

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0288**

State of Minnesota,
Respondent,

vs.

Tremayne Isaiah Colon,
Appellant.

**Filed January 6, 2025
Affirmed
Harris, Judge**

Hennepin County District Court
File No. 27-CR-23-11542

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Harris, Judge; and Jesson,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HARRIS, Judge

In this direct appeal from his conviction of first-degree burglary and unlawful possession of a firearm, appellant argues that the district court abused its discretion by denying his motion for a new trial based on juror misconduct. We affirm.

FACTS

Respondent State of Minnesota charged appellant Tremayne Isaiah Colon with first-degree burglary while possessing a dangerous weapon, first-degree burglary of an occupied dwelling, and unlawful possession of a firearm. Colon pleaded not guilty, and the matter proceeded to a jury trial. The following facts were established at trial.

In the early morning hours in May 2023, S.Z. was awakened in his bed by Colon pointing a gun at him and demanding money. S.Z. gave Colon his wallet and car keys. Colon asked if there was anybody else in the house. S.Z. lived with his roommates, J.W. and H.W., but J.W. was not at home. As S.Z. was leading Colon to H.W.'s room, the dog began barking and Colon ran away. S.Z. called the police. A short time later, S.Z. and H.W. began driving around the neighborhood and found Colon about four houses away from their house. S.Z. testified that he recognized Colon by his distinctive "rainbow-colored sweatshirt" and by his voice. When J.W. returned home, H.W. and J.W. left the house to look for Colon and confront him. H.W. and J.W. found Colon standing in the front yard of a home and took pictures of him, which they later gave to the police.

A few hours later, a nearby homeowner contacted the police department to report that he found a wallet under the bushes in his yard. The wallet belonged to S.Z. At trial,

the neighbor testified that he saw a young man walking through his yard that morning. The neighbor later found the wallet in his backyard. The neighbor had surveillance video at his home and shared this video with the police. The video shows Colon standing in the neighbor's yard and looking at the wallet, before throwing it to the ground.

A Minneapolis police officer was assigned to investigate the crime. During direct examination, the prosecutor asked the officer if Colon was the same person depicted in the surveillance footage and in photographs taken by H.W. and J.W., and if the clothing matched the photographs and video. The officer responded, "Yes. He had on a very distinct stonewash blue jeans with two dark blue patches on the knees, [and] black Nike tennis shoes with white Nike sign." The officer testified that the clothing matched what Colon was wearing in the photo from S.Z., and "believed those were the same pants and shoes when [Colon] was arrested."

Colon waived his right to testify on his own behalf at trial and did not call any witnesses. The jury found Colon guilty of all counts.

Following the verdict, Colon moved for a new trial because of juror misconduct. The motion was based on an email that a juror sent to the court after the verdict, admitting that she had looked up the temperature on the date of the offense and shared that information with the other jurors during deliberations.¹ The district court found that this

¹ The juror also informed the court that she looked up Colon's name in a search engine but immediately closed the computer before seeing any of the results. The juror stated that she did not discuss this search with any of the other jurors. On appeal, Colon does not seek a new trial on the basis of this conduct.

email “sufficiently raise[d] an issue for a *Schwartz* hearing.”² At the *Schwartz* hearing, the district court took testimony from the juror. The juror testified that she looked up the temperature on the date of the offense because she was curious how cold it was that morning and whether the suspect would have been wearing gloves. She acknowledged that she told the other jurors during deliberations that she had looked up the weather, and she told them what she read on the weather website. According to the juror, another juror told her that she was not supposed to look up that information. She testified that there was no further discussion about the weather.

The district court denied Colon’s motion for a new trial because the jury took internal curative measures and the juror’s conduct was not prejudicial to Colon. The district court adjudicated Colon guilty of one of the burglary offenses and the unlawful-possession offense and imposed a 60-month sentence for the unlawful possession and a 105-month concurrent prison sentence for one of the burglary offenses.³

Colon appeals.

DECISION

The United States and Minnesota Constitutions guarantee the right to a trial by an impartial jury. U.S. Const. amend. VI; Minn. Const. art. I, § 6. After the verdict has been returned, a defendant may challenge the verdict through a *Schwartz* hearing to determine whether improper considerations affected the jury’s decision. *Schwartz*, 104 N.W.2d at

² *Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 31 (Minn. 1960).

³ The district court did not adjudicate Colon guilty of first-degree burglary of an occupied dwelling because it is an included offense under Minnesota Statutes section 609.04 (2022).

303; Minn. R. Crim. P. 26.03, subd. 20(6) (providing procedures for post-verdict hearings on alleged juror misconduct). A defendant is entitled to a *Schwartz* hearing when they present a prima facie case that “standing alone and unchallenged, would warrant the conclusion of jury misconduct.” *State v. Martin*, 614 N.W.2d 214, 225-26 (Minn. 2000) (quotation omitted); see Minn. R. Crim. P. 23.03, subd. 20(6) (“A defendant may move the court for a hearing to impeach the verdict.”). At the *Schwartz* hearing, the defendant may present juror testimony about “whether extraneous prejudicial information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon any juror” in reaching the verdict. Minn. R. Evid. 606(b); see Minn. R. Crim. P. 26.03, subd. 20(6) (incorporating Minn. R. Evid. 606(b)).

When a jury is inadvertently exposed to potentially prejudicial material, “[t]he proper procedure for reviewing a jury verdict is to determine from juror testimony what outside influences were improperly brought to bear upon the jury and then estimate their probable effect on a hypothetical average jury.” *State v. Cox*, 322 N.W.2d 555, 559 (Minn. 1982). On appeal, we independently consider the four *Cox* factors: “the nature and source of the prejudicial matter, the number of jurors exposed to the influence, the weight of evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice.” *Id.* We review the district court’s denial of a motion for a new trial on the basis of juror misconduct for an abuse of discretion. *Id.* at 560; *State v. Landro*, 504 N.W.2d 741, 745 (Minn. 1993). We address each *Cox* factor in turn.

Nature and Source of the Information

Here, the nature and source of the alleged prejudicial matter were statements made by a juror during deliberations. According to the juror, while she was at home after the first day of jury deliberations, she was wondering how cold it was the morning of the offense, and she “just looked it up.” The next day, she shared this weather information with the other jurors while deliberating. The juror indicated that another juror admonished her for sharing this outside information. The juror testified that “it all happened really fast” and that there was no further discussion about the weather beyond her initial statement.

Colon relies on *State v. Hanke*, 712 N.W.2d 211 (Minn. App. 2006), to support his contention that the nature and source of the juror’s statements weigh in favor of a finding of prejudice. But we find this case distinguishable. In *Hanke*, the jury found the defendant guilty of possession of cocaine. 712 N.W.2d at 213. Following trial, a jury exit questionnaire revealed that during trial a bailiff made comments to several jurors about “there being a real methamphetamine problem,” and “suggested that the only way to stop the problem was to get the offenders off the streets.” *Id.* Methamphetamine was implicated in the case because the jurors viewed an arrest video during trial, which showed an individual with the defendant admitting to obtaining pseudoephedrine pills, which are used to make methamphetamine. *Id.* The reviewing court determined that the nature and source of the bailiff’s comments weighed in favor of a new trial because “[t]he bailiff was an officer of the court whose personal opinions might have improperly influenced a jury because of his position of authority and his presumed experience.” *Id.* at 214; *see also Parker v. Gladden*, 385 U.S. 363, 365 (1966) (recognizing that a comment from a court

official “beyond question carries great weight with a jury”); *Cox*, 322 N.W.2d at 558 (“Statements of a court official about the merits of a criminal case raise a rebuttable presumption of prejudice.”).

In the present case, by contrast, it is undisputed that the comments came from a juror, rather than from an outside party or a court official. Thus, the source of this information lessens the risk of prejudice and distinguishes this case from *Hanke*. Moreover, information concerning the weather is not comparable to the bailiff’s remarks in *Hanke* about the criminality of the defendant’s conduct. 712 N.W.2d at 214-15; *see also Cox*, 322 N.W.2d at 558 (analyzing the prejudicial effect of a sheriff’s remark to the jury implying that the defendant was guilty but declining to order a new trial). Here, the juror did not express a belief about whether the temperature changed her view on the likelihood that Colon was guilty of the crimes charged, but simply reported what she had read on the weather website. And she further testified that there was no discussion beyond her single statement about the weather. Therefore, the nature of the juror’s comments also weighs against Colon’s new-trial request, and we discern no abuse of discretion by the district court in weighing this factor against granting a new trial.

Number of Jurors Exposed to Information

Next, the record shows that all of the jurors were exposed to the juror’s comment about the weather. During the *Schwartz* hearing, the juror testified that her comments were made “[t]o the group.” The district court inquired, “Okay. So probably all twelve of you heard it?” The juror responded, “Yes.” This factor weighs in favor of Colon. However, while this factor supports Colon’s request for a new trial, we note that the number of jurors

exposed to an improper comment is not determinative when the other factors show little likelihood that the statements tainted the verdict. *See Cox*, 322 N.W.2d at 559 (stating that, while seven jurors heard the sheriff's improper remark, the other factors weighed against a finding that the jurors were tainted by the information). Just as all jurors heard the improper remark, all jurors also heard the admonition of one juror saying, "What you did was not what you're supposed to do[.]" and all discussion about the improper remark stopped.

Weight of the Evidence

Turning to the weight of the evidence properly before the jury, we conclude that substantial evidence supported the verdicts. S.Z. identified Colon as the man who came into his bedroom and threatened him with a gun. S.Z. stated that there was light coming through his bedroom window and he had "a pretty good view" of Colon. When S.Z. and H.W. drove around their neighborhood, S.Z. saw Colon about four houses away from their home and stated, "That's him." S.Z. testified that Colon was uniquely dressed in a "rainbow-colored sweatshirt." He also recognized Colon by the "accent" and "cadence" of his voice. The investigating police officer similarly testified that Colon wore "distinct" stonewash blue jeans and tennis shoes. Finally, a nearby homeowner called the police to report that he found a wallet under the bushes in his backyard. Police officers viewed surveillance video from the neighbor's home and saw Colon looking into the wallet before throwing it to the ground. The wallet belonged to S.Z. Because substantial evidence supports the verdict, this factor weighs in favor of the district court's finding that Colon was not prejudiced.

Curative Measures

Finally, we consider the curative measures taken to reduce the risk of prejudice. Here, the district court did not learn of the juror's misconduct until after trial and did not have the opportunity to give a curative instruction directly in response to the juror's comments. *Cf. Cox*, 322 N.W.2d at 560 (noting that the court learned of the bailiff's misconduct during trial and ameliorated it through further instructions to the jury). Because the district court was unable to provide a curative instruction this factor weighs in favor of Colon.

Taken together, the *Cox* factors weigh in favor of the district court's determination that the juror's comments would have little effect on the average jury. The juror's statements during deliberations were improper. These statements were addressed to all of the jurors and the district court was unable to give a curative instruction. But the strength of the remaining two factors overcomes the juror's improper behavior. The nature and source of the information weighs against a finding of prejudice because it was a single comment about the weather made by one of twelve jurors deciding the case. Finally, the weight of the evidence presented at trial—including S.Z.'s identification of Colon and the surveillance video showing Colon holding S.Z.'s wallet—also lessens any prejudicial effect of the juror's comment. We are therefore satisfied that the juror's misconduct does not warrant reversal. Accordingly, we conclude that the district court did not abuse its discretion by denying Colon's motion for a new trial.

Affirmed.