

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Jun 06 2016 08:55 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

FREDERICK LEWIS BOWMAN,

No. 67656

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

_____ /

ANSWER TO PETITION FOR REHEARING

COMES NOW, Appellant Mr. Fredrick Bowman, by and through his Counsel Theresa Ristenpart, Esq., and responds to this Court's Order on May 24, 2016 directing Answer to Petition for Rehearing filed by Respondent on May 16, 2016, as follows:

- I. The State erroneously argues that this Court undertook independent fact-finding and must defer to the lower court's conclusions about facts.**

The State's entire argument in its Petition for Rehearing is that this Court should abide by the lower Court's fact-finding conclusions. Matters presented in the briefs and oral arguments may not be reargued in the Petition for Rehearing. NRAP 40(c)(1). The State seemingly chides this Court for "fact-

finding” and incorrectly argues that this Court undertook its own fact-finding. The State also misstates the applicable law, arguing that this Court was prohibited from conducting a *de novo* review.

"Absent clear error, the district court's findings of fact will not be disturbed. However, where the misconduct involves allegations that the jury was exposed to extrinsic evidence in violation of the Confrontation Clause,² *de novo* review of a trial court's conclusions regarding the prejudicial effect of any misconduct is appropriate." *Meyer v. State*, 119 Nev. 554, 561-62, 80 P.3d 447, 453 (2003) (citing *United States v Saya*, 247 F.3d 929, 935 (9th Cir. 2001)).

This Court did not conduct new fact-finding. This Court embraced a comprehensive review of *all* the case facts and record. After reviewing the case facts and record, this Court found that the jury was exposed to extrinsic evidence in the form of two independent investigations performed by different jurors. Therefore, *de novo* review of the trial court's conclusions is appropriate.

The State demands that this Court must abide by the lower court's conclusion that the subsequent testimony was somehow more credible than earlier sworn affidavits from the same jurors. It is evident from the Court's

Order on April 28, 2016, that this Court considered the totality of all facts and evidence regarding the jurors' misconduct. This Court took into account the jurors' initial sworn affidavits, the jurors' subsequent contradictory testimony, and the meeting with the District Attorney investigator that occurred sometime in between the jurors' sworn affidavits and the changed testimony at the motion hearing. *See footnote 1* on this Court's Order. This Court also looked at nature of the experiments along with the timing of the trial, deliberations, and verdict. Based upon a *de novo* review on the totality of the record, this Court came to a different conclusion than the lower court about likely prejudicial effect from the independent experiments.

Most importantly, the State neglects to remember that this Court found that these jurors' experiments would have had a prejudicial effect on the reasonable hypothetical juror. This also factored into the Court's decision.

CONCLUSION

WHEREFORE, Mr. Fredrick Bowman respectfully requests that the State's Petition for Rehearing be summarily denied.

DATED this 6th day of June, 2016.

/s/Theresa Ristenpart
THERESA RISTENPART, Esq.
Attorney for Mr. Fredrick Bowman

VERIFICATION

1. I hereby certify this Answer to Petition for Rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This Answer has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font.

2. I further certify that this Reply complies with the page – or type-volume limitations of NRAP 3C(h)(2) because it is: Proportionately spaced, has a typeface of 14 points and contains 1,040 and does not exceed 15 pages.

3. This Answer complies with the requires of NRAP 40(b)(3) that every factual assertion in the Answer to Petition for Rehearing regarding matters in the record is supported by appropriate references to the record on appeal.

DATED this 6th day of June, 2016.

/s/ Theresa Ristenpart
THERESA RISTENPART

Nevada Bar No. 9665
Theresa@ristenpartlaw.com

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 8th day of June, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Chief Appellate Deputy,
Washoe County District Attorney's Office

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to his last known address:

Frederick Lewis Bowman (#1057893)
Carlin Conservation Camp
Post Office Box 1490
Carlin, Nevada 89822

DATED this 8th day of June, 2016.

/s/ Theresa Ristenpart
THERESA RISTENPART