STATE OF MINNESOTA
IN COURT OF APPEALS
A10-375

State of Minnesota,
Respondent,

vs.

Debra Ann Nimeth Biendara,
Appellant.

Filed December 14, 2010
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-CR-09-9774

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

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Toussaint, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges her conviction of offering a forged check, arguing that she is entitled to a new trial because the district court denied her challenge for cause based on

the implied bias of one of the prospective jurors. Because Minnesota has not adopted the implied-bias doctrine, we affirm.

FACTS

Appellant Debra Ann Nimeth Biendara was charged with offering a forged check in an attempt to obtain more than $250 in violation of Minn. Stat. § 609.631, subds. 3, 4(3)(a) (2008). During jury selection, Biendara sought to remove one of the prospective jurors, a commander in the St. Paul Police Department, for cause. The St. Paul Police Department investigated the incident and forwarded the case to the prosecutor for charging. The prospective juror (juror) knew two of the prosecution's potential witnesses through his work with the department.

Biendara challenged the juror for cause, arguing that bias should be presumed because of the juror's occupation, affiliation with the investigating police department, and his acquaintance with the potential officer witnesses. The district court denied Biendara's challenge, noting that the juror indicated he could be fair and that his employment as a police officer was not a ground for disqualification under the Minnesota Rules of Criminal Procedure. Biendara exercised a peremptory challenge to dismiss the juror from the panel. The jury found Biendara guilty of the charged offense. Following sentencing, Biendara commenced this appeal.

D E C I S I O N

Minn. R. Crim. P. 26.02, subd. 5, "provides the exclusive grounds upon which jurors may be challenged for cause." *State v. Roan*, 532 N.W.2d 563, 568 (Minn. 1995). A reviewing court should give deference to the district court's ruling on challenges for

cause, because the district court is in the best position to observe and judge the demeanor of a prospective juror. *State v. Prtine*, 784 N.W.2d 303, 310 (Minn. 2010); *see also State v. Logan*, 535 N.W.2d 320, 323 (Minn. 1995) (holding that the question of whether a juror is impartial is a credibility determination and that appellate courts defer to a district court's finding of impartiality).

Biendara does not argue that the juror was actually biased. Rather, she asserts that the district court erred by denying her challenge for cause based on implied bias. We disagree. Courts in other jurisdictions permit such challenges for cause in extreme circumstances when a prospective juror has such a connection with the case that it is highly unlikely that the juror could be fair and impartial. *State v. Brown*, 732 N.W.2d 625, 629 n.2 (Minn. 2007). But our supreme court has declined several opportunities to adopt the implied-bias doctrine. *See Holt v. State*, 772 N.W.2d 470, 477-78 (Minn. 2009) (holding that it was proper for a juror to continue his service where no actual bias was established and that the facts of the case did not present an "extreme" situation to appropriately apply the doctrine); *Williams v. State*, 764 N.W.2d 21, 28 (Minn. 2009) (finding no reason to adopt the doctrine where the claim of bias was not supported by any evidence); *Brown*, 732 N.W.2d at 629 n.2 (discussing the doctrine without expressly rejecting or adopting it).

Biendara argues that the facts of this case present an "extreme" case warranting adoption of the doctrine because of (1) the relationship between the juror and the prosecution; (2) the effect of a law enforcement officer sitting as a juror in a criminal case on public confidence in the judicial system; (3) a significant appearance of impropriety;

and (4) the effect an officer-juror would have on other members of the jury. We disagree. "[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). And as we noted in rejecting the implied-bias doctrine in *State v. Anderson*, "without a clear indication from the Minnesota Supreme Court, this court is reluctant to adopt into its established jurisprudence a new doctrine that would have such a profound effect on current practice." 603 N.W.2d 354, 357 (Minn. App. 1999), *review denied* (Minn. Mar. 14, 2000). Accordingly, we decline Biendara's invitation to adopt the doctrine of implied bias in this case.

Affirmed.