STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1450

State of Minnesota,
Respondent,

vs.

Cody Lyle Bergendahl,
Appellant.

Filed September 21, 2020
Reversed and remanded
Johnson, Judge

Le Sueur County District Court
File No. 40-CR-17-786

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Brent Christian, Le Sueur County Attorney, Le Center, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Schellhas, Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

A Le Sueur County jury found Cody Lyle Bergendahl guilty of first-degree criminal sexual conduct. On appeal, he seeks relief on three grounds. We conclude that the district court erred by denying Bergendahl's for-cause challenge of a prospective juror on the ground that she was biased. Therefore, we reverse and remand for a new trial.

FACTS

In July 2017, the state charged Bergendahl with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2016), and first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(e)(ii). The complaint alleged that Bergendahl and the alleged victim were friends because they had been co-workers, that they spent an evening together with a couple who are friends of Bergendahl, and that Bergendahl sexually penetrated the complainant's vagina with his penis, without her consent, in a bedroom at Bergendahl's friends' home.

Before jury selection, a prospective juror, Juror 27, answered a questionnaire by stating that her daughter had been physically and emotionally abused by a boyfriend. During *voir dire*, the district court and Bergendahl's attorney questioned Juror 27 about the disclosure, which led to inconsistent and equivocal responses. The district court began by asking Juror 27 whether her daughter's abuse "would affect your ability to be fair and impartial in a situation like this?" Juror 27 initially answered that it "might" and further stated, "I would hope that I could be impartial to it all, but I can't say for sure, either." Bergendahl's attorney asked Juror 27 whether she "could be fair to both sides of the case."

Juror 27 answered, "I think that I could be, but I can't . . . say a hundred percent sure." When asked whether she could "completely set aside the past about your daughter," she answered, "Yep. Yep, that I could." Bergendahl's attorney asked whether her daughter's experience "would affect how you would think about a case like this?" Juror 27 answered by saying, "I hope not, but I . . . can't say a hundred percent," "I want to be impartial [and] to listen to both sides and . . . come up with a fair judgment," and "[t]here is part of me that says, I might not be able to, yes, that I'm not sure."

Bergendahl's attorney asked the district court to excuse Juror 27. The district court asked Juror 27 additional questions, concluding with the question, "In your heart of hearts, do you think you can be fair?" Juror 27 answered, "I don't know. I honestly don't know." After Juror 27 left the courtroom, Bergendahl's attorney renewed the for-cause challenge, arguing that Juror 27 had ongoing doubts about her ability to be fair and impartial and that Juror 27 ultimately had said that "she just didn't know." The prosecutor opposed Bergendahl's challenge. The district court denied the challenge.

At trial, the state called seven witnesses and introduced 28 exhibits. Bergendahl testified in his own defense and called as witnesses the two friends who were present on the night of the incident. The jury found Bergendahl guilty.

Bergendahl filed two post-trial motions in which he made five arguments, including the argument that Juror 27 was biased. The district court denied both motions. With respect to Bergendahl's juror-bias argument, the district court reasoned that it "was not convinced that [Juror 27's] doubts were anything other than the doubts that every juror

feels" and that the nature of Juror 27's "strong and deep impressions" were unclear. The district court sentenced Bergendahl to 144 months of imprisonment. Bergendahl appeals.

D E C I S I O N

Bergendahl argues that he is entitled to appellate relief for three reasons. First, he argues that he is entitled to a new trial on the ground that the district court erred by not removing Juror 27 for cause. Second, he argues that he is entitled to a new trial on the ground that the prosecutor engaged in misconduct in closing argument by vouching for the victim's credibility. And third, he argues that he is entitled to a *Schwartz* hearing because, in a post-trial evaluation form, a juror anonymously stated that she should not have been selected for jury service because she previously had experienced sexual abuse. We begin by considering Bergendahl's first argument.

A defendant in a criminal case has a constitutional right to an impartial jury. U.S. Const. amend. VI; Minn. Const. art. I, § 6. "Because the impartiality of the adjudicator goes to the very integrity of the legal system, . . . the bias of a single juror violates the defendant's right to a fair trial." *State v. Evans*, 756 N.W.2d 854, 863 (Minn. 2008) (quotations omitted). Furthermore, the presence of a biased fact finder is a structural error, which requires automatic reversal. *Id.*

"A juror may be challenged for cause" on any of 11 grounds, including the ground that "[t]he juror's state of mind—in reference to the case or to either party—satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party." Minn. R. Crim. P. 26.02, subd. 5(1), 5(1)1. If a party challenges a prospective juror on the ground of bias, "the challenging party must show that

the juror exhibited strong and deep impressions that would prevent her from laying aside her impression or opinion and rendering a verdict based on the evidence presented in court." *State v. Munt*, 831 N.W.2d 569, 577 (Minn. 2013) (quotations, citations, and alterations omitted).

> Determining whether the district court erred . . . is a two-step process. We must first determine if the juror expressed actual bias. To do so, we must view the juror's voir dire answers in context. If the juror expressed actual bias, we must then determine whether the juror was properly rehabilitated. We consider a juror to be rehabilitated if he or she states unequivocally that he or she will follow the district court's instructions and will set aside any preconceived notions and fairly evaluate the evidence.

