IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLA DENISE EAGLETON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58133

FILED

FEB 08 2012

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 three counts of assault with a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Appellant Carla Denise Eagleton raises seven errors on appeal.

First, Eagleton contends that the district court erred in denying her challenge, pursuant to Batson v. Kentucky, 476 U.S. 79 (1986), to two peremptory strikes based on racial discrimination. See Diomampo v. State, 124 Nev. 414, 422, 185 P.3d 1031, 1036 (2008) (explaining the three-pronged test for determining whether illegal discrimination has occurred). We disagree. The State explained that prospective juror number 393 and 374 both indicated that they were biased against law enforcement. We conclude that these explanations for exercising the State's peremptory challenges were race-neutral and Eagleton has not demonstrated that these explanations were pretext for racial discrimination. See Hawkins v. State, 127 Nev. ___, ___, 256 P.3d 965, 967 (2011). Therefore, the district court did not err by rejecting Eagleton's Batson challenge.

Second, Eagleton contends that insufficient evidence supports her convictions because the State failed to prove every element of the

crime. We review the evidence in the light most favorable to the prosecution and determine whether any rational juror could have found the essential elements of the crime beyond a reasonable doubt. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Here, Eagleton's husband testified that Eagleton chased him around the house with a baseball bat. Eagleton then swung the bat at her husband knocking a cell phone out of his hands. Two officers also testified that Eagleton fired two rounds from a semi-automatic handgun at them through a bay window. Both officers testified that they feared for their safety. We conclude that a rational juror could infer from these circumstances that Eagleton intentionally placed her husband and the two officers in reasonable apprehension of immediate bodily harm with the use of a deadly weapon. NRS 200.471 The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports a conviction. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (circumstantial evidence alone may sustain a conviction).

Third, Eagleton contends that the State improperly referred to her prior bad acts without a Petrocelli hearing. Eagleton failed to object pursuant to NRS 48.045(2) and we review for plain error. Mclellan v. State, 124 Nev. 263, 269, 182 P.3d 106, 110 (2008). We conclude that the admission of the officer's unsolicited statement indicating that Eagleton had previously tried to strike her husband did not affect Eagleton's substantial rights because there was overwhelming evidence that Eagleton assaulted her husband, including Eagleton's own admission on cross-examination that she swung the bat at her husband and knocked his cell phone out of his hands. See id. at 271, 182 P.3d at 112 (declining to

find plain error in light of overwhelming evidence); see also Qualls v. State, 114 Nev. 900, 903-04, 961 P.2d 765, 767 (1998) (declining to reverse on appeal "where the result would have been the same if the trial court had not admitted the evidence").

Fourth, Eagleton contends that the State improperly shifted the burden of proof during rebuttal closing argument by arguing that Eagleton did not present testimony that her pills caused her to be confused or disoriented. Eagleton argues that the State was referring to her failure to present expert testimony. However, the State clarified its statement to the jury by explaining that it was only referring to Eagleton's own testimony that the pills she had taken affected her behavior. "Although a prosecutor may not normally comment on a defendant's failure to present witnesses or produce evidence, in some instances the prosecutor may comment on a defendant's failure to substantiate a claim." Leonard v. State, 117 Nev. 53, 81, 17 P.3d 397, 415 (2001). Furthermore, the State had the right to comment on Eagleton's credibility because she waived her Fifth Amendment right against self-incrimination by voluntarily testifying. See Owens v. State, 94 Nev. 171, 172, 576 P.2d 743, 744 (1978); State of Nevada v. Harrington, 12 Nev. 125, 129 (1877). Therefore, we conclude that the State did not impermissibly shift the burden of proof during closing argument.

Fifth, Eagleton contends that she was denied her right to a fair trial because she was forced to wear a sleeveless shirt that revealed her tattoo. Unlike prison clothing, a tattoo of a cross is not "'a constant reminder of the accused's condition' that 'may affect a juror's judgment.'" Hightower v. State, 123 Nev. 55, 58, 154 P.3d 639, 641 (2007) (quoting

Estelle v. Williams, 425 U.S. 501, 504 (1976)). We therefore conclude that Eagleton was not denied the right to a fair trial.

Sixth, Eagleton contends that the district court improperly denied her proposed jury instruction on resisting a public officer as a lesser-included offense of assault with a deadly weapon. See Rosas v. State, 122 Nev. 1258, 1264-65, 147 P.3d 1101, 1106 (2006). Resisting a public officer is not a lesser-included offense of assault with a deadly weapon because resisting a public officer requires two elements that assault with a deadly weapon does not. Compare NRS 199.280 (requiring victim to be a public officer discharging or attempting to discharge any legal duty of his or her office) with NRS 200.471(1)(a) and (2)(b); see also Barton v. State, 117 Nev. 686, 694-95, 30 P.3d 1103, 1108-09 (2001) (adopting elements test for determining "whether lesser included offense instructions are required"), overruled on other grounds by Rosas, 122 Nev. 1258, 147 P.3d 1101. The State did not charge Eagleton with assault on a public officer, see NRS 200.471(2)(c), and assault with a deadly weapon does not require the victim to be an officer discharging his or her public office. Therefore, we conclude that the district court did not err by denying Eagleton's proposed jury instructions.

Seventh, Eagleton contends that the district court improperly denied her proposed "two reasonable interpretations" jury instruction because it supported her defense theory. We conclude that the district court did not abuse its discretion because the jury was properly instructed on reasonable doubt. See NRS 175.211(1); Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002).

Having considered Eagleton's arguments and concluded that she is not entitled to relief,[1] we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[1]Eagleton also contends that the district court improperly denied her two proposed jury instructions related to an attempted murder charge. Because Eagleton was not convicted of attempted murder we need not address these claims.