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SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



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Case No. CR-1208084

Dept. No. 2

FILED

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CLERK OF DISTRICT COURT
BY: *[Signature]*

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

THE STATE OF NEVADA,

Plaintiff,

vs.

MIKE FIXER NEWCASTLE,

Defendant.

ORDER DENYING MOTION FOR A
NEW TRIAL AND REQUEST FOR AN
EVIDENTIARY HEARING

PROCEDURAL AND FACTUAL HISTORY

On October 18, 2013, Mike Fixer Newcastle ("Defendant") was convicted of battery by an inmate with the use of a deadly weapon causing substantial bodily harm in violation of NRS 200.481. At the conclusion of the four day trial, the jurors were polled and each juror indicated that the guilty verdict was true and correct. The court then entered formal judgment of guilt.

On October 28, 2013, Defendant filed a motion for a new trial.¹ On November 1, 2013, the State filed its opposition. On November 6, 2013, Defendant filed a reply. Upon reviewing the record, the court finds additional briefing is not necessary.

¹ Defendant filed an amended motion for a new trial on October 30, 2013.



1 At trial, the State's main witness, Ely State Prison Correctional Officer Cortney
2 Green ("Correctional Officer Green") testified that he saw Defendant standing over the
3 victim with the weapon raised over his head in a striking fashion. During cross-
4 examination, defense counsel presented evidence that Correctional Officer Green's
5 statements changed during the investigation, preliminary hearing, and trial. Additionally,
6 several state witnesses testified to Correctional Officer Green's emotional state during and
7 immediately after observing the victim's injuries. Defense counsel argued that Correctional
8 Officer Green's emotional state may have affected his perception and memory of the
9 events.

10 The State's DNA expert, Monica Siewertsen, testified that DNA found on the
11 weapon, Defendant's shoe and jumpsuit matched the victim. She also testified that she
12 found second or third trace contributors on the weapon, but they could not be identified.
13 Lastly, she testified that her DNA collection method on the weapon destroyed any
14 possibility of lifting fingerprints from the weapon. The State argued that lifting fingerprints
15 was irrelevant because Defendant was found holding the weapon over the victim.

16 Defense expert, Jeff Saviano ("Mr. Saviano"), testified that he examined the
17 directionality and placement of blood splatter found on Defendant's jumpsuit and the room
18 where the incident occurred. He testified that blood splatter on the front of Defendant's
19 jumpsuit was deposited on the article when Defendant was facing the source of the
20 splatter. Mr. Saviano also testified that at some point, Defendant had his back to the
21 source of the splatter because of blood deposits on the back of his jumpsuit.

22 The jury was instructed that they could return three possible verdicts. First, that
23 Defendant was guilty of attempted murder. Second, that Defendant was not guilty of
24 attempted murder, but guilty of battery by an inmate with a deadly weapon causing
25 substantial bodily harm. Last, that Defendant was not guilty. The jury returned with a
26 verdict after deliberating for approximately three hours.



1 At the conclusion of the trial, defense counsel spoke with four jurors. Allegedly,
2 Juror Josie Jensen ("Ms. Jensen") stated that during deliberations at least one juror voiced
3 that: (1) Defendant was guilty of attempted murder; (2) there was insufficient evidence to
4 convict Defendant of attempted murder; and (3) jurors voiced doubt about Defendant's guilt
5 and compromised on a verdict.² Juror James Nelson ("Mr. Nelson") said that Defendant
6 was in prison for a reason. Additionally, Juror Amanda Reieher ("Ms. Reieher") stated that
7 jurors discussed Ely State Prison, the fact that Defendant was in the room at the time the
8 battery occurred, and that the jurors "knew he was involved with the battery somehow."³
9 Lastly, Juror Kelly Ernest ("Mr. Ernest") said that during deliberations jurors: (1)
10 commented on the fact that Defendant was an inmate at Ely State Prison; (2) "that
11 everyone knows that inmates are at Ely State Prison, in particular, for a reason;" (3)
12 discussed convicting Defendant of battery because the jurors "knew he was involved in the
13 offense in some way because he had the victim's blood on his jumpsuit;" and (4) opined
14 that Defendant may have assisted another individual during the battery.⁴

15 **DISCUSSION**

16 A. **JURISDICTION OF THE DISTRICT COURT**

17 Pursuant to NRS 176.515, the district court may grant a new trial in three
18 circumstances: (1) if required as a matter of law; (2) on the ground of newly discovered
19 evidence; or (3) on any other grounds.⁵ A criminal defendant must file a motion for a new
20 trial, based on "any other grounds," within seven days after a verdict or finding of guilt.⁶

21 _____
22 ² Am. Mot. for a New Trial Based Upon Jury Misconduct and Conflicting Evidence 3.

23 ³ Id.

24 ⁴ Id. at 4.

25 ⁵ NRS 176.515(1), (4).

26 ⁶ NRS 176.515(4).



1 B. JUROR MISCONDUCT

2 Juror misconduct may be grounds for a new trial, however, "[n]ot every incidence
3 of juror misconduct requires the granting of a motion for [a] new trial."⁷ "Juror misconduct
4 falls into two categories: (1) conduct by jurors contrary to their instructions or oaths, and
5 (2) attempts by third parties to influence the jury process."⁸ The first category includes
6 considering evidence not admitted during trial and conducting independent investigations.⁹
7 The second category was not alleged and will not be discussed here.

8 "The district court is vested with broad discretion in resolving allegations of juror
9 misconduct."¹⁰ "Each case turns on its own facts, and on the degree and pervasiveness
10 of the prejudicial influence possibly resulting."¹¹ The court may only consider objective
11 facts and may not delve into the state of mind or deliberative thought process of the jury.¹²
12 When determining whether or not misconduct affected the verdict, the court must consider:
13 (1) the timing of the misconduct; (2) whether the misconduct involved a collateral or
14 material issue; (3) whether the information was admissible; (4) the influence the
15 misconduct might have had in light of the entire trial; (5) how long the jury discussed the
16 extrinsic material; (6) when the discussion occurred in relation to the verdict; (7) the
17 specificity or the ambiguity of the information; (8) whether the issues of guilt or innocence
18 is close; (9) the quantity and character of the error; and (10) the gravity of the crime

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20 ⁷ Barker v. State, 95 Nev. 309, 313 594 P.2d 719, 721 (1979).

21 ⁸ Meyer v. State, 119 Nev. 554, 561, 80 P.3d 447, 453 (2003) (internal quotations
22 omitted).

23 ⁹ Id.

24 ¹⁰ Id. at 562, 80 P.3d at 454.

25 ¹¹ Id., 80 P.3d at 453–54 (internal quotations omitted).

26 ¹² Id. at 563, 80 P.3d at 454.



1 charged.¹³

2 A defendant has the burden of proving that: (1) juror misconduct occurred; and (2)
3 the misconduct was prejudicial.¹⁴ "Prejudice is shown whenever there is a reasonable
4 probability or likelihood that the juror misconduct affected the verdict."¹⁵ Generally, jurors
5 may not impeach their own verdict.¹⁶ A defendant, however, may admit juror affidavits or
6 testimony establishing the fact that the jury received or considered extrinsic information.¹⁷
7 Intrinsic misconduct, such as, improper discussions among jurors is generally
8 inadmissible.¹⁸ Additionally, juror affidavits or testimony that delve into "any matter or
9 statement occurring during the course of the jury's deliberations or the effect of anything
10 upon that or any other juror's mind or emotions as influencing the juror to assent to or
11 dissent from the verdict . . . or concerning the juror's mental processes in connection
12 therewith" are inadmissible.¹⁹

13 As a procedural matter, Defendant has failed to present any admissible evidence
14 to establish that juror misconduct occurred. Nevada has well settled precedent that a
15 defendant must prove juror misconduct through juror affidavits or testimony.²⁰ Defendant's
16 motion is absent any juror affidavits or testimony. Therefore, Defendant's motion for a

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18 ¹³ See Zana v. State, 125 Nev. 541, 547, 216 P.3d 244, 248 (2009) (internal citations
omitted); Valdez v. State, 124 Nev. 1172, 1186–87, 196 P.3d 465, 475 (2008).

19 ¹⁴ Meyer, 119 Nev. at 563, 80 P.3d at 455.

20 ¹⁵ Id.

21 ¹⁶ Id.

22 ¹⁷ Id. at 562, 80 P.3d at 454.

23 ¹⁸ Id.

24 ¹⁹ Id. at 563, 80 P.3d at 454; see also NRS 50.065(2).

25 ²⁰ See Maestas v. State, 128 Nev. Adv. Rep 12, 275 P.3d 74, 83–86 (2012); Valdez,
26 124 Nev. at 1186–88, 196 P.3d at 475–76; Meyer, 119 Nev. at 562–68, 80 P.3d at
454–58; Barker, 95 Nev. at 310–12, 594 P.2d at 720–21.



1 new trial based upon juror misconduct is denied. Assuming arguendo that a defendant
2 may prove juror misconduct without juror affidavits or testimony, the motion is denied for
3 the following reasons.

4 1. INTRINSIC EVIDENCE

5 Defendant argues that the jurors' statements made during deliberations constitute
6 intrinsic misconduct because the jury failed to follow the court's instruction and are
7 admissible pursuant to Maestas v. State. Defendant, however, has failed to explicitly
8 address which instruction the jury failed to follow. Construing Defendant's amended
9 motion liberally, it appears that Defendant is arguing that the jury failed to follow Jury
10 Instruction No. 28, regarding the of innocence, and that there is not sufficient evidence to
11 find Defendant guilty of the crime beyond a reasonable doubt.²¹ Defendant relies on the
12 following statements: doubt of Defendant's guilt, the compromise for a guilty verdict in the
13 alternative count, Defendant's incarceration and the character of inmates at Ely State
14 Prison.

15 Defendant also contends that the jury's failure to follow Jury Instruction No. 1 and
16 No. 4 is extrinsic misconduct. A jury's failure to follow a district court's instruction,
17 however, is intrinsic juror misconduct.²² Therefore, the court will address Defendant's
18 additional arguments as intrinsic misconduct. Defendant states that the jury failed to follow
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22 ²¹ Jury Instruction No. 28 states in its entirety:

23 You are instructed that the Defendant in this case is presumed to be
24 innocent and this is a presumption of law with which the Defendant is clothed
25 and it abides with him throughout the entire trial of the case unless it is
26 overcome by competent evidence sufficient in your minds to establish the
guilt of the offense charged beyond a reasonable doubt; and in case of a
reasonable doubt whether his guilt is satisfactorily shown, he is entitled to
be acquitted.

²² Valdez, 124 Nev. at 1186, 196 P.3d at 476.



1 Instruction No. 1 because the jurors participated in guesswork and speculation.²³
2 Defendant bases his argument upon the following statements: that the jury “knew he was
3 involved with the battery somehow” because he was found in the room at the time of the
4 battery, he had the victim’s blood on his jumpsuit, and that the jury opined that Defendant
5 may have assisted another individual. Defendant also argues that the statements
6 regarding Defendant’s incarceration violated Instruction No. 4 because the jury considered
7 evidence not introduced or admitted before the jury.²⁴ Specifically, comments regarding
8 Defendant’s prior criminal behavior, his placement at Ely State Prison, and the
9 participation of accomplices.²⁵

10 The State counters that the juror’s statements are inadmissible because they are
11 evidence that describes the thought process of the jurors.²⁶ The court agrees.

12 Intrinsic juror misconduct includes failure to follow a court’s instruction, improper
13 discussions among jurors, intimidation, or harassment.²⁷ Only in extreme circumstances
14 will intrinsic misconduct justify a new trial because of the restriction on juror affidavits and
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16 ²³ Jury Instruction No. 1 states in relevant part: “Your purpose as jurors is to find and
17 determine the facts from the evidence and the reasonable inferences arising from the
18 evidence, and in so doing, you must not indulge in guesswork or in speculation.”

19 ²⁴ Jury Instruction No. 4 states in relevant part: “In determining questions of fact
20 presented in this case, you should be governed solely by the evidence introduced and
21 admitted before you.”

22 ²⁵ In his amended motion, Defendant argues these statements are extrinsic evidence
23 because they introduce new information about a fact not found in the record or
24 evidence. Nevada precedent has established extrinsic misconduct occurs when a juror
25 relates “specific information from an outside source, such as quoting from a treatise,
26 textbook, research results, etc.” *Maestas*, 275 P.3d at 84 (internal citations omitted).
Defendant has failed to demonstrate how the specific information came from an outside
source. Rather, the statements elude to the jurors’ personal opinions based upon their
life experience and general knowledge. *See id.*

²⁶ Opp’n to Def.’s Mot. for New Trial 4–6.

²⁷ *See Valdez*, 124 Nev. at 1186, 196 P.3d at 475; *Meyer*, 119 Nev. at 562, 80 P.3d at
454.



1 testimony that “delve into the jury’s deliberative thought process.”²⁸ “A juror’s opinion
2 based on life experience, general knowledge, and specialized knowledge or expertise”
3 does not constitute juror misconduct,²⁹ even if the opinion is “based upon information not
4 admitted into evidence.”³⁰ Jurors may only use their personal experiences and common
5 sense to interpret the exhibits and testimony.³¹

6 In Maestas, the defendant pled guilty to first-degree murder with the use of a deadly
7 weapon, attempted murder with the use of a deadly weapon, and burglary while in
8 possession of a deadly weapon.³² The case proceeded before a jury to determine his
9 sentence for the first-degree murder charge.³³ The jury sentenced the defendant to
10 death.³⁴ The defendant filed a motion for a new trial based upon extrinsic and intrinsic
11 juror misconduct.³⁵ Defendant’s intrinsic misconduct allegation was based upon a juror
12 affidavit submitted by Rachel Poore (“Ms. Poore”). Ms. Poore’s affidavit stated that the jury
13 foreperson said “she personally knew of individuals who had been sentenced to life
14 without the possibility of parole who were ‘walking the streets with ankle bracelets.’”³⁶ At
15 the evidentiary hearing, the jury foreperson testified that she never made the statement
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18 ²⁸ Meyer, 119 Nev. at 565, 80 P.3d at 456.

19 ²⁹ Maestas, 275 P.3d at 84 (internal citation omitted).

20 ³⁰ Meyer, 119 Nev. at 570–71, 80 P.3d at 459, n.54.

21 ³¹ Id. at 568, 80 P.3d at 458.

22 ³² Maestas, 275 P.3d at 78.

23 ³³ Id.

24 ³⁴ Id. at 80.

25 ³⁵ Id.

26 ³⁶ Id.



1 during deliberations.³⁷ Nine additional jurors gave conflicting accounts of statements made
2 by the jury foreperson.³⁸ Based upon the conflicting affidavits and testimony, the district
3 court denied the defendant's motion because it found that Ms. Poore was not credible.³⁹
4 In regard to the intrinsic misconduct, the court found that the allegation was untrue.⁴⁰ The
5 district court found that the jury foreperson "only made a statement that she had seen or
6 heard of people who received life sentences being released and that no specific
7 information beyond that statement was conveyed to the jury."⁴¹ The district court also
8 struck several portions of the juror affidavit and testimony that addressed a juror's
9 reactions and thought process pursuant to NRS 50.065(2).⁴²

10 On appeal, the Nevada Supreme Court found that there was no proof of intrinsic jury
11 misconduct.⁴³ The Court reasoned that given the evidentiary limitation of NRS 50.065(2),
12 "[h]ow other jurors interpreted [the jury foreperson's] comments and the impact that the
13 comments or the juror's interpretation of the comments had on the jurors' thought
14 processes" were inadmissible.⁴⁴ The Court noted, however, that NRS 50.065(2) did "not
15 include the prohibition against juror testimony 'about any statement made or incident that
16 occurred during the jury's deliberations.'"⁴⁵ Therefore, a juror affidavit or testimony may

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18 ³⁷ Id.
19 ³⁸ Id. at 80–81.
20 ³⁹ Id. at 81.
21 ⁴⁰ Id. at 82.
22 ⁴¹ Id.
23 ⁴² Id.
24 ⁴³ Id. at 85.
25 ⁴⁴ Id.
26 ⁴⁵ Id. at 85 n.13.



1 address objectively apparent facts or events that occurred during deliberations.⁴⁶

2 In Valdez, the Nevada Supreme Court found that the juror statements were objective
3 evidence and created prejudice, thus requiring a new trial.⁴⁷ The defendant contended
4 that intrinsic juror misconduct occurred when the jury failed to follow the court's oral
5 bifurcation instruction regarding guilt and penalty phases.⁴⁸ The defendant relied upon the
6 jury foreperson's statement, made in open court, that a portion of jury deliberations were
7 devoted to discussing the penalty phase, and they decided a sentence.⁴⁹ The Nevada
8 Supreme Court agreed that the jury foreperson's statement was objective evidence that
9 the jury failed to follow the bifurcation instruction.⁵⁰ Then, the Court found that the intrinsic
10 misconduct was prejudicial because the penalty discussion most likely affected the
11 verdict.⁵¹ The Court reasoned that the jury may have compromised on a verdict to impose
12 the desired penalty.⁵²

13 In this case, Ms. Jensen's statements go to the heart of NRS 50.065(2). The statute
14 prohibits testimony "concerning the effect of anything upon the juror's or any other juror's
15 mind or emotions as influencing the juror to assent to . . . the verdict." Ms. Jensen's
16 statements describe the deliberative thought process as the jury reviewed and discussed
17 the evidence, testimony, and charges. Moreover, Ms. Jensen's statement that after
18 deliberations the jury compromised on a verdict is distinguishable from Valdez. In Valdez,

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20 ⁴⁶ Id.

21 ⁴⁷ Valdez, 124 Nev. at 1187–88, 196 P.3d at 475–76.

22 ⁴⁸ Id., at 1184, 196 P.3d at 473.

23 ⁴⁹ Id. at 1181, 196 P.3d at 472.

24 ⁵⁰ Id. at 1187, 196 P.3d at 475.

25 ⁵¹ Id.

26 ⁵² Id.



1 the foreperson made an objective fact, in open court, about an event that occurred during
2 deliberations. The objective fact was that the jury discussed the guilty and penalty phase,
3 thus violating the court's bifurcation instruction. Here, Ms. Jensen's statement does not
4 refer to an event or an objective fact that occurred during deliberations. Rather, the
5 statement refers to the deliberative thought process of one or more juror's, who at one
6 point questioned Defendant's guilt, but later joined in the guilty verdict. Further, there is
7 no objective evidence that the jury improperly followed the court's instruction that they
8 must find the defendant guilty beyond a reasonable doubt. In open court, each juror
9 confirmed that the guilty verdict was his/her true and correct verdict.

10 Mr. Nelson's, Ms. Reieher's, and Mr. Ernest's comments pertaining to Defendant's
11 incarceration and characterizations of inmates at Ely State Prison were not improper. At
12 trial, the State's witnesses provided extensive testimony and evidence pertaining to the
13 following: safety procedures at a maximum security prison, the processing and strip down
14 of inmates as a safety precaution, correction officers' training, and the number of guards
15 required in a unit or the culinary. The jurors were at liberty to use their common sense and
16 general knowledge to interpret and weigh the testimony and evidence regarding Ely State
17 Prison and Defendant's incarceration. The jurors were also permitted to make opinions
18 about Ely State Prison and Defendant's incarceration based on their general knowledge.
19 Additionally, how a juror interprets another juror's opinion of Ely State Prison and
20 Defendant's incarceration, and how that interpretation affects a juror's deliberative process
21 is inadmissible.⁵³ Further, there is no evidence that the jury considered facts not in
22 evidence or conducted an independent investigation into Defendant's prior criminal
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26 ⁵³ See Maestas, 275 P.3d at 85.



1 history.⁵⁴

2 Ms. Reieher's and Mr. Ernest's statements that the jury "knew [Defendant] was
3 involved with the battery somehow" because: (1) Defendant was found in the room where
4 the crime occurred; (2) the victim's blood was found on Defendant's jumpsuit; (3)
5 Defendant may have assisted another individual who actually delivered the blows to the
6 victim were not improper. As noted earlier, the jury is instructed to interpret the evidence
7 and testimony utilizing their common sense and personal experiences. Utilizing their
8 experience and common sense, the jury discussed and weighed the evidence presented
9 by the State. How much weight the jury decided to give to any evidence, concerns the
10 jury's mental processes and is inadmissible. Furthermore, a statement that Defendant may
11 have assisted another individual to commit the battery is not an objective fact. It is a
12 statement about opinions or mental processes during deliberations. How those opinions
13 affected a juror's assent to a verdict is inadmissible.

14 C. CONFLICTING EVIDENCE

15 The decision to grant or deny a motion for a new trial based upon "other grounds"
16 is within the district court's discretion.⁵⁵ The Supreme Court of Nevada has held that "other
17 grounds" exist "where the trial judge finds that the evidence of guilt is conflicting, and after
18 an independent evaluation of the evidence, disagrees with the jury's verdict of guilty."⁵⁶

19 The Court explained that:

20 a conflict of evidence occurs where there is sufficient evidence presented at
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22 ⁵⁴ The parties stipulated that Defendant was an inmate in the lawful custody of the
23 State of Nevada when the crime occurred. The jury was instructed that the stipulation
24 was a fact in evidence to be considered during deliberations.

24 ⁵⁵ Washington v. State, 98 Nev. 601, 604, 655 P.2d 531, 532 (1982) (citing State v.
Busscher, 81 Nev. 587, 407 P.2d 715 (1965)).

25 ⁵⁶ Evans v. State, 112 Nev. 1172, 1193, 962 P.2d 265, 279 (1996) (citing State v.
26 Purcell, 110 Nev. 1389, 887 P.2d 276 (1994); Washington v. State, 98 Nev. 601, 655
P.2d 531 (1982)).



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trial which, if believed, would sustain a conviction, but this evidence is contested and the district judge, in resolving the conflicting evidence differently from the jury, believes the totality of evidence fails to prove the defendant guilty beyond a reasonable doubt.⁵⁷

Conflicting evidence is distinctly different from insufficient evidence.⁵⁸ Defendant does not allege that there is insufficient evidence.

Here, Defendant has proffered inconsistent testimony and evidence, not conflicting evidence. Defendant argues that Correctional Officer Green's statements during the investigation, at the preliminary hearing, and during trial show conflicting evidence because the statements were inconsistent as to how he escorted Defendant from the room, the placement of the weapon, the arrival of other correctional officers, and the location and behavior of other inmates. Nonetheless, at the preliminary hearing and at trial, Correctional Officer Green consistently testified that when he entered the room he found Defendant holding the weapon above the victim and he did not notice any other individual in the room. No evidence conflicts with this testimony. Defendant also argues that the blood splatter on the front and back of his jumpsuit and Mr. Saviano's testimony demonstrate conflicting evidence. At trial, Mr. Saviano testified that blood splatter on the front of Defendant's jumpsuit was deposited on the article when Defendant was facing the source of the splatter. Mr. Saviano also testified that the blood splatter on the back of Defendant's jumpsuit demonstrated that Defendant had his back to the source of the splatter at some point.

