

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR GEOVANI RICO-ARREOLA
A/K/A OSCAR GEOVANI
RICOARREOLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49512

FILED

APR 19 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of sexual assault of a minor under 14 years of age. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

This appeal asks us to consider whether a peremptory challenge can survive under Batson v. Kentucky, 476 U.S. 79 (1986), when a juror is dismissed based on an assumption of group bias. Specifically, appellant Oscar Rico-Arreola claims that the State's exercise of peremptory challenges to dismiss two African-American women as jurors because they were licensed social workers was a pretext for unlawful discrimination. We disagree and affirm.

A recent Supreme Court case addresses this issue. In Felkner v. Jackson, the prosecutor struck an African-American from the jury by peremptory challenge because she had a master's degree in social work. No. 10-797, slip op. at 1-2 (U.S. Mar. 21, 2011). When the defense brought a Batson challenge, the state trial court accepted the prosecutor's explanation "that he does not 'like to keep social workers'" and rejected the Batson challenge. Id. at 2. This holding was affirmed on direct appeal in the state court system and by the federal district court on habeas review. However, the Ninth Circuit summarily reversed.

The Supreme Court in Felkner in turn reversed the Ninth Circuit. See 79 U.S.L.W. 3532. It held that the trial court did not act unreasonably in deeming the prosecutor's explanation about not "lik[ing] to keep social workers" to be "race neutral" and that the determination of pretext thus came down to a credibility determination by the trial court judge. Slip op. at 4 (citing Snyder v. Louisiana, 552 U.S. 472, 477 (2008)); see also Purkett v. Elem, 514 U.S. 765, 767-68 (1995).

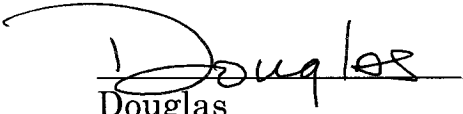
This case does not differ materially from Felkner. When challenged by the defense, the prosecutor here explained that she dismissed two female African-American prospective jurors because they were licensed social workers. According to the prosecutor, social workers tend to want to fix people and to be sympathetic to defendants. After the prosecutor offered this as her race-neutral reason for her peremptory challenges, the court asked the defense if it had "[a]nything further" on the Batson challenge; the defense said it had "nothing further on that." The court then stated that, "I certainly didn't see a pattern of exercising peremptory challenges that would alert me to a substantial problem and I think there's sufficient explanation."

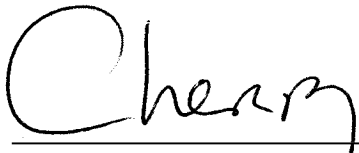
The district court's findings are something of a non sequitur. Nonetheless, it appears that, based on the record it was given, the district court accepted the prosecutor's social worker explanation as (1) race neutral and (2) non-pretextual. Felkner legitimates the first point and recognizes that the second is a credibility determination. Under Diamampo v. State, 124 Nev. 414, 422-23, 185 P.3d 1031, 1036-37 (2008), "the trial court's decision on the ultimate question of discriminatory intent

represents a finding of fact of the sort accorded great deference on appeal” (internal citations omitted). Rico-Arreola did not meet this standard.¹

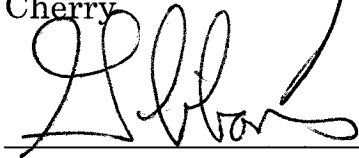
Accordingly, we


ORDER the judgment of the district court AFFIRMED.

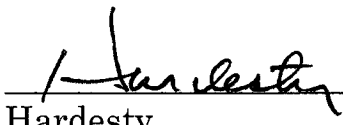

Douglas, C.J.


Cherry, J.


Saitta, J.


Gibbons, J.


Pickering, J.


Hardesty, J.


Parraguirre, J.

¹In addition to the specific challenges addressed in this order, Rico-Arreola asserts a variety of arguments including: (1) the district court improperly admitted testimony, (2) the jury instructions provided to the jury unconstitutionally minimized the State’s burden of proof, (3) the district court improperly denied Rico-Arreola’s motion to dismiss counsel, (4) the State engaged in prosecutorial misconduct, (5) the district court improperly granted the State a continuance, (6) Rico-Arreola’s prison sentence constituted cruel and unusual punishment, and (7) cumulative error warrants reversal. We have considered these arguments and conclude they are without merit. Rico-Arreola also claims that the State failed to present sufficient evidence to convict. We conclude that there was sufficient evidence to convict in this case. See Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto-Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk