IN THE SUPREME COURT OF THE STATE OF NEVADA

RUDY MORRIS PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57478

FILED

APR 24 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of level-three trafficking in a controlled substance. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge. Appellant Rudy Morris Perez alleges five errors on appeal.

First, Perez contends that the district court abused its discretion by admitting his oral and written confessions in which he admitted to prior drug use and a prior felony conviction. We conclude that the district court did not abuse its discretion because it conducted a thorough Petrocelli hearing and appropriately addressed all three Tinch factors before issuing its ruling. See Petrocelli v. State, 101 Nev. 46, 51–52, 692 P.2d 503, 507–08 (1985); Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997) (outlining the substantive criteria for admitting prior bad act evidence); Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006) ("A district court's decision to admit or exclude evidence under NRS 48.045(2) rests within its sound discretion and will not be reversed on appeal absent manifest error.").

Second, Perez contends that his confession was coerced in violation of the Due Process Clause of the United States Constitution. Perez's claim lacks merit because he failed to show how his decision to

confess out of concern for his girlfriend's health condition was the result of state action. Colorado v. Connelly, 479 U.S. 157, 164 (1986) ("Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law.").

Third, Perez contends that his confession was obtained in violation of the Sixth Amendment because his right to counsel attached when the State filed a criminal complaint against him. U.S. Const. amend. VI. We need not decide whether the Sixth Amendment right to counsel attaches upon the filing of a criminal complaint because Perez does not challenge the validity of his Miranda waiver. See Montejo v. Louisiana, 556 U.S. ___, ___, 129 S. Ct. 2079, 2085 (2009) (explaining that a valid waiver of Miranda rights will also be considered the knowing and intelligent waiver of Sixth Amendment right to counsel). Accordingly, Perez's claim lacks merit.

Fourth, Perez contends that the district court violated NRS 16.030(4) by failing to empanel jurors in the order in which their names were drawn. See NRS 175.021(1) ("[J]uries for criminal actions are formed in the same manner as . . . civil actions."). Perez did not object below and we review for plain error. Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). Because Perez has not demonstrated that any violation of the jury selection statute resulted in actual prejudice affecting his substantial rights, we do not find plain error. See id.

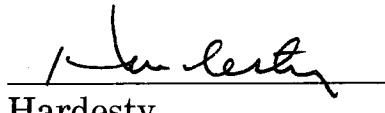
Fifth, Perez contends that the district court erred in denying his Batson challenge to two peremptory strikes based on racial discrimination. See Diomampo v. State, 124 Nev. 414, 422, 185 P.3d 1031, 1036 (2008) (explaining the three-pronged test for determining whether illegal discrimination has occurred). On December 27, 2011, we issued an

order of limited remand noting a discrepancy in the record between the State's race-neutral explanation for striking one prospective juror and the voir dire transcript and directed the district court to hold an evidentiary hearing to determine whether this discrepancy was based on mistake or pretext. The district court determined that there was a clerical error in the voir dire transcript and the names of two prospective jurors had been transposed by the court reporter.

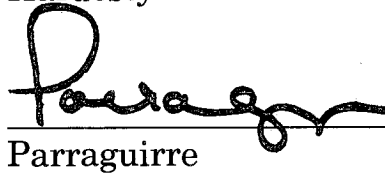
After reviewing the corrected record, we conclude that the district court's determination that the State provided a race-neutral explanation for striking both jurors is supported by the record. Diomampo, 124 Nev. at 422-23, 185 P.3d at 1036-37 ("The trial court's decision on the ultimate question of discriminatory intent represents a finding of fact of the sort accorded great deference on appeal." (alteration omitted) (internal quotations omitted)). Therefore, we conclude that the district court did not err by rejecting Perez's Batson challenge. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Douglas



_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Leon Aberasturi, District Judge
Stephen B. Rye
Attorney General/Carson City
Lyon County District Attorney
Lyon County Clerk