

# Ballew v georgia: trial by the (right) jury case study examples

[Law](#), [Criminal Justice](#)



## Introduction

The United States Supreme Court, in the course of its interpreting the tenets of the Constitution, has commonly regarded the 12 man jury panel as critical to the satisfaction of the right to a jury trial by an accused in court, as ruled in *Thompson v Utah* (1898). However, the High Court has backtracked from this position in recent times, with Justice Byron White enumerating the reasons in the decision of the Court in *Williams v Florida* (1970). In the decision in *Williams*, the Court gave several reasons as their justification from retracting from the decision in *Thompson*.

Among the reasons given were one, the justices cannot feign knowledge on the intent of the Framers of the Constitution regarding this provision. Two, the number “ 12” was believed to be founded on superstition, i. e., 12 apostles, 12 tribes. Lastly, the needs of the society cannot support any reasons for the courts to adhere to the requirement for 12 individuals to sit in a jury. In the *Williams* decision, the requirement for 12 members in a jury is only conducted to satisfy the demands of a jury trial as listed in the Sixth; for the jury to ascertain the truth and to allow for the involvement of the community in the criminal justice system-the primary objectives of the jury in a trial-does not necessarily require the use of a 12 man jury panel.

Nevertheless, the concept of a 12 man jury panel has strong advocates, even though the Court has rebuffed the use of the concept as one born out of erroneous beliefs. In the ruling of the High Court on the “ absolute need” for the constitution of a 12 man panel to guarantee compliance with the Sixth, the Court ruled that:

“ to read the Sixth as a forever codifying a feature so incidental to the real

<https://assignbuster.com/ballew-v-georgia-trial-by-the-right-jury-case-study-examples/>

purpose the Amendment is to ascribe a blind formalism to the Framers which would require considerably more evidence than we have been able to discover in the history and language of the Constitution or in the reasoning of our past decisions (Samaha, 2007, p. 448).

### **Ballew v Georgia: The requirement for juries**

Claude Ballew was managing an “ adult movie theater” in Atlanta, Georgia, when police arrested him and charged with “ distributing obscene material” for featuring the movie “ Behind the Green Door”. Ballew was charged and found guilty by a five man jury panel. Ballew decided to contest the relatively new Georgia statute that permitted the reduction in jury size, stating the new law conflicted with the constitutional right to “ due process”. The courts in Georgia, however, affirmed the validity of the state law. In this light, Ballew moved to appeal his case before the United States Supreme Court (Fulero, Wrightsman, 2008, p. 380).

In assailing the case for which he was being convicted, Ballew motioned that he was informed that the five man jury system was used for cases where misdemeanors were being tried, and thus Ballew’s motion for a 12 man jury panel was rejected. Assailing the conviction before the United States Supreme Court, Ballew moved that the imposition of a five man jury trial for his case deprived him of his rights as enshrined in the Sixth and Fourteenth Amendments regarding trials by jury.

The question posed before the High Court was whether the use of a jury with members less than what was stipulated in the Constitution automatically invalidates the rendering of the jury as it is unconstitutional. In the holding of

the Court, it found that the application of a five man jury panel was insufficient in complying with the guarantee of a trial by jury as enshrined in the Sixth Amendment, as this is applied to the states as stipulated in the 14th (Cretacci, 2008, p. 356).

### **The jury rule: the “ moral seriousness standard”**

Nevertheless, there is an exception to the rules where trial by jury is listed as a fundamental element, as listed in Article III, section 2 and for “ all criminal prosecutions”, as listed in the Sixth Amendment. This is in the area of “ petty offenses”, as decided by the Court in *Duncan v Louisiana* (1968). In states and jurisdictions where there is no defining law that will separate “ petty” from other offenses, the High Court has often used the qualifier of whether the crime merits an imprisonment of six (6) months as the separating line (*Baldwin v New York*, 1970).

