SUPREME COURT NO. _____

NO. 59418-8-II

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHAREESE NEAL,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY
The Honorable Thomas P. Quinlan, Judge

PETITION FOR REVIEW

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A. PETITIONER AND COURT OF APPEALS DECISION

Chareese Neal, the appellant below, seeks review of the Court of Appeals' decision, filed March 18, 2025 (Op., attached), affirming her conviction for third-degree assault of a child.

B. ISSUES PRESENTED FOR REVIEW

1. Where the jury expresses immovable deadlock, in a note that violates the court's instructions by revealing that there is a single holdout juror, does the trial court err by instructing the jury to continue its deliberations, without reinstructing the jury on the proper way to seek consensus?

2. Where the jury, which formerly expressed immovable deadlock with a single member opposed to conviction, returned its verdict thirteen minutes after receiving the court's terse instruction to continue deliberating, is there a

reasonably substantial possibility the court's instruction was coercive?

C. STATEMENT OF THE CASE

Ms. Neal and her former partner, Levi Garrett, have one child together: seven-year-old J.G. Ex. 2-A at 13:35:00. They separated when J.G. was almost one year old. Ex. 2-A at 13:38:25.

In late summer of 2022, Ms. Neal and Mr. Garrett were involved in protracted and contentious custody litigation. RP (Aug. 3, 2023) at 72-75, 94-96; RP (Aug. 8, 2023) at 217-19, 231. J.G. stayed with each parent for five days at a time, alternating weekends, while the family court case proceeded. RP (Aug. 8, 2023) at 219.

On August 27, 2022, Ms. Neal spanked J.G. for being disrespectful. RP (Aug. 3, 2023) at 76-77; RP (Aug. 8, 2023) at 223. J.G. said the spanking hurt only for about ten seconds, and he did not complain of any pain afterwards. RP (Aug. 3, 2023) at 79-80, 106; RP (Aug. 8, 2023) at 227, 233, 244-45. But when J.G. went back to stay with Mr. Garrett, four days later, J.G. told Mr.

Garrett about the spanking and Mr. Garrett observed bruises on J.G.'s bottom and legs. RP (Aug. 3, 2023) at 97-100.

Mr. Garrett took pictures of the bruises, called his attorney, reported the incident to J.G.'s principal and school counselor, and filed a report with Child Protective Services (CPS). RP (Aug. 3, 2023) at 100-03, 110-11; Ex. 18, 19.

Pierce County Police detectives Jennifer Terhaar and Kevin Wales, and CPS investigator Shannon Jeffreys, visited Ms. Neal at her home on September 8, 2022. RP (Aug. 3, 2023) at 119-26.

Ms. Neal told the detectives that she spanked J.G. on Saturday (August 27), and that she used her hand. Ex. 2-A at 13:40:47. She said she spanked J.G. seven times, on his bare bottom, for being disrespectful and talking back. Ex. 2-A at 13:40:55. Ms. Neal said she did not observe any marks on J.G. after the spanking. Ex. 2-A at 13:41:39.

Ms. Neal also told the detectives and Ms. Jeffreys that she was shocked when Mr. Garrett showed her the pictures of J.G.'s bruises. Ex. 2-A at 13:47:00. She said she had not seen any marks

on J.G. during the several days that followed the spanking. Ex. 2-A at 13:52:04.

Ms. Neal denied using a belt to spank J.G., and she observed that he sometimes appeared to bruise easily. Ex. 2-A at 13:54:02. Ms. Jeffreys asked Ms. Neal to describe the various belts in her home, and Ms. Neal said at least one had a metal buckle. Ex. 2-A at 14:02:27.

About six weeks later, the State charged Ms. Neal with one count of third-degree assault of a child, alleging she "with criminal negligence, . . . cause[d] bodily harm to J.G., by means of a weapon or other instrument or thing likely to produce bodily harm." CP 4.

Ms. Neal pleaded not guilty and proceeded to trial on August 1, 2023. RP (Aug. 1, 2023) at 3.

Given the nature of the charges, the prospective jurors were questioned at length on the subject of parental discipline, particularly spanking. RP (Aug. 2, 2023) at 117-43. Jurors expressed a range of views, with some saying they would never spank a child and others saying that spanking, even with an "object

or instrument," was a legitimate form of discipline. RP (Aug. 2, 2023) at 117-35.

The jury heard testimony from J.G., Mr. Garrett, Det. Terhaar, Ms. Jeffreys, child forensic interviewer Stacey Lawrence, pediatric nurse Michelle Breland, and Ms. Neal. RP (Aug. 3, 2023) at 72-139, 145-64; RP (Aug. 7, 2023) at 165-77; RP (Aug. 8, 2023) at 204-13, 217-51.

Most of the facts were undisputed. The parties agreed that Ms. Neal spanked J.G. on August 27, 2022, for being disrespectful earlier that morning while they were out at a restaurant. RP (Aug. 3, 2023) at 76-78; RP (Aug. 8, 2023) at 220-26. They also agreed that J.G. did not feel any lasting pain from the spanking, and that he went to a birthday party immediately thereafter and played happily with the other kids there. RP (Aug. 3, 2023) at 79-80, 84, 91-92; RP (Aug. 8, 2023) at 226-27. It was also undisputed that Ms. Neal rarely spanked J.G., since he was generally a respectful and obedient child. RP (Aug. 8, 2023) at 245; see RP (Aug. 3, 2023) at 97-99.

The only disputed facts were the method Ms. Neal used to administer the spanking and the possible side effects of a steroid cream that both parents administered to J.G.'s groin area. RP (Aug. 3, 2023) at 77-78, 82-83, 114-15; RP (Aug. 7, 2023) at 174; RP (Aug. 8, 2023) at 225-26, 234-36.

Ms. Neal testified that she used her hand to spank J.G. on his bare bottom seven times, once for each letter in the word, "respect." RP (Aug. 8, 2023) at 225-26. J.G. testified that his mother hit him a few times with a belt, but not the part with the buckle on it. RP (Aug. 3, 2023) at 77-78, 82-83. Ms. Lawrence testified that J.G. initially told her his mother sometimes hit him with her hand, but then later took that back. RP (Aug. 3, 2023) at 157-61.

Ms. Neal testified that J.G. had unexplained bruising while he was on the steroid medication, but that she did not think much about it since it did not seem to be causing him any discomfort. RP (Aug. 8, 2023) at 234-35. Mr. Garrett testified that the cream itself did not appear to cause any skin irritation, but that he did not

know its side effects. RP (Aug. 3, 2023) at 111-15. Ms. Breland testified that she thought one of the bruises in J.G.'s leg could have been caused by a looped belt, and that knowing of the steroid cream would not have changed her conclusion to that effect. RP (Aug. 7, 2023) at 171, 173-74.

Ms. Neal steadfastly denied abusing J.G. RP (Aug. 8, 2023) at 238. She testified that she had considered the spanking carefully and was not angry when she administered it. RP (Aug. 8, 2023) at 221-26, 246. She said she had taken teacher-training classes, worked with youth in the community, and completed parenting classes as part of the custody litigation involving J.G. RP (Aug. 8, 2023) at 237-38. Ms. Neal also frequently cared for her 18-month-old daughter and her partner's three-year-old child. RP (Aug. 8, 2023) at 220-21.

Consistent with RCW 9A.16.100 and WPIC 17.07, the jury was instructed that a parent may use "reasonable and moderate" physical discipline "for purposes of restraining or correcting [her] child":

It is a defense to a charge of assault that the force used was lawful as defined in this instruction.

The physical discipline of a child is lawful when it is reasonable and moderate, and is inflicted by a parent for purposes of retraining or correcting the child.

You must first determine whether the force used, when viewed objectively, was reasonable and moderate.

You may, but are not required to, infer that it is unreasonable to do the following acts to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive.

The State bears the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty as to this charge.

CP 29.

The jury began deliberating at 1:55 p.m. on August 8, 2023. CP 68. At 4:04 p.m., the jury submitted two inquiries to the court. CP 68.

The first inquiry asked for guidance on the reasonable use of physical discipline: "Is there any guidance on 'Temporary marks' (#11)." CP 14.

The second inquiry expressed intractable deadlock and disclosed the jury's vote:

> We have had a vigorous discussion and believe we are at an impass [sic] and will not reach a unanimous decision. What should we do? We do not believe more time (Today or tomorrow will change). (We are 11 To 1 guilty).

CP 15.

As soon as the jury submitted these inquiries, the jurors were excused for the evening and told to return the next morning at 8:45, to resume deliberations. CP 68.

The jury resumed deliberations at 9:03 a.m. the next morning, August 9, 2023. CP 68. Meanwhile, the court and the parties addressed the two inquiries. RP (Aug. 9, 2023) at 318.

The parties agreed that the only acceptable response to the first inquiry (for guidance on "Temporary marks") was: "Please refer to the court's instructions as provided." RP (Aug. 9, 2023) at 318-19; CP 14.

The parties did not agree on the proper response to the second inquiry, about the jurors' deadlock.

The court lamented the fact that the jury had disclosed its vote, and it questioned whether the jurors had actually read their instructions. RP (Aug. 9, 2023) at 318-20. Both Instruction 13 and the Jury Question forms themselves direct jurors, in the event of an inquiry: "Do not state how the jury has voted." CP 14-15, 31.

The prosecutor argued that it would be pointless to bring the jurors in, for questioning, when they had been deliberating for only a couple of hours. RP (Aug. 9, 2023) at 320-21. She said the court would inevitably instruct them to keep deliberating, so it need not inquire into their state of deadlock. RP (Aug. 9, 2023) at 320-21.

The court agreed with this, but it also expressed concern about the disclosure of the vote. RP (Aug. 9, 2023) at 322-23.

Defense counsel moved for a mistrial. RP (Aug. 9, 2023) at 321-22. She argued the jurors had indicated immovable deadlock, after "vigorous discussion," and that it was therefore appropriate to discharge them. RP (Aug. 9, 2023) at 322.

The court denied the mistrial motion, but with a caveat. RP (Aug. 9, 2023) at 322-23. It said it would normally instruct the jury to continue its deliberations, "[a]bsent the language on this question where they had indicated what their vote was," but it also noted that it was concerned about the jury's disclosure of its "preliminary vote." RP (Aug. 9, 2023) at 322-23. The court therefore directed the parties to research the issue and return in an hour and fifteen minutes. RP (Aug. 9, 2023) at 322-23.

This caveat notwithstanding, the court then immediately instructed the jury to continue its deliberations. RP (Aug. 9, 2023) at 323-25; CP 15. It did not call the jurors in for any inquiry or oral instruction, it simply wrote, on the Jury Question form:

"PLEASE CONTINUE YOUR EFFORTS TO DELIBERATE." CP 15.

The judicial assistant delivered this response (and the response to the other inquiry) to the jury at 9:22 a.m. CP 68. Thirteen minutes later, the jury informed the judicial assistant that they had reached a verdict. CP 68.

The parties reconvened at 10:45 a.m., to argue the mistrial motion. RP (Aug. 9, 2023) at 325.

The prosecutor argued it was immaterial that the jury had disclosed its vote, and that the court had not exerted any undue influence on the verdict by instructing the jury as it did. RP (Aug. 9, 2023) at 326-28.

Defense counsel disagreed and argued a mistrial was still warranted, for two reasons. RP (Aug. 9, 2023) at 328-29.

First, by disclosing its vote, in direct violation of two explicit instructions, the jury had indicated it could not follow the court's instructions. RP (Aug. 9, 2023) at 328.

Second, the court's terse instruction—issued without any inquiry—was coercive where the jury had revealed it was deadlocked because of a single holdout juror. RP (Aug. 9, 2023) at 328-31. Defense counsel pointed out that the jury had returned its verdict almost immediately after receiving the court's instruction, a strong indication of coercion. RP (Aug. 9, 2023) at 329-30.

The court denied the motion for a mistrial, but without prejudice. RP (Aug. 9, 2023) at 331-33. It determined it would take the verdict, poll the jurors, and then allow the defense to re-raise the issue in a motion for a new trial, in the event the verdict was guilty. RP (Aug. 9, 2023) at 331-33.

The jury then returned to the courtroom, and the court read the verdict: guilty. RP (Aug. 9, 2023) at 334-35; CP 33. The court also polled the jurors, who each indicated their assent. RP (Aug. 9, 2023) at 335-38.

Defense counsel did not thereafter move for a new trial.

Sentencing occurred five weeks later. RP (Sept. 15, 2023) at 354.

Ms. Neal expressed deep remorse for the effect her actions had had on J.G. and his siblings. RP (Sept. 15, 2023) at 362-65. She said she had apologized to J.G. when she realized that he felt abused, and she told the court that she herself had been the victim of abuse as a child and did not want to deprive J.G. of emotional intelligence or bodily autonomy. RP (Sept. 15, 2023) at 362-65. She also said that she felt misjudged by the jury, because she believed that what she had done was within the scope of legitimate parental discipline, consistent with the way she had been raised. RP (Sept. 15, 2023) at 363-64.

The court imposed 12 months of community custody, with parenting classes, anger management and domestic violence evaluations, and no term of confinement, pursuant to the first-time offender waiver statute. RP (Sept. 15, 2023) at 365-71.

Court of Appeals Decision

Ms. Neal appealed, arguing the trial court's terse instruction coerced the holdout juror into changing their vote, in violation of the Washington and federal constitutions. Br. of App. at 17-23. Citing state and federal precedent, Ms. Neal argued the jury's quick verdict after the instruction was strong evidence of coercion.

The Court of Appeals, Division Two, affirmed the conviction. It reasoned that the trial court had not "prob[ed] for facts behind the vote or attempt[ed] to secure commitments from the jurors about an expected timeframe," and that the court's instruction was therefore a "neutral statement" rather than a coercing influence. Op. at 7. The Court also concluded that it was impossible to draw any inference of coercion from the quick—indeed, almost immediate—post-instruction verdict. Op. at 8. It held that doing so was "mere speculation" and therefore insufficient to warrant relief. Op. at 8.

D. REASONS REVIEW SHOULD BE ACCEPTED

This Court will grant review of a petition that involves a "significant question of law under the Constitution of the State of Washington or of the United States." RAP 13.4(b)(3). Ms. Neal's petition meets this criterion.

The Sixth Amendment to the United States Constitution and article I, section 22, of the Washington Constitution guarantee the accused a fair trial before an impartial jury. State v. Rupe, 108 Wn.2d 734, 748, 743 P.2d 210 (1987). "The right to a fair and impartial jury trial demands that a judge not bring coercive pressure to bear upon the deliberations of a jury." State v. Jones, 97 Wn.2d 159, 164, 641 P.2d 708 (1982) (citing State v. Boogard, 90 Wn.2d 733, 739, 585 P.2d 789 (1978)). Accordingly, the right to a jury trial includes the right to a mistrial, where the jury is unable to reach unanimous agreement. State v. McCullum, 28 Wn. App. 145, 149, 622 P.2d 873 (1981), rev'd on other grounds, 90 Wn.2d 484, 656 P.2d 1064 (1983).

Consistent with these constitutional rights, a trial court must respond cautiously to a deliberating jury's expressions of deadlock.

On one hand, the court generally should not grant a mistrial—and it must not do so over the defendant's objections—absent a factual basis to conclude the jury is hopelessly deadlocked. State v. Watkins, 99 Wn.2d 166, 171-72, 660 P.2d 1117 (1983); Jones, 97 Wn.2d at 164. Thus, where the jury foreman indicates the jury is deadlocked, further inquiry and instruction may be required. See id.; WPIC 4.70.

On the other hand, the judge must never instruct the jurors in a manner that suggests the need for agreement, the consequences of disagreement, or the length of time the jury will be required to deliberate. CrR 6.15(f)(2); Watkins, 99 Wn.2d at 175. Any suggestion that a juror "should abandon his conscientiously held opinion for the sake of reaching a verdict" infringes on the jury trial right. Boogaard, 90 Wn.2d at 736.

To prove a violation of her jury trial right, an appellant must show a "reasonably substantial possibility that the verdict was improperly influenced by the trial court's intervention." Watkins, 99 Wn.2d at 177-78. The appellate court considers all relevant circumstances of the trial court's intervention, as well as the length of time the jury deliberated after the intervention, as a quick verdict tends to indicate coercion. Id.; McCullum, 28 Wn. App. at 153.

While the trial court here clearly tried to proceed cautiously, there is a reasonably substantial possibility that the verdict was coerced.

Where the jury has revealed its vote, the court must take special care not to exert pressure on any "holdout" juror. Jiminez v. Myers, 40 F.3d 976, 981 (9th Cir. 1993). It should avoid any instruction that tends to imply such pressure, and it should "counterbalance[]" any implied pressure with an instruction that no juror should "abandon their conscientiously held views." United States v. Bonam, 772 F.2d 1449, 1451 (9th Cir. 1985).

In the absence of these precautions, a verdict returned quickly after the instruction is strong evidence of coercion. Cf. United States v. Ajiboye, 961 F.2d 892, 894 (9th Cir. 1992).

The federal courts announcing these principles have done so in the context of an "Allen charge," an instruction which explicitly directs dissenting jurors to reconsider their minority viewpoint. Ajiboye, 961 F.2d at 894; Myers, 40 F.3d at 980-81; Bonam, 772 F.2d at 1450-51. Washington is one of many jurisdictions that have banned such instructions, and Ms. Neal does not contend the trial court gave an explicit "Allen charge"[1] in her case. See Watkins, 99 Wn.2d at 171-75; United States v. Thomas, 449 F.2d 1177, 1184-88 (D.C. Cir. 1971).

Nevertheless, the court's response to the jury's expression of deadlock resembled an Allen instruction in its probable coercive effect.

[1] The United States Supreme Court approved such instructions in Allen v. United States, 164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 2d 528 (1896).

As defense counsel argued to the trial court, the jury's note revealed three things: (1) jurors were at an impasse, despite "vigorous discussion," and did not believe further deliberations would result in a verdict; (2) the vote was 11 to one, in favor of conviction; and (3) the jury could not follow its instructions, as evidenced by their revelation of the vote. RP (Aug. 9, 2023) at 328-29.

In these circumstances, the court at a minimum had a duty to remind jurors of Instruction 12, which elaborates on the proper way to seek unanimity:

> As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind for the purpose of reaching a verdict.

CP 30.

Reminding the jury of Instruction 12 would have reinforced the importance of every individual juror's fidelity to his or her honest belief about the evidence. Instead, the court simply ordered the jury to: "CONTINUE YOUR EFFORTS TO DELIBERATE." CP 15. This instruction, given without any inquiry into the jury's state of deadlock, no doubt communicated to the jurors that they were expected to reach a verdict, no matter what. That communication was coercive. Watkins, 99 Wn.2d at 175.

The court always has a duty to guard against such coercion, but that duty is heightened where there is a single holdout juror. Jiminez, 40 F.3d at 981; see Bonam, 772 F.2d at 1451. Here, the court failed in that duty, with the result that the jury returned its verdict almost immediately upon receiving the court's inadequate response to the expression of deadlock. CP 68.

This sequence of events establishes a "reasonably substantial possibility that the verdict was improperly influenced by the trial court's intervention." Watkins, 99 Wn.2d at 177-78.

The Court of Appeals disagreed, citing this Court's decision in Watkins for the rule that "'speculation' is insufficient to establish coercion." Op. at 8. But Watkins is distinguishable.

In Watkins, the defendant was charged with first-degree assault, and the jury was instructed on that charge and the lesser included offense of second-degree assault. 99 Wn.2d at 170. The verdict forms and instructions indicated the jury would have to acquit on the first-degree assault before considering a conviction on the lesser included offense. Id.

When jurors expressed deadlock several hours into deliberations, the court "clarified" the instructions by telling the jurors: "[I]t is not necessary that you agree on assault in the First Degree before considering assault in the Second Degree." Id. at 171. The court also provided new verdict forms, which did not imply that an acquittal on the greater offense must precede consideration of the lesser. Id. Within ten minutes of receiving the supplemental instruction and new verdict forms, the jury returned a guilty verdict on the lesser included offense. Id.

