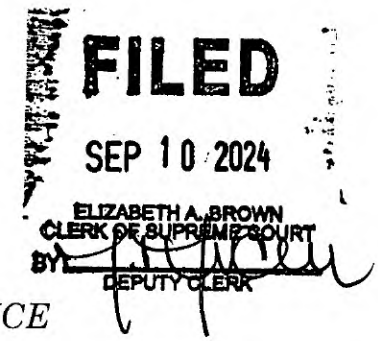
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ZANE NUCE KELLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87159-COA



ORDER OF AFFIRMANCE

Zane Nuce Kelly appeals from a judgment of conviction, entered pursuant to a jury verdict, of possession of a stolen motor vehicle and eluding a public officer. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Kelly first argues the district court erred in failing to apply his 515 days of presentence credit to his sentence for possession of a stolen motor vehicle and then again to his consecutive sentence for eluding a public officer. We disagree. The district court applied Kelly's presentence confinement credit to his sentence for possession of a stolen motor vehicle, leaving nothing left to apply to his remaining consecutive sentence for eluding a public officer. *See Kuykendall v. State*, 112 Nev. 1285, 1287, 926 P.2d 781, 783 (1996) (holding that an offender is entitled to have all of their presentence time served credited toward their ultimate sentence); *Mays v. Eighth Jud. Dist. Ct.*, 111 Nev. 1172, 1176, 901 P.2d 639, 642 (1995) (providing that presentence confinement may be split among two or more consecutive sentences). Contrary to Kelly's argument, the district court could not apply his presentence credit again to his remaining consecutive sentence for eluding a public officer because that would result in Kelly

receiving double the amount of time he actually spent in presentence confinement. *Cf. White-Hughley v. State*, 137 Nev. 472, 472, 495 P.3d 82, 83 (2021) (reiterating "a district court must give a defendant credit for any time the defendant has actually spent in presentence confinement" (internal quotation marks omitted)). Accordingly, we conclude the district court did not err by applying Kelly's presentence credit to one of his consecutive sentences, and Kelly is not entitled to relief based on this claim.

Kelly next argues the district court erred in denying his *Batson*[1] challenge. During voir dire, the district court asked prospective jurors if they knew any prosecution witnesses. One prospective juror responded that she knew a police officer involved in the case because the officer was married to her cousin, and they grew up together and went to family gatherings. The prospective juror further stated that she did not "appreciate his character," and she would possibly have a negative view of the officer's testimony based on her familiarity with him. Neither party asked the prospective juror any further questions about her opinion of the police officer.

The State exercised its first peremptory strike against this prospective juror, and Kelly raised a *Batson* challenge because she was Hispanic. In response, the State argued that it struck the prospective juror because she held an unfavorable opinion of the police officer based on her personal knowledge of him. When the district court asked Kelly if he had any further argument on the State's proffered race-neutral reasons, Kelly submitted the matter and did not challenge the State's explanations as pretextual. The court then denied Kelly's *Batson* challenge.

---

[1]*Batson v. Kentucky*, 476 U.S. 79 (1986).

When reviewing a *Batson* challenge, this court gives deference to the "trial court's decision on the ultimate question of discriminatory intent." *Diomampo v. State,* 124 Nev. 414, 422-23, 185 P.3d 1031, 1036-37 (2008) (quotation marks omitted). There are three stages to a *Batson* challenge: first, the opponent of the peremptory strike must show "a prima facie case of racial discrimination"; second, the proponent of the peremptory strike must present a race-neutral explanation; and third, the trial court must determine whether the opponent of the peremptory strike has proven purposeful racial discrimination. *See Hawkins v.* State, 127 Nev. 575, 578, 256 P.3d 965, 967 (2011) (quoting *Purkett v. Elem*, 514 U.S. 765, 767 (1995)); *Williams v. State*, 134 Nev. 687, 689, 429 P.3d 301, 306 (2018).

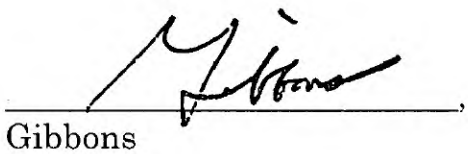
In this case, because Kelly did not challenge the State's race-neutral explanation for its peremptory strike, he essentially "stopped at step [one]."[2] *Hawkins*, 127 Nev. at 578, 256 P.3d at 967. "Failing to traverse an ostensibly race-neutral explanation for a peremptory challenge as pretextual in the district court stymies meaningful appellate review which, as noted, is deferential to the district court." *Id.* The prosecutor's reasoning for striking the prospective juror does not reflect an inherent discriminatory intent, and Kelly "failed to show purposeful discrimination or pretext or to

---

[2]For step one of *Batson*, Kelly argued in the district court that the State used its peremptory strike to remove a prospective juror who was Hispanic. Though the State disputed whether Kelly had made a prima facie case of racial discrimination, because the State went on to offer a race-neutral explanation for the strike before the district court decided step one, the step-one analysis is moot. *See Williams*, 134 Nev. at 690-691, 429 P.3d at 306-07 (holding the analysis for step one is moot "[w]here, as here, the State provides a race-neutral reason for the exclusion of a veniremember before a determination at step one" (citing *Hernandez v. New York*, 500 U.S. 352, 359 (1991))).

offer any analysis of the relevant considerations, such as comparative juror analysis or disparate questioning."[3] *Id.* at 579, 256 P.3d at 968. Therefore, we conclude that the district court did not err in rejecting Kelly's *Batson* challenge. Accordingly, we

ORDER the judgment of conviction AFFIRMED.[4]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

---

[3]Kelly argues on appeal that the State's proffered race-neutral reason was pretextual because another prospective juror, a Caucasian, indicated he had a negative view of law enforcement, and he was not stricken. It is unclear whether we must conduct comparative juror analysis for the first time on appeal, *see Nunnery v. State*, 127 Nev. 749, 784 n.17, 263 P.3d 235, 258 n.17 (2011). Nonetheless, we note that the State indicated it struck the prospective juror based on her personal relationship and knowledge of a specific police officer, not because of her opinion on law enforcement in general. Thus, Kelly has not shown that the two prospective jurors were similarly situated such that he can show disparate treatment by the State.

[4]Kelly also asserts that cumulative error warrants reversal. As Kelly has identified no errors, we conclude there are no errors to cumulate and Kelly is not entitled to relief based on this claim. *See Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018).

cc: Hon. Michael Montero, District Judge
Nevada State Public Defender's Office
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk