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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC ALEXANDER WILLIAMS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 91759-COA

ORDER OF AFFIRMANCE

Eric Alexander Williams appeals from a judgment of conviction, entered pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Hon. Carli Lynn Kierny, Judge.

First, Williams argues the State failed to present sufficient evidence that he was the person who shot the victim. When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *accord Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). "[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). And circumstantial evidence is enough to support a conviction. *Washington v. State*, 132 Nev. 655, 662, 376 P.3d 802, 807 (2016).

Davion Smith, the victim, Nakie Dodge, the victim's girlfriend, and Andres Rodriguez, the victim's cousin, took Dodge's car to a man named Scrap. Rodriguez testified that Scrap fixed cars at his recreational vehicle (RV) and

that Scrap had been fixing cars for Rodriguez's family for several years. Rodriguez testified that when the group went to pick up the car, Scrap did not have the key because someone who was helping him fix the car took the key to ensure payment. Rodriguez and Dodge testified that Scrap's girlfriend was present but stayed mostly in the RV. Both Rodriguez and Dodge testified that no one else was present at the RV or in the surrounding area. Rodriguez and Dodge testified that for about an hour the group waited around for this other person to bring the key. Rodriguez testified that, at some point, Scrap asked for more money from Smith and Rodriguez left to get more money while Dodge and Smith remained at the RV.

Rodriguez testified that, when he returned, he noticed Scrap pacing and not interacting with the group anymore. Rodriguez testified that Scrap then went inside the RV. Within 30 seconds to a minute, Rodriguez testified that Smith and Rodriguez walked up to the door of the RV to tell Scrap they had to leave to return the rental car Dodge was driving while her car was being fixed. Rodriguez testified that they knocked, he immediately saw a hand with a gun coming out from the door, and Smith was shot. Rodriguez testified that he noticed the hand was masculine and he identified Scrap as the shooter to law enforcement when law enforcement responded to the crime scene. Rodriguez also testified that, as he ran, he saw Scrap and his girlfriend get into a car and leave. Dodge testified she heard the shot and saw Scrap get into the car and leave. Smith did not die immediately, and Dodge testified that Smith identified Scrap as the shooter. Rodriguez testified that he went onto his Facebook account when police arrived, found Scrap in his friends list, and identified him as Eric Williams. A police officer testified that inside the RV were items and mail belonging to Williams. At trial, neither Rodriguez nor Dodge identified Williams as Scrap. However, when shown a picture of

Williams, both Rodriguez and Dodge identified the person in the picture as Scrap. A detective testified that, while Williams was still recognizable, he had gained weight since his arrest.

Williams contends that there is insufficient evidence to support his conviction because: (1) no physical evidence linked him to the shooting; (2) no firearm was recovered; (3) no forensic testing tied him to the cartridge case; (4) no surveillance or location data placed him at the murder scene and no eyewitness testified at trial to seeing him fire the weapon; (4) the two percipient witnesses did not identify him in court; and (5) the other person who was in the RV was not investigated or interviewed. While Scrap's girlfriend was not investigated or interviewed and there was no forensic evidence, surveillance video, or location data presented at trial that tied Williams to the shooting, we conclude that the evidence presented, including Rodriguez's identification of Williams as Scrap at the scene, Smith's identification of Scrap being the shooter, and the evidence tying Williams to the RV, was sufficient to demonstrate Williams was the shooter. Thus, we conclude that, when viewing the evidence in the light most favorable to the prosecution, a rational juror could find beyond a reasonable doubt that Williams committed second-degree murder. *See* NRS 200.010 (defining murder); NRS 200.030(2) (defining second-murder as "all other kinds of murder" other than first-degree murder). Therefore, we conclude Williams is not entitled to relief on this claim.

Second, Williams argues the district court erred by failing to sufficiently analyze whether the State's race-neutral reason for exercising a peremptory strike against a juror was a pretext for purposeful discrimination. Pursuant to *Batson v. Kentucky*, the use of a peremptory strike to remove a potential juror on the basis of race is unconstitutional. 476 U.S. 79, 86 (1986). When an objection is made to a peremptory challenge under *Batson*, 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 district court must allow the parties to argue and "then decide whether the opponent of the 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 jury selection, Williams made a *Batson* challenge because the State used a peremptory challenge to strike an African American woman. For step one, Williams argued that the jury pool appeared to only have three African Americans from the outset and the State's decision to strike one of those African Americans constituted a prima facie case of discrimination. Before a specific ruling on step one, the State provided a race-neutral reason for using the peremptory challenge—that the prospective juror's nephew had been accused of murder, turned himself in, and been exonerated because someone else did it, which was somewhat similar to the defense claimed by Williams. The State's offer of a reason for the exclusion of the prospective juror

before a determination at step one rendered the step-one analysis moot. *See Williams*, 134 Nev. at 690-91, 429 P.3d at 306-07 ("Where, as here, the State provides a race-neutral reason for the exclusion of a veniremember before a determination at step one, the step-one analysis becomes moot and we move to step two."). And the State's explanation for the challenge was a race-neutral explanation, thus satisfying step two of the analysis.

For the third *Batson* step, Williams argued the State's race-neutral reason was a pretextual reason solely because the State did not move to remove the prospective juror for cause. Williams provided no further argument. The State responded that it did not seek to strike the prospective juror for cause because the prospective juror did not give the State a reason to remove her for cause. The district court found there was still an African American on the jury, the State struck several jurors of all races, and the defense did not demonstrate purposeful racial discrimination in the face of the race-neutral reason proffered by the State. Based on this record, we conclude that Williams failed to meet his burden of demonstrating that the State's race-neutral reason for striking the prospective juror was pretextual. The district court sufficiently analyzed the third *Batson* step and did not err by denying Williams' *Batson* challenge. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Carli Lynn Kierny, District Judge
Attorney General/Carson City
Clark County District Attorney
Marchese Law Office
Eighth District Court Clerk