

APR 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>GUIDO BRAVATTI and ANTHONY EPPOLITO,</p> <p>Defendants - Appellants.</p>

Nos. 08-10294, 08-10295

D.C. No. 2:05-cr-087-PMP (LRL)

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Argued and Submitted March 09, 2009
San Francisco, California

Before: BEA and HUG, Circuit Judges, and EDMUNDS,** District Judge.

The district court did not err either in denying appellants' motions to dismiss their indictments on double jeopardy grounds or in denying their requests for an

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Nancy G. Edmunds, United States District Judge for the Eastern District of Michigan, sitting by designation.

evidentiary hearing. The government opposed the grant of a mistrial and there is nothing to suggest the government's case was going badly or that the government had reason to think it would fare better on retrial. *See United States v. Lun*, 944 F.2d 642, 644 (9th Cir. 1991). Having presided over the entire proceeding, the district court was uniquely situated to evaluate the prosecutor's conduct and nothing calls into question the prosecutor's explanation for the events at trial. *See United States v. Hagege*, 437 F.3d 943, 951 (9th Cir. 2006).

AFFIRMED.