

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JOSEPH ZELLIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53950

FILED

APR 07 2010

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 burglary. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. Appellant Michael Zellis raises two issues on appeal.

First, Zellis claims that the district court erred by permitting a number of peremptory challenges in violation of Batson v. Kentucky, 476 U.S. 79 (1986). Specifically, Zellis challenges the State's use of peremptory challenges to dismiss one African-American potential juror and four female potential jurors. The record reflects that the State used all of its peremptory challenges to dismiss persons who had been charged with crimes or had family members who had been charged with crimes.¹ Because the challenged African-American potential juror had a brother with whom she was close and who had recently been prosecuted by the

¹The jury that convicted Zellis included one juror with a relative who had been charged with a crime. She had been the victim of an automobile burglary and the State was explicit in stating that it chose not to excuse her because she had been a victim of the crime for which Zellis was being tried.

District Attorney's Office for burglary, we conclude that the district court did not abuse its discretion in concluding that the State's reasons for excusing her were not pretext for racial discrimination. See Thomas v. State, 114 Nev. 1127, 1136-37, 967 P.2d 1111, 1118 (1998); Washington v. State, 112 Nev. 1067, 1071, 922 P.2d 547, 549 (1996).

With regard to Zellis' claim that the State engaged in gender discrimination in exercising its peremptory challenges to excuse four female potential jurors, he failed preserve this claim for review by raising a Batson objection in the district court. See generally, Diomampo v. State, 124 Nev. ___, ___, 185 P.3d 1031, 1041 (2008) (“[U]nobjected to errors are not preserved for appellate review.”). Nevertheless, because the record reveals gender-neutral reasons for each of the State's peremptory challenges, we conclude that Zellis fails to show plain error affecting his substantial rights. See Higgs v. State, 126 Nev. ___, ___, 222 P.3d 648, 662 (2010).

Second, Zellis claims that the district court erred by sentencing him as a habitual criminal because (1) the State did not file the documentary support for imposition of the enhancement until the day before sentencing, (2) the State only provided certified copies of judgments of conviction for ten of Zellis' eleven prior felony convictions, and (3) the district court failed to hold a “meaningful” hearing. Zellis fails to show error. There is no requirement that documentary evidence of prior felony convictions be provided in advance of sentencing. The notice of habitual criminality was filed seven months before sentencing. See NRS 207.016(2). And although one judgment of conviction submitted by the State lacked a certification stamp from the clerk's office, the State submitted additional documentation of that conviction including charging

documents, the signed and filed guilty plea agreement, and court minutes reflecting the conviction and subsequent sentencing. Even without proof of that conviction, the remaining ten felony convictions were more than sufficient to support the district court's adjudication of Zellis as a habitual criminal. See NRS 207.010. And our review of sentencing reveals no indication that the district court failed to exercise its discretion in adjudicating Zellis as a habitual criminal. See Hughes v. State, 116 Nev. 327, 333-34, 996 P.2d 890, 894 (2000).

Having considered Zellis' claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.²

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted.

cc: Hon. Jackie Glass, District Judge
Law Offices of Gamage & Gamage
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk
Michael Joseph Zellis