

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA LOCKWOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50864

JOSHUA LOCKWOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52615

FILED

NOV 23 2009

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

ORDER OF REVERSAL AND REMAND

These are appeals from a judgment of conviction, pursuant to a jury verdict, of three counts of sexual assault of a child under the age of sixteen (Docket No. 50864) and a district court order denying a motion for a new trial (Docket No. 52615). Third Judicial District Court, Lyon County; David A. Huff, Judge. The district court sentenced appellant Joshua Lockwood to serve three consecutive terms of life in the Nevada State Prison with the possibility of parole after twenty years. We elect to consolidate these appeals for disposition. See NRAP 3(b).

Docket No. 52615 concerns Lockwood's claim that the district court abused its discretion in denying his motion for a new trial based on juror misconduct. Specifically, he argues that the verdict should be overturned because the jury foreperson conducted impermissible research on a material issue and shared her findings with the jury during deliberations. We agree. Because we are remanding for a new trial, we

decline to reach Lockwood's arguments raised in his appeal from the judgment of conviction in Docket No. 50864.

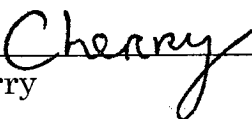
We review a district court's denial of a motion for a new trial based upon juror misconduct for an abuse of discretion. Meyer v. State, 119 Nev. 554, 561, 80 P.3d 447, 453 (2003). In order to "prevail on a motion for a new trial based on juror misconduct, the defendant must present admissible evidence sufficient to establish: (1) the occurrence of juror misconduct, and (2) a showing that the misconduct was prejudicial." Id. at 563-64, 80 P.3d at 455.

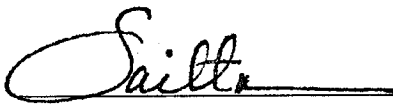
"[W]here the misconduct involves allegations that the jury was exposed to extrinsic evidence in violation of the Confrontation Clause, de novo review of a trial court's conclusions regarding the prejudicial effect of any misconduct is appropriate." Id. at 561-62, 80 P.3d at 453. "Prejudice is shown whenever there is a reasonable probability or likelihood that the juror misconduct affected the verdict." Id. at 564, 80 P.3d at 455. "Jur[y] exposure to extraneous information via independent research or improper 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." Id. at 565, 80 P.3d at 456.

We conclude that the district court abused its discretion in denying Lockwood's motion for a new trial. The jury foreperson testified that she conducted independent research concerning whether a child sexual abuse victim could have an intact hymen. She consulted eight to ten internet articles over the course of forty-five minutes and shared her research with the rest of the jury during the jury's deliberations. By conducting her own research and relaying that information to the rest of

the jury, the foreperson engaged in misconduct. Considering that this information is related directly to whether it was possible that the victim was assaulted, there was a reasonable probability that the information affected the verdict. Accordingly, we

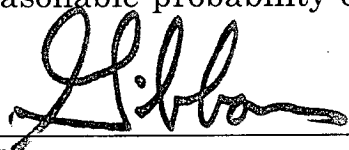
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


Cherry, J.


Saitta, J.

GIBBONS, J., dissenting:

I respectfully dissent and would affirm the district court's order denying Lockwood's motion for a new trial and the judgment of conviction. Considering that the jury had already heard testimony that 75 to 90 percent of child sexual abuse cases reveal no evidence of abuse, the evidence introduced by the foreperson was cumulative, and Lockwood failed to demonstrate that it had a reasonable probability of affecting the verdict.


Gibbons, J.

cc: Hon. David A. Huff, District Judge
Jacob N. Sommer
Attorney General Catherine Cortez Masto/Carson City
Lyon County District Attorney
Lyon County Clerk