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State of Nebraska, appellee, v. Keith L. Allen, appellant.

___ N.W.2d ___

Filed September 15, 2023. No. S-22-169.

SUPPLEMENTAL OPINION

Appeal from the District Court for Lincoln County: Richard A. Birch, Judge. Former opinion modified. Motion for rehearing overruled.

Charles D. Brewster, of Anderson, Klein, Brewster & Brandt, for appellant.

Michael T. Hilgers, Attorney General, and Jordan Osborne for appellee.

Heavican, C.J., Miller-Lerman, Cassel, Stacy, Funke, Papik, and Freudenberg, JJ.

Per Curiam.

This case is before us on a motion for rehearing filed by the appellee, the State, concerning our opinion in *State v. Allen*, 314 Neb. 663, 992 N.W.2d 712 (2023).

We overrule the motion, but modify the opinion as follows:

In the analysis section, under the subheading "2. Juror Misconduct," we withdraw the second paragraph and substitute the following:

> Neb. Rev. Stat. § 29-2101(2) (Reissue 2016) provides that "[a] new trial, after a verdict of conviction, may be granted, on the application of the defendant" for "misconduct of the jury" "affecting materially his or her

substantial rights." In the civil context, we have said "misconduct of the jury" does not necessarily mean a jury's bad faith or malicious motive, but means a jury's violation of, or departure from, an established rule or procedure for production of a valid verdict. See *Loving v. Baker's Supermarkets*, 238 Neb. 727, 472 N.W.2d 695 (1991).

The remainder of the opinion shall remain unmodified.

FORMER OPINION MODIFIED.
MOTION FOR REHEARING OVERRULED.