STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1303

State of Minnesota,
Respondent,

vs.

Robert Joseph Hutchins,
Appellant.

Filed November 13, 2012
Affirmed; motion denied
Chutich, Judge

Crow Wing County District Court
File No. 18-CR-10-462

Lori Swanson, Attorney General, Jennifer R. Coates, Assistant Attorney General, St. Paul, Minnesota; and

Donald F. Ryan, Crow Wing County Attorney, Brainerd, Minnesota (for respondent)

Bradford W. Colbert, Assistant State Public Defender, John Monnens (certified student attorney), Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

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

CHUTICH, Judge

Appellant Robert Hutchins challenges his conviction of fifth-degree possession of marijuana, contending that the district court erred by denying his motion to strike for

cause a juror who Hutchins contends was not a resident of Crow Wing County. Because we conclude that the district court did not clearly err in finding that the juror was a resident of the county, we affirm.

FACTS

In September 2009, officers from the Lakes Area Drug Investigative Division were monitoring land in Crow Wing County, near the town of Crosslake, where illicit marijuana plants were growing. On September 26, 2009, officers went to observe the area where the plants were growing and discovered that the plants were gone. They noticed several foot trails leading from the area, and followed one trail to a nearby property where they saw a fish house. They heard music coming from the fish house, and also the sound of breaking branches, which one officer testified was consistent with processing marijuana plants into a form that can be smoked. The officers left the property and then determined that the fish house was on property owned by Hutchins.

Later that same day, the officers went to Hutchins's residence, and Hutchins agreed to show them the trails leading to his fish house. As they approached the fish house, the officers detected a strong odor of marijuana coming from the fish house. Hutchins admitted that there was marijuana inside the fish house, and gave the officers consent to enter. The officers observed hanging marijuana plants and a metal, "one-hitter" pipe commonly used for smoking marijuana. Hutchins admitted stealing the marijuana from the patch growing near his property and bringing it back to his fish house. The state charged Hutchins with fifth-degree possession of a controlled substance.

The district court held a jury trial in March 2011. During voir dire, defense counsel moved to strike one of the prospective jurors for cause on the grounds that he was not a resident of Crow Wing County. The prospective juror, D.T., wrote on his juror qualification questionnaire that he was a resident of Crow Wing County, but he listed a post office box in Minneapolis as his address, asking the court to "please send all correspondence to this address." The phone numbers he listed also had area codes corresponding to the metro area.

When further questioned about his residency, D.T. told the court that he had a homesteaded, winterized lake home in Crow Wing County and an apartment in Bloomington. He works full time in Bloomington, but he said that he "technically live[s] up [in Crow Wing County]." D.T. told the court that he comes to his lake home "probably twice a month." He was born and raised in Minneapolis, and has lived in the metro area ever since. D.T. and his ex-wife purchased the lake home in 2001, and he received the lake home in their 2007 divorce settlement while she was awarded their home in Bloomington. He homesteaded the lake cabin after the divorce.

The district court determined that D.T. was a proper member of the jury pool in Crow Wing County, presumably because he had a homestead and paid taxes in the county. Defense counsel did not contest this determination, but argued that it did not make him a resident of the county and therefore he was not a proper juror. Defense counsel made no allegation, however, that D.T. was biased against Hutchins in any way, and D.T.'s responses on voir dire do not suggest any bias or impartiality.

The district court ultimately denied Hutchins's motion to strike D.T. for cause, and neither party used a peremptory challenge to remove him from the jury. The jury found Hutchins guilty of fifth-degree possession of marijuana. This appeal follows.

D E C I S I O N

The Minnesota Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury *of the county or district wherein the crime shall have been committed*, which county or district shall have been previously ascertained by law." Minn. Const. art. I, § 6 (emphasis added); *see also* Minn. R. Gen. Pract. 808(b)(3) ("To be qualified to serve as a juror, [a] prospective juror must be . . . [a] resident of the county."). Hutchins contends that because D.T. was not a resident "of the county or district" where the crime was committed, i.e., Crow Wing County, this constitutional right was violated. Hutchins made a proper challenge for cause on the grounds that D.T. was not a qualified juror under Minnesota law. *See* Minn. R. Crim. P. 26.02, subd. 5(1)(3) (allowing a challenge for cause on the grounds that a prospective juror "lack[s] any qualification prescribed by law").

We generally review a challenge for cause based on juror bias or impartiality for abuse of discretion. *State v. Manley*, 664 N.W.2d 275, 284–85 (Minn. 2003). We see a distinction, however, between a challenge alleging bias or impartiality and a challenge asserting that a prospective juror is unqualified to serve because he or she does not meet the constitutional residency requirement. In the case of bias, the district court judge must listen to the prospective juror's testimony, weigh his or her credibility, and exercise

discretion in determining whether the person can be an impartial juror. *See, e.g.*, *State v. Logan*, 535 N.W.2d 320, 323 (Minn. 1995) (stating that the district court's resolution of whether a prospective juror's protestation of impartiality is credible is a determination of credibility and demeanor and, therefore, is entitled to special deference).

In the case of residency, however, the district court weighs historical facts, rather than the stated impressions of the juror, and need not make determinations based on the juror's credibility and demeanor. Thus, residency is more properly considered a question of fact, and it is well settled that we review factual findings under a clear-error standard.[1] *See State v. Berrios*, 788 N.W.2d 135, 140 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). "Findings are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id*. (quotation omitted).

The most recent case addressing residency, although in a different context, is *In re Conduct of Karasov*, 805 N.W.2d 255 (Minn. 2011). In that case, the supreme court reviewed the Board on Judicial Standard's determination that Judge Karasov resided outside of her judicial district. *Id.* at 264–68. The court held that the test for judicial residency is the same as that used in determining whether a legislative candidate resides in a certain district. *Id.* at 265.

---

[1] This clearly erroneous standard is consistent with the standard used in cases reviewing residency determinations in other settings. *See, e.g.*, *Studer v. Kiffmeyer*, 712 N.W.2d 552, 558 (Minn. 2006) (stating that, when addressing whether a legislative candidate meets residency requirements, "factors that establish residency are largely questions of fact, and we therefore defer to the findings of the referee who heard the witnesses testify" (quotation omitted)); *Bell v. Gannaway*, 303 Minn. 346, 350, 227 N.W.2d 797, 801 (1975) (reviewing residency determinations, for the purpose of voting, under a clearly erroneous standard).

Although noting that it has not "adopted outright the statutory residency principles established for voters" under Minnesota law in legislative residency cases, the court cited and discussed the factors considered in determining voter residency. *Id.* at 264–65. Under those statutory factors, found at Minn. Stat. § 200.031 (2010), the two main considerations are physical presence and intent to reside. *Karasov*, 805 N.W.2d at 264–65; Minn. Stat. § 200.031(a), (h), (i); *see also State v. Kemp*, 34 Minn. 61, 64, 24 N.W. 349, 351 (1885) (suggesting that residence for jury purposes is the place where jurors have their homes and to which they intend to return). In the absence of caselaw prescribing a different test to determine juror residency, we will apply the residency test used in *Karasov*.

Here, the two residency factors, D.T.'s physical presence and his intent to reside, lead to different conclusions about whether he was qualified to sit on Hutchins's jury. Concerning physical presence, D.T. testified that he rented an apartment and worked full time in Bloomington, and that he would come to his lake home in Crow Wing County about twice a month. While we consider twice a month to be relatively frequent, especially considering the distance between Hennepin and Crow Wing Counties, D.T. is physically present in Hennepin County the majority of the time. Yet, on the factor of D.T.'s intent, D.T. wrote on his juror questionnaire that he was a resident of Crow Wing County. He testified during voir dire that he "technically live[s]" in Crow Wing County, and he has a homesteaded lake home in Crow Wing County. His testimony and actions therefore show that he intends to reside in Crow Wing County. *Cf. Karasov*, 805 N.W.2d at 265 (noting that even though Judge Karasov stated that she intended to reside in

Hennepin County, she had no Hennepin County residence for three of the months in question).

Given that the two key residency factors—physical presence and intent to reside—are split in this case, it may have been most prudent for the district court to excuse D.T. from the jury. We are not, however, "left with the definite and firm conviction that a mistake has been made." *Berrios*, 788 N.W.2d at 140 (quotation omitted). Based upon our deferential standard of review, therefore, we conclude that the district court did not clearly err in determining that D.T. was a resident of Crow Wing County, or in denying Hutchins's motion to strike D.T. from the jury.

In any event, we note that the district court ruled on Hutchins's motion to strike D.T. *before* either party exercised any peremptory challenges.[2] Thus, even if the district court's denial of the challenge for cause was erroneous, Hutchins has not shown prejudice because he had the opportunity to remove D.T. from the jury by using a peremptory challenge, and he chose not to do so. *See Logan*, 535 N.W.2d at 324 ("If defendant had . . . peremptory challenges available and had not exercised one of them to strike [the challenged juror], then the question would be whether defendant could complain about [the challenged juror's] sitting on the jury."); *cf. State v. Prtine*, 784 N.W.2d 303, 311–12 (Minn. 2010) (concluding that, although the district court

[2] At oral argument before this court, a question arose as to whether the record shows that Hutchins used all of his peremptory challenges. Resolution of this dispute, however, is not necessary to our decision here. We therefore deny, as moot, the state's motion to strike a letter that Hutchins sent to this court following oral argument in which he disputed a statement made by counsel for the state on the issue of preemptory challenges. We also deny as unnecessary the state's alternative request to permit it to submit an additional brief on the issue.

erroneously refused to dismiss a juror for cause, the defendant was not prejudiced because he used a peremptory challenge to remove the juror).

Affirmed; motion denied.