

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUSTIN KANE STEVENS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51805

FILED

AUG 25 2009

ORDER OF AFFIRMANCE

THACIR K. LINDEMAN
CLERK OF SUPREME COURT
BY *Therese*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of assault with a deadly weapon. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge. The district court sentenced appellant Dustin Kane Stevens to serve a prison term of 12 to 30 months, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed two years.

First, Stevens contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. Stevens argues that this is a situation "where the reasoning observer will never know for certain what happened" because there are no witnesses or forensic proof and "the State's case hinges solely on the credibility of [the victim, . . . which] must be balanced against" the credibility of Stevens, who is a military veteran with no criminal history whatsoever.

When reviewing a claim of insufficient evidence, this court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational [juror] could have found the

essential elements of the crime beyond a reasonable doubt.” McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). We conclude that the State presented sufficient evidence to prove Stevens guilty of all the elements of assault with a deadly weapon. See NRS 200.471(1), (2)(b).

Here, although Stevens testified that he did not remove the knife from the nylon sheath on his belt during the incident, the victim testified that Stevens brandished a knife at him and held it to his throat. The officers who apprehended Stevens immediately after the incident testified that they found a knife on Stevens’ person that was consistent with the victim’s description. A witness testified that she identified Stevens at the time and place the incident occurred. Although conflicting testimony was presented at trial, it is for the jury to determine the weight and credibility to give to conflicting testimony, and the jury’s verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); See also McNair, 108 Nev. at 56, 825 P.2d at 573.

Second, Stevens contends that the district court erred by rejecting his challenge under Batson v. Kentucky, 476 U.S. 79 (1986), to the prosecutor’s use of peremptory challenges to strike four venirepersons from the jury panel who were members of recognized ethnic minorities. Specifically, Stevens claims that the race-neutral explanations offered by the State for striking the four individuals from the panel were “clearly pretextual” and that his constitutional rights to a fair trial and an impartial jury were violated.

In Batson, the United States Supreme Court held that the State's use of peremptory challenges to remove potential jurors on the basis of race is a violation of the Equal Protection Clause of the United States Constitution and developed a three-pronged test for determining whether the State used its peremptory challenges in a discriminatory manner. Id. at 96-98. First, the defendant must make a prima facie showing that race-based discrimination has occurred based upon the totality of the circumstances. Diomampo v. State, 124 Nev. ___, ___, 185 P.3d 1031, 1036 (2008). Under this step, the fact that "a significant proportion of peremptories exercised by the State is used to remove members of a cognizable group" may be sufficient to establish a prima facie case of discrimination. See Libby v. State, 113 Nev. 251, 255, 934 P.2d 220, 223 (1997). Racial identity is not required to make a prima facie case, and the "defendant need not belong to the same group as the prospective jurors in order to challenge their exclusion on grounds of discrimination." Kaczmarek v. State, 120 Nev. 314, 333, 91 P.3d 16, 29 (2004) (citing Powers v. Ohio, 499 U.S. 400, 416 (1991)). Second, the burden shifts to the prosecution to provide race-neutral explanations for the peremptory challenges. Diomampo, 124 Nev. at ___, 185 P.3d at 1036. Under this step, "the issue is the facial validity of the prosecutor's explanation." Walker v. State, 113 Nev. 853, 867, 944 P.2d 762, 771 (1997) (quoting Hernandez v. New York, 500 U.S. 352, 360 (1990)). At this stage, the State's reasons need not be "persuasive, or even plausible," and "[u]nless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." Kaczmarek, 120 Nev. at 333, 91 P.3d at 29 (internal quotation marks and citations

omitted). Third, “the district court must determine whether the defendant in fact demonstrated purposeful discrimination.” Diomampo, 124 Nev. at ___, 185 P.3d at 1036. Under this step, “the persuasiveness of the State’s explanation is relevant.” Ford v. State, 122 Nev. 398, 404, 132 P.3d 574, 578 (2006). The district “court’s findings on the issue of discriminatory intent largely turn on evaluations of credibility.” Kaczmarek, 120 Nev. at 334, 91 P.3d at 30. Accordingly, the district “court should evaluate all the evidence introduced by each side on the issue of whether race was the real reason for the challenge and then address whether the defendant has met his burden of persuasion.” Id. Where the record does not support a finding that the State treated similarly situated prospective jurors differently during voir dire or the exercise of its challenges, the district court may properly conclude that the State did not purposefully discriminate on the basis of race. See Ford, 122 Nev. at 405-08, 132 P.3d at 579-81. “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.” Walker, 113 Nev. at 867-68, 944 P.2d at 771-72 (quoting Hernandez, 500 U.S. at 364).

Stevens argues that the district court erred in denying his motion pursuant to Batson, challenging the State’s use of four of its five peremptory challenges to remove members of minority racial groups.¹

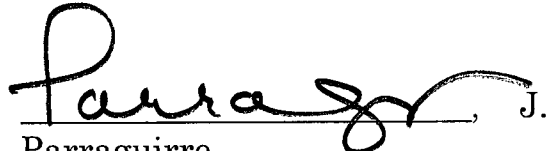
¹The record indicates, though it does not clearly specify, that two of the individuals stricken were African-American and two were Hispanic. Stevens is Caucasian. The victim is Hispanic. The petit jury was comprised of ten Caucasians, one Asian and one Hispanic.

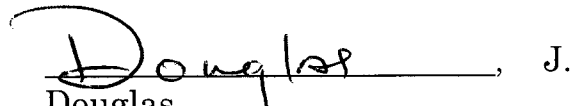
Without waiting for the district court to rule on whether Stevens had met his burden under the first step of the Batson analysis, the State offered race-neutral reasons for excusing each of the prospective jurors in question. Therefore, whether Stevens made out a prima facie case is moot. See Kaczmarek, 120 Nev. at 332, 91 P.3d at 29. The prosecutor offered the following explanations: (1) juror Crump was stricken because her cousin had been shot by police and the prosecutor feared she may not be impartial; (2) juror Smith was stricken because the prosecutor observed her sleeping; (3) juror Brass, a juvenile detention officer whose wife was a social worker, was stricken because the prosecutor feared he was too liberal and would favor a person suffering from substance abuse problems; and (4) juror Hernandez was stricken because she had a brother in prison for murder and stated that she would be uncomfortable making a judgment about someone, and the prosecutor feared she would judge the person instead of the facts. None of the State's reasons for its peremptory challenges contain an inherent intent to discriminate, and therefore each is sufficient to satisfy the State's burden under the second step. See id., 120 Nev. at 333, 91 P.3d at 29. Stevens did not provide the district court any evidence or argument that the State's reasons were pretextual and that race was the real reason for its challenges. As such, Stevens did not carry his burden of proving purposeful discrimination at step three of the process, and we conclude Stevens has failed to demonstrate that the district court erred in rejecting his Batson challenge.²

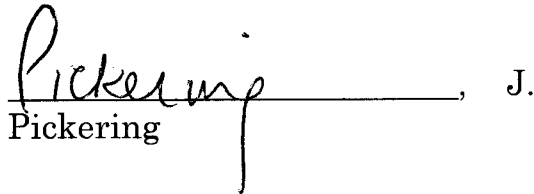
²Although the district court did not clearly spell out all three steps of the Batson analysis and address whether Stevens met his burden of
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Having considered Stevens contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


Parraguirre


Douglas


Pickering

cc: Hon. Kenneth C. Cory, 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

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persuasion, we conclude that based on the record on appeal we may properly defer to the district court's determination on the issue of purposeful discrimination. See Kaczmarek, 120 Nev. at 333-35, 91 P.3d at 29-30.