

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP HARRY HUGHES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41320

FILED

DEC 22 2004

BY *[Signature]*
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of six counts of lewdness with a child under fourteen. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

Appellant Phillip Hughes was convicted pursuant to a jury verdict of four counts of sexual assault of a minor under the age of fourteen years and two counts of lewdness with a minor under the age of fourteen years. Following the jury's guilty verdict Hughes was sentenced by the district court as follows: counts I, II, III, and IV, life with the possibility of parole after twenty years with all counts running concurrent; counts VII and VIII, life with the possibility of parole after ten years with both counts running concurrent to each other. Additionally, Hughes was sentenced to pay \$300 restitution.

Shortly after the jury verdict, the defense received a complaint from an alternate juror who alleged misconduct by jury foreperson Zoraida Schertl (hereinafter "Schertl"). The alternate juror claimed Schertl bragged about understanding the full translation of the testimony of appellant's wife, Reina Hughes (hereinafter "Reina"). Schertl claimed the court interpreter did not give an accurate account of Reina's responses.

Hughes raises two issues on appeal. First, Hughes argues that the ineffective interpretations by the court interpreter violated his

right to cross-examine the witness, and jury foreperson Schertl's revelation of her own interpretation warrants reversal. Second, Hughes argues that the district court erred in denying his motion for a new trial.

Ineffective Interpretation

Hughes argues the court interpreter's failure to fully interpret his wife's rapid, lengthy answers violated his right to cross-examine his wife.

Pursuant to NRS 50.054, an interpreter for non-English speaking persons must translate accurately to the witness in the language of the witness and likewise, make a true interpretation of the statements of the witness in an understandable manner. NRS 50.054(2) provides that prior to undertaking his duties, the interpreter shall swear or affirm that he will:

- (a) To the best of his ability, translate accurately to the witness, in the language of the witness, questions and statements addressed to the witness;
- (b) Make a true interpretation of the statements of the witness in an understandable manner; and
- (c) Repeat the statements of the witness in the English language to the best of his ability.

In United States v. Long,¹ the court stated, "[W]hile the general standard for interpreters requires continuous word-for-word translation, occasional lapses in the standard will not necessarily contravene a defendant's constitutional rights." The transcript from Hughes' trial and evidentiary hearing revealed the interpreter did not

¹United States v. Long, 301 F.3d 1095, 1105 (9th Cir. 2002).

provide word-for-word interpretation during a heated moment of Reina's testimony. However, although the record indicates that Reina repeated herself during her day-long testimony, the missed responses by the court interpreter were later repeated by the witness and thereafter properly interpreted. Additionally, Reina was fully examined during direct, cross, redirect and recross examination, which was evidenced by 119 pages of her testimony transcript. Defense counsel was diligent in rephrasing his questions and identifying inappropriate responses that required his follow-up questions. We therefore conclude that no contravention of important constitutional rights occurred in connection with the in-court interpretation of Reina's testimony.

Hughes argues the verdict was tainted when jury foreperson Schertl interpreted the missed responses and revealed her interpretations to the jury during deliberation. Review of the record indicates no new or different responses were ever revealed to the jury by Schertl.² We conclude the jury foreperson's misconduct does not warrant a reversal of the conviction.

New Trial

Hughes next argues Schertl's misconduct warrants a new trial and that the district court erred in denying his motion.

²Review of the trial transcript confirmed the repetitive statements found in Reina's testimony matched Schertl's interpretations. The only interpretation by Schertl that differed, was that of Reina's family wanting to kill the defendant for what he did to the child. The transcript revealed the witness stated she wanted to kill Hughes for what he did to the child.

Pursuant to NRS 176.515, in a criminal case, a court may grant a new trial if required as a matter of law.³ Pursuant to Barker v. State,⁴ not every incidence of juror misconduct requires the granting of a new trial. The misconduct must be ascertainable from objective facts and overt conduct without regard to the state of mind and mental processes of any juror. A new trial need not be granted if harmless error, rather than prejudicial error occurred. In Meyer v. State,⁵ this court held that the question of misconduct and any resulting prejudice is ultimately a question of fact for the district court, and this court will not disturb the determination of the district court absent an abuse of discretion.

Schertl's misconduct did not result in a revelation of conflicting and/or prejudicial information. At the evidentiary hearing, the court interpreter revealed she struggled to interpret Reina's emotional responses. The jurors testified they believed Reina was very upset when testifying. They noticed that during a heated moment, Reina's sentences were long and the interpreter's interpretations were short. Several of the jurors testified that Schertl's translations were not relevant to Hughes'

³NRS 176.515 New Trial: Grounds; time for filing motion.

1. The court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.
2. If trial was by the court without a jury the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.

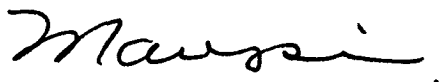
⁴Barker v. State, 95 Nev. 309, 313, 594 P.2d 719, 721 (1979).

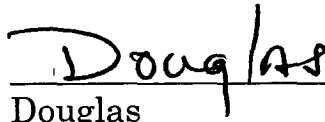
⁵Meyer v. State, 119 Nev. 554, 562, 80 P.3d 447, 453 (2003).

guilt and that they relied on other compelling evidence from the trial. We conclude the district court did not abuse its discretion in denying Hughes' motion for a new trial. Accordingly we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Joseph T. Bonaventure, District Judge
Stephen Stein
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk