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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1003**

State of Minnesota,
Respondent,

vs.

Bakil Nuh Dahir,
Appellant.

**Filed May 18, 2020
Affirmed
Florey, Judge**

Olmsted County District Court
File No. 55-CR-18-7282

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Assistant County Attorney,
Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

On appeal from the judgment of conviction for kidnapping and third-degree criminal sexual conduct, appellant Bakil Nuh Dahir argues that the district court erred by denying a for-cause strike of a prospective juror who expressed actual bias. We affirm.

FACTS

In October 2018, a young woman walked into a gas station carrying her shoes and repeating a license-plate number. M.J.S., who was working at the gas station, “could tell [the woman] was kind of drunk.” The woman asked M.J.S. for a piece of paper to write the license-plate number down and then told M.J.S. that she had been raped. M.J.S. called the police. The woman identified herself as C.R. and told dispatch that she and her boyfriend met a man at Kathy’s Pub in Rochester who was supposed to drive them home. C.R. stated that she did not know what had happened to her boyfriend, but the last thing she recalled before waking up with the man “on top of her” was getting into his car. The man dropped C.R. off at the gas station. When police arrived, C.R. gave a brief statement and the car’s license-plate number. Then C.R. was taken to the hospital.

The officers ran the license-plate number C.R. gave them and discovered that the car was registered to Dahir. The police found the car parked near Kathy’s Pub and found Dahir in an alley behind the bar. The officers asked Dahir “where he had just come from” and Dahir stated that he had just taken a couple from Kathy’s to the gas station. Dahir stated that he did not make any stops during the trip. Officers arrested Dahir, who was charged the next day.

During voir dire, the district court and the parties questioned the potential jurors regarding their personal experiences with sexual assault. One of the jurors (Juror A) testified that his wife “shared with me after we had been dating a couple years” that she had been sexually assaulted during college, before Juror A knew her. Juror A stated:

[S]he shared that she drank too much and had been basically passed out, and someone had sex with her without her consent. She remembered who it was, but there was really no action afterward. Of course I was angry when I heard about that and that some people would hurt her in that way. And she seemed to keep some veneer of not being upset about it for many years, but after the birth of our first child, I’m not sure if chemical changes set her off, but it really sort of erupted in her and brought her back a lot of stress and trauma remembering it.

Juror A’s wife did not report the sexual assault to the police or to the college that she was attending. Juror A also described two other incidents in which his wife had been sexually harassed – one instance that took place when she was “grade-school age” and one that took place during college. The district court questioned Juror A as follows:

Court: And so is there anything about that experience and kind of seeing what it has done to her throughout her life, and while you didn’t experience it, obviously experiencing it through your wife, that you think that it would be hard for you to be fair and impartial as a juror in this case?

Juror A: It’s - - you know, I don’t know the specifics of the case, but it touched on - - if the case touches on anything that’s potentially something similar to that, that could affect my ability to think through it impartially.

Court: Do you understand that obviously your wife wasn’t the one that is alleged to have been raped in this case? Do you understand that?

Juror A: Yes.

Court: And that Mr. Dahir has pled not guilty to the allegations here. So as a juror you would have to listen to all of the evidence and be able to be objective about that. So we're not asking you to kind of put aside everything that you've known about your wife and her experiences. But the real question is do you think you could put that aside and understand that it's a separate case and not convict somebody just because of what happened to your wife?

Juror A: Yes, I can do that.

Court: And so you can evaluate the witnesses on the stand and - - or I should say, do you feel that you could evaluate all of the witnesses that would testify in this trial and judge their credibility and what you believed the facts show, based on what you hear in this courtroom and not what your personal experiences of your wife have been?

Juror A: I'm hesitating because sometimes it's difficult when you hear somebody's statement and you're judging whether you think they're telling the truth or not. That's somewhat of a subjective measure. And I can't always say why I chose that. And I'm concerned that again, depending on what this case touches on, that it may be an issue and I may judge information improperly because of it.

Court: Okay. Well, the only way that would be improper is if you let your own prejudices, okay, this happened to my wife, I feel sorry for her, so therefore I feel sorry for whoever testifies on the stand. So that would really be the only improper thing. You're not going to have to explain how you came to your decision. But do you think you could kind of set aside what happened to your wife in evaluating credibility of the witnesses?

Juror A: Yeah, I think so.

Next, defense counsel and Juror A had the following exchange:

Counsel: So we expect that the evidence in this case or the accusation in this case is likely to involve details of alcohol impairment and a person allegedly being taken advantage of

while they're in that state. What's your reaction to hearing that?

Juror A: That sounds really similar to my background and frankly, even kind of starting with the details this morning brought up more emotions that I hadn't thought that I had. So while I can do my best to not be emotional and judge fairly, there is some definite similarity there that makes me feel concerned.

Counsel: Okay. And then part of my role is to urge a jury, you know, don't believe this person, talking about the individual who's alleged to have been assaulted. Some people have kind of an emotional reaction to that sort of argument. Does then notion of me arguing, "Hey, don't believe this person who claims to have been in a really serious" - -

Juror A: I sort of expected that to be a normal part of the process.

Counsel: Okay. You know, when you say you have some concerns about how you'd react to the evidence if and when it's similar, is there anything that we, the judge or the attorneys, can be doing right now to sort of help know a little bit better what's likely to happen, because of course you're in the same situation that we're in. We're thinking, well, we don't know what it's going to be like when the evidence comes in.

Juror A: Yeah, yeah.

Counsel: Is there anything we can do?

Juror A: I can't draw any specific lines for you and say, well, if it's going to be about this, I'm going to be concerned, other than sort of the vague descriptions I've already given.

Then, the prosecutor had the following exchange with Juror A:

Prosecutor: [Juror A], you know, when we talk to jurors and we ask them to sit and evaluate the credibility of witnesses and assess the evidence, we're not asking them to put aside their life experiences and conversations that they've had with others. We're just asking that both sides get a fair trial, and that the

jurors who sit on this case can objectively evaluate the testimony of the witnesses and the evidence sitting in that box. And again, not asking you to forget about other things that have happened, but just asking you to make your decision based on the evidence presented. And I know this has been asked of you by the judge and by [defense counsel] a number of different ways, but you [sic] do you think that's something that you would be able to do in this case?

Juror A: The best I could say is probably, most likely that I could do that.

Prosecutor: Okay. Would you try to do that?

Juror A: Absolutely. Yes, absolutely.

The defense attorney moved to have Juror A excused for-cause “due to the best that he was able to say was probably that he could be fair and impartial.” Defense counsel noted that he believed the “victim is going to testify that she woke up with him on top of her, which sounds pretty similar to what his wife went through” and that “the concern . . . would be . . . the fear that even though he intellectually knows that they're two separate cases, the emotional thought of, gosh, what if someone had not believed my wife.”

The state opposed defense counsel's motion, noting that Juror A “said he would try to be fair and impartial, he probably would be able to.” The district court denied the motion, stating:

I think [Juror A] was honest with us. I think all jurors, we don't know how people's emotions will affect them or what they will say, but I got the sense that he would put aside and not unfairly judge Mr. Dahir because of what his wife has gone through. And he said that in his questioning to me.

Later, during voir dire of the entire panel, Juror A stated that he had been a jury member on a civil case that deliberated to a verdict. The district court inquired if there

was “anything about that experience that would make it hard for you to be a fair and impartial juror in this case” to which Juror A responded “No.” The prosecutor asked Juror A additional questions about his previous jury service:

Prosecutor: [Juror A], you said you were a juror in a civil trial about ten years ago and you reached a verdict in that case?

Juror A: Yes.

Prosecutor: And the judge probably asked you this and I just missed it. Did you enjoy that experience of sitting on that jury?

Juror A: I did not enjoy that experience. I found it very tedious.

Prosecutor: You thought it very tedious?

Juror A: Yes. It was important and I’m happy to do it, but I did not find it pleasant in any way.

Prosecutor: Do you think it would be any more interesting to sit as a juror on a criminal case versus a civil case? You can be honest with me.

Juror A: No. But I will do it to the best of my ability.

Prosecutor: I appreciate it.

Juror A.: I don’t have enthusiasm like this is going to be great, I’m going to watch it on TV here. No.

The prosecutor also asked Juror A about evaluating witness credibility:

Ms. Gustafson: Okay [Juror A], how do you feel about being asked to judge the credibility of people who will take that witness stand in the next few days?

Juror A: It turns out I think I’m really bad at judging people’s credibility. I have a hard time telling when people are lying. I like to – it has made me very skeptical. So I like to see

some evidence that what they're saying is true, to the great irritation of my wife.

Ms. Gustafson: Okay. And if you don't want to share, I totally get it, but is there something specific that has made you think that you're bad at assessing people's credibility?

Juror A: I don't have any – there's no traumatic event or specific thing that stands out.

Ms. Gustafson: You've just come to that conclusion?

Juror A: I've taken a new job in the last couple of years and I deal with a lot of salespeople.

C.R. and her boyfriend E.H. testified at trial. Dahir also testified, and contradicted the testimony of C.R. and E.H. Dahir did not deny having sex with C.R., but claimed that it was consensual. The jury found him guilty of third-degree criminal sexual conduct, kidnapping, and false imprisonment, but acquitted him of second- and fifth-degree assault. Dahir appeals.

D E C I S I O N

The Constitutions of both the United States and Minnesota protect the right of a criminal defendant to have an impartial jury. *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001). We review the district court's decision to impanel a juror for an abuse of discretion. *State v. Curtis*, 905 N.W.2d 609, 615 (Minn. 2018). The district court is in the best position to determine whether prospective jurors can be impartial because it hears their testimony and observes their demeanor. *State v. Drieman*, 457 N.W.2d 703, 708-09 (Minn. 1990). The district court's resolution of whether a prospective juror's protestation of impartiality is credible is a determination of credibility and demeanor and, therefore, is entitled to

“special deference.” *State v. Logan*, 535 N.W.2d 320, 323 (Minn. 1995). “[T]his court will not lightly substitute its own judgment” if the district court is satisfied jurors can set aside any preconceived notions. *Drieman*, 457 N.W.2d at 709.

Impaneling a biased juror is structural error requiring automatic reversal. *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015). To prove actual bias, the burden is on the challenging party to “show that the juror exhibited strong and deep impressions” that would prevent the juror “from laying aside [their] impression or opinion and rendering a verdict based on the evidence presented in court.” *Id.* (internal quotation omitted). On appeal, to determine whether the district court’s decision to impanel a juror is error, we apply a two-step test. *Id.* First, we determine if the juror expressed actual bias. *Id.* To make this determination, we must view the juror’s voir dire answers in context.” *Id.* Second, if the juror expressed actual bias, “we must then determine whether the juror was properly rehabilitated.” *Id.* A juror is properly 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.* (internal quotation omitted).

Dahir asserts that Juror A expressed actual bias because he “expressed numerous times that he was ‘concerned’ about his ability” to be impartial due to the similarity between the sexual assault that his wife experienced and the sexual assault at issue in this case.

In *State v. Fraga*, a prospective juror disclosed that “he knew about the case, had read about it in the newspaper, and had discussed it with family or friends, including the case details.” *Id.* at 623-24. The juror’s mother-in-law was a nurse in the emergency room

at the hospital where the victim had been taken, and had gone to work the morning that the victim had been pronounced dead. *Id.* at 623. That juror also knew “two of the witnesses on the witness list and [stated] that he would find them more believable based on that familiarity.” *Id.* at 624. In reversing, the supreme court found that the trial court abused its discretion in finding that the juror had not expressed actual bias and found that the juror had not been adequately rehabilitated. *Id.* at 625-26.

Here, unlike in *Fraga*, Juror A expressed no actual knowledge of this case nor did he express any favorable opinion as to the believability of any witnesses who would testify based on his familiarity with those witnesses. Juror A’s hesitation stemmed from his wife’s experience with a sexual assault of a similar nature to the charged crime. While Juror A made equivocal statements and raised concerns about his ability to be impartial, he did not state that it would be hard for him to do so. When viewing the voir dire transcripts as a whole, it is clear that Juror A also made statements that seemed to express a distaste for jury service in general, and also made statements to suggest that he is “bad at judging people’s credibility” and has “had a hard time telling when people are lying.” As the state points out, the district court may well have inferred that Juror A’s statements were motivated by a desire to get out of jury service, rather than a reflection of his ability to properly weigh the evidence. Based on the record as a whole, we conclude that Juror A’s statements did not express the sort of strong or deeply ingrained impressions that amount to actual bias, rendering him unfit to serve on the jury. But even if the voir dire transcript revealed Juror A’s actual bias, we conclude that Juror A was properly rehabilitated.

Dahir asserts that Juror A was not properly rehabilitated because he “never unequivocally stated that he could be impartial and judge the case on the evidence presented.” However, the record reflects that Juror A did state, “Yes, I can do that.” when asked by the district court if he “could put that aside and understand that it’s a separate case and not convict somebody just because of what happened to your wife?” Based on the record, we conclude that the district court did not abuse its discretion by impaneling Juror A.

Affirmed.