

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHERYL ANN WALKER,

No. 37663

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

JUL 12 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Schach*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon.<sup>1</sup> The district court sentenced appellant to serve two consecutive prison terms of 10 to 25 years.

Appellant's sole contention is that the district court erred in enhancing appellant's sentence for use of a deadly weapon because the initial verdict form returned by the jury left the question regarding the use of a deadly weapon blank. Particularly, appellant contends that the district court acted improperly in questioning the jury about whether they had deliberated on the issue of the use of a deadly weapon, and then returning the unanswered verdict form to the jury so that they could deliberate on the deadly-weapon enhancement question. We conclude that the district court did not err in allowing the jury to clarify its verdict.

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<sup>1</sup>Appellant was originally convicted of first-degree murder with the use of a deadly weapon and sentenced to serve two consecutive prison terms of 50 years. This court reversed that conviction, holding that the admission of irrelevant prior bad act evidence had prejudiced appellant, and remanded the case for a new trial. See Walker v. State, 116 Nev. 442, 997 P.2d 803 (2000).

01-11823

In Sellers v. State,<sup>2</sup> this court held that a jury's initial failure to designate the degree of murder on a verdict form did not render the guilty verdict void because the district court ordered the jury to reconvene to clarify its verdict. This court determined that this type of remedy was permissible because the jury reconvened to clarify its verdict while still under the district court's control and admonitions and before hearing any additional evidence.<sup>3</sup>

In the present case, the district court acted in a manner analogous to the district court in Sellers. After the jury returned with their verdict, the district court noticed that they did not answer the bottom of the second-degree murder verdict form that stated: "If you find the defendant guilty of Murder in the first degree, you must answer the following question: Was a deadly weapon used in the commission of the offense? Yes \_\_\_\_\_ No .."<sup>4</sup> This verdict form contained a typographical error in that it stated that the deadly weapon issue should be decided only if the jury found that appellant guilty of first-degree murder. The verdict form was contrary to the deadly weapon instruction given to the jury, which provided that they should consider whether the State proved appellant used a deadly weapon beyond a reasonable doubt in the event that they returned a verdict of guilty of second-degree murder.

Before discharging the jury, the district court pointed out the incomplete verdict form and inquired whether

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<sup>2</sup>108 Nev. 1017, 843 P.2d 362 (1992).

<sup>3</sup>Id. at 1019, 843 P.2d at 364; cf. NRS 16.180 (providing that, in civil cases, "the verdict may be corrected by the jury, under the advice of the court, or the jury may again be sent out").

<sup>4</sup>Emphasis added.

the jury had deliberated on the issue of use of a deadly weapon. The jury foreman stated that it was her understanding that they were only supposed to address the deadly weapon issue if they found appellant guilty of first-degree murder, pointing out the typographical error on the form. The district court then gave the jury three choices: (1) to check "no" on the form, if that was the jury's decision; (2) if they had not deliberated on the issue and wanted to, to reconvene to deliberate; or (3) to let the verdict stand as read. The district court further told the jury: "You do not have to answer it. If you chose not to answer it, just tell us that. If you chose to answer it and it was an oversight, tell me that." The foreperson informed the court that the jury wished to deliberate on the issue, and after a short period of deliberation, the jury found that appellant had used a deadly weapon. The district court then polled the jury and each juror affirmed the verdict.

We conclude that the district court acted properly in allowing the jury to reconvene to deliberate on the deadly weapon issue. The statements made by the jury foreperson clearly indicated that the jury had been confused by the typographical error on the verdict form, had not deliberated on the deadly weapon issue, and wished to do so.<sup>5</sup> Moreover, the jury had not been discharged, was still under the court's admonitions and control, and had not been tainted by any outside influence or additional evidence.<sup>6</sup>

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<sup>5</sup>Cf. Stroup v. State, 110 Nev. 525, 874 P.2d 769 (1994) (holding that whether an accused used a deadly weapon is an issue to be determined by the trier of fact).

<sup>6</sup>Cf. Carlson v. Locatelli, 109 Nev. 257, 849 P.2d 313 (1993) (recognizing that with respect to civil cases, every effort should be made to "salvage" the jury's verdict so that a new trial is not necessary).

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Young J.  
Young

Leavitt J.  
Leavitt

Becker J.  
Becker

cc: Hon. Connie J. Steinheimer, District Judge  
Attorney General  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk