

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

RACHEL VELIE,
Appellant,

v.

WALMART STORES EAST, LP,
Appellee.

No. 4D2025-0679

[August 19, 2026]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Okeechobee County; Laurie E. Buchanan, Judge; L.T. Case No. 472022CA000205CAAXMX.

Grace Mackey Streicher and Andrew A. Harris of Harris Appeals, P.A., Palm Beach Gardens, for appellant.

Jack R. Reiter and Eric Yesner of GrayRobinson, P.A., Miami, for appellee.

PER CURIAM.

Rachel Velie appeals an order granting Walmart Stores East, LP's motion for new trial following a jury verdict in her favor. The trial court concluded that the cumulative effect of several events occurring during trial deprived Walmart of a fair and impartial trial. We conclude that the record does not support a finding that the complained-of conduct prejudiced Walmart or resulted in a miscarriage of justice. Accordingly, we reverse the order granting a new trial. We affirm the trial court's determination that no additional evidentiary hearing was required before ruling on the motion.

Background

Velie sued Walmart after she was struck by a pallet jack operated by a Walmart employee while shopping in one of Walmart's stores. Following a five-day jury trial, the jury found Walmart one hundred percent liable and awarded Velie damages totaling \$6,786,517.61.

During the testimony of one of Velie's treating physicians, Velie's counsel displayed a medical demonstrative depicting alleged brain injuries. One juror became visibly ill, stating that she felt she was going to "throw up" and could not continue viewing the images. The trial court immediately excused the jury, denied Walmart's motion for mistrial, removed the juror, replaced her with an alternate, and instructed the remaining jurors not to consider the juror's reaction.

Shortly thereafter, the jury submitted a note asking whether Velie's medical outcome would have been different had she received treatment immediately following the accident. Concerned that the note suggested the jurors had discussed the evidence before deliberations, Walmart again moved for a mistrial. The trial court denied the motion, issued a curative instruction reminding the jurors not to discuss the case before deliberations, and later conducted a juror interview regarding the discussions.

During the interview, jurors acknowledged limited discussions concerning the evidence and witness testimony. The jurors, however, denied debating the merits of the case, attempting to persuade one another, or reaching conclusions concerning liability or damages. The jurors likewise denied exposure to outside information.

Following the verdict, Walmart moved for a new trial. Although the trial court had denied Walmart's contemporaneous motions for mistrial, it later granted the motion for new trial based upon the totality of the circumstances, including the juror's reaction to the medical demonstrative, the jurors' mid-trial discussions, confusion concerning the trial court's instructions, and concerns arising from the juror interview.

Discussion

We review an order granting a new trial for abuse of discretion. *England v. State*, 940 So. 2d 389, 402 (Fla. 2006).

"[S]uch motions are granted in the exercise of a sound, broad discretion [and] the ruling should not be disturbed in the absence of a clear showing that it has been abused." *Smith v. Brown*, 525 So. 2d 868, 869 (Fla. 1988) (citations omitted). "The appellate court should apply the reasonableness test to determine whether the trial judge abused his discretion, to wit, 'discretion is abused only where no reasonable [person] would take the view adopted by the trial court.'" *Allstate Ins. Co. v. Manasse*, 707 So. 2d 1110, 1111 (Fla. 1998) (quoting *Huff v. State*, 569 So. 2d 1247, 1249 (Fla. 1990)).

We also recognize that an order granting a new trial is entitled to more deference and requires a stronger showing of error in order to reverse. *See, e.g., State Farm Fire and Cas. Co. v. Higgins*, 788 So. 2d 992, 1006 (Fla. 4th DCA 2001) (noting that “a stronger showing is required to reverse an order allowing a new trial than to reverse an order denying a motion for new trial.”) (quoting *Cenvill Cmtys., Inc. v. Patti*, 458 So. 2d 778, 781 (Fla. 4th DCA 1984)); *Krolick v. Monroe ex rel. Monroe*, 909 So. 2d 910, 913–94 (Fla. 2d DCA 2005) (“Historically, however, it has taken a greater showing to reverse an order granting a new trial than one denying a new trial.”) (citing *Manasse*, 707 So. 2d 1110).

But while trial courts possess broad discretion in ruling on motions for new trial, that discretion is not unbounded. *See Cloud v. Fallis*, 110 So. 2d 669, 673 (Fla. 1959). Section 59.041, Florida Statutes (2024), prohibits the granting of a new trial unless the error complained of resulted in a miscarriage of justice. Thus, even where a trial court identifies irregularities occurring during trial, the record must support a conclusion that the complained-of conduct prejudiced the moving party. *See Fla. Power Corp. v. Smith*, 202 So. 2d 872, 878 (Fla. 2d DCA 1967).

“Prejudice as a result of juror misconduct is a ground for granting a new trial.” *Green v. State*, 397 So. 3d 73, 74 (Fla. 4th DCA 2024) (citation and internal quotation marks omitted). “When juror misconduct is established, the moving party is entitled to a new trial *unless* the opposing party can demonstrate that there is no reasonable possibility that the juror misconduct affected the verdict.” *Id.* (quotations omitted); *see also Naugle v. Philip Morris USA, Inc.*, 133 So. 3d 1235, 1237 (Fla. 4th DCA 2014) (“Under the *Hamilton* standard, the moving party must first establish actual juror misconduct. The movant is entitled to a new trial unless the opposing party can demonstrate that there is no reasonable possibility that the juror misconduct affected the verdict.”) (citations omitted); *Baptist Hosp. of Miami, Inc. v. Maler*, 579 So. 2d 97, 99 (Fla. 1991) (citing *Hamilton*, 574 So. 2d at 124). “Not every irregularity which would subject a juror to censure should overturn the verdict. In order to authorize the setting aside of a verdict on account of misconduct of the jury, it must appear that such misconduct may have had an influence upon the final result, and caused injury to the complaining party.” *James v. State*, 843 So. 2d 933, 936–37 (Fla. 4th DCA 2003) (quotation omitted).

The first incident relied upon by the trial court involved the juror’s reaction to the medical demonstrative. The juror stated that she felt ill and could not continue viewing the exhibit. The trial court immediately excused the juror, replaced her with an alternate, and instructed the

remaining jurors not to consider the incident.

A new trial based upon juror misconduct or irregularity is warranted where the conduct “may have had an influence upon the final result.” *James v. State*, 843 So. 2d 933, 936–37 (Fla. 4th DCA 2003) (quoting *State v. Rodgers*, 347 So. 2d 610, 613 (Fla. 1977)). Here, the record contains no evidence that the juror’s reaction influenced any remaining juror or affected the verdict. Indeed, the trial court contemporaneously denied Walmart’s motion for mistrial, reflecting its determination that any potential prejudice had been cured.

Florida courts have repeatedly recognized that isolated incidents occurring in the presence of a jury do not warrant a mistrial or new trial where the trial court takes prompt curative action and prejudice is not shown. See *Doyle v. State*, 460 So. 2d 353, 356–57 (Fla. 1984); *Arbelaez v. State*, 626 So. 2d 169, 176 (Fla. 1993). The circumstances here are less severe than those presented in *Doyle* and *Arbelaez*. The juror did not express any opinion concerning liability, causation, or damages, nor did she advocate a position regarding the merits of the case. Because the juror was removed and replaced and the remaining jurors were instructed to disregard the incident, the record does not support a finding that the event affected the verdict or resulted in a miscarriage of justice.

Nor does the record support the trial court’s conclusion that the jurors engaged in improper premature deliberations. The jury note asked whether earlier medical treatment would have altered Velie’s medical outcome. While the note reflected that jurors had discussed the evidence before deliberations, the subsequent juror interview established that the discussion was limited and did not involve debate concerning liability, causation, or damages. Jurors repeatedly described the discussion as brief and nonsubstantive, denied attempting to persuade one another, and denied reaching conclusions concerning the merits of the case.

Not every mid-trial discussion constitutes improper premature deliberation. See *Sheppard v. State*, 151 So. 3d 1154, 1172 (Fla. 2014); *Reaves v. State*, 826 So. 2d 932, 943 (Fla. 2002). A presumption of prejudice arises only where jurors express opinions about the merits of the case, attempt to influence one another, or otherwise engage in substantive deliberations before the case is submitted. See *Sheppard*, 151 So. 3d at 1172.

That did not occur here. The jurors did not discuss a potential verdict. They did not express opinions regarding liability or damages. Rather, the record reflects that they formulated a question concerning evidence being

presented through an expert witness. Although the discussions violated the trial court's instruction not to discuss the case before deliberations, the record does not demonstrate that the discussions affected the verdict.

This case is more akin to *Key v. State*, 179 So. 3d 513 (Fla. 4th DCA 2015), where this Court concluded that limited juror discussions concerning the evidence did not warrant relief because the discussions involved no extrinsic information and did not demonstrate that jurors had reached a predetermined decision. *Id.* at 516–17. Unlike *Green v. State*, 397 So. 3d 73 (Fla. 4th DCA 2024), the jurors here were not exposed to outside information and did not receive extrinsic evidence relevant to the issues being decided.

The trial court also expressed concern regarding juror confusion concerning the court's instructions and statements allegedly made by the bailiff. The juror interview, however, revealed no exposure to extrinsic information and no improper outside influence. At most, the record reflects confusion concerning when jurors were permitted to discuss the evidence. Any such confusion was promptly addressed by the trial court through additional instructions clarifying that jurors were not permitted to discuss the case until deliberations. Jurors are presumed to follow the court's instructions. *See Sutton v. State*, 718 So. 2d 215, 216 (Fla. 1st DCA 1998).

Likewise, the record does not support granting a new trial based upon the manner in which the juror interview was conducted. The interview was conducted by the trial court in the presence of counsel and was undertaken at Walmart's request. The interview revealed no extrinsic influence, no improper outside information, and no evidence that any juror had formed a fixed opinion regarding the outcome of the case.

Finally, we reject the trial court's conclusion that the cumulative effect of these events warranted a new trial. While a trial court may consider the totality of the circumstances, cumulative error does not exist where the underlying claims are harmless or unsupported by a showing of prejudice. *See Smith v. State*, 320 So. 3d 20, 33 (Fla. 2021).

Here, the record reflects an isolated juror reaction that was immediately cured, limited juror discussions that did not rise to the level of premature deliberations, no exposure to extrinsic information, no improper outside influence, and repeated curative measures by the trial court. Even when viewed collectively, the incidents identified by the trial court do not establish that the verdict was affected or that a miscarriage of justice occurred. *See* § 59.041, Fla. Stat. (2024).

Although the trial court expressed legitimate concerns regarding the events that occurred during trial, the record does not demonstrate that those events deprived Walmart of a fair and impartial trial. Because the record fails to demonstrate prejudice sufficient to warrant setting aside the jury's verdict, the trial court erred in granting a new trial.

Velie also argues that the trial court was not required to conduct an additional evidentiary hearing before ruling on Walmart's motion for new trial. We agree.

Florida Rule of Civil Procedure 1.530 does not require an evidentiary hearing before a trial court rules on a motion for new trial. *Aubourg v. Erazo*, 922 So. 2d 1106, 1107-08 (Fla. 4th DCA 2006). Rather, a trial court may resolve a motion for new trial based upon the existing record and the parties' written submissions. *Id.*

Moreover, the factual basis for Walmart's motion had already been developed during the contemporaneous juror interview conducted by the trial court. The trial court personally observed the events at issue, interviewed the jurors concerning the alleged misconduct, and developed a record addressing the circumstances underlying the motion. Thus, unlike cases involving undeveloped allegations of juror misconduct, the trial court possessed an adequate factual record upon which to rule.

Accordingly, although the trial court ultimately erred in granting a new trial, it was not required to conduct an additional evidentiary hearing before ruling on the motion.

We reverse the order granting a new trial and remand with instructions that the trial court reinstate the jury's verdict. We affirm the trial court's determination that no additional evidentiary hearing was required before ruling on the motion for new trial.

Affirmed in part, reversed in part, and remanded.

CIKLIN and KLINGENSMITH, JJ., concur.

CIKLIN, J., concurs specially with opinion.
LOTT, J., dissents with separate opinion.

CIKLIN, J., concurring specially.

I fully concur in the majority opinion. I write separately only to emphasize the narrow basis for my agreement.

Few principles of appellate review are more firmly established than the broad discretion afforded a trial judge in ruling on a motion for new trial. Trial judges occupy a unique vantage point unavailable to an appellate court. They observe the witnesses, the jurors, the attorneys, and the overall atmosphere of the courtroom in a way that a written record can rarely, if ever, fully convey. They are called upon to make difficult (and sometimes rapid) decisions in real time, often under circumstances that cannot be fully appreciated from a cold record. That reality explains—and justifies—the extraordinary deference appellate courts traditionally afford their discretionary rulings.

That deference, however, is not without limits. Our review is not merely ceremonial, nor is it satisfied by simply acknowledging the trial court's superior vantage point. The Legislature has determined that a new trial may not be granted unless the complained-of error resulted in a miscarriage of justice. § 59.041, Fla. Stat. Thus, while our review is highly deferential, it nevertheless requires us to determine whether the record supports the legal conclusion that the irregularities identified by the trial court were sufficiently prejudicial to justify setting aside a jury's verdict.

This case illustrates the distinction. The trial court was unquestionably in the best position to observe the events as they unfolded, and I do not question either the court's sincerity or its thoughtful exercise of discretion. Nevertheless, after careful review of the record, I agree with the majority that the record does not establish the degree of prejudice necessary to satisfy the statutory standard for ordering a new trial.

Respect for trial court discretion and meaningful appellate review are not competing principles. They are complementary ones. We owe substantial deference to the trial judge's assessment of the proceedings, but we also have an obligation to ensure that the legal prerequisites for disturbing a jury's verdict have been satisfied. Because I conclude they were not here, I concur.

LOTT, J., dissenting.

I would affirm the decision of the trial court under the extremely deferential standard of review (correctly set forth in the panel's opinion). Here, a juror caused the trial to grind to a halt when she stated she was going to throw up after seeing an exhibit; it's not clear from the cold transcript whether the resulting scene was mundanity or pandemonium. Regardless, the jury thereafter engaged in actual misconduct by having communications among themselves and with the bailiff. The trial court was in a unique position to assess the jurors' credibility during the ensuing interview and assess whether all of the issues in the context of the whole trial resulted in prejudicial error. Even if I may not have made the same decision as the trial judge, I cannot say that "no reasonable [person] would take the view adopted by the trial court." *Manasse*, 707 So. 2d at 1111 (quoting *Huff*, 569 So. 2d at 1249).

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Not final until disposition of timely-filed motion for rehearing.