

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAFAEL ORTIZ ROSADO,

No. 36967

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

JAN 30 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. P. [Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of receiving or possessing stolen goods. The district court sentenced appellant to serve a prison term of 12-36 months, and ordered him to pay \$530.00 in restitution. Appellant was given credit for 146 days time served.

Appellant's sole contention on appeal is that his Sixth Amendment right to an impartial jury was violated.<sup>1</sup> Appellant argues that (1) in responding to a jury questionnaire completed approximately one-year earlier, the jury foreperson demonstrated a bias against certain minority groups, and (2) the district court erred by allowing the juror to remain on the jury. We disagree with appellant's contention.

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<sup>1</sup>U.S. Const. amend. VI.

This court has stated that a trial court has broad discretion in ruling on challenges for cause.<sup>2</sup> The "'predominant function in determining juror bias involves credibility findings'" by the district court,<sup>3</sup> and "'if the prospective juror's responses are . . . conflicting, the trial court's determination of that juror's state of mind is binding.'"<sup>4</sup>

In this case, after the selection of the jury and before the trial began, a question arose as to the impartiality of a juror based on comments made in a jury questionnaire; the juror stated that she did not trust Mexicans and African-Americans. The district court canvassed the juror concerning her remarks and discussed appellant's right to a fair trial. The juror stated in response to questioning from both the district court judge and counsel for both parties that she completed the questionnaire approximately one-year earlier, that she no longer held those beliefs, and that she would have no difficulty being impartial.<sup>5</sup> We therefore conclude that the

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<sup>2</sup>See Walker v. State, 113 Nev. 853, 865, 944 P.2d 762, 770 (1997).

<sup>3</sup>Id. (quoting Wainwright v. Witt, 469 U.S. 412, 428-29 (1985)).

<sup>4</sup>Id. (quoting People v. Livaditis, 831 P.2d 297, 303 (Cal. 1992)).

<sup>5</sup>The juror stated, "Things have changed since then. My position and my beliefs and I am - when I wrote that, I was a little stressed. I had had a bad day at work and it was - my comments on there were a little rude and obnoxious . . . that was totally uncalled for."

district court did not err in allowing the juror in question to remain on the jury.

Having considered appellant's contention and concluded that it lacks merit, we affirm the judgment of conviction.

It is so ORDERED.

Young J.  
Young

Rose J.  
Rose

Becker J.  
Becker

cc: Hon. Jack B. Ames, District Judge  
Attorney General  
Elko County District Attorney  
Michael L. Shurtz  
Elko County Clerk