

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0518

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ROBERT CRAIG BRITZIUS,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Tenth Judicial District Court,
Fergus County, The Honorable Jon A. Oldenburg, Presiding

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STATEMENT OF THE ISSUE

Whether the court erred when it denied a challenge for cause to a juror who had “strong feelings” about the offense of driving under the influence.

STATEMENT OF THE CASE

The State charged Appellant Robert Craig Britzius with felony driving under the influence (DUI), a seatbelt violation, and obstructing a peace officer. (Doc. 3.) A trial was held on those charges June 28-29, 2021. During voir dire, Britzius moved to strike a potential juror for cause based on her answers about her concern about the offense of DUI. (6/28/21 Tr. at 88-89.) The court denied the motion, and Britzius later removed the potential juror using a peremptory challenge. (*Id.* at 127.) The jury convicted Britzius of DUI, but found him not guilty of obstructing a peace officer and a seatbelt violation. (6/29/21 Tr. at 52.)

On appeal, Britzius challenges the court’s denial of his challenge for cause of the potential juror who had expressed concerns about DUIs.

STATEMENT OF THE FACTS

I. The offense

Britzius lives a few miles up the road from Alan Folda in the Judith Mountains. (6/28/21 Tr. at 145.) Britzius drove a loud truck, so Folda always heard Britzius approaching before seeing his truck. (*Id.* at 146.)

In the evening on July 16, 2020, Folda noticed Britzius driving by Folda's house. (*Id.* at 145-46.) After the road goes past Folda's house, the road goes up a hill and curves to the right at the top of the hill. (*Id.* at 147.) Folda noticed that Britzius was accelerating up the hill, and Folda commented to his wife that at the speed Britzius was driving, he would not be able to make the curve. (*Id.*) Folda saw Britzius's truck disappear over the hill and then heard the truck hit a tree, without hearing any sign that Britzius engaged in evasive action to avoid the tree. (*Id.* at 147-48.)

Folda went up the hill to assist Britzius. (*Id.* at 150-51.) Britzius was partway down a steep ditch and had crashed his truck into a tree. (*Id.* at 151.) Britzius was inside the truck. (*Id.*) He appeared to be confused because he did not recognize Folda and asked Folda what he was doing there. (*Id.* at 151, 163.) Britzius told Folda that it was his place and he could park wherever he wanted to. (*Id.* at 152.) Britzius wanted Folda to help him get out of the truck, but Folda

could not due to the position of the truck and because one door was smashed. (*Id.* at 152.) Folda left to call 9-1-1. (*Id.* at 153.)

While Folda was gone, Britzius crawled out of the window of the truck. (*Id.* at 154.) When Folda returned, Britzius was lying in the ditch. (*Id.*) Folda told Britzius that help was coming. (*Id.*) Britzius asked Folda if he would just take him home, but Folda did not. (*Id.*) Instead, paramedics arrived and transported Britzius to the hospital. (*Id.*)

Montana Highway Patrol Trooper Timothy Haymond examined the scene of the crash and contacted Britzius at the hospital. (*Id.* at 170-86.) Britzius appeared to be in pain at the hospital. (*Id.* at 171.) He also had bloodshot, watery eyes, was slurring his speech, and was argumentative and uncooperative. (*Id.*)

Medical personnel took a blood sample from Britzius for medical purposes. (*Id.* at 209, 217.) Britzius's blood alcohol content in his blood serum was .178, which equates to a whole blood alcohol content of .148 to .154. (6/29/21 Tr. at 10-11.)

The jury found Britzius guilty of DUI, but not guilty of obstructing a peace officer and a seatbelt violation. (*Id.* at 52.)

II. Voir dire

During voir dire, Britzius's counsel, Breena LeCount, asked potential jurors about their experience with alcohol. When she asked whether any of the potential jurors had family members who had struggled with alcohol, Megan Phillips responded. She stated,

Ms. Phillips: Uh huh I was, grown up in an alcoholic family. My dad and brother. My dad is an addictions counselor now. Yep.

Ms. LeCount: And does that, does that give you any pause about being a good juror in this case, that life experience?

Ms. Phillips: It's really hard to say. I'd have to know all the evidence, but I do have strong feelings toward DUI's and I've seen them first hand so.

Ms. LeCount: So, that, that life experience.

Ms. Phillips: Yes.

