

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS MORALES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54180

**FILED**

JUL 15 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Appellant Thomas Morales raises four issues.

First, Morales argues that the district court erred in denying his motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986), which alleged that the State used four of its nine peremptory challenges in a discriminatory manner. The State offered the following explanations for striking the four panel members: (1) juror Bishop because the State believed he was telling fantastical tales about having 27 siblings and a nephew who was hypnotized by police; (2) juror Diaz because she was too soft-spoken and lacked life experiences; (3) juror Harper because she also lacked life-experiences and seemed too eager to share her opinions; and (4) juror Mendoza because he seemed impatient and upset that he was losing \$172 a day in income with a disabled wife to support. Morales asserts that the State's proffered explanations are pretextual, arguing that none of these reasons impair the potential jurors' ability to be fair and impartial. "[H]owever, an explanation for the removal of a juror need not

amount to a challenge for cause” in order to be race neutral. People v. Harris, 647 N.E.2d 893, 899 (Ill. 1994); cf. Miller-El v. Dretke, 545 U.S. 231, 252, 255 (2005) (holding that race-neutral explanation was pretextual where the prosecutor did not dismiss similarly situated non-minority jurors and posed different questions to minority jurors to elicit disqualifying responses). We therefore conclude that, because “discriminatory intent is not inherent in the State’s explanation[s],” and those explanations are “not implausible or fantastic,” the district court did not clearly err in rejecting Morales’s Batson challenge. Ford v. State, 122 Nev. 398, 403, 404, 132 P.3d 574, 578 (2006).

Second, Morales argues that the district court erred in denying his motion to sever his trial from that of his codefendant brother, specifically claiming that holding a joint trial compelled him to testify about his brother’s lack of involvement in the crime and to explain “missing details of the crime.” Morales does not explain how holding a joint trial forced him to take the stand to exculpate his brother or explain details of the crime and he further does not assert antagonistic defenses. He thus fails to demonstrate the type of prejudice from holding a joint trial that would require the district court to sever. Compare Chartier v. State, 124 Nev. 760, 765, 191 P.3d 1182, 1185-86 (2008) (concluding district court erred by denying motion to sever where codefendants had conflicting and irreconcilable defenses), with Marshall v. State, 118 Nev. 642, 648, 56 P.3d 376, 379-80 (2002) (no error where defenses were “antagonistic,” but appellant failed to show that joinder “compromised a specific trial right or prevented the jury from making a reliable judgment regarding guilt or innocence”). Morales thus cannot carry the “heavy burden” of showing

that the district court abused its discretion. Amen v. State, 106 Nev. 749, 755-56, 801 P.2d 1354, 1359 (1990).

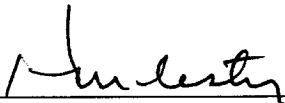
Third, Morales asserts that there was insufficient evidence of premeditation and deliberation to support a verdict of guilty of first-degree murder. We disagree. Substantial circumstantial evidence of premeditation and deliberation was adduced at trial, including: (1) the victim's defensive wounds, which indicate that he was stabbed at least two times before Morales landed the fatal blow to his heart; (2) Morales's dissembling after the crime, claiming that he never went to the victim's house; and (3) his attempt to remove all traces of the victim's blood from the murder weapon. See Briano v. State, 94 Nev. 422, 424-25, 581 P.2d 5, 7-8 (1978) (attempt to conceal crime evidence of premeditation); Turpen v. State, 94 Nev. 576, 578, 583 P.2d 1083, 1084 (1978) (sequence and manner of injuries leading to death evidence of premeditation). We therefore conclude that a rational jury could have found that Morales killed with premeditation and deliberation. See Beets v. State, 107 Nev. 957, 962, 821 P.2d 1044, 1048 (1991).

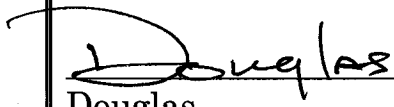
Fourth, Morales claims that the State committed reversible error by impermissibly inquiring into his post-arrest silence. Morales, however, did not remain silent after he was arrested: he was advised of his rights under Miranda v. Arizona, 384 U.S. 436 (1966), signed a waiver card, and gave a statement to police. Therefore, any cross-examination as to the inconsistencies between that statement and his trial testimony is not constitutionally problematic. See Anderson v. Charles, 447 U.S. 404, 408 (1980); Gaxiola v. State, 121 Nev. 638, 655, 119 P.3d 1225, 1237 (2005). Morales asserts similar error in the prosecutor's comment during cross-examination, "So, you've had since [the night of the murder]


to think of the story you just told . . . the jury on direct?" Where Morales did not in fact remain silent, either after his arrest or at trial, it is unclear how this was a "comment upon [Morales's] election to remain silent." Murray v. State, 113 Nev. 11, 17, 930 P.2d 121, 124 (1997) (quoting Neal v. State, 106 Nev. 23, 25, 787 P.2d 764, 765 (1990)). Moreover, even if it was improper, the comment was harmless beyond a reasonable doubt where, as here, it was made in passing and overwhelming evidence of guilt supports the verdict. See Morris v. State, 112 Nev. 260, 264, 913 P.2d 1264, 1267-68 (1996).

Having considered Morales's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Michelle Leavitt, District Judge  
Christiansen Law Offices  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk