

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN KEITH RHODES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42546

**FILED**

JUL 05 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of insurance fraud, false claim for benefits. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court sentenced appellant John Keith Rhodes to a prison term of 18 to 48 months, but then suspended execution of the sentence and placed Rhodes on probation for a time period not to exceed 5 years.

Rhodes first contends that reversal of his conviction is warranted because the district court failed to give a jury instruction on the definition of a material misrepresentation. We conclude that Rhodes' contention lacks merit.

Our review of the record on appeal indicates that the district court gave a jury instruction defining material misrepresentation. Specifically, jury instruction number 13 provided:

A fact is material if it concerns a subject reasonably relevant to the insurance company's investigation, and if a reasonable person would attach importance to that fact. A representation is false when the facts fail to correspond with its assertions.

The jury instruction contained an accurate statement of the legal definition of a material misrepresentation in an insurance fraud case.<sup>1</sup> Accordingly, the district court did not err in instructing the jury on the material misrepresentation element of insurance fraud.<sup>2</sup>

To the extent that Rhodes argues that the jury instruction was erroneous because it did not include additional language requiring the jury to find that the insurer's investigation would have proceeded differently had the insured told the truth, we conclude that any error in refusing the request for additional language was harmless beyond a reasonable doubt.<sup>3</sup>

Rhodes next contends that reversal of his conviction is warranted because the State failed to provide timely exculpatory evidence. In particular, the State failed to provide the memorandum of the pretrial

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<sup>1</sup>See 1997 Nev. Stat., ch. 435, § 3, at 1541; see generally Sheriff v. Richardson, 103 Nev. 180, 734 P.2d 735 (1987) (discussing sufficient evidence necessary to bind defendant over on insurance fraud charges); Powell v. United Servs. Auto. Ass'n, 115 Nev. 38, 42, 979 P.2d 1286, 1288-89 (1999) (defining material misrepresentation in a civil, bad faith insurance case).

<sup>2</sup>Rhodes also challenges jury instruction number 3, arguing that it "incorrectly stated as fact that [he] had committed insurance fraud." We reject Rhodes' argument and note that jury instruction number 3 merely described the nature of the charges in the indictment. Before doing so, jury instruction number 3 specifically stated: "An indictment is but a formal method of accusing a person of a crime and is not itself any evidence of his guilt." Accordingly, we disagree that jury instruction number 3 "stated as fact" that Rhodes committed insurance fraud.

<sup>3</sup>See Wegner v. State, 116 Nev. 1149, 1155-56, 14 P.3d 25, 30 (2000).

interview with State's witness, Janeen Thompson-McLaurin, describing her statement that she had once become pregnant with Rhodes' child and had an abortion. We conclude that Rhodes' contention lacks merit.

NRS 174.295(2) sets forth the remedy for violation of a discovery order. Specifically, where a discovery order has been violated, the district court: "may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances."<sup>4</sup> "However, where the State's non-compliance with a discovery order is inadvertent and the court takes appropriate action to protect the defendant against prejudice, there is no error justifying dismissal of the case."<sup>5</sup>

In this case, the district court did not abuse its discretion in admitting the testimony of Janeen Thompson-McLaurin. There is no indication in the record that the State's untimely disclosure of the memorandum was intentional, and the district court took adequate measures to ensure that Rhodes was not prejudiced by allowing him additional time to prepare his cross-examination of Thompson-McLaurin. Accordingly, we conclude that the district court did not err with respect to the discovery violation.

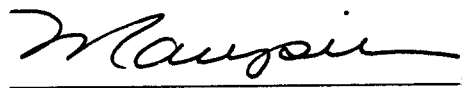
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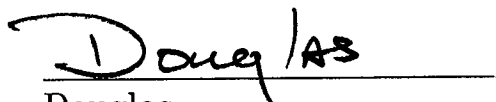
<sup>4</sup>NRS 174.295(2).

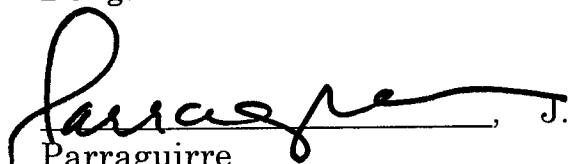
<sup>5</sup>State v. Tapia, 108 Nev. 494, 497, 835 P.2d 22, 24 (1992); Langford v. State, 95 Nev. 631, 635-36, 600 P.2d 231, 234-35 (1979).

Having considered Rhodes' contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michael A. Cherry, District Judge  
Robert G. Lucherini, Chtd.  
Attorney General Brian Sandoval/Las Vegas  
Clark County District Attorney David J. Roger  
Clark County Clerk