2017 IL App (1st) 150087-U

FIRST DIVISION
September 11, 2017

No. 1-15-0087

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	) Appeal from the Circuit Court of) Cook County, Criminal Division
v.	) No. 13 CR 14683
DEANDRE MOORE, Defendant-Appellant.	) Honorable Mauricio Araujo,) Judge Presiding

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's improper admission into evidence of a witness' prior consistent statement was a harmless error. Defendant's right to a fair trial was not violated during the venire. Defendant was not denied his right to a unanimous guilty verdict.

¶ 2 Following a jury trial, defendant Deandre Moore was found guilty of residential burglary and sentenced to five years in prison. On appeal, defendant argues that: (1) the trial court improperly allowed the State to introduce an out-of-court statement to bolster the credibility of one of its witnesses, (2) the comments of two potential jurors created a prejudicial atmosphere for the remaining jurors that affected the jury's ability to remain fair and impartial, and (3) his

right to a unanimous guilty verdict was denied due to the court's improper polling procedures. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 At defendant's trial, Chicago police officer Dean Ewing testified that on July 20, 2013, around noon, he was working with Officer Puszkiewicz and Sergeant Castone. After someone flagged him down, he went to an apartment at 18 West 109th Street. Officer Ewing noticed that the rear door had been forced open. Drawing his weapon, he entered the apartment and heard voices coming from inside a bedroom on the main floor. He went in to the bedroom and observed two black men going through drawers. Several items were laid out on the bed. Ewing identified defendant as one of the individuals who was in the bedroom. Defendant was wearing a black t-shirt and his hair was "kind [of] like a fro [sic]." After Officer Ewing made his presence known, the other person fled out the front door, pursued by Officer Puszkiewicz. Officer Ewing attempted to place defendant in custody, but defendant resisted. They struggled from the bedroom to the kitchen, until Officer Ewing fell down a flight of stairs. As he fell, Officer Ewing ripped defendant's shirt near the left side of his collar. Defendant then fled through the rear door of the house.

¶ 5 Ewing observed defendant running northbound through an alley, crossing 108th Place, and running west. Officer Ewing then momentarily lost sight of defendant. Ewing radioed his partner to pick him up and they toured the area. The officers eventually spotted defendant hiding in the backyard of a house at 34 W. 108th Place. Defendant was still wearing his ripped black t-shirt. Defendant ran into the house. Officer Ewing did not follow defendant right away because he was waiting for other officers to cover the back of the house. When the other police units were in place, Officer Ewing entered the house through the open front door. He went up to the

second floor where he saw a girl doing defendant's hair. Defendant was wearing a different black shirt. Defendant ran to the rear stairwell, through the house, and attempted to escape through the front door. Shortly thereafter, Officer Ewing heard that defendant was placed into custody.

¶ 6 Officer Ewing spoke with defendant in the presence of Officers Puszkiewicz and Baker at the police station. After Officer Puszkiewicz read defendant his *Miranda* rights, defendant waived his rights, and agreed to talk to the officers. Officer Ewing testified that defendant acknowledged that he "went back a second time to get stuff. I didn't kick no door in. You didn't find me with shit. I just ran because I was scared."

¶ 7 On cross-examination, Ewing stated that after defendant ran outside, he radioed the location, direction and description of the individual he was chasing. He described a man, 16 or 17 years old, with natural hair, and wearing a black t-shirt. When asked if the arrest report was the only report he prepared, Ewing stated that he also prepared the general offense incident report. After being showed the general offense incident report to refresh his memory, Ewing admitted that the arrest report was actually the only report he prepared in the case. Ewing acknowledged that he did not include the following information in the arrest report: that there were two people at the apartment located at 18 West 109th Street when he arrived; a description of the defendant; no mention of a struggle or being pulled down the stairs, or the injuries Ewing sustained; that he ripped defendant's shirt; that defendant was found hiding behind a house; or that the shirt defendant was wearing was different from the shirt defendant was wearing when Officer Ewing first saw him.

¶ 8 On redirect, over a defense objection, Ewing testified that he told Officer Puzkiewicz the following: that he observed defendant inside the residence; that he tried to place defendant in custody, but defendant pulled away; that defendant dragged Officer Ewing down the rear

stairwell, and he suffered an injury as a result; that defendant fled out the rear door and ran northbound through the yard; that defendant entered the house located at 34 W. 108th Place where he was eventually placed into custody.

¶ 9 William Keith testified that he lived at 18 West 109th Street on July 20, 2013, with his wife, stepson, and nephew. Keith and his family went downtown that morning and returned at about 12:30 p.m. He noticed that the front door of his house was completely open and policemen were standing out front. Subsequently, Keith went to the police station. When he arrived home a couple of hours later, he noticed that the front and rear doors had been damaged and items were missing. Keith stated that he did not give defendant permission to enter his house.

¶ 10 Detective Richard Glenke testified that on July 20, 2013, he was working with his partner, Detective Levins, when he spoke with defendant. Glenke identified defendant in open court. Detective Glenke testified that, after reading defendant his *Miranda* rights, defendant stated that "he entered the victim's residence to go in there and take some property, with another black man. He said he was in there when the police arrived, so he took off and then the police arrested him."

¶ 11 In his case-in-chief, defendant called Cook County Sheriff Officer Miguel Colula. Officer Colula testified that he inventoried defendant's belongings at Cook County jail and that defendant had green shoes, blue jeans and a grey shirt when he was brought into the lockup.

¶ 12 The parties stipulated that, if called to testify, Michelle Harper of the Chicago Office of Emergency Communications ("OEMC") would testify that she was a dispatcher on July 20, 2013. Harper would testify that the recorded transmission from that day was true and accurate. The recorded transmission was then played in open court. On the recording, Officer Ewing described one suspect as a black male, wearing blue shorts with red and white pinstripes, and no

t-shirt. Officer Ewing described the "one [he] lost" as a black male with dark complexion, and a "mid-length" natural hairstyle wearing a ripped and shredded black t-shirt. Later in the recording, Ewing reported that the second suspect was taken into custody at 34 W. 108th Place. Following closing arguments, the trial court instructed the jury, and then the jury retired for deliberations.

¶ 13 Two hours into deliberations, the jury sent a note to the court asking if they could review Officer Ewing's testimony. The court sent back a note indicating that the jury received and heard all the evidence in the case, and to continue to deliberate. Later, the jury sent another note stating: "Judge we are unresolved and cannot reach consensus. We do not feel that we will be able to come to a consensus. Please advise." The court called the jury out and read them the *Prim* instruction. Subsequently, the jury found defendant guilty of residential burglary.

¶ 14 Defense counsel asked for the jury to be polled. Each juror was asked by the court, "was this then and is this now your verdict?" The following exchange occurred:

"MS. ATHNOS: Doy Athnos.

THE COURT: Was that then and is this now your verdict?

MS. ATHNOS: Yes.

MS. ANDERSON: No.

THE COURT: I'm sorry. No what?

MS. ANDERSON: My name is Catherine Anderson. The answer no—

THE COURT: Hold on. Was that then, meaning when I read it, and is this now your verdict?

MS. ANDERSON: Oh. Yes.

THE COURT: That's the only question. The question is when I read it, was it then, that's then, and now is when I'm asking you the question.

MS. ANDERSON: Okay. I'm sorry.

THE COURT: I don't want to know about any deliberations or anything else."

¶ 15 After the jury was dismissed, the defense asked that juror Anderson be questioned about her answer. Initially, the court brought out juror Anderson on her own, but then decided to re-poll the entire jury. The jury was polled again and everyone assented to the guilty verdict. Subsequently, the court sentenced defendant to five years in prison. This appeal follows.

¶ 16 ANALYSIS

¶ 17 Prior Consistent Statement

¶ 18 Defendant argues that the trial court erred when it allowed Officer Ewing to testify regarding the prior consistent statements he made to Officer Puskiewicz in order to bolster Officer Ewing's credibility. Defendant contends that the testimony was inadmissible for rehabilitating Officer Ewing's credibility following his cross examination because defendant had not made a charge of recent fabrication nor alleged a motivation to testify falsely.

¶ 19 Prior consistent statements of a witness are inadmissible for the purpose of corroborating trial testimony or rehabilitating a witness. *People v. Cuadrado*, 214 Ill. 2d 79, 90 (2005). Such evidence is inadmissible because it unfairly enhances the credibility of the witness based simply on the repetition of an account. *People v. Donegan*, 2012 IL App (1st) 102325, ¶ 52 citing *People v. Smith*, 139 Ill. App. 3d 21, 33 (1985) (the "danger" in such statements is that "repetition lends credibility to testimony that it might not otherwise deserve"). As exceptions to the above rule, prior consistent statements are admissible in two circumstances: (1) where there is a charge that the witness has a motive to testify falsely; or (2) where there is a charge that the

witness has recently fabricated the testimony. *People v. Heard*, 187 Ill. 2d 36, 70 (1999). Under the first exception, the prior consistent statement is admissible if it was made before the motive to testify falsely came into existence. *Id.* Under the second exception, a prior consistent statement is admissible if it was made prior to the alleged fabrication, because it shows that the witness told the same story before the time of the alleged fabrication. *Donegan*, 2012 IL App (1st) 102325, ¶ 52.

¶ 20 Absent an abuse of discretion, this court will not reverse a trial court's evidentiary ruling on a prior consistent statement. *Id.* Not all errors in the admission of evidence require reversal. Rather, "[t]o determine whether an ordinary trial error, such as the improper admission of hearsay evidence, was harmless, we must ask whether the verdict would have been different if the evidence had not been admitted." *People v. McWhite*, 399 Ill. App. 3d 637, 643 (2010).

¶ 21 Defendant contends and, we agree, that no charge of recent fabrication or an alleged motive to testify falsely was made that would have allowed Officer Ewing's prior statement made to Officer Puskiewicz to be admitted. At trial, Officer Ewing was impeached based on the arrest report he prepared after defendant was arrested. The arrest report stated that Ewing received information that a burglary was in progress at an apartment at 18 West 109th Street. The arrest report also indicated that he entered the residence through a rear door that had been forced open, that he saw an individual going through the drawers, that the suspect fled, and was later placed in custody at 34 W. 108th Place.

¶ 22 During cross-examination, Officer Ewing acknowledged that the arrest report did not include the following information that he testified to during his direct examination: that Ewing saw two people on the scene at 18 West 109th Street; a description of the defendant; that Officer Ewing struggled with defendant; that during the struggle, Officer Ewing was pulled down the

stairs and ripped defendant's shirt; that Officer Ewing later saw defendant hiding in a backyard; that he saw someone doing defendant's hair in the second house; and that defendant was wearing a different shirt when he was arrested.

¶ 23 On redirect examination, the State first elicited testimony from Officer Ewing that while he created an arrest report for the incident, arrest reports typically do not contain much detail about the incident, but merely contain enough information to establish probable cause to arrest. Officer Ewing testified that Officer Puskiewicz created a general incident report for the burglary, and that type of report contains more details than the arrest report. Officer Ewing spoke with Officer Puskiewicz about the incident before he wrote the general incident report.

¶ 24 The trial court allowed the State to rehabilitate Officer Ewing by allowing him to testify that he told Officer Puskiewicz the following information: he observed defendant inside the residence; defendant tried to run out of the back of the residence; Officer Ewing tried to place defendant in custody, but defendant pulled away; and defendant dragged Ewing down the rear stairwell causing a large abrasion to Ewing's right chin area and swelling to his left ankle. Ewing also testified that he told Officer Puskiewicz that defendant fled out of the rear of the house and ran northbound through the yard; that he lost sight of defendant for a brief period until he saw him hiding in a backyard nearby; and defendant then proceeded to go into a house at 34 W. 108th Place where he was ultimately arrested.

¶ 25 The record reveals that most of the cross-examination of Officer Ewing focused on the omissions from the arrest report of some important details he testified to about the crime during his direct examination. These questions, standing alone, would not permit the introduction of prior consistent statements because if impeachment by omission justified the introduction of such hearsay, the exception would swallow the rule. See *People v. Miller*, 302 Ill. App. 3d 487, 492

(1998) ("If courts were to admit prior consistent statements whenever there was any questioning or contradiction of a witness' testimony, the exception would swallow the rule."). This impeachment falls short of raising a charge or inference that the witness was motivated to testify falsely or that his testimony was of recent fabrication; therefore, the admission of the prior statements was improper rehabilitation. See, *e.g.*, *People v. Wetzel*, 308 Ill. App. 3d 886, 895 (1999) (prior inconsistent statement in which officer testified that the defendant had fired "west" instead of "northwest" did not raise a charge of recent fabrication or motive to testify falsely such that a prior consistent statement could be admitted to rehabilitate the officer). Under the circumstances present here, it was an error to allow the State to elicit testimony from Officer Ewing regarding his statements made to Officer Puskiewicz that were consistent with his trial testimony.

¶ 26 In addition, even if there had been a suggestion of recent fabrication as the State argues, the State failed to establish that Officer Ewing's statements to Officer Puskiewicz predated the arrest report. See *McWhite*, 399 Ill. App. 3d at 641-42 (finding the officer's preliminary hearing statement and arrest reports inadmissible evidence where neither predated the report used to impeach the officer). Therefore, even if it had been suggested that officer Ewing was lying, the prior consistent statement did not disprove, explain or qualify the inconsistencies between Officer Ewing's arrest report and his trial testimony and thus, his statements to Officer Puskiewicz should not have been admitted. *People v. Bobiek*, 271 Ill. App. 3d 239, 244 (1995).

¶ 27 Having found that the court erred in allowing Officer Ewing's prior consistent statement, we need to determine whether the erroneous admission was a reversible error. Generally, the improper admission of evidence is harmless if no reasonable probability exists that the verdict

would have been different had the inadmissible evidence been excluded. *People v. Lynn*, 388, Ill. App. 3d 272, 282 (2009).

¶ 28 Here, the evidence at trial included not only Officer Ewing's testimony, his arrest report, but also the audio recording containing Officer Ewing's dispatch to OEMC. The recording included much of the information that Officer Ewing testified to during his direct examination and was omitted from his arrest report. On the transmission, Ewing indicated that he saw two people on the scene, described one of the two suspects as the "one [he] lost" wearing a "black t-shirt [that] should be ripped, he's got natural hairstyle, dark complexion, he's about 16-17." Officer Ewing stated that the suspect was "running northbound through the alley." Ewing also reported that the individual he was chasing was taken into custody at 34 W. 108th Place.

¶ 29 Furthermore, defendant admitted his participation in the crime to both Officer Ewing and Detective Glenke. Detective Glenke testified that defendant acknowledged that "he entered the victim's residence to go in there and take some property, with another male black" and that "when he was in there the police arrived, so he took off and then the police arrested him." Based on this record, we cannot say that the jury's verdict would have been different had Ewing's prior consistent statements been excluded, and therefore, we find that the error harmless.

¶ 30 Defendant cites *People v. McWhite*, 399 Ill. App. 3d 637, in support of his argument. In *McWhite*, a police officer testified at trial that the defendant retrieved a cigarette box from a barbeque grill near the base of a tree in a vacant lot, removed something from the box, gave the item to another person, and returned the box to the grill. *Id.* at 638-39. According to the officer, this happened several times prior to defendant's arrest. *Id.* at 639. After the arrest, the officer testified he directed another officer to the cigarette box inside the grill. *Id.* On cross-examination, the officer was confronted with a report of the incident, which he reviewed and signed, that made

no mention of the barbeque grill, but instead recited that defendant " 'relocated to a large tree inside an empty lot * * *, bent down, and picked up a green-white Newport cigarette box.' "*Id.* On redirect, the trial court allowed the State to ask the officer about testimony he had given at a preliminary hearing during which he had referred to defendant removing the cigarette box from the grill as well as arrest reports he had prepared that also referred to the same facts. *Id.* at 640. The court found that cross-examination regarding omissions from the report did not assert or imply that the officer had recently fabricated his testimony or had a motive to lie, concluding that admission of the prior statement was improper rehabilitation. *Id.* at 642. Finding that the officer's testimony, the only witness at trial, was critical to the prosecution and that the trial court specifically referred to the prior statements in its ruling, the court found that the erroneous admission of the evidence required reversal. *Id.* at 643.

