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ATTORNEYS FOR APPELLANT:

SUSAN K. CARPENTER
Public Defender of Indiana

JAMES T. ACKLIN
Deputy Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DEWAYNE WASHINGTON,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A05-0808-PC-491
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia J. Gifford, Judge
The Honorable Steven J. Rubick, Magistrate
Cause No. 49G04-0205-PC-143985

June 11, 2009

MEMORANDUM DECISION ON REHEARING - NOT FOR PUBLICATION

VAIDIK, Judge

We grant rehearing for the limited purpose of addressing our statement in the decision affirming the denial of DeWayne Washington's petition for post-conviction relief that because the record did not reflect that the jury was apparently deadlocked, there could be no violation of *Allen v. United States*, 164 U.S. 492 (1896). *Washington v. State*, 2009 WL 1108884, *7 (Ind. Ct. App. Apr. 23, 2009) (citing *Clark v. State*, 597 N.E.2d 4, 7-8 (Ind. Ct. App. 1992), *reh'g denied*, *trans. denied*; *Hero v. State*, 765 N.E.2d 599, 604 (Ind. Ct. App. 2002), *trans. denied*).

In *Lewis v. State*, 424 N.E.2d 107, 109 (Ind. 1981), our Supreme Court wrote that an "*Allen* charge" is "a designation given to a supplemental charge given by a trial judge to an *apparently deadlocked* jury." (Emphasis added). However, since *Lewis*, our Supreme Court and this Court have recognized that a supplemental charge to the jury may be improper under *Allen* even where the jury is not apparently deadlocked. *Broadus v. State*, 487 N.E.2d 1298, 1303 (Ind. 1986); *Parish v. State*, 838 N.E.2d 495, 502-03 (Ind. Ct. App. 2005), *reh'g denied*.

In this case, however, we affirmed the denial of relief because we concluded that the trial court did not improperly charge the jury. That is, the trial court's statement to the jury did not amount to an *Allen* charge. Subject to the clarification that an apparent deadlock is not necessary for a trial court's charge to the jury to be improper under *Allen*, we affirm our original decision in all other respects.

RILEY, J., and DARDEN, J., concur.