

NO. 131411

IN THE

SUPREME COURT OF ILLINOIS

ROBERT SCHILLING	) On leave to Appeal from the
	) Appellate Court, Fourth
Appellant,	) District
	)
v.	) There on Appeal from the
	) Circuit Court for Adams
QUINCY PHYSICIANS AND	) Illinois, Eighth Judicial
SURGEONS CLINIC, S.C. d/b/a	) Circuit, Case No. 18L53,
QUINCY MEDICAL GROUP and	)
KREG LOVE	) The Honorable
	) Scott D. Larson
Appellees.	) Judge Presiding

Brief *Amicus Curiae* of the Illinois Trial Lawyers Association

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VI. SUPPLEMENTAL STATEMENT OF FACTS:

Timeline of Jury Deliberations

The following timeline is derived from the Appellate Court order, *Schilling v. Quincy Physicians & Surgeons Clinic, S.C.*, 2024 IL App (4th) 240520-U, ¶¶ 7-12:

November 1, 2023

2:25 p.m. - deliberations begin.

5:10 p.m. - the jury submitted a note asking whether it was to read and interpret plaintiff's allegations of negligence "as they are written or as we preceive [sic] the evidence." With the parties' agreement, the trial court instructed the jury that the instructions contained the law and the jury's job was to determine and apply the facts to the law.

6:22 p.m. - the jury sent a note asking questions about the meanings of "negligance" [sic] and "standard of care." With the parties' agreement, the court instructed the jury that those terms were defined in the instructions given previously.

7:00 p.m. - the jury declared deadlock in a written note: "It is very obvious that we will not come to an agreement unanimously. Sitting in here for hours and hours will not make a difference." The parties agreed to provide the following response to the jury: "Please continue your deliberations. We will check in with you shortly."

7:55 p.m. - the court discharged the jury for the evening.

November 2, 2023

9:02 a.m. - Deliberations resume.

9:40 a.m. - an unidentified juror submitted the following handwritten note:

“For the record, I will sign the verdict for the defendant Dr[.] Love. I am firm in my support for the plaintiff Mr. Shilling.

I am only signing to end this deliberation and put an end to this. After many hours of discussion and debate, we cannot come to a unanimous decision. Therefore, it's my position to sign *only* to end this.

I 100% believe Dr[.] Love was negligent in providing the appropriate care to his patient. As a result, Mr[.] Schilling[']s overall care was impacted because of Dr[.] Love[']s decision.

Once again, I am *only* agreeing to sign to end this.”(Emphases in original.)

Plaintiff's counsel moved for a mistrial, arguing the Surrender Note showed the jury was deadlocked and that any forthcoming verdict would be a product of undue influence.

Defense counsel requested that the trial court give a *Prim* instruction. *See People v. Prim*, 53 Ill.2d 62 (1972), *cert. denied* (1973), 412 U.S. 918. Plaintiff's counsel contended a *Prim* instruction might have been appropriate the previous night but that the issue raised by the Surrender Note was “incurable.”

The trial court denied the motion for a mistrial and explained it would give a *Prim* instruction, without seeking to ascertain the numerical division of the jury.

The court brought in the jury, confirmed with the foreperson that she believed the jury was deadlocked, and provided the following *Prim* instruction both orally and in writing:

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. Your verdict must be unanimous. It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But, do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict. You are not partisans. You are judges—judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

10:10 a.m. - jury resumes deliberations.

10:20 a.m. - the jury sent the following note: “Please provide clarification of the phrase ‘deviation from standard of care ’and ‘professional negligence. ’Is this to be interpreted as ‘neglect? ’WE NEED A CLEAR INTERPRETATION! What exhibit is Dr[.] Honnakers [sic] deposition?¹ Would like to review.” With the parties ’agreement, the trial court provided the following response to these questions: “The information requested is contained in the jury

¹ Plaintiff had filed with the court Dr. Richard Honaker’s June 3, 2020 discovery deposition transcript as Exhibit 43 on October 16, 2023.

instructions you have been provided[.] The exhibits for you to review are in your possession.”

11 a.m. - the jury informed the trial court it had reached a verdict. Plaintiff's counsel requested the court poll the jurors before the verdict was announced. The court denied this request, stating it would poll the jurors afterward by asking each person whether this was then and is now his or her verdict. The court stated that if any juror provided a dissent or a “qualified answer” during polling, the court would have a further discussion with that juror outside the presence of the other jurors. Plaintiff's counsel responded that although he did not object to this procedure, he believed the Surrender Note indicated a juror already had a “dissenting opinion.” Thus, plaintiff's counsel proposed that even if all jurors indicated that this was then and is now their verdict, the court should ask each juror whether he or she wrote the Surrender Note; upon identifying the author, the court should ask that juror whether he or she had changed his or her opinion since writing the Surrender Note.

The purpose of plaintiff's request to poll the jurors was to determine whether a juror had impermissibly acquiesced in the verdict simply out of a desire to end deliberations:

[P]laintiff would request the Court take that one step further and individually poll the jurors to identify is this your note and if it is, you know, is there -- have you changed your opinion with respect to dissenting opinion identified in the note because of the fact that the note clearly identifies several times that the only reason why the verdict would be signed would be in

opposition to the law * * *.
Tr. November 2, 2023, p. 28.

Plaintiff further explained that the purpose was “to verify that the opinion stated in that note has, in fact, changed and is consistent with the verdict depending on what the verdict is obviously so.” *Id.* pp. 28-29.

After all jurors were discharged - plaintiff's counsel stated that juror No. 34 (who was not the foreperson) gave “a clear and obvious hesitation” and sighed loudly before saying “Yes” to the clerk's question during polling. Neither defense counsel nor the court disputed this representation. Despite this “qualified answer,” the court conducted no further inquiry. Plaintiff's counsel renewed his motion for a mistrial and asked the court not to accept the verdict. The court denied those requests, and entered a judgment on the verdict.

VII. ARGUMENT

The trial court's refusal to inquire whether the Surrender Note remained the basis for at least one juror's capitulation to the majority conflicts with this Court's precedent and with well-reasoned precedent from other jurisdictions. This Court, in affirming the grant of a mistrial under such circumstances, has explained that “The jury's own statement that it is unable to reach a verdict has been repeatedly considered the most important factor in determining whether a trial court abused its discretion in declaring a mistrial.” *People v. Kimble*, 2019 IL 122830, ¶¶ 39-40. The indications of deadlock in the cause *sub judice* exceed those found to justify a mistrial in *Kimble*.

**1. The Surrender Note Indisputably Shows that a Juror Was
Coerced into Agreeing Upon the Verdict**

The Surrender Note stated:

For the record, I will sign the verdict for the defendant Dr. Love. I am firm in my support for the plaintiff Mr. Schilling. I am *only* signing to end this deliberation and put an end to this. After many hours of discussion and debate, we cannot come to a unanimous decision. Therefore, its [sic] my position to sign only to end this. I 100% believe Dr. Love was negligent in providing the appropriate care to his patient. As a result, Mr. Schilling overall care was impacted because of Dr. Love's decision.

Once again, I am *only* agreeing to sign to end this.
CI8, Tr. 2082-2083.

Nothing could be clearer: despite at least one juror's "100%" conviction that the defendant was negligent and that the defendant's negligence had caused harm to the plaintiff, that juror signed a verdict for the opposite result.

The Appellate Court, however, found that the trial court properly entered judgment on the verdict because "*A different reasonable interpretation* is that the author simply wanted to get the court's attention about the perceived deadlock, especially considering the court did not provide any guidance when the jury first declared itself deadlocked the previous night." 2024 IL App (4th) 240520-U, ¶ 24 (emphasis added). But this strained "interpretation" by the reviewing court that never met this juror, more than a year after the juror wrote the note, would have been unnecessary had the trial court granted plaintiff's request for additional

polling to “verify that the opinion stated in that note has, in fact, changed and is consistent with the verdict”. Tr. November 2, 2023, pp. 28-29.

