


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATHY CARLENE STEELE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89231-COA

FILED

JUN 03 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kathy Carlene Steele appeals from a judgment of conviction entered pursuant to a jury verdict of aggravated stalking, battery with the use of a deadly weapon, and assault with the use of a deadly weapon. Second Judicial District Court, Washoe County; Robert E. Estes, Senior Judge.

Aliks and Julia Mineikis own the surface rights to property in Washoe County. After they purchased the surface rights, Steele contacted them as she owned the mineral and water rights to the property. However, Steele's contact with Aliks and Julia grew increasingly problematic, as she began sending emails containing threats to the couple. Steele's behavior escalated, and she was ultimately convicted of several misdemeanor offenses as a result of her contacts with Aliks and Julia, along with being ordered to have no contact with them for a period of time.

Shortly after the expiration of the no contact order, Steele emailed Julia, stating she was soon coming to the property and that she would be coming armed. A few days later, Aliks and Julia were on the property to oversee construction of a residence when Steele arrived. Aliks

approached Steele and Steele sprayed him with pepper spray. Julia also approached Steele and later testified that Steele hit her in the chest with what she thought was a hammer. Aliks was unable to see after the pepper spray attack and had difficulty breathing, and he was therefore transported to a hospital for treatment. Julia photographed her injuries resulting from the hammer attack, as she sustained bruising and swelling. The photograph depicting Julia's injuries was admitted at trial.

Steele returned to the property the next day. Aliks later testified that Steele, from outside of the fence, sprayed the pepper spray in his direction but she was too far away to reach him. Steele left after that incident but later returned to the property. This time, Steele climbed over the fence and, once on the property, she attempted to spray the couple's dogs with pepper spray but her canister ran out. Aliks later testified that his young child was beside him at that time and, after her canister of pepper spray ran out, Steele threw rocks at him and his child. Steele thereafter left the property and drove away in her vehicle.

Aliks called 9-1-1 and sheriff's deputies located Steele in her vehicle not far from the Mineikis's property. A deputy searched Steele's vehicle and discovered both pepper spray and a hammer located within reach of the driver's seat.

The State subsequently charged Steele with aggravated stalking, battery with the use of a deadly weapon, and assault with the use of a deadly weapon. This matter proceeded to trial and, during the second day of trial, Steele's counsel informed the district court it appeared to them that a juror had been asleep during a portion of the previous day's proceeding. The district court responded, stating that it had watched the

jurors carefully during the previous day and did not find that the juror had been sleeping. The court explained that the relevant juror had looked as if he had been asleep when he was actually looking down at his notepad and the court could tell that the juror had not been sleeping because the juror had been taking notes. Accordingly, the district court declined to excuse the juror.

The jury subsequently convicted Steele of all counts. Steele thereafter filed a motion for a new trial, contending that a new trial was warranted because the juror had been asleep. The State opposed the motion and argued that the juror had not been asleep and that Steele was unable to demonstrate prejudice stemming from juror misconduct. The district court later entered a written order denying the motion for a new trial. Thereafter, the court sentenced Steele to serve terms totaling 36 to 79 months in prison but suspended the sentence and placed Steele on probation for a term not to exceed 36 months. The district court also required Steele to pay several fees, including a \$1,000 fee for her appointed legal representation. This appeal followed.

First, Steele argues the district court abused its discretion by denying her request to replace a sleeping juror without conducting an adequate inquiry. Steele also contends the district court abused its discretion by denying her motion for a new trial based on the sleeping juror without conducting an evidentiary hearing.

We review a district court's decision concerning a claim of juror misconduct "for an abuse of discretion, and absent clear error, we will not disturb the district court's findings of fact." *Maestas v. State*, 128 Nev. 124, 138, 275 P.3d 74, 83 (2012) (quotation marks and brackets omitted); *see also*

Burnside v. State, 131 Nev. 371, 387, 352 P.3d 627, 639 (2015) (reviewing a district court's rejection of a claim of a sleeping juror for an abuse of discretion); *Meyer v. State*, 119 Nev. 554, 561, 80 P.3d 447, 453 (2003) (reviewing a district court's denial of a motion for a new trial based upon juror misconduct for abuse of discretion). "To obtain a new trial based on juror misconduct, the defendant must establish that (1) misconduct occurred and (2) the misconduct was prejudicial." *Maestas*, 128 Nev. at 138, 275 P.3d at 84; *see also Vandecar v. State*, No. 61649, 2015 WL 918764, *2 (Nev. Mar. 2, 2015) (Order of Affirmance) (stating "appellant must demonstrate that the juror in question actually slept during the trial and that appellant was prejudiced by this misconduct" to obtain a new trial concerning an allegation of a sleeping juror).

Moreover, "the trial court's own contemporaneous observations of the juror may negate the need to investigate further by enabling the court to take judicial notice that the juror was not asleep or was only momentarily and harmlessly so." *Burnside*, 131 Nev. at 387, 352 P.3d at 639. The Nevada Supreme Court also explained that further investigation into an allegation of a sleeping juror was unwarranted when a defendant failed to "bring the matter to the district court's attention when the juror was believed to be sleeping, but waited until sometime later," did not explain how long the juror had been sleeping, did not "identify what portions of the trial or critical testimony the juror had missed," or "specify any resulting prejudice." *Id.*

As explained previously, the district court made contemporaneous observations of the juror and concluded that the juror had not been sleeping. In addition, Steele did not raise this issue when she

believed the juror had been sleeping, but rather waited until the following day to advise the district court of her concerns. Finally, Steele did not identify what portions of the trial or any testimony the juror may have missed or explain how she had been prejudiced. And, considering the district court's observations of the juror and its finding that the juror was not sleeping, together with "the totality of the surrounding circumstances, we cannot fault the district court's handling of the situation." *Id.* Accordingly, we conclude the district court did not abuse its discretion by declining to remove the relevant juror or by denying Steele's motion for a new trial without further investigation into this allegation or conducting an evidentiary hearing.

Second, Steele argues the district court committed plain error by requiring her to pay reimbursement fees related to expenses for her appointed counsel without making findings concerning her ability to pay. Steele acknowledges she did not raise this argument before the district court. However, she contends she was indigent and the district court should have conducted a hearing to ascertain her ability to pay the appointed counsel fees.

Steele did not raise this claim below; thus, we review for plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). To demonstrate plain error, an appellant must show "(1) there was an 'error'; (2) the error is 'plain,' meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights." *Id.* "A district court may order a defendant to pay all or part of the expenses that the state incurred by providing the defendant with an attorney, but must consider the defendant's financial resources and

the burden the payment will cause.” *Truesdell v. State*, 129 Nev. 194, 204-05, 304 P.3d 396, 403 (2013) (citing NRS 178.3975(1)). However, a defendant that has been ordered to pay such fees may generally petition the sentencing court at any time for remission of those fees if they “impose manifest hardship on the defendant or the defendant’s immediate family.” NRS 178.3975(3); *see also Truesdell*, 129 Nev. at 205 & n.3, 304 P.3d at 403 & n.3 (holding a district court’s failure to make specific findings concerning an appellant’s ability to pay indigent defense fees did not raise to plain error as the failure did not affect the appellant’s substantial rights and noting the appellant could petition for remission of those fees pursuant to NRS 178.3975(3)).

Here, Steele did not challenge the imposition of the appointed counsel fee before the district court or request an evidentiary hearing concerning her ability to pay such fees. During the sentencing hearing, the district court stated that it had reviewed the presentence investigation report (PSI) and was familiar with its contents. And the PSI stated that Steele was retired but worked part-time for her window washing business and had thousands of dollars in assets. The PSI further stated under the category of potential fees based on defendant’s ability to pay, “Attorney Fee: \$1,000.” As the district court stated it reviewed the PSI, the record indicates the district court considered Steele’s financial status.


In light of her failure to raise this issue before the district court, it is not plain from the record that the district court failed to consider her financial resources prior to imposition of this fee. Moreover, Steele may petition the district court at any time for relief from her appointed counsel fee obligation, *see* NRS 178.3975(3), and Steele thus fails to demonstrate

error affecting her substantial rights stemming from the court's imposition of the aforementioned fee without first conducting an evidentiary hearing concerning her ability to pay such fees. Accordingly, we conclude Steele fails to meet her burden of demonstrating plain error in this regard. Accordingly, we


ORDER the judgment of conviction AFFIRMED.¹


_____, C.J.

Bulla


_____, J.

Gibbons


_____, J.

Westbrook

cc: Chief Judge, Second Judicial District Court
Hon. Robert E. Estes, Senior Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹Insofar as Steele raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.