

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D17010
C/cb

_____AD3d_____

Submitted - October 25, 2007

HOWARD MILLER, J.P.
ROBERT A. LIFSON
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2007-04174

DECISION & JUDGMENT

In the Matter of Keith Jeffrey, petitioner, v Neil
J. Firetog, etc., et al., respondents.

(Index No. 1166/05)

Scott Brettschneider, Uniondale, N.Y., for petitioner.

Charles J. Hynes, District Attorney, Brooklyn, N. Y (Anthea H. Bruffee and Jonathan
Kaye of counsel), respondent pro se and for respondent Neil J. Firetog.

Proceeding pursuant to CPLR article 78 in the nature of prohibition to bar the retrial
of the petitioner in a criminal action entitled *People v Jeffrey*, pending in the Supreme Court, Kings
County, under Indictment No. 1166/05, on the ground that retrial would violate the prohibition
against double jeopardy.

ADJUDGED that the petition is denied, without costs or disbursements, and the
proceeding is dismissed on the merits.

We reject the petitioner's contention that retrying him on Kings County Indictment No.
1166/2005 would violate the prohibition against double jeopardy.

"Where a mistrial is granted without the consent or over the objection of a defendant,
retrial is barred by double jeopardy protections unless there was 'manifest necessity' for the mistrial
or 'the ends of public justice would otherwise be defeated'" (*People v Ferguson*, 67 NY2d 383, 388,

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quoting *United States v Perez*, 22 US 579, 580; see *Matter of Smith v Marrus*, 33 AD3d 708, 709; *People v Gentile*, 96 AD2d 950, 951-52). A hopelessly deadlocked jury presents the "classic basis for a proper mistrial" (*Arizona v Washington*, 434 US 497, 509; see *Matter of Smith v Marrus*, 33 AD3d at 708; *Matter of Martin v Hynes*, 259 AD2d 547). "Generally, the declaration of a mistrial due to a deadlocked jury is a matter of discretion for the Trial Judge, who is in the best position to determine whether a mistrial is required under the circumstances of the case, and this decision must be accorded great deference" (*Matter of Martin v Hynes*, 259 AD2d at 548; see *Matter of Plummer v Rothwax*, 63 NY2d 243, 471; *People v Wincelowicz*, 258 AD2d 602). Here, the trial was brief and the issue to be resolved relatively simple. The jury deliberated for a minimum of seven to eight hours, had twice reported its inability to reach a verdict, and the Trial Judge adequately explored the genuineness of the deadlock with the jury. Under the circumstances, the jury appeared to be genuinely deadlocked and it would have served no purpose to provide additional instructions or to order it to continue to deliberate. Therefore, the Supreme Court properly determined that manifest necessity existed and providently exercised its discretion in declaring a mistrial. Accordingly, there is no bar to a retrial (see *Matter of Plummer v Rothwax*, 63 NY2d at 243; *Matter of Martin v Hynes*, 259 AD2d at 547; *People v Wincelowicz*, 258 AD2d at 602).

MILLER, J.P., LIFSON, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court