

IN THE SUPREME COURT OF THE STATE OF NEVADA

LANCE HAWES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44058

**FILED**

MAR 04 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts each of domestic battery (counts I-II) and battery causing substantial bodily harm (counts III-IV) and one count of assault with a deadly weapon (count VII). Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Lance Hawes to serve concurrent prison terms of 13-60 months for count I, 48-120 months for count III, and 13-60 months for count IV, and two consecutive prison terms of 24-60 months for count II and 28-72 months for count VII; the district court also ordered Hawes to pay \$28,352.25 in restitution.<sup>1</sup>

Hawes contends that the district court erred in denying his motion for a mistrial based on juror misconduct. Hawes argues that the jury was prejudiced when the juror in question introduced extrinsic information during deliberations. Alternatively, Hawes contends that if juror misconduct was not so egregious to warrant a mistrial, then the district court abused its discretion in replacing the juror with an alternate rather than allowing the juror to remain on the jury. We disagree with Hawes' contentions.

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<sup>1</sup>The jury found Hawes not guilty of two counts of false imprisonment (counts V-VI).

The district court has the discretion to grant or deny a motion for a mistrial based on juror misconduct, and absent a clear abuse of that discretion, the court's ruling will not be disturbed.<sup>2</sup> "However, where the misconduct involves allegations that the jury was exposed to extrinsic evidence in violation of the Confrontation Clause, de novo review of a trial court's conclusions regarding the prejudicial effect of any misconduct is appropriate."<sup>3</sup> "Prejudice is shown whenever there is a reasonable probability or likelihood that the juror misconduct affected the verdict."<sup>4</sup> Jury exposure to extraneous information via independent research or experiment generally does not raise a presumption of prejudice but should be "analyzed in the context of the trial as a whole to determine if there is a reasonable probability that the information affected the verdict."<sup>5</sup>

We conclude that the district court did not abuse its discretion in denying Hawes' motion for a mistrial, or in replacing the offending juror with an alternate. After being informed by the foreperson of the juror's misconduct, the district court conducted a hearing and determined that the juror had in fact committed misconduct by consulting an extrinsic source and reading information gleaned from the source to the jury. Nevertheless, the district court concluded:

[T]he chance of contamination or prejudice to the remaining [jury] panel is slight or marginal based

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<sup>2</sup>See Lane v. State, 110 Nev. 1156, 1163, 881 P.2d 1358, 1363-64 (1994), vacated in part on other grounds on rehearing 114 Nev. 299, 956 P.2d 88 (1998); see also U.S. v. Saya, 247 F.3d 929, 935 (9th Cir. 2001).

<sup>3</sup>Meyer v. State, 119 Nev. 554, 561-62, 80 P.3d 447, 453 (2003).

<sup>4</sup>Id. at 564, 80 P.3d at 455.

<sup>5</sup>Id. at 565, 80 P.3d at 456.

on . . . the note that we received indicating that the breakdown was eleven to one.

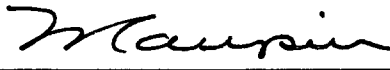
And, therefore, the court has determined that it will replace juror number eight . . . with the alternate. . . .

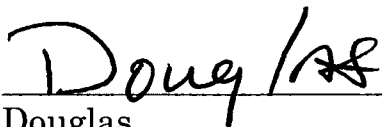
The court doesn't feel that the incident of juror misconduct caused the type of prejudice that would require a mistrial at this point.


The district court then instructed the jury, with the alternate in place, to begin their deliberations anew. We agree with the district court and conclude that Hawes is not entitled to a new trial.

Therefore, having considered Hawes' contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Jerome Polaha, District Judge  
Steven L. Sexton  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk