IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER EDWIN KINDLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76337-COA

ORDER OF AFFIRMANCE

Christopher Edwin Kindler appeals from a judgment of conviction entered pursuant to a jury verdict of five counts of lewdness with a child under the age of 14 and one count of attempted lewdness with a child under the age of 14. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

First, Kindler argues the district court erred by denying his *Batson*[1] challenge to the State's use of peremptory strikes to remove two Hispanic jurors from the venire. Kindler contends the district court improperly failed to conduct a sensitive inquiry into whether he had demonstrated purposeful discrimination.

In reviewing a *Batson* challenge, this court gives great 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). This court utilizes the three-prong test outlined in *Batson* to determine whether illegal discrimination has occurred:

> (1) the defendant must make a prima facie showing that discrimination based on race has occurred

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

> based upon the totality of the circumstances, (2) the prosecution then must provide a race-neutral explanation for its peremptory challenge or challenges, and (3) the district court must determine whether the defendant in fact demonstrated purposeful discrimination.

Id. at 422, 185 P.3d at 1036. "The district court must undertake a sensitive inquiry into such circumstantial and direct evidence of intent as may be available and consider all relevant circumstances before ruling on a *Batson* objection." *Conner v. State*, 130 Nev. 457, 465, 327 P.3d 503, 509 (2014) (internal quotation marks omitted).

Kindler raised a *Batson* challenge after the State struck two Hispanic jurors. At the beginning of the discussion concerning the challenge, the district court noted such a challenge involves a three-step test. The district court found Kindler had made a prima facie showing that discrimination based upon race had occurred and requested the State to provide its reasons for striking the jurors. The State responded that the first juror had a history of arrests and was not forthcoming about a 2013 domestic-violence arrest. The State also explained that the second juror was a postal worker and past experience had caused the State to not want postal workers as jurors. The district court found the State had provided race-neutral explanations.

The district court next proceeded to have a brief discussion with the parties as to whether Kindler had demonstrated purposeful discrimination. Kindler noted that there was an additional juror who worked for the post office and had not been stricken by the State but the district court noted that juror performed a different type of labor as a letter box mechanic, whereas the stricken juror was a letter carrier. The State also provided additional detail regarding a juror's arrest record. Following

the discussion, the district court concluded Kindler failed to demonstrate purposeful discrimination and denied the *Batson* challenge. The record before this court demonstrates the district court properly considered the relevant circumstances before ruling on Kindler's *Batson* challenge. *See id.* at 465, 327 P.3d at 509. Accordingly, we conclude Kindler fails to demonstrate the district court abused its discretion when denying his *Batson* challenge. Therefore, Kindler is not entitled to relief based on this claim.

Second, Kindler argues the district court abused its discretion by admitting prior-bad-act evidence in the form of his writings concerning his sexual thoughts about young males. Kindler contends the writings were made years before the incidents at issue in this matter and the danger of unfair prejudice from these writings substantially outweighed their probative value.

"A district court's decision to admit or exclude evidence of prior bad acts rests within its sound discretion and will not be reversed by this court absent manifest error." *Somee v. State*, 124 Nev. 434, 446, 187 P.3d 152, 160 (2008). Before admitting prior bad acts evidence, the district court must conduct a hearing outside the presence of the jury, *Petrocelli v. State*, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985), *modified on other grounds by Sonner v. State*, 112 Nev. 1328, 1333-34, 930 P.2d 707, 711-12 (1996), *and superseded in part by statute as stated in Thomas v. State*, 120 Nev. 37, 45, 83 P.3d 818, 823 (2004), and determine whether "(1) the prior bad act is relevant to the crime charged and for a purpose other than proving the defendant's propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially

outweighed by the danger of unfair prejudice," *Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012).

Prior to trial, the State sought introduction of multiple writings and records which contained information concerning Kindler's sexual actions and thoughts about young males. The district court conducted a *Petrocelli* hearing and concluded the majority of the information the State sought to introduce was either irrelevant or too prejudicial. However, the district court found two portions of Kindler's writings were relevant to show his intent to commit lewdness with the alleged victims in this matter. The district court also found the State had proven by clear and convincing evidence that Kindler had written the documents. Finally, the district court found the pertinent portions of Kindler's writings were more probative than prejudicial because one of the essential elements the State must prove to sustain a lewdness charge was Kindler's intent to touch the alleged victims for purposes of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or the victims. During trial, the district court properly instructed the jury on the limited use of this evidence. *See Tavares v. State*, 117 Nev. 725, 731, 30 P.3d 1128, 1132 (2001). Based on the record before this court, we conclude Kindler fails to demonstrate the district court manifestly erred by admitting the challenged evidence. *See Rhymes v. State*, 121 Nev. 17, 22, 107 P.3d 1278, 1281 (2005) (concluding "evidence of uncharged prior bad acts was properly admitted" to show intent in a case involving the sexual abuse of a child victim). Therefore, Kindler is not entitled to relief based on this claim.

Third, Kindler argues the district court abused its discretion by admitting expert testimony on grooming. Kindler asserts Dr. Lippert was not qualified to testify as an expert on grooming as she was not a specialist

in child psychology, has not published on grooming or delayed response in child victims, and merely read articles and attended conferences with grooming as a topic. "We review a district court's decision to allow expert testimony for an abuse of discretion." *See Perez v. State*, 129 Nev. 850, 856, 313 P.3d 862, 866 (2013). The Nevada Supreme Court has "identified several nonexclusive factors that are useful in determining whether a witness is qualified in an area of scientific, technical, or other specialized knowledge" and therefore may testify as an expert," including "(1) formal schooling and academic degrees, (2) licensure, (3) employment experience, and (4) practical experience and specialized training." *Id.* at 856-57, 313 P.3d at 866-67 (internal quotation marks omitted).

The district court conducted a hearing concerning the admission of Dr. Lippert's expert testimony. At the hearing, Dr. Lippert testified she has a doctorate degree in psychology. Dr. Lippert acknowledged she did not have a degree in child psychology and had not published on the topics of grooming or delayed disclosures, but stated she has practiced for decades and much of her practice involves working with victims of sexual abuse, including children. She testified she attended conferences and trainings which included information on grooming, she has read studies and literature concerning grooming, had experience with grooming behaviors through the treatment of her clients, and had previously testified as an expert on child sexual abuse. The district court concluded Dr. Lippert was qualified to testify as an expert in grooming and delayed response in child victims. Given the record concerning Dr. Lippert's academic career and professional experience, we conclude Kindler fails to demonstrate the district court abused its discretion. *Id.* at 857, 313 P.3d at 867 (affirming a district court's decision to admit a witness with similar

qualifications to testify as an expert on grooming). Therefore, Kindler is not entitled to relief based on this claim.

Having concluded Kindler is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk