STATE OF MINNESOTA

IN SUPREME COURT

A17-0390

Ramsey County — Lillehaug, J.

State of Minnesota,

Respondent,

vs.

Filed: January 10, 2018
Office of Appellate Courts

Daryl Negel Curtis,

Appellant.

Lori Swanson, Minnesota Attorney General, Saint Paul, Minnesota, and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant Ramsey County Attorney, Saint Paul, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. The district court did not abuse its discretion in declining to excuse a juror who was not actually biased.

2. The district court did not abuse its discretion in excluding reverse-*Spreigl* evidence on the ground that the defendant did not show by clear and convincing evidence that a third party was involved in a previous shooting.

Affirmed.

O P I N I O N

LILLEHAUG, Justice.

Appellant Daryl Negel Curtis was convicted in Ramsey County District Court of first-degree premeditated murder for the shooting death of Renaldo McDaniel. On direct appeal, Curtis argues that the district court abused its discretion when it declined to excuse a juror who, after the trial began, realized that she knew a witness and had been exposed to news coverage of the shooting. Curtis also argues that the district court abused its discretion by excluding reverse-*Spreigl* alternative-perpetrator evidence. Because we conclude that the district court did not abuse its discretion in either respect, we affirm Curtis's conviction.

FACTS

At around 8 p.m. on June 12, 2016, McDaniel was shot and killed in the parking lot of an auto parts store in Saint Paul. Immediately before McDaniel was shot, he was standing next to his cousin, Z.M., and looking under the hood of a car. At trial, Z.M. testified that she did not see the shooter's face, but did see a light-skinned black man wearing a red shirt running away from the scene. Two store employees also saw a light-skinned black man in a red shirt at, and running away from, the scene. When shown a photograph of Curtis, one of the clerks identified him as the shooter.

T.S., Curtis's girlfriend, testified that she, Curtis, and an acquaintance, A.J.,[1] had been driving around Saint Paul on the night of McDaniel's death. T.S. testified that they drove to the auto parts store with the intent of getting a part for Curtis's car. They spotted McDaniel looking under the hood of a car in the parking lot, and Curtis told A.J. to keep driving. Curtis texted the license plate number of the car to T.S. at 7:53 p.m. A.J. drove around the block. Curtis got out of the car, taking with him a gun from A.J.'s purse. Curtis called A.J. moments later, asking to be picked up. When he entered the car, Curtis told A.J. that he "shot the guy." As confirmed by surveillance video from a nearby store, Curtis was wearing a red shirt.

The jury returned verdicts of guilty against Curtis on one count of first-degree premeditated murder and one count of second-degree murder. The district court convicted Curtis of first-degree murder.

We turn now to the facts underlying Curtis's two primary arguments, concerning a juror and reverse-*Spreigl* evidence. Prior to the trial, each prospective juror completed a juror questionnaire that included a list of 48 trial witnesses and inquired about media exposure related to the case. One member of the jury panel, Juror 1, responded that she was not acquainted with any of the witnesses and had never heard of the case or seen any media coverage of it. Upon hearing opening statements, Juror 1 realized that she knew

[1] A.J. was the girlfriend of Curtis's cousin, J.C., who had feuded with McDaniel in the past.

witness Z.M. and had heard about the shooting on the news. Juror 1 immediately brought her realization to the court's attention.

The court questioned Juror 1 about the extent of her acquaintance with Z.M. Juror 1 said that she believed that she had attended high school with Z.M., but that they were not friends, did not take classes together, did not spend time together outside of school, and did not have any common dating history or any history of confrontation.

When asked about media exposure related to the case, Juror 1 stated that she had not specifically followed the case, but thought that she might have seen more than one report. The court did not ask Juror 1 about whether she had formed any impressions as a result of the reports. Nor did the court make any specific findings about whether Juror 1's exposure to news reports affected her ability to be impartial.

The defense asked that Juror 1 be removed. Defense counsel stated that, had the defense been aware during jury selection of Juror 1's connection with Z.M. and her exposure to media reports related to the case, Curtis "would have exercised a peremptory strike or maybe attempted [to strike her] for cause."

