

## **Blueford v. Arkansas**

**--- U.S. --- (2012)**

**Decided May 24, 2012**

**FACTS:** Blueford stood trial in Arkansas for capital murder but the prosecution waived the possibility of the death penalty.<sup>1</sup> The jury was instructed on the possible charges that the jury might consider and specifically instructed that they were to start their deliberations by looking at the charge of capital murder, and only if the jury concluded that charge was inappropriate, were they to move to first-degree murder, manslaughter and then negligent homicide.

A few hours into deliberations, the jury sent a question asking what would happen if they could not agree on a charge at all. The Court brought the jury back into the courtroom and “issued a so –called ‘Allen instruction,’ emphasizing the importance of reaching a verdict.”<sup>2</sup> The Court deliberated another half hour and reported that it was “hopelessly” deadlocked. The Court inquired into the votes for each of the possible charges and the jury foreman stated that they were unanimous that it was not capital or first-degree murder, but that they disagreed on manslaughter and never reached negligent homicide. They were given another Allen instruction and went back to deliberate, but finally returned that they had not, and could not, reach a verdict. The Court declared a mistrial.

Blueford was retried. He moved to dismiss the capital and first degree murder charges, arguing that since the jurors had unanimously decided he was not guilty of those offenses it was a violation of Double Jeopardy to retry him on those charges. The trial court, and the appellate courts of Arkansas, disagreed, stating that the foreperson’s report to the court was not a “formal announcement of acquittal” when she disclosed the vote.

Blueford requested certiorari and the U.S. Supreme Court granted review.

**ISSUE:** Does the Double Jeopardy Clause bar a retrial on a greater offense if the jury announces (during an Allen charge) that it has voted against guilt on that greater offense?

**HOLDING:** No

**DISCUSSION:** Blueford continued to argue “that he cannot be retried for capital and first-degree murder because the jury actually acquitted him of those offenses.”<sup>3</sup> The Court, however, agreed that the “foreperson’s report was not a final resolution of anything.” Even though the jury had been instructed to deliberate each charge separately, from the most serious on down, it was possible for the jury to revisit the higher charges, “notwithstanding its earlier

---

<sup>1</sup> The crime would have been classified as Wanton Murder, KRS 507.020(1)(b) in Kentucky.

<sup>2</sup> Allen v. U.S., 164 U.S. 492 (1896).

<sup>3</sup> Green v. U.S., 355 U.S. 184 (1957).

votes.” As such, the “foreperson’s report prior to the end of deliberations lacked the finality necessary to amount to an acquittal on those offenses, quite apart from any requirement that a formal verdict be returned or judgment entered.”

Blueford further argued that it was improper for the trial court to declare a mistrial and that instead it should have explored other options to allow the jury to give effect to its decision not to convict on the two highest charges. The Court disagreed, noting that it had never before required a trial court “to consider any particular means of breaking the impasse – let alone to consider giving the jury new options for a verdict.”<sup>4</sup>

The Court concluded that the “jury in this case did not convict Blueford of any offense, but it did not acquit him of any either.” The Court ruled that “the Double Jeopardy Clause does not stand in the way of a second trial on the same offense” and upheld the judgment by the Arkansas Supreme Court.

---

<sup>4</sup> See Renico v. Lett, 559 U.S. – (2010).