Illinois law has been clear for at least fifty years that where the record does not affirmatively demonstrate that no juror dissented from the verdict, the judgment must be reversed:

In the instant case, we cannot determine from the record whether or not the juror dissented from the verdict. Although the juror signed the verdict, her statements upon being polled indicated the possibility of disagreement with the verdict. The court, however, did not explore this possibility; rather, it assumed concurrence in the verdict from the mere fact that the juror signed the verdict. If the signing of a verdict were to be considered conclusive, as was done by the court in this case, a polling of the jury would in every case, become a perfunctory and senseless procedure. Moreover, the court's language foreclosed the juror from an opportunity to express dissent. This was error. When the court polls the jury it must fully examine those jurors whose statements indicate possible dissent from the verdict. Its examination must be conducted with a view toward determining whether any juror had been coerced into accepting the verdict of the other jurors.

People ex rel. Paul v. Harvey, 9 Ill. App. 3d 209, 210–11 (1st Dist. 1972). This Court cited *People ex rel. Paul* with approval in *People v. Williams*, 97 Ill. 2d 252, 307, 454 N.E.2d 220, 246 (1983). *Williams* explained that a jury poll is valid if “the jurors were not ‘locked in’ or limited to giving only a yes-or-no answer.” *Id.*, 308. But here, the trial court’s questions limited the jurors to a yes-or-no answer. *See* Tr. November 2, 2023, pp. 34-36.

Moreover, the Surrender Note distinguishes this case from decisions of this Court such as *People v. Daily*, 41 Ill. 2d 116, 121–22 (1968), where the jury had deliberated for about 6 1/2 hours when the trial judge recalled the jury to ascertain

if a verdict had been reached. The foreman declared that it had not and stated there had been no change in voting in the preceding two or three hours. The court then directed the jurors to continue to deliberate and “a short time later a verdict of guilty was returned.” *Id.* The trial court gave nothing akin to a *Prim* instruction and no juror expressed deadlock. *Id.*

The procedure to preserve a tainted verdict adopted by the trial court and approved by the Appellate Court ignored the Surrender Note and refused to examine the reluctance of Juror No. 34 during polling. The Appellate Court’s rationale for its decision was that

Plaintiff maintains the *Prim* instruction itself was coercive in light of the Surrender Note. This argument is untenable, as our supreme court adopted this instruction specifically to avoid the possibility of undue coercion and trial courts are given broad discretion to determine whether circumstances require a mistrial. When a court determines a jury should be instructed on a subject, the court must use the pattern instruction approved by our supreme court unless such instruction “does not accurately state the law.” Ill. S. Ct. R. 239(a) (eff. Apr. 8, 2013). Thus, there is no merit to plaintiff’s position that the *Prim* instruction was coercive.
2024 IL App (4th) 240520-U, ¶¶ 26-28.

This is precisely the kind of “‘mechanical application ’of any ‘rigid formula ’ when trial judges decide whether jury deadlock warrants a mistrial” condemned by this Court in *Kimble* (see 2019 IL 122830 at ¶ 38) and amounts to no review, rather than an assessment of whether the trial court abused its discretion. *Kimble* said that “A discretionary decision implies a range of acceptable outcomes. *United States v. Taylor*, 569 F.3d 742, 747 (7th Cir. 2009).” 2019 IL 122830, ¶ 46. But as *Taylor*

explained, “So long as the judge's conclusion *was within that range of outcomes*, we will defer to his judgment, not substitute our own.” 569 F.3d 742, 747 (emphasis added). Because the trial judge constrained jurors to yes-and-no answers after three separate expressions of deadlock and after Juror 34’s response to polling was ambivalent, the judge’s conclusion was **not** within the range of acceptable outcomes under this Court’s precedents. *See Williams*, supra, 97 Ill. 2d at 308 (disapproving poll questions that locked jurors in or limited responses to “yes” or “no”); *see also People v. Richards*, 95 Ill. App. 2d 430, 440 (1st Dist. 1968) (“utilization of this device in the instant case was the very type of discretionary abuse” prohibited by precedent).

