IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PENISIMANI ULUI TAUNAHOLO, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 89034-COA

ORDER OF AFFIRMANCE

Penisimani Ului Taunaholo appeals from a judgment of conviction, entered pursuant to a jury verdict, of robbery with the use of a deadly weapon, ownership or possession of a firearm by a prohibited person, and assault with the use of a deadly weapon. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge. Taunaholo raises three claims on appeal related to the trial.

The district court did not abuse its discretion in granting the State's request for a 60-day continuance of trial

Taunaholo claims the district court abused its discretion in granting the State's request for a 60-day continuance of trial without good

cause, thereby violating his rights to a speedy trial. [1] NRS 178.556(2) provides that "[i]f a defendant whose trial has not been postponed upon the defendant's application is not brought to trial within 60 days after the arraignment on the complaint . . . , the court may dismiss the complaint." However, when there is good cause for delay, dismissal is not mandatory. *See Huebner v. State* , 103 Nev. 29, 31, 731 P.2d 1330, 1332 (1987). The State bears the burden of showing good cause. *Id*.

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[1]Taunaholo does not include the motion practice in the record on appeal and does not clearly explain in his opening brief whether his speedy-trial claim is premised upon his statutory or constitutional right to a speedy trial, or both. *See State v. Robles-Nieves* , 129 Nev. 537, 543, 306 P.3d 399, 404 (2013) (recognizing that a defendant has two speedy-trial rights: "the constitutional right protected by the Sixth Amendment and a statutory right to a trial within 60 days of arraignment under NRS 178.556(1)"). While Taunaholo's appellate briefings reference in passing his constitutional right to a speedy trial, he neither cites to caselaw relevant to this right nor discusses the applicable factors regarding such a right. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (noting "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court"). Additionally, his arguments at the hearing on the State's motion and on appeal center on whether the State established good cause for the requested 60-day continuance, indicating his claim is premised on his statutory right to a speedy trial. *See Huebner v. State* , 103 Nev. 29, 31, 731 P.2d 1330, 1332 (1987) (holding that "[d]ismissal is mandatory [under NRS 178.556] where there is a lack of good cause shown for the delay"). Nevertheless, to the extent Taunaholo is asserting a Sixth Amendment speedy trial claim premised on the 60-day continuance, his claim necessarily fails because a 60-day delay is not presumptively prejudicial as required to trigger a constitutional speedy-trial analysis. *See Meegan v. State* , 114 Nev. 1150, 1153-54, 968 P.2d 292, 294 (2001) (recognizing that a post-accusation delay becomes presumptively prejudicial as it approaches one year, and that a delay of less than 30 days was insufficient to trigger a speedy trial analysis), *abrogated on other grounds by Vanisi v. State* , 117 Nev. 330, 22 P.2d 1164 (2001); *Doggett v. United States* , 505 U.S. 647, 651-52 (1992).

The record reflects that the State initiated this action by filing a criminal complaint on January 17, 2023. Because of issues related to representation that are not relevant here, Taunaholo's arraignment did not occur until October 16, 2023, at which time he invoked his right to a speedy trial. After explaining to Taunaholo that it had several other matters already set for trial, the district court set trial for February 13, 2024. Subsequently, on February 5, 2024, the State moved the court for a continuance of the trial to allow its crime lab to finish DNA testing on a firearm found when law enforcement searched a vehicle Taunaholo was driving and believed to be used in the charged crimes. Taunaholo opposed the request. At a hearing on the motion, the State explained that, although it had submitted four pieces of evidence to the crime lab for DNA testing in January 2023, the crime lab had returned the firearm without having completed the requested DNA testing. Based on the crime lab's estimate of the time needed to complete the DNA testing, the State requested a 60-day continuance. The district court found the State had established good cause for a continuance and reset trial.

Determining whether to dismiss a case which has exceeded the 60-day time period falls within the sound discretion of the trial court. *Berry v. Sheriff*, 93 Nev. 557, 558, 571 P.2d 109, 110 (1977). The State established that the purpose of the continuance was to obtain DNA results it believed were crucial to its case. *See Meegan v. State*, 114 Nev. 1150, 1153-54, 968 P.2d 292, 294 (2001) (finding good cause for delay to obtain DNA evidence critical to the prosecution), *abrogated on other grounds by Vanisi v. State*, 117 Nev. 330, 22 P.2d 1164 (2001). Here, as in *Meegan*, the State sought a continuance to obtain DNA results it believed were crucial to its case, and there is no indication in the record that the State was dilatory in preparing

for trial. We therefore conclude the district court did not abuse its discretion in finding that the State established good cause for the delay and in granting the requested continuance. Accordingly, we conclude no relief is warranted on this claim.

