

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A18-0358

A18-0742

Cindy Moshier,
Appellant,

vs.

Roger B. Jarvis,
Respondent.

**Filed March 11, 2019
Affirmed
Jesson, Judge**

Wright County District Court
File No. 86-CV-16-3867

Rene L'Esperance, Natalie Feidt, L'Esperance & Feidt, LLC, Hortonville, Wisconsin (for appellant)

Paul A. Rajkowski, Steven A. Bader, Rajkowski Hansmeier LTD, St. Cloud, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Halbrooks, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Appellant Cindy Moshier, who was injured in a car accident caused by respondent Roger Jarvis, appeals the district court's denial of her motions for a new trial and a *Schwartz* hearing. Moshier further challenges the district court's application of the

collateral-source statute and calculations for cost-shifting under rule 68 of the Minnesota Rules of Civil Procedure. Because we discern no abuse of discretion in the district court's denial of Moshier's motions and conclude that the district court reached the correct result when applying the collateral-source statute and rule 68, we affirm.

FACTS

In 2012, appellant Cindy Moshier was riding with her husband near Highway 37 and Ames Road. Respondent Roger Jarvis—who was making a left-hand turn—collided with the Moshiers' vehicle in an almost head-on manner, causing the Moshiers' car to speed off the road into a ditch. The car's airbags deployed, causing significant bruising to Moshier's stomach, right shoulder, and left breast. Moshier's husband was transported to the hospital, but Moshier did not go to the hospital until a few days later to get her injuries evaluated.¹

Jarvis conceded liability for the accident. And in late 2017, a trial began on the issues of causation and damages. Moshier testified that as a result of the car accident, she suffers from significant neck pain, post-traumatic stress disorder (PTSD), and some memory loss. According to Moshier, she tried several treatments to help her neck pain, including physical therapy, six weeks of chiropractic care, and consultation and treatment from a pain management doctor. After the accident, Moshier stated that she was unable to work because of physical and mental health problems resulting from the accident and because her boss at a new job was a bully. Although Moshier maintained that her neck

¹ Moshier's husband settled his claim against Jarvis during mediation and is not part of this appeal.

pain worsened significantly after the car accident, she also testified about previous issues with neck pain resulting from a three-wheeler accident, a previous car accident, and fibromyalgia. But Moshier testified that as a result of the 2012 collision with Jarvis, she cannot get in a car or enjoy the things she used to. According to Moshier, her children and husband are worried about her becoming a recluse.

In support of her case, Moshier presented testimony from a witness to the accident, her husband, and two expert witnesses. Moshier's pain management doctor testified that he believed Moshier's injuries from the accident were an aggravation of pre-existing injuries and that he did not feel that she was back to her pre-accident condition. He further testified that that he believed Moshier had reached "maximum medical improvement" and did not need further treatment, could do light work, and lead a fairly normal life. Moshier also presented testimony from a clinical psychologist who diagnosed her with PTSD and a cognitive disorder with some memory impairment. The clinical psychologist testified that she believed these conditions resulted from the car accident, that Moshier had permanent psychological injury, and that she could not work in a competitive environment.

Jarvis presented his own expert witness, a pain management doctor who testified that Moshier's injury from the car accident would have resolved in six to twelve weeks and continued to slowly get better with time. Jarvis's expert testified that there was no evidence Moshier would need further treatment. She also testified that Moshier could work. This expert did not dispute that Moshier had PTSD but testified that the PTSD did not stem from the car accident.

Before the case was submitted to the jury, the parties discussed the proper wording of the special verdict form with respect to the tort threshold for recovery under the Minnesota No-Fault Automobile Insurance Act. Moshier objected to the use of the phrase “diagnostic testing” instead of “diagnostic x-rays” on the special verdict form. The district court left the phrasing on the special verdict form as “diagnostic testing” but used the phrase “diagnostic x-rays” when reading the instructions to the jury. After deliberating, the jury found that Jarvis’s negligence was a direct cause of the vehicle collision and, as a result, Moshier sustained a disability for 60 days or more. Accordingly, the jury awarded Moshier: \$10,000 for past healthcare expenses excluding diagnostic testing; \$2,000 for past healthcare expenses for diagnostic testing; \$2,500 for past pain, disfigurement, disability, and emotional distress; and \$500 for past wage loss. The verdict totaled \$15,000. The jury did not award Moshier damages for future suffering or diminished earning capacity.

After trial, Moshier learned that the jury foreperson failed to disclose a prior felony conviction during voir dire. Moshier moved for a *Schwartz* hearing² and a new trial as a result of juror misconduct, but the district court denied that motion. Moshier also moved for a new trial on the basis of other errors of law, which the district court denied as well.

Shortly after the trial, the district court found that Moshier was the prevailing party but that her award needed to be reduced by any collateral source payments. After reducing Moshier’s award to account for benefits she received from her automobile insurance, the

² “A [*Schwartz*] hearing is a posttrial hearing in which jurors are examined under oath to address concerns of juror misconduct.” *Pajunen v. Monson Trucking, Inc.*, 612 N.W.2d 173, 174 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000).

district court concluded that her net award was \$0. The court further found that Jarvis was able to recover his costs and disbursements because he made a total-obligation offer pursuant to rule 68 of the Minnesota Rules of Civil Procedure that exceeded the jury verdict. Accordingly, the district court entered judgment in favor of Jarvis in the net amount of \$2,367.30. Moshier appeals.³

DECISION

Automobile accidents can often cause severe economic and noneconomic distress to victims if they are not compensated for their injuries. See Minn. Stat. § 65B.42(1) (2018). Recognizing this problem, the legislature enacted the Minnesota No-Fault Automobile Insurance Act to ensure that automobile accident victims receive “prompt payment” for specific basic costs like medical expenses, income loss, or funeral expenses. *Id.*; Minn. Stat. § 65B.44 (2018). But, to prevent the overcompensation of individuals suffering minor injuries, the statute establishes certain tort thresholds that victims must meet in order to recover additional noneconomic damages such as compensation for pain and suffering. Minn. Stat. § 65B.42(2), .51, subd. 3 (2018).

In addition to preventing overcompensation, the Minnesota No-Fault Insurance Act also seeks to avoid double recovery. Minn. Stat. § 65B.42(5) (2018). It does so by providing that in cases where a car accident victim has been compensated for their injuries by a collateral source, any subsequent award from a court must be reduced by that amount.

³ Moshier timely filed a notice of her appeal of the denial of her motion for a new trial. After the district court determined collateral sources and rule 68 cost-shifting calculations, Moshier appealed those determinations. This court granted her motion to consolidate her appeals.

Minn. Stat. § 65B.51, subd. 1 (2018); *see also* Minn. Stat. § 548.251, subd. 1 (2018) (defining collateral sources).

With this statutory framework in mind, we turn to Moshier's arguments. First, Moshier argues that the district court abused its discretion in denying her motion for a new trial, in part because of erroneous jury instructions explaining the tort thresholds Moshier needed to meet to recover noneconomic damages. Once Moshier received a jury award, she contends that the district court improperly applied the collateral-source statute when reducing her award to prevent double recovery. After the district court calculated Moshier's net verdict, she further maintains that the district court incorrectly applied the cost-shifting procedures of rule 68 of the Minnesota Rules of Civil Procedure. And finally, according to Moshier, the district court erred by not granting a *Schwartz* hearing or new trial on the basis of alleged juror misconduct. We review each argument in turn.

I. The district court did not abuse its discretion by denying Moshier's motion for a new trial.

Moshier first argues that the district court incorrectly denied her motion for a new trial. Specifically, Moshier alleges that a new trial is warranted based on the district court's erroneous special verdict form and because the jury rendered a verdict contrary to the weight of the evidence.

A new trial may be granted for reasons including errors of law objected to at trial or if the verdict is contrary to law or not justified by the evidence. Minn. R. Civ. P. 59.01(f), (g). We review the decision to deny a new trial for an abuse of discretion. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018).

The special verdict form

Moshier contends that the district court erred as a matter of law in its construction of the special verdict form and that, as a result, a new trial is warranted. According to Moshier, the district court should have used a separate jury interrogatory to determine if she met the tort threshold required by Minnesota’s No-Fault Automobile Insurance Act, and it was error for the district court to use the phrase “diagnostic testing” instead of “diagnostic x-rays” on the special verdict form.

Minnesota’s No-Fault Automobile Insurance Act allows the recovery of noneconomic damages—which includes compensation for pain and suffering, loss of consortium, and inconvenience—only in certain cases. Minn. Stat. § 65B.51, subd. 3. Among those cases are instances where the plaintiff’s statutorily outlined damages exceed \$4,000 or the plaintiff’s injury resulted in a disability for 60 days or more. *Id.* Accordingly, in order to recover noneconomic damages, a plaintiff must prove that she satisfied this tort threshold required by the statute. *Nemanic v. Gopher Heating & Sheet Metal, Inc.*, 337 N.W.2d 667, 670 (Minn. 1983). If an issue is raised regarding whether the tort threshold requirement was satisfied, “the question should be submitted to the jury as part of the special verdict.” *Id.* at 670 (citing *Murray v. Walter*, 269 N.W.2d 47, 50 (Minn. 1978)). And, the district court “has broad discretion regarding the form and substance of special verdict questions.” *SCSC Corp. v. Allied Mut. Ins. Co.*, 536 N.W.2d 305, 313 (Minn. 1995).

Here, through a special verdict form, the district court asked the jury to determine whether Moshier sustained a permanent injury and whether Moshier sustained a disability

for 60 days or more. Further, the special verdict form required the jury to determine the amount that would fairly compensate Moshier for her past healthcare expenses “excluding diagnostic testing,” and the amount that would fairly compensate Moshier for her past healthcare expenses for diagnostic testing. The jury determined that Moshier sustained a disability for 60 days or more and that her past healthcare expenses excluding diagnostic testing amounted to \$10,000. Each of these determinations separately and independently meant that Moshier satisfied the tort threshold requirement to recover noneconomic damages. *See* Minn. Stat. § 65B.51, subd. 3.

Although Moshier argues that it was error for the district court to not pose a separate question asking whether Moshier’s medical expenses exceeded \$4,000 and that it was error to use the phrase “diagnostic testing” instead of “diagnostic x-rays,” an erroneous jury instruction only warrants reversal when it is prejudicial. *Lewis v. Equitable Life Assurance Soc’y of the U.S.*, 389 N.W.2d 876, 885 (Minn. 1986). An instruction is prejudicial when a “more accurate instruction would have changed the outcome of the case.” *Domagala v. Rolland*, 805 N.W.2d 14, 31 (Minn. 2011).

The outcome in this case would not have changed had the judge used the special verdict form Moshier suggests. Here, the jury found that Moshier sustained a 60 day disability. Because the No-Fault Automobile Insurance Act requires only one criterion to be satisfied in order to meet the tort threshold, this finding alone was sufficient to permit Moshier to recover noneconomic damages. *See* Minn. Stat. § 65B.51, subd. 3. Further, despite the alleged errors, the jury found that Moshier’s past healthcare expenses, excluding diagnostic testing, amounted to \$10,000, also satisfying the tort threshold.

Because the jury found that Moshier satisfied the tort threshold, Moshier was not prejudiced by the allegedly erroneous jury instruction and is not entitled to a new trial.⁴ Accordingly, it was not an abuse of discretion for the district court to deny her motion for a new trial on this ground.

Verdict contrary to the evidence

Moshier also argues that the district court abused its discretion by denying her motion for a new trial because the jury rendered a verdict contrary to the evidence. *See* Minn. R. Civ. P. 59.01(g). Moshier contends that the evidence established that she did not have a PTSD diagnosis before the accident but that the jury did not award any future damages and that it awarded past pain and suffering damages lower than what the defense asked for. Moshier suggests that the only explanation for this verdict is that the jury was influenced by passion and prejudice, especially because they deliberated for a short amount of time.

In appeals from a district court's denial of a motion for a new trial, we will not set aside a jury verdict "unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *Navarre v. S. Wash. Cty. Sch.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotations omitted). In cases where a jury completes a

⁴ Moshier contends that a more accurate instruction would have changed the outcome of her trial because the jury was confused by the district court's instructions and the special verdict form, noting that the jury did not adopt either party's proposed award amount for past medical expenses. But there are a multitude of reasons why the jury could have determined that both parties' proposed awards were incorrect. And a jury award of alleged inadequate damages does not necessarily demonstrate prejudice during jury deliberations. *Markowitz v. Ness*, 413 N.W.2d 843, 846 (Minn. App. 1987).

special verdict form, our review analyzes “whether the special verdict answers can be reconciled in any reasonable manner consistent with the evidence and its fair inferences.” *Dunn v. Nat’l Beverage Corp.*, 745 N.W.2d 549, 555 (Minn. 2008) (quotations and citation omitted). Further, our review of a special verdict is even more limited where the jury’s findings turn upon assessing the credibility of witnesses. *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 662-63 (Minn. 1999).

Our review of the record supports the district court’s conclusion that Moshier is not entitled to a new trial on this basis. Although Moshier presented evidence of her injuries and their effects, Jarvis challenged the extent and nature of Moshier’s injuries through cross-examination and his expert witness. Based on this evidence, the jury awarded some damages for past healthcare expenses and past pain and suffering, but chose not to award any future damages. While Moshier may disagree with the jury’s award, nothing in the record suggests that it is manifestly contrary to the evidence. Accordingly, it was not an abuse of discretion for the district court to deny Moshier’s motion for a new trial on this ground.

II. The district court reached the correct conclusion in offsetting Moshier’s award.

Moshier also argues that the district court erred in its application of the collateral-source statute. Specifically, Moshier contends that a defendant cannot collaterally offset medical expenses paid by a participant in the Medical Assistance⁵

⁵ The Medical Assistance program is the state version of Medicaid.

program and that it was error for the district court to deduct any medical healthcare expenses which were available to pay the asserted healthcare subrogation lien. Because this is a mixed question of law and fact, we correct erroneous applications of law, but review the district court's conclusions under an abuse of discretion standard. *In re Estate of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015).

As part of the No-Fault Act's goal of preventing double recovery, when an individual injured in a car accident brings a negligence action, the district court is required to offset any award by the value of no-fault benefits that are paid or payable by an insurer. *Do v. Am. Family Mut. Ins. Co.*, 779 N.W.2d 853, 857 (Minn. 2010). Under Minnesota Statutes section 65B.51, subdivision 1:

With respect to a cause of action in negligence accruing as a result of injury arising out of the operation, ownership, maintenance or use of a motor vehicle . . . the court shall deduct from any recovery the value of basic or optional economic loss benefits paid or payable, or which would be payable but for any applicable deductible.

The district court concluded that Moshier received \$20,253.62 in medical expense personal injury protection benefits and \$235.62 in wage loss personal injury protection benefits from her automobile insurance carrier. Although the district court offset these amounts citing the general collateral-source statute, Minnesota Statutes section 548.251 (2018),⁶ it should have offset these amounts under the above statute, Minnesota Statutes

⁶ Minnesota Statutes section 548.251 is the more generally applicable collateral-source statute intended to prevent double recovery by plaintiffs. Under that statute, a party may file a motion requesting that the district court make a determination of collateral sources and offset any recovery pursuant to the guidelines of that statute. Minn. Stat. § 548.251, subds. 2, 3.

section 65B.51, subdivision 1, which specifically addresses the deduction of no-fault benefits. That provision does not provide for any “adding back” of the premiums that Moshier paid for her automobile insurance, so the district court should not have considered that amount. But in any event, Moshier’s award from the jury for past healthcare expenses and past wage loss only totaled \$12,500. When offsetting this amount by the value of the personal injury protection benefits that Moshier received, the net award is clearly \$0. Accordingly, although the district court applied the wrong statute, it ultimately reached the correct result.⁷

Because Moshier’s position is not supported by law and because the district court, although incorrect in its reasoning, ultimately reached the correct result in offsetting Moshier’s award, we affirm.

III. The district court correctly concluded that Jarvis was entitled to cost-shifting under rule 68 of the Minnesota Rules of Civil Procedure.

Moshier argues that the jury verdict exceeded the total-obligation offer made by Jarvis and, as a result, the district court erred in its interpretation and application of the

⁷ Neither party argued that Minnesota Statutes section 65B.51, subdivision 1, governed the procedure for offsetting Moshier’s award. Instead, the district court and both parties relied on the more general collateral-source statute. But even if Minnesota Statutes section 548.251 applied, Moshier’s arguments are not persuasive. Although Moshier contends that a district court is prohibited by law from collaterally offsetting medical expenses paid by a participant in the Medicaid program, she points to no Minnesota or federal law to support this assertion. And although Moshier suggests that the district court should have applied the jury verdict to pay the subrogation lien first, this position similarly lacks support in statute or caselaw. Finally, Moshier contends that an asserted subrogation lien cannot be collaterally offset pursuant to Minnesota Statutes section 548.251, subdivision 2(1), which is correct. But here, the district court did *not* collaterally offset the subrogation lien.

cost-shifting provision of rule 68 of the Minnesota Rules of Civil Procedure. This again presents a mixed question of fact and law, so we correct erroneous applications of law, but review the district court's conclusions under an abuse of discretion standard. *Sullivan*, 868 N.W.2d at 754.

Under rule 68, any party may make an offer of settlement anytime more than ten days before trial. Minn. R. Civ. P. 68.01(a). If a rule 68 offer is not accepted, it can affect a party's ability to recover costs. Minn. R. Civ. P. 68.03. In cases where a defendant makes an offer, if either the defendant prevails or if the relief awarded to the plaintiff is less favorable than the defendant's offer, the plaintiff must pay the defendant's costs and disbursements that he or she incurred after making the offer. Minn. R. Civ. P. 68.03(b)(1). In order to determine if the relief awarded is less favorable than a total-obligation offer, the "total-obligation offer is compared with the amount of damages awarded to the plaintiff, plus applicable prejudgment interest, the plaintiff's taxable costs and disbursements, and applicable attorney fees, all as accrued to the date of the offer." Minn. R. Civ. P. 68.03(c)(2).

Here, the district court concluded that Jarvis made a total-obligation offer of \$30,000 to Moshier, which exceeded her jury verdict, prejudgment interest, her taxable costs and disbursements, and "applicable attorney fees." Accordingly, the district court found that Jarvis was entitled to recover his costs from Moshier, ultimately resulting in a judgment in Jarvis' favor in the amount of \$2,367.30.

Moshier argues that the district court incorrectly concluded that the total obligation offer exceeded Moshier's total relief, contends that the district court should have calculated

the total amount of her relief before it was offset,⁸ and maintains that she is entitled to attorney fees. Moshier proposes that, had she accepted Jarvis's \$30,000 offer, that amount would have been reduced by prejudgment interest, pre-offer costs and disbursements, and accrued attorney fees. Once these costs were subtracted from the \$30,000 offer, Moshier contends that her net recovery would have been \$13,986.81, an amount less than the \$15,000 jury verdict.⁹

But Moshier's proposed calculation method is incorrect. Although the district court used erroneous figures, it followed the correct process for determining whether Moshier's total relief exceeded Jarvis's total-obligation offer. Once Moshier's jury verdict was offset by no-fault benefits she previously received, her remaining award was \$2,500 for past pain and suffering and \$264.38 for lost wages, amounting to a total award of \$2,764.38. Prejudgment interest on this amount totals \$247.52. *See* Minn. Stat. § 549.09, subd. 1(c)(1)(i) (2018). Moshier's costs and disbursements totaled \$3,328.03. When adding Moshier's costs and disbursements to her offset jury award, her total relief amounted to \$6,339.93, a figure that is clearly less than the \$30,000 total-obligation offer.

⁸ Even if we adopted Moshier's argument that, in its calculations, the district court should have used the amount of the jury award before it was collaterally offset, her relief would have totaled \$19,671.04 after adding the jury verdict (\$15,000), costs and disbursements (\$3,328.03), and prejudgment interest (\$1,343.01). Although Moshier is not entitled to recover attorney fees, even if we included her attorney fees of \$10,000, her total relief would be \$29,671.04, an amount that is still less than Jarvis's \$30,000 total-obligation offer.

⁹ Moshier cites no authority for her proposition that, for rule 68 cost-shifting purposes, a district court compares an individual's net recovery with a jury award. Further, the text of the rule states that the total-obligation *offer* is compared with the jury verdict. Minn. R. Civ. P. 68.03(c)(2).

