

SUPREME COURT OF LOUISIANA

No. 2016-K-1482

STATE OF LOUISIANA

VERSUS

CHRISTOPHER J. BELL

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS**

CRICHTON, J., additionally concurs and assigns reasons:

I agree with this Court’s decision to deny this writ application and write separately to commend the trial judge’s discretion, under the circumstances presented, to instruct the jury to continue its deliberations. On occasion, a trial judge may instruct a deadlocked jury to continue deliberating—a so-called “*Allen* charge.” *See Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896) (permitting a jury instruction that stated a minority of jurors could consider the views of the majority of jurors and ask themselves whether their own views were reasonable under the circumstances.). In general, Louisiana courts prohibit the use of an *Allen* charge, *see State v. Nicholson*, 315 So.2d 639, 641–43 (La. 1975), unless it is not coercive. *See, e.g., State v. Lewis*, 2012-0803, p. 24 (La. App. 4 Cir. 9/25/13), 125 So.3d 1252, 1266 (noting a trial judge permissibly instructed a jury “to continue to deliberate and made every effort to speak to your fellow jurors and try to come to some sort of conclusion, to the best of your abilities”); *see also State v. Foster*, 09-837, p. 10 (La. App. 5 Cir. 6/29/10), 44 So.3d 733, 740 (noting a trial judge permissibly instructed a jury because the judge did not imply it would declare a mistrial and did not tell some jurors to rethink their views in order to reach a verdict).

Here, after deliberating for less than two hours,¹ the jury informed the court that they seemed unable to reach a verdict. The trial judge instructed the jury to continue deliberating:

Let me just remind you. We spent a long time, taking the time to select y'all. And we've spent over 72 hours going through this case together. So it's been three days that we've committed to this case. It's a very serious offense. Am [sic] I would urge you at least continue in your deliberations with the effort to reach a verdict.

Given the jury's relatively brief deliberation in this case, in my view, the trial judge appropriately exercised her discretion and used the *Allen* charge in an exemplary fashion.

¹ After the jury left the courtroom, the trial judge stated:

All right. I'll note for the record it's been less than two hours that the jury has been deliberating. And closing arguments alone were over three hours. So I've asked the jury to go back and continue in their deliberations. We're in recess.