

“The polling of a jury is intended ‘to ascertain whether any juror had been coerced into agreeing upon a verdict-coerced by his associate jurors.’

While polling the jury, a trial court must be careful not to hinder a juror's expression of dissent.” The trial judge, in determining whether a juror has freely assented to the verdict, not only hears the juror's response, but observes the juror's demeanor and tone of voice during the course of the polling of the jury.

A trial court's determination as to a juror's voluntariness of his assent to the verdict will not be set aside unless the trial court's conclusion is clearly unreasonable.”

When, as here, a juror dissents from the verdict, “[T]he proper remedy is for the trial court * * * to either direct the jury to retire for further deliberations [citation], or to discharge it.” (People v. Kellogg (1979), 77 Ill.2d 524, 528-29, 34 Ill.Dec. 163, 397 N.E.2d 835.)

Here, however, the trial court did neither. The jury was not instructed to continue to deliberate; it did not return with a new verdict. Defendant objected to polling the jury again before the court ruled on the motion for a mistrial. In addition, the trial court did not poll the jury; it merely reexamined the two jurors. (See People v. Chandler (1980), 88 Ill.App.3d 644, 650, 44 Ill.Dec. 314, 411 N.E.2d 283 (the polling of the jury requires that the entire jury be polled).)

While it is for the trial judge to determine whether a juror has freely assented to the verdict, “a verdict cannot stand if the interrogation precludes the opportunity to dissent or if the record reflects that the juror in the poll has not in fact assented to the verdict.”

People v. Smith, 271 Ill. App. 3d 763, 766, 649 N.E.2d 71, 73 (1995)