Under this premise, courts have ruled that defendants are assured of their rights to a jury trial in cases such as planning to mislead immigration authorities, driving while under the influence of alcohol, and petty theft, even though these offenses carry a sentence of less than six months (Samaha, 2007, p. 447).

### **Jury Size: How many members can still be constitutional?**

As mentioned earlier, there are strong advocates that maintain that the 12 man jury is essential to the right of a trial by jury as listed in the Sixth. In rejecting the “ superstition” argument against the 12 man panel, Justice John Marshall Harlan called the argument “ much too thin”. In the opinion of Harlan, “ if the number 12 was merely an accident, it was one that has

recurred without interruption since the 14th century”.

Moreover, the position taken by Harlan is roundly supported even by those outside of the criminal justice system. Social analysts have discovered that juries comprised of 12 individuals have given more legally sound decisions, and are seen to be more representative of the community than juries comprised of less than 12 members (Samaha, 2007, p. 448).

The Court in *Williams* viewed the issue of jury size as associated to the function of the jury. Though it is understood that the size of the jury must be enough to promote discussion and deliberation, independent of any external attempts to intimidate or persuade the members, and to afford a reasonable probability of acquiring a representative cross section of the community, the court in this case declared that a panel of six members would be sufficient to comply with these requirements (Fulero, Wrightsman, 2008, p. 381).

However, the Court also restated its position in *Williams*, 399 U. S. 78 [1970], that the studies (regarding jury size), many of which were conducted after *Williams*, has led the Court to believe that the objective and operation of the jury will be seriously compromised, and to level that will have constitutional implications, if there should be a decrease in the size of the jury below five (5) individuals.

Furthermore, as the size of a jury is of critical import to the criminal justice system of the United States, any subsequent deduction from the size of the jury that will advocate deficient and flawed, and even bigoted, decision making that can result in unnecessary conflicts among jury members in rendering just verdicts, as well as preventing juries from being truly reflective of the sentiments of their communities; this may also lead to

issues that are infringing on the Constitution (Cretacci, 2008, p. 356).

With regards to deliberation, contemporary empirical research proffers that smaller jury panels have less potential to develop effective group discussion. It is argued that at one point, the decrease in discussion of the merits of a case will result in defective investigation and flawed application of the 'common sense of community' to be applied to the facts. It is stated that the fewer members to comprise a jury panel, the lesser amount of contribution that each member can make in the resolution of an issue.

As many jury members will not be able to take down notes in the courts, the faculty of memory is critical to the task of accurately recording facts to deliberate on the merits of a case. In addition, the smaller the jury, there is reduced potential that a jury will be able to set aside its biases, both collectively and of its individual members, in order to get an accurate conclusion on the facts of the case (Cretacci, 2008, p. 356).

In the work of Ellsworth (1989, p. 206), the decision of a jury is more than the individual, collective preferences of twelve or six people who come from a variety of backgrounds. The collective memories must come in a fashion that there is a reasonable logic that emanates from it in order for it to be understood as accurate and reflective of the sentiment and belief of the jury as well as the community. In the opinion of psychologists, the memories are compiled into a construal, or what is perceived as the perceived truth, is far more effective than being dependent on the individual reflections of individual jury members.

The question seems to be centered on the possibility that six man jury panels would render a different verdict, given the same case facts, than if

the case were argued before a 12 man jury; another is whether a six man panel would be detrimental to the case of a defendant in a case.

The lack of an amicus opinion on the matter is troublesome since in the footnotes attached to the decision attesting to the basis of the decision, the Court used the prevailing literature examining the issue. In the research used by the Court, using civil case trials as their research survey sample, in evaluating the decisions reached by 6 man and 12 man jury panels, there were no significant differences in the provisions of the decision.

However, the High Court did not factor in the veracity of the research used to come to the conclusion. The “ experiments” that were used by the High Court were, for the majority, only unsubstantiated opinions anchored on “ uncontrolled observations that might be paralleled to clinical studies. As stated by Saks (1977) in analyzing the studies used by the Court, it was noted that none of these studies were published in scientific social science journals. In essence, the opinions were summarized without any effort to justify and verify the materials used.

For example, one of the studies noted by Saks simply gave a conclusion bereft of any evidence to substantiate its declarations. Three of the studies were mostly “ anecdotal observations”, and one simply stated that in the report a smaller jury size was used, and the others simply stated the cost benefits of having smaller juries. Not one of the studies, as noted by Saks, can be considered as empirical evidences. Nevertheless, these studies and research endeavors became the foundations of the High Court in its decision affirming policies establishing six man juries to try cases (Fulero, Wrightsman, 2008, p. 381).

The focal point of the entire discussion with regards to the cost savings for smaller sized juries is that the savings that are hoped to be realized from reducing juries, from 12 to six or even to three members, is very negligible. These reductions can allow states to realize a small amount of savings from reductions in allowances, and even if juries were to be cut in half, the savings would not be sufficient to even consider reducing the number (Cretacci, 2008, p. 357).

In Ballew, compared to the earlier rulings, the decision was penned by a justice that was responsive to the findings of social science and who is quite knowledgeable in using the findings. Justice Blackmun's ruling was a template for the use of empirical research literature by the judiciary. The decision contained a 10 page section of the prevailing legal literature as well as the social science research findings on the impact of jury size. In fact, Blackmun cited 71 sources from 19 various social science resources (Fulero, Wrightsman, 2008, p. 381).

On a historical note, the discussion over the expertise of juries in deciding cases has not been clear than can be asked for. To be particular, there are two significant exclusions. One, there is significant hesitation to define what can be called as "qualified decision-making". Social analysts who seek guidance from legal literature often are frustrated at searching for the definition in this area.

Two, majority of the work that has been done by social science and the focus of much of the legal conflict, has been centered on the verdict rather than the functioning of the jury, which is a very primal standard of measurement to adjudge proficiency, and offers very little by way of analyzing the



operation of a jury panel (Ellsworth, 1989, p. 208).

In this light, Kalven and Zeisel aver that juries, “ by and large, understand the facts and get the case straight”. Most of the time spent by juries in deliberating the merits of the case involves the resolution of contested matters; however, there are still instances that jury members tend to dwell much on testimony or evidence that inclines to their own preferences, or lean towards their initial favored position. Also, there are instances where major parts of the testimonies were omitted where the point came up as an issue of determination for a conviction or an acquittal (Ellsworth, 1989, p. 218).

It is important, therefore, to consider the significance of amicus briefs in deciding cases heard by the United States Supreme Court. It is not automatic for the Supreme Court to hear cases when these are lodged by aggrieved parties seeking relief and justice from the body; when the Court does agree to hear a case, the Court extensively goes over the submitted briefs, as well as amicus briefs given by outside parties that are relevant to the case being heard.

However, though one of the purposes of providing amicus briefs is to give resources for the use of the Court, another more evident objective is to persuade the Court to render a decision that is favorable to one of the parties in the case (Fulero, Wrightsman, 2008, p. 385).

In summation, the paper considers the statement of Ellsworth (1989), in that collective memory is critical to the determination of an accurate verdict in a case. This is an integral component of the jury system. The verdict rendered by a jury is said to be reflective of the mores and norms of the society; here,

the laws are applied to display the collective revulsion of the community to the actions of the offender. Is there a need to consistently comprise the 12 man jury? To this representation, the requirement must be consistent in all circumstances, no matter how light or severe the crime.

## **References**

Cretacci, M. A. (2008). Supreme Court case briefs in criminal procedure.

Maryland: Rowman and Littlefield

Ellsworth, P. C. (1989). Are twelve heads better than one? Law and contemporary problems Volume 52 number 4 pp. 205-224

Fulero, S., Wrightsman, L., (2008). Forensic Psychology. Connecticut: Cengage Learning.

Samaha, J. (2007). Criminal procedure. Connecticut: Cengage Learning.