

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE MANUEL REYNOSO-LUNA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44148

**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, one count of second-degree kidnapping. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Jose Manuel Reynoso-Luna to a serve a prison term of 36 to 120 months.

Reynoso-Luna's sole contention is that that the district court erred in dismissing juror number one because she assured the court that she could be fair and impartial. We conclude that Reynoso-Luna's contention lacks merit.

NRS 16.080 provides that "[a]fter the impaneling of the jury and before verdict, the court may discharge a juror upon a showing of . . . any . . . inability to perform his duty."<sup>1</sup> "A juror who will not weigh and consider all the facts and circumstances shown by the evidence for the purpose of doing equal and exact justice between the State and the accused should not be allowed to decide the case."<sup>2</sup> A district court's ruling with respect to a juror's state of mind involves factual findings that cannot

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<sup>1</sup>NRS 16.080.

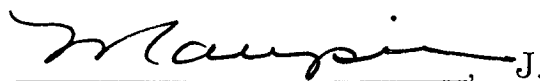
<sup>2</sup>McKenna v. State, 96 Nev. 811, 813, 618 P.2d 348, 349 (1980).


be easily discerned from an appellate record.<sup>3</sup> The district court's determination that a juror is unable to perform her duty will not be disturbed on appeal if the juror's statements about her objectivity were equivocal or conflicting.<sup>4</sup>


In this case, juror number one's statements about whether she could be fair, impartial and objective were equivocal and conflicting. Accordingly, we conclude that the district court's ruling that juror number one was unable to perform her duty as a juror is supported by sufficient evidence.

Having considered Reynoso-Luna's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. J. Michael Memeo, District Judge  
Elko County Public Defender  
Attorney General Brian Sandoval/Carson City  
Elko County District Attorney  
Elko County Clerk

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<sup>3</sup>Walker v. State, 113 Nev. 853, 865, 944 P.2d 762, 770 (1997).

<sup>4</sup>Id.