IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MICHAEL JAA A/K/A DAVID M. BROUGHTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54294

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of battery causing substantial bodily harm and one count of destruction or injury to property. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

First, appellant David Michael Jaa contends that he "was denied due process, equal protection, a fair proceeding, and a trial by a jury of his peers when the State struck the only African-American person on the venire." "In reviewing a Batson challenge, 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." Diomampo v. State, 124 Nev. 414, 422-23, 185 P.3d 1031, 1036-37 (2008) (internal quotation marks omitted). Here, the State used its final peremptory challenge to excuse Beverly Jackson from the jury venire. The State made its final peremptory challenge without objection and offered race-neutral reasons for the excusal. Jaa agreed with the State's reasons and stated that he would not make a Batson challenge. The district court found that the State had presented valid reasons to excuse Jackson. Under these

circumstances, we conclude that the district court did not abuse its discretion by excusing Jackson from the jury venire. See Batson v. Kentucky, 476 U.S. 79, 96-98 (1986) (outlining a three-pronged test for determining whether the removal of a potential juror was unconstitutional).

Second, Jaa contends that he was deprived of his right to a fair trial when his alleged victim testified that Jaa was on parole. Jaa did not object to this testimony or seek a curative instruction. Therefore, we review for plain error. Herman v. State, 122 Nev. 199, 204, 128 P.3d 469, 472 (2006). We conclude that no relief is warranted because the victim's inadvertent reference to Jaa's prior criminal history did not affect his substantial rights. See generally Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995-96 (1996) (discussing factors to consider when evaluating the prejudicial effect of an inadvertent reference to prior criminal activity).

Third, Jaa contends that the district court erred by admitting statements into evidence that he made to a police officer without the benefit of a Miranda warning. See Miranda v. Arizona, 384 U.S. 436, 479 (1966). "The district court's purely historical factual findings pertaining to the 'scene- and action-setting' circumstances surrounding an interrogation is entitled to deference and will be reviewed for clear error. However, the district court's ultimate determination of whether a person was in custody and whether a statement was voluntary will be reviewed de novo." Rosky v. State, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005). Here, the district court found that Jaa's statements to the officer while in custody were spontaneous and not made in response to questions by the officer. Our review of the record reveals that the district court's finding is supported by substantial evidence and is not clearly erroneous. We conclude that Jaa's

statements were made voluntarily and were not the result of an interrogation and were properly admitted into evidence. See Rhode Island v. Innis, 446 U.S. 291, 301-02 (1980) (defining "interrogation" as direct questioning and "any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response").

Fourth, Jaa contends that the district court erred by admitting a medical doctor's expert testimony regarding the force generated by a fall from a futon because the testimony was outside the realm of the doctor's expertise and he did not inspect the futon or the floor or read the reports of the incident. This testimony was elicited without objection during defense counsel's cross-examination of the witness and we conclude that no plain error occurred here. See Herman, 122 Nev. at 204, 128 P.3d at 472.

Having considered Jaa's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Steven P. Elliott, District Judge
Marc Picker
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk