ELECTRONICALLY FILED MAR 02, 2023 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 22-0089

THE STATE OF IOWA,

Plaintiff-Appellee,

vs.

JOHNNY BLAHNIK CHURCH,
f/k/a DREW ALAN BLAHNIK,

Defendant-Appellant.

APPEAL FROM IOWA DISTRICT COURT FOR LINN COUNTY
CASE NO. FECR133722
HONORABLE CHRISTOPHER L. BRUNS
SIXTH JUDICIAL DISTRICT OF IOWA

RESISTANCE TO APPLICATION FOR FURTHER REVIEW
(Iowa Court of Appeals Decision: February 8, 2023)

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS 2

QUESTION PRESENTED FOR FURTHER REVIEW 3

TABLE OF AUTHORITIES 4

STATEMENT RESISTING FURTHER REVIEW 6

STATEMENT OF THE CASE 8

ARGUMENT 10

I. While the wording of the verdict-urging instruction was not objectionable, the giving of it under the circumstances constituted an abuse of discretion 10

A. The Court of Appeals properly evaluated the instruction using the *Davis* factors 10

B. The panel properly evaluated the *Allen* charge by examining the unique circumstances before and after it was given 13

C. The State's criticism of the panel's examination of similar cases is unwarranted 15

CONCLUSION 19

CERTIFICATE OF COMPLIANCE 20

QUESTION PRESENTED FOR FURTHER REVIEW

After more than two full days of deliberation, the jury foreperson informed the court attendant orally and in subsequent notes that the jury was deadlocked and that one juror, based on a vote by the other eleven jurors, was deliberately not following the court's instructions. In a final note to the court, the jury foreperson informed the court that further deliberations "would NOT be fruitful." After first declining to give a verdict-urging instruction due to concerns it would violate Church's rights, the district court gave an instruction similar to that approved in *State v. Davis.* After approximately three hours the jury returned unanimous verdicts.

Finding that under the circumstances the instruction was coercive and that giving it was an abuse of discretion, the Iowa Court of Appeals reversed and remanded.

Based on the surrounding circumstances, did the trial court abuse its discretion in submitting a verdict-urging instruction?

TABLE OF AUTHORITIES

Federal Cases

Brewster v. Hetzel, 913 F.3d 1042 (11th Cir. 2019) 14

Hooks v. Workman, 606 F.3d 715 (10th Cir. 2010) 14

Lowenfield v. Phelps, 484 U.S. 231, 108 S.Ct. 546,
98 L.Ed.2d 568 (1988) 11

United States v. Sae-Chua, 725 F.2d 530 (9th Cir. 1984) 15

United States v. Williams, 547 F.3d 1187 (9th Cir. 2008) 16

Williams v. United States, 338 F.2d 530 (D.C. Cir. 1964) 14

State Cases

State v. Bogardus, 188 Iowa 1293, 176 N.W. 327 (Iowa 1920) 18

State v. Campbell, 294 N.W.2d 803, 808 (Iowa 1980) 10, 17

State v. Church, No. 22-0089, 2023 WL 1812785
(Iowa Ct. App. Feb. 8, 2023) 6, 11, 12, 13, 15

State v. Cornell, 266 N.W.2d 15 (Iowa 1978) 11

State v. Davis, 975 N.W.2d 1 (Iowa 2022) 3, 6, 10, 11, 12

State v. Kelley, 161 N.W.2d 123 (Iowa 1968) 17, 18

State v. Parmer, No. 13-2033, 2015 WL 2393652
(Iowa Ct. App. May 20, 2015) 16, 17

State v. Peirce, 178 Iowa 417, 159 N.W. 1050 (Iowa 1916) 10

State v. Piper, 663 N.W.2d 894 (Iowa 2003) 11, 12

State v. Power, No. 13-0052, 2014 WL 2600214
(Iowa Ct. App. June 11, 2014) 16, 17

Rules

Iowa R. App. P. 6.1103(1)(b)(1)..7

STATEMENT RESISTING FURTHER REVIEW

On February 8, 2023, the Iowa Court of Appeals reversed Church's convictions for second-degree murder, abuse of a corpse, and obstructing prosecution. The panel concluded that "considering the totality of circumstances – which includes an unusually open expression of animosity from the majority jurors toward the lone holdout – we find that the district court should not have given the supplemental instruction." *State v. Church,* No. 22-0089, 2023 WL 1812785 (Iowa Ct. App. Feb. 8, 2023). More particularly, the panel held, "Unlike *Davis* and *Piper,* the circumstances here left the minority juror particularly vulnerable to the coercive effect of the *Allen* charge. So giving it was an abuse of discretion." 2023 WL 1812785 at *7. The panel's conclusion was reached after careful consideration of the primary factors identified in *Davis* for evaluating the potential coercive effect of verdict-urging instructions: (1) the instruction's contents; (2) the length of the jury's deliberations after the supplemental instruction is given; and (3) the results of post-verdict polling. *See Davis*, 975 N.W.2d at 18. Just as the court in *Davis* and earlier cases dealing with the impact of verdict-urging instructions have emphasized, the Court of Appeals also examined the important surrounding circumstances leading up to the trial court's decision, including the trial court's awareness of the jury division, the

