

May 30, 2012

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***Blueford v. Arkansas:  
Double Jeopardy Does Not Bar to Retrial Even After  
Tentative Jury Vote of Acquittal***

In *Blueford v. Arkansas*, Case No. 10-1330 (USSC May 24, 2012), the State of Arkansas charged Blueford with capital murder for the death of one-year-old Matthew McFadden, who died from a severe head injury sustained on November 28, 2007. The State’s theory at trial was that Blueford had intentionally caused the boy’s death, while the defense maintained that Blueford accidentally knocked the child onto the ground. The trial court instructed the jury that the charge of capital murder included the three lesser offenses of first degree murder, manslaughter and negligent homicide. In closing arguments, the prosecution told the jury that before they could consider the lesser included offenses of capital murder, they must first unanimously vote that Blueford was not guilty of capital murder before proceeding to the lesser charges. The prosecution emphasized that the jury was not to lay out the four charges and pick which one fits the best.

A few hours after beginning its deliberations, the jury sent the court a note asking, “What happens if we cannot agree on a charge at all.” The court called in the jury and issued an “Allen instruction” instructing them on the importance of reaching a verdict. After some time, the jury again sent a note informing the court that it could not agree on a charge. When summoned, the court asked the foreperson to disclose the jury’s votes on each offense, at which point the foreperson told the court that the jury unanimously voted against capital and first degree murder but could not reach a decision as to manslaughter, as they currently had 9 votes for and 3 against. The jury had not voted on the negligent homicide charge.

Following this, Blueford’s counsel asked the court to submit new verdict forms to the jurors, to be completed “for those counts that they have reached a verdict on.” However, the State objected that the jury was still deliberating and a verdict of acquittal had to be all or nothing. The court denied Blueford’s request. When the jury again returned, the foreperson stated that they still could not reach a verdict and thus the court declared a mistrial and discharged the jury. The State sought to retry Blueford who moved to dismiss the capital and first degree murder charges on double jeopardy grounds, citing the foreperson’s statement that the jurors voted unanimously against those charges.

The U. S. Supreme Court found that the report by the foreperson was not a final resolution as evidenced by the fact that their deliberations had not concluded. The jurors in fact went back to the jury room to deliberate further, even after the foreperson had delivered her report. When they emerged a half hour later, the foreperson stated only that they could not reach a verdict. The foreperson gave no indication whether it was still the case that all 12 jurors



State Prosecution Support

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believed Blueford was not guilty of capital or first-degree murder, that 9 of them believed he was guilty of manslaughter, or that a vote had not been taken on negligent homicide. The fact that deliberations continued after the report deprives that report of the finality necessary to constitute an acquittal on the murder offenses. The U.S. Supreme Court stated that it was therefore possible for Blueford's jury to revisit the offenses of capital and first-degree murder, notwithstanding its earlier votes. And because of that possibility, 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. Therefore, the State would not violate the Double Jeopardy Clause by retrying Blueford for capital murder.