

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODNEY LYNN BUTCHEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52920

FILED

SEP 04 2009

TRACIE M. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of burglary. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Rodney Lynn Butchee to serve a prison term of 24 to 72 months.

Butchee contends that his constitutionally guaranteed right to a fair trial and review of that trial was violated when the district court prohibited him from making a record of the jury venire's racial composition. Butchee further claims that when he asked to make a record, he raised the issue that the jury venire's racial composition did not comport with Clark County standards. And Butchee asserts that the district court's action prevents this court from reviewing the jury venire's racial composition.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee a criminal defendant the right to a fair and impartial trial before a jury selected from a fair cross-section of the community. Williams v. State, 121 Nev. 934, 939, 125 P.3d 627, 631 (2005). To demonstrate a prima facie violation of this fair cross-section requirement, a criminal defendant must show that (1) a distinctive group

in the community was excluded, (2) the group was not fairly represented in the venires from which juries are drawn, and (3) the group was systematically excluded from the venires by the jury selection process.¹ Id. at 940, 125 P.3d at 631.

Butchee did not timely object to the composition of the jury venire in the district court. Butchee waited until after the jury venire had been released and the jury had been impaneled and sworn before seeking to make a record of the jury venire's composition. As the district court was not presented with a contemporaneous objection, we conclude that it did not have a duty to allow Butchee to make a record of the jury venire's composition and therefore it did not err by denying Butchee's request.

Having considered Butchee's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Pickering, J.
Pickering

¹We note that a "venire" is "the group of persons sent to the district court from which a jury is chosen." Williams, 121 Nev. at 938 n.1, 125 P.3d at 630 n.1.

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