State v. Fraga, 864 N.W.2d 615, 623 (Minn. 2015) (quotation and citation omitted). An appellate court applies an abuse-of-discretion standard of review to a district court's decision not to strike a prospective juror for cause. *See id.*

The first question is whether Juror 27 expressed "strong and deep impressions that would prevent her from laying aside her impression or opinion and rendering a verdict based on the evidence presented in court." *See Munt*, 831 N.W.2d at 577. The transcript of *voir dire* indicates that Juror 27 had certain impressions that caused her to doubt her ability to be a fair and impartial juror. Some of her answers reflected less doubt than others, but most of her answers indicated that her doubts were persistent and had not abated before the district court made its ruling on Bergendahl's for-cause challenge. Bergendahl emphasizes the last question put to Juror 27, "In your heart of hearts, do you think you can be fair?," and her answer: "I don't know. I honestly don't know." Bergendahl's argument has merit because it appears that Juror 27 was not confident that she could set aside the

impressions and opinions she held because of her daughter's prior abuse and make a decision based solely on the evidence presented at trial.

The state argues that Juror 27 was not biased against persons accused of conduct similar to the conduct alleged in this case. But the state has not cited any caselaw for the proposition that a prospective juror's bias must be directly related to the nature of the case or the alleged criminal conduct, and we are unaware of any such caselaw. The caselaw asks only whether the juror has "exhibited strong and deep impressions that would prevent her from laying aside her impression or opinion and rendering a verdict based on the evidence presented in court." *Id.*

The state also argues that Juror 27 stated that she would set aside her daughter's experience and do her best to be fair and impartial. But this argument is based on isolated statements Juror 27 made in *voir dire*. As a whole, Juror 27's answers to the questions asked of her were equivocal, especially her last statement that she "honestly" did not know whether she could be fair.

The state argues further that this court should defer to the district court's decision. We acknowledge that appellate courts generally give deference to a district court's interpretation and assessment of a prospective juror's answers to *voir dire* questions. *See id.* at 576. But such deference is not warranted in this case. As an initial matter, the district court did not make a determination that Juror 27 was not credible. In the absence of such a determination, we must assume Juror 27's statements to be true. More importantly, the district court's order denying Bergendahl's post-trial motion reflects a misunderstanding of Juror 27's *voir dire* testimony. The order states that she answered "Yep" when asked

whether she could be fair and impartial. In reality, that was Juror 27's answer to a different question. When asked whether she could be fair, Juror 27 generally expressed doubts and ultimately stated, "I honestly don't know." The district court did not mention Juror 27's final answer in its legal analysis. It appears that the district court based its post-trial ruling on a misunderstanding of what Juror 27 said.

In addition, the district court's ruling is inconsistent with supreme court caselaw. In *Fraga*, the supreme court concluded that the district court erred because the prospective juror "expressed actual bias," in part by stating, in response to questions about whether he could be fair and impartial, "I think it would be hard." 864 N.W.2d at 623-25. In *State v. Logan*, 535 N.W.2d 320 (Minn. 1995), the supreme court concluded that the district court erred because the prospective juror stated that he would tend to favor the testimony of a police officer but he would "be objective, . . . as best I could." *Id.* at 324. The supreme court acknowledged that "trial courts must have considerable discretion in ruling on such challenges" but nonetheless "conclude[d] that the trial court erred in rejecting defense counsel's challenge . . . because the juror did not 'swear that he *could* set aside any opinion he might hold and decide the case on the evidence,' but only that he would *try*." *Id.* (quoting *Patton v. Yount*, 467 U.S. 1025, 1036, 104 S. Ct. 2885, 2891 (1984)). Similarly, in *State v. Prtine*, 784 N.W.2d 303 (Minn. 2010), the supreme court concluded that the district court erred because the prospective juror stated that she would tend to favor the testimony of a police officer and qualified those statements only by stating that "she would 'try and be fair' and 'would weigh the facts.'" *Id.* at 309-11. These supreme court opinions illustrate that, despite a deferential standard of review, an appellate court must find error if

a transcript reveals statements by a prospective juror that indicate a bias and if the prospective juror has not stated that he or she will set aside the bias and make a decision based on the evidence. *See Munt*, 831 N.W.2d at 577. We are unaware of any caselaw in which statements similar to Juror 27's statements were deemed *not* to be an expression of bias. Thus, we conclude that Juror 27 was biased.

The state argues in the alternative that Juror 27 was rehabilitated. A prospective juror who has expressed bias may be deemed rehabilitated if the person has stated "unequivocally" that he or she will follow the district court's instructions and "fairly evaluate the evidence." *Logan*, 535 N.W.2d at 323. But a prospective juror is not rehabilitated if he or she merely will "'try,' 'do their best,' 'think they could,' 'think it would be hard,' or 'guess' they could set aside their bias." *Ries v. State*, 889 N.W.2d 308, 314 (Minn. App. 2016) (quoting *Fraga*, 864 N.W.2d at 625), *aff'd*, 920 N.W.2d 620 (Minn. 2018). In this case, Juror 27's answers were generally equivocal, and her last answer was especially equivocal. She did not make an "unequivocal" statement that she would set aside her preconceptions and be fair. *Logan*, 535 N.W.2d at 323. Thus, Juror 27 was not rehabilitated.

In sum, the district court erred by denying Bergendahl's for-cause challenge to Juror 27 and by denying Bergendahl's post-trial motion for a new trial based on Juror 27's bias. Therefore, we reverse and remand for a new trial. *See Fraga*, 864 N.W.2d at 625-26, 627. In light of that conclusion and remedy, we need not consider Bergendahl's second and third arguments.

Reversed and remanded.