

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 09-3051**

**September Term, 2009**

FILED ON: MARCH 22, 2010

UNITED STATES OF AMERICA,  
APPELLEE

v.

FARZAD DARUI, APPELLANT

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Appeal from the United States District Court  
for the District of Columbia  
(No. 07-cr-0149)

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Before: SENTELLE, *Chief Judge*, and Garland and Kavanaugh, *Circuit Judges*.

## J U D G M E N T

Upon consideration of the record from the United States District Court for the District of Columbia and the briefs and arguments of the parties, it is

**ORDERED AND ADJUDGED** that the judgment of the district court be affirmed.

Appellant Farzad Darui appeals the district court's denial of his Motion to Dismiss Superseding Indictment as Violative of the Double Jeopardy Clause. He claims that the district court should have granted the motion because at the end of his first trial the district court committed reversible error when it declared a mistrial unsupported by "manifest necessity" as required by *Arizona v. Washington*, 434 U.S. 497, 505-06 (1978). Because there was no "manifest necessity" to the mistrial declaration, Darui argues, retrying him on the same charges would put him in double jeopardy in violation of the Fifth Amendment.

In *Arizona v. Washington* the Supreme Court concluded that a trial judge is allowed "broad discretion in deciding whether or not 'manifest necessity' justifies a discharge of the jury." 434 U.S. at 509. Here, on the record before us, including the trial judge's jury instructions, the trial judge's communications with the jury during its deliberations, and the length of the jury's deliberations, we conclude that the trial judge did not abuse his "broad discretion" in declaring a mistrial based on manifest necessity. We therefore affirm the district court's denial of Darui's motion.

**No. 09-3051**

Pursuant to Rule 36 of this Court, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. See Fed R. App. P. 41(b); D.C. Cir. R. 41.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/

Michael C. McGrail  
Deputy Clerk