

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONNESH A RAYNEIL PHILLIPS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71580

FILED

JAN 09 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Donnesha Rayneil Phillips appeals from a judgment of conviction entered pursuant to a jury verdict of robbery. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

First, Phillips argues the jury venire was not composed of a fair cross section of Clark County because African Americans were underrepresented. Phillips also argues the district court erred by failing to conduct an evidentiary hearing to permit her to question the jury commissioner regarding juror selection. The district court concluded an evidentiary hearing was not necessary because the representation of African Americans in the group of jurors was reasonable in relation to the number of African Americans in Clark County and prior hearings regarding the jury-selection process had established the process used in the Eighth Judicial District Court did not systematically exclude African Americans from serving as jurors.

The Sixth and Fourteenth Amendments entitle a defendant to a jury venire chosen from a fair cross-section of the community, meaning the venire does not systematically exclude minority groups within the community. *Williams v. State*, 121 Nev. 934, 939, 125 P.3d 627, 631 (2005). To prove a prima facie Sixth Amendment fair cross-section violation, a

defendant must show (1) the excluded group is a distinctive group in the community, (2) the group is not fairly and reasonably represented in the venire, and (3) the underrepresentation is caused by systematic exclusion. *Id.* at 940, 125 P.3d at 631. However, there is no constitutional right to a venire that perfectly reflects the community's composition. *Id.* at 939, 125 P.3d at 631.

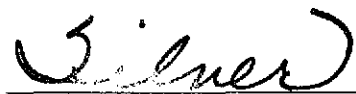
Regarding reasonable representation of the group in the venire, “[w]hether a certain percentage [of minority jurors] is a fair representation of a group is measured by the absolute and comparative disparity between the actual percentage in the venire and the percentage of the group in the community.” *Id.* at 940 n.9, 125 P.3d at 631 n.9 (2005). “[A] comparative disparity well below 50% is unlikely to be sufficient to show underrepresentation, especially where the absolute disparity also is small.” *Evans v. State*, 112 Nev. 1172, 1187, 926 P.2d 265, 275 (1996) (internal punctuation omitted) (quoting *State v. Lopez*, 692 P.2d 370, 377 (Idaho Ct. App. 1984)).


Before the district court, Phillips asserted African Americans comprised 11.5% of the population of Clark County and noted only 3 of the 45 members of the jury venire were African American. Therefore, African Americans comprised 6.7% of Phillips' venire. Thus, the absolute disparity between the representation of African Americans in Phillips' venire amounted to 4.8% and there was a comparative disparity of 42%. Because the absolute disparity was small and the comparative disparity was below 50%, we conclude the district court correctly concluded the representation of African Americans in Phillips' venire was reasonable in relation to the number of African Americans in Clark County. Thus, Phillips' fair-cross-section challenge fails and we conclude the district court properly denied her challenge without conducting an evidentiary hearing.

Second, Phillips argues there was insufficient evidence to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The victim in this matter testified he and Phillips went to his hotel room to engage in a sexual act. The victim testified after conclusion of the sexual act, Phillips got dressed in the bathroom while he stayed on the bed. He testified Phillips then exited the bathroom while brandishing a Taser, they then engaged in a struggle while she shocked him with the Taser, and Phillips told the victim to "let yourself be robbed." The victim testified Phillips eventually exited the hotel room with his pants, which contained between \$4700 to \$4900 in a pocket. The victim's pants were later discovered in the hotel parking lot, but his money was gone. Based on this testimony, the jury could reasonably find Phillips committed robbery. *See NRS 200.380(1)*. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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