

34.5 Deadlock

- A. Further Instructions
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“In times long gone by, when a jury was unable to reach a verdict the trial court simply deprived the jurors of food, water, and fire until it reached a verdict. Today a more subtle approach is used to break a deadlocked jury.” *State v. Lamb*, 44 N.C. App. 251, 253 (1979) (citations omitted); *see also Renico v. Lett*, 559 U.S. 766, 780 (2010) (Stevens, J., dissenting) (noting that “[f]ourteenth-century English judges reportedly loaded hung juries into oxcarts and carried them from town to town until a judgment ‘bounced out’” while “[l]ess enterprising colleagues kept jurors as de facto ‘prisoners’ until they achieved unanimity”) (citations omitted).

A. Further Instructions

G.S. 15A-1235(c) provides that if the jury indicates a deadlock, the trial judge may give or repeat the instructions about reaching a verdict provided in G.S. 15A-1235(a) and (b). *See supra* § 34.1, Instructions to the Jury about Reaching a Verdict. The language of G.S. 15A-1235(c) is permissive rather than mandatory, and it is within the sound discretion of the trial judge whether to give those instructions. *State v. Williams*, 315 N.C. 310 (1986).

In lieu of the instructions set out in G.S. 15A-1235(b), the judge may give the pattern instruction entitled “Failure of Jury to Reach a Verdict,” which is found in N.C. Pattern Jury Instruction—Crim.101.40 (June 2014). *See, e.g., State v. Walters*, 209 N.C. App. 158 (2011). This instruction is similar to the one found in G.S. 15A-1235(b). The instructions in both G.S. 15A-1235(b) and N.C. Pattern Jury Instruction—Crim. 101.40 are modified, weaker versions of the charge approved by the U.S. Supreme Court in *Allen v. United States*, 164 U.S. 492 (1896). Both are still sometimes referred to as an “Allen” or “dynamite” charge. *See State v. Fowler*, 312 N.C. 304, 306 (1984); *State v. Lamb*, 44 N.C. App. 251, 253–54 (1979).

B. Mistrial

Grounds. If it appears that there is no reasonable possibility of the jury reaching a verdict, the judge may declare a mistrial and discharge the jury. G.S. 15A-1235(d). This statute allows a judge to declare a mistrial on the same grounds as in G.S. 15A-1063(2), which 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.” *State v. O’Neal*, 67 N.C. App. 65 (1984) (noting judge’s authority to grant a mistrial under G.S. 15A-1063(2), but order for mistrial not justified since the jury could and did reach a verdict in the case), *aff’d in pertinent part*, 321 N.C. 154 (1984).

The jury's inability to reach a verdict due to deadlock constitutes "manifest necessity," justifying the declaration of a mistrial. *State v. Pakulski*, 319 N.C. 562, 570 (1987). Whether to grant a motion for a mistrial is a matter that lies within the sound discretion of the trial judge, and that ruling will not be disturbed on appeal unless it was so clearly erroneous that it amounted to an abuse of discretion. *State v. McCarver*, 341 N.C. 364, 383 (1995).

Findings of fact. Pursuant to G.S. 15A-1064, "[b]efore granting a mistrial, the judge must make finding of facts with respect to the grounds for the mistrial and insert the findings in the record of the case." In noncapital cases, a trial judge's failure to make findings in support of a mistrial is not subject to appellate review unless timely objected to by defense counsel. "However, in a *capital* case, the failure to object to a mistrial declaration will not prevent a defendant from assigning the declaration of mistrial as error on appeal." *State v. Pakulski*, 319 N.C. 562, 569 (1987) (emphasis in original).

For further discussion of mistrials after a jury has become deadlocked, see *supra* § 31.7, Juror Deadlock.