IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL KEVIN POHLABEL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36656

FILED

OCT 25 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a controlled substance for the purpose of sale (count I), and possession of a controlled substance (count II). The district court sentenced appellant to serve a prison term of 12-32 months for count I, and a concurrent term of 12-48 months for count II; the sentences were ordered to run consecutively to all prior convictions. Appellant was given credit for 5 days time served.

First, appellant contends the district court erred by rejecting his objection to the prosecutor's use of peremptory challenges to strike two Native American venirepersons in violation of Batson v. Kentucky, 476 U.S. 79 (1986). More specifically, appellant argues that the State's explanation for the exercise of the peremptory strikes was pretextual. We disagree.

Pursuant to Batson and its progeny, there is a three step process for evaluating race-based objections to peremptory challenges: (1) the opponent of the peremptory challenge must make a prima facie showing of racial discrimination; (2) upon a prima facie showing, the proponent of the peremptory challenge has the burden of providing a race-neutral explanation; and (3) if a race-neutral explanation is tendered, the trial court must decide whether the proffered explanation is merely a pretext for purposeful racial discrimination. See id. at 96-98; see also Purkett v. Elem, 514 U.S. 765, 767 (1995); Doyle v. State, 112 Nev. 879, 887, 921 P.2d 901, 907 (1996). The ultimate burden of proof regarding racial motivation rests with the opponent of the

strike. See Purkett, 514 U.S. at 768. The trial court's decision on the question of discriminatory intent is a finding of fact to be accorded great deference on appeal. See Hernandez v. New York, 500 U.S. 352, 364-65 (1991) (plurality opinion); Thomas v. State, 114 Nev. 1127, 1137, 967 P.2d 1111, 1118 (1998), cert. denied, 120 S.Ct. 85 (1999); see also Doyle, 112 Nev. at 889-90, 921 P.2d at 908.

Our review of the record on appeal reveals that the district court did not err in rejecting appellant's objection to the prosecutor's use of peremptory challenges to strike two Native American venirepersons. The prosecutor offered race-neutral explanations, and appellant failed to carry his burden of establishing a racial motivation for the strikes by proving that the explanations were pretextual. Accordingly, we conclude that appellant's contention lacks merit.

Second, appellant contends the State committed "forensic error" during opening and closing arguments. We construe appellant's claim to be a charge of prosecutorial misconduct regarding various statements made by the State during opening and closing arguments. We disagree.[1]

Initially, we note that appellant did not cite to any authority, case law, or statute in support of his contentions. "It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court." Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Furthermore, appellant failed to object to the prosecutor's comments. Failure to object at the trial court level generally precludes the right to assign error on appeal. Garner v. State, 78 Nev. 366, 372-73, 374 P.2d 525, 529 (1962); see also Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992).

[1]We note that counsel's fast track statement fails to cite to any specific instance of "forensic error" committed by the prosecutor during closing arguments.

Third, appellant contends the State committed prosecutorial misconduct by disparaging defense tactics. More specifically, appellant argues the prosecutor committed misconduct by stating that appellant's counsel, "dug his own grave," in response to a defense objection. The district court subsequently denied appellant's motion for a mistrial.

Initially, we note that "it is within the sound discretion of the trial court to determine whether a mistrial is warranted. Absent a clear showing of abuse of discretion, the trial court's determination will not be disturbed on appeal." Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995 (1996) (citations omitted).

The district court struck the prosecutor's comment from the record, and admonished the jury to disregard it. We must presume that the jury followed that instruction. See Lisle v. State, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997) ("There is a presumption that jurors follow jury instructions."), clarified on other grounds, 114 Nev. 221, 954 P.2d 744 (1998). Moreover, we conclude that to the extent the prosecutor improperly disparaged defense counsel, the misconduct did not affect appellant's substantial rights because the State adduced sufficient evidence to support the conviction. See United States v. Olano, 507 U.S. 725, 734 (1993) (explaining that "'affec[t] substantial rights' . . . means that the error must have been prejudicial: It must have affected the outcome of the district court proceedings").

Fourth, appellant contends the State erred by eliciting improper testimony from two State witnesses. More specifically, appellant argues that the testimony included impalpable and highly suspect evidence, and improperly bolstered the character and reliability of a witness. We conclude that appellant's contention lacks merit.

Our review of the trial transcript reveals that in each instance the objected-to witness statement was unsolicited. Furthermore, in each instance the district court sustained

appellant's objection, struck the statement from the record, and admonished the jury to disregard it. We must presume that the jury followed that instruction. See Lisle, 113 Nev. at 558, 937 P.2d at 484. Moreover, the testimony was not so prejudicial that it could not be neutralized by an admonition to the jury. See Allen v. State, 99 Nev. 485, 490-91, 665 P.2d 238, 241 (1998); see also Olano, 507 U.S. at 734. We conclude that the State did not commit error by eliciting improper testimony.

Having considered appellant's contentions and concluded that they are without merit, we affirm the judgment of conviction.

It is so ORDERED.

Shearing, J.

Agosti, J.

Leavitt, J.

cc: Hon. J. Michael Memeo, District Judge
Attorney General
Elko County District Attorney
Matthew J. Stermitz
Elko County Clerk