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SUPREME COURT CLARIFIES JURY INSTRUCTIONS IN CRIMINAL CASES

SANTA FE – The state Supreme Court today clarified how juries are to deliberate in certain cases where jurors are deadlocked and unable to reach a verdict on a criminal charge.

The decision by the state's highest court allows an Albuquerque man, Kelson Lewis, to be retried on a felony child sex charge.

As part of its ruling, the Supreme Court adopted a new approach to instructions given to juries for deliberating when there is a lesser offense contained in a more serious charge against a defendant. The justices said a jury must unanimously find a defendant not guilty on the greater charge before it can return a verdict on a "lesser included offense."

In the case against Lewis, battery was considered a lesser offense included in the greater charge of criminal sexual contact with a minor. A district judge in Albuquerque declared a mistrial in 2015 on the felony child sex crime. Lewis appealed the judge's decision to allow a new trial on the charge.

In his appeal, Lewis contended a retrial would violate the constitutional protection against double jeopardy that prohibits a retrial if a jury has reached a verdict of guilty or not guilty on the charged offense. Lewis argued that the judge failed to poll jurors to determine whether the jury was deadlocked on the felony child sex charge or battery.

The Supreme Court concluded the judge had acted properly and established a "clear record" that jurors were deadlocked by questioning the jury foreperson and from notes the jury had sent to the judge during its deliberations.

The Court assigned one of its standing committees to update rules that provide uniform jury instructions for criminal cases. "Henceforth, juries shall be instructed that they have discretion to choose the order in which they deliberate on the offenses within a count but that they may not

return a verdict on a lesser included offense unless they unanimously find the defendant not guilty on the greater offense," the Court said in an opinion written by Justice Barbara J. Vigil.

To read the opinion in *State v. Lewis*, No. S-1-SC-36428 slip op. (N.M. S. Ct. November 1, 2018), please visit the New Mexico Compilation Commission's website using the following link:

http://www.nmcompcomm.us/nmcases/nmsc/slips/SC36,428.pdf

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