

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS COE,  
Appellant,  
vs.  
MARCO CENTENO-ALVARES,  
Respondent.

No. 51216

FILED

SEP 28 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

This is an appeal from a district court post-judgment order granting a new trial in a personal injury action. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Prior to trial, the district court granted respondent Marco Centeno-Alvares' motion in limine to exclude a surveillance video generated beyond the pre-set discovery deadline, but nonetheless permitted limited references to its contents. Based, in part, on its conclusion that this compromise ruling created an irregularity in the proceedings that unfairly disadvantaged Centeno-Alvares, the district court granted Centeno-Alvares' motion for a new trial.

On appeal, appellant Curtis Coe challenges the district court's evaluation of the prejudice resulting from its compromise ruling. For the following reasons, however, we conclude that the district court was within its discretion to order a new trial based on its admitted mishandling of the video's exclusion and therefore affirm the district court's order granting Centeno-Alvares' motion for a new trial. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

NRCP 59(a)(1)

Coe contends that the district court abused its discretion in granting Centeno-Alvares a new trial based on its evaluation of the compromise ruling's contribution to creating a prejudicial trial

atmosphere. See Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1036, 923 P.2d 569, 576 (1996) (orders denying or granting motions for a new trial are reviewed for an abuse of discretion). We disagree.

Under NRCP 59(a)(1), a new trial may be granted based on an “[i]rregularity in the proceedings . . . or abuse of discretion by which either party was prevented from having a fair trial.” After carefully analyzing the consequences of its compromise ruling in light of this standard, the district court acknowledged that its ruling contributed to depriving Centeno-Alvares of a fair trial.

According to the compromise ruling, the district court excluded the “surveillance video, related records and reports, and any reference thereto.” Nevertheless, the parties’ experts were permitted to view the video, and the parties were permitted to explain any resulting change in their experts’ opinions by allowing references to “new information” or “[p]laintiff’s current condition.”

However, despite approving specific terminology to avoid alerting the jury to the existence of the excluded video, the district court recognized that its compromise ruling was unworkable in the first instance, since screening the jury from the video’s existence was practically impossible when the parties’ attorneys and experts were permitted to refer to its contents.

Indeed, Coe’s trial counsel and medical experts repeatedly proved incapable of refraining from alluding to the existence of the excluded video. Neither was Centeno-Alvares’ trial counsel innocent in this regard, given his inadvertent reference to the excluded video during his direct examination of Dr. Dunn, Centeno-Alvares’ medical expert. As the district court recognized, these repeated references to the excluded video inevitably alerted the jury to the video’s existence, a point the jury

foreperson confirmed when he asked to view the video following the testimony of Dr. Rappaport, Coe's medical expert.

Because the district court's compromise ruling could not effectively shield the jury from the video's existence, it inadvertently created a situation in which the jury knew that allegedly damaging evidence relating to Centeno-Alvares' physical condition existed, but was prohibited from viewing it. Although Coe asserts that this situation was harmless, we are reluctant to ignore the district court's candid assessment of the prejudice resulting from its compromise ruling.

Given the dissonance in learning the "truth" about Centeno-Alvares' condition but having the source of this information withheld from it, the district court acknowledged that its compromise ruling created an atmosphere in which the jury "may have felt that they were being lied to or kept in the dark." Moreover, as if conceding prejudicial error, the district court acknowledged that "[i]t would have been better had the video actually been shown, as the content likely would not have had nearly the devastating impact on the jury as the mystique and curiosity that was caused by keeping the video from them."

Based on the unworkable nature of the compromise ruling, as confirmed by the jury's obvious knowledge of the excluded video despite attempts to conceal its existence, the district court acknowledged that its ruling ultimately generated an irregularity that "placed [Centeno-Alvares] at such a severe disadvantage that a manifest injustice would occur in the event [that it] did not set aside the jury verdict."<sup>1</sup> Because the district

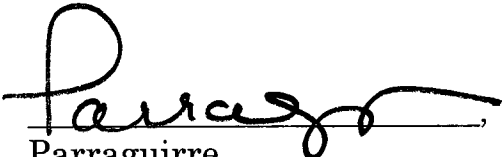
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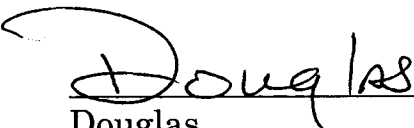
<sup>1</sup>In addition to the demonstrated inability of defense counsel to comply with the compromise ruling, which, among other things, contributed to calling the jury's attention to the excluded video, the district court granted Centeno-Alvares' motion for a new trial based on


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court was uniquely qualified to make this evaluation regarding its own ruling, we fail to discern palpable abuse in the decision to grant Centeno-Alvares a new trial under NRCPC 59(a)(1). See Edwards, 112 Nev. at 1036, 923 P.2d at 576. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. James M. Bixler, District Judge  
Robert F. Saint-Aubin, Settlement Judge  
Lemons Grundy & Eisenberg  
Ranalli & Zaniel, LLC  
Ganz & Hauf  
Vannah & Vannah  
Eighth District Court Clerk

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defense counsel's "pay day" and "pot of gold" references, his allusions to Centeno-Alvares' drinking, defense counsel's conduct during sidebars, and his purported violations of several unrelated rulings in limine. Based on a close review of the record, we conclude that none of these instances amount to attorney misconduct that would independently warrant a new trial. Nevertheless, the district court was still within its discretion to grant Centeno-Alvares a new trial under NRCPC 59(a)(1) based on the cumulative effect of the parties' failed attempts to comply with the district court's compromise ruling, which the district court identified as "largely the most prejudicial" aspect of this trial.