hostility focused on the lone holdout by the other jurors, the foreperson's repeated communications that the jury was deadlocked, and the time spent before and after the *Allen* charge. While neither Church nor the panel found fault with the *wording* of the verdict-urging instruction, it was the *giving* of it under the circumstances that the panel concluded coerced the verdict in Church's case.

This Court should decline to grant review because the panel's opinion is consistent with the jurisprudence governing verdict-urging instructions, and because the panel's decision was justified by the unique factual circumstances detailed in the record. *See* Iowa R. App. P. 6.1103(1)(b)(1). Moreover, the panel opinion highlights the importance of considering the context and environment in which a trial court should respond to a deadlocked jury and provides not only valuable guidance but also restores Church's right to a verdict free from coercion.

STATEMENT OF THE CASE

Nature of the Case:

Church acknowledges that the State is seeking further review of a decision of the Court of Appeals pursuant to Iowa Rule of Appellate Procedure 6.1103.

Course of Proceedings and Statement of Facts:

Church was charged with first-degree murder, abuse of a corpse, and obstructing prosecution. Having conceded that he stabbed Chris Bagley, the fighting issue at trial was whether Church acted in self-defense. After more than two full days of deliberation, a note from the jury foreperson reported that *a* juror was failing to follow the court's instructions. Shortly thereafter, a court attendant was informed orally by the jury that it was deadlocked and minutes later the jury sent an additional note that they had voted eleven-to-one that the holdout juror was deliberately not following the rules. In response to the vote the holdout stated "I don't care – I'm not changing my mind." Asked by the court in a written response whether additional deliberations would be productive, the foreperson responded emphatically that further deliberations would "NOT be fruitful."

After earlier declining to issue an *Allen* charge out of concern that it would violate Church's trial rights, the district court submitted the verdict-

urging instruction over Church's objection. After approximately three hours of additional deliberation, during which the jury sought no additional instructions or guidance, the jury returned a verdict finding Church guilty of second-degree murder, abuse of a corpse, and obstruction of prosecution. Church again asserted his challenge to the verdict-urging instruction in his motion for new trial which was overruled by the district court. Church was sentenced and filed a timely appeal.

Neither the State nor Church requested retention, and the appeal was transferred to the Iowa Court of Appeals. Having found that the trial court abused its discretion in giving the verdict-urging instruction, the Court of Appeals reversed and remanded for retrial. The underpinnings to the panel's opinion, and Church's confidence in its decision, are the basis for this resistance.

ARGUMENT

I. While the wording of the verdict-urging instruction was not objectionable, the giving of it under the circumstances constituted an abuse of discretion.

In its application, the State, urging a mechanical application of three factors identified in *State v. Davis,* 975 N.W.2d 1 (Iowa 2022), mistakenly claims that the *words* of a verdict-urging instruction must have a coercive effect in order for the giving of the instruction to be an abuse of discretion. In fact, the Court of Appeals properly examined not only the *Davis* factors, but also the critical circumstances surrounding the trial court's decision and why, under the unique circumstances of this case, the *giving* of the instruction was an abuse of discretion.

A. The Court of Appeals properly evaluated the instruction using the *Davis* factors.

Both the United States Supreme Court and this Court have long recognized that the test for whether a verdict-urging instruction was properly given is whether the instruction "improperly coerced or helped coerce a verdict or merely initiated a new train of real deliberation which terminated the disagreement." *State v. Campbell,* 294 N.W.2d 803, 808 (Iowa 1980). Importantly, "each case is to be decided on its own circumstances." 294 N.W.2d at 809. *See also State v. Peirce,* 178 Iowa 417, 159 N.W. 1050, 1054 (Iowa 1916) ("[I]t depends upon the conditions under which its

language is used whether there is reversible error,"); *State v. Cornell,* 266 N.W.2d 15, 20 (Iowa 1978) ("We have employed a similar standard of review [the totality of the circumstances] in determining the propriety of a trial court's giving a verdict-urging instruction to the jury,"); *State v. Piper*, 663 N.W.2d 894, 911-12 (Iowa 2003) ("The supplemental charge must be evaluated 'in its context and under all the circumstances,'") quoting *Lowenfield v. Phelps,* 484 U.S. 231, 237, 108 S.Ct. 546, 550, 98 L.Ed.2d 568, 577 (1988); *State v. Davis,* 975 N.W.2d 1, 18 (Iowa 2022) ("Only in cases where prejudice has been demonstrated by surrounding circumstances will the trial court be reversed").

The Court of Appeals thoroughly reviewed the principal factors used in gauging whether a verdict-urging instruction is coercive: (1) the instruction's contents; (2) the length of the jury's deliberations after the supplemental instruction is given; and (3) the results of post-verdict polling. *Davis*, 975 N.W.2d at 18. Church did not challenge the *content* of the trial court's instruction. As also prescribed in *Davis*, the panel looked at both the length and the ratio (a "more intricate gauge") of the time spent by the Church jury in deliberations before and after the challenged instruction was given. It concluded that the ratio here – nearly 13 hours of deliberation across four days before the *Allen* charge and three hours after the instruction

– pointed to coercion and prejudice. 2023 WL 1812785 at *5. Lastly, although Church acknowledged that when polled the jurors exhibited no outward signs of coercion, the panel agreed with Church that in light of the trial's intense media coverage and emotionally charged atmosphere the jurors' lack of hesitation was not a "reliable indicator that no coercion occurred." 2023 WL 1812785 at *5.

In addition to thoroughly reviewing the *Davis* precepts, the panel also described how the surrounding circumstances in that case differed from those in Church's case. In *Davis,* the court was informed by a court attendant that "the jury may be deadlocked." 975 N.W.2d at 17. The jury had been deliberating seven hours before a verdict-urging instruction was delivered, and there is no record that the jury ever communicated by a note or otherwise that it was hung, nor was there any communication indicating any hostility toward any holdout jurors. As the panel also pointed out, the circumstances in *Piper* are not comparable to the situation facing the district court in Church. The trial court in *Piper* received one note from the jury about being hung (with a second note clarifying the positions taken by the jurors), but there was no indication of any hostility toward the minority jurors. The trial court in *Piper* did not even issue a so-called *Allen* charge, but simply resubmitted the standard instructions on the duty of jurors. 663

N.W.2d at 911. As the panel concluded, "Unlike *Davis* and *Piper*, the circumstances here left the minority juror particularly vulnerable to the coercive effect of the *Allen* charge." 2023 WL 1812785 at *7.

B. They panel properly evaluated the *Allen* charge by examining the unique circumstances before and after it was given.

While the Court of Appeals properly examined the *Davis* factors employed in determining whether coercion existed during Church's trial, it also highlighted other factors that led to its conclusion that in the context of the unique circumstances here, the giving of the trial court's *Allen* charge was an abuse of discretion.

First, the Court of Appeals panel found significant the trial court's "unsolicited knowledge of the eleven-to-one jury split." 2023 WL 1812785 at *5-6. Identifying in its opinion cases in which other courts had examined a jury's numerical division, and analyzing the potential effect of the instruction from the point of view of the minority juror, the panel found critical that the district court not only knew the eleven-to-one split but also knew that in *three* consecutive notes the foreperson disclosed that the jury majority was accusing the holdout of failing to follow the rules set forth by the court. The jury majority specifically targeted the holdout by voting that the juror was "deliberately" breaking the rules. The foreperson reported that the holdout "did not care." 2023 WL 1812785 at *6. Under these

circumstances the panel concluded that the holdout was rendered especially susceptible to the coercive impact of the verdict-urging instruction, coming as it did on the heels of three communications from the jury that it was deadlocked.

Similar hostility toward a holdout was found to be a critical factor in *Hooks v. Workman,* 606 F.3d 715, 747 (10th Cir. 2010), in which eleven jurors believed that the holdout "was illegally refusing to change her vote." The court of appeals found that the disclosure of that information "certainly bears on the coerciveness of the *Allen* charge." 606 F.3d at 747. Likewise, in *Brewster v. Hetzel,* 913 F.3d 1042, 1054 (11th Cir. 2019), in concluding that a verdict was coerced from a deadlocked death penalty jury, the court found significant not only that the trial court was aware of the jury's eleven-to-one division, but also that notes from the jury indicated that the holdout was "unwilling to discuss the case" and was "doing crossword puzzles instead." The court also emphasized that "the more times a jury tells the court that it is deadlocked, and the more times the court responds by instructing the jury to continue deliberating, the greater the risk of coercion." 913 F.3d at 1054.

Similarly, in *Williams v. United States,* 338 F.2d 530, 531 (D.C. Cir. 1964), the jury foreman informed the trial judge that two jurors were hanging the jury and that the other jurors were asking to have the holdouts

replaced by alternate jurors. The dissenting jurors were “rebuked” by their fellow jurors, who proposed that they be discharged from the jury. The court found the *Allen* charge impermissibly coercive and noted that “[i]t would indeed take a strong-willed juror to maintain his position under this type of pressure.” 338 F.2d at 533.

