IN THE SUPREME COURT OF IOWA
Supreme Court No. 22–0089

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DREW ALAN BLAHNIK, AKA JOHNNY BLAHNIK CHURCH,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR LINN COUNTY
THE HONORABLE CHRISTOPHER L. BURNS, JUDGE

APPELLEE'S AMENDED BRIEF

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I. Did the trial court err in giving the same verdict-urging instruction that *State v. Davis* held was non-coercive?

Authorities

Lowenfield v. Phelps, 484 U.S. 231 (1988)
Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)
State v. Campbell, 294 N.W.2d 803 (Iowa 1980)
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ROUTING STATEMENT

The State concurs with Blahnik's routing statement. *See* Def's Br. at 6. The challenge raised in this appeal can be resolved through application of established legal principles. Transfer to the Iowa Court of Appeals is appropriate. *See* Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This is Drew Allen Blahnik, aka Johnny Blahnik Church's direct appeal from convictions for second-degree murder, a Class B felony, in violation of Iowa Code section 707.3 (2018); obstructing prosecution, an aggravated misdemeanor, in violation of Iowa Code section 719.3; and abuse of a human corpse, a Class D felony, in violation of Iowa Code section 708.14(1)(b). The evidence established that Blahnik killed Christopher Bagley with the help of accomplices, then buried Bagley's body next to an accomplice's garage. Blahnik was sentenced to consecutive terms of incarceration, totaling 54 years in prison, with a minimum of 35 years before parole eligibility.

In this appeal, Blahnik argues that the trial court erred in giving a verdict-urging instruction, in response to notes from the jury that suggested a deadlock. The jury deliberated for more than three hours after that instruction, before returning a unanimous verdict.

Course of Proceedings

The State generally accepts Blahnik's description of the relevant course of proceedings. *See* Iowa R. App. P. 6.903(3); Def's Br. at 6–7.

Statement of Facts

The facts of the underlying offense are not relevant to the challenge raised in this appeal. To summarize the evidence: Blahnik and an accomplice went to Bagley's trailer and confronted him about various wrongdoings. When that confrontation escalated to a fight, Blahnik stabbed Bagley at least 13 times in the face, neck and torso. Blahnik helped bury Bagley's body in an accomplice's yard. Then, he lied to investigators and to a grand jury about what had happened.

Blahnik's challenge is about the verdict-urging instruction, so the relevant facts begin here: the jury began deliberating at 4:06 p.m. on Monday, July 26, 2021. *See* TrialTr.V7 96:20–97:25. Deliberations on Tuesday apparently proceeded without any need to make a record. On Wednesday, the jury sent two notes to the court. The first note was a request for particular lines of grand jury testimony. The second note was a question about the jury instructions that related to self-defense. *See generally* TrialTr.V8. The trial court's responses to those two notes were appropriate and agreed to by both parties.

On Thursday morning, the jury sent a note to the court that said: "A juror is failing to follow specific rules set forth by you in the rule packet provided. In regards to 45 & 52." *See* TrialTr.V8 3:2–20; Jury Note 3; App. 9. Those were the jury instructions that defined reasonable force and the duty not to destroy or conceal evidence. *See* Jury Instr. 45, 52; App. 10–11. After consulting with both parties, the court responded: "As previously instructed, you are required to apply the law set forth in the instructions already provided to you." *See* Jury Note 3; App. 9. The court had considered inquiring as to whether the jurors believed they were deadlocked, but it ultimately decided to "wait to make any reference to [possible deadlock] until we get some further indication that there may be an issue." *See* TrialTr.V8 3:21–5:20. Both parties agreed that this response was appropriate, and it was submitted to the jury at 10:11 a.m. *See* TrialTr.V8 5:21–23.

At 11:15 a.m., the court made a record that jurors had told the court attendant that they were deadlocked. Upon being told that any communication with the court had to be in writing, they sent a note:

> We have a juror that is refusing to follow certain rules set forth by you. We took a vote to whether or not we felt this person was deliberately not following a rule. The vote was 11 to 1. We have gone over this rule numerous times with this juror. The response has been, "I don't care, I'm not changing my mind."

TrialTr.V8 5:21–6:17; Jury Note 4; App. 10. The court proposed inquiring as to whether the jurors believed that "further deliberations would be fruitful," because the note did not expressly state that jurors believed they were deadlocked. *See* TrialTr.V8 6:22–7:1. The State suggested a verdict-urging instruction, using language that mirrored the instruction in *State v. Parmer*, No. 13–2033, 2015 WL 2393652, at *6 (Iowa Ct. App. May 20, 2015). *See* TrialTr.V8 7:3–8:16. Blahnik said that he objected to giving any verdict-urging instruction, and he recommended inquiring as to whether the jury believed that further deliberation would be fruitful. *See* TrialTr.V8 8:17–9:22. The court explained that it did not want to submit a verdict-urging instruction at that point, "because the jury has basically told me [that] we have a single holdout and we cannot convince that holdout." *See* TrialTr.V8 9:23–12:12. So the court responded to the jury note by asking: "Do you believe further deliberations would be fruitful?" *See* Jury Note 4; App. 10. Twelve minutes later, the jury sent another note with this reply:

> No, we feel that because the rules set forth by this Court are not being followed by the single juror that deliberations would NOT be fruitful.

TrialTr.V8 12:13–24; Jury Note 5; App. 11. The State renewed its request for a verdict-urging instruction. *See* TrialTr.V8 13:4–15:1.

Blahnik objected. He argued that a verdict-urging instruction would be coercive, because it "would focus directly on that juror and would not be anything other than signaling to that single juror that his or her position in the present state of deliberations is anything other than incorrect or erroneous." *See* TrialTr.V8 15:2–16:11. The State pointed out that Iowa appellate courts had repeatedly held that there was nothing coercive about the language in this particular instruction. *See* TrialTr.V8 16:14–17:18. The trial court took a moment to "go back and re-review *Parmer*." *See* TrialTr.V8 17:19–25. Then, it explained:

> I have reviewed additional relevant case law as well as the State's proposed instruction. I would indicate to you all that I am not entirely convinced that an *Allen* charge is appropriate here.
>
> However, if I give an *Allen* charge and then we don't get a verdict and we still have a hung jury, we have a hung jury. If I give an *Allen* charge and we get a verdict, either I or the appellate court, if I shouldn't have given the *Allen* charge, can take the verdict away or if it was appropriate to give the charge, leave the verdict standing and we don't have to try the case again.
>
> So I'm going to give this charge. I'll give [Blahnik's counsel] a chance to look at it. This is a charge given by Judge Hoover in another case. It appears to me to be exceptionally neutral.

TrialTr.V8 18:1–15. Blahnik's counsel told the court that he did not have "any specific objections to the language" of the instruction, but he still objected to giving the instruction. *See* TrialTr.V8 19:10–25.

The trial court overruled Blahnik's objection. It submitted this verdict-urging instruction as a written response to the jury's note:

> You have been deliberating upon this case for a considerable period of time, and the Court deems it proper to advise you further in regard to the desirability of agreement, if possible.
>
> The case has been exhaustively and carefully tried by both sides and has been submitted to you for decision and verdict, if possible. It is the law that a unanimous verdict is required. While this verdict must be the conclusion of each juror and not a mere acquiescence of the jurors in order to reach an agreement, it is still necessary for all of the jurors to examine the issues and questions submitted to them with candor and fairness and with a proper regard for, and deference to, the opinion of each other. A proper regard for the judgment of others will greatly aid us informing our own judgment.
>
> Each juror should listen to the arguments of other jurors with a disposition to be convinced by them; and if the members of the jury differ in their views of the evidence, such difference of opinion should cause them all to scrutinize the evidence more closely and to reexamine the grounds of their problem. Your duty is to decide the issues of fact which have been submitted to you, if you can conscientiously do so. In conferring, you should lay aside all mere pride of opinion and should bear in mind that the jury room is no place for espousing and maintaining, in a spirit of controversy, either side of a cause. The aim ever to be kept in view is the truth as it appears from the evidence, examined in light of the instructions of the Court.
>
> Please continue your deliberations.

Jury Note 5; App. 11. That response was submitted to the jury at about 12:03 p.m. The jury kept deliberating. At 3:39 p.m., the jury reported that it had reached a verdict. *See* TrialTr.V8 21:10–17.

Upon reading the jury verdict in open court, the trial court polled the jury. All twelve jurors affirmed that this was their verdict, without hesitation. *See* TrialTr.V8 23:1–25:9.

Blahnik filed a motion for new trial, which included a claim that the trial court had erred in submitting the verdict-urging instruction. *See* Motion for New Trial (9/10/21) at 4; App. 20; Memo in Support (9/20/21) at 7–9; App. 28–30; MotionTr. (10/12/21) at 6:19–10:12 and at 15:2–19. The State resisted. *See* Resistance (9/29/21) at 4; App. 40; MotionTr. (10/12/21) at 12:21–14:17. The court overruled the motion.

> As a result of the notes from the jury it ultimately became clear that the jury was deadlocked 11 to 1. It also became clear that, in the opinion of the 11 jurors, the other juror was not following the instructions. . . . . The court did not attempt to solicit the information the jury provided and attempted to avoid taking any side in whatever disagreement existed in the jury room.
>
> . . . The court used a charge previously viewed in a favorable manner by the appellate courts as the basis for its charge. However, because the charge had been solicited by a jury note, it was submitted to the jury as an answer to the jury note indicating that the jurors did not believe further deliberations would be fruitful. The court considered this method of communicating the charge to be less likely to cause the one juror to view the charge as an attempt to pressure that juror into changing his/her position.
>
> . . . The charge was given to the jury approximately 3 ½ hours prior to the jury informing the court that it had reached a verdict. Based on the time this instruction was given (about 12:08 p.m.), it is likely that some of the 3 ½ hours included whatever time the jury took to eat lunch.

> Although the jury reached a verdict after the *Allen* charge was given, the court does not know whether the one juror changed his/her view, whether the other jurors changed their view, or whether all the jurors reached some common ground different from their positions when the *Allen* charge was given. In light of the passage of time, it would not be fair to infer that the charge caused the one juror to immediately give up on his/her position. Rather, it appears the jury engaged in a significant amount of deliberation after the charge was given.
>
> [Paragraph block-quoting *State v. Davis* omitted.]
>
> In the present case the court did not inquire as to the jury's numerical division although it did, because the jury shared the information without prompting, know there was an 11/1 split. The court did not know which way this split broke, i.e., for or against conviction. The instruction used by the court was almost identical to one already approved by an appellate court. The jury deliberated about 3 ½ hours after the charge was given, a strong indication that the charge itself did not cause the one juror to change his/her stance.
>
> The court finds that it did not err in giving the *Allen* instruction and the instruction did not improperly coerce or help coerce a verdict in this case.

Ruling on Motion for New Trial (12/8/21) at 15–16; App. 59–60.

Blahnik filed a motion to enlarge, to clarify that he was alleging a violation of his constitutional rights. *See* Motion (12/10/21); App. 42. The court explained that it had ruled that Blahnik failed to show that the verdict-urging instruction had deprived him of a fair trial or violated his constitutional rights. *See* Ruling (12/14/21); App. 68.

Additional facts will be discussed when relevant.

ARGUMENT

I. The trial court did not err in giving a verdict-urging instruction with non-coercive language.

Preservation of Error

Blahnik objected to the verdict-urging instruction, and the court overruled Blahnik's objection. *See* TrialTr.V8 12:16–20:17. That ruling preserved error. *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

Because "the trial judge has considerable discretion" on whether to submit a verdict-urging instruction, review is for abuse of discretion. *See State v. Campbell*, 294 N.W.2d 803, 808–09 (Iowa 1980); *accord State v. Davis*, 975 N.W.2d 1, 18 (Iowa 2022).

Merits

A verdict-urging instruction is permissible if it is not coercive. In assessing whether such an instruction was coercive, Iowa courts have "mainly focused on the content of the verdict-urging instruction and the timing surrounding the verdict," as well as "responses from juror polling to ensure each juror was not coerced into their verdict." *See Davis*, 975 N.W.2d at 18. Here, an examination of those factors establishes that this verdict-urging instruction was not coercive, and Blahnik cannot establish error in the court's decision to submit it.

The timing of the verdict: "The charge was given to the jury approximately 3 ½ hours prior to the jury informing the court that it had reached a verdict." *See* Ruling on Motion for New Trial (12/8/21) at 15–16; App. 59–60; TrialTr.V8 21:10–17. This helps establish that the instruction did not coerce jurors into abdicating their own judgment, because it suggests that they "spent enough time engaging in 'further worthwhile consideration before a verdict was agreed to.'" *See Davis*, 975 N.W.2d at 19 (quoting *Campbell*, 294 N.W.2d at 811). *Davis* noted that "timeframes as short as forty-one minutes are sufficient indicia that the jury engaged in real deliberation of the case" after it received a verdict-urging instruction. *See id.* at 19–20 (citing *State v. Myers*, 140 N.W.2d 891, 898 (Iowa 1966) and collecting other cases). Here, jurors deliberated for about three and a half hours after receiving this verdict-urging instruction. That indicates the instruction sparked "a new train of real deliberation." *See Parmer*, 2015 WL 2393652, at *6 (quoting *Campbell*, 294 N.W.2d at 808); *accord Davis*, 975 N.W.2d at 20 (finding "[f]our and a half hours was ample time for the jurors to . . . thoroughly evaluate each other's opinions" and was "enough to show the jury adequately reconsidered the case"); *State v. Quitt*, 204 N.W.2d 913, 914 (Iowa 1973) (similar timeframe, including a meal).

The content of the instruction: This instruction was substantively identical to the instructions in *Davis* and *Parmer*. *Compare* Jury Note 5; App. 11, *with Davis*, 975 N.W.2d at 17; *Parmer*, 2015 WL 2393652, at *6. *Davis* determined that this same instruction did not include content that could give rise to coercion.

> This instruction lacks the problematic content that we have previously condemned. It does not target jurors in the minority to conform to other jurors. Rather, the instruction warns against acquiescence and implores all jurors to fully consider each other's opinions. Moreover, the district court did not identify the number of jurors with a minority opinion to further coerce the jury. The instruction at issue also does not express any requirement that the jury reaches a verdict. Instead, the jury is repeatedly made aware they only have to reach a unanimous verdict "if possible" or "if you can conscientiously do so." Lastly, the instruction does not discuss the possibility of a retrial or the mounting litigation expenses that *Campbell* found concerning.
>
> [. . .]
>
> An *Allen* charge has been sometimes referred to as a "dynamite charge." Under the context and circumstances of this case, the court's verdict-urging instruction was no such thing. If anything, it was more like a sparkler than a stick of dynamite. It simply refocused the jurors on their responsibilities to go back to the jury room and consider the evidence and each other's opinions fairly and properly.

Davis, 975 N.W.2d at 18–21 (citations omitted). Blahnik is correct to concede that the instruction "did not include any 'problematic content' tending to cast blame on a holdout juror in the event a verdict was not reached." *See* Def's Br. at 29. This was a non-coercive instruction.

The polling of the jury: Polling jurors after the verdict is read in the courtroom helps to confirm that "the verdict returned is actually the verdict of each individual member." *See Davis*, 975 N.W.2d at 20 (quoting *State v. Morelock*, 164 N.W.2d 819, 823 (Iowa 1969). *Davis* identified the kind of record that suggests a lack of coercive impact:

> Here, each juror was polled in open court before the trial court judge, prosecution, and defense trial counsel. The record indicates the court attendant asked each juror whether guilty was that juror's verdict. Each juror responded "yes" to the question. In the record, neither party nor the trial court judge identified any hesitation, comments, or body language from the jurors during polling that would indicate coercion during the return of the verdict or in the motion for a new trial.

Id. at 21. Here, too, when the court polled the jury, all twelve jurors affirmed that this was their verdict, without hesitation. Neither party nor the court made any record on any observable indicia of hesitation. *See* TrialTr.V8 23:1–25:9. That is another indication that the verdict was the product of uncoerced deliberations. Each juror affirmed that this verdict was his or her own—which means this instruction did not cause any of them to acquiesce to someone else's view of the evidence.

Unsolicited information about numerical split: Blahnik argues that the instruction was coercive because that the jury's notes had informed the court that "there was a single holdout on the jury,"

and that in that context "any verdict urging instruction would clearly target the holdout and add to the pressure the juror had already been undergoing." *See* Def's Br. at 29–31. But the instruction did not make any distinction between jurors on either side of such a split—it directed *all* of the jurors to "listen to the arguments of the other jurors with a disposition to be convinced by them," and to treat differing views of the evidence as cause "to scrutinize the evidence more closely and to reexamine the grounds of their problem." *See* Jury Note 5; App. 11. Moreover, it "repeatedly made [them] aware they only have to reach a unanimous verdict 'if possible' or 'if [they] can conscientiously do so.'" *See Davis*, 975 N.W.2d at 18; *accord* Jury Note 5; App. 11 (explaining that "this verdict must be the conclusion of each juror and not mere acquiescence of the jurors in order to reach an agreement"). Just like in *Davis*, that mitigates any coercive pressure by acknowledging that agreement might not be possible, and by emphasizing that a verdict had to be the result of actual *agreement*, rather than acquiescence.

It would have been better if the jury had not told the court that there was a split between one juror and the other eleven jurors. But that does not weigh heavily in favor of a coercive effect. This is not a circumstance that makes the instruction coercive, because *the court*

did not do anything that would lead jurors to believe that its attention was focused on the lone juror, nor did the content of this instruction indicate that it was aimed at that lone juror. This is not a case where there was content in the verdict-urging instruction "targeting jurors in the minority by asking those jurors to reevaluate their opinions to possibly conform to the majority," nor was there any "action by the district court that proactively identifies the number of jurors of the minority opinion." *See Davis*, 975 N.W.2d at 18 (citations omitted). The fact that the court is *aware* of an 11-1 split is not enough to imbue an otherwise proper verdict-urging instruction with a coercive effect. Rather, coercion arises from some action taken by the court to identify or target jurors in a minority, or some language in the instruction that recommends different actions for jurors on different sides of the split. So while it would have been better if the jurors had not told the court anything about the numerical split at any point in deliberations, that disclosure did not make this verdict-urging instruction coercive.

The best case to illustrate this point is *State v. Piper*, where the jury notified the trial court that they were deadlocked, on a 10-2 split. *See State v. Piper*, 663 N.W.2d 894, 910–11 (Iowa 2003); *overruled on other grounds by State v. Hanes*, 790 N.W.2d 545, 551 (Iowa 2010).

The trial court gave a supplemental instruction, in line with *Campbell*. The Iowa Supreme Court noted that it could infer a coercive effect if there had been "an inquiry into the jury's numerical division." *See id.* at 912 (citing *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988)). But it declined to infer a coercive effect from that unsolicited disclosure:

> As we have already noted the content of the instruction given here was not objectionable. In addition, neither the instruction nor anything stated by the court to the jury indicated the jury was required to reach a verdict. Moreover, the court did not inquire into the voting breakdown, albeit that information was volunteered by the foreperson in the notes sent to the trial judge.

See id. Blahnik's argument is that any verdict-urging instruction is impermissibly coercive if it follows the jury's volunteered disclosure of a lopsided numerical split—and *Piper* forecloses that argument.

This verdict-urging instruction did not include any "dynamite" that could have a coercive effect. The amount of time elapsed between the instruction and the verdict suggests that it prompted meaningful deliberation, not acquiescence. When polled, each juror claimed the verdict as his or her own. And *Piper* forecloses Blahnik's argument that unsolicited disclosure of a numerical split on the jury makes an otherwise benign instruction coercive and prejudicial. Thus, Blahnik cannot establish an abuse of discretion, and his challenge fails.

CONCLUSION

The State respectfully requests that this Court reject Blahnik's challenge and affirm his convictions.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,832** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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