

**IN THE COURT OF APPEALS OF IOWA**

No. 0-388 / 09-1256  
Filed July 14, 2010

**RICHARD WAYNE GUIDRY,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Pocahontas County, Thomas J. Bice, Judge.

Applicant appeals the district court decision denying his request for postconviction relief from his convictions for assault with intent to inflict serious injury, two counts of attempted murder, intimidation with a dangerous weapon, child endangerment, and three counts of willful injury. **AFFIRMED.**

Jonathan Beaty, Fort Dodge, and Douglas Cook, Jewell, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik and Charles Thoman, Assistant Attorneys General, and Ann Beneke, County Attorney, for appellee State.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

**DANILSON, J.****I. Background Facts & Proceedings**

Richard Guidry was charged by trial information with the following crimes: (1) attempted murder of Holly Guidry, his ex-wife; (2) attempted murder of Tristan Guidry, his child; (3) attempted murder of Scot Blasey, Holly's boyfriend; (4) intimidation with a dangerous weapon; (5) child endangerment; (6) willful injury of Tristan; (7) willful injury of Scot; and (8) willful injury of Holly. The State alleged Guidry stopped Holly's vehicle, fired into it with a shotgun, and injured Holly, Tristan, and Scot.

The case was submitted to the jury at 5:10 p.m. on Friday, July 21, 2006. Food was brought to the jury room at 6:00 p.m., and deliberations continued until 10:15 p.m., when the court permitted the jurors to separate temporarily overnight. The jury returned on Saturday, July 22, at 9:00 a.m. At 11:00 a.m., the jury sent a note to the judge stating they were at a stand-still on counts one, two, and three, and had reached a unanimous verdict on counts four, five, and seven. The jury asked, "What are the next steps we should take?" The judge met with the attorneys in chambers to discuss the matter. The court then sent the jurors an additional instruction:

The Court has received the note from the Foreman concerning the progress of deliberations and after review and consultation with counsel, directs the jury to re-read the jury instructions and continue deliberations.

At 2:15 p.m. the jury sent another note to the judge stating they had reached a unanimous verdict on counts two, three, four, five, six, and seven, and were still deliberating counts one and eight. The note stated that at that time

they were deadlocked on counts one and eight, but were still debating those counts and were willing to meet again on Tuesday. The note stated the jurors had agreed among themselves to debate the case until 2:00 p.m. that day.

The judge met with counsel in chambers to discuss the communication from the jury. Defense counsel stated, "I strongly urge, for a multiplicity of reasons, that the court direct this jury to continue its deliberation or reach the conclusion that it cannot or that it is deadlocked, one or the other." Defense counsel also asked for the court to declare a mistrial due to the jury's assertion it was deadlocked on some issues. The court gave an additional instruction to the jury:

Your communication of July 22, 2006, at 2:15 p.m. has been reviewed by the Court and counsel. The Court directs you to complete your deliberations on all Counts. Re-read the instructions.

The Court has never understood or agreed to any adjournment of deliberations and finds great risk in adjourning for a period of up to two days. Please continue your deliberations addressing all Counts.

The jury returned a verdict at 3:45 p.m. On count 1, Guidry was found guilty of the lesser-included offense of assault with intent to inflict serious injury. The jury found him guilty of all other charges against him. His convictions were affirmed on direct appeal. See *State v. Guidry*, No. 06-1357 (Iowa Ct. App. Oct. 24, 2007).

Guidry filed an application for postconviction relief, claiming among other issues that he received ineffective assistance due to defense counsel's failure to object to the instructions sent to the jury in response to their notes. The district court found no impropriety in the court's communications with the jury. The court

stated “[t]he additional Instructions given merely initiated a new train of real deliberation and did not improperly coerce a verdict . . . .” The court denied Guidry’s request for postconviction relief. Guidry now appeals.

## **II. Standard of Review**

We review claims of ineffective assistance of counsel de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, an applicant must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied the applicant a fair trial. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006). Absent evidence to the contrary, we assume the attorney’s conduct falls within the wide range of reasonable professional assistance. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995).

## **III. Merits**

Guidry claims he received ineffective assistance during his criminal trial because his defense counsel did not object to the court’s additional instructions given in response to the jury’s questions to the judge. He contends the second instruction was improperly coercive. He states the jury was clearly deadlocked and the second instruction was an attempt to pressure the jurors to reach a verdict. He points out that the jury was deliberating on a weekend and it reached a verdict soon after the second instruction.

“Supplemental instructions urging a jury to reach a unanimous verdict have ‘long been sanctioned.’” *State v. Piper*, 663 N.W.2d 894, 911 (Iowa 2003) (quoting *Lowenfield v. Phelps*, 484 U.S. 231, 237, 108 S. Ct. 546, 550, 98 L. Ed. 2d 568, 577 (1988)). A supplemental instruction, however, may not improperly

coerce a verdict. *State v. Campbell*, 294 N.W.2d 803, 808 (Iowa 1980). “The ultimate test is whether the instruction improperly coerced or helped coerce a verdict or merely initiated a new train of real deliberation which terminated the disagreement.” *Id.*

A supplemental instruction will be evaluated in context, and considering all the circumstances. *State v. Wright*, 772 N.W.2d 774, 778 (Iowa Ct. App. 2009). Other factors to consider are (1) an inquiry into the jury’s numerical division, (2) a speedy verdict after receiving the supplemental instruction, and (3) language instructing the jury it must make a decision. *Lowenfield*, 484 U.S. at 239-40, 108 S. Ct. at 551-52, 98 L. Ed. 2d at 578-79.

The court in this case did not make any inquiry into the jury’s numerical division. The jury volunteered the information in the notes sent to the judge. The jury had deliberated a little over ten hours, including a dinner break, before sending the second note. At that time they had reached a unanimous decision on six of the eight charges against Guidry. After receiving the second supplemental instruction, the jury deliberated another hour before reaching a decision on the last two charges. We conclude this was a reasonable amount of time for the jurors to reexamine their positions.

Finally, the second supplemental instruction directed the jury to complete its deliberations on all counts, but did not tell the jury it was required to reach a decision. The jury’s second note stated that the jury was unanimous on six counts and deadlocked on two counts, 1 and 8. Most significantly, there was no expression by the jury in either note of an unwillingness to continue deliberations and in fact the second note stated, that “We are still debating counts 1 & 8.”

Looking at the second supplemental instruction in context, and considering all the circumstances, we conclude the instruction was not coercive.<sup>1</sup>

We also note that at the postconviction hearing defense counsel testified he and Guidry “both felt positive that because they hadn’t reached a verdict within a relatively short period of time, that we may have had some momentum among some of the jurors.” Defense counsel stated, “we were somewhat pleased that a jury might come back with either a lesser included offense or an acquittal of some type.”

We conclude Guidry has not shown he received ineffective assistance due to counsel’s failure to object to the supplemental instructions given in response to notes from the jury. We affirm the district court’s decision denying Guidry’s request for postconviction relief.

**AFFIRMED.**

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<sup>1</sup> The jury sent a third note at 2:50 p.m., stating that some jurors wanted to use the telephone to call employers. Apparently a responsive instruction to this note was not given prior to the jury reaching its unanimous verdict on all eight counts.