

IN THE SUPREME COURT OF THE STATE OF NEVADA

DWAYNE STANDLEY,
Appellant,

vs.

SABHA SHOSHANI D/B/A QUICK STOP
MARKET; AND COLLEGE PARK REALTY
CO., A NEVADA CORPORATION,
Respondents.

No. 50391

FILED

FEB 05 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment on a jury verdict in a tort action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

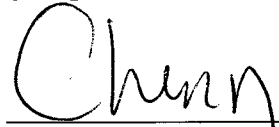
On appeal, appellant challenges the district court's decisions to exclude 9-1-1 call logs from evidence and denying the jury's request to view the call logs during jury deliberations. The district court excluded the call logs based on a finding that they were hearsay, but allowed the use of the call logs during the trial for purposes of refreshing witnesses' memories and for use by expert witnesses. Appellant argues that the call logs were relevant and fall under one of several hearsay exceptions.

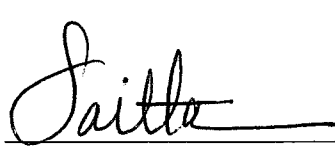
We review the district court's ruling on admissibility of evidence and hearsay determinations for an abuse of discretion. Harkins v. State, 122 Nev. 974, 980, 143 P.3d 706, 709 (2006); Hansen v. Universal Health Servs., 115 Nev. 24, 27, 974 P.2d 1158, 1160 (1999). Having reviewed the briefs and appendices on appeal, we conclude that the district court did not abuse its discretion. The call logs appellant sought to admit involved double hearsay and were therefore only admissible if a hearsay exception applied to each level of hearsay. NRS 51.067. While the operators' records of the 9-1-1 calls may meet the business records exception, appellant failed to establish any reliable basis for applying a

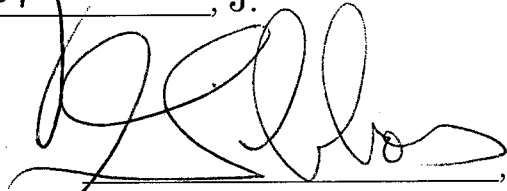
hearsay exception to the statements made by the people who placed the 911 calls. As a result, the call logs did not qualify for admissibility under a hearsay exception, and the district court properly excluded them from evidence. Because the call logs were properly excluded from evidence, the district court also properly denied the jury's request to view the call logs during deliberation.

Appellant also argues on appeal that respondents' attorney engaged in misconduct during opening and closing arguments by referring to the lack of police records in evidence. As appellant failed to object at any time to the arguments made by respondents' counsel, appellant must demonstrate that the "misconduct amounted to irreparable and fundamental error," which requires showing that "but for the misconduct, the verdict would have been different." Lioce v. Cohen, 124 Nev. ___, ___, 174 P.3d 970, 982 (2008). We conclude that appellant has failed to demonstrate that a different verdict would have resulted without the alleged misconduct.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

¹Appellant also argues that the attorney misconduct "opened the door" for admissibility of the call logs. Appellant failed to provide any legal authority in support of this argument; therefore, we need not consider it. Mainor v. Nault, 120 Nev. 750, 777, 101 P.3d 308, 326 (2004).

cc: Hon. Elizabeth Goff Gonzalez, District Judge
William F. Buchanan, Settlement Judge
Potter Law Offices
Bremer Whyte Brown & O'Meara, LLP
Eighth District Court Clerk