IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY DOUGLAS ECHOLS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46455

FILED

MAR 02 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's motion for a new trial. First Judicial District Court, Carson City; William A. Maddox, Judge.

On January 15, 2003, appellant Anthony Echols was convicted, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon and burglary.[1] He was sentenced to serve two consecutive terms of life in prison without parole for the murder and a concurrent term of 24 to 120 months for the burglary. This court affirmed

[1]The judgment of conviction and this court's order affirming the judgment of conviction and sentence indicate that Echols was convicted of burglary with the use of a deadly weapon; however, the lack of a consecutive sentence under NRS 193.165 for the burglary indicates that Echols was actually convicted of and sentenced for burglary while in possession of a deadly weapon pursuant to NRS 205.060(4), not burglary with the use of a deadly weapon.

07-05115

the judgment of conviction and sentence on direct appeal.[2] The remittitur issued on December 7, 2004.

On December 29, 2004, Echols filed in the district court a motion for a new trial asserting that the victim's family tampered with the jury by making comments prejudicial to Echols outside the courtroom but within the hearing of the jurors. After holding an evidentiary hearing, the district court denied the motion. This appeal followed.

NRS 176.515 provides in relevant part:

> 3. Except as otherwise provided in NRS 176.0918, a motion for a new trial based on the ground of newly discovered evidence may be made only within 2 years after the verdict or finding of guilt.
>
> 4. A motion for a new trial based on any other grounds must be made within 7 days after the verdict or finding of guilt or within such further time as the court may fix during the 7-day period.

The State argues that the motion here should have been subject to the seven-day filing deadline rather than the two-year deadline and that the motion was therefore untimely filed. We disagree. Evidence of jury tampering can constitute newly discovered evidence sufficient to support a new trial motion. Several federal appellate courts, including the

---

[2]Echols v. State, Docket No. 40913 (Order of Affirmance, September 3, 2004).

Ninth Circuit Court of Appeals, have so held.[3] This conclusion is also supported by our previous application of the statute. This court has indicated that prosecutorial interference with a defense trial witness could be newly discovered evidence subject to the two-year deadline.[4] Thus, we conclude that evidence of jury tampering can constitute newly discovered evidence sufficient to bring a new trial motion based pursuant to NRS 176.515(3), and Echols's motion was timely filed.

The general standard for a successful motion for a new trial based on newly discovered evidence is as follows:

> (1) the evidence must be newly discovered; (2) it must be material to the defense; (3) it could not have been discovered and produced for trial even with the exercise of reasonable diligence; (4) it must not be cumulative; (5) it must indicate that a different result is probable on retrial; (6) it must not simply be an attempt to contradict or discredit a former witness; and (7) it must be the best evidence the case admits.[5]

---

[3]See, e.g., U.S. v. Medina, 118 F.3d 371, 373 (5th Cir. 1997); U.S. v. Endicott, 869 F.2d 452, 457 (9th Cir. 1989); Holmes v. U.S., 284 F.2d 716, 720 (4th Cir. 1960); see also Rubenstein v. U.S., 227 F.2d 638, 642 (10th Cir. 1955).

[4]D'Agostino v. State, 112 Nev. 417, 915 P.2d 264 (1996).

[5]Callier v. Warden, 111 Nev. 976, 988, 901 P.2d 619, 626 (1995).

We recently discussed motions for a new trial based on juror misconduct, which includes "attempts by third parties to influence the jury process," in Meyer v. State.[6] We held in Meyer that

> [a] denial of a motion for a new trial based upon juror misconduct will be upheld absent an abuse of discretion by the district court. Absent clear error, the district court's findings of fact will not be disturbed. 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.[7]

We conclude that Echols's case is distinguishable from the facts in Meyer, that the abuse of discretion standard is appropriate here, and that the district court did not abuse its discretion in denying Echols's motion.

The claim in Meyer involved one juror independently investigating the case by consulting the Physician's Desk Reference and informing her fellow jurors of what she learned there. We held that this constituted use of extrinsic evidence in violation of the Confrontation Clause and that de novo review of the district court's findings relating to prejudice was appropriate. This is not what happened in Echols's case,

---

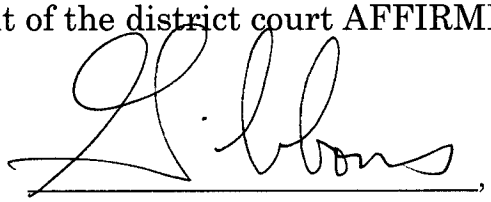
[6]Meyer v. State, 119 Nev. 554, 561, 80 P.3d 447, 453 (2003).

[7]Id. at 561-62, 80 P.3d at 453 (internal citations omitted).

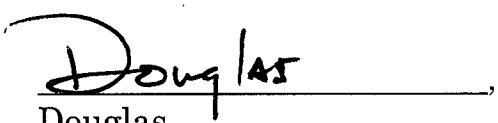
where the alleged misconduct was that jurors may have overheard comments by the victim's family about desired verdicts and trial witnesses' credibility. Echols presented no evidence that any jurors actually overheard any of these comments or took them into the jury room. We conclude that the district court acted within its discretion in finding that there was insufficient evidence of improper third-party contact with jurors and that, even assuming there was contact, it was not prejudicial to Echols.

Having reviewed Echols's arguments and concluded he is not entitled to relief, we

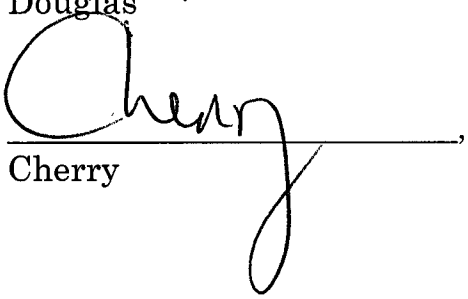
ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. William A. Maddox, District Judge
Richard F. Cornell
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk