

150.50 FAILURE OF JURY TO REACH VERDICT.

Members of the jury, I am going to ask you to resume your deliberations in an attempt to return a verdict. I have already instructed you that your verdict must be unanimous- that is, each of you must agree on the verdict.¹ I shall give you these additional instructions:

First, it is your duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment.²

Second, each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors.³

Third, in the course of your deliberations, you should not hesitate to reexamine your own views and change your opinion if you become convinced it is erroneous. On the other hand, you should not hesitate to hold to your own views and opinions if you remain convinced they are correct.⁴

Fourth, none of you should surrender an honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.⁵

Please be mindful that I am in no way trying to force or coerce you to reach a verdict. I recognize the fact that there are sometimes reasons why jurors cannot agree. Through these additional instructions I have just given you, I merely want to emphasize that it is your duty to do whatever you can to reason the matter over together as reasonable people and to reconcile your differences, if such is possible without the surrender of conscientious convictions, and to reach a verdict.⁶

I will now let you resume your deliberations.⁷

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1. Different instructions must be given where the parties have stipulated a stated majority verdict under N.C. Gen. Stat. § 1A-1, Rule 48.

2. Compare N.C. Gen. Stat. § 15A-1235(b)(1).

3. Compare N.C. Gen. Stat. § 15A-1235(b)(2).

4. Compare N.C. Gen. Stat. § 15A-1235(b)(3).

5. Compare N.C. Gen. Stat. § 15A-1235(b)(4).

6. *State v. Williams*, 288 N.C. 680, 693-696 (1975).

7. This instruction does not mention that a mistrial will probably necessitate the selection of another jury to hear the case and evidence again, or that more time of the court will be spent in the retrial of the case. Although such language was approved in such cases as *State v. Williams*, 288 N.C. 680, 693-696 (1975) and *State v. Dial*, 38 N.C. App. 529, 532-533 (1978), the later case of *State v. Lamb*, 44 N.C. App. 251 (1979) holds that deadlocked criminal juries are to be instructed in accordance with N.C. Gen. Stat. § 15A-1235 after July 1, 1978. Since N.C. Gen. Stat. § 15A-1235 does not mention wasted jury and judicial resources which might occur as the result of mistrials, it may be error to so charge in criminal cases, *c.f.*, *State v. Alston*, 294 N.C. 577 (1978). Whether the same rule will obtain in civil cases is an open question. This instruction, however, takes the conservative approach and follows *State v. Lamb* and N.C. Gen. Stat. § 15A-1235.