The jury, acting as a fact finder, evaluated the weight and credibility of Correctional Officer Green's and Mr. Saviano's testimony, and the evidence presented at trial. Despite the inconsistencies, the jury found there to be sufficient evidence to prove Defendant guilty beyond a reasonable doubt. The court agrees and finds that even if there was conflicting

⁵⁷ Id. (quoting State v. Walker, 109 Nev. 683, 685–86, 857 P.2d 1, 2 (1993)).

⁵⁸ State v. Purcell, 110 Nev. 1389, 1395, 887 P.2d 276, 280 (1994).



1 evidence, the totality of the evidence is sufficient to support the conviction. Therefore, the
2 court will not substitute its judgment in place of the judgment of the jury.

3 C. REQUEST FOR AN EVIDENTIARY HEARING

4 In his reply, Defendant requests an evidentiary hearing to determine if a new trial
5 is warranted. An evidentiary hearing is held at the discretion of the judge after review of
6 all documents.⁵⁹ An evidentiary hearing is required where (1) claims are supported by
7 specific factual allegations, (2) factual allegations are not belied by the record, and (3) the
8 factual allegations, if true, would entitle the defendant to relief.⁶⁰

9 1. Claims must be supported by specific factual allegations

10 Defendant provides many specific factual allegations in support of his motion for a
11 new trial based upon juror misconduct. As discussed prior, Defendant failed to submit
12 juror affidavits to support his claim. In addition, the juror statements proffered by
13 Defendant are hearsay. Despite these procedural issues, Defendant's motion was
14 accompanied by juror's names and descriptions of their intended testimony.⁶¹

15 2. Factual allegations are not belied by the record

16 The factual allegations of juror misconduct are not belied by the record. An
17 evidentiary hearing is not required where Defendant's claims are belied by the record.⁶²
18 "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed
19 at the time the claim was made."⁶³ A court may not rely on affidavits submitted with a

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21 ⁵⁹ NRS 34.770(1).

22 ⁶⁰ Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

23 ⁶¹ See id. (Bare, naked, or conclusory claims are not enough to entitle a defendant to
24 an evidentiary hearing. The motion must set forth names of witnesses and intended
testimony demonstrating entitlement to relief.).

25 ⁶² Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

26 ⁶³ Id.



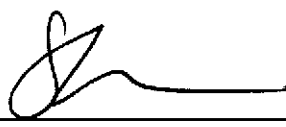
1 response or answer to determine if claims are belied by the record.⁶⁴ There is no
2 indication in the record of intrinsic juror misconduct for failure to follow the court's
3 instruction. In fact, the record contains no information on this issue. Therefore, the issue
4 is not belied by the record.

5 3. The factual allegations, if true, would entitle the defendant to relief
6 Even if the factual allegations were true, Defendant would not be entitled to relief.
7 As discussed earlier, Defendant's proffered evidence is inadmissible because most of the
8 statements concern the jury's mental processes during deliberations, and other statements
9 were simply not improper.⁶⁵ Accordingly, Defendant's request for an evidentiary hearing
10 is denied because Defendant would not be entitled to relief.

11
12 Good Cause Appearing,
13 **IT IS HEREBY ORDERED** that Defendant's MOTION FOR A NEW TRIAL is
14 **DENIED.**

15 **IT IS HEREBY ORDERED** that Defendant's REQUEST FOR AN EVIDENTIARY
16 HEARING is **DENIED.**

17 DATED this 2nd day of December, 2013.

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19 _____
20 DISTRICT JUDGE

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24 _____
24 ⁶⁴ Id.

25 ⁶⁵ Jurors may, and are encouraged, to utilize their life experiences, general knowledge,
26 and common sense to interpret the evidence and determine the issues at trial. See
Maestas, 275 P.3d at 84; see also Meyer, 119 Nev. at 568, 80 P.3d at 458.