Ms. LeCount: Again, is that something that while you listened to the testimony and evidence that those feelings that you have and those personal experiences, is that something you can just brush under the rug and forget about over the next couple days. Or is it something that you know is gonna just impact your ability to pay attention and be fair and impartial? And again, there is no right or wrong answer.

Ms. Phillips: It would be hard. I know what alcohol can do. I've seen it first hand. It would be really hard to, I don't know, it's just hard to say.

Ms. LeCount: Okay. Would you feel that maybe this isn't the right case for you?

Ms. Phillips: I do feel like that.

Ms. LeCount: Okay. Your Honor I would request that Ms. Phillips be excused for cause.

(6/28/21 Tr. at 88-89.)

Britzius then moved to strike Phillips for cause. (*Id.* at 89.)

The prosecutor followed up, asking, “As we proceed forward today if you’re seated on the jury can you listen to all of the evidence and remain impartial?” (*Id.*)

Phillips then replied, “Yes, I think I can.” (*Id.*) The court then denied Britzius’s motion to excuse Phillips for cause. (*Id.*)

Later during voir dire, Britzius’s counsel asked several jurors whether, if they were in the defendant’s position, they would want themselves as a juror. (*Id.* at 118.) She followed up with one juror, asking, “But do you think you would I mean be a good juror on your case if you were sitting here.” (*Id.* at 119.) After that juror responded, LeCount asked, “How about you Ms. Phillips?” (*Id.*) Phillips replied, “Probably not I tend to be a little biased with DUI’s.” (*Id.*) LeCount then asked, “And again just because of your history and background do you, do you feel that you can be fair and impartial then?” (*Id.*) Ms. Phillips responded, “Yes, I know that I would have to be, so yes.” (*Id.*) LeCount did not renew her motion to strike Phillips for cause or make any additional argument about her. (*Id.*)

Britzius later used a peremptory challenge to remove Phillips. (*Id.* at 127.)

SUMMARY OF THE ARGUMENT

The district court did not abuse its discretion when it denied Britzius's challenge for cause to Phillips because her statements did not raise serious question about her ability to decide the case fairly and impartially. Phillips's personal experiences caused her to have "strong feelings" about DUIs, but she did not indicate that her feelings about the offense would prevent her from fairly weighing the evidence to determine whether Britzius committed the offense. To the contrary, Phillips stated initially that she would have to know all of the evidence to determine whether she would be a good juror, which indicated that she would decide the case based on the evidence. Further, Phillips's statements expressing uncertainty about her ability to be a good juror came in response to one question from defense counsel that was confusing and contained multiple parts and another question that suggested to Phillips that this may not be a good case for her to be on. Phillips's answers demonstrated her hesitation to be a juror in a DUI trial, but did not demonstrate that she had a state of mind that would prevent her from being fair and impartial. When asked whether she could fairly and impartially weigh the evidence to reach a verdict, Phillips clearly stated that she could. Based on the totality of her statements, the court did not abuse its discretion. Further, Phillips later reaffirmed that she could fairly and impartially decide the case. Because the

court did not abuse its discretion when it denied Britzius’s challenge to Phillips, his conviction should be affirmed.

ARGUMENT

I. Standard of review

This Court reviews a district court’s denial of a challenge for cause for abuse of discretion. *State v. Cudd*, 2014 MT 140, ¶ 6, 375 Mont. 215, 326 P.3d 417. “A district court abuses its discretion if it denies a challenge for cause when a prospective juror’s statements during voir dire raise serious doubts about the juror’s ability to be fair and impartial or actual bias is discovered.” *Id.* If the district court abuses its discretion in denying a challenge for cause, reversal is required. *Id.*

II. The district court did not abuse its discretion when it denied a challenge for cause to potential juror Megan Phillips because Phillips did not have a state of mind that would prevent her from acting with entire impartiality.

A. A court does not abuse its discretion when it denies a challenge for cause to a potential juror who can fairly and impartially weigh the evidence and reach a verdict.

Criminal defendants have federal and state constitutional rights to an impartial jury under the Sixth Amendment to the United States Constitution and article II, section 24, of the Montana Constitution. *State v. Johnson*, 2019 MT 68,

¶ 9, 395 Mont. 169, 437 P.3d 147. A potential juror may be removed for cause under Mont. Code Ann. § 46-16-115(2)(j) if the juror has “a state of mind in reference to the case or to either of the parties that would prevent the juror from acting with entire impartiality and without prejudice to the substantial rights of either party.” *Accord Cudd*, ¶ 8. A court considering a challenge for cause should consider the totality of the circumstances presented. *Cudd*, ¶ 8.

“Jurors who state that they are unable or unwilling to suspend their prejudicial beliefs and follow the law should be excused for cause.” *Cudd*, ¶ 9. But “a juror should not be removed merely because she voices a concern about being impartial—every person comes to jury duty with preconceptions.” *State v. Jay*, 2013 MT 79, ¶ 20, 369 Mont. 332, 298 P.3d 396; *accord State v. Robinson*, 2008 MT 34, ¶ 10, 341 Mont. 300, 177 P.3d 488; *State v. Normandy*, 2008 MT 437, ¶ 22, 347 Mont. 505, 198 P.3d 834 (“[I]f the prospective juror merely expresses concern about impartiality but believes he can fairly weigh the evidence, the court is not required to remove the juror.”). It is “common for prospective jurors to have experiences common or similar to matters or persons at issue in a criminal case.” *Johnson*, ¶ 10 (citing *State v. Russell*, 2018 MT 26, ¶¶ 13-19, 390 Mont. 253, 411 P.3d 1260; *Normandy*, ¶¶ 23-25; *State v. Rogers*, 2007 MT 227, ¶¶ 25-26, 339 Mont. 132, 168 P.3d 669; *State v. Heath*, 2004 MT 58, ¶¶ 25-26, 320 Mont. 211, 89 P.3d 947).

For that and other reasons, “it is common for prospective jurors to initially express doubt or concern about their ability to be fair and impartial.” *Johnson*,

¶ 10. When doubts are raised,

the dispositive question is not whether a prospective juror has: (1) expressed a bias or fixed opinion of fact or law pertinent to a case; (2) a common or similar experience or connection that would or could give rise to such bias or fixed opinion; (3) specialized or extraordinary knowledge or interest in a matter pertinent to a case; or (4) expressed doubt or concern about the juror’s ability to be fair and impartial.

Johnson, ¶ 11.

Instead, “the dispositive question is ‘whether the totality of the juror’s statements and referenced circumstances raise a serious question or doubt about his or her willingness or ability to set aside any such matter to fairly and impartially render a verdict based solely on the evidence presented and instructions given.’”

State v. Block, 2019 MT 180, ¶ 9, 396 Mont. 478, 448 P.3d 505 (quoting *Johnson*, ¶ 11).

When a juror makes conflicting statements, it is within the discretion of the district court, who has the ability to see the juror, to determine whether the juror will be able to be impartial. *Jay*, ¶ 20; *Robinson*, ¶ 13; *see also Cudd*, ¶ 9 (“Because district judges sit in the best position to observe the disposition of prospective jurors, we grant lower courts a certain degree of deference in making this determination.”). But this Court gives more weight to “spontaneous statements” than to “coaxed recantations’ elicited by counsel because spontaneous

statements are ‘most likely to be reliable and honest.’” *Jay*, ¶ 19 (quoting *Robinson*, ¶ 11). “If questioning raises ‘serious doubts’ as to the ‘juror’s ability to be fair and impartial,’ the court should err on the side of caution and remove the juror.” *Jay*, ¶ 19 (quoting *Robinson*, ¶ 8).

This Court has repeatedly held that a juror’s experience with or disdain for the charged offense does not necessarily disqualify the juror. *Russell*, ¶¶ 13-19; *Normandy*, ¶¶ 23-25; *Heath*, ¶¶ 17-36. In *Normandy*, a potential juror expressed bias against domestic violence because it had affected his wife in her prior marriage, but he indicated that he could fairly weigh the evidence to evaluate whether the defendant had committed the offense. *Normandy*, ¶¶ 21-25. Because the potential juror was biased against the crime charged, rather than the defendant, and could fairly assess the evidence, this Court held that the district court did not abuse its discretion when it denied the challenge for cause. *Normandy*, ¶ 25.

