STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1612

State of Minnesota,
Respondent,

vs.

Milton Thomas,
Appellant.

Filed September 14, 2010
Affirmed
Johnson, Judge

Goodhue County District Court
File No. 25-CR-08-3792

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Stephen N. Betcher, Goodhue County Attorney, Erin L. Kuester, Assistant County Attorney, Red Wing, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and Willis, 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 Goodhue County jury found Milton Thomas guilty of third-degree criminal sexual conduct. During voir dire, a prospective juror made statements suggesting that he harbored a racial bias. After counsel and the district court questioned the prospective juror extensively, Thomas sought to remove him from the venire panel by challenging him for cause. The district court denied the challenge. We conclude that the district court did not err by denying Thomas's challenge to the prospective juror because the prospective juror stated that he could set aside his personal views and decide the case based on the evidence and the law. Therefore, we affirm.

FACTS

In August 2008, G.M.M. accused Thomas of sexually assaulting her. According to G.M.M., she fell asleep on a couch while babysitting a friend's child, but she awoke when Thomas, whose girlfriend lived in a nearby apartment, suddenly appeared next to her and began talking to her. G.M.M. testified that she asked Thomas to leave her alone because she was sleeping. According to G.M.M.'s testimony at trial, Thomas covered her mouth, pulled down her pants, and penetrated her vagina with his penis.

The state charged Thomas with third-degree criminal sexual conduct, a violation of Minn. Stat. § 609.344, subd. 1(c) (2008). Before jury selection, a prospective juror, A.G., submitted a written answer to a juror questionnaire in which he stated that he would have bias or prejudice for or against Thomas, who is African American, because of

Thomas's race. During voir dire, Thomas's trial counsel examined A.G., in part, as follows:

> MR. GAVIN: I read through your questionnaire and you responded yes to this following question. The defendant Milton Thomas is African American. Would you have any bias or prejudice either for or against him because of his race. Do you recall answering yes to that question?
>
> [A.G.]: Yeah, I did.
>
> MR. GAVIN: Why did you answer yes to that question?
>
> [A.G.]: It was my way of trying to get out of the jury duty I guess. I didn't know if I could want to be responsible for making judgment on a person with this serious of a case.
>
> MR. GAVIN: Okay. You're going to have to help me out.
>
> [A.G.]: I put that down purposely I guess to try to get out of being on jury duty and I would have trouble, yes.
>
> MR. GAVIN: Did you just simply want to get out of jury duty or is it true you harbor some kind of prejudice against African Americans?
>
> [A.G.]: I suppose a little of both.
>
> MR. GAVIN: Okay. Is there something specific that leads you to have a prejudice against African Americans, something specific that's happened to you or your family?
>
> [A.G.]: No, no.
>
> MR. GAVIN: What do you -- what do you feel about African Americans that cause you to say that you have a potential bias or prejudice against them?
>
> [A.G.]: I guess I drive through Red Wing, I just see so many of them, there're just walking on the streets. That's

why. Middle of the day, any time of day. Kids. Old ones. They're not working or they're not in school. It seems like they have -- we're not used to seeing them and now all of a sudden you got them.

MR. GAVIN: I don't understand what's different. What's different between white people walking on the street in Red Wing and black people walking on the street in Red Wing?

[A.G.]: Usually you don't see kids when they're supposed to be in school, or adults. Usually they're at working or they're not walking around in bunches in town.

MR. GAVIN: Okay. Do you feel that African Americans have a greater propensity to commit criminal acts?

[A.G.]: Yeah. I think I do right now, yeah.

MR. GAVIN: Okay. Do you view my client as being guilty?

[A.G.]: No, I don't.

MR. GAVIN: No. Obviously he's an African American.

[A.G.]: True.

MR. GAVIN: And you've just described this prejudice or this bias feeling you have against African Americans.

[A.G.]: I voted for one for president.

. . . .

MR. GAVIN: And obviously you've articulated some pretty negative views of African Americans here. Now you're saying that you can view him as being innocent. Is that what you're saying?

[A.G.]: Yeah, I think I could.

When he was asked again why he indicated a racial bias in his answers to the juror questionnaire, A.G. stated, "I think I have a little prejudice in me, and I did want to get out of jury duty. It just -- just seemed like an overwhelming responsibility to me to try to judge someone in a case like this. I didn't know if I wanted that responsibility." In response to additional questions, he stated, "I think I can judge someone whether I don't like them, or I think I can be honest and set that aside. I think you do that every day, don't you? . . . . Dealing with people, you may not like them, but do you judge people or you do things that way."

Thomas's trial counsel continued his examination:

> MR. GAVIN: [T]he fact that my client's black is not a concern for you[?]
>
> [A.G.]: Well, I don't -- I don't know. I just -- I don't think so.
>
> MR. GAVIN: Do you subscribe to the belief that the races shouldn't mix?
>
> [A.G.]: No, I don't.
>
> MR. GAVIN: Okay. You know there's the time in this country where a black man simply looking at white women would result in him being strung up in a tree. You're aware of that history in this country?
>
> [A.G.]: Yes, I am.
>
> MR. GAVIN: And you don't have any feelings in that regard?

[A.G.]: Doesn't bother me in the least.[1]

The prosecutor then examined A.G., in part, as follows:

> MS. KUESTER: . . . . I guess I'm just curious, going back to the questionnaire. Did someone tell you or did you hear that if you marked something on the questionnaire, that would get you off jury duty?
>
> [A.G.]: No, no. I just seen that, and I just -- I don't know. I did it. I did it I guess.
>
> MS. KUESTER: Okay. So I guess nobody's trying to pry or make you uncomfortable, we're just trying to figure out do you think that the race of the defendant is going to have -- going to be a problem for you?
>
> [A.G.]: Not really I guess. I don't -- no.
>
> MS. KUESTER: Not really?
>
> [A.G.]: No.
>
> MS. KUESTER: Is it -- your answer, you said there's two parts to your answer. One was the fact that he's black and the second was the fact that you heard the charges.
>
> [A.G.]: Correct.

[1]In his brief, Thomas argues that, in this statement, A.G. "admitted that he is not 'bother[ed] [] in the least' by our country's history of lynching black men for simply looking at white women." (Alterations in the original.) Thomas has not accurately characterized A.G.'s statement. The most natural interpretation of this part of the transcript is that A.G. is not offended when black men and white women interact or associate with each other, which is the essence of the specific question to which his answer relates. Thomas's interpretation is inconsistent with the answer A.G. gave only two questions earlier, when he said that he does *not* "subscribe to the belief that the races shouldn't mix." In addition, A.G. later stated that he is not opposed to interracial dating. If A.G. had intended to communicate that he is not bothered by a lynching, Thomas's trial counsel surely would have examined A.G. further on that point. As it happened, Thomas's trial counsel did not refer to this passage when making argument to the district court judge in support of his request to remove A.G. from the venire panel for cause.

MS. KUESTER: Did one of those have --

[A.G.]: The charges were probably a bigger influence on my answer than the first, than his color.

MS. KUESTER: So can you tell me a little bit more about that?

[A.G.]: I just -- I -- I just had it through my head that I didn't know if I wanted the responsibility of sending somebody to prison for ten years or whatever it is. I don't know how serious it is. I'm assuming we're talking rape, some type of rape, and that's serious, and I just didn't know that if I could handle that I guess.

. . . .

MS. KUESTER: Do you think that you could follow the instructions by the Judge?

[A.G.]: Yes.

MS. KUESTER: Do you think you'd be comfortable talking about -- with eleven other people about what you heard and saw?

[A.G.]: Yes. It wouldn't bother me.

MS. KUESTER: And after you had an opportunity to talk it through and look over everything, that's when you'd make a decision. Do you think you could make a decision after you had some time to talk it through and look over the evidence?

[A.G.]: Yeah, I think I could put it that way.

The district court conducted its own examination of A.G.:

THE COURT: Let me cut it apart here, one part of it being the race issue. That's the part you answered affirmatively in the questionnaire. And I've listened to your answers now for twenty, twenty five minutes. On one hand you seem to have in your own mind some question about your

> ability to be fair to someone who is of a different race, a minority, but then at the same time I'm hearing you say when it comes down to analyzing a set of facts or circumstances, race isn't an issue for me. Can you help me out there, which way you're thinking in that regard?
>
> [A.G.]: Well, I think I, if it came down to just analyzing the facts, that I could be fair.
>
> THE COURT: I think it was asked by a lot of people today, a lot of questions on the issue of interracial dating, marriages. Do you have any problem with that?
>
> [A.G.]: No, I have none.
>
> THE COURT: I think you were already asked that and you stated that. So the fact here that the alleged victim is going to be, you'll hear if you hear this case, Caucasian, the alleged perpetrator is black, does that cause you any concern?
>
> [A.G.]: No.
>
> . . . .
>
> THE COURT: That all being said, do you think in this case, with what you know about it, you can be fair and impartial to both sides filling that role as a juror?
>
> [A.G.]: Yeah.
>
> THE COURT: Like it or not, but could you do that?
>
> [A.G.]: Yes, I could.

Thomas challenged the prospective juror for cause. The district court denied the challenge. Thomas exercised each of the five peremptory challenges he was allotted, but he did not use a peremptory challenge to strike A.G.

At trial, the state presented the testimony of seven witnesses, including G.M.M., the doctor and nurse who examined G.M.M. at the hospital, two investigating officers,

and a friend of G.M.M. to whom she initially reported the assault. In addition, the state introduced evidence that a DNA sample found on G.M.M.'s person matched Thomas's DNA profile. The jury found Thomas guilty. The district court sentenced him to 108 months of imprisonment. Thomas appeals.

D E C I S I O N

Thomas argues that the district court erred by denying his challenge to A.G. for cause in violation of his right to an impartial jury.

A defendant in a criminal case has a constitutional right to an impartial jury. U.S. Const. amend. VI, XIV; *Ross v. Oklahoma*, 487 U.S. 81, 85, 108 S. Ct. 2273, 2277 (1988); *United States v. Wood*, 299 U.S. 123, 142-43, 57 S. Ct. 177, 184 (1936); *see also* Minn. Const. art. I, §§ 6, 7. "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) (quotation omitted). Furthermore, "the presence of a biased fact finder constitutes structural error, which requires automatic reversal." *Id.*; *see also State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007) ("[s]tructural errors always invalidate a conviction").[2]

[2]The state argues that, to obtain reversal of his conviction and a new trial, Thomas must demonstrate that the district court's failure to dismiss the biased juror resulted in actual prejudice. The state's argument finds some support in cases such as *State v. Stufflebean*, 329 N.W.2d 314, 317-18 (Minn. 1983). More recent caselaw, however, clearly states that the presence of a biased juror constitutes structural error, which does not require a showing of prejudice. *See Evans*, 756 N.W.2d at 863; *Brown*, 732 N.W.2d at 630; *State v. Logan*, 535 N.W.2d 320, 324 (Minn. 1995).

