IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIS KING DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83806

FILED

APR 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE
AND REMAND TO CORRECT CLERICAL ERROR

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.[1]

In 2021, a police officer in his patrol vehicle observed appellant Willis Davis walking in a crosswalk against the crossing signal. The officer activated his vehicle's lights and siren, and Davis fled. After a lengthy foot pursuit, the officer apprehended Davis. Without any prompting, Davis made statements about cold cases and, during interviews with detectives, he admitted to killing three people. The detectives connected Davis's admissions to three shooting deaths in 1996—a drive-by shooting and a double murder. After a jury trial, Davis was convicted of all three murders, and this appeal followed.

Motion to suppress

Davis argues that the district court erred in finding he validly waived his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and denying his motion to suppress his confession. Specifically, Davis contends that he did not knowingly, intelligently, and voluntarily waive his rights

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[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

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due to his phencyclidine (PCP) intoxication. "[W]hether a waiver is knowing and intelligent is a question of fact, which is reviewed for clear error. However, the question of whether a waiver is voluntary is a mixed question of fact and law that is properly reviewed de novo." *Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181 (2006) (footnote omitted).

We discern no error because Davis was advised of his constitutional rights multiple times, affirmed he understood those rights before the interrogation, and did not invoke them. And the record does not show that any alleged intoxication prevented Davis from understanding his rights or the effect of his voluntary waiver. Davis provided detailed personal information (phone number, date of birth, social security number, etc.) and his responses to the detectives' questions about the crimes were generally responsive and coherent. *See Kirksey v. State*, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996) (holding an accused must be so intoxicated "that he was unable to understand the meaning of his comments" to render a confession involuntary (internal quotation marks omitted)); *see also Soto v. Commonwealth*, 139 S.W.3d 827, 846-48 (Ky. 2004) (holding that defendant's intoxication on PCP, cocaine, and amphetamines at the time of confession did not require suppression absent a showing that he lacked sufficient faculties to make a reliable statement). And having considered the totality of the circumstances and the factors outlined in *Passama v. State*, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987), we conclude that the State showed, by a preponderance of the evidence, that Davis's statements were voluntary, *see Dewey v. State*, 123 Nev. 483, 492, 169 P.3d 1149, 1154 (2007). There is no indication that Davis, an adult with previous experience in the criminal justice system, was subjected to prolonged questioning or that his will was overborne by the officers, and any alleged PCP intoxication did not render his statement involuntary. Thus, the district court did not

err by denying his motion to suppress. *See State v. Beckman*, 129 Nev. 481, 485-86, 305 P.3d 912, 916 (2013) (findings of fact for suppression issues are reviewed for clear error, but this court will review de novo the legal consequences of those facts).

Batson objection

Davis argues that the district erred in denying his objections to the State's use of peremptory challenges to dismiss two veniremembers pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). Courts resolve a *Batson* objection using a three-step framework: the opponent of the challenge making a prima facie showing of impermissible discrimination, the proponent offering a neutral, permissible explanation for the strike, and the opponent proving purposeful discrimination. *Id.* at 93-98; *Kaczmarek v. State*, 120 Nev. 314, 332, 91 P.3d 16, 29 (2004); *see also Williams v. State*, 134 Nev. 687, 689-92, 429 P.3d 301, 305-07 (2018). "Because the district court is in the best position to rule on a *Batson* challenge, its determination is reviewed deferentially, for clear error." *Williams*, 134 Nev. at 689, 429 P.3d at 306.

Here, the first step of the *Batson* inquiry became moot when the district court asked the State to give its race-neutral reasons for the peremptory challenges to which Davis objected. *See id.* at 690-91, 429 P.3d at 306-07. After the State provided race-neutral reasons for the challenges (step two), the district court engaged in a thoughtful and considered discussion, affording Davis an opportunity to traverse the reasons as pretextual before it denied his *Batson* objections (step three).[2] First, in

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[2]In claiming that the State's explanations were pretextual, Davis argued that prospective Juror #252 said he could be fair and impartial, and that the State mentioned prospective Juror #51's comment that she did not know any minorities who had not experienced prejudice. The first

accord with the race-neutral reasons offered by the State, the district court agreed that prospective Juror #252 had a conviction for possession of a controlled substance and regretted talking with the police, which was similar to Davis's claim that his confession was drug-induced. Next, the district court agreed that prospective Juror #51 paused before affirming that she could vote for guilt if the State presented evidence beyond a reasonable doubt, and after the prosecutor followed up, she responded that she could find a person guilty if "the State presented all the evidence," which could cause concern because some evidence was unavailable due to the death of witnesses and the passage of 25 years. Although the district court did not use the word "demeanor," it explained that the cold record may not reflect the context of the prosecutor's voir dire of prospective Juror #51. *See id.* at 693, 429 P.3d at 308 ("Because the district court interacts with the juror and the prosecutor, and sees their interactions first-hand, an appellate court defers to the district court's demeanor determinations."). Finally, the district court agreed that the State had used peremptory challenges on other prospective jurors for comparable reasons—prospective Juror #58 stated that his brother pleaded guilty to a crime he didn't commit, and prospective Juror #123 said he expected the police to have preserved all the evidence from 1996. We conclude that the district court did not clearly err

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argument is insufficient to show purposeful discrimination. *See Hernandez v. New York*, 500 U.S. 352, 374 (1991) (O'Connor, J., concurring) ("Absent intentional discrimination violative of the Equal Protection Clause, parties should be free to exercise their peremptory strikes for any reason, or no reason at all."). Likewise, the second argument does not demonstrate purposeful discrimination because any individual could hold the same opinion. *See Connor v. State*, 130 Nev. 457, 464, 327 P.3d 503, 509 (2014) (explaining that "the defendant bears a heavy burden in demonstrating that the State's facially race-neutral explanation is pretext for discrimination").

in accepting the State's race-neutral justifications and denying Davis's *Batson* objections.

Motion to sever charges

Davis argues that the district court erred in ruling on his motion to sever the drive-by shooting and double murder charges. In this case, the district court granted Davis's motion to sever the charges but indicated that his statements about all the murders may become admissible to rebut the defense that Davis falsely confessed during a PCP hallucination. Davis decided to withdraw the motion and proceed to trial on all counts. Because Davis withdrew his motion after it was granted, we review for plain error. *See United States v. Newman*, 6 F.3d 623, 628 (9th Cir. 1993) (applying plain error review where appellant withdrew his objection in the lower court). We discern no plain error because other-bad-act evidence may be relevant to rebut a defense. *See, e.g., Hubbard v. State*, 134 Nev. 450, 458, 422 P.3d 1260, 1267 (2018) (providing that "[p]rior act evidence can also be used to rebut a defense of mistake or accident"). Therefore, Davis has not shown he is entitled to relief.

Confrontation Clause

Davis argues that the district court violated his right to confrontation by allowing Dr. Lisa Gavin, a medical examiner, to testify when she did not perform the drive-by shooting victim's autopsy. Davis contends that Dr. Gavin was a substitute coroner and only "regurgitated" the original autopsy report. We review such claims de novo, *see Jeremias v. State*, 134 Nev. 46, 54, 412 P.3d 43, 51 (2018), and disagree because Dr. Gavin testified about her independent medical opinion as to the cause and manner of the victim's death after reviewing the autopsy report, toxicology report, the coroner's investigation report, photos of the crime scene, and a photo of the victim in the hospital. Accordingly, her testimony did not

violate the Confrontation Clause. *See Flowers v. State*, 136 Nev. 1, 9, 456 P.3d 1037, 1046 (2020) (finding no Confrontation Clause violation where a substitute pathologist testified based on his independent opinions). Furthermore, any hearsay Dr. Gavin relayed about the caliber of the bullet used in the drive-by shooting constitutes harmless error as the testimony was cumulative to other testimony about the caliber of spent casings found at the scene. *See* NRS 178.598 (harmless error standard).

Gang-affiliation evidence

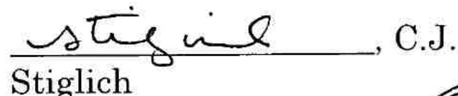
Davis argues that the district court erred in admitting evidence of his gang affiliation at trial. "The decision to admit gang-affiliation evidence rests within the discretion of the trial court." *Butler v. State*, 120 Nev. 879, 889, 102 P.3d 71, 78 (2004). Davis admitted his gang membership to detectives. Specifically, Davis stated that he and others decided "to go gang bangin'," drove through rival gang territory, and decided to shoot the victim. As to the double murder, Davis stated that "it was a gang-bangin' situation" and "somethin' that happened to earn a name." The district court determined that the evidence was relevant to show motive, that it was proven by clear and convincing evidence, and that its probative value was not substantially outweighed by the risk of unfair prejudice. *See id.* (upholding the admission of gang evidence to establish defendant's motive); *see also* NRS 48.045(2). We conclude that the district court did not abuse its discretion by admitting evidence of Davis's gang affiliation. *See Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) ("An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason.").

Motion to strike

Davis argues that the district court abused its discretion in denying his motion to strike the State's notice of expert witnesses because

it noticed all the crime lab employees. NRS 174.234(2) requires parties to provide written notice of potential expert witnesses. *See Mitchell v. State*, 124 Nev. 807, 818-19, 192 P.3d 721, 729 (2008). Here, Davis has not shown the State failed to comply with any disclosure obligation or that it acted in bad faith. *See id.* at 819 & n.24, 192 P.3d at 729 & n.24. Moreover, the State informed him before trial that only Dr. Gavin would be called to testify. Therefore, Davis knew which expert would testify, and we conclude that the district court did not abuse its discretion in denying the motion to strike. Accordingly, for the foregoing reasons,[3] we

ORDER the judgment of conviction AFFIRMED AND REMAND this matter to the district court to correct a clerical error.



_____________________, C.J.
Stiglich

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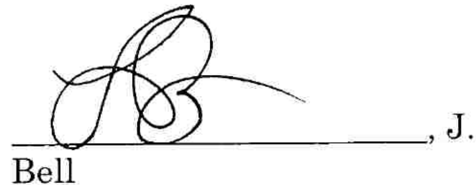
Lee



_____________________, J.
Bell

cc: Hon. Jacqueline M. Bluth
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[3]The parties agree that the judgment of conviction contains a clerical error—it incorrectly states that Davis pleaded guilty. Accordingly, following this court's issuance of its remittitur, the district court shall enter a corrected judgment of conviction. *See* NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); *Buffington v. State*, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that the district court does not regain jurisdiction following an appeal until this court issues its remittitur).