

STATE OF MAINE

v.

ALI ALMURSHIDY

Submitted on Briefs September 27, 2000
Decided October 2, 2000

Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER, and
CALKINS, JJ.

MEMORANDUM OF DECISION

Ali Almurshidy appeals from a decision of the Superior Court (Cumberland County, *Crowley, J.*) denying his motion to dismiss a gross sexual assault charge on double jeopardy grounds, following the jury's failure to reach a verdict in a retrial. The case had been remanded for retrial following our decision in *State v. Almurshidy*, 1999 ME 97, 732 A.2d 280.

The trial court's ruling, although interlocutory, is directly appealable. *See State v. Flick*, 495 A.2d 339, 341 (Me. 1985). *See also Richardson v. United States*, 468 U.S. 317, 322 (1984); *State v. Lebroke*, 589 A.2d 941, 942-43 (Me. 1991).

On appeal, Almurshidy contends that the Superior Court erred in not attempting to break the jury deadlock with an "*Aller*" type charge suggesting to the jury the consequences of their failure to reach a verdict. We have specifically stated that such a charge is inappropriate. *See State v. White*, 285 A.2d 832 (Me. 1972). The United States Supreme Court has

recently reemphasized that courts should avoid suggesting to juries the consequences of failure to reach a unanimous verdict. *See Jones v. United States*, 527 U.S. 373, 382 (1999). Prior to declaring a mistrial on the gross sexual assault charge, the court conducted an appropriate inquiry in accordance with our direction in *State v. Landry*, 600 A.2d 101 (Me. 1992). There was no error in the court's finding manifest necessity and declaring a mistrial or in denying Almurshidy's motion to dismiss.

The entry is:

Order denying motion to dismiss on
double jeopardy grounds affirmed.

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