

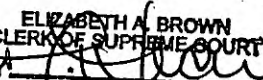
IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL MARISCAL-OCHOA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84670

**FILED**

**AUG 17 2023**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of sexual assault of a child under the age of 14 years and lewdness with a child under the age of 14 years. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.<sup>1</sup>

Appellant Manuel Mariscal-Ochoa argues that the district court should have granted a mistrial after a prospective juror made comments that tainted the venire and deprived him of an impartial jury. We review a district court's decision to deny a motion for a mistrial for an abuse of discretion. *Rose v. State*, 123 Nev. 194, 206-07, 163 P.3d 408, 417 (2007).

The United States and Nevada Constitutions entitle a criminal defendant to a trial before a fair and impartial jury. U.S. Const. amend. VI; Nev. Const. art. 1, § 3; *Azucena v. State*, 135 Nev. 269, 273, 448 P.3d 534, 538 (2019). A defendant's guilt or innocence must be determined "solely on the basis of the evidence introduced at trial, and not on grounds of official

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial.” *Gunera-Pastrana v. State*, 137 Nev. 295, 297, 490 P.3d 1262, 1266-67 (2021) (quoting *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978)). The right to an impartial jury has been violated when there is a possibility that the jurors have been unfairly prejudiced against the defendant by learning of offenses other than those being tried. *Holt v. State*, 987 So. 2d 237, 239 (Fla. Dist. Ct. App. 2008). Where the circumstances are such that we are not convinced that an impartial jury was selected, reversal is appropriate. *See Azucena*, 135 Nev. at 269, 448 P.3d at 536.

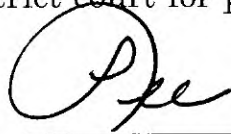
Here, prospective juror Mendoza was asked if she knew Mariscal-Ochoa and answered, “I’m not sure because my sister—I know somebody [sic] else about Manuel, they abused one of my nephews.” She stated further that she thought that she knew Mariscal-Ochoa as her sister’s partner and that she believed he had previously been involved in a similar case. Following a bench conference, the district court excused prospective juror Mendoza and denied Mariscal-Ochoa’s motion for a mistrial and request to strike the venire. Although the prospective juror who originally made the comments was excused for cause, Mariscal-Ochoa nonetheless faced trial before jurors who were in the courtroom when the accusations were made and who may have believed he committed a similar, highly inflammatory offense which he had no ability to rebut. The district court should have disqualified the venire and called for a new array of prospective jurors in this instance. *See Parker v. Clickener*, 387 S.E.2d 587, 589 (Ga. Ct. App. 1989) (reversing where the district court failed to strike the venire after a prospective juror accused the defendant of the same sort of conduct as that with which he was charged). Under these circumstances,

we cannot say that Mariscal-Ochoa was tried before a fair and impartial jury.

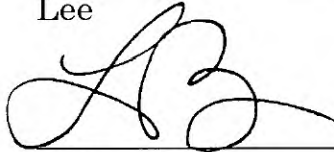
Mariscal-Ochoa raises several other issues on appeal, including that his convictions were not supported by sufficient evidence. We reject the claim of insufficient evidence. *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (providing that in reviewing a challenge to the sufficiency of the evidence, this court considers “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt” (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))). In light of our disposition, we need not address Mariscal-Ochoa’s remaining contentions.

Having concluded that relief is warranted, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



\_\_\_\_\_, J.  
Lee



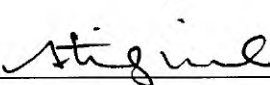
\_\_\_\_\_, J.  
Bell

STIGLICH, C.J., dissenting:

I respectfully disagree that reversal is warranted here. The right to an impartial jury is not violated unless a juror empaneled was unfair or biased. *See Blake v. State*, 121 Nev. 779, 796, 121 P.3d 567, 578 (2005). Exposure to prejudicial information does not deprive a defendant of an impartial jury where the seated jurors indicate that they are able to fairly and impartially render a verdict based upon the trial evidence. *See*

*Sonner v. State*, 112 Nev. 1328, 1336-37, 930 P.2d 707, 712-13 (1996) (concluding that the district court was not obligated to change venue on the basis of extensive pretrial publicity), *modified on reh'g on other grounds by* 114 Nev. 321, 955 P.2d 673 (1998). The district court is “better able to view a prospective juror’s demeanor than a subsequent reviewing court” and is granted broad discretion in determining whether a venire member can act impartially. *Leonard v. State*, 117 Nev. 53, 67, 17 P.3d 397, 406 (2001).

Following its bench conference, the district court concluded that the venire did not need to be disqualified after finding that prospective juror Mendoza’s comments were confusing and hazy and did not appear to impact any other prospective juror. The record further supports the finding that the comments did not “taint” the venire, as the jurors who were ultimately empaneled discussed their personal opinions and experiences relevant to the charged offenses in voir dire without suggesting that Mendoza’s earlier comments predisposed them against Mariscal-Ochoa or impaired their abilities to fairly consider the evidence presented at trial. Indeed, the empaneled jurors each attested that they would act in a fair and impartial fashion. Given that Mariscal-Ochoa has not shown that any empaneled juror was not impartial, I would conclude that he has not shown the district court abused its discretion in denying the mistrial motion or proceeding with the venire. Therefore, I respectfully dissent.

  
\_\_\_\_\_, C.J.  
Stiglich

cc: Hon. Barry L. Breslow, District Judge  
Karla K. Butko  
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Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk