

### **31.7 Juror Deadlock**

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## **31.7 Juror Deadlock**

### **A. Statutory Authority**

A jury's inability to reach a verdict due to deadlock justifies the declaration of a mistrial. *State v. Pakulski*, 319 N.C. 562, 570 (1987). Two statutes authorize a trial judge to declare a mistrial if the jury becomes hopelessly deadlocked during deliberations. G.S. 15A-1063(2) states that "[u]pon motion of a party or upon his own motion, a judge may declare a mistrial if . . . [i]t appears there is no reasonable probability of the jury's agreement upon a verdict." See also *State v. O'Neal*, 67 N.C. App. 65 (1984) (noting judge's statutory authority to grant a mistrial but finding that order for mistrial was not justified since the jury could and did reach a verdict in the case), *aff'd as modified*, 311 N.C. 747 (1984).

G.S. 15A-1235(d) also allows a judge to declare a mistrial on the same grounds as in G.S. 15A-1063(2), stating that "[i]f it appears that there is no reasonable possibility of agreement, the judge may declare a mistrial and discharge the jury." See *O'Neal*, 67 N.C. App. 65. The purpose behind the enactment of G.S. 15A-1235, which also prohibits the trial judge from requiring or threatening to require the jury to continue deliberating for an unreasonable length of time, was "to avoid coerced verdicts from jurors having a difficult time reaching a unanimous decision." *State v. Evans*, 346 N.C. 221, 227 (1997).

### **B. Capital Sentencing Hearings**

If a jury becomes deadlocked during deliberations in a capital sentencing hearing, a mistrial and new sentencing hearing is not the appropriate remedy. Instead, G.S. 15A-2000(b) provides that "[i]f the jury cannot, within a reasonable time, unanimously agree to its sentence recommendation, the judge shall impose a sentence of life imprisonment." The judge cannot impose the death penalty if the jury cannot agree unanimously to a sentence recommendation. *Id.*

If misconduct occurs during jury deliberations at the sentencing phase, mistrial remains an appropriate remedy if there is a manifest necessity for its declaration. See, e.g., *State v. Sanders*, 347 N.C. 587 (1998) (record revealed "manifest necessity" based on misconduct by the jurors in failing to follow the judge's instructions concerning their duties and the law).

### C. Retrial after Mistrial Based on Hung Jury

**Generally.** It has long been held that the prohibition against double jeopardy will generally not bar a retrial of a defendant whose previous trial ended in a deadlocked jury. *See State v. Odom*, 316 N.C. 306 (1986); *see also United States v. Perez*, 22 U.S. 579 (1824). “The ‘interest in giving the prosecution one complete opportunity to convict those who have violated its laws’ justifies treating the jury’s inability to reach a verdict as a nonevent that does not bar retrial.” *Yeager v. United States*, 557 U.S. 110, 118 (2009) (citation omitted). “A ‘hung’ jury is a classic example of manifest necessity.” *Odom*, 316 N.C. 306, 310 (citing *Arizona v. Washington*, 434 U.S. 497 (1978)); *see also State v. Simpson*, 303 N.C. 439 (1981).

**Implied acquittal of offenses when a verdict on lesser charge reached.** In *Green v. United States*, 355 U.S. 184 (1957), the U.S. Supreme Court explained the doctrine of implied acquittal as follows: “when a jury convicts [a defendant] on a lesser alternate charge and fails to reach a verdict on the greater charge—without announcing any splits or divisions and having had a full and fair opportunity to do so—the jury’s silence on the second charge is an implied acquittal.” *Brazzel v. Washington*, 491 F.3d 976, 978 (9th Cir. 2007). “A verdict of implied acquittal is final and bars a subsequent prosecution for the same offense.” *Id.* For example, when a defendant is tried for first-degree murder on the theory of premeditation and deliberation and is found guilty of murder in the second degree, the jury has decided that there is not sufficient evidence to conclude beyond a reasonable doubt that defendant premeditated and deliberated the killing. The conviction of the lesser included offense of second-degree murder is an implied acquittal of the greater offense of first-degree murder. *State v. Marley*, 321 N.C. 415, 424 (1988).

However, if a mistrial is declared because the jury is deadlocked and unable to reach *any* verdict, the implied acquittal doctrine does not apply and the defendant is not entitled to the dismissal of the charge of the greater offense even if the jury indicated that it was deadlocked on a lesser-included offense. *See Blueford v. Arkansas*, 566 U.S. 599 (2012); *State v. Booker*, 306 N.C. 302 (1982). In the view of these cases, there must actually be a final verdict before there can be an implied acquittal of the greater charges. Since a deadlocked jury has been unable to reach any verdict, double jeopardy principles do not preclude a defendant from being tried again for the greater offense. *See Blueford*, 566 U.S. 599, 610 (foreperson’s report that jury was “unanimous against” convicting defendant of the two greater charges and were deadlocked on the third lesser charge was not a final resolution and the Double Jeopardy Clause “does not stand in the way of a second trial on the same offenses”); *Booker*, 306 N.C. 302 (no double jeopardy bar to retrying defendant on a first-degree murder charge after a mistrial had been declared even though the jury at the first trial had sent a note to the trial judge stating that it was deadlocked seven to five in favor of a verdict of guilty of second-degree murder); *see also State v. Edwards*, 150 N.C. App. 544 (2002) (no implied acquittal of felony assault charge where mistrial was declared after jury indicated its deadlock on lesser included misdemeanor assault charge).

In *Booker*, the N.C. Supreme Court refused to adopt the rule announced by the Supreme Court of New Mexico in *State v. Castrillo*, 566 P.2d 1146 (N.M. 1977), that “when a jury announces its inability to reach a verdict in a case involving included offenses, the trial court is required to submit verdict forms to the jury to determine if it has unanimously voted for acquittal on any of the included offenses, and the jury may then be polled with regard to any verdict thus returned.” *Booker*, 306 N.C. 302, 306 (citation omitted). The N.C. Supreme Court agreed instead with the rationale espoused by other jurisdictions that a polling of the jury on the various possible verdicts that were submitted would amount to an “unwarranted and unwise intrusion into the province of the jury.” *Id.* (citation omitted)

In addition, when a trial judge elects not to submit lesser-included offenses of a greater charged offense, a defendant is not deemed to have been “acquitted” of those lesser charges if the trial results in a mistrial because of a hung jury. Thus, the defendant can be retried not only on the greater offense, but also on any lesser included offenses supported by the evidence at the second trial. *See State v. Hatcher*, 117 N.C. App. 78 (1994) (after mistrial was declared based on a hung jury, defendant could be retried on second-degree rape charge *and* any applicable lesser included offenses even though trial judge in first trial only charged on second-degree rape).

**Retrial of hung counts barred if simultaneous acquittal of other charge decided the same issue.** In *Yeager v. United States*, 557 U.S. 110 (2009), the petitioner was acquitted of fraud charges and the jury deadlocked on charges involving insider trading and money laundering based on the fraud. The government sought to retry the petitioner on the charges on which the jury had deadlocked. The petitioner moved to dismiss the charges and asserted that by acquitting him of the fraud charges, the jury had necessarily decided that he did not possess any insider information—an issue that was also a critical issue of fact in the hung charges. The petitioner then argued that the issue preclusion aspect of the Double Jeopardy Clause therefore barred a second prosecution for insider trading and money laundering. The U.S. Supreme Court agreed, finding that in cases where a jury acquits on one count while failing to reach a verdict on another count concerning the same issue of ultimate fact, the preclusive effect of the acquittal bars reprosecution of the hung count.

For additional information regarding double jeopardy in the context of mistrials, see *infra* § 31.9, Double Jeopardy and Mistrials. For a further discussion of the propriety of taking partial verdicts, see *infra* § 34.7F, Partial Verdicts.

#### **D. Additional Resources**

For further discussion of topics relevant to deadlock and jury deliberations, including lengthy deliberations, see *infra* Chapter 34, Deliberations and Verdict.