

THE DEADLOCKED JURY

When the jury indicates that it cannot reach a verdict, the court should consider if and when to declare a mistrial for those offenses that the jury could not reach a verdict.

Put on the record how long the jury had been deliberating. Do NOT ask the numerical division of the jury.

After consulting with the Prosecutor and the Defense, the judge should read the Prim instruction to the jury: (See the following page)

After reading the Prim instruction, the jury should be sent back to deliberate.

If after another attempt to deliberate, the jury cannot reach a verdict, the Court should declare a “mistrial in the manifest interest of justice” for those offenses that the jury was unable to reach a verdict. If the jury was able to reach a verdict on SOME of the charges, judgment should be entered upon those charges in accordance with the verdict(s).

PRIM INSTRUCTION
I.P.I. 26.07

The verdict must represent the considered judgment of each juror.

In order to return a verdict it is necessary that each juror agree thereto.

Your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment.

Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors.

In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous; but do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans.

You are judges, judges of the facts.

Your sole interest is to ascertain the truth from the evidence in the case.”

People v. Prim (1972), 53 Ill.2d 62, 75-76, 289 N.E.2d 601, cert. denied (1973), 412 U.S. 918, 93 S.Ct. 2731, 37 L.Ed. 144:

People v. Cowan, 105 Ill. 2d 324, 327, 473 N.E.2d 1307, 1308 (1985)

CASE LAW

A trial court has broad discretion in ruling upon a motion for mistrial. The court's judgment will not be disturbed unless this discretion is shown to be clearly abused, even though the jury had earlier indicated it was hopelessly deadlocked. The trial court is not required to accept a jury's assessment of its own ability to reach a verdict or to declare a mistrial merely because the jurors have not been able to come to a unanimous verdict immediately. In determining how long a jury should be permitted to deliberate before a mistrial is declared and the jury is discharged, no fixed time can be prescribed, and great latitude must be accorded to the trial court in the exercise of its informed discretion. There is no mechanical formula that can be applied because a trial court's ruling on a motion for mistrial is grounded in the unique facts of the particular case in which the ruling was made. *People v. Willmer*, 396 Ill. App. 3d 175, 180, 919 N.E.2d 1035 (2009)

Our supreme court has cited, at minimum, six relevant factors in reviewing whether a trial court has acted within its discretion in deciding whether to declare a mistrial on the basis of a jury deadlock: "(1) statements from the jury that it cannot agree, (2) the length of the deliberations, (3) the length of the trial, (4) the complexity of the issues, (5) the jury's communications to the judge, and (6) the potentially prejudicial impact of continued forced deliberations." (holding trial court did not abuse its discretion by declaring mistrial where juror statements supported determination that further deliberations would have been futile). "The jury's own statement that it is unable to reach a verdict has been repeatedly considered the most important factor in determining whether a trial court abused its discretion in declaring a mistrial." A jury impasse is more significant when the case is short and less complicated. (noting the "relatively short trial, which primarily involved two days of witness testimony and videotaped statements and one defendant" and the uncomplicated nature of the case. *People v. Richardson*, 2022 IL App (2d) 210316

"The trial court has broad discretion when responding to a jury that claims to be deadlocked, although any response should be clear, simple, and not coercive." *People v. McLaurin*, 235 Ill. 2d 478, 491 (2009).

A trial court's comments are considered coercive if the comments convey to the jurors that they must arrive at a verdict and do not leave open the option of returning no verdict if they are unable to reach a consensus. *People v. Wilcox*, 407 Ill. App. 3d 151, 164-65 (2010).

The law has invested Courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act [] or the ends of public justice would otherwise be defeated.” Illinois v. Somerville, 410 U.S. 458, 461, 93 S.Ct. 1066, 1069, 35 L.Ed.2d 425, 429 (1973).

We do not think a court errs in discharging a jury when it is apparent it is hopelessly deadlocked. In the case of People v. DeFrates, 395 Ill. 439, 70 N.E.2d 59

When “manifest necessity” justified the discharge of juries unable to reach verdicts, the Double Jeopardy Clause did not bar retrial. Illinois v. Somerville, 410 U.S. 458, 463, 93 S. Ct. 1066, 1070, 35 L. Ed. 2d 425 (1973)

It may be improper for a court to issue supplemental instructions urging deadlocked jurors to reach a unanimous verdict after the court becomes aware that a majority of jurors favor conviction. This rule of law arises from the possibility that a supplemental jury instruction given to a deadlocked jury may have a coercive effect upon jurors in the minority, particularly where those jurors might feel that the judge agrees with the majority. However, where the trial court receives an *unsolicited* statement regarding the numerical division of the jurors, an order instructing the jury to continue its deliberations does not constitute error. People v. Watkins, 293 Ill. App. 3d 496, 688 N.E.2d 798 (1997)

This court adheres to the position that it is error for the trial court to inquire into the numerical division of a jury. However, this court also adheres to the position that such error is not reversible per se, and unless defendant can show that the inquiry into numerical division interfered with the deliberations of the jury to the prejudice of defendant or hastened the verdict, such error is not reversible. People v. Sanchez, 96 Ill. App. 3d 774, 778, 422 N.E.2d 58, 61 (1981)

Actions of the trial court in repeatedly calling the jury into open court, asking the numerical division of the jury, and ordering them to continue deliberations after the court became aware that the majority of the jurors was in favor of a verdict of guilty and after the foreman indicated that he did not know whether further deliberations would help operated to coerce the minority into returning a verdict of guilty and, as such, was reversible error. People v. Santiago, 108 Ill. App. 3d 787, 439 N.E.2d 984 (1982).