

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GEORGE OMAR MATUTI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65245

**FILED**

**MAY 17 2016**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of first-degree kidnapping. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant George Matuti claims his constitutional right to equal protection of the law was violated by the State's use of peremptory challenges to remove six men from the jury venire. Matuti argues he made a prima facie showing of gender discrimination, this court should reconsider the standard for reviewing a district court's prima-facie-showing determination, and the State failed to provide adequate gender-neutral explanations for challenging prospective jurors 260 and 264.

A proponent's use of peremptory challenges to remove prospective jurors solely on the basis of gender violates the Equal Protection Clause of the United States Constitution. *Watson v. State*, 130 Nev. \_\_\_, \_\_\_, 335 P.3d 157, 165 (2014). The district court is required to evaluate equal-protection challenges to the exercise of peremptory

challenges by applying the three-step analysis set forth in *Batson v. Kentucky*, 476 U.S. 79, 96-98 (1986). *Id.* This analysis provides,

(1) the opponent of the peremptory challenge must make out a prima facie case of discrimination, (2) the production burden then shifts to the proponent of the challenge to assert a neutral explanation for the challenge, and (3) the trial court must then decide whether the opponent of the challenge has proved purposeful discrimination.

*Ford v. State*, 122 Nev. 398, 403, 132 P.3d 574, 577 (2006). “[We give] great deference to the district court’s factual findings regarding whether the proponent of a strike has acted with discriminatory intent, and we will not reverse the district court’s decision unless clearly erroneous.” *Watson*, 130 Nev. at \_\_\_, 335 P.3d at 165 (internal citations and quotation marks omitted).

Matuti objected to six of the State’s peremptory challenges because the prospective jurors were male, the alleged victim was a juvenile female, and the challenges appeared to discriminate on the basis of gender. The district court declined to make a ruling as to whether Matuti made a prima facie showing of discrimination, and it asked the State to place its reasons for the challenges on the record.

The State explained that prospective juror 208 was challenged because he was hard to hear, did not provide much of a response to questions, and did not appear to want to be there. Prospective juror 211 had a deep seated bias against law enforcement and indicated other people could do a better job of being fair and objective. Prospective juror 256 had a bias against law enforcement and the State had been unsuccessful in

having him struck for cause. Prospective juror 225 said that teenagers mostly lie and the alleged victim in this case was a teenager. Prospective juror 260 appeared to have difficulty understanding and responding to questions and there was not a lot known about him. And prospective juror 264 was challenged for strategic reasons because the State wanted to move other people it knew more about into the jury.

The district court found the State's reasons for challenging the prospective jurors were gender-neutral, and it upheld the State's peremptory challenges. Because the district court did not reject Matuti's equal protection claim on the first step of the *Batson* analysis, his claims regarding the sufficiency of his prima facie showing and the appropriate standard for reviewing a district court's first-step determination are moot. *See Ford*, 122 Nev. at 403, 132 P.3d at 577 (recognizing the first-step of the *Batson* analysis is moot where the State "gave its reasons for its peremptory challenges before the district court determined whether the opponent of the challenge made a prima facie showing of discrimination").


The district court specifically found the State provided gender-neutral reasons for challenging prospective jurors 260 and 264. The district court observed prospective juror 260 was "milk toast," he did not have a lot of response to questions, and there was a sense he was not interested in the process and was not going to offer a lot. And, as to prospective juror 264, the State had made a strategic decision to challenge someone who might otherwise be a good juror in order to get someone else it really wanted on the jury and determined this was a valid reason for a peremptory challenge. We conclude the district court did not clearly err in


this regard. *See id.* (“[T]he State’s neutral reasons for its peremptory challenges need not be persuasive or even plausible. Where a discriminatory intent is not inherent in the State’s explanation, the reason offered should be deemed neutral.” (footnote omitted)).

For the foregoing reasons, we conclude Matuti is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Douglas W. Herndon, District Judge  
Law Office of Patricia M. Erickson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk