

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
PASCUAL LOZANO,
Respondent.

No. 42918

FILED

NOV 03 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Riddell*
CHIEF DEPUTY CLERK

This is the State's appeal from an order of the district court granting respondent's motion for new trial.¹ Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

Respondent, Pascual Lozano, was tried and convicted of first-degree murder in connection with a gang shooting in Las Vegas. Following the penalty phase of the trial, the jury voted to impose the death penalty. Thereafter, the district court granted Pascual's motion for a new trial based upon 1) newly discovered evidence from an eyewitness, 2) newly discovered evidence from the State's jailhouse informant, Scott Riddel, 3) the State's failure to disclose the nature of a separate agreement with Riddel, and 4) misconduct of a member of the jury panel.

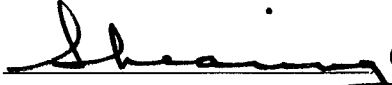
NRS 176.515(1) provides that a district court may grant a new trial "if required as a matter of law or on the ground of newly discovered evidence." To warrant a new trial based upon newly discovered evidence, the evidence must be


¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

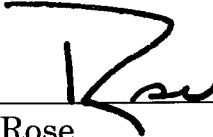
[N]ewly discovered; material to the defense; such that even with the exercise of reasonable diligence it could not have been discovered and produced for trial; non-cumulative; such as to render a different result probable upon retrial; not only an attempt to contradict, impeach, or discredit a former witness, unless the witness is so important that a different result would be reasonably probable; and the best evidence the case admits.²


Although we disagree that the first ground merits a new trial, we conclude that the district court acted within its discretion in granting a new trial on the remaining three grounds. Accordingly, we

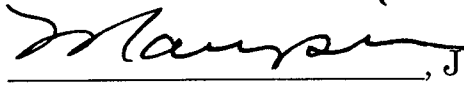
ORDER the judgment of the district court AFFIRMED.

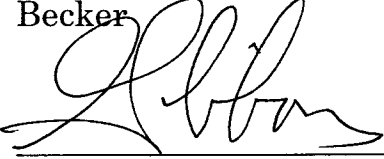

Shearing C.J.

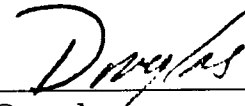

Agosti, J.


Rose, J.


Becker, J.


Maupin, J.


Gibbons, J.


Douglas, J.

²Funches v. State, 113 Nev. 916, 923-24, 944 P.2d 775, 779 (1997).

cc: Hon. John S. McGroarty, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Special Public Defender David M. Schieck
Clark County Clerk