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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. Affirmed.

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

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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.