¶ 31 We agree with defendant that *McWhite* is similar to the instant case because, just as in *McWhite*, the court erred when permitting Ewing's improper rehabilitation when defendant was merely impeaching the officer's testimony by pointing out the omissions in his arrest report. But, unlike *McWhite*, here, the trial court's erroneous decision to allow Officer Ewing to testify to his prior consistent statements did not affect the outcome of the trial in the light of the substantial evidence establishing defendant's guilt. As noted previously, both Officer Ewing and Detective Glenke testified regarding defendant's inculpatory statements made following his arrest. Additionally, Officer Ewing's dispatch recording, describing defendant's pursuit was played in court and it contained the bulk of Officer Ewing's prior consistent statements. Therefore, unlike *McWhite*, where the police officer's testimony was the sole source of evidence at trial, here, there was other evidence that substantially established defendant's guilt. Accordingly, we find the trial

court's error in allowing the improper rehabilitation evidence harmless and we affirm defendant's conviction for residential burglary.

¶ 32 *Voir Dire*

¶ 33 Defendant argues next that he was denied his right to a fair trial by an impartial jury when the trial court decided not to dismiss the venire after two potential jurors commented, based on their personal knowledge, that home invasions and burglaries by young men were prevalent in the area where the crime was committed. Defendant maintains that, although the two potential jurors were not selected to be part of the jury, their comments created a prejudicial atmosphere for the remaining venire that affected the jury's fairness and impartiality.

¶ 34 "[T]he trial court is given the primary responsibility of conducting the *voir dire* examination, and the extent and scope of the examination rests within its discretion." *People v. Strain*, 194 Ill. 2d 467, 476 (2000). "However, the trial court should exercise its discretion in a manner that is consistent with the goals of *voir dire*. *Voir dire* is conducted to assure the selection of an impartial jury, free from bias or prejudice, and grant counsel an intelligent basis on which to exercise peremptory challenges." *People v. Dixon*, 382 Ill. App. 3d 233, 243 (2008). A trial court abuses its discretion only if the trial court prevents the selection of a jury that harbors "no bias or prejudice which would prevent them from returning a verdict according to the law and evidence." *Dixon*, 382 Ill. App. 3d at 243.

¶ 35 The record reflects that the complained-of comments took place after the first eight jurors were chosen from the first panel. The court placed a second panel of sixteen jurors into the jury box and questioned the potential jurors individually on various topics. During the questioning, the following exchange took place between the court and Muhammad Shabaz, a potential juror:

"THE COURT: Anything about that experience that would affect you one way are [sic] other?

Mr. SHABAZ: For this case?

THE COURT: Yes.

MR. SHABAZ: Yes, possibly. I say that because knowing my area kind of have [sic] good and bad blocks. Bad blocks where a lot of youngsters hang out and they kind of watch the better blocks to kind of single people out [sic] watch your movements. Most likely when I get burglarized someone was probably watching me. I'm pretty sure it was somebody young. And I'm not justifying what was done, but I kind of understand sometimes how people can see people who don't have [sic] and people they feel like do have and kind of target them not so much violently like in terms of armed robbery but maybe watch to see what they can take advantage of some their property so that's good and bad to be honest with you."

¶ 36 Another potential juror, Tiffany Moody, who had already been questioned by the court interjected:

MS. MOODY: I am not really sure about how I feel about the case my brother and a few of his friends they break into people's houses on the regular [sic].

THE COURT: They what?

MS. MOODY: They break in people's houses on the regular [sic]. He is currently in like McComb right now. He was sentenced for breaking into

someone's house, and he does in that area as well so I'm kind of in between.

THE COURT: In between what?

MS. MOODY: Judging. Like, I automatically when I first heard the case was like he did it because I mean wasn't right but that's how I felt because I've heard stories of the things that they say they do [sic].

THE COURT: Do you know this man?

MS. MOODY: No. That's why I don't want to judge him period.

¶ 37 The court questioned both potential jurors:

"THE COURT: So let me ask of you. Can you put aside whatever you have right now that you just told me and listen to all the evidence presented and base your decision on the law that I give you and the evidence that you hear. Ms. Moody, can you?

MS. MOODY: I don't know.

THE COURT: Sir?

MR. SHABAZ: Yes, I can."

¶ 38 The court resumed questioning the remaining potential jurors individually. At the conclusion of the *voir dire*, the court asked the jurors "who feel that you can't be fair to listen to the evidence here and make your decision based on only the evidence and the law as provided" to stand up. Several jurors stood up, but potential jurors Moody and Shabaz did not. Four jurors and two alternates were chosen from the second panel to complete the jury. Moody and Shabaz were not part of the jury.

¶ 39 The court was well within its discretion when it found that the jury pool was not poisoned and that all the jurors retained their ability to remain fair and impartial. During the proceedings, the court properly admonished the venire, and conducted the questioning, both *en masse* and individually. Both Moody and Shabaz indicated multiple times that nothing in their individual experiences would cause them to be unfair or partial jurors, and neither was selected to be part of the jury. The selected jurors indicated that they "could be fair, listen to the evidence and base their decisions only on the evidence and law of the case." The trial court, when rejecting defendant's motion for a mistrial, acknowledged that it considered the comments made by Moody and Shabaz but held that that jury pool was not "so tainted that people could not be fair and especially those who said they could be." Based on this record, we find that the trial court did not abuse its discretion when electing not to dismiss the entire venire as the comments did not create a prejudicial atmosphere.

¶ 40 In so holding, we reject defendant's reliance on *People v. Smith*, 341 Ill. App. 3d 729, 737 (2003), as the facts in that case differ significantly from the case at hand. In *Smith*, after the jury retired for deliberations, a juror told the other jurors that she knew the defendant, that she had previously seen the defendant selling drugs, that defendant was a bad person, a gang member and a drug dealer. *Id.* at 736. After the trial court was informed of the comments, it questioned each juror individually about what the juror told them and whether they were able to remain impartial. *Id.* The court dismissed the juror who made the comments and another one who indicated that they could not remain impartial. *Id.* A third juror indicated that the comments had a negative effect on her, but she was allowed to remain on the jury because she assured the trial court that she would not be influenced by those comments and she would base her decision on

the evidence admitted at trial. The appellate court found the defendant was prejudiced by those comments and reversed defendant's conviction and remanded the case for a new trial. *Id.*

¶ 41 Here, unlike *Smith*, the comments made did not allude specifically to defendant. Neither juror indicated that they knew defendant personally. Shabaz referenced the area where the crime happened, and noted that he knew burglaries and home invasions took place in the area. Moody mentioned that her brother and his friends broke into homes in the area. Moreover, neither Moody nor Shabaz were selected to be part of the jury. These isolated comments made by the two potential jurors were unremarkable, and we find that the court did not abuse its discretion when electing not to dismiss the venire.

¶ 42 The Verdict

¶ 43 Defendant argues that his right to a unanimous verdict was denied when the trial court failed to adequately inquire into a juror's dissent and pressured the juror to assent to the guilty verdict. According to defendant, juror number #4, Catherine Anderson, indicated her dissent to the verdict, and instead of asking about her dissent, the court cut her off and repeated the polling question. Defendant maintains that the trial court rather than speak with juror Anderson alone, brought back the entire jury for re-polling and recreating "the coercive environment that may have led juror [Anderson] to assent to the verdict against her will during the initial poll."

¶ 44 We review these actions by the circuit court for an abuse of discretion. *Freeman for Estate of Freeman v. City of Chicago*, 2017 IL App (1st) 153644, ¶ 60 citing *Graham v. Northwestern Memorial Hospital*, 2012 IL App (1st) 102609, ¶ 39; see also *People v. McCoy*, 405 Ill. App. 3d 269, 275 (2010) (whether a guilty verdict was coerced when the judge permitted the jury to continue deliberations after they were told they would be sequestered is reviewed for an abuse of discretion).

