IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARRIN SCOTT PLYMELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88534-COA

FILED
MAY 30 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Darrin Scott Plymell appeals from a judgment of conviction, entered pursuant to a jury verdict, of allowing a child to be present during the sale of a controlled substance other than marijuana. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

This case proceeded to trial. At the start of jury selection, the State informed the prospective jurors of the facts as alleged in the information, including that Plymell was alleged to have sold fentanyl in the presence of a child. During voir dire, Plymell asked prospective jurors, including R.S., about their experiences with fentanyl and opioids. R.S. offered that her brother had "been in and out of rehab and jail" due to fentanyl and heroin. The district court asked R.S. about her brother's age, whether they grew up in the same house, when the brother's drug problem started, and generally about the brother's criminal history and current custodial status. R.S responded that her brother was 34 years old, they grew up together in the same house, he started using drugs when he was approximately 17 years old, and that he was currently in custody for parole

violation after being convicted of "possession." The court then asked R.S.: "With all of that as a backdrop, [you've] heard what this case is about[,] [a]re you the best juror for this case?" R.S. responded: "No. I'm also a teacher here in Washoe County, so my job is to protect children so I think with both of those being my background, I may be impartial [sic]." The district court followed up and asked R.S. if there were drug issues at the junior high where she taught, and R.S. responded:

> Yes. A lot of demographic at my particular school where I work a lot of the kids do have parents with drug issues and some in foster care and it's something I see on a daily basis, just seeing the kids that have hard home lives that have been with drugs, if that makes sense.

The district court then permitted the parties to question R.S. The State asked R.S if she could examine the evidence objectively, and R.S. responded that she could, stating "everyone has the right to a fair trial and innocent until proven guilty," but she also explained that her role as a teacher required her to report if she heard that fentanyl had been used in the presence of a child.

During questioning from Plymell, R.S. stated it would be "difficult" for her to hear evidence related to opioids, explaining, "I think this does hit a little close to home for me" because her brother had brought opioids, and specifically fentanyl into their home when she was a minor. When asked if, while in the jury deliberation room, she would "be thinking just in the back of [her] mind all the time about [her] brother and [her] experiences growing up," R.S. responded in the affirmative. R.S. said she

thought she could set aside her experiences and "give both sides a fair shake" but acknowledged "[i]t would be difficult" to do.

Thereafter, during questioning from Plymell regarding preconceived notions of his guilt, R.S. responded "yes" when asked if there was something that made her feel that Plymell was already guilty. R.S. explained that based on what Plymell was charged with, "where there's smoke there's fire, there must be something behind it to back it up so I'd be lying if I said I wasn't leaning one way towards the other."

After Plymell moved to remove R.S. for cause,[1] the district court in order to rehabilitate R.S. asked R.S. the following questions:

> THE COURT: Thank you. [R.S.], is that how you feel? Is that -- I mean, did you hear all of the questions that I asked of jurors? Remember when I went through this process where I said nod if you agree with that, raise your hand if you don't, do you remember when I did that with all the jurors?
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> [R.S.]: Yes.
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> THE COURT: So one of the questions that I asked all the jurors was do you realize as he sits here Mr. Plymell is presumed innocent, and the presumption

[1]We reject the State's argument that Plymell waived his argument regarding R.S.'s bias based on facts related to her brother's background with opioids because Plymell did not explicitly state those facts when seeking her removal for cause. *See Sayedzada v. State*, 134 Nev. 283, 294, 419 P.3d 184, 194 (Ct. App. 2018) (discussing the circumstances where "a party waives the right to challenge a juror's presence on the jury on appeal"). Plymell questioned R.S. about her brother's opioid use and its impact on her impartiality and argued R.S. should be removed for cause based on her inability to be impartial under the facts and circumstances raised during voir dire.

must be removed by proof beyond a reasonable doubt by the State and that is the State's burden. Did you hear that?

[R.S.]: Yes.

THE COURT: Do you agree with that principle?

[R.S.]: Yes.

THE COURT: Okay. I said that the State had -- I asked the other jurors the State has the burden of proving a charge by evidence beyond a reasonable doubt, do you understand that the burden of proof never shifts to Mr. Plymell, that he never has to present any evidence, and that he never has to testify. Did you understand all of that?

[R.S.]: Yes.

THE COURT: And do you agree with that?

[R.S.]: Yes.

THE COURT: Okay. If I were to -- if you were to be a juror in this case, would you be able to listen to all of the witnesses fairly and impartially or looking at the witness list and thinking about your life experience do you think you have a bias?

[R.S.]: I would be able to listen to it impartially.

THE COURT: Okay. And then when you get back into the jury room, are you going to be able to deliberate and fairly and impartially with the rest of the jurors?

[R.S.]: Yes.

THE COURT: Okay. All right. I'm going to deny the challenge as to [R.S.].

On appeal, Plymell argues the district court abused its discretion by denying his for-cause challenge to prospective juror R.S.

because statements she made during voir dire exhibited bias and were not specifically refuted. The State responds that R.S.'s statements, taken as a whole, demonstrate she could set aside her bias, follow the law, and consider the evidence fair and objectively.

"The test for evaluating whether a juror should have been removed for cause is whether a prospective juror's views would prevent or substantially impair the performance of [their] duties as a juror in accordance with [their] instructions and [their] oath." *Weber v. State*, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005) (internal quotation marks omitted), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 405 P.3d 114 (2017); *see also* NRS 175.036. "The district court has broad discretion in ruling on challenges for cause," *Preciado v. State*, 130 Nev. 40, 44, 318 P.3d 176, 178 (2014), and "[i]f the trial court *sufficiently* questions the juror and determines the juror can set aside any bias and be impartial, we will generally defer to the trial court's decision," *Sanders v. Sears-Page*, 131 Nev. 500, 508, 354 P.3d 201, 206 (Ct. App. 2015).

In this case, R.S.'s background and experiences called into question her impartiality to be a juror in this case given the allegations that Plymell sold fentanyl in presence of a child. These facts included: (1) her brother's fentanyl use and criminal history; (2) her duty as a teacher to protect children from drug use; (3) dealing with children impacted by their parents' drug use and; (4) her job as a teacher that required her to report fentanyl use that occurred in front of a child. Further, when asked about preconceptions of Plymell's guilt, R.S. made clear, unequivocal statements regarding her preconceived notions of Plymell's guilt based on the allegation

that he sold fentanyl in front of a child—facts closely related to R.S.'s background and experiences as the sister of a fentanyl user and a teacher.

We have held that, where "a juror's background is replete with circumstances which would call into question [their] ability to be fair, the district court should remove the juror for cause, even if the juror has stated he or she can be impartial." *Sanders*, 131 Nev. at 509, 354 P.3d at 207 (internal quotation marks omitted); *see also* N.R.Cr.P. 17(6)(N) (providing that a challenge for cause may be taken based on a juror's "[c]onduct, responses, state of mind, or other circumstances that reasonably lead the court to conclude the juror's views would prevent or substantially impair the performance of his or her duties as a juror in accordance with his or her instruction and oath"); N.R.Cr.P. 17(6)(O) (providing that a challenge for cause may be taken based on "[t]he existence of a state of mind in the juror evincing enmity against or bias to either party. Bias may be actual, implied, or inferred"). Thus, R.S.'s subsequent statements that she could be impartial do not necessarily alleviate the concerns raised by her unequivocal statements related to her experiences and circumstances that "cast doubt on her impartiality." *Preciado*, 130 Nev. at 44, 318 P.3d at 179 (providing that a prospective juror should have been removed for cause because, while she "stated that she could be impartial, she was equivocal" and her "statement that a graphic photo would make her believe the defendant was guilty . . . cast doubt on her impartiality"). These concerns are compounded by her statements regarding her preconceived notions of Plymell's guilt based on factual allegations closely related to R.S.'s background and experiences.

Although we generally defer to the district court's decision regarding a prospective juror's alleged bias, the district court's questioning of R.S. did not address her personal circumstances and their relationship to R.S.'s statements demonstrating partiality, including her preconceived notions of Plymell's guilt. *See Sanders*, 131 Nev. at 508, 354 P.3d at 206. Rather, the court's questioning only generically touched on R.S.'s ability to be fair and impartial. And while R.S. made detached statements espousing that she could be impartial, these statements did not serve as retractions of her specific statements of partiality based on her circumstances and thus, they failed to eradicate the fact that she previously demonstrated beliefs that were not impartial. *See Thompson v. State*, 111 Nev. 439, 442, 894 P.2d 375, 377 (1995) ("Therefore, simply because the district court was able to point to detached language that prospective juror eighty-nine could be impartial does not eradicate the fact that he previously demonstrated partial beliefs, capped by an unequivocal statement that Thompson was guilty.").

Given R.S.'s equivocal statements as to her impartiality based on her unretracted statements of personal experiences of being a minor when fentanyl was brought into her home, the fact her brother had been convicted and incarcerated for possessing opioids, and that as a teacher she has a mandate to protect children from illegal drug use, when considered in connection with the facts of the case and with R.S.'s concerning statements demonstrating her preconceptions about Plymell's guilt, we conclude that the district court abused its discretion in failing to remove R.S. for cause. Because R.S. was seated on the jury after Plymell used his peremptory

challenges on other prospective jurors, and the district court erred in denying his for-cause challenge to remove R.S., the court's error entitles Plymell to reversal. *See Sayedzada v. State*, 134 Nev. 283, 293, 419 P.3d 184, 194 (Ct. App. 2018) (providing that "a district court's error in denying a challenge for cause is not grounds for reversal unless the defendant demonstrates both that he exhausted all of his peremptory challenges and that an empaneled juror was unfair or biased").[2] For these reasons, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[2]We have considered the State's remaining arguments, and we conclude they are unpersuasive.