

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARDO FERREL PACHECO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58231

FILED

MAY 10 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *H. Ingerson*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Leonardo Ferrel Pacheco contends that insufficient evidence was adduced to support the jury's verdict. We disagree and conclude that the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Trial testimony indicated that Pacheco was driving an unregistered moped when LVMPD patrol officers initiated a traffic stop. Pacheco stated that he was the owner of the moped and produced two documents from his pants pocket—a bill of sale and a certificate of origin. Officer Sandra Rumery testified that the certificate of origin seemed unusual because the typeface listing the engine number was smaller than the typeface on the rest of the document and the listed model “wasn't necessarily the same as the vehicle itself.” The bill of sale also seemed unusual because one section was typed and another was handwritten, and

Officer Rumery had never seen one bill of sale used in multiple transactions. The bill of sale did not include Pacheco's name or a vehicle identification number (VIN). A search of the moped's VIN confirmed that it was reported stolen. After Pacheco was Mirandized, he told Officer Nathan Davis that he traded a Honda Accord belonging to a friend of his sister's for the moped. At a later point in the interview, Pacheco told Officer Davis that he paid \$200 for the moped. When confronted about the discrepancy, Pacheco stated that he both traded the car and paid \$200 for the moped. When Pacheco was asked "where he got the scooter from and who he paid the money to. . . . [H]e said that's beside the point." The owner of the moped testified that when it was returned to him, he noticed that a hole was cut in the dashboard to accommodate a new ignition in a different location and the electrical system was damaged.

Circumstantial evidence alone may sustain a conviction. See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003). It is for the jury to determine the weight and credibility to give conflicting testimony, McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992), and a jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict, Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also NRS 205.273(1)(b). Therefore, we conclude that Pacheco's contention is without merit.

Pacheco next contends that the district court erred by denying his objection to the State's removal of juror 09 because the prosecutor's explanation for the peremptory strike was pretext for racial discrimination. See U.S. Const. amends. VI & XIV, § 1; Nev. Const. art. 1, §§ 3, 8; Batson v. Kentucky, 476 U.S. 79 (1986). We agree.

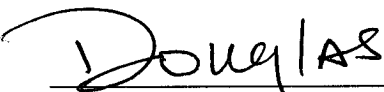
“Appellate review of a Batson challenge gives deference to [t]he trial court’s decision on the ultimate question of discriminatory intent.” Hawkins v. State, 127 Nev. ___, ___, 256 P.3d 965, 966 (2011) (internal quotation omitted); see also Felkner v. Jackson, 562 U.S. ___, ___, 131 S. Ct. 1305, 1307 (2011). Determining whether a peremptory strike was exercised in a discriminatory manner in violation of Batson requires a three-step inquiry: (1) based on the totality of the circumstances, the opponent of the strike must make a prima facie showing that racial discrimination occurred; (2) the proponent of the strike must provide a race-neutral explanation; and (3) “the trial court must determine whether the parties have satisfied their respective burdens of proving or rebutting purposeful racial discrimination.” Hawkins, 127 Nev. at ___, 256 P.3d at 967; Diomampo v. State, 124 Nev. 414, 422, 185 P.3d 1031, 1036 (2008). Pretext may be found by considering “the similarity of answers to voir dire questions given by [minority] prospective jurors who were struck by the prosecutor and answers by [nonminority] prospective jurors who were not struck.” Hawkins, 127 Nev. at ___, 256 P.3d at 967 (alterations in original) (quoting Ford v. State, 122 Nev. 398, 405, 132 P.3d 574, 578-79 (2006)). “Discriminatory jury selection in violation of Batson generally constitutes ‘structural’ error that mandates reversal.” Diomampo, 124 Nev. at 423, 185 P.3d at 1037.


Here, the prosecutor stated that a peremptory strike was used to remove juror 09 because her son was convicted of burglary and the prospective juror “had a problem” with his representation and believed “that he could have been treated better.” Defense counsel objected pursuant to Batson and noted that nonminority prospective juror 38 expressed a similar dissatisfaction in a case involving his juvenile son and

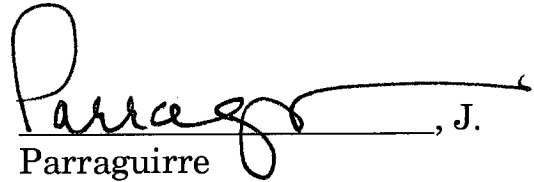
was not struck by the State. The prosecutor claimed that the State “just never got around to him” and “would have if we had additional preempts [sic].” The district court, however, found that the State “could have challenged him.” Nevertheless, the district court denied Pacheco’s challenge to the State’s peremptory strike, removing juror 09, “in light of the issues she brought up about her son.”

Jurors 09 and 38 both ultimately stated that they could be unbiased in their deliberations, however, nonminority prospective juror 38 “appeared to have a far more extreme response,” *id.* at 425, 185 P.3d at 1038, than juror 09 on the subject of law enforcement personnel and the court system, thus indicating bias, and was not struck. Juror 38 stated that his juvenile son was not treated fairly and, upon questioning, described how his son had been “pulled out of school,” interrogated without an adult or attorney present, and charged with robbery. The robbery charge was eventually dismissed. When asked if “the police didn’t do a good enough investigation,” juror 38 replied, “I don’t think they did any. It was presented to the DA, and they made the decision.” Juror 38 offered, “I just have a healthy mistrust.” Juror 09, on the other hand, never expressed any negative feelings in such strong terms. Therefore, we conclude that the district court erred by denying Pacheco’s Batson challenge to the State’s removal of juror 09 because a comparative juror analysis reveals that the prosecutor’s explanation for the peremptory strike was pretextual in nature. Accordingly, we

ORDER the judgment of conviction REVERSED AND
REMAND this matter to the district court for a new trial.¹


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Douglas W. Herndon, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Because we are reversing and remanding for a new trial, we need not address Pacheco's additional claims of error.