

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN JIMENEZ-GONZALEZ, A/K/A
JUAN JIMENEZ, A/K/A FRANCISCO
LAVILLA, A/K/A MARIO MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61989

FILED

MAY 15 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Anderson
DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

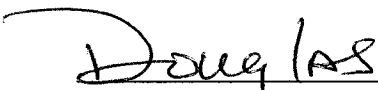
Appellant Juan Jimenez-Gonzalez contends that the district court erred by denying his motion for a mistrial based on the presence of the alternate juror in the jury room during deliberations. The decision to grant or deny a motion for a mistrial is within the sound discretion of the district court and this court will not disturb that decision absent an abuse of discretion. *Lisle v. State*, 113 Nev. 679, 700, 941 P.2d 459, 473 (1997), *limited on other grounds by Middleton v. State*, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).


The presence of the alternate juror in the jury room violated NRS 175.391 and created a presumption of prejudice. *Falcon v. State*, 110 Nev. 530, 533, 874 P.2d 772, 774 (1994). After conducting an evidentiary hearing and listening to the testimony of the alternate juror and 11 of the 12 jurors, however, the district court concluded that the State rebutted the presumption of prejudice created by the alternate juror's presence in the

jury room and denied the motion for a mistrial. *See id.* The record before this court supports the district court's decision and we conclude Jimenez-Gonzalez fails to demonstrate an abuse of discretion. Accordingly, we

ORDER the judgment of conviction AFFIRMED.¹


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Nancy L. Porter, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk

¹Although we filed the fast track statement and appendix and fast track response, these documents fail to comply with the Nevada Rules of Appellate Procedure. The fast track briefs do not contain margins in compliance with NRAP 3C(h)(1) and NRAP 32(a)(4) and the fast track statement does not contain adequate citation to the appendix, *see* NRAP 3C(e)(1)(C). Further, the appendix does not contain a single index identifying each document included in all volumes. NRAP 3C(e)(2)(C); NRAP 30(c)(2). Counsel for the parties are cautioned that the failure to comply with applicable rules in the future may result in the imposition of sanctions. *See* NRAP 3C(n); *Smith v. Emery*, 109 Nev. 737, 743, 856 P.2d 1386, 1390 (1993).