The defendant appealed, arguing the supplemental instruction coerced the verdict. Id. at 177. This Court rejected that argument as speculative under the unique facts of the case. Id. at 177-79. It reasoned that there was only the most remote possibility that the instruction had persuaded any jurors to convict of second-degree assault rather than to acquit the defendant of everything. Id. at 178-79 ("It is unlikely in the extreme considering the evidence presented that jurors who had resolutely clung to their opinions for several hours, necessitating two pleas to the court claiming deadlock, would abandon those opinions within a few minutes of receiving this instruction."). Instead, this Court concluded, the supplemental "clarifying" instructions had given jurors a new way to resolve the case, which they would have chosen earlier had they known it was an option: "If any jurors were persuaded to abandon their opinions, it almost certainly would be those who believed defendant guilty of first degree assault." Id. at 178.

Ms. Neal's case differs from Watkins for the obvious reason that her holdout juror did not want to convict *at all*, until the court

instructed the jury to keep deliberating. Under these circumstances, it is not "mere speculation" to hypothesize that the instruction had a coercive effect. Instead, that effect is a reasonably substantial possibility.

E. CONCLUSION

This Court should grant review, hold that the trial court had a duty to either grant Ms. Neal's motion for a mistrial or, at a minimum, to reinstruct the jury on the importance of fidelity to each juror's conscientious beliefs, and reverse the conviction.

I certify that this document was prepared using word processing software, in 14-point font, and contains 4,073 words excluding the parts exempted by RAP 18.17.

DATED this 31st day of March, 2025.

Respectfully submitted,

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Filed
Washington State
Court of Appeals
Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CHAREESE CHAMPALE NEAL, Appellant.	No. 59418-8-II UNPUBLISHED OPINION

PRICE, J. — Chareese C. Neal was on trial for assaulting her seven-year-old son, J.G. During deliberations, the jury sent a note to the trial court, indicating that it was at an impasse and having difficulty reaching a unanimous verdict. The note also revealed that the jury's preliminary vote was 11-1 in favor of convicting. The trial court encouraged the jury to continue deliberating.

Neal moved for a mistrial, contending that the trial court's response to the note exerted coercive pressure on the deliberations. The trial court denied the motion, and Neal was eventually convicted. Neal appeals.

We affirm.

FACTS

I. BACKGROUND

In August 2022, J.G.'s father observed bruises on J.G.'s back, legs, and bottom. J.G.'s father asked about the bruises, and J.G. said that Neal had "spanked" him. 1 Verbatim Rep. of Proc. (VRP) at 100. J.G.'s father took photos of the bruises and notified school officials and Child

Protective Services (CPS). CPS, in turn, notified law enforcement. Law enforcement's investigation involved a forensic interview with J.G. During the interview, J.G. described being abused by Neal. Following its investigation, the State charged Neal with third degree assault of a child.

Neal's jury trial involved three days of testimony. J.G., J.G.'s father, a law enforcement officer, a forensic interviewer, and a former CPS employee testified consistently with the facts set forth above.

J.G. testified that Neal "spanked" him with a belt about three times on his bottom and his back. 1 VRP at 77. J.G. described the pain as, "Pretty bad" and said he had bruising as a result of the spanking. 1 VRP at 79.

A pediatric nurse practitioner also testified and explained that photos of J.G.'s bruising on his bottom were consistent with being hit with a belt that was folded in half.

Neal testified and denied abusing J.G. Neal admitted that she spanked J.G., but testified that she used her hand and not a belt. Neal also said that she did not spank J.G. in anger; she explained that with respect to parental discipline, she had completed parenting classes and worked with youth in the community.

Following the testimony, the trial court instructed the jury. The trial court gave jury instruction 12, which told the jury they had a duty to "deliberate in an effort to reach a unanimous verdict." Clerk's Papers (CP) at 30. But the instruction also said:

> You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

CP at 30. Another instruction, instruction 13, explained to the jury the procedure for asking a question during the deliberations and expressly told the jury that it should not disclose the results of any preliminary vote.

II. JURY QUESTION AND NEAL'S MISTRIAL MOTION

After only a few hours of deliberations, the jury submitted a question to the trial court, which stated,

> We have had a vigorous debate and believe we are at an impass[e] and will not reach a unanimous decision. What should we do? We do not believe more time (today or tomorrow will change). (We are 11 to 1 guilty).

