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STATE OF CONNECTICUT *v.* ANGEL A.[*] (SC 21180)

Mullins, C. J., and McDonald, D'Auria, Ecker, Alexander, Dannehy and Bright, Js.[**]

Syllabus

The defendant appealed, on the granting of certification, from the judgment of the Appellate Court, which had affirmed his conviction of attempt to commit murder, among other crimes. After the jury foreperson announced the guilty verdict and the other jurors collectively indicated their agreement with that verdict, the trial judge informed the jurors that their jury service had ended and that they were "free from [their] oath at [that] point," but asked that they return to the jury room. Shortly thereafter, the judge entered the jury room and indicated that she was there to answer any questions the jurors may have had about the trial or the court system in general but that she did not want to discuss their verdict or anything about their deliberations. After approximately five to seven minutes, one of the jurors, C.A., stated that she felt "a little guilty about the attempted murder charge" but did not indicate why she felt that way, and the judge did not ask C.A. any questions about her comment. Two days later, the judge disclosed C.A.'s remark to trial counsel and scheduled a hearing for the purpose of questioning C.A. At that hearing, the judge asked C.A. whether she said "yes" when she was asked by the court clerk if she had agreed with the verdict as reported by the foreperson. C.A. replied that she "absolutely did [say yes]." Defense counsel did not request that the jury be polled or raise any claim concerning jury unanimity at the hearing. On appeal to this court, the defendant claimed that the Appellate Court improperly upheld his conviction on the grounds that the trial court had violated his right to poll the jurors in accordance with the rules of practice (§ 42-31) and violated his constitutional right to a unanimous jury verdict. *Held*:

Contrary to the defendant's claims, the trial court did not violate his rights to poll the jury or to a unanimous jury verdict, and, accordingly, this court affirmed the Appellate Court's judgment.

The trial court's failure to immediately disclose C.A.'s remark to trial counsel did not result in a violation of the defendant's right to poll the jury under Practice Book § 42-31.

[*]In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2024); we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

[**]The listing of justices reflects their seniority status on this court as of the date of oral argument.

The defendant's polling claim arguably was not preserved because defense counsel never requested that the jury be polled, and an unpreserved claim alleging a violation of a defendant's right to poll the jury is not reviewable under *State* v. *Golding* (213 Conn. 233), as modified by *In re Yasiel R.* (317 Conn. 773), because that right is not of constitutional dimension.

Nonetheless, this court concluded that the defendant's polling claim was reviewable under the rules of practice (§ 60-5), that claim having arisen "subsequent to [the defendant's] trial" for purposes of Practice Book § 60-5 insofar as C.A. made her remark after the jury returned its verdict.

Under the express language of Practice Book § 42-31, a request to poll the jury is timely only if it is made after the jury has returned its verdict but before the jury has been discharged, and the purpose of that requirement is to guarantee the reliability of the jurors' responses to the poll by ensuring that the jury remains under the trial court's control, untainted by outside contact, and without an opportunity to discuss the case with others.

In the present case, even if the trial judge had immediately disclosed C.A.'s remark to the parties, the jurors could not have been polled because they already had been discharged when C.A. made her remark, and the jurors had no reason to believe that they remained under the trial court's supervision, that any other obligations were imposed on them by their oaths, or that they were still bound by the court's instructions that they, inter alia, refrain from discussing the case, from performing research about the case, and from reviewing outside information and media reports about the case.

Although there was no way of knowing what occurred immediately after the jury delivered its verdict and went back to the jury room, in the absence of evidence to the contrary, it was reasonable to believe that the jurors had the opportunity to initiate or receive outside communications, even before the trial judge entered the room, and, because even seemingly innocuous interactions with an outsider can influence a juror's views about a case, the postverdict, ex parte communication between the trial judge and the jury in the present case called into doubt the reliability of any poll that would have been conducted thereafter.

The trial court did not violate the defendant's constitutional right to a unanimous jury verdict by failing to immediately disclose C.A.'s remark to trial counsel, the defendant having failed to demonstrate the existence of a constitutional violation for purposes of the third prong of *Golding*, as modified by *In re Yasiel R.*

C.A.'s remark did not implicate any claim about jury unanimity, and the present case did not involve any risk that the trial court had permitted or accepted a nonunanimous jury verdict, as C.A.'s remark that she felt "a little guilty about the attempted murder charge" did not express any uncertainty or equivocation about her decision to find the defendant guilty of attempt to commit murder.

Rather, jury deliberations may arouse strong and unsettling emotions for jurors in light of the grave consequences that a guilty verdict will have on a

defendant, and C.A.'s remark was consistent with the notion that she had agreed with the verdict but felt some concern about the impact that the guilty verdict would have on the defendant.

Moreover, at the time C.A. made her remark, there was no indication that she disagreed with the verdict, and she emphasized at the posttrial hearing that she "absolutely did" agree with the verdict when the foreperson announced it in court.

Nonetheless, this court urged trial courts to immediately disclose remarks by jurors to the parties when they confront similar circumstances, and this court further observed that any inquiry by a court into the circumstances surrounding such remarks must be narrowly tailored in scope and relate to matters that do not essentially inhere in the verdict itself.

Furthermore, although this court recognized that it may be common practice for a trial judge to enter a jury room after a verdict to thank the jurors for their service and to converse with them about their experience, it also recognized the inherent dangers of doing so and urged judges to avoid the risks inherent in that practice.

Argued May 11—officially released September 8, 2026

Procedural History

Two part substitute information charging the defendant, in the first part, with the crimes of attempt to commit murder, assault in the first degree and criminal violation of a protective order, and, in the second part, with having committed an offense while on release, brought to the Superior Court in the judicial district of Windham, geographical area number eleven, and tried to the jury before *Swords, J.*; verdict and judgment of guilty, from which the defendant appealed to the Appellate Court, *Westbrook*, *J.*, with *Keller, J.*, concurring, and *Moll, J.,* dissenting, which affirmed the judgment, and the defendant, on the granting of certification, appealed to this court. *Affirmed*.

Lisa J. Steele, assigned counsel, for the appellant (defendant).

Jonathan M. Sousa, assistant state's attorney, with whom, on the brief, were *John F. Fahey*, state's attorney, *Louis Luba, Sr.*, former supervisory assistant state's attorney, and *Jennifer Miller*, former assistant state's attorney, for the appellee (state).

ECKER, J. After a jury found the defendant, Angel A., guilty of attempt to commit murder, among other crimes, the trial judge accepted the verdict, released the jurors from their oath, and then met with them in the deliberation room. During the ensuing off-the-record conversation, one juror, C.A., told the judge that she "[felt] a little guilty about the attempted murder charge." The trial court did not disclose this remark to counsel until two days later, prompting the defendant to claim that this delay violated his right to poll the jury pursuant to Practice Book § 42-31, as well as his constitutional right to a unanimous jury verdict. The Appellate Court affirmed the defendant's conviction, holding that neither C.A.'s remark nor the process employed by the trial court to ascertain the significance of that remark violated the defendant's rights. See *State* v. *Angel A.*, 235 Conn. App. 635, 636–37, 657, 346 A.3d 527 (2025).

In this certified appeal, we conclude that (1) when C.A. made her remark to the trial court, the jury had been discharged, and a jury poll therefore was no longer permissible under Practice Book § 42-31, and (2) C.A.'s remark expressing an emotion about the verdict did not demonstrate a violation of the defendant's constitutional right to a unanimous jury verdict.[1] As a result, we affirm the judgment of the Appellate Court.

The record reflects the following facts. On August 30, 2016, the defendant and his girlfriend, the victim, had

[1]We granted certification to appeal, limited to the following issues: (1) "Did the Appellate Court correctly conclude that the defendant failed to preserve his claim that the trial court had violated his right to poll the jurors under Practice Book § 42-31?" And (2) "[d]id the Appellate Court correctly conclude that the trial court had not violated the defendant's right to jury unanimity or his right to request that the jurors be polled pursuant to § 42-31 by failing to disclose to the parties a juror's remark to the trial judge about the verdict before allowing the jury to disperse?" *State* v. *Angel A.*, 353 Conn. 927, 927–28, 346 A.3d 512 (2025). To avoid conflating the jury polling and jury unanimity issues, we restate the questions as follows: (1) Regarding the defendant's right to poll the jury under Practice Book § 42-31, was the jury discharged when its members were released from their oath and exposed to outside

an argument that led each of them to obtain a protective order against the other. The following month, the defendant and the victim had an argument in the victim's apartment, during which the defendant used a knife to stab the victim three times in the back. The victim called 911 and left the apartment to seek help from neighbors. The defendant followed the victim outside and waited for the police to arrive. The victim was transported to Windham Hospital and then transferred to Hartford Hospital for treatment and recovery. The defendant was arrested and charged with attempt to commit murder, assault in the first degree, and violation of a protective order.

At the conclusion of the defendant's trial on those charges, the jury found the defendant guilty on all counts. The following colloquy took place after the foreperson announced the verdict:

"The Court: . . . I'd like to ask, do the other five members of the jury agree with the foreperson's verdict?

"Jurors: Yes.

"The Court: Okay. And the record may reflect that all of the jurors responded affirmatively. As a result of that, the court orders that the jury verdict be accepted and recorded. . . . Anything further from counsel at this point?

"[Defense Counsel]: No, Your Honor.

"[The Prosecutor]: Nothing, Your Honor.

"The Court: . . . Ladies and gentlemen, I want to let you know that your jury service [has] ended. *You're free from your oath at this point.* . . . I thank you and ask you to go back into the jury deliberation room for a short period of time. The clerk has some paperwork that she needs to

influence, precluding a subsequent jury poll? And (2) did the Appellate Court correctly conclude that the trial court had not violated the defendant's constitutional right to jury unanimity because that claim was unpreserved and failed under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015)? See, e.g., *State* v. *Mekoshvili*, 344 Conn. 673, 680 n.3, 280 A.3d 388 (2022) (restating certified question).

give you, and, after that, we'll release you to go home." (Emphasis added.)

The jurors exited the courtroom and returned to the deliberation room, where the trial judge went to speak with them after adjournment. Upon entering the room, the judge told the jurors that she "was there to answer any questions they might have about the trial, or about the Connecticut court system, or about the criminal justice system." The judge "also told them that [she] did not want to discuss their verdict or anything about their deliberations. . . . After approximately five to seven minutes, one of the jury members [C.A.] said, I feel a little guilty about the attempted murder charge. [C.A.] did not indicate why she felt a little guilty, and [the judge] did not ask her any questions about her comment."

Two days later, on December 7, 2018, the trial court disclosed C.A.'s remark to trial counsel via telephone and, acting sua sponte, scheduled a hearing for December 12, 2018, for the purpose of questioning C.A. The trial court began the hearing by recounting the events relating to C.A.'s remark and then asking counsel, "does either side want to be heard?" Defense counsel responded, "I would just ask for the opportunity to address the court if there are additional questions that I feel . . . may be appropriate at the conclusion of the court's questioning of" C.A. The trial court then explained to counsel how the hearing would proceed: "It's my intention to bring [C.A.] out here, to swear her in, [and] to ask her a question. And the court will conduct the inquiry, and then you [can] put whatever on the record you want after [C.A. is] excused." The trial court summoned C.A., and the following colloquy occurred:

"The Court: Now, you will recall last Wednesday that, at the conclusion of your deliberations, the jury came out, and your foreperson . . . reported the verdict . . . upon questioning from the clerk.

"[C.A.]: Yes.

"The Court: The clerk asked [the foreperson] what the verdict was as to count one, attempted murder. He said guilty. As to count two, assault in the first degree, he said guilty. As to count three, violation of a protective order, he said guilty.

"[C.A.]: Correct.

"The Court: Do you recall that?

"[C.A.]: Yes.

"The Court: Okay. And then, immediately thereafter, the clerk asked the jury as a whole, collectively, whether [it] agreed with the verdict, as reported by the foreperson.

"[C.A.]: Yes.

"The Court: Do you remember that? And did you say yes when the clerk asked that question?

"[C.A.]: I absolutely did."

When the trial court finished its inquiry, defense counsel asked if C.A. could wait in the hall outside the courtroom, and then asked "if the court would inquire of [C.A.] if there was any reason . . . she may have to believe that any juror may have not followed the instructions given by the court." Defense counsel acknowledged that courts may not inquire into a jury's deliberative process but maintained that his proposed question was appropriate. The trial court responded: "I will deny that request. There is absolutely no indication from . . . [C.A.'s remark] that this involved any misconduct on the part of anybody, either [by someone who was a] part of the jury or [by] someone outside the jury. So, I don't think that your request is appropriate under the limited scope of the hearing that the [Connecticut] Supreme Court has set out in *State* v. *Brown* [235 Conn. 502, 668 A.2d 1288 (1995)], and other cases."

In further response to defense counsel's request, the trial court cited additional precedent from this court to explain why the inquiry had to be narrow in scope and concluded that "the court cannot find that there's any

evidence that [C.A.] did not vote guilty in the jury room [and] affirm[ed] the verdict as [returned] by all of . . . her fellow jury members." The court asked if counsel had anything further, to which defense counsel responded, "[n]o, Your Honor," and the court adjourned the hearing. On May 15, 2019, the trial court sentenced the defendant to a total effective term of thirty years of incarceration.

The defendant appealed from the judgment of conviction, and the Appellate Court affirmed in a split decision.[2] See *State* v. *Angel A.*, supra, 235 Conn. App. 636–37, 657. The Appellate Court first determined that the defendant had not preserved his claim that the trial court's failure to immediately disclose C.A.'s remark violated his right to poll the jury and his right to a unanimous jury verdict because "the defendant never raised any issues to the trial court concerning polling or lack of unanimity of the verdict during the posttrial hearing or in a motion for a new trial." Id., 642. The Appellate Court next concluded that the unpreserved claim failed under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015), because the remark made by C.A. "did not raise constitutional concerns. C.A. did not indicate that she, or any other member of the jury, had not *agreed* to the verdict. Her statement cannot reasonably be construed as an equivocation or expression of reservation about the verdict. Rather, C.A. simply told the trial judge how she *felt* about the verdict to which she had agreed." (Emphasis in original.) *State* v. *Angel A.*, supra, 651; see id., 643, 653.

For purposes of its *Golding* analysis, the Appellate Court did not decide whether the jury had been discharged before C.A. made her remark; see id., 645–46;

[2]The opinion announcing the judgment was authored by Judge Westbrook and joined by Judge Keller. *State* v. *Angel A.*, supra, 235 Conn. App. 636, 657; see also id., 657 (*Keller, J.*, concurring). Judge Keller also issued a concurring opinion. Id., 657 (*Keller, J.*, concurring). Judge Moll dissented in a separate opinion. Id., 662 (*Moll, J.*, dissenting). All references hereinafter to the Appellate Court decision are to the opinion announcing the judgment, unless otherwise indicated.

which presented a potentially dispositive issue because, if the jury had been discharged before that point in time, it would have been legally impermissible to reconvene the jury and to conduct a poll. See *State* v. *Pare*, 253 Conn. 611, 629, 755 A.2d 180 (2000) ("a trial court's obligation to poll a jury remains viable until the jury has been discharged"). Instead, the Appellate Court assumed without deciding that the jury could have been polled after C.A.'s remark and concluded that the remark did not raise unanimity concerns in any event. See *State* v. *Angel A.*, supra, 235 Conn. App. 646, 651–53. The Appellate Court expressed its approval of the proposition that, "'[w]hen an ex parte communication [between a judge and a juror] relates to some aspect of the trial, the trial judge generally should disclose the communication to counsel for all parties.'" Id., 647–48.

Judge Keller's concurrence expressed the view that the jury had been discharged and could not have been polled at the time of C.A.'s comment to the trial judge. See id., 657–58 (*Keller, J.*, concurring). The concurrence reasoned that "the [trial] judge's [postverdict] meeting with the members of the jury effectively terminated the ability to conduct a poll . . . [because the discussion] amounted to . . . an 'outside factor' that renders the reliability of any jury poll on recall problematic." Id., 658 (*Keller, J.*, concurring). The concurrence also explained that the jurors had expressly been released from their oath by the trial court and, therefore, were free to interact with nonjurors and to access outside sources of information, including through the use of their cell phones, after leaving the courtroom. See id., 658–59, 659–60 n.2 (*Keller, J.*, concurring). This certified appeal followed.

I

The defendant first claims that the trial court's failure to immediately disclose C.A.'s remark that she "[felt] a little guilty about the attempted murder charge" violated the defendant's right to poll the jury. That right is rooted in Practice Book § 42-31, which provides in relevant part that, "[a]fter a verdict has been returned and before the

jury has been discharged, the jury shall be polled at the request of any party . . . . The poll shall be conducted . . . by asking each juror individually whether the verdict announced is such juror's verdict. . . ." This court has "recognize[d] that the right to poll the jury, although not constitutional, is nonetheless a substantial right . . . ." (Citation omitted; internal quotation marks omitted.) *State* v. *Pare*, supra, 253 Conn. 631.

We observe that the defendant never requested a jury poll and, thus, arguably failed to preserve this claim of error. See Practice Book § 60-5 ("[t]he court shall not be bound to consider a claim [on appeal] unless it was distinctly raised at the trial or arose subsequent to the trial"). We have also held that a claimed violation of a defendant's polling right under Practice Book § 42-31 "is not subject to *Golding* review" because the right "is 'not of constitutional dimension . . . .'" *State* v. *Bolton*, 352 Conn. 477, 499, 337 A.3d 1114 (2025); see also *State* v. *Pare*, supra, 253 Conn. 623; *State* v. *Angel A.*, supra, 235 Conn. App. 666 (*Moll, J.*, dissenting). However, under the unusual circumstances of the present case, in which C.A. made her remark after the jury returned its verdict and the defendant had no opportunity to request that the jury be polled because he did not learn of the remark until days later, when a jury poll was no longer an option, we conclude that the defendant's polling claim "arose subsequent to the trial" and is therefore reviewable pursuant to § 60-5.

On the merits, the defendant argues that, at the time C.A. made her remark to the trial judge, the jury had yet to be discharged because the jurors had not dispersed, so a poll was still permissible. The state takes the contrary view and contends that the jury had already been discharged by that time because the jury had been freed from its oath and had communicated with a nonjuror—the judge—so a poll was no longer permissible under Practice Book § 42-31, which provides in relevant part that, "[a]fter a verdict has been returned *and before the jury has been discharged*, the jury shall be polled at the

request of any party or upon the judicial authority's own motion. . . ." (Emphasis added.) We agree with the state.

"A request to poll the jury pursuant to [Practice Book] § 42-31 must be made in a timely fashion. It is well established that [t]he right to have the jury polled may be waived. Failure to make a timely demand or request for a poll, [when] there has been reasonable opportunity to do so, operates as a waiver of the right." (Internal quotation marks omitted.) *State* v. *Pare*, supra, 253 Conn. 626–27. As noted, the express language of § 42-31 provides that polling must occur before the jury is discharged; a request to poll the jury is timely only if made before the jury's discharge. See id., 628. The purpose of this requirement is not to penalize the defendant for delay, but to guarantee the reliability of the jurors' responses to a poll by ensuring that the jury remains under the trial court's control, with "'no opportunity to mingle with or discuss the case with others'"; id., 630; and that the jury is "'untainted by any outside contact.'" Id., 634; see also *United States* v. *Marinari*, 32 F.3d 1209, 1213–14 (7th Cir. 1994).[3]

When the members of a jury disperse after delivering the verdict, the jury is considered discharged because its duties are complete and the jurors are no longer insulated by the obligations of their oath to avoid any potential outside influence regarding the case. See, e.g., *State* v. *Pare*, supra, 253 Conn. 628, 633–34; see also *United States* v. *Rojas*, 617 F.3d 669, 678 (2d Cir. 2010); *Commonwealth* v. *Brown*, 367 Mass. 24, 28–29, 323 N.E.2d 902 (1975); *State* v. *Rodriguez*, 139 N.M. 450, 452, 134 P.3d 737 (2006). In *Pare*, after the jury returned a guilty verdict, the trial court told the jurors, "'[you] can retire now and if you wait for a moment, I'll be in to speak to you very shortly.'" *State* v. *Pare*, supra, 619. Immediately after the jury left the courtroom, defense counsel requested a poll of the jury, which the trial court denied. Id. This court held that the trial court had improperly denied a

[3]In the federal context, jury polling is governed by rule 31 (d) of the Federal Rules of Criminal Procedure, which, like Practice Book § 42-31, permits a jury poll only "before the jury is discharged . . . ."

timely polling request because "a jury is not discharged for the purpose of [Practice Book] § 42-31 until its individual members separate or disperse and, therefore, a request submitted prior thereto is timely." Id., 621.

Our legal analysis is guided by the reasoning underlying *Pare*'s "separate or disperse" standard. We explained in *Pare* that "a jury cannot be considered discharged so long as its members have yet to fulfill an outstanding obligation pursuant to their status as jurors. . . . [H]owever, a jury is not necessarily relieved of its obligations once it retires from the courtroom. . . . Particularly when, as [in *Pare*], the trial court effectively informs the members of the jury that, upon departing from the courtroom, they nonetheless remain under the supervisory authority of the trial court, it cannot be said that the jury is discharged under the common understanding of that term." (Citation omitted.) Id., 628–29. The trial court's ongoing control pursuant to such instructions advises the jurors that they must continue avoiding outside contact regarding the case. See id., 632–33. When, however, a trial court expressly tells the jurors that they have fulfilled all of their responsibilities and are no longer subject to the court's supervision, the jurors may reasonably conclude that they are then permitted to have outside contact regarding the case.

Our discussion in *Pare* makes it clear that a jury poll can occur only before the jurors "may have come into contact with outside influences." (Internal quotation marks omitted.) Id., 632; see *State* v. *Murray*, 254 Conn. 472, 495, 757 A.2d 578 (2000); see also *United States* v. *Rojas*, supra, 617 F.3d 678. When a jury has had "no opportunity to mingle with or discuss the case with others, it is undischarged and may be recalled." (Internal quotation marks omitted.) *State* v. *Pare*, supra, 253 Conn. 630, quoting *United States* v. *Marinari*, supra, 32 F.3d 1214. "Until that time . . . it can be assumed, in the absence of any indication to the contrary, that the deliberative process ha[s] not been tainted and, therefore, that the results of a jury poll will provide adequate

confirmation as to whether the verdict was reached upon full consensus of the jurors." *State* v. *Pare*, supra, 633.

That said, it is equally clear that even minimal or seemingly innocuous outside contacts can taint a jury poll because it is difficult to know how these contacts will impact a juror. See *United States* v. *Marinari*, supra, 32 F.3d 1214 ("[s]imple questions such as '[d]id we do alright?' or '[w]e did the right thing, didn't we?'—responded to either positively or negatively would taint any subsequent poll"). Other courts agree that a jury is considered discharged due to risk of taint after the jury delivers its verdict and the jurors have had opportunities for exposure to outside influences, regardless of whether such exposure actually occurred. See *Commonwealth* v. *Brown*, supra, 367 Mass. 28–29 (citing cases); see also *State* v. *Green*, 995 S.W.2d 591, 613 (Tenn. Crim. App. 1998) (relevant inquiry is "whether outside contacts *may* have been had" or whether there was "the *possibility* of outside contact or influence" (emphasis in original)), appeal denied, Tennessee Supreme Court (April 12, 1999); *State* v. *Edwards*, 15 Wn. App. 848, 850–51, 552 P.2d 1095 (1976) (discharge occurs when jurors are permitted to "mingle with outsiders," and "contamination is presumed even though the jurors may not have taken advantage of the opportunity to discuss the case"), review denied, 88 Wn. 2d 1003 (1977).

In the present case, we conclude that the jury had been discharged before C.A. made her remark to the trial judge and, therefore, could not have been polled pursuant to Practice Book § 42-31, even if the judge had immediately disclosed the incident to counsel. Prior to meeting with the jurors, the trial court had released the jurors from their oath,[4] and, upon exiting the courtroom, the jurors

[4]General Statutes § 1-25 provides the oath administered to jurors in criminal trials: "You solemnly swear or solemnly and sincerely affirm, as the case may be, that you will, without respect of any persons or favor of any person, decide this case between the state of Connecticut and the defendant (or defendants) based on the evidence given in court and on the laws of this state, as explained by the judge; that you will not talk to each other about this case until instructed to do so; that

were or might have been exposed to the influence of outsiders, including the trial judge herself. In this regard, it is important to understand that, prior to the start of evidence, the trial judge told the jurors about the obligations imposed on them by their oath—and when those obligations would end: "A few moments ago, you took an oath that will govern your conduct as jurors between the time you took that oath and the time that you are discharged by me after you have [returned] a verdict in this case. That oath . . . obligate[s] you to do certain things . . . . [Y]ou may not perform any investigations, or research, or experiments of any kind, on your own . . . . Do not look anything up on the Internet concerning information about the case . . . . The same thing is true of any media reports you may come across about the case . . . . You may not discuss this case with anyone, including anyone involved with this case, until the trial is over and you have been discharged as jurors. . . . *When you have* [*returned*] *a verdict and been dismissed by the court, you will be free to discuss the case with anyone you wish* . . . ." (Emphasis added.)

Consistent with this preliminary instruction, after the trial court accepted the jury's verdict, the trial judge told the jurors that their service had ended and that they were free from their oath. The court, moreover, did not inform the jurors that the judge would visit them in the deliberation room, so the jurors had no reason to believe that they remained under the court's supervision or were subject to any further obligations imposed by their oath. These facts distinguish the present case from *Pare*, in which the trial judge said nothing to release the jurors from their oath and, instead, directed the jurors to wait for him in the deliberation room. See *State* v. *Pare*, supra, 253 Conn. 619. Unlike the jurors in *Pare*, the jurors in the

you will listen to and consider what the other jurors have to say in deliberations about this case; that you will not speak to anyone else, or allow anyone else to speak to you, about this case until you have been discharged by the court; and that when you reach a decision, you will not disclose the decision until it is announced in court; so help you God or upon penalty of perjury."

present case, once released from their oath and dismissed to the deliberation room, were "quite properly free to discuss the case with whomever they [chose]." *United States* v. *Marinari*, supra, 32 F.3d 1214.

There is no way of knowing what occurred in the present case immediately after the jury delivered its verdict and retired to the deliberation room, but, in the absence of any contrary evidence, it is reasonable to believe—given the ubiquity of cell phones and the ease of instantaneous communication using those devices—that the jurors had the opportunity to initiate or receive outside communications, even before the judge entered the room. As Judge Keller observed in her concurring opinion in the Appellate Court, once the jurors exited the courtroom after being released by the trial court, they "were free to speak about the case and their verdict on their cell phones with nonjurors . . . . The jurors also were free to look up news and social media reports concerning the case." (Footnote omitted.) *State* v. *Angel A.*, supra, 235 Conn. App. 659 (*Keller, J.*, concurring). Smart phones have become omnipresent in the quarter century since we decided *Pare* in 2000. See, e.g., *Riley* v. *California*, 573 U.S. 373, 385, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014) ("cell phones . . . are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy"). The moment that the jurors reentered the deliberation room after being released from their oaths, their access to those devices created a realistic risk of outside influence. See *State* v. *Angel A.*, supra, 659–60 n.2 (*Keller, J.*, concurring). As the United States Supreme Court has observed in this very context, "[i]t is a [now ingrained] instinct to check our phones whenever possible. Immediately after discharge, a juror could text something about the case to a spouse, research an aspect of the evidence [using] Google, or read reactions to a verdict on [social media]. Prejudice can come through a whisper or a byte." *Dietz* v. *Bouldin*, 579 U.S. 40, 51, 136 S. Ct. 1885, 195 L. Ed. 2d 161 (2016).[5]

[5]In *Dietz*, the United States Supreme Court held that, in a civil trial, the trial court can reassemble a previously discharged jury to continue

Indeed, there is no doubt that the jurors in this case engaged in an ex parte conversation with the trial judge for at least five to seven minutes. It was during this exchange that C.A. told the judge that she "[felt] a little guilty about the attempted murder charge." Because even simple and seemingly innocuous interactions with an outsider can influence a juror's views about a case, the postverdict, ex parte communication between the trial judge and the jury calls into doubt the reliability of any jury poll conducted afterward.

In light of the on-the-record release of the jurors from their oath, the jurors' actual exposure to outside influence through their conversation with the trial judge, and the jurors' possible exposure to outside influence via cell phones or conversations with others, we conclude that the jury had been discharged before C.A. made her remark to the trial court. For this reason, even if the trial court had immediately disclosed C.A.'s remark to counsel, a jury poll would not have been permissible, and the defendant's polling claim must fail.[6]

II

The defendant also claims that the trial court violated his constitutional right to a unanimous jury verdict by failing to immediately disclose C.A.'s remark that she "[felt] a little guilty about the attempted murder charge."

deliberations and to correct a mistake if the trial court determines that there is no risk that the jury was tainted. See *Dietz* v. *Bouldin*, supra, 579 U.S. 48–49. In *Dietz*, the jury had returned a legally impermissible verdict because it awarded $0 in damages, but the parties had previously stipulated to damages of $10,136. Id., 43. The Supreme Court identified several factors a trial court should consider in determining whether the jury could be recalled, including "to what extent [just dismissed] jurors accessed their smartphones or the Internet, which provide . . . avenues for potential prejudice. . . . Given additional concerns in criminal cases, such as attachment of the double jeopardy bar, [the court did] not address . . . whether it would be appropriate to recall a jury after discharge in a criminal case." Id., 51.

[6]Although a jury's discharge prevents a subsequent jury poll, relief may still be available under circumstances involving the discovery, after discharge, of juror misconduct that may have affected jury unanimity. See part II of this opinion.

In particular, the defendant argues that the remark indicated C.A.'s doubt, reservation, uncertainty, or remorse about the verdict, suggesting that the verdict may not have been unanimous. He further argues that his right to a unanimous verdict was violated by the trial court's delay in disclosing the remark and failure to inquire into why C.A. made the remark. The state contends that C.A.'s remark did not implicate any claim about the jury's unanimity because C.A.'s expression of her feelings was not an expression of disagreement with the verdict. We agree with the state that the defendant has not demonstrated a violation of his constitutional right to a unanimous jury verdict.

At the outset, we agree with the state that the defendant's constitutional claim was not preserved at trial. At the hearing on December 12, 2018, the trial court denied defense counsel's request to ask C.A. whether any juror had failed to follow the court's instructions, but defense counsel never mentioned the defendant's constitutional right to jury unanimity or suggested that C.A.'s remark implicated any constitutional right. Because the claim is unpreserved, we review it under *State* v. *Golding*, supra 213 Conn. 239–40.[7] We conclude that the defendant has failed to demonstrate the existence of a constitutional violation.

The sixth amendment to the United States constitution requires that jury verdicts in both state and federal criminal trials be unanimous. See, e.g., *Ramos* v.

[7] A defendant can prevail on an unpreserved constitutional claim only if "(1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." (Footnote omitted.) *State* v. *Golding*, supra, 213 Conn. 239–40; see also *In re Yasiel R.*, supra, 317 Conn. 781 (modifying third prong of *Golding*). "In the absence of any one of these conditions, the defendant's claim will fail. The appellate tribunal is free, therefore, to respond to the defendant's claim by focusing on whichever condition is most relevant in the particular circumstances." *State* v. *Golding*, supra, 240.

Louisiana, 590 U.S. 83, 92, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020); see id., 93 (sixth amendment's unanimity requirement is made applicable to states through due process clause of fourteenth amendment). This is consistent with our recognition of "the 'unmistakable' requirement of a unanimous jury verdict before a defendant may be found guilty"; *State* v. *King*, 350 Conn. 303, 305, 324 A.3d 81 (2024), quoting *State* v. *Douglas C.*, 345 Conn. 421, 436, 285 A.3d 1067 (2022); and federal precedent that prohibits a criminal defendant's waiver of the right to a unanimous jury verdict. See, e.g., *United States* v. *Pachay*, 711 F.2d 488, 490 (2d Cir. 1983).

The cases in which this court previously has found a violation of a defendant's right to a unanimous jury verdict involve claims of instructional error. See *State* v. *Douglas C.*, supra, 345 Conn. 445, 448 (constitutional violation exists when "a single count [in the information] charge[s] the defendant with having violated a single statute in multiple, separate instances, each of which could establish a separate violation of the statute," and trial court does not give jury instruction specifically requiring jury's unanimity as to which instance or instances of conduct violated statute); *State* v. *Martinez*, 278 Conn. 598, 618–20, 900 A.2d 485 (2006) (constitutional violation exists when jury instructions expressly permit defendant to be found guilty of committing offense without jury's being unanimous as to whether defendant was liable as coconspirator or accomplice because those theories are "conceptually distinct" and require different mental states). In these cases, this court recognized that a defendant's right to unanimity could be violated by the trial court's failure to correct the impression conveyed to the jury by an instruction that expressly or impliedly suggested that the jury could return a verdict that was nonunanimous with respect to which instances of conduct constituted a criminal offense or with respect to a specific theory of liability.

The present case does not involve a risk that the trial court permitted or accepted a nonunanimous jury verdict

because C.A.'s remark expressed a feeling about voting to find the defendant guilty rather than any uncertainty or equivocation about that decision. The state cites multiple cases in which jurors' statements that they had reservations about the verdict or that the verdict was a close decision did not demonstrate a lack of jury unanimity. See, e.g., *United States* v. *Jefferson*, 258 F.3d 405, 411 (5th Cir.) (juror expressed reservations about verdict during poll, but "simply expressing reservations in conjunction with a guilty verdict, in and of itself, is not sufficient to indicate a lack of unanimity"), cert. denied, 534 U.S. 967, 122 S. Ct. 379, 151 L. Ed. 2d 289 (2001); see also *United States* v. *Lowe*, 2 F.4th 652, 658 (7th Cir. 2021) ("[W]hen asked if the verdict 'constitute[s] your individual verdict in all respects,' [the juror] replied, '[y]es. Barely.' . . . The second word indicates only that the stated conclusion was narrowly reached."). The jurors' comments in these cases were not responsive to the question of whether they had agreed with the verdicts, instead providing collateral details regarding their votes. The defendant attempts to distinguish these cases because the jurors' statements in *Jefferson* and *Lowe* were made in response to jury polls; see *United States* v. *Jefferson*, supra, 410–11; *United States* v. *Lowe*, supra, 655; and the defendant in the present case was prevented from seeking a poll. We see no meaningful distinction. The fundamental issue in these cases is the same: Did a juror's comment indicate that the verdict was not unanimous?

As the state observes in the present case, jury deliberations may arouse strong and unsettling emotions for jurors because, among other reasons, a guilty verdict can be expected to result in grave consequences for the defendant. C.A.'s remark is fully consistent with the notion that she agreed with the verdict but felt some concern about the impact that the verdict would have on the defendant. Under these circumstances, C.A.'s statement that she felt "a little guilty" about the verdict, without more, reflects that she was a human being capable of feeling compassion as she performed her solemn role as a juror. Her words to the trial judge, spoken shortly

after delivering a consequential verdict, were insufficient to suggest that the jury verdict in the present case was not unanimous. At the time it was made, C.A.'s remark was not accompanied by any indication that she disagreed with the verdict. Although she was not asked about her views regarding the verdict as they existed at the time of the hearing, she emphasized at that time that she "absolutely did" voice agreement with the verdict when it was announced in open court, a response that plainly does not assist the defendant on appeal.[8]

Although we conclude in the present case that C.A.'s remark did not indicate a lack of jury unanimity, it is appropriate to add several notes of caution intended to guide trial courts in the future should they choose to meet with jurors after the jury is discharged, notwithstanding the significant risks entailed. A different remark made by a juror in a similar context could have far more serious consequences. We therefore urge trial courts confronting these circumstances in the future to immediately disclose to counsel any event of this nature so that decisions can be made about the potential need for further inquiry or action. See *State* v. *Outlaw*, 350 Conn. 251, 258–59, 324 A.3d 107 (2024) ("[a] trial court's investigation of juror misconduct 'is a delicate and complex task,'" and "[a]cknowledging the behavior and taking a 'wait and see' approach is not necessarily a sufficient response"); *State* v. *Myers*, 242 Conn. 125, 138, 698 A.2d 823 (1997) (recognizing "the exigency of the situation when the [trial] court is confronted with . . . allegations [of juror misconduct]"). Prompt disclosure enables the court and counsel to identify potential problems, to create an accurate record, and to avoid timeliness concerns.

[8]We agree with the defendant that C.A.'s recollection at the posttrial hearing that she had indicated agreement with the verdict at the time it was announced does not necessarily demonstrate that she would have agreed with the verdict in response to a timely jury poll. There is, however, no indication in the record that C.A. disagreed with the verdict when it was announced in court, and her emphatic response regarding the agreement that she expressed at the posttrial hearing suggests that she always had agreed with the verdict.

We also remind trial courts that any inquiry into the circumstances surrounding a juror's remarks must be narrowly tailored in scope. See Practice Book § 42-33 ("[u]pon an inquiry into the validity of a verdict, no evidence shall be received to show the effect of any statement, conduct, event or condition upon the mind of a juror nor any evidence concerning mental processes by which the verdict was determined"). Juror testimony "'may be received for the purpose of avoiding a verdict, to show any matter occurring during the trial or in the jury room, which does not essentially inhere in the verdict itself, as that a juror was improperly approached by a party, his agent, or attorney; that witnesses or others conversed as to the facts or merits of the cause, out of court and in the presence of jurors; [or] that the verdict was determined by aggregation and average or by lot, or game of chance or other artifice or improper manner,'" but juror testimony cannot be used "'to show any matter which does essentially inhere in the verdict itself, as that the juror did not assent to the verdict . . . .'" (Emphasis omitted.) *Josephson* v. *Meyers*, 180 Conn. 302, 310–11, 429 A.2d 877 (1980); see also *State* v. *Hughes*, 341 Conn. 387, 411, 427, 267 A.3d 81 (2021). A trial court could ask a juror whether improper external influences were introduced to the jury, which may have impacted the jury's unanimity, but not whether or how those influences affected the jurors' decision-making.[9]

III

More broadly, we take this opportunity to echo the concerns expressed by Judge Keller in her concurring

[9]The trial court in the present case followed this protocol by strictly limiting the scope of the posttrial hearing regarding C.A.'s remark. The court could properly have permitted the inquiry to go beyond a single question asking C.A. whether, in fact, she had responded "yes" when the jury as a whole was asked whether it agreed with the verdict announced by the foreperson, but, on this record, the court properly declined to ask C.A. the only additional question requested by defense counsel. Defense counsel requested that the court "inquire of [C.A.] if there was any reason . . . she may have to believe that any juror may have not followed the instructions given by the court." That question

opinion regarding "the inherent dangers" that arise when trial judges speak with jurors off the record, after the jury returns its verdict and exits the courtroom. *State* v. *Angel A.*, supra, 235 Conn. App. 660 (*Keller*, *J.*, concurring). Judge Keller acknowledged the benefits of such interactions: in a relatively informal setting, the judge can thank the jurors for their service, answer questions about any aspects of our court system unrelated to the case, and promote positive relationships between the court system and the public. See id., 660–61 (*Keller*, *J.*, concurring). We agree that these occasions can provide an opportune time to convey the court's genuine appreciation to citizens who have just devoted days or weeks of their lives to fulfill a vital public role, of constitutional dimension, without which our system of justice could not function. However, as Judge Keller aptly notes, the present case illustrates the significant risks associated with even brief conversations of this nature. These ex parte meetings, which occur off the record, can swerve without warning into forbidden territory if even a single juror happens to make an unprompted remark about the case that ended only minutes before. At best, such an incident can be momentarily awkward. Other times, it can create serious concerns and, depending on the particulars, require further proceedings to ensure that no impropriety has occurred. At worst, it can result in the need for a new trial.

We recognize that it may be "common practice for judges to enter the jury room after a verdict has been returned to thank the jury for its service and [to] converse with jurors about their experience"; *State* v. *Kamel*, 115 Conn. App. 338, 349 n.2, 972 A.2d 780 (2009); and that the commentary to rule 2.8 of the Code of Judicial Conduct contemplates such interactions. See Code of Judicial Conduct, Rule 2.8, comment (3) ("[a] judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but shall be careful to avoid discussion of the merits of

was overly broad and, as the trial court correctly concluded, not warranted under the circumstances.

the case"). Nevertheless, we urge trial judges to avoid the risks inherent in this practice.[10] Although perhaps less personal, prudence dictates that a trial judge limit postverdict interaction with the jurors by remaining on the record in open court, relieving the jurors from their oath, thanking the jurors for their service, and then dismissing them. See *State* v. *Angel A.*, supra, 235 Conn. App. 661–62 (*Keller, J.*, concurring).

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

[10]We note that New Jersey prohibits postverdict, ex parte communication between trial judges and jurors in all civil and criminal trials. See *Davis* v. *Husain*, 220 N.J. 270, 285, 106 A.3d 438 (2014). The New Jersey Supreme Court reasoned that "[postverdict] ex parte communication between the trial court and jurors cannot be countenanced. The informality of such encounters, however benign their intended purpose, creates the possibility for the innocent remark or question to spark an attempt to plumb jurors' decision-making processes. . . . The asserted salutary purposes of 'education' of the bench and bar cannot justify this ex parte communication practice." Id.