

SUPREME COURT OF NEVADA

Zana v. State

125 Nev. 541 (2009) (Nev. 2009) · No. No. 50786 · Decided September 24, 2009

SUMMARY

The Supreme Court of Nevada affirmed Mark R. Zana's convictions for lewdness with a child and possession of visual representations depicting sexual conduct involving a person under 16. The court held that testimony concerning prior conduct was admissible despite related proceedings having been sealed or expunged, so long as the testimony was limited to witnesses' personal experiences and did not reference the proceedings. It also held that a juror's unauthorized Internet search did not prejudice the verdict and that the lewdness and pornography charges were properly joined because the evidence was cross-admissible.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Douglas, J.; Hardesty, C.J.; Parraguirre, J.; Cherry, J.; Saitta, J.; Gibbons, J.; Pickering, J.
JURISDICTION	Nevada
DECIDED	September 24, 2009
DOCKET	No. 50786
DISPOSITION	affirmed
PROCEDURAL POSTURE	Zana appealed his convictions for lewdness with a child under the age of 14 and possession of visual representations depicting sexual conduct of a person under the age of 16. He challenged the admission of prior-bad-act testimony concerning sealed or expunged proceedings, the denial of a mistrial based on juror misconduct, and the denial of his motion to sever the lewdness and pornography counts.
STANDARD OF REVIEW	Admission of evidence concerning prior bad acts and joinder or severance decisions are reviewed for abuse of discretion. Denial of a new trial based on juror misconduct is reviewed for abuse of discretion, with factual findings reviewed for clear error; when the alleged misconduct involves extrinsic evidence and the Confrontation Clause, the prejudicial-effect determination is reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion

TOPICS

evidence

criminal procedure

appellate procedure

harmless error

standard of review

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether testimony about a defendant's prior conduct may be admitted when the related criminal proceedings were sealed or expunged.
2. Whether a juror's independent Internet search constituted prejudicial misconduct requiring a new trial or mistrial.
3. Whether the district court abused its discretion by refusing to sever the lewdness counts from the pornography-possession counts when the evidence was mutually cross-admissible.

HOLDINGS

1. A court may admit testimony confined to a witness's personal experience of a defendant's prior conduct even when the resulting criminal proceedings were sealed or expunged, provided the witness does not rely on or disclose the sealed or expunged court proceedings.
2. A juror's independent Internet search for a website mentioned during trial constituted the use of extrinsic evidence and violated the Confrontation Clause, but the unsuccessful and ambiguous search did not prejudice the verdict and therefore did not require a new trial or mistrial.
3. The district court did not abuse its discretion by denying severance because evidence of the lewdness charges and evidence of the pornography charges were mutually cross-admissible in separate trials.

KEY QUOTATIONS

"It is clear, however, that such authorized disavowals cannot erase history. Nor can they force persons who are aware of an individual's criminal record to disregard independent facts known to them." (247)

"However, we conclude that one juror's inability to locate a website mentioned during trial is not so prejudicial as to necessitate a new trial." (249)

FACTUAL BACKGROUND

Zana, a fifth-grade teacher, was accused by six female students of touching their breasts or inviting them to place a hand in his pocket to obtain candy. Investigators also uncovered allegations from 1992 in Pennsylvania and 1998 in Henderson, Nevada; the Pennsylvania proceedings were expunged and the Henderson proceedings were sealed. Police later found pornographic images of young females on Zana's computer, and the State charged him with lewdness and possession of child pornography. During deliberations, one juror conducted an unsuccessful Internet search for a pornographic website mentioned at trial and reported the search to the other jurors.

PROCEDURAL HISTORY

The State charged Zana with nine counts of lewdness with a child under the age of 14 and twelve counts of possession of visual representations depicting sexual conduct of a person under the age of 16. The district court admitted testimony from alleged victims of two prior incidents but limited the testimony to the witnesses' personal experiences and excluded references to the sealed or expunged court proceedings. After a juror conducted an Internet search related to evidence discussed at trial, the district court found misconduct but no prejudice and denied a mistrial. The district court also denied severance of the lewdness and pornography counts, and Zana appealed his judgment of conviction.

DISPOSITION

affirmed

CASES CITED

- Yllas v. State, 112 Nev. 863, 867, 920 P.2d 1003, 1005 (1996)
- Baliotis v. Clark County, 102 Nev. 568, 569-71, 729 P.2d 1338, 1339-40 (1986)
- Walker v. Dist. Ct., 120 Nev. 815, 820, 101 P.3d 787, 791 (2004)
- Meyer v. State, 119 Nev. 554, 561-62, 565-68, 80 P.3d 447, 453, 456-58 (2003)
- Tillema v. State, 112 Nev. 266, 268, 914 P.2d 605, 606 (1996)
- Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990)
- Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989)
- Robinson v. United States, 459 F.2d 847, 855-56 (D.C. Cir. 1972)