C. The State’s criticism of the panel’s examination of similar cases is unwarranted.

The State criticizes the Court of Appeals panel for not citing any case in which a court found a lack of any problematic content in the verdict-urging instruction but ordered a retrial anyway. Application at 14. In fact, the panel cited *United States v. Sae-Chua,* 725 F.2d 530 (9th Cir. 1984), in which a federal court found an *Allen* charge coercive where the trial judge was aware of an eleven-to-one split. 2023 WL 1812785 at *6, n.12. In *Sae-Chua,* the court bypassed claimed defects in the *Allen* charge. A case in which one holdout juror had taken a position “the foreman had felt to be improperly taken,” the court found the giving of verdict-urging instruction to constitute reversible error.

> In a half-dozen respects appellant challenges the substance of the charge given and notes respects in which it departs from the charge approved by the Supreme Court. We need not reach the issues so presented. In our view the giving of any *Allen*-type charge under the circumstances was bound to be coercive.

725 F.2d at 531.

In *United States v. Williams,* 547 F.3d 1187 (9th Cir. 2008), the court found that a "neutral form" of the *Allen* charge was impermissibly coercive where a juror notified the court that she was a holdout and the foreperson informed the court in another note that the holdout was refusing to participate in deliberations. 547 F.3d at 1203, 1205. Virtually identical to instructions approved in earlier cases, the instruction "simply encouraged the jurors to reach a unanimous verdict 'only if each of you can do so after having made your own conscientious decision.'" Even though the judge *inadvertently* learned of the jury's division, the court found reversal necessary where the holdout juror could only have interpreted the instruction as being directed specifically to her. The court found that the trial judge had abused its discretion in denying appellant's motion for mistrial. 547 F.3d at 1207. Similarly, as the panel found here, because the holdout juror knew that the trial court was aware of the split and the majority's vehemence, the holdout would reasonably perceive the verdict-urging instruction as directing her to conform to the majority.

The State also criticizes the panel for not addressing its own decisions in *State v. Parmer,* 2015 WL 2393652, and *State v. Power,* 2014 WL 2600214, in which the court found the giving of verdict-urging instructions not to be an abuse of the court's discretion. In *Power,* the district court gave

a verdict-urging instruction "strikingly similar" to the one approved in *Campbell* and deemed not to constitute an abuse of discretion. Importantly, however, in *Power,* "The court was not informed of the ratio of disagreement and did not address any special directives to the jurors holding the minority viewpoint." 2014 WL 2600214 at *5. In *Parmer,* again the court found that the verdict-urging instruction was similar to the *Campbell* instruction and – unlike the situation here – there was no indication that the trial court was aware of the jury's split nor was there any indication of hostility underlying the jury's inability to reach a verdict on one of the submitted charges. Moreover, unlike the situation here where the jury three times told the court it was deadlocked, the *Parmer* jury indicated but once that it was unable to reach a verdict on all of the submitted charges. 2015 WL 2393652 at *6. Simply put, the panel did not address in detail its decisions in *Parmer* and *Power* because the facts were significantly different from the circumstances here.

The State also finds fault with the panel's failure to address *State v. Kelley*, 161 N.W.2d 123 (Iowa 1968), in which the Court found no reversible error in the giving of a verdict-urging instruction to a jury that had been deliberating for approximately 22 hours and returned a guilty verdict some two-and-a-half hours later. Importantly, there is nothing in the *Kelley*

opinion to indicate that the jury had communicated its division, or whether it had communicated with the trial court at all. Lacking any details about the surrounding circumstances, the *Kelley* opinion is instructive of little more than a general proposition. Similarly, *State v. Bogardus,* 188 Iowa 1293, 176 N.W. 327 (Iowa 1920), reveals no details about the circumstances prompting the issuance of a verdict-urging instruction in that case and the Court specifically notes, “The record does not show how the jury stood at the time the instruction was given in the instant case.” 176 N.W. at 329.

But for the fact of the *repeated* communications from the jury that it was deadlocked, that the jury had voted eleven-to-one that the holdout was not playing by the rules, and that the holdout was adamant that she was not changing her mind, this could be viewed as yet another case in the line of cases in which this Court found no reversible error. But those facts – those critical “surrounding circumstances” rightly scrutinized by the Court of Appeals – take this case out of the heartland. The guilty verdicts were precipitated not by the *words* of a verdict-urging instruction but by the circumstances in which those words were given, not by deliberation but by capitulation. The Court of Appeals got it right: the trial court abused its discretion. This Court should decline further review.

CONCLUSION

Johnny Church respectfully requests that this Court deny the State's application for further review.

REQUEST FOR NONORAL SUBMISSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This resistance complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

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Dated: March 2, 2023

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