The court declined to remove Juror 1, based on Juror 1's affirmation "that she would treat [Z.M.] the same as other witnesses that would come before the court in this trial." In its ruling, the court did not discuss Juror 1's media exposure.

Regarding the reverse-*Spreigl* issue, the defense filed a pretrial notice of intent to present an alternative-perpetrator defense. The defense alleged that a third party—D.D., a person who had feuded with McDaniel in the past—had been seen near the auto parts store around the time of McDaniel's shooting. In a pretrial order, the district court determined

that the defense had "identified the [alternative perpetrator] and placed him near the scene at the approximate time of the shooting," and had "complied with the first step of case law that allows the alternative perpetrator argument to proceed." The court advised that, "[p]rior bad acts of the alternate perpetrator, as Reverse-Spreigl, can be admissible but the evidence must be clear and convincing."

During the State's case-in-chief, the defense elicited testimony from Sergeant Shawn Shanley, the lead investigator, that an anonymous tipster had seen D.D., the alleged alternative perpetrator, near the scene of McDaniel's murder. Sergeant Shanley also testified that an analysis of the spent cartridge casings from the murder scene returned "hits" in the National Integrated Ballistics Information Network system. These hits showed that the casings recovered from the McDaniel murder scene came from the same gun as casings found at an unsolved shooting that took place in Saint Paul on May 14, about a month before the McDaniel shooting.

The defense attempted to introduce evidence that D.D. was the perpetrator of the May 14 shooting. The court held an evidentiary hearing outside the presence of the jury. The court identified the May 14 shooting as a reverse-*Spreigl* incident—a prior bad act—that the defense alleged a third party (D.D.) had committed. Accordingly, the court ruled that the defense needed to show by clear and convincing evidence that D.D. was involved in the May 14 shooting.[2]

[2] The defense argued that the evidence was not reverse-*Spreigl*, and therefore was not subject to the higher evidentiary standard. That argument has not been renewed on appeal.

At the evidentiary hearing, the defense presented evidence that the May 14 shooter was approximately 6 feet tall and weighed about 185 pounds. There was also evidence that the suspected shooter was driving a "2006-ish" silver Pontiac G6 four-door car, with an African-American male sitting in the passenger seat of the car and a third unidentified person located in the back seat. An investigator for the defense testified that a 2004 gray, four-door Pontiac Grand Prix was registered to D.D. The investigator further testified that D.D. had not been in custody on June 12 (the day McDaniel was shot) and that D.D.'s height and weight were 5 feet, 8 inches and 190 pounds, respectively.

The district court did not admit the evidence offered to link D.D. to the May 14 shooting. The court concluded that, although the vehicles were similar, it would be difficult to mistake someone like D.D., who is 5 feet 8 inches tall, for someone who is 6 feet tall. Accordingly, the court determined that the defense did not show by clear and convincing evidence that D.D. was the perpetrator of the May 14 shooting. In fact, the district court said, "I wouldn't even say . . . a preponderance [of the evidence,] if that was the standard, has been met."

ANALYSIS

Curtis's brief by counsel raises two issues on direct review.[3] First, Curtis challenges the district court's decision not to remove a juror who realized after opening statements

[3] Curtis submitted a supplemental pro se brief that raised two other issues. Neither has merit. First, Curtis argues that the district court erred in allowing T.S. to testify. Among other things, Curtis argues that T.S.'s testimony about the gun was false, that police used illegal interrogation tactics on her, and that she was mentally and emotionally dysfunctional. The defense did not raise any such objections before, at, or

that she knew a witness and had seen news coverage of the shooting. Second, Curtis argues that the district court abused its discretion by excluding "reverse-*Spreigl*" alternative-perpetrator evidence. We address each issue in turn.

I.

Criminal defendants have a constitutional right to an impartial jury. *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015). Accordingly, a district court commits structural error when it allows actually biased jurors to sit. *Id.* A juror is actually biased if the court is satisfied "that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party." *Id.* (quoting Minn. R. Crim. P. 26.02, subd. 5(1)). To prove actual bias, the challenging party must show that the juror had " 'strong and deep impressions' " that she could not set aside, thus preventing her from rendering a verdict based on the evidence presented in court. *Fraga*, 864 N.W.2d at 623 (quoting *State v. Munt*, 831 N.W.2d 569, 577 (Minn. 2013)).

When a defendant alleges that a potential juror has been biased by media exposure, the defendant must show actual prejudice: that the publicity influenced a specific juror.

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after the trial, and the district court's decision to allow an eyewitness to testify was not plain error.

Second, Curtis argues that the district court lacked personal jurisdiction over him. This argument, on its face, has no merit—the crime was committed in Minnesota, Curtis was a Minnesota resident, and he was arrested and charged in Minnesota. The court had personal jurisdiction over him. Rather, Curtis seems to argue that there was insufficient probable cause to charge him with this crime. This argument is also unavailing. A defendant bears a heavy burden in attacking a probable cause determination, especially after being found guilty at trial. *See State v. Smith*, 876 N.W.2d 310, 322 (Minn. 2016). Curtis has not met his burden.

State v. Drieman, 457 N.W.2d 703, 708 (Minn. 1990). Mere exposure is not sufficient. *Id.* The issue is whether a juror can set aside an impression or opinion and render an impartial verdict. *Id.*; *see also State v. Fairbanks*, 842 N.W.2d 297, 302 (Minn. 2014).

We review a district court's decision to seat a juror for an abuse of discretion. *Fraga*, 864 N.W.2d at 623. Whether a juror is actually biased is a question of fact that is properly decided by the district court, and its findings regarding actual bias are entitled to great deference. *Id*. If, after viewing the juror's statements in context, we determine that a juror exhibited actual bias, we then consider whether the juror was properly rehabilitated. *Id.* A juror is properly rehabilitated when she states unequivocally that she will follow the district court's instructions, set aside any preconceived notions, and fairly evaluate the evidence. *Id.*

Curtis argues that the district court abused its discretion by not removing Juror 1 because she was actually biased and was not properly rehabilitated.[4] Curtis asserts that Juror 1 was biased because she gave "untruthful answers" on her juror questionnaire. Curtis urges us to "presume bias" in cases in which a juror is "untruthful" during voir dire or in a juror questionnaire. In support of this proposition, Curtis cites three cases from two courts that have presumed bias when a juror "lie[d] materially and repeatedly" during voir

[4] In the alternative, Curtis argues that the district court abused its discretion because it did not allow the defense to exercise a peremptory challenge on Juror 1, even though the trial had already begun. Curtis cites no authority from any jurisdiction to support this argument, and we reject it. The Minnesota Rules of Criminal Procedure clearly distinguish between jury selection procedures that occur *before* trial, Rule 26.02, and procedures that occur *during* the trial, Rule 26.03. Our rules do not allow a party to strike a juror after the trial starts.

dire because those misrepresentations created "destructive uncertainties" as to the juror's ability to render an impartial verdict. *Green v. White*, 232 F.3d 671 (9th Cir. 2000); *Dyer v. Calderon*, 151 F.3d 970 (9th Cir. 1998); *State v. Harris*, 652 N.W.2d 585 (Neb. 2002).

In *Green*, the Ninth Circuit applied its presumption of bias rule to a juror who "lied twice to get a seat on the jury [and] when asked about these lies [the juror] provided misleading, contradictory, and outright false answers." 232 F.3d at 677. In *Dyer*, the Ninth Circuit held that the "magnitude of the [the juror's] lies and her remarkable display of insouciance . . . add up to that rare case where we must presume juror bias." 151 F.3d at 984. *Harris*, citing *Green* and *Dyer*, held that a juror who "deliberately lied with the motivation of being placed on the jury" should have been removed. 652 N.W.2d at 866. Each of these cases dealt with "more than mere juror dishonesty because of mistake or embarrassment." *Id.*; *see also State v. McKinley*, 891 N.W.2d 64, 69 (Minn. App. 2017) (citing *Dyer*, *Green*, and *Harris*), *rev. denied* (Minn. Apr. 26, 2017).

Even if we were to adopt the reasoning of these cases—a question we need not decide today—it would not apply here. There is no reasonable inference that Juror 1 lied. Viewing her statements in context, it appears that Juror 1 made an innocent mistake and came forward as soon as she realized her error. Although the court's dialogue with Juror 1 is not a model of clarity, and it appears that Juror 1 struggled at times to understand the court's questions, we are satisfied that Juror 1 committed to make a "fair decision" in the case. Certainly, the transcript does not demonstrate Juror 1 had "strong and deep impressions" based on her acquaintance with a witness that would have prevented her from being impartial.

The district court could have engaged Juror 1 in more extensive questioning—and could have made specific findings—regarding her exposure to news reports. But, viewing Juror 1's statements in context, the record does not reflect any actual bias. Therefore, we need not determine whether Juror 1 was properly rehabilitated. The district court did not abuse its discretion in declining to remove her from the jury.

II.

We next address whether the district court improperly excluded "reverse-*Spreigl*" alternative-perpetrator evidence. We review a district court's decision to admit or exclude reverse-*Spreigl* evidence for an abuse of discretion. *State v. Swaney*, 787 N.W.2d 541, 556 (Minn. 2010).[5]

Defendants must be given a meaningful opportunity to present a complete defense through the introduction of evidence. *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). This right may include the introduction of alternative-perpetrator evidence to cast reasonable doubt on the defendant's guilt. *Swaney*, 787 N.W.2d at 557. But the evidence must still be admissible under the ordinary rules of evidence. *State v. Jones*, 678 N.W.2d 1, 16 (Minn. 2004).

Alternative-perpetrator evidence is that which inculpates a third party as the perpetrator of the crime charged. *Swaney*, 787 N.W.2d at 557. To introduce evidence of an alternative perpetrator, defendants must lay a foundation which has "an inherent

[5] The parties no longer dispute that the evidence the defense attempted to introduce at trial was reverse-*Spreigl* evidence, rather than general alternative-perpetrator evidence.

tendency to connect" a third party with the actual commission of the crime. *State v. Vance*, 714 N.W.2d 428, 436 (Minn. 2006).

If defendants wish to introduce evidence of the alternative perpetrator's *other* crimes, wrongs, or bad acts, they must make an additional showing. *Jones*, 678 N.W.2d at 16–17. Under Minnesota Rule of Evidence 404(b), a defendant must show by "clear and convincing evidence" that the alleged alternative perpetrator participated in the "reverse-*Spriegl* incident" (the prior crime, wrong, or bad act), that the incident is relevant and material to the defendant's case, and that the probative value of the evidence outweighs its potential prejudicial effect. *Id.* (citing *Woodruff v. State*, 608 N.W.2d 881, 885 (Minn. 2000)). "Clear and convincing" evidence means that the truth of the facts asserted is "highly probable." *Roby v. State*, 808 N.W.2d 20, 26 (Minn. 2011) (quoting *Gassler v. State*, 787 N.W.2d 575, 583 (Minn. 2010)). "This means that the evidence alleged should be 'unequivocal, intrinsically probable and credible, and free from frailties.' " *Id*. (quoting *Gassler*, 787 N.W.2d at 583).

Here, the district court did not abuse its discretion by excluding the reverse-*Spreigl* evidence linking D.D. to the May 14 shooting because Curtis did not show by clear and convincing evidence that D.D. participated in that shooting. The district court determined that "it's hard to mistake someone who is 6 feet [the reported height of the May 14 shooter] for someone who is 5 [feet] 8 [inches, D.D.'s height]." The court acknowledged that the car registered to D.D. and the one involved in the May 14 shooting were similar in certain respects, but observed that the headlights would have looked "much different." The court expressed uncertainty regarding who was in the car seen at the May 14 shooting. The court

ruled that Curtis had not satisfied "even . . . a preponderance [of the evidence standard] if that was the standard."

Based on the evidence and on the district court's findings, we cannot say it is "highly probable" or even more likely than not that D.D. was involved in the May 14 shooting. Therefore, the district court did not abuse its discretion in excluding the reverse-*Spreigl* evidence.

CONCLUSION

For the foregoing reasons, we affirm the conviction of first-degree murder.

Affirmed.