IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GABY MOMPREMIER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74254

ORDER OF AFFIRMANCE

Gaby Mompremier appeals from a judgment of conviction entered pursuant to a jury verdict of battery with use of a deadly weapon constituting domestic violence. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Mompremier was arrested for stabbing her fiancée. At the time, Mompremier was taking medication to transition from a male to a female. During voir dire, the State used a peremptory strike to remove a prospective juror who identified as queer and who questioned his ability to be impartial. Thereafter at trial, the victim testified that Mompremier hit him with a trophy and then stabbed him in the stomach with a knife, piercing his liver. Mompremier testified in her defense, countering that the victim tried to choke her, and she hit him with the trophy and then pointed the knife at him in self-defense. Mompremier claimed that the victim accidentally stabbed himself when he grabbed the knife from Mompremier.

In addition to the victim's testimony, the State presented photographs of the victim's wounds, the scene of the crime, the weapons, and the victim's shirt. The State also presented the testimonies of officers who investigated the scene and spoke with the victim, and testimony from a detective who investigated the scene and spoke with Mompremier. Critically, the detective testified that Mompremier told him she was in another room

when the victim fell and hit his head on a trophy and then fell on the knife. Yet, at trial, Mompremier testified that she acted in self-defense. The jury returned a guilty verdict.[1]

On appeal, Mompremier argues this court should reverse her conviction and remand the case for a new trial because (1) the district court erroneously denied her *Batson* challenge to the State's peremptory strike of the prospective juror, (2) the district court abused its discretion by admitting two Facebook posts into evidence, and (3) the district court erred by failing to sua sponte instruct the jury to consider whether Mompremier's statement to the police were voluntary. We disagree.

As an initial matter, Mompremier failed to preserve her second and third arguments for appeal, and after carefully reviewing the record, we conclude Mompremier has not demonstrated plain error in light of the overwhelming evidence against her. *See Rimer v. State*, 131 Nev. 307, 332-33, 351 P.3d 697, 715-16 (2015) (explaining unpreserved claims of error are reviewed for plain error, and to obtain a reversal the defendant must show that the error was prejudicial and that it affected his or her substantial rights).[2]

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[1]We do not recount the facts except as necessary to our disposition.

[2]We note that the Facebook posts may have been inadmissible but Mompremier did not object to the posts' admission. *See id.* (concluding that where the defendant failed to object to the admission of alleged other bad act evidence at trial, any error did not amount to plain error where the evidence did not show that it affected the outcome of the trial).

Mompremier also fails to provide Nevada law requiring the trial court, under these facts, to sua sponte instruct the jury to determine whether her statements to police were voluntary. Notably, Mompremier's statement to police was not a confession, and on appeal she does not demonstrate that she

Turning to Mompremier's remaining argument, we evaluate an equal-protection challenge to the exercise of a peremptory challenge using the three-step analysis set forth by the United States Supreme Court in *Batson v. Kentucky*, 476 U.S. 79 (1986). *Kaczmarek v. State*, 120 Nev. 314, 332, 91 P.3d 16, 29 (2004); *see also Purkett v. Elem*, 514 U.S. 765, 767 (1995). First, the party opposing the challenge must present a prima facie case of discrimination, after which the proponent must present a neutral explanation for the challenge. *Ford v. State*, 122 Nev. 398, 403, 132 P.3d 574, 577 (2006). The district court then determines whether the opponent has proved purposeful discrimination. *Id.*; *see also Johnson v. California*, 545 U.S. 162, 171 (2005) (noting the "burden of persuasion 'rests with, and never shifts from, the opponent of the strike'" (quoting *Purkett*, 514 U.S. at 768)). We give great deference to the district court's factual findings regarding discriminatory intent, *Diomampo v. State*, 124 Nev. 414, 422-23, 185 P.3d 1031, 1036-37 (2008), and we will not reverse the district court's decision "unless clearly erroneous," *Kaczmarek*, 120 Nev. at 334, 91 P.3d at 30.

We conclude Mompremier fails to demonstrate clear error. The Nevada Supreme Court recently extended *Batson* to recognize sexual orientation. *See Morgan v. State*, 134 Nev. ___, ___, 416 P.3d 212, 224 (2018). Here, the State offered a neutral reason for the challenge, and Mompremier

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contested the voluntariness of her statement below. *See Carlson v. State*, 84 Nev. 534, 536, 445 P.2d 157, 159 (1968) (addressing the need to give a jury instruction where the voluntariness of a confession is at issue); *see also Gonzales v. State*, 131 Nev. 481, 494, 354 P.3d 654, 663 (Ct. App. 2015) (addressing the voluntariness of a confession and concluding that even if there was error it was harmless in light of the overwhelming evidence of guilt). Because Mompremier does not adequately support or cogently argue this point, we need not consider it further. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

fails to demonstrate that reason was a pretext for discrimination. Specifically, the State asserted below that the prospective juror repeatedly expressed doubt regarding his ability to be fair and impartial because of his personal background and his distrust of police officers. The record supports the district court's factual finding that this explanation was neutral. The prospective juror stated that his past experiences made the case "pretty personal" and would "definitely affect[ ] my judgment," and he admitted that if he were the prosecutor, he would not want himself to be on the jury. He further stated his friends had been victimized by the police, and that he did not fully trust the police as a result. Even though the prospective juror later asserted he could be fair and impartial, the prospective juror's statements, taken as a whole, suggest bias. *See id.* at ___, 416 P.3d at 226 (upholding the district court's decision to deny a challenge where the gay juror approved of the media's criticism of police).[3] Accordingly, the district court did not err by denying the *Batson* challenge, and we

ORDER the judgment of conviction AFFIRMED.

Silver, C.J.

Tao, J.

Gibbons, J.

[3]We note the State initially challenged the prospective juror for cause, and that the district court could have granted that challenge on the basis of inferable bias in light of the record as a whole. *See Sayedzada v. State*, 134 Nev. ___, ___, 419 P.3d 184, 192 (Ct. App. 2018) ("Bias may be inferred where facts disclosed by the prospective juror during voir dire show an average person in the juror's situation would not be able to be unbiased.").

cc: Hon. Tierra Danielle Jones, District Judge
Resch Law, PLLC d/b/a Conviction Solutions
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk