

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEMAR DEMON MATTHEWS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84339

FILED

MAY 11 2023

ORDER OF AFFIRMANCE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon, three counts of attempted murder with the use of a deadly weapon, two counts of robbery with the use of a deadly weapon, two counts of assault with a deadly weapon, conspiracy to commit murder, possession of a short-barreled rifle, and conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Jemar Matthews argues the State presented insufficient evidence to support his convictions. Specifically, he argues that certain witnesses were consistent in their descriptions of the perpetrators and that the descriptions did not match him as to height, hairstyle, or clothing. In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution to determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Mersey Williams, Myniece Cook, Michel’le Tolefree, and Maurice Hickman were outside of Hickman’s residence when four to five males began shooting at them from a nearby corner. Williams died of a

gunshot wound to the head, and Cook was shot in the wrist. Close to Hickman's residence, Melvin Bolden and his then-girlfriend were parking their car when Bolden heard gunshots and saw four males running. One male wearing red gloves and dark clothes approached Bolden with a pistol and told him and his passengers to get out of the car. All four males got into the Lincoln Town Car and sped away.

Officers Cupp and Walter were patrolling the neighborhood when they heard gunshots and saw what appeared to be an argument between a group of males and an elderly male outside a Town Car. Officer Cupp saw an individual, later identified by the officers as Matthews, get into the driver's seat while two other males got into the vehicle, and the car sped off. The officers were in pursuit of the vehicle when they saw that Matthews jumped or fell out of the car and that he had a firearm, something shorter than a rifle but larger than a handgun. Matthews began to run, and the officers' vehicle hit him, allowing the officers a clear look at his face. The Town Car crashed, and Officer Cupp pursued a passenger who exited the vehicle with a handgun while Officer Walter pursued Matthews, who no longer had a firearm. Matthews jumped over a fence, going into a backyard of a residence; a red glove found on the sidewalk in front of the residence tested positive for gunshot residue. A K9 unit responded to the area and, approximately an hour later, discovered Matthews.

At trial, Officers Cupp and Walter identified Matthews as the driver of the vehicle and as one of the individuals they pursued on foot. Both had made contact and were familiar with Matthews before the evening of Williams' death. Additionally, Officer Cupp identified a semiautomatic rifle with an altered stock and shortened barrel, recovered near the crashed Town Car, as the firearm Matthews had in his hands when he exited the

vehicle. Matthews' palms tested positive for gunshot residue. And the jury heard that Matthews and his friend—the one Officer Cupp pursued on foot—were looking for guns the night before the murder to “take care of” an individual who was known to hang out where Williams was killed.

Although Matthews points to some discrepancies in the witnesses' descriptions of the perpetrators and his own physical appearance, namely that he was purportedly 5 feet 11 inches tall, had cornrows, and was wearing shorts and a long-sleeved shirt at the time of his arrest, the jury heard any such discrepancies and weighed them against the other evidence presented. “[W]e do not reweigh the evidence or determine credibility as those functions belong to the jury.” *Watson v. State*, 130 Nev. 764, 781, 335 P.3d 157, 169 (2014); *see also Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975) (“[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness.”). Based on the evidence presented, we conclude that a rational juror could find beyond a reasonable doubt the essential elements of the crimes charged, *see* NRS 193.165(1), (6) (use of deadly weapon); former NRS 193.330(1) (1997 Nev. Stat., ch. 314, § 2, at 1178) (attempt); NRS 199.480(1) (conspiracy); NRS 200.010(1) (murder); NRS 200.020 (same); NRS 200.030(1) (same); NRS 200.380(1) (robbery); NRS 200.471(1)(a) (assault); NRS 202.275(1), (2) (possession of short-barreled rifle), and the identity of Matthews as the perpetrator, and thus sufficient evidence was presented to support Matthews' convictions.

Matthews next argues the district court erred by denying his two *Batson*¹ objections to the State's use of peremptory challenges. He

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

contends that the district court did not conduct the necessary three-step analysis when it conflated the last two steps and relied on refutation to arguments he did not make. He also submits that the district court did not clearly articulate its findings as to demeanor and credibility or its reasoning for the denials.

The use of a peremptory challenge to strike a prospective juror based on race violates the Equal Protection Clause of the United States Constitution. *Batson*, 476 U.S. at 86. When an objection is made to the alleged use of a race-based peremptory challenge, the district court must resolve the objection using a three-step process. *See id.* at 93-100; *see also Kaczmarek v. State*, 120 Nev. 314, 332-35, 91 P.3d 16, 29-30 (2004). Those steps consist of (1) the opponent of the strike making a prima facie showing that the strike was exercised on the basis of race; (2) if the prima facie showing is made, the proponent presenting a race-neutral explanation for the strike; and (3) the district court hearing argument and determining whether the opponent has shown purposeful discrimination. *Williams v. State*, 134 Nev. 687, 689, 429 P.3d 301, 305-06 (2018). A *Batson* objection should be sustained, and the strike denied, where “it is more likely than not that the [strike] was improperly motivated.” *Id.* at 692, 429 P.3d at 307 (internal quotation marks omitted). “If, after conducting the inquiry, the district judge finds no unlawful discrimination occurred, we give great deference to the district court’s finding and will only reverse if the district court clearly erred.” *Id.* at 688, 429 P.3d at 305.

Here, we disagree with Matthews’ contention that the district court did not conduct the three-step analysis because it ended with comments about step two. Rather, the record for each objection shows the district court found that Matthews made a prima facie case of

discrimination (step one), asked the State to give its race-neutral explanation for each strike (step two), and allowed Matthews an opportunity to argue the race-neutral explanations were pretextual before deciding whether Matthews demonstrated purposeful discrimination (step three).

For prospective juror (PJ) 344, the State said it struck her because she did not disclose her criminal history, namely a previous misdemeanor conviction, when the district court asked the panel if anyone had ever been accused of a crime.² In determining whether Matthews had met his burden of demonstrating this race-neutral explanation was pretextual, the district court heard Matthews' comparison of PJ 344 to PJ 550, who had issues and lied to the court but was not struck by the State, and Matthews' arguments that PJ 344 was not purposefully lying, that any fault was cured when PJ 344 was individually questioned by the district court about her omission, and that the State's pattern of strikes had a profound numerical impact on the racial composition of the jury. Based on his argument about a pattern, the district court clarified the standards for for-cause and peremptory challenges with Matthews and allowed him to elaborate on his argument that the State's strike was discriminatory. The district court found the State did not question PJ 344 differently than others

²To the extent the State also relied on a demeanor explanation for striking PJ 344 (her hesitation when the district court asked her a second time, outside the presence of the panel, if she had ever been accused of a crime showed she purposefully omitted or lied about her criminal background), we focus on the nondemeanor explanation because the district court did not make a finding as to PJ 344's demeanor and we "cannot assume that the district court credited the State's demeanor argument." *Matthews v. State*, 136 Nev. 343, 346-47, 466 P.3d 1255, 1260-61 (2020) (internal quotation marks omitted).

on the panel, the State struck another individual for the exact same reason, and PJ 344 did omit her criminal history despite being questioned about it. Based on those findings, the district court denied Matthews' objection.

For PJ 360, the State referenced her answer that she did not think the criminal justice system was fair,³ expressed concern about her questioning jury verdicts while working at the Nevada Division of Parole and Probation, and highlighted the fact that she had access to a lot of information through her work that the average person in a deliberation room would not have. The district court heard Matthews' arguments that the State's explanations were pretextual: the prospective juror was a law enforcement officer who said she could be fair and impartial and the State's challenges established a pattern of striking minorities.⁴ The district court noted its understanding that Matthews had to offer more than the race of the struck individual at step three to meet his burden. It also attempted to clarify Matthews' position by asking if PJ 360 was questioned in a way that would allow the State to strike her, ostensibly based on race. The district court agreed with Matthews that, generally, someone in law enforcement would be a good prospective juror for the State but found that PJ 360 implied her knowledge was superior to an average juror's because she had

³We disagree with Matthews' characterization of the explanation as demeanor based merely because the State said PJ 360 felt the system was not fair.


⁴For the first time on appeal, Matthews makes a comparative juror analysis for the State's strike of PJ 360. Although it is unclear whether we must conduct such an analysis when it is raised for the first time on appeal, *see Nunnery v. State*, 127 Nev. 749, 784 n.17, 263 P.3d 235, 258 n.17 (2011), we consider Matthews' argument out of an abundance of caution and conclude he has not shown that PJ 360 and PJ 550 were similarly situated such that he can show disparate treatment by the State.

looked at the prosecution's complete file in other cases. The district court also found that the State did not question or treat PJ 360 differently than others on the panel and that PJ 360 did not think the criminal justice system was fair. Based on the totality of the circumstances, the district court found that there was no purposeful discrimination in striking PJ 360.

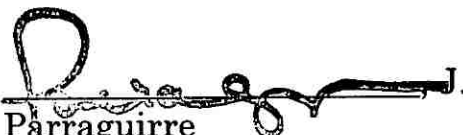
The district court conducted "a sensitive inquiry into such circumstantial and direct evidence of intent as [was] available and consider[ed] all relevant circumstances before ruling." *McCarty v. State*, 132 Nev. 218, 227, 371 P.3d 1002, 1008 (2016) (internal quotation marks omitted). The district court contemplated Matthews' specific arguments as well as other considerations that were not raised by Matthews but that nevertheless may be relevant in determining whether an opponent of a strike has met his or her burden of proving purposeful discrimination. *See id.* at 226-27, 371 P.3d at 1007-08. And it is clear from the record that the district court found the State's explanations credible. Because the district court made specific findings supported by the record, we perceive no clear error in the denial of Matthews' *Batson* objections.

Having considered Matthews' claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Leventhal & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk