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### Jeffries v. State, 133 Nev. Adv. Op. 47 (July 6, 2017)

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PROSECUTORIAL AND JUROR MISCONDUCT: GUIDANCE ON *BOWMAN V. STATE*  
AND *GONZALEZ V. STATE*

**Summary**

In denying appellant's motion for a mistrial, the Court held that (1) to prove prosecutorial misconduct, an appellant must show that a prosecutor's statements resulted in a denial of due process; and (2) to prove juror misconduct, an appellant must show that misconduct occurred and that the misconduct was prejudicial. The Court also clarified *Bowman v. State*'s<sup>2</sup> applicability by stating that when juror misconduct occurs before the verdict, and defense counsel is aware of the misconduct, it is defense counsel's responsibility to request an investigation regarding prejudice. Finally, the Court defined the scope of *Gonzalez v. State*<sup>3</sup> by stating that a district court does not abuse its discretion when it refuses to provide further instructions if neither party offers a clarifying answer.

**Background**

On October 22, 2011, appellant Michael Jeffries invited Eric Gore and several other friends to his Las Vegas, Nevada home. Jeffries' live-in girlfriend, Mandy, and her daughter, Brittany, were also present. Both Jeffries and Gore became intoxicated throughout the course of the evening. Gore then became angry with another guest. Jeffries attempted to calm Gore down, but he remained upset, prompting the other guests to leave. When Gore refused to leave Jeffries' home, an altercation ensued. Jeffries retrieved a gun from his bedroom. As Jeffries exited his bedroom, an unarmed Gore approached Jeffries. Jeffries then fatally shot Gore.

Brittany was the only other eyewitness to the shooting. Her initial statements discredited Jeffries' self-defense theory. However, when the State called Brittany as its first witness, Brittany failed to remember many of the details she recounted in her initial interview. In the State's closing argument, the prosecutor suggested that Jeffries influenced Brittany's testimony and questioned her credibility. Jeffries objected and moved for a mistrial based on the prosecutor's statements. The district court denied the motion.

Additionally, during jury deliberations, the jury presented several questions to the district court. First, the jury indicated that a juror conducted outside research. The district court then reinstructed the jury. Second, the jury requested clarification regarding jury instructions, but the district court did not provide supplemental clarifying instructions. The jury returned a guilty verdict for second-degree murder, which Jeffries appealed.

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<sup>1</sup> By Hayley J. Cummings.

<sup>2</sup> 132 Nev. Adv. Op. 74, 387 P.3d 202 (2016).

<sup>3</sup> 131 Nev. Adv. Op. 99, 366 P.3d 680 (2015).

## **Discussion**

### *Prosecutorial Misconduct*

Jeffries argued that the district court erred by denying his motion for a mistrial due to prosecutorial misconduct. The district court may grant a defendant's request for a mistrial when the defendant experiences prejudice that prevents him from receiving a fair trial.<sup>4</sup> The Nevada Supreme Court will not disturb a district court's denial of a motion for mistrial "absent a clear showing of abuse."<sup>5</sup>

When determining whether prosecutorial misconduct occurred, the Court examines "whether [the] prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due process."<sup>6</sup> The Court must consider the prosecutor's comments within the context of the trial; and the Court does not lightly overturn criminal convictions based on prosecutorial misconduct.<sup>7</sup>

#### *Whether the State improperly vouched for Brittany*

While Jeffries contended that the prosecutor improperly vouched for Brittany at trial, he failed to raise the issue of vouching below, meaning that only plain error review applied. Under plain error review, a defendant must show that the error caused "actual prejudice or a miscarriage of justice."<sup>8</sup> The Court concluded that Jeffries failed to demonstrate that plain error existed.

#### *Whether the State inappropriately argued that Jeffries influenced Brittany's testimony*

Jeffries argued that the prosecutor committed misconduct by suggesting that Jeffries influenced Brittany's testimony because the prosecutor did not support his assertion with evidence. While a prosecutor may not argue facts or inferences without evidentiary support, a prosecutor may argue inferences drawn from evidence and offer conclusions on challenged matters.<sup>9</sup> On that basis, a prosecutor may explain why a witness is lying.

The Court determined that explaining the relationship between Jeffries and Brittany was important to inferring why Brittany failed to recall details that she initially delivered in prior interviews. Thus, the prosecutor's arguments were appropriate, and the court did not abuse its discretion by denying Jeffries' motion for a mistrial.

### *Juror misconduct*

Jeffries asserted that the district court had a sua sponte obligation to investigate whether prejudice resulted from the juror misconduct based on *Bowman v. State*.<sup>10</sup> The Court disagreed with Jeffries' argument and provided further guidance on *Bowman*.

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<sup>4</sup> Rudin v. State, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004).

<sup>5</sup> Ledbetter v. State, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006).

<sup>6</sup> Butler v. State, 120 Nev. 879, 896, 102 P.3d 71, 83 (2004).

<sup>7</sup> Leonard v. State, 117 Nev. 53, 81, 17 P.3d 397, 414 (2001).

<sup>8</sup> Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

<sup>9</sup> Williams v. State, 103 Nev. 106, 110, 734 P.2d 700, 703 (1987); Miller v. State, 121 Nev. 92, 100, 110 P.3d 53, 59 (2005).

<sup>10</sup> 132 Nev. Adv. Op. 74, 387 P.3d 202.

Under *Meyer v. State*, to successfully motion for a mistrial based on juror misconduct, "the defendant must present admissible evidence sufficient to establish: (1) the occurrence of juror misconduct, and (2) a showing that the misconduct was prejudicial."<sup>11</sup> Prejudice occurs when the juror misconduct likely affected the verdict. Absent an abuse of discretion, the Court will uphold the district court's decision to deny a motion for a new trial based on misconduct.

Like *Bowman*, the juror misconduct in *Jeffries* involved an independent investigation. In *Bowman*, the Court found that the district court erred in denying the defendant's motion for a mistrial because the prejudicial conduct occurred after applying the *Meyer* factors. The Court also concluded that the district court had a sua sponte obligation to provide a jury instruction that prohibits jurors from conducting independent investigations.

Unlike *Bowman*, the district court provided the proper instructions regarding investigations and because the jury revealed the misconduct prior to the verdict, the district court had the opportunity to remedy any prejudice. Because defense counsel knew of the misconduct, requesting an investigation was defense counsel's responsibility, not the court's. Thus, the district court did not have a sua sponte duty to investigate. Accordingly, *Jeffries* failed to demonstrate prejudice warranting a new trial.

#### *Supplemental clarifying jury instructions*

The Court determined that *Jeffries* misunderstood the scope of *Gonzalez v. State* in arguing that the district court abused its discretion by refusing to provide supplemental clarifying instructions. *Gonzalez* states that "in situations where a jury's question during deliberations suggests confusion or lack of understanding of a significant element of the applicable law, the judge has a duty to give additional instructions on the law to adequately clarify the jury's doubt or confusion."<sup>12</sup> There, the jurors' questions went to the heart of the offense at issue and both parties agreed to a clarifying answer.

In *Jeffries*, while the juror's questions concerned a significant element of murder, neither party proffered a supplemental answer. Without proffering a supplemental answer, the Court's reasoning in *Gonzalez* is outside the case's scope. Thus, *Jeffries* failed to show that the district court abused its discretion.

#### **Conclusion**

To prove prosecutorial misconduct, an appellant must show that a prosecutor's statements resulted in a denial of due process; and to prove juror misconduct, an appellant must show that misconduct occurred and that the misconduct was prejudicial. Under *Bowman*, when juror misconduct occurs before the verdict and defense counsel is aware of the misconduct, it is defense counsel's responsibility to request an investigation regarding prejudice. Further, when applying *Gonzalez*, the district court does not abuse its discretion when it refuses to provide further instructions if neither party offers a clarifying answer. Therefore, the Court affirmed *Jeffries*' judgment of conviction.

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<sup>11</sup> *Meyer v. State*, 119 Nev. 554, 563–64, 80 P.3d 447, 455 (2003).

<sup>12</sup> 131 Nev. Adv. Op. 99, 366 P.3d at 682.