The district court did not clearly err in overrul ing Taunaholo's Batson *objection*

Taunaholo asserts the district court clearly erred in denying his *Batson*[2] objection to the State's use of a peremptory strike to remove the only African American member of the jury venire. Taunaholo argues the district court erred in applying the steps enunciated in *Batson* and the error was structural. The State acknowledges the district court initially misstated one aspect of *Batson*'s jurisprudence but argues the district court revisited its ruling, correctly followed the three-step *Batson* process, and made supplemental findings supported by the record.

Under *Batson*, the use of a peremptory strike to remove a potential juror on the basis of race is unconstitutional. 476 U.S. at 86. When a *Batson* objection is made following a peremptory challenge to remove a prospective juror, the district court must follow a three-step process to determine whether the challenge to remove the juror was unconstitutional. *Id*. at 93-100; *see also Williams v*. *State* , 134 Nev. 687, 689, 429 P.3d 301, 305 (2018). First, "the opponent of the peremptory challenge must make out a prima facie case of discrimination." *Ford v*. *State*, 122 Nev. 398, 403, 132 P.3d 574, 577 (2006). "[T]he production burden then shifts to the proponent of the challenge to assert a neutral explanation for the challenge." *Id*. Finally, the court shall hear argument from the parties and "must then decide whether the opponent of the

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

challenge has proved purposeful discrimination." *Id.*; *see 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 v. Elem*, 514 U.S. 765, 768 (1995)). The district court's factual findings regarding whether the proponent of a strike has acted with discriminatory intent is given great deference, *Diamampo 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 v. State*, 120 Nev. 314, 334, 91 P.3d 16, 30 (2004).

During voir dire, the State asked the panel of prospective jurors whether anyone "has had an unpleasant experience with law enforcement." Prospective Juror No. 4 stated that he had dealt with "a couple racist officers" in his home state of Alabama that "would stereotype a lot, so I got harassed a lot." Prospective Juror No. 4 also expressed that he was not sure that he could be fair and impartial when listening to the testimony of the State's law enforcement witnesses. The State initially moved to excuse Prospective Juror No. 4 for cause. In response to additional questioning by the parties and the district court, Prospective Juror No. 4 stated he would follow the law and impartially assess each witness's credibility, although he indicated he was uncertain because he "had some pretty traumatic experiences from officers back home" and had been "harassed." The State then passed the panel for cause.

During jury selection, the State used one of its peremptory challenges against Prospective Juror No. 4. Taunaholo objected to the strike pursuant to *Batson*, arguing that (1) Prospective Juror No. 4 was the sole person on the venire who appeared to be African American; (2) the State had singled him out for additional questioning; and (3) the State had tried

to remove him for cause "multiple times." The State responded that (1) Taunaholo had not made a prima facie showing of racial discrimination; (2) it had a race-neutral reason to remove Prospective Juror No. 4 because of his uncertainty about whether he could be impartial; (3) it had not singled Prospective Juror No. 4 out for additional questioning; and (4) it had only moved once to remove him for cause. The district court initially denied Taunaholo's *Batson* objection based on the incorrect conclusion that Taunaholo did not have a cognizable *Batson* claim because Prospective Juror No. 4 did not belong to the same racial group as Taunaholo, who is Pacific Islander. *See*, *e.g.*, *Kaczmarek*, 120 Nev. at 333, 91 P.3d at 29 (noting that under post-*Batson* federal constitutional law, "a defendant need not belong to the same group as the prospective jurors in order to challenge their exclusion on grounds of discrimination").

After jury selection concluded, Taunaholo presented the district court with the supreme court's decision in *Kaczmarek* and asked to revisit the *Batson* objection. The State concurred with Taunaholo's representations and reiterated its prior arguments against his objection. The district court reconsidered Taunaholo's *Batson* objection and found that the State had provided a race-neutral explanation and evaluated whether Prospective Juror No. 4's prior negative experiences with law enforcement justified the State's preemptory strike. Specifically, the district court found that Prospective Juror No. 4 expressed a distrust of law enforcement based on his prior experiences with racial profiling. [3]

[3]Furthermore, the record reflects that the State exercised peremptory challenges against two other prospective jurors who had indicated bias based on negative experiences with law enforcement.

On appeal, Taunaholo acknowledges the district court reconsidered his objection but asserts the district court nevertheless clearly erred because the reason offered by the State and relied upon by the district court was not race-neutral but was in fact based on Projective Juror No. 4's experiences with racial profiling. Taunaholo does not provide any authority in support of this argument; we therefore decline to address it on appeal. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant 's argument that is not supported by relevant authority). Moreover, even were we to consider this claim, Taunaholo fails to demonstrate that the district court clearly erred by concluding the State presented a race-neutral reason for exercising its peremptory challenge of Prospective Juror No. 4 based on his distrust of law enforcement. *See*, *e.g.*, *State v. Aziakanou*, 498 P.3d 391, 401-02 (Utah 2021) (concluding the prosecution had provided a race-neutral explanation for striking a prospective juror where the juror's prior negative experiences with law enforcement due to racial profiling and the juror's demeanor during voir dire caused the prosecutor to believe the juror had a negative view of the police and may not credit the testimony of the State 's law enforcement witnesses). We therefore conclude the district court did not clearly err in overruling Taunaholo's *Batson* objection.

The district court did not plainly err in admitting testimony

Taunaholo claims the district court plainly erred in allowing a sergeant to testify as to his certainty regarding various aspects of the case because the testimony invaded the province of the jury. Taunaholo did not object to any of the specific testimony he identifies on appeal, so we review this claim for plain error. To demonstrate plain error, an appellant must show that: "(1) there was an 'error'; (2) the error is 'plain,' meaning that it is clear under current law from a casual inspection of the record; and (3) the

error affected the defendant's substantial rights." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). "[A] plain error affects a defendant's substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a 'grossly unfair' outcome)." *Id.* at 51, 412 P.3d at 49.

First, Taunaholo argues the sergeant invaded the province of the jury when he testified on redirect examination that he was "a hundred percent certain" the firearm law enforcement found during the inventory search of the vehicle Taunaholo was driving was the firearm used in the commission of the charged robbery. The State responds that Taunaholo invited the error by eliciting the testimony on cross-examination. The record demonstrates that the trial testimony Taunaholo now complains of was elicited when trial counsel asked the sergeant on cross-examination whether he was "[h]undred percent certain that's the same – the same gun," and that the State followed up on this question on redirect. "[A] party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit." *Chadwick v. State*, 140 Nev. 104, 115, 546 P.3d 215, 227 (Ct. App. 2024). We therefore conclude Taunaholo has not demonstrated a plain error affecting his substantial rights.

Second, Taunaholo claims the sergeant invaded the province of the jury by testifying on redirect that he was "a hundred percent positive" the sweatpants law enforcement found during the search of Taunaholo's residence were the sweatpants worn by the robber. The State responds that Taunaholo also invited this error by eliciting the testimony on cross-examination. The record demonstrates that Taunaholo elicited this testimony on cross-examination by asking Sheffield if he was "[a] hundred percent certain" the sweatpants were the same and that the State followed

up on this line of inquiry on redirect. Taunaholo therefore invited the error of which he now complains. *Id*. Accordingly, we conclude Taunaholo has not demonstrated a plain error affecting his substantial rights.

Third, Taunaholo claims the sergeant invaded the province of the jury by testifying on redirect examination that there was no doubt in his mind that Taunaholo was the robber in the charged offenses. The State responds that this testimony was responsive to Taunaholo's theory of defense. Even assuming the sergeant's testimony exceeded the bounds of admissible testimony, *see Collins v. State*, 133 Nev. 717, 724, 405 P.3d 657, 664 (2017) (holding that witnesses "may not give a direct opinion on the defendant's guilt or innocence in a criminal case"), we conclude that such error did not affect Taunaholo's substantial rights given the strength of the evidence demonstrating his guilt, including video surveillance of the incident showing the robber using a car similar to the car Taunaholo was driving, brandishing a firearm similar to the one found in Taunaholo's car, walking with a limping gait similar to Taunaholo's, and wearing sweatpants similar to the pair found in Taunaholo's residence. We therefore conclude Taunaholo has not identified a plain error affecting his substantial rights.

Cumulative error

Finally, Taunaholo argues that the cumulative errors at trial entitle him to relief. "The cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually." *Valdez v. State*, 124 Nev. 1172, 1195, 196 P.3d 465 481 (2008) (internal quotation marks omitted). Here, even assuming there was error stemming from the sergeant's testimony regarding his belief that Taunaholo was the robber, "one error cannot cumulate." *Carroll v. State*, 132 Nev. 269, 287, 371 P3d 1023, 1035 (2016).

Thus, we deny Taunaholo's cumulative error challenge. Accordingly, we ORDER the judgment of conviction AFFIRMED.

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Kathleen A. Sigurdson, District Judge
Ristenpart Law
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk