

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40359

FILED

FEB 03 2003

ORDER OF AFFIRMANCE

JANETTE M. SLOAN
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery with the use of a deadly weapon. The district court sentenced appellant Richard Walker to serve a prison term of 48-120 months; he was given credit for 272 days time served.¹

Walker contends that the district court erred by rejecting his objection under Batson v. Kentucky² to the prosecutor's use of a peremptory challenge to strike a male African-American venireperson from the jury panel. Walker argues that the State's explanation for the exercise of the peremptory strike was pretextual and proves purposeful discrimination. We conclude that the district court did not err and that Walker's contention is without merit.

Pursuant to Batson and its progeny, there is a three-step process for evaluating race-based objections to peremptory challenges: (1) the opponent of the peremptory challenge must make a prima facie showing of racial discrimination; (2) upon a prima facie showing, the proponent of the peremptory challenge has the burden of providing a race-

¹Walker was found not guilty of attempted murder with the use of a deadly weapon.

²476 U.S. 79 (1986).

neutral explanation; and (3) if a race-neutral explanation is tendered, the trial court must decide whether the proffered explanation is merely a pretext for purposeful racial discrimination.³ The State's explanation "need not be plausible, just not discriminatory."⁴ The ultimate burden of proof regarding racial motivation rests with the opponent of the strike.⁵ The trial court's decision on the question of discriminatory intent is a finding of fact to be accorded great deference on appeal.⁶

We conclude that a review of the jury voir dire transcript reveals that the State adduced a sufficiently race-neutral explanation for striking the potential juror. Although the district court did not expressly find that Walker had made a prima facie showing of racial discrimination in his objection to the strike, the State was nevertheless asked to respond. The State explained that the venireperson's ex-wife worked in management for the same corporation as the victim, that he still communicated with his ex-wife, and that when asked whether he might discuss the case or the people involved with her, the venireperson stated, "Sounds tempting, but no." The district court subsequently ruled that the State's peremptory strike was proper. Walker failed to prove that the explanation was a pretext for purposeful discrimination, and therefore, we

³See Purkett v. Elem, 514 U.S. 765, 767 (1995); Batson, 476 U.S. at 96-98; see also Grant v. State, 117 Nev. 427, 434, 24 P.3d 761, 766 (2001).

⁴Grant, 117 Nev. at 434, 24 P.3d at 766.

⁵See Purkett, 514 U.S. at 768.

⁶See Hernandez v. New York, 500 U.S. 352, 364-65 (1991) (plurality opinion); Thomas v. State, 114 Nev. 1127, 1137, 967 P.2d 1111, 1118 (1998).

conclude that the district court did not err in rejecting his objection to the strike.⁷

Having considered Walker's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.⁸

 J.

 J.
Leavitt

 J.
Becker

cc: Hon. John S. McGroarty, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷We also note that the State did not use any of its peremptory strikes to challenge two other African-Americans remaining on the jury panel.

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.