

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

March 19, 2008

Charles R. Fulbruge III  
Clerk

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No. 06-51082  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

BRUCE PERKINS

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:06-CR-99-ALL

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Before JONES, Chief Judge, and HIGGINBOTHAM and CLEMENT, Circuit Judges.

PER CURIAM:\*

Bruce Perkins appeals from the district court's denial of his motion to dismiss his indictment on double jeopardy grounds. The denial of a motion to dismiss the indictment is an appealable order under the collateral order doctrine. *United States v. Brackett*, 113 F.3d 1396, 1398 (5th Cir. 1997). Because the district court denied the motion as frivolous, Perkins' notice of appeal did not divest the district court of jurisdiction to accept Perkins'

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

subsequent conditional guilty plea. See *United States v. Dunbar*, 611 F.2d 985, 987 (5th Cir. 1980) (en banc).

Prior to entering a conditional guilty plea to the indictment, Perkins proceeded to trial before a jury. The district court declared a mistrial based on manifest necessity, namely, the jury's inability to reach a verdict. Perkins argues that the district court erred in declaring a mistrial. Perkins further argues that his double jeopardy rights were violated because the Government failed to establish venue as an element of the offense at trial and because jeopardy had attached during the first trial.

The district court did not err in finding that a mistrial was necessitated by the jury's inability to reach a verdict. See *Arizona v. Washington*, 434 U.S. 497, 508 (1978). The record reflects that jury deliberations lasted for about seven hours while Perkin's trial lasted only about three hours. The jury sent several notes to the district court concerning its inability to reach a verdict, and the district court interviewed two jurors individually as well as the jury as a whole in the presence of counsel and the defendant to confirm the jury's deadlocked status. The district court also consulted with counsel regarding whether the jury should continue its deliberations. Furthermore, the issue facing the jury, namely, possession with intent to distribute crack cocaine, was not particularly complex. In light of these factors, the district court did not abuse its discretion in declaring a mistrial. See *United States v. Holley*, 986 F.2d 100, 104 (5th Cir. 1993); *United States v. Bauman*, 887 F.2d 546, 552 (5th Cir. 1989); *United States v. Starling*, 571 F.2d 934, 941 (5th Cir. 1978).

The district court also did not err in denying Perkins' motion to dismiss on double jeopardy grounds. The Double Jeopardy Clause does not bar a second trial where the first trial appropriately ended in a mistrial, as in this case. See *Richardson v. United States*, 468 U.S. 317, 322-23 (1984). Moreover, the Government introduced sufficient evidence at trial to establish venue. See *Weaver v. United States*, 298 F.2d 496, 498 (5th Cir. 1962).

AFFIRMED.