¶ 45 The right to a trial by an unbiased jury, the right to a unanimous verdict is among the most fundamental of rights in Illinois. *People v. McGhee*, 2012 IL App (1st) 093404, ¶ 24; see also *People v. Strain*, 194 Ill. 2d 467, 475 (2000) (noting that the right to trial by jury guaranteed under article I, section 13, of the Illinois Constitution of 1970 includes "the right to to have the facts in controversy determined, under the direction and superintendence of a judge, by the unanimous verdict of twelve impartial jurors who possess the qualifications and are selected in the manner prescribed by law").

¶ 46 In every criminal trial, the defendant has the absolute right to poll the jury after it returns its verdict. See *People v. Rehberger*, 73 Ill. App.3d 964, 968 (1979). The purpose of polling the jury is to ensure that the verdict is in fact unanimous. *People v. McGhee*, 2012 IL App (1st) 093404, ¶ 15. When a jury is polled, each juror should be questioned individually as to whether the announced verdict is his own. *People v. Kellogg*, 77 Ill. 2d 524, 527–28 (1979). When questioning a juror about his or her "present intent during the poll," the circuit court "must be careful not to make the polling process another arena for deliberations." *Id.* at 529. A trial court's comments to the jury are improper where, under the totality of the circumstances, the language used actually interfered with the jury's deliberations and coerced a guilty verdict. *Id.*

¶ 47 Here, the record rebuts defendant's contention that juror Anderson dissented from the verdict. After the jury rendered its guilty verdict, at the parties' request, the trial court commenced polling the individual jurors. The court asked each juror individually to state their name, and then asked "Was that then and is this now your verdict?" Immediately after the previous juror assented to the verdict, juror Anderson simply said "No." The following colloquy occurred:

"MS. ANDERSON: My name is Catherine Anderson. The answer is no.

THE COURT: Hold on. Was that then, meaning when I read it, and is this now your verdict?

MS. ANDERSON: Oh. Yes.

THE COURT: That's the only question. The question is when I read it, was it then, that's the then, and now is when I'm asking you the question.

MS. ANDERSON: Okay. Got it. I'm sorry.

THE COURT: I don't want to know about any deliberations or anything else."

¶ 48 Contrary to defendant's arguments, the record reflects that juror Anderson simply misunderstood the question asked by the trial court, not that she dissented from the verdict. The court attempted to clarify the question "The question is when I read it, was it then, that's the then, and now is when I'm asking you the question" and juror Anderson's comment to the court "Okay. Got it. I'm sorry," reflecting that she then understood the question.

¶ 49 Defendant relies on *People v. Kellogg*, 77 Ill. 2d 524 (1979) in support of his argument that the trial court coerced juror Anderson into assenting to the verdict. In *Kellogg*, during the jury poll, a juror asked "Can I change my vote?" *Id.* at 527. The court responded, "The question is, was this then and is this now your verdict?" *Id.* The juror did not respond. *Id.* The court then repeated, "Was this then and is this now your verdict?" *Id.* The juror answered, "Yes, Sir." *Id.* Our supreme court found that the trial court erred because it did not allow dissent from the verdict and failed to ascertain whether the juror desired to change her vote at that time after she asked if she could. *Id.* at 530. In contrast, here, after the court clarified the question, juror

Anderson did not hesitate to assent to the verdict. Juror Anderson never asked the court a question, and did not indicate that she desired to change her verdict. Since juror Anderson's response indicated no ambivalence or hesitancy, there was no cause for the judge to further question her as to possible dissent. The record further reflects that the court gave juror Anderson the opportunity to dissent again when re-polling all the jurors. Again, juror Anderson assented to the guilty verdict. Therefore, defendant's right to a unanimous verdict free of coercions was not violated.

¶ 50 CONCLUSION

¶ 51 Based on the foregoing, we affirm defendant's conviction and sentence.

¶ 52 Affirmed.