Significantly, the Fourth District’s decision acknowledged that its result conflicted with the opinion of the Second District in *People v. Richardson*, 2022 IL App (2d) 210316. *See* 2024 IL App (4th) 240520-U, ¶ 27 (“*Contra Richardson*, 2022 IL App (2d) 210316, ¶¶ 41, 43 ...”).

In *Richardson*, the Second District explained that “the trial court's decision to prolong deliberations after the jury stated it could not agree magnified the risk that jurors would consider the improper DNA evidence by adding pressure on the minority to conform with the majority.” 2022 IL App (2d) 210316, ¶ 44. *Richardson*’s express rationale was that “[a] jury's unanimous expression that it cannot reach a unanimous verdict, especially after extended deliberations and the provision of the *Prim* instruction, suggests that any later consensus would be the product of coercive pressures.” 2022 IL App (2d) 210316, ¶ 48. In the case at bar, the jury told the

court three separate times that they were deadlocked. As *Richardson* recognized, giving I.P.I. 1.05 in this circumstance is coercive and therefore reversible error.

The Fourth District’s citation in the present case to *Richardson* as “*contra*” tacitly acknowledges that the two cases irreconcilably conflict. The Appellate Court made no attempt to distinguish *Richardson* because it is indistinguishable. *Amicus* respectfully submits that *Richardson* represents the better-reasoned view because the Second District’s analysis recognized (1) that a *Prim* instruction can coerce a verdict where, as here, there is evidence of lack of unanimity and (2) that jury polling is not a talisman to enforce a verdict that is not actually unanimous.

2. The Purpose of Jury Polling is to Determine Whether a Juror Was Coerced into Agreeing Upon a Verdict; When a Juror Has Been Coerced, the Verdict Cannot Stand

Polling individual jurors who have expressed dissent in order to exclude the possibility of coercion was approved by the Appellate Court in *People v. Chandler*, 88 Ill. App. 3d 644, 645 (1st Dist. 1980) (“the court questioned the dissenting jurors as to whether they had been coerced into reaching the guilty verdict. Upon receiving a negative response from both jurors, the jury was returned for further deliberations, with new verdict forms. The jury again returned a guilty verdict which a poll disclosed to be unanimous.”) The reason that jurors are polled is to exclude the possibility of a coerced verdict.

“The polling of a jury is intended to ascertain whether any juror had been coerced into agreeing upon a verdict—coerced by his associate jurors.” *People v. Williams*, 97 Ill. 2d 252, 307, 73 Ill.Dec. 360, 454

N.E.2d 220 (1983) (*citing People ex rel. Paul v. Harvey*, 9 Ill. App. 3d 209, 211, 292 N.E.2d 124 (1972), *citing Ritchie v. Arnold*, 79 Ill. App. 406, 409 (1898)).

People v. Carter, 2020 IL App (3d) 170745, ¶ 26). To fulfill this purpose, “[t]he trial court, on polling, must determine that the jury verdict accurately reflects each juror's vote as reached during deliberations **and** that the jurors' votes were not the result of force or coercion.” *Id.*, citing *Williams*, 97 Ill.2d at 307 (emphasis added).

But here, the trial court’s inquiry ignored the second requirement, even though the Surrender Note evidenced coercion. Plaintiff’s counsel cited *Chandler* as support for his request for individual polling regarding the Surrender Note. *See* Tr. November 2, 2023, p. 23. Here, both the trial and appellate courts held that the jurors’ affirmative answers that the verdict was and is their verdict ended the inquiry when the record demonstrated that at least one juror vowed to sign the verdict solely to end deliberations.

This Court has explained that “When polling a jury, if a juror indicates some hesitancy or ambivalence in his or her answer, then the trial judge **must** determine the juror's present intent by affording the juror the opportunity to make an unambiguous reply as to the juror's present state of mind.” *People v. Klinier*, 185 Ill. 2d 81, 166–67 (1998). The record here shows that “Juror 34 responded to the polling with clear and obvious hesitation to issue affirmative response or yes and with a loud sigh” before finally expressing agreement. Tr. November 2, 2023, p. 40. Despite “clear and obvious hesitation” and the improper statement of purpose in the “Surrender Note,” the trial court refused to inquire further. Given these

circumstances, this is “clearly unreasonable” under *Kliner* and constitutes an abuse of discretion.

Moreover, in *People v. Prim*, 53 Ill.2d 62, supra, the jury had deliberated for over four hours when it was called in by the judge. When the foreman was asked whether it could reach a verdict, he said, “I think there is a chance.” *Id.* at 71. That is completely different from the multiple expressions of deadlock in the case at bar. What happened in this case is contrary to *Prim*, which endorsed this standard by the American Bar Association that would have required discharge of the jury under the circumstances: “‘The jury may be discharged without having agreed upon a verdict if it appears that there is no reasonable probability of agreement.’” *Id.* at 75. *See also id.* at 76 (“We are of the belief that the adoption of the above-quoted standards relating to jury trials will resolve the many questions created by the uncertainty attendant upon instructing a jury that is in disagreement.”).

3. The *Prim* instruction coerced the verdict

Other jurisdictions recognize that giving an instruction analogous to the Illinois *Prim* instruction after a juror has expressed disagreement with the verdict is inherently coercive and therefore reversible error. “When dissent is revealed in open court and the jury is simply instructed to continue deliberations, ‘[t]he most obvious danger’ is that the dissenting jurors ‘will conclude that the trial judge is requiring further deliberations in order to eliminate [their] dissent.’” *Coley v. United States*, 196 A.3d 414, 421 (D.C. 2018) (quoting *Brown v. United States*, 59 A.3d 967,

975 (D.C. 2013) (quoting *Crowder v. U. S.*, 383 A.2d 336, 342 n.11 (D.C. 1978). *See also Crowder*, 383 A.2d at 342 (when lack of unanimity is revealed trial judge should be “especially sensitive” to the possibility of undue coercion of the lone dissenter).

Thus, it has been held error in similar circumstances to give the equivalent of IPI 1.05 because when “a jury reveals its numerical division and the judge then gives a *Winters* instruction, the potential for coercion is great. It is as if the judge were to say, ‘I know a few of you are holding up a verdict; you should stop being so stubborn and fall in line.’” *Smith v. United States*, 542 A.2d 823, 825 (D.C. 1988) (citation omitted); *see Mullin v. United States*, 356 F.2d 368, 370 (D.C. Cir. 1966) (“It would have been a precarious undertaking for the Judge to give a supplemental charge to consider each other's views when he was already advised that only 4 of 12 jurors voted for acquittal.”)²

A recent New York case reversed a conviction because a juror expressed far less disagreement with the verdict than reflected in the Surrender Note at issue here:

Here, when the jury was polled and asked if the verdict was theirs, juror number nine stated, “Um, I'm not sure, with some, but most of them, yes.” Although the Supreme Court thereafter inquired of juror number nine if the verdict announced to the court was her own, it did so by asking her “is that a yes or a no” in the presence of the remaining jurors, despite evidence before the court suggesting that juror number

² The fewer the dissenters, the greater the likelihood of coercion. *See Coley*, *supra*, 196 A.3d 414, 423–24 (“inherent coercive potential” is “especially high” when there is a solitary objector).

nine may have succumbed to pressure to vote with the majority even though she did not agree with the verdict as to certain counts. The court's inquiry was therefore not sufficient to resolve the uncertainty of whether the verdict announced to the court was the individual voluntary verdict of juror number nine.

People v. Ramunni, 203 A.D.3d 1076, 166 N.Y.S.3d 27, 31 (2022).

This principle is not limited to convictions of criminal defendants. *See Middle States Utilities Co. v. Inc. Tel. Co.*, 222 Iowa 1275, 271 N.W. 180, 184 (1937) (in a dispute regarding who was the proper owner of telephone wire, juror's statement during polling that "No--I had to" before conforming "strongly indicates that the giving of the verdict inducing instruction had an effect not intended by the court in giving the same, namely, to overpersuade or coerce an agreement on the part of this particular juror to the verdict which was returned.").

Coley recognized that a juror's note expressing disagreement with the verdict changes the effect of a jury poll. *Coley*, 196 A.3d at 423–24 (juror sent note to the judge stating "I don't feel he did it.").

Thus, Juror 668's note to the judge distinguishes this case from the ordinary case in which the judge aborts jury polling after the third juror indicates disagreement with the verdict because the information in the note all but confirmed that the juror was alone in her convictions and provided evidence that the juror felt pressured to surrender those convictions by the instruction to continue deliberations. Although our case law presumes that the risk of coercion is not substantial in the former situation, we cannot indulge that presumption here in the face of a juror's repeated statement (both during the polling and in the note) to the court regarding her stance on the verdict.

*Id.*³ see *Harris v. United States*, 622 A.2d 697, 701 (D.C. 1993) (“[I]f a juror is forced to abandon an honest conviction, the resulting verdict cannot stand.”)

The District of Columbia Court of Appeals has explained that “[i]n our legal system, the minority in a jury deserves respect and credence. Indeed, [i]t is contrary to the concept of a free society that one who is outnumbered is wrong for that reason alone. No judge should instill that notion in a juror's mind.” *Smith v. U.S.*, 542 A.2d 823 (D.C.App.1988) (internal quotation removed).

The record here, including the Surrender Note and Juror 34’s polling response, demonstrates *at a minimum* a substantial risk of a coerced verdict. The trial court’s response failed to ascertain whether Juror 34’s assent to the verdict was in fact because of the sentiment expressed in the Surrender Note or not. In this circumstance, reversal is required:

On the third point, the unanimous jury polls do not shed significant light on whether Juror 7 was feeling internal pressure to complete deliberations before his trip.

Because “a substantial risk of juror coercion ... was not effectively addressed, we cannot find the error[] to have been harmless.” *Coley*, 196 A.3d at 425; see *id.* at 423 (reversing convictions because trial court did not adequately address risk that juror may have “felt pressured to surrender [her] convictions”). We therefore cannot affirm the convictions in this case on the current record. The United States argues, however, that we should not vacate the convictions outright and instead should remand the case for an after-the-fact inquiry into whether Juror 7 was able to deliberate fairly and impartially. That argument seems difficult to reconcile with this

³ The juror response in *Coley* is similar to the instant case where, after the Surrender Note, Juror 34 responded to the polling with “clear and obvious hesitation to issue affirmative response or yes and with a loud sigh” before finally expressing agreement. Tr. November 2, 2023, p. 40.

court's statement that “a defendant is entitled as a matter of law to reversal of [the] conviction on appeal if the record reveals a substantial risk of a coerced verdict.” *Id.* at 420 (internal quotation marks omitted).

Abney v. United States, 273 A.3d 852, 861 (D.C. 2022) (emphasis added).

Every juror took an oath to render a verdict according to the law and evidence. One juror explicitly said that her verdict was not based on the law and the evidence but only to end deliberations. The appellate court concluded that the jury poll validated the verdict. But a jury poll was never intended to be a mechanism to ignore actual expressions of juror dissent. Nor was IPI 1.05 intended to coerce a lone dissenter into agreeing with a verdict. But that is what happened in this case. Because the record demonstrates a “substantial risk” of juror coercion, *Amicus* respectfully suggests that this Court ought to reverse the judgments below and remand for a retrial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 16 pages.

/s/ Roy C. Dripps

CERTIFICATE OF SERVICE

I, Roy C. Dripps, certify that I electronically filed the foregoing Illinois Trial Lawyers Association Brief Amicus Curiae with the Clerk of the Illinois Supreme Court, on April 30, 2025, via Odyssey eFileIL.

I further certify that on April 30, 2025, an electronic copy of the Illinois Trial Lawyers Association's Brief Amicus Curiae is being served on the following counsel of record via Odyssey eFileIL:

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Under penalties as provided by law pursuant to Sec 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), I certify that the statements set forth in this instrument are true and correct.

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