CP at 15.

The trial court gathered the parties outside the presence of the jury and discussed the question. The trial court first questioned whether the jury had read its instructions because jury instruction 13 explicitly told the jury not to reveal its vote when asking a question. The trial court then asked the parties about how to move forward.

The State argued that the trial court should respond by instructing the jury to continue deliberating because deliberations had only just started. Neal, however, moved for a mistrial, arguing that the jury had declared it was at an impasse, so giving the jury additional time to deliberate was futile.

The trial court delayed ruling on Neal's motion; it asked that the parties research the law on the issue and return in approximately one hour to argue the motion. In the interim, the trial court gave the following written response to the jury, "Please Continue Your Efforts to Deliberate." CP at 15 (some capitalization omitted).

Shortly after receiving the trial court's response, the jury notified the trial court that it had reached a verdict. When the parties reconvened (and before the trial court took the verdict), the trial court requested that the parties discuss the results of their research for the mistrial motion.

The State argued there was no basis for a mistrial. The State explained that although the trial court is prohibited from coercing jurors in making their decision on the verdict, nothing the trial court did amounted to coercion. Neal disagreed and made two arguments. First, she argued that the jury showed that it could not follow instructions when it disclosed the results of the preliminary vote. Second, because the vote was revealed to be 11-1, Neal argued that the trial court created an environment that pressured the holdout juror to change their decision. Instructing the jury to continue deliberating under these circumstances was "tantamount" to coercion. 5 VRP at 329.

The trial court denied the motion for a mistrial, explaining that its response to the jury was a neutral statement that did not amount to coercion. But the trial court also explained that its decision was without prejudice and that Neal could request further relief after the verdict, such as requesting a new trial.

III. VERDICT, SENTENCING, AND APPEAL

The jury then entered the courtroom and announced a verdict of guilty as charged. The trial court polled each juror individually, and each confirmed that they agreed with the verdict.

After the jury was discharged, the trial court discussed with the parties the possibility of a motion for a new trial from Neal. Neal's counsel responded that they would have to "consult with [their] supervisor" before deciding to bring such a motion. 5 VRP at 341. No motion for a new trial was ever made.

At sentencing, the trial court imposed 12 months of community custody, parenting classes, anger management, and domestic violence evaluations pursuant to the first-time offender statute.

Neal appeals.

ANALYSIS

Neal argues that the trial court abused its discretion in denying her motion for a mistrial. We disagree.

I. LEGAL PRINCIPLES

We review the trial court's denial of a mistrial motion for an abuse of discretion. *State v. Emery*, 174 Wn.2d 741, 765, 278 P.3d 653 (2012). A trial court abuses discretion if its decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. *State v. Borboa*, 157 Wn.2d 108, 121, 135 P.3d 469 (2006).

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee a criminal defendant the right to a fair trial by an impartial jury. *State v. Guevara Diaz*, 11 Wn. App. 2d 843, 854-55, 456 P.3d 869, *review denied*, 195 Wn.2d 1025 (2020). This right to an impartial jury prohibits the trial court from placing coercive pressure on the jury's deliberations. *State v. Boogaard*, 90 Wn.2d 733, 736-37, 585 P.2d 789 (1978).

The criminal rules also place certain restrictions on how the trial court may interact with the jury while it is deliberating. *See* CrR 6.15(f)(2). The purpose is to prevent judicial interference in the jury's deliberative process. *Boogaard*, 90 Wn.2d at 736. CrR 6.15(f)(2) provides, "After jury deliberations have begun, the court shall not instruct the jury in such a way as to suggest the need for agreement, the consequences of no agreement, or the length of time a jury will be required

to deliberate." A trial court also violates a defendant's right to an impartial jury if it issues "an instruction which suggests that a juror who disagrees with the majority should abandon [their] conscientiously held opinion for the sake of reaching a verdict . . . ." *Boogaard*, 90 Wn.2d at 736.

To prevail on a claim of coercion in violation of these requirements, a defendant must show that there is a "reasonably substantial possibility" that the trial court improperly influenced the verdict. *State v. Watkins*, 99 Wn.2d 166, 178, 660 P.2d 1117 (1983). Mere "speculation about how the trial court's intervention might have influenced the jury's verdict" is insufficient. *Id.* at 177-78.

II. APPLICATION

Neal argues that the trial court's instruction to the jury to " 'Please Continue Your Efforts to Deliberate' " improperly influenced the verdict because there was only one holdout juror and the jury reached its verdict very shortly thereafter. Br. of Appellant at 14 (quoting CP at 15) (some capitalization omitted). Neal contends that the trial court should have inquired into the state of the deadlock before merely telling them to continue their deliberations. According to Neal, this failure to inquire into the state of the jury's deadlock "no doubt communicated to the jurors that they were expected to reach a verdict, no matter what." *Id.* at 22. This, Neal argues, could have improperly coerced the holdout juror to change their vote to find Neal guilty.[1]

[1] The State responds, in part, with a short argument that Neal "waived" her assignment of error when she failed to seek a new trial after the verdict. Br. of Resp't at 9-10. Neal disagrees, arguing that the issue was adequately preserved by her motion for a mistrial and that a subsequent motion for a new trial was unnecessary. Because the State cites no authority that a defendant must file a motion for a new trial to preserve this type of issue and because the record is adequately developed below for our review of this issue, we address the merits.

Neal generally supports her argument, in part, with a citation to our Supreme Court's decision in *Boogaard*, 90 Wn.2d at 736. There, the trial court asked the presiding juror, in the jury's presence, about the history of the vote during deliberations and how long the vote had "stood at each division." *Id.* at 735. The trial court then asked each juror whether they believed that they could reach a verdict in 30 minutes. *Id.* All but one of the jurors responded that they believed they could reach a verdict within that timeframe. *Id.* The trial court subsequently instructed the jury to return to the jury room and continue deliberating. *Id.* Thirty minutes later, the jury reached a verdict. *Id.* From these facts, our Supreme Court held that the trial court's questioning of the individual jurors likely influenced holdout jurors to vote with the majority. *Id.* at 740. The trial court's questioning tended to suggest to holdout jurors that they should capitulate to the majority for the sake of reaching a verdict within 30 minutes. *See id.*

Boogaard, as an example of how coercion can occur, illustrates why Neal's arguments are unpersuasive in this case. Here, when notified by the jury that a unanimous verdict might not be possible and that the jury's preliminary vote was 11 to 1 guilty, the trial court responded with the simple statement, "Please Continue Your Efforts to Deliberate." CP at 15 (some capitalization omitted). Unlike the trial court in *Boogaard*, there was no probing for facts behind the vote or attempts to secure commitments from the jurors about an expected timeframe. 90 Wn.2d at 735. Nothing about this neutral statement approached anything remotely resembling coercive pressure on a holdout juror to abandon their opinion for the sake of reaching a verdict.

Nor did the trial court's response violate CrR 6.15(f)(2). Nothing was said about any constraints on the length of time that the jury would be required to deliberate or suggest any consequences of failing to reach a unanimous verdict.

Still, Neal suggests that, rather than just encouraging further deliberation, the trial court should have reminded the jury about the unanimity instruction (instruction 12), which, she asserts, outlined the "proper way" for the jury to achieve unanimity and reinforced "the importance of every individual juror's fidelity to [their] honest belief about the evidence." Br. of Appellant at 21-22. The consequences of the trial court's failure can be seen, according to Neal, from the jury's quick verdict—the speed with which the jury reached a verdict is a strong indication of the coercion. But drawing any conclusions from the quick verdict is mere speculation. And, as discussed above, "speculation" is insufficient to establish coercion. *See Watkins*, 99 Wn.2d at 177-78.

We find nothing in the trial court's response of "Please Continue Your Efforts to Deliberate," or the circumstances of it being given, establishes a reasonably substantial possibility that the jury's verdict was improperly influenced or coerced. CP at 15 (some capitalization omitted). Thus, we hold that the trial court did not abuse its discretion in denying Neal's motion for a mistrial.

CONCLUSION

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

PRICE, J.

We concur:

CRUSER, C.J.

J., J.

NIELSEN KOCH & GRANNIS P.L.L.C.

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