IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Edgar Tiedemann, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20080471-CA F I L E D (September 24, 2009) 2009 UT App 273

Third District, Salt Lake Department, 021912452
The Honorable Judith S. Atherton

Attorneys: Linda M. Jones, Heidi A. Buchi, Patrick W. Corum, and Heather A. Brereton, Salt Lake City, for Appellant
Mark L. Shurtleff and Jeffrey S. Gray, Salt Lake City, for Appellee

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Before Judges Thorne, Orme, and McHugh.

THORNE, Associate Presiding Judge:

Edgar Tiedemann appeals from his convictions on two counts of murder, a first degree felony, see Utah Code Ann. § 76-5-203 (2008), and one count of attempted murder, a second degree felony, see id. §§ 76-4-101 to -102. We affirm.[1]

Tiedemann first argues that the district court erred when it failed to strike a potential juror (Juror Nineteen) for cause. Juror Nineteen revealed during voir dire that she had previously worked for the Salt Lake County Sheriff's Office for twenty years, where she had been involved in prisoner transport. Based on this information, Tiedemann sought to strike Juror Nineteen for cause, arguing that her knowledge of prisoner transport procedures would reveal to her that Tiedemann was in custody and, thus, deprive him of the right to a fair trial. See generally Holbrook v. Flynn, 475 U.S. 560, 567 (1986) (discussing impropriety of jury consideration of "'official suspicion,

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[1]Factual background pertaining to this matter can be found in State v. Tiedemann, 2007 UT 49, 162 P.3d 1106, addressing a previous interlocutory appeal in this case. See id. ¶¶ 2-10.

indictment, continued custody, or other circumstances not adduced as proof at trial'"). The district court denied Tiedemann's request, and Tiedemann used a peremptory challenge to remove Juror Nineteen from the panel.

Even if Juror Nineteen should have been removed for cause, a question we need not decide in this case,[2] Tiedemann has not demonstrated that the district court's decision prejudiced him as required by State v. Menzies, 889 P.2d 393 (Utah 1994). Menzies held "that a per se reversible error does not occur whenever a party is compelled to use a peremptory challenge to remove a jury member that the trial court erroneously failed to remove for cause" and "that to prevail on a claim of error based on the trial court's failure to remove a prospective juror for cause, a defendant must demonstrate prejudice, [that is], show that a member of the actual jury that sat was partial or incompetent." State v. Wach, 2001 UT 35, ¶ 24, 24 P.3d 948 (emphasis added) (applying Menzies). Here, Tiedemann fails to demonstrate that any seated jury member was partial or incompetent. Instead, he limits his argument to speculation that he might have received a more favorable result had he been able to peremptorily strike another juror (Juror Eight), whose home had previously been burglarized. However, Tiedemann failed to object to Juror Eight during voir dire and, in fact, passed the jury for cause. Under these circumstances, Tiedemann cannot now claim that Juror Eight was biased or partial. See id. ¶¶ 37-40 (concluding, under similar circumstances, that failure to object during voir dire constitutes a waiver barring later inquiry into juror bias).

Tiedemann also argues that the district court's ruling, as a practical matter, unfairly gave the State a greater number of peremptory challenges than it gave to Tiedemann. However, such an argument could be made in any case in which a defendant, but not the State, uses a peremptory challenge to remove a juror that should have been removed for cause. Accordingly, we conclude that this argument is foreclosed by Menzies's rejection of a rule of per se prejudice in these types of cases. See generally 889 P.2d at 398.

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[2]We note that the district court would certainly not have exceeded its discretion if it had removed Juror Nineteen for cause, and we encourage the liberal granting of for cause challenges in close cases. See generally State v. Woolley, 810 P.2d 440, 442 (Utah Ct. App. 1991) ("[T]he exercise of the trial court's discretion in selecting a fair and impartial jury must be viewed 'in light of the fact that it is a simple matter to obviate any problem of bias simply by excusing the prospective juror and selecting another.'" (quoting Jenkins v. Parrish, 627 P.2d 533, 536 (Utah 1981))).

Tiedemann's second argument is that the district court erred when it failed to suppress certain statements Tiedemann made after his arrest but before he was given Miranda warnings, see generally Miranda v. Arizona, 384 U.S. 436 (1966). Tiedemann filed a pretrial motion to suppress all of his pre-Miranda statements to police as the result of custodial interrogation. Addressing Tiedemann's motion, the district court ruled that statements made in response to police questions would be suppressed but that spontaneous statements would be allowed. Tiedemann identifies only one instance where pre-Miranda statements were actually admitted at trial. One of the arresting officers testified, "As we were walking back to the police car, [Tiedemann] stated that he had shot them because they had burned him on a drug buy of $6,000. He also stated that he'd been sniffing glue since he was a young boy. And all this was just spontaneous." Tiedemann raised no objection to this testimony when it was offered.

Under these circumstances, Tiedemann has failed to preserve for appeal any error arising from the State's use of his pre-Miranda statements at trial. "As a general rule, claims not raised before the trial court may not be raised on appeal." State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346. Here, although Tiedemann originally sought to suppress all of his pre-Miranda statements, the district court correctly ruled that spontaneous statements--i.e., those that were not the result of police questioning--would not be suppressed. See generally Rhode Island v. Innis, 446 U.S. 291, 300 (1980) ("Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by [Miranda]." (internal quotation marks omitted)). The district court's ruling acknowledged that the State might attempt to offer pre-Miranda statements and left the determination of whether any particular statement was spontaneous for future determination. Thus, the ruling was not a "definitive ruling" on the admissibility of any particular statement sufficient to excuse Tiedemann from the requirement of later renewing his objection. See Utah R. Evid. 103(a)(2) ("Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal."); State v. Hansen, 2002 UT 114, ¶¶ 12-20, 61 P.3d 1062 (discussing the requirement of a contemporaneous renewed objection when an issue raised pretrial has not been definitively resolved).

At trial, Tiedemann did not object to the admissibility of his pre-Miranda statements when they were offered by the State. The witness's testimony expressly characterized Tiedemann's statements as spontaneous and, thus, admissible under the district court's prior ruling. By refraining from objection,

Tiedemann failed to alert the district court to his current argument that the admitted statements were actually the result of police questioning and should have been suppressed. Accordingly, the issue is not preserved for appeal, and we do not address it. See generally State v. Diaz-Arevalo, 2008 UT App 219, ¶ 10, 189 P.3d 85 ("In order to preserve an issue for appeal, a defendant must raise the issue before the district court in such a way that the court is placed on notice of potential error and then has the opportunity to correct or avoid the error."), cert. denied, 199 P.3d 970 (Utah 2008).

We conclude that Tiedemann has failed to demonstrate prejudice arising from the district court's refusal to strike Juror Nineteen for cause and failed to preserve his argument that admission of certain pre-Miranda statements was error. Accordingly, we affirm the judgment of the district court.

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William A. Thorne Jr.,
Associate Presiding Judge

WE CONCUR:

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Gregory K. Orme, Judge

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Carolyn B. McHugh, Judge