

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWIN VON SEVRENCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45857

FILED

DEC 06 2007

ORDER OF REVERSAL AND REMAND

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

This is an appeal from a judgment of conviction, upon jury verdict, of one count of sexual assault of a child under the age of fourteen, and one count of lewdness with a child under the age of fourteen. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

After a five-day trial, a jury found appellant Edwin Von Sevrence guilty of one count of sexual assault of a child under the age of fourteen and one count of lewdness with a child under the age of fourteen. The district court sentenced Sevrence to serve consecutive terms of life with the possibility of parole after twenty years for Count I and life with the possibility of parole after ten years for Count III.

Sevrence raises numerous issues on appeal. We address only one. Sevrence contends that the district court erred in failing to grant a mistrial following discovery that one of the jurors had observed Sevrence terminate his parental rights while the juror was working as an intern with the Washoe County Social Service Department.

Whether or not to deny a motion for mistrial rests within the district court's discretion and will not be reversed on appeal "absent a clear showing of abuse."¹

In the present case, it was discovered during the trial that Juror Nixon was present at the proceeding where Sevrence relinquished his parental rights to his children, including the victim in this case, so that the children could be adopted. In an in-chambers discussion with the district judge and in the presence of both counsel, Nixon asserted that she was never aware of hearing a summary of the case, reading related paperwork, or looking through any related file. She stated she was never present at any court proceedings and was only present to witness Sevrence's signature to the paperwork. Nixon also admitted that although she was supposed to have witnessed Sevrence's signature, she never actually did, despite having signed the paperwork. Nixon told the district court that her prior involvement in the relinquishment proceedings did not affect her ability to be fair and impartial to both parties in the criminal case.

Sevrence argues that it was a conflict of interest for Nixon to participate as a juror in the case where she previously allegedly witnessed the signature of Sevrence on arguably related relinquishment and adoption papers for the victim and her siblings. Sevrence contends that

¹Randolph v. State, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001).

because no alternate juror remained, the district court erred in not declaring a mistrial.²

The State contends that no harm occurred, and the district court judge took the matter under advisement and found that Nixon did not taint the trial in any manner. The State emphasizes Nixon's testimony that she simply signed the documents and left, without any significant interaction with Sevrence.

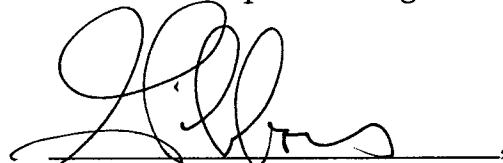
The district court concluded that a mistrial was not warranted because Juror Nixon only signed as a witness to the documents without further knowledge. We disagree. We conclude that Juror Nixon, having witnessed paperwork directly related to the adoption of Sevrence's children, had prior personal knowledge of the present case. We therefore conclude that the district court abused its discretion when it did not declare a mistrial after discovering Juror Nixon's previous witness status.³

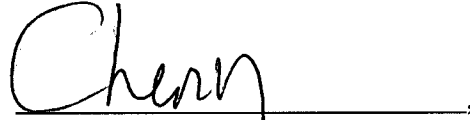
²Prior to Juror Nixon's disclosure that she witnessed Sevrence's signature, Juror Rodarte was dismissed due to migraine attacks and the only other alternate juror replaced her.

³This court has reviewed the insufficient evidence issue and we conclude it is without merit. Furthermore, in light of the resolution of the juror issue, we conclude that it is unnecessary to address the remaining contentions.

Accordingly, we

ORDER the judgment of the conviction REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Steven P. Elliott, District Judge
Mary Lou Wilson
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk