STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1676

State of Minnesota,
Respondent,

vs.

Chad Edward Danberry,
Appellant.

Filed November 23, 2020
Reversed and remanded
Hooten, Judge

Blue Earth County District Court
File No. 07-CR-18-886

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Patrick McDermott, Blue Earth County Attorney, Mankato, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Hooten, Judge; and Gaïtas, Judge.

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

HOOTEN, Judge

In his appeal from his convictions of multiple counts of criminal sexual conduct, appellant argues, among other things, that the district court abused its discretion by denying

his challenge for cause of a prospective juror and permitting the juror to sit in his trial. Because we conclude the district court abused its discretion by denying his for-cause challenge and allowing a biased juror to sit on the jury deciding appellant's guilt, we reverse and remand for a new trial.

FACTS

In 2018, a middle-school girl reported that appellant Chad Danberry had sexually abused her over the course of four years. The state charged Danberry with five counts of first-degree criminal sexual conduct and four counts of second-degree criminal sexual conduct. During jury selection, a prospective juror revealed that her daughter suffered repeated sexual abuse by a neighbor over the course of a year. The juror repeatedly expressed doubt about her ability to be fair and impartial in this case. Danberry moved the court to strike the juror for cause based on juror bias. The district court questioned the juror on her ability to be impartial, then, notwithstanding appellant's challenge for cause, permitted the juror to sit on the jury.

The jury found Danberry guilty on all nine counts. The district court sentenced Danberry to consecutive prison terms for four counts of first-degree criminal sexual conduct. Danberry appealed to this court.

D E C I S I O N

Danberry contends that the district court abused its discretion by seating a biased juror in violation of his right to an impartial jury under the United States Constitution and Minnesota Constitution. The state argues that the juror was not biased, and, even if she was, the district court rehabilitated her. We find that the juror's testimony showed evidence

of bias, and that the district court failed to rehabilitate her. We are forced to conclude that the juror was biased.

"The United States Constitution and the Minnesota Constitution guarantee a criminal defendant the right to an impartial jury." *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015). *See also* U.S. Const. amend. VI ("the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State"); Minn. Const. art. 1, § 6 ("in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury"). "'The bias of a single juror violates the defendant's right to a fair trial,' because the 'impartiality of the adjudicator goes to the very integrity of the legal system.'" *Id.* (quoting *State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007)). "Permitting a biased juror to serve is structural error *requiring* automatic reversal." *Id.* (emphasis added).

Our state's rules for criminal trials allow a party to prevent a biased juror from corrupting the trial by requesting that the district court remove the juror on 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)1. The challenging party proves to the district court that the juror is actually biased by "show[ing] 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." *Fraga*, 864 N.W.2d at 623 (quotation omitted). *See also* Minn. R. Crim. P. 26.02, subd. 5(1)1 (a prospective juror is "actually biased" where she cannot decide the case impartially

and without prejudice). A district court has the discretion to grant or deny the request. *Fraga*, 864 N.W.2d at 623.

We review the district court's decision to see if the district court abused its discretion by making an arbitrary and capricious decision, basing its decision on clearly erroneous factual findings, or basing its decision on an incorrect interpretation or application of law. *Id.* We give "great deference" to the district court's factual findings about a juror's possible bias, rejecting those findings only if the record shows that they are clearly erroneous. *Id.* (quotation omitted).

Our review requires two steps. *Id.* First, we review the record of the juror's statements during the jury selection process to "determine if the juror expressed actual bias." *Id.* If we find evidence that the juror may have been biased, we then review the record of the jury selection process to determine whether the district court rehabilitated the juror to set aside her bias and consider the evidence at trial fairly and impartially. *Id.* "We consider a juror to be rehabilitated if . . . she states unequivocally that . . . she will follow the district court's instructions and will set aside any preconceived notions and fairly evaluate the evidence." *Id.*

A. The juror's testimony shows her strong doubt about her ability to be fair and unbiased because of her daughter's sexual abuse.

Giving deference to the district court's finding on the juror's bias, we must find that the juror showed evidence of bias through her repeated expressions of doubt and concern that she could not be fair and impartial due to her daughter's experience of sexual abuse. Danberry argues these expressions show the juror was actually biased. The state responds

that these expressions show only that the juror might be biased, and that the juror promised to be impartial, so we should defer to the district court's determination that she had not expressed disqualifying bias.

The juror disclosed on her jury questionnaire that a neighbor sexually abused her daughter, leading her to doubt her ability to be impartial in this case. Under questioning by Danberry's attorney, the juror further revealed that, for a year, the neighbor abused her daughter while she was baby-sitting at the neighbor's house. When asked if she had reason to be concerned about her impartiality, she said, "I honestly don't know that I can be not prejudiced in this kind of case." When asked if she could follow the judge's instruction to put aside her experiences and decide just on the evidence and the jury instructions, she replied, "I do believe I can be fair. I-I don't try to judge anybody by circumstances I've been involved in. I just . . . I just can't promise that I can. I don't know that it won't come back in." When asked how certain she was of her ability to be fair, she replied, "[H]onestly, I am uncertain, yes. I will admit, I am uncertain." When asked if she believed her daughter's abuse would "creep into [her] consciousness" while listening to testimony during the trial, she replied, "My thought is that if it was anything sounding familiar, yes, it would."

Based on these statements, Danberry's attorney requested the district court remove the juror, arguing that there were too many similarities between the juror's experience and this case for the court to be certain she could be unbiased. The prosecutor opposed the request, arguing that "she said she'd be able to try and do her best, and that's all we can ask of any juror. And . . . as long as she can promise that she would try" then she should

not be removed. The district court did not dismiss the juror, but noted "from my perspective, it's possible she'll strike. I need to ask her some questions." The district court did not explicitly find that the juror expressed actual bias. But the district court implicitly found that the juror's statements suggested she was biased, because it was considering striking her based on those statements.

We defer to the district court's implicit finding of evidence of bias. But even if we set aside the district court's finding, our legal precedent makes clear that the juror's statements show evidence of bias. *See Fraga*, 864 N.W.2d at 623-25. In *Fraga*, the Minnesota Supreme Court determined that a juror showed evidence of bias because when he was asked whether he knew of any reason why he could not be fair and impartial, he responded with the caveat "Besides the fact I know about the case, I don't, no. I think it would be hard." 864 N.W.2d at 625. The court found "the caveat . . . should have been considered an expression of bias" and "his ambiguous acknowledgement that 'I think it would be hard' was probative of bias." *Id.*

Like the juror in *Fraga*, the juror's multiple expressions of doubt and uncertainty in this case were probative of bias. The juror believed that her daughter's abuse would creep into her mind if there was similar testimony in this case, suggesting that her daughter's abuse would bias her interpretation of the testimony. The juror repeatedly expressed doubt and concern about her ability to judge fairly, impartially, and only on the evidence, saying, "I honestly don't know" and "I am uncertain." The only time the juror said she believed she could be fair, she immediately followed up with the caveat "I just can't promise that I can. I don't know that it won't come back in." These expressions suggest that the juror's

strong and deep emotions about her daughter's sexual abuse would prevent her from judging Danberry based solely on the evidence at trial.

The state argues that these expressions show only that the juror was uncertain about her ability to be fair. That is true, but her uncertainty is probative of bias. *See id.* The structural, constitutional guarantee of an unbiased jury is so fundamental to criminal trials in our state and nation that courts and prosecutors must treat a juror's mere expressions of doubt as evidence of actual bias. *See id.* Based on the juror's multiple statements of doubt and uncertainty, we conclude that the district court did not clearly err when it implicitly found that the juror's statements were evidence of actual bias.

B. The juror was not rehabilitated because she never unequivocally committed to setting aside her prejudice and fairly evaluating the evidence.

The state argues that even if the juror's statements are evidence of actual bias, the district court rehabilitated the juror. We disagree because the record shows that the juror never unequivocally stated that she would follow the district court's instructions, set aside any preconceived notions, and fairly evaluate the evidence. *See Fraga*, 864 N.W.2d at 623.

An actually biased juror must be rehabilitated before she can sit in the jury. *Id.* "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." *Id.*; *see Ries v. State*, 889 N.W.2d 308, 314 (Minn. App. 2016), *aff'd*, 920 N.W.2d 620 (Minn. 2018).

Following Danberry's request to remove the juror, the district court questioned the juror in an attempt to rehabilitate her. The district court first said:

> When we're making these decisions, one of the things that inevitably comes up is the difference between the possibility that our life experiences would remain in our head, and then we think about that and, of course, that will happen. There is no such thing as not having the life experiences with which we bring to court. Same goes for me. But that's different when we try to ascertain whether, even with life experiences, do you think you'd be able to uphold a sworn oath to wait until the evidence is in to make a decision? And I see you as potentially, you know, you might-you might--stuff might creep into your head. I think you've already indicated it might be there. But I've also heard you testify here a little bit that you believe you could still be fair, there's just that uncertainty that comes with being a juror. Is that fair to say, from your perspective?

The juror responded, "Yes. Yep, that is true." The district court continued its questioning:

> And, ultimately, one of the things that every juror needs to be able to raise their right hand and swear to, is that no matter what their life experiences are, no matter how similar or dissimilar, good or bad, they may be, you're at least swearing to not make up your mind until you've heard all the evidence, let everyone speak who wants to speak, and that you've had a chance to talk with your fellow jurors. If I instruct you that that's the law, do you think you could follow that law?

The juror responded, "Yes." This was the entirety of the district court's questioning.

We conclude that these questions and the juror's answers failed to rehabilitate the juror because the juror never made an unequivocal commitment to fairly evaluate the evidence. In *Fraga*, the supreme court found that the juror was not adequately rehabilitated when given the opportunity to express his sentiments in his own words, because the juror repeatedly gave equivocal answers about his ability to be fair and impartial. 864 N.W.2d at 625; *see State v. Prtine*, 784 N.W.2d 303, 311 (Minn. 2010) (concluding that juror was

not rehabilitated when she responded to leading questions by the district court but never swore that she could be fair); *Ries*, 889 N.W.2d at 314 (determining that "[juror's] statement that she would 'do her best to be fair' is far from an unequivocal statement that she would not be biased"). In response to the questions posed to her by Danberry's attorney, the juror repeatedly gave equivocal answers regarding her ability to be fair and unbiased. Her only unequivocal responses were two simple, short answers of "yes" in response to the district court's lengthy questions. These are not the unequivocal statements required of the juror.

The juror's answers of "yes" to the district court's inquiry were also flawed in several other ways. First, the district court's initial inquiry was a multipart question that asked "But that's different when we try to ascertain whether, even with life experiences, do you think you'd be able to uphold a sworn oath to wait until the evidence is in to make a decision?" and "I've also heard you testify here a little bit that you believe you could still be fair, there's just that uncertainty that comes with being a juror. Is that fair to say, from your perspective?" We cannot determine from this record which of these questions the juror responded to with "yes."

Even if we could determine which question the juror answered, neither question rehabilitated her. The district court's first question only asked if the juror would avoid making a decision "until the evidence is in," not whether the juror would unequivocally avoid bias and prejudice when evaluating that evidence. The question left open the possibility that the juror would allow her deeply held emotions about her daughter's abuse

to bias and prejudice her evaluation of the evidence. *See Prtine*, 784 N.W.2d at 311; *Ries*, 889 N.W.2d at 315.

The second part of this statement ("you believe you could still be fair, there's just that uncertainty that comes with being a juror") could be interpreted as the district court asking whether the juror still felt uncertain. Rather than rehabilitating the juror, this question and the juror's "yes" seemed to reinforce that the juror continued to feel uncertain about her ability to be fair. It did not show that she could set aside that uncertainty. The question also seemed to excuse that uncertainty as natural for all jurors, when our law and constitution insist that a juror unequivocally commit to being fair and impartial. *See Fraga*, 864 N.W.2d at 625; *Prtine*, 784 N.W.2d at 311; *Ries*, 889 N.W.2d at 315.

The district court's second inquiry was also flawed. The district court asked "you're at least swearing to not make up your mind until you've heard all the evidence, let everyone speak who wants to speak, and that you've had a chance to talk with your fellow jurors. If I instruct you that that's the law, do you think you could follow that law?" Like the first question, this question only asked if the juror would wait until she had the evidence and testimony, and conferred with the other jurors. Waiting to have all the evidence is not the same as evaluating that evidence fairly. *See Ries*, 889 N.W.2d at 315. The question again left open the possibility that the juror would allow her specific experiences to bias and prejudice her evaluation of the evidence. None of these questions asked if the juror could set aside her prejudice and fairly evaluate the evidence, so her responses did not rehabilitate her.

The juror never unequivocally stated that she would follow the district court's instructions, set aside any preconceived notions, and fairly evaluate the evidence. *Fraga*, 864 N.W.2d at 623. Furthermore, under questioning by the parties, the juror, in her own words, repeatedly expressed concern and doubt about her ability to be fair and unbiased. Finally, the district court's questions left open the possibility that the juror's bias would inform her decisions and excused her uncertainty as natural for all jurors. Giving deference to the district court, and considering the entirety of the juror's statements and responses, the evidence shows that the juror was not rehabilitated.

Because the record indicates that the juror expressed actual bias and was not rehabilitated, we hold that the district court abused its discretion by allowing her to sit for the trial.

C. A biased juror is a structural error requiring reversal for a new trial.

As previously discussed, "[p]ermitting a biased juror to serve is structural error *requiring* automatic reversal." *Fraga*, 864 N.W.2d at 623 (emphasis added). If an appellate court determines that the juror was actually biased, not rehabilitated, and sat in judgment of the appellant, "any conviction must be reversed." *Id.* at 625-626.

Notwithstanding the district court's implicit finding of evidence of juror bias, the district court permitted the juror to sit in this case. Because the record indicates that the juror was not rehabilitated and made no unequivocal statement that she could be a fair and impartial juror, we conclude that the district court abused its discretion by allowing this juror to sit in Danberry's trial. In accordance with our clear case law indicating that this constituted structural error, we are compelled to reverse Danberry's convictions and

remand for a new trial. We do not reach the merits of the other issues raised by Danberry in his appeal.

Reversed and remanded.