"The bias of a prospective juror may be actual or implied; that is, it may be bias in fact or bias conclusively presumed as matter of law." *Wood*, 299 U.S. at 133, 57 S. Ct. at 179. In this context, the term "actual bias" refers to "a state of mind on the part of the juror, in reference to the case or to either party, which would prevent the juror from trying the issue impartially and without prejudice to the substantial rights of either party." *Brown*, 732 N.W.2d at 629 n.2. A juror with an actual bias must be excused from jury service unless the juror is "rehabilitated." *Logan*, 535 N.W.2d at 323. A biased juror is rehabilitated "if he or she agrees to set aside any preconceived notions and make a decision based on the evidence and the court's instructions." *Brown*, 732 N.W.2d at 629 n.2. In contrast, "implied bias" refers to "a bias that is conclusively presumed as a matter of law," which means that a juror to whom bias is implied "is not susceptible to rehabilitation through further questioning." *Id.*

Thomas argues that A.G. should have been removed from the venire panel on the basis of both actual bias and implied bias. We first analyze his argument of actual bias. Before doing so, however, we consider the state's counterargument that Thomas has not properly preserved his Sixth Amendment argument.

A. Preservation

The state argues that Thomas cannot pursue his bias argument on appeal because he could have used, but did not use, a peremptory challenge to remove A.G. from the venire panel. We construe the state's argument to raise the question whether Thomas has preserved his argument by not taking the opportunity to cure the alleged error with a peremptory challenge.

The state does not cite any caselaw providing direct support for its argument. The state contends merely that the present situation is different from that of *Logan*, in which the appellant used all his peremptory challenges before conducting voir dire of the allegedly biased juror. *See* 535 N.W.2d at 323. The defendant in *Logan* was charged with first-degree murder, which meant that he was allotted 15 peremptory challenges, *see* Minn. R. Crim. P. 26.02, subd. 6, and was required to decide whether to exercise a peremptory challenge with respect to each prospective juror immediately "[u]pon completion of defendant's examination" of the prospective juror, *see* Minn. R. Crim. P. 26.02, subd. 4(3)(c)(4) (2008). In this case, in contrast, Thomas was allotted five peremptory challenges, *see* Minn. R. Crim. P. 26.02, subd. 6, and was permitted to exercise all of them after the examination of all prospective jurors, *see* Minn. R. Crim. P. 26.02, subd. 4(3)(b)(6) (2008).

Two opinions of the United States Supreme Court bear on the state's argument. In *Ross*, the defendant argued -- as Thomas now argues -- that the trial court denied his Sixth Amendment right to an impartial jury by refusing to strike a prospective juror, Huling, for cause. 487 U.S. at 83, 108 S. Ct. at 2275. At trial, however, Ross had removed Huling from the venire panel by using a peremptory challenge. *Id.* at 85-86, 108 S. Ct. at 2277. The Court stated, "Any claim that the jury was not impartial, therefore, must focus not on Huling, but on the jurors who ultimately sat." *Id.* at 86, 108 S. Ct. at 2277. None of the jurors who returned the verdict was alleged to be biased. *Id.* Thus, the Court disposed of Ross's argument by stating, "So long as the jury that sits is impartial, the fact that the defendant had to use a peremptory challenge to achieve that

result does not mean the Sixth Amendment was violated." *Id.* at 88, 108 S. Ct. at 2278. The Court also rejected Ross's alternative argument that he was denied his right to due process because the trial court deprived him of "the full complement of nine peremptory challenges allowed by Oklahoma law." *Id.* at 89-91, 108 S. Ct. at 2278-80.

More recently, in *United States v. Martinez-Salazar*, 528 U.S. 304, 120 S. Ct. 774 (2000), the basic fact pattern of *Ross* repeated itself in a federal prosecution. *Id.* at 308-09, 120 S. Ct. at 777-78. The Sixth Amendment right to an impartial jury was not at issue, having been foreclosed by *Ross*. *Id.* at 313-14, 120 S. Ct. at 780. Instead, the Supreme Court considered whether the defendant was deprived of any rights protected by Fed. R. Crim. P. 24 and, if not, whether his right to due process was violated. *Id.* at 317, 120 S. Ct. at 782. In analyzing those issues, the Court stated that, after the trial court denied the for-cause challenge, "Martinez-Salazar had the option of letting [the allegedly biased juror] sit on the petit jury and, upon conviction, pursuing a Sixth Amendment challenge on appeal." *Id.* at 315, 120 S. Ct. at 781.

Read together, *Ross* and *Martinez-Salazar* refute the state's argument that Thomas did not properly preserve his Sixth Amendment argument. If Thomas had done what the state contends is required -- remove A.G. with a peremptory challenge -- he would have given up his challenge to the impartiality of the jury on Sixth Amendment grounds. *Ross*, 487 U.S. at 88, 108 S. Ct. at 2278. Instead, Thomas chose "the option of letting [A.G.] sit on the petit jury and, upon conviction, pursuing a Sixth Amendment challenge on appeal." *Martinez-Salazar*, 528 U.S. at 315, 120 S. Ct. at 781. We interpret the Supreme Court's caselaw to provide that, when a defendant is faced with an allegedly biased juror

and a denial of a motion to remove that juror for cause, he or she may *either* exercise a peremptory challenge to remedy the bias *or* proceed to trial and later pursue a Sixth Amendment argument on appeal. *Id.* at 315-16, 120 S. Ct. at 781-82. Thus, we conclude that Thomas has preserved his argument that the district court deprived him of his Sixth Amendment right to an impartial jury.

B. Actual Bias

As stated above, Thomas argues that A.G. should have been dismissed for cause on the basis of actual bias. The state concedes that A.G. expressed a racial bias in his answers to some of the questions posed to him during voir dire. Consequently, the inquiry turns to the question whether A.G. was rehabilitated. *See Brown*, 732 N.W.2d at 629 n.2.

Whether a biased juror was rehabilitated is a two-part inquiry. The first question is whether the juror swore "'that he could set aside any opinion he might hold and decide the case on the evidence.'" *Logan*, 535 N.W.2d at 323 (quoting *Patton v. Yount*, 467 U.S. 1025, 1036, 104 S. Ct. 2885, 2891 (1984)). The second question is whether "the juror's protestation of impartiality [should] have been believed." *Id.* (quotation omitted). A district court's answer to the second question "is entitled to 'special deference' because the determination is essentially one of credibility, and therefore largely one of demeanor." *Id.* (quotation omitted).

The parties' arguments focus on the first part of the two-part test. Although A.G. initially made statements indicating a racial bias, he later indicated that he could set aside his personal views and decide the case based on the evidence and the law. A.G. said, "I

think I can judge someone whether I don't like them, or I think I can be honest and set that aside." He stated that he could listen to the evidence and follow the district court's jury instructions. He said, "Well, I think I, if it came down to just analyzing the facts, that I could be fair." When the district court asked whether "he could be fair and impartial to both sides," A.G. responded in the affirmative.

A.G.'s rehabilitative statements are similar to those in other cases where a biased juror was deemed either not biased or rehabilitated. In *State v. Williams*, 593 N.W.2d 227 (Minn. 1999), the supreme court concluded that a juror was not biased despite the juror's indication on his juror questionnaire that he "would tend to believe police officers more than other witnesses." *Id.* at 238. The supreme court noted that the prospective juror "stated under oath that he could listen to the evidence presented at trial, could keep an open mind, and, if the evidence did not prove the state's case, could return a verdict of not guilty." *Id*. Similarly, in *State v. Holt*, 772 N.W.2d 470 (Minn. 2009) *cert. denied*, 130 S. Ct. 2073 (2010), the supreme court held that the district court did not err by failing to strike a juror who was the victim of an attempted burglary during the trial. *Id*. at 476-78. When questioned about his impartiality after the attempted burglary, the juror testified that he "believed he could remain fair and impartial and objective and understood that his experience was not evidence in the case." *Id*. at 477 (quotation marks omitted).

In contrast, A.G.'s statements are not similar to those in other cases in which the supreme court reversed and remanded for a new trial because a biased juror was not rehabilitated. In *Logan*, the supreme court held that the district court erroneously denied

Logan's for-cause challenge to a prospective juror because the juror "candidly admitted he likely would give greater credence to the testimony of police officers than to the testimony of other witnesses." 535 N.W.2d at 324. The supreme court concluded that the juror was not rehabilitated because he "did not 'swear that he *could* set aside any opinion he might hold and decide the case on the evidence.'" *Id*. (quoting *Patton*, 467 U.S. at 1036, 104 S. Ct. at 2891). Similarly, in *State v. Prtine*, 784 N.W.2d 303 (Minn. 2010), the supreme court again examined whether a district court erred by not striking a juror for cause after the juror "indicated that she would be more inclined to believe a police officer's testimony over that of other witnesses." *Id*. at 309. Although the district court "was able to get [the juror] to agree that police officers are fallible, [the juror] never swore that she 'could set aside any opinion [she] might hold and decide the case on the evidence.'" *Id*. at 311 (third alteration in original) (citing *Logan*, 535 N.W.2d at 324). Rather, the juror consistently stated that "she would be more inclined to believe a police officer's testimony." *Id.* Accordingly, the supreme court concluded that the district court erred by failing to strike the juror for cause. *Id*. In short, this case is like *Williams* and *Holt* and unlike *Logan* and *Prtine*.

Thomas contends that A.G. was not rehabilitated because he did not state "*unequivocally* that he will follow the trial court's instructions and fairly evaluate the evidence." Thomas further contends that A.G.'s rehabilitating statements were not unequivocal because he qualified them by saying, for example, "[p]robably not," and "I don't think so." Thomas's argument is based on *Logan*, in which the supreme court stated, "*Typically* rehabilitation takes the form of the prospective juror stating

unequivocally that he/she will follow the [district] court's instructions and will fairly evaluate the evidence." 535 N.W.2d at 323 (emphasis added). One week after oral argument in this case, the Minnesota Supreme Court reformulated that statement slightly by removing the word "typically." In *Prtine*, the supreme court stated, "A prospective juror may be rehabilitated if the juror 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." 784 N.W.2d at 310 (citing *Logan*, 535 N.W.2d at 323).

To interpret *Prtine*, which applied the Sixth Amendment to the United States Constitution, it is useful to refer to guidance provided by the United States Supreme Court concerning statements by prospective jurors that are "ambiguous" or "contradictory":

> This is not unusual on *voir dire* examination . . . . It is well to remember that the lay persons on the panel may never have been subjected to the type of leading questions and cross-examination tactics that frequently are employed, and that were evident in this case. Prospective jurors represent a cross section of the community, and their education and experience vary widely. Also, unlike witnesses, prospective jurors have had no briefing by lawyers prior to taking the stand. Jurors thus cannot be expected invariably to express themselves carefully or even consistently. Every trial judge understands this, and under our system it is that judge who is best situated to determine competency to serve impartially. The trial judge properly may choose to believe those statements that were the most fully articulated or that appeared to have been least influenced by leading.

Patton, 467 U.S. at 1038-39, 104 S. Ct. at 2893.

The *Patton* Court provided this explanation when considering the statements of three jurors. The first juror stated, "*I think* I could enter [the jury box] with a very open

mind," and the Court deemed that statement to be "categorical." *Id.* at 1039, 104 S. Ct. at 2893 (emphasis added). The second juror said "she could put her [biased] opinion aside 'if she had to,'" and the Court found no error in the trial court's acceptance of that statement. *Id.* at 1039-40, 104 S. Ct. at 2893 (alteration omitted). The third juror "appear[ed] simply to have answered 'yes' to almost any question put to him." *Id.* at 1040, 104 S. Ct. at 2893. The Court described his statements as "the most ambiguous" but resolved the issue by stating, "It is here that the federal court's deference must operate, for while the cold record arouses some concern, only the trial judge could tell which of these answers was said with the greatest comprehension and certainty." *Id.* The Supreme Court's discussion of rehabilitation generally and of the three jurors' statements specifically indicates that the Sixth Amendment does not, as Thomas argues, require a prospective juror to consistently make completely unambiguous statements that he or she can "set aside any opinion he might hold and decide the case on the evidence." *Patton*, 467 U.S. at 1036, 104 S. Ct. at 2891. It is significant that *Logan* is the basis of *Prtine*'s reference to "unequivocal" statements, *see* 784 N.W.2d at 310, and that *Patton* is the basis of *Logan*, *see* 535 N.W.2d at 323.

Thus, A.G. was rehabilitated because he sufficiently stated "'that he could set aside any opinion he might hold and decide the case on the evidence.'" *Logan*, 535 N.W.2d at 323 (quoting *Patton*, 467 U.S. at 1036, 104 S. Ct. at 2891). The district court believed A.G.'s professed impartiality, and the district court's decision to credit A.G.'s statements of impartiality is entitled to deference. *See id.* In essence, the caselaw does not require that jurors be perfect or pure; rather, the caselaw requires only that jurors --

despite their imperfections and impurities -- be willing and able to decide a case fairly by basing their verdict on the evidence and the court's instructions. Therefore, we conclude that the district court did not err by denying Thomas's for-cause challenge to A.G. on the basis of actual bias.

C. Implied Bias

Thomas also argues that A.G. should have been dismissed for cause on the basis of implied bias. Thomas essentially contends that A.G.'s racial animus was so strong that bias should be conclusively presumed as a matter of law, without any inquiry into whether he was rehabilitated. In response, the state argues that Minnesota caselaw does not permit a finding of implied bias due to racial attitudes.

The term "implied bias" refers to the situation in which a "prospective juror is connected to the litigation at issue in such a way that [it] is highly unlikely that he or she could act impartially during deliberations." *Holt*, 772 N.W.2d at 477 (quotations omitted). The term generally refers not to the state of mind of a prospective juror but, rather, to his or her relationship to the parties to the case or to the case itself. *See, e.g.*, *United States v. Tucker*, 243 F.3d 499, 509 (8th Cir. 2001) (noting that implied bias may exist "without regard to subjective state of mind or 'actual bias'"). Accordingly, "[a] juror with implied bias cannot be rehabilitated through further questioning" and "must be excused notwithstanding their claim of impartiality." *Brown*, 732 N.W.2d at 629 n.2.

The Minnesota Supreme Court never has applied the implied-bias doctrine. *Holt*, 772 N.W.2d at 477; *see also Williams v. State*, 764 N.W.2d 21, 28 (Minn. 2009) ("Minnesota has not adopted the theory of implied bias and we see no reason to do so

here."); *cf. Wood*, 299 U.S. at 133, 57 S. Ct. at 179 ("The bias of a prospective juror may be actual or implied . . . ."). Nonetheless, Thomas urges this court to hold that racial bias may be the basis of a finding of implied bias. The supreme court, however, has indicated that racial bias should be analyzed solely in terms of actual bias: "there may be cases in which a juror's admitted racial bias is so strong that, *like implied bias*, it is not subject to rehabilitation." *Brown*, 732 N.W.2d at 629-30 n.2 (emphasis added). This statement recognizes that a prospective juror with an extreme racial bias would be foreclosed from jury service by the existing framework for analyzing actual bias, which asks, in part, whether "the juror's protestation of impartiality [should] have been believed." *See Logan*, 535 N.W.2d at 323 (quoting *Patton*, 467 U.S. at 1036, 104 S. Ct. at 2891). The existing caselaw simply does not support Thomas's argument that A.G.'s racial bias may give rise to a finding of implied bias.

In sum, the district court did not err by denying Thomas's request to dismiss A.G. from the venire panel for cause because A.G. stated that he could set aside his views and decide the case based on the evidence and the law.

Affirmed.