

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 81400

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michelle Leavitt, District Judge
District Court No. C-17-328587-1

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed pursuant to that rule. These representations are made so that the justices of this Court may evaluate any potential conflicts warranting disqualification or recusal.

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a. N/A

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DATED this 21st day of October, 2020.

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction after a jury trial finding Appellant Raekwon Robertson (“Robertson”) guilty of 3 felony counts. (7 Appellant’s Appendix “AA” 001632-AA001633). The Judgment of Conviction was filed on June 17, 2020. (7 AA001668-AA001670). The Notice of Appeal was filed on June 24, 2020. (7 AA001672). This Court has jurisdiction over this appeal under NRS 177.015 which provides for the right to appeal a final judgment in a criminal case.

ROUTING STATEMENT

This appeal is presumptively assigned to the Supreme Court because it relates to convictions for Category A and B felonies. NRAP(b)(1).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The State presented an impeached witness to connect unpersuasive evidence that when heard on its own could not have resulted in a guilty verdict.

As well, the District Court decided in error to deny Defendant’s *Batson* challenge when the State excused the only remaining African-American venire-member.

STATEMENT OF THE CASE

Robertson began an eight day trial on February 11, 2020. (1 AA000142). The same day the State filed an Amended Superseding Indictment containing one count of Conspiracy to Commit Robbery, one count of Attempted Robbery with use of a Deadly Weapon, and one count of Murder with use of a Deadly Weapon. (1 AA000138).

After deliberation, the jury returned with guilty verdicts on all three counts. (7 AA001632-AA001633). On March 12, 2020 Robertson signed a Guilty Plea Agreement to one count of Conspiracy to Commit Robbery and one count of Robbery with a Deadly Weapon. (7 AA001645-AA001653). Robertson was sentenced on June 11, 2020 to 28 years to life. (7 AA001654-AA001667).

This Opening Brief now follows.

STATEMENT OF THE FACTS

The State presented the following evidence at trial. On August 8th, 2017 and into the morning of the August 9th, 2017 Raekwon Robertson, Demario Lofton-Robinson, Davonte Wheeler, and Deshawn Robinson carried out an armed robbery they planned that morning. (5 AA001011-AA001012).

They arrived in the neighborhood of Dewey Avenue and Lindell Avenue just before midnight where they and their car, a white Mercury Grand Marquis, were observed by a passing jogger, Robert Mason. (3 AA00686-AA000690). Shortly after, they saw Gabrielle Valenzuela pull into his driveway and check his mail. (5 AA001034-AA001035).

The four men quickly approached him, grabbed him, and told him to give them everything he had. (5 AA001034-AA001035). Within a couple of seconds Valenzuela lay dying in his driveway, shot in his head and torso. (5 AA001053). The four men fled the scene without taking any of Valenzuela's property. (5 AA001036).

The State used accomplice DeShawn Robinson to validate the facts of the events. (5 AA001048). Robinson agreed to this only after the State offered to remove the charge of Murder with use of a Deadly Weapon in exchange for his testimony against Robertson and Wheeler. (5 AA001048).

SUMMARY OF THE ARGUMENT

A Motion to Strike the jury venire due to the systemic exclusion of a protected group was presented by Defendant and subsequently denied. The State then used a peremptory challenge to excuse the only remaining African-American venire-member. A second *Batson* challenge, raised on the grounds Juror 468 was excused because she is African-American, was

also denied. The State then presented an accomplice to this crime, Deshawn Robinson, to corroborate unconvincing evidence that on its own would not render a guilty verdict. Robinson had previously lied to investigators about what occurred that day, only deciding to enter an Alford plea after the State offered to remove the charge of Murder with use of a Deadly Weapon. (5 AA001060-AA001072).

ARGUMENT ON THE ISSUES

I. The District Court erred by denying Defendant's Batson challenge after the State utilized a peremptory challenge for a discriminatory purpose.

When the District Court denied Defendant's *Batson* challenge, subsequent the State's peremptory strike removing Juror 468, the only remaining African American venire-member, it denied Robertson the right to a fair and impartial jury. "Exclusion of black citizens from service as jurors constitutes a primary example of the evil the Fourteenth Amendment was designed to cure." *Batson v. Kentucky*, 476 U.S. 79, 85 (1986).

Even though the District Court did not believe Defendant met the first prong of *Batson* it accepted the State's race-neutral explanation, "I'm never picking a criminal defense attorney, no matter what color, no matter what ethnicity, no matter what sex, no matter what gender, on my jury." (AA000614). In *McCarty v. State*, 371 P.3d 1002, 132 Nev. Adv. Op.

20 (Nev. 2016), the Nevada Supreme Court found the State of Nevada's race-neutral explanation pretextual when it stated, "It has nothing to do with race, but the State of Nevada's not going to leave somebody who works at a strip club on their panel."

After the State offered its race-neutral reason for its strike, the District Court denied the challenge without discussion for its reasoning. (AA000618). However, as the Nevada Supreme Court has stated, "At the third step, especially, an adequate discussion of the district court's reasoning may be critical to our ability to assess the District Court's resolution of any conflict in the evidence regarding pretext." *Kaczmarek v. State*, 120 Nev. 314, 334 (Nev. 2004).

During voir dire Juror 468 indicated she was enrolled at UNLV as a Criminal Justice major. The State then asked eight follow up questions where it learned that she wanted to become a Criminal Defense attorney. The State used this as their reason to strike the juror, however, simply stating that she aspires to become a criminal defense attorney is not indicia she could not be impartial. Juror 468 was asked three times if she would be fair and impartial and each time she answered in the affirmative. (AA000223, AA000388, AA000570).

Alternatively, Juror 462, who is not African-American, was only asked one follow up question when she stated she was enrolled at CSN to become a Medical Lab Scientist, a career field that would potentially include official investigatory roles. On the single follow up question by the State, Juror 462 indicated that she wanted to work with blood as she already had some experience with it. (AA000384). The State should have followed up in a similar manner they did with Juror 468. “Disparate questioning by prosecutors of struck veniremembers and those veniremembers of another race or ethnicity is evidence of purposeful discrimination.” *McCarty v. State*, 371 P.3d 1002, 1010 (Nev. 2016).

II. The State presented an unreliable witness to corroborate evidence that on its own could not have resulted in a guilty verdict.

When the jury returned with its guilty verdict, it did so using the testimony of a witness who admitted to lying to police and investigators about what transpired starting the morning of August 8th, 2017 into August 9th, 2017. Robinson only changed his story to investigators when the State offered to remove the charge of Murder with use of a Deadly Weapon. (5 AA001060-AA001072).

Jury Instruction number 9 states in pertinent part, “The credibility or believability of a witness should be determined by his manner upon the

stand, his relationship to the parties, his fears, motives, interests or feelings...” (7 AA001597).

Knowing that Robinson must testify to the State’s facts he had every motivation to deceive the jury during his testimony in order to protect his well being and future interest.

Jury instruction number 11 states in pertinent part:

“Evidence to corroborate accomplice testimony does not suffice if it merely casts grave suspicion on the defendant... If there is not sufficient independent evidence which tends to connect the defendant with the commission of the offense the testimony of the accomplice is not corroborated.” (7 AA001599).

Evidence to support a finding of guilt beyond a reasonable doubt without corroboration of accomplice testimony is insufficient in this instant case.

A defendant in a criminal action is entitled to due process of law as guaranteed by the Fifth and Fourth Amendments to the United States Constitution. The Constitution prevents the criminal conviction of any person except upon proof of reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970); *Edwards v. State*, 90 Nev. 255, 258-59, 525 P. 2d 328. 331 (1974). In reviewing a sufficiency of the evidence claim, a court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find the essential elements of

the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This Court reviews insufficiency of evidence claims to determine, “[w]hether the jury, acting reasonably, could have been convinced by the competent evidence of the defendant’s guilt beyond a reasonable doubt.” *Wilkins v. State*, 96 Nev. 367, 374, 609 P. 2d 309 (1980). A verdict will be upheld only if supported by “substantial evidence.” *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 937 (1978).

CONCLUSION

Robertson submits for the reasons and argument stated herein, his judgment of conviction be reversed and this case be remanded to the District Court.

DATED this 21st of October, 2020.

/s/ Michael Sanft

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CERTIFICATE OF COMPLIANCE

1. I hereby certify this brief does comply with the formatting requirements of NRAP 32(a)(4).

2. I certify that this brief does comply with the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font of the Times New Roman style.

3. I certify that this brief does comply with the word limitation requirement of NRAP 32(a)(7)(A)(ii). The relevant portions of the brief are 2,300 words.

4. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanction in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 21st day of October, 2020.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 21st day of October, 2020, a copy of the foregoing Appellant's Opening Brief was served by electronic filing as follows:

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