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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0656**

State of Minnesota,
Respondent,

vs.

Abdirizak Osman Salad,
Appellant.

**Filed March 5, 2018
Affirmed
Kirk, Judge**

Hennepin County District Court
File No. 27-CR-16-16480

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

Michael O. Freeman, Hennepin County Attorney, Sean P. Cahill, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi Lynn Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Cleary, Chief Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant challenges his conviction for aiding and abetting simple robbery, arguing that the district court erred by declining to remove a sworn juror under Minn. R. Crim. P.

26.02, subd. 9. Because we conclude that the district court did not abuse its discretion when it determined that the juror was competent to serve under Minn. R. Crim. P. 26.02, subd. 5(1), we affirm.

FACTS

On June 21, 2016, appellant Abdirizak Osman Salad was charged with one count of simple robbery alleged to have occurred on June 18. At the jury trial, the state proceeded on the amended charge of aiding and abetting simple robbery.

Before appellant's trial began, but after the jury was empaneled, a juror expressed concern that he may recognize a trial witness, or that a witness may recognize him. The juror told the judge's clerk that he wanted to be a juror, but that he wanted to make sure the court and attorneys knew that he spends time in the area where the charged offense occurred. Initially, neither attorney believed that the juror's statements suggested that he could not be impartial, nor wished to strike him from the panel.

The district court then questioned the juror on the record. When he was asked to describe his concerns, the juror explained that he knows the neighborhood well and rides the bus through the area often. The juror was concerned that someone might recognize him, which made him uncomfortable. The juror clarified that he was concerned for his safety, not about his ability to be impartial. The juror reiterated that he could be fair and could give the trial his full attention.

When questioned by defense counsel, the juror clarified that, although he did not know what the verdict would be, he was concerned about retaliation and his safety if someone did not like the outcome. The juror also stated that there have been violent

incidents in the bars and gang-related shootings in the alleys near where the charged offense occurred, but that he has never experienced a violent incident in the area. The state did not question the juror.

After the juror left the courtroom, the defense moved to remove him from the panel noting that appellant was charged with a crime of violence and arguing that the juror had already developed concerns regarding his safety regardless of the verdict. The state objected to the motion, arguing that the juror's concerns were general rather than specific to appellant or to his case and that the juror could be impartial.

After a recess, the district court addressed the defense motion. The court applied the removal-for-cause standards under Minn. R. Crim. P. 26.02, subd. 5(1), and examined whether the juror could be impartial. The court found that the juror's assertions that he would be impartial were credible. The court also found that the juror's credibility was bolstered because he followed the court's instructions to the jury and brought this issue to the court's attention. The court found no evidence of bias and found that the juror was committed to serving. The court denied the defense motion.

Appellant was convicted of aiding and abetting simple robbery and was sentenced on January 31, 2017. This appeal follows.

D E C I S I O N

The U.S. and Minnesota Constitutions guarantee a criminal defendant the right to an impartial jury. U.S. Const. amend. VI; Minn. Const. art. I, § 6. "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." *State v. Fraga*, 864 N.W.2d 615, 623 (Minn.

2015) (quotation omitted). “Permitting a biased juror to serve is structural error requiring automatic reversal.” *Id.* No additional showing of prejudice is necessary. *Id.* at 625-26. We give a district court’s decision regarding whether to remove a sworn juror great deference on appeal. *See State v. Manley*, 664 N.W.2d 275, 283-84 (Minn. 2003) (noting that the deferential standard applied to removal of a prospective juror for cause also applies to removal of a sworn juror); *see also State v. Munt*, 831 N.W.2d 569, 576 (Minn. 2013) (noting that appellate “review of the district court’s determination of juror impartiality is especially deferential”).

“The interpretation of the Minnesota Rules of Criminal Procedure is a question we review de novo.” *Reynolds v. State*, 888 N.W.2d 125, 129 (Minn. 2016). “[T]he criminal procedural rules must be ‘read as a whole and each section . . . interpreted in light of the surrounding sections to avoid conflicting interpretations.’” *State v. Carpenter*, 893 N.W.2d 380, 384 (Minn. App. 2017) (quoting *State v. Dahlin*, 753 N.W.2d 300, 306 (Minn. 2008) (quotation omitted)). Minn. R. Crim. P. 26.02, subd. 5(1), provides that a juror may be challenged for cause on several grounds including if “[t]he juror’s state of mind . . . satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.” *Id.*, subd. 5(1)(1). Under Minn. R. Crim. P. 26.02, subd. 5(2), a challenge for cause “must be made before the juror is sworn to try the case, but the court for good cause may permit it to be made after the juror is sworn but before all the jurors constituting the jury are sworn.” But under Minn. R. Crim. P. 26.02, subd. 9, “[i]f a juror becomes unable to serve, an alternate juror must replace that juror.” Subdivision 9 does not define “unable to serve.”

Appellant requests that his conviction be reversed and that the case be remanded for a new trial because the district court improperly considered his motion to remove the juror under Minn. R. Crim. P. 26.02, subd. 5, rather than under Minn. R. Crim. P. 26.02, subd. 9. Appellant asserts that, in applying the incorrect standard, the district court erroneously focused on impartiality rather than on “whether the juror was mentally capable of rendering satisfactory jury service.” Appellant argues that the juror was unable to serve, but acknowledges that Minnesota caselaw does not address whether a juror’s fear of retaliation renders him unable to serve as a juror.

The state argues that Minn. R. Crim. P. 26.02, subd. 9, does not set out a new or different standard for determining a juror’s competence to serve and only instructs the district court on how to remove and replace a sworn juror who is unable to serve. The state asserts that the requirements set out for juror competence in subdivision 5 apply to Minn. R. Crim. P. 26.02 as a whole.

Our caselaw holds that “[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); *see also State v. Curtis*, __ N.W.2d __, __, No. A17-0390, slip op. at 7-8 (Minn. Jan. 10, 2018) (applying Minn. R. Crim. P. 26.02, subd. 5(1), to removal of a sworn juror). Therefore, the appropriate consideration for the district court in addressing appellant’s motion to remove the sworn juror under Minn. R. Crim. P. 26.02, subd. 9, was whether the juror could serve impartially at trial, as provided under Minn. R. Crim. P. 26.02, subd. 5(1)(1). The district court did not misapply the law by following this procedure.

Appellant also argues that the district court abused its discretion when it found that the juror was mentally capable of serving on the jury. Here, there is nothing in the record to indicate that the district court abused its discretion in finding that the juror's statements were credible, that the juror could remain impartial, and that the juror was able to serve. Thus, we defer to the district court's determination and affirm. *See Munt*, 831 N.W.2d at 576.

Affirmed.