IN THE SUPREME COURT OF THE STATE OF NEVADA

EUGENE HOLLIS NUNNERY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56272

FILED

OCT 05 2011

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, attempted murder with the use of a deadly weapon, two counts of robbery with the use of a deadly weapon, attempted robbery with the use of a deadly weapon, and conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Appellant Eugene Nunnery raises three issues on appeal.

First, Nunnery claims that the district court erred by limiting the scope of jury voir dire. We disagree. The district court precluded Nunnery from asking various open-ended and unclear questions and instead suggested more direct inquiries that the district court concluded would elicit much of the same information from the potential jurors. Under the circumstances presented, we conclude that the district court did not abuse its discretion. See Witter v. State, 112 Nev. 908, 914, 921 P.2d 886, 891 (1996), receded from on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

Second, Nunnery contends that he is entitled to a new trial because the venire in his case did not represent a fair racial cross section

of the community. While the venire included only one African-American,[1] the Sixth Amendment does not require a venire to reflect a perfect cross section of the community. Williams v State, 121 Nev. 934, 939-40, 125 P.3d 627, 631 (2005) ("[A]s long as the jury selection process is designed to select jurors from a fair cross section of the community, then random variations that produce venires without a specific class of persons or with an abundance of that class are permissible."). Although Nunnery suggests various strategies that the jury commissioner should employ to ensure a more racially diverse jury pool—such as sanctioning those who fail to appear for jury service or recording the racial background of jury pool members—Nunnery has not shown that the venire was selected in a manner that systematically excluded a distinctive group, and we accordingly reject this claim. See id.

Third, Nunnery claims that the State committed reversible misconduct by repeatedly stating in opening arguments that Nunnery did not simply kill his victim, but executed him. Indeed, the evidence at trial—including Nunnery's admissions to detectives—showed that Nunnery momentarily deliberated and then shot the victim in the head while the victim was kneeling on the grass, pleading with Nunnery not to shoot his friend. While the State's comments were arguably inflammatory, under the circumstances we cannot conclude that the "statements so infected the proceedings with unfairness as to result in a denial of due process." Anderson v. State, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005).

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[1]No evidence was presented on the racial background of the remaining venirepersons.

Having considered Nunnery's contentions and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.[2]

Pickering, J.
Pickering

Rose, Sr. J.
Rose

Shearing, Sr. J.
Shearing

cc: Hon. Donald M. Mosley, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[2]The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.