

31.1 Purposes of Mistrial

31.1 Purposes of Mistrial

A mistrial is a procedural device used by a judge to terminate a trial before the jury returns a verdict on the merits. *See State v. Diehl*, 137 N.C. App. 541 (2000), *rev'd on other grounds*, 353 N.C. 433 (2001). The courts have observed that the “purposes of mistrial are to prevent prejudice arising from conduct before the jury and to provide a remedy where the jury is unable to perform its function.” *State v. O’Neal*, 67 N.C. App. 65, 69 (1984), *aff’d as modified*, 311 N.C. 747 (1984). They have also stated that although it is a “drastic remedy,” a mistrial is appropriately granted when a party shows serious improprieties that render a fair and impartial verdict impossible. *See State v. Stocks*, 319 N.C. 437, 441 (1987); *see also State v. Taylor*, 362 N.C. 514 (2008).

Generally, the granting of a mistrial will not violate a defendant’s right to be free from double jeopardy where a defendant’s trial or sentencing hearing “ends with a mistrial declared for a manifest necessity or to serve the ends of public justice.” *See State v. Sanders*, 347 N.C. 587, 599 (1998). A manifest necessity only exists when some event occurs at trial that creates “a situation where the defendant’s right to have the trial continue to termination in a judgment is outweighed ‘by the public’s interest in fair trials designed to end in just judgments.’” *Id.* at 595 (quoting *Wade v. Hunter*, 336 U.S. 684, 689 (1949)); *see also State v. Lachat*, 317 N.C. 73, 82 (1986) (stating that the failure of a jury to reach a verdict due to deadlock is a manifest necessity justifying the declaration of a mistrial). The term “manifest necessity” is used throughout this chapter and is discussed further *infra* in § 31.9C, Mistrial Declared for a Manifest Necessity.

Although double jeopardy principles do not bar retrial after a proper declaration of a mistrial, jeopardy is still considered to have attached. Therefore, if the State dismisses the charges after a mistrial, double jeopardy bars refile of the charges later. *See State v. Courtney*, ___ N.C. App. ___, 817 S.E.2d 412, 419 (2018) (holding that where the prosecutor filed a voluntary dismissal pursuant to G.S. 15A-931 after the judge had granted a mistrial based on a deadlocked jury, “such a post-jeopardy dismissal is accorded the same constitutional finality and conclusiveness as an acquittal for double jeopardy purposes”), *rev. allowed*, ___ N.C. ___, 818 S.E.2d 109 (2018); *see also* Shea Denning, [State v. Courtney: Retrying the Defendant after Charges Have Been Dismissed](#), N.C. CRIM. L., UNC SCH. OF GOV’T BLOG (May 16, 2018).

The basic reasons for a mistrial can be categorized as follows. A mistrial may be granted if an event occurs during trial that:

- prejudices the defendant,
- prejudices the State, or
- prevents the trial from proceeding in conformity with the law.

Examples of events that commonly necessitate the granting of a mistrial include:

- hopeless deadlock by the jury,
- death or disability of a juror, or
- death or disability of the trial judge.

These types of mistrials and mistrials based on prejudice to the parties are discussed in this chapter as well as the practical effects of a mistrial, including the effect of a mistrial on a defendant's constitutional right to be free from double jeopardy.