Even if we included Moshier's attorney fees in our analysis, as Moshier urges us to do, her total relief (\$16,339.93) would still be less than Jarvis's total-obligation offer. But we note that Moshier is not entitled to recover any of her attorney's fees. Although rule 68.03 states that *applicable* attorney fees should be considered when determining whether a total-obligation offer exceeded a plaintiff's recovery, rule 68.04 makes clear that the rule does not create a right to attorney fees that is not provided for under applicable substantive law. Rule 68.04 states that "applicable attorney fees" under rule 68 means "any attorney fees to which a party is *entitled* by statute, common law, or contract for one or more of the claims resolved by an offer made under the rule." (Emphasis added.) Certain statutes, like the Minnesota Human Rights Act, provide that a prevailing party may recover reasonable attorney fees as part of their costs. See Minn. Stat. § 363A.33, subd. 7 (2018). But nothing in Minnesota statutes or specific to this case suggests the Moshier would be entitled to recover her attorney fees from Jarvis.¹⁰ Without the inclusion of attorney fees, it is evident that Moshier's relief was less than Jarvis's total-obligation offer for rule 68 cost-shifting purposes. As such, the district court correctly concluded that Jarvis's total-obligation offer exceeded Moshier's relief.

IV. The district court did not abuse its discretion by denying Moshier's motion for a *Schwartz* hearing and a new trial on the basis of juror misconduct.

Finally, Moshier contends that it was an abuse of discretion for the district court to deny her motion for a *Schwartz* hearing and a new trial on the basis of juror misconduct.

¹⁰ Although Moshier presumably had a contract with her attorney regarding her payment of attorney fees, Moshier has not alleged any contractual basis that would entitle her to recover her attorney fees from Jarvis.

Moshier contends that the jury foreperson lied during voir dire by failing to reveal felony convictions and that this prejudiced her and warrants a new trial.

The purpose of a *Schwartz* hearing is “to investigate potential juror misconduct and prevent the practice of attorneys contacting and questioning jurors after a verdict has been rendered.” *Pajunen*, 612 N.W.2d at 175. In general, district courts should liberally grant *Schwartz* hearings. *Quinn v. Winkel’s, Inc.*, 279 N.W.2d 65, 69 (Minn. 1979). But, before a *Schwartz* hearing will be granted, a prima facie showing of juror misconduct must be made. *State v. Larson*, 281 N.W.2d 481, 484 (Minn. 1979). A *Schwartz* hearing is only warranted if the “evidence which, standing alone and unchallenged, would warrant the conclusion of jury misconduct.” *Id.* We review the denial of a *Schwartz* hearing for an abuse of discretion. *State v. Church*, 577 N.W.2d 715, 721 (Minn. 1998).

The district court, in denying Moshier’s motion for a *Schwartz* hearing, found that a *Schwartz* hearing was unnecessary because there was no evidence that the foreperson gave false testimony. Voir dire was not recorded, and there was no evidence that the alleged misconduct prejudiced the verdict.

We agree with the district court. Although Moshier argues that there was some indication of juror misconduct because the jury foreperson’s concealment of his past was indicative of deception, Moshier did not provide any evidence—other than speculation—that the alleged misconduct prejudiced the verdict. The district court’s conclusions that Moshier did not make the requisite evidentiary showing that juror misconduct occurred to warrant a *Schwartz* hearing and that Moshier did not show that the foreperson’s undisclosed conviction impacted the verdict and rendered an unfair outcome are supported by the

record. Accordingly, it was not an abuse of discretion for the district court to deny Moshier's motion for a *Schwartz* hearing. See *State v. Benedict*, 397 N.W.2d 337, 340 (Minn. 1986) (noting that while the district court could have ordered a *Schwartz* hearing, it was not an abuse of discretion for it to refuse to do so where the defendant failed to make a sufficient showing that the juror lied); *Blatz v. Allina Health System*, 622 N.W.2d 376, 394 (Minn. App. 2001) (noting that it was not an abuse of discretion for the district court to deny a *Schwartz* hearing where the moving party failed to establish the a juror's answer was untruthful or misconduct in light of the absence of a transcript and the dismissal of charges), *review denied* (Minn. May 16, 2001). Similarly, the district court did not abuse its discretion by denying Moshier's motion for a new trial based on juror misconduct because Moshier again failed to demonstrate a connection between the alleged juror misconduct and the verdict in the case.

In sum, the district court did not abuse its discretion by denying Moshier's motion for a new trial and a *Schwartz* hearing. Further, the district court reached the correct result when applying both the collateral-source statute and rule 68's cost-shifting process and concluding that Jarvis's total-obligation offer exceeded Moshier's relief. Accordingly, we affirm.

Affirmed.