In *Heath*, a potential juror stated that she had been a rape survivor advocate and was a stalking victim. *Heath*, ¶¶ 21-22. She stated that she believed she could put her prejudices aside. *Heath*, ¶ 21. In response to leading questions from defense counsel, however, she also stated that if she were the defendant, she would not want her as a juror and that she “probably shouldn’t be on this particular case.” *Heath*, ¶ 22. This Court held that the district court did not abuse its discretion when it denied the defendant’s motion to remove the potential juror. This Court

explained that the potential juror's initial and spontaneous statements did not raise a serious question of bias. Instead, the arguable bias appeared after defense counsel manipulated the potential juror's statements. *Heath*, ¶ 27. The Court concluded that follow-up questions from the prosecutor and the court affirmed that the potential juror could be fair and impartial and did not constitute improper rehabilitation. *Heath*, ¶¶ 27-29.

Similarly, in *Russell*, this Court held that a district court did not abuse its discretion when it denied a challenge for cause to a juror whose sister had been injured and brother-in-law killed by a drunk driver and who expressed uncertainty about his ability to be fair in a DUI case. *Russell*, ¶¶ 5, 18-20. The potential juror stated that he would be more comfortable sitting on another type of case, but he also repeatedly indicated that he could fairly weigh the evidence. *Russell*, ¶¶ 5-7. This Court explained that although the potential juror disclosed personal experiences that related to the case, he did not reveal bias or an inability to be impartial or express a fixed opinion of guilt. *Russell*, ¶ 18. Instead, the potential juror indicated that he would have to hear the evidence before determining the defendant's guilt. *Id.*

In contrast, in *State v. Golie*, 2006 MT 91, ¶¶ 11-15, 332 Mont. 69, 134 P.3d 95, this Court held that a district court erred in denying a challenge for cause to a juror who said drunk driving was a "sore subject" for him because his arm had been shattered by a drunk driver who had never been prosecuted; stated that he

could “probably” be fair, but could not guarantee he would not be biased; and stated that he would “absolutely not” want himself on a jury if he were the defendant. This Court concluded that his statements demonstrated that he had a state of mind in reference to the case that would prevent him from acting with entire impartiality. *Golie*, ¶ 15.

B. This Court has correctly interpreted Mont. Code Ann. § 46-16-115(2)(j) and can continue to rely on the caselaw governing the removal of jurors for cause.

This Court has repeatedly, correctly interpreted the standard for the removal of jurors for cause under Mont. Code Ann. § 46-16-115(2)(j), and there is no reason to reevaluate the standard, as Britzius suggests. (*See* Appellant’s Br. at 13-16.) The caselaw discussed above is consistent with the requirement in Mont. Code Ann. § 46-16-115(2)(j) that potential jurors be removed if they have “a state of mind . . . that would prevent the juror from acting with entire impartiality and without prejudice to the substantial rights of either party.” Although this Court previously focused on whether a potential juror has “fixed opinions on the guilt or innocence of the defendant,” *Great Falls Tribune v. Dist. Court of Eighth Judicial Dist.*, 186 Mont. 433, 439-40, 608 P.2d 116, 120 (1980), this Court clarified in 2004 in *Heath* that “the ‘fixed opinion of guilt’ rule is but one argument which can be asserted under the statutory ‘state of mind’ basis for a challenge for cause.” *Heath*, ¶ 16.

Contrary to Britzius’s assertion, this Court has not improperly relied on the “fixed opinion” standard in its recent cases. Britzius misquotes this Court’s statement in *Russell* when he states that this Court stated that prospective jurors should be disqualified “only when they have formed ‘fixed opinions[.]’” (Appellant’s Br. at 13 (quoting *Russell*, ¶ 14).) The remainder of the sentence, which Britzius omits, states, “or when a serious question arises about a juror’s ability to be fair and impartial.”¹ The impartiality test in the second portion of the sentence properly determines whether a juror should be removed for cause.

Further, contrary to Britzius’s assertion, *State v. Morales*, 2020 MT 188, 400 Mont. 442, 468 P.3d 355, does not demonstrate a “doctrinal drift.” (See Appellant’s Br. at 13.) While the dissenting justices in *Morales* believed that the majority erred by narrowly focusing its inquiry on whether the potential juror had a fixed opinion, *Morales*, ¶ 24, the majority opinion properly applied this Court’s caselaw and determined that the district court did not abuse its discretion in accepting the potential juror’s assurance that she could set aside her personal experiences and fairly and impartially weigh the evidence. *Morales*, ¶¶ 9-22. The Court’s decision was based on the juror’s statement that she was certain that she could put aside her personal experiences and decide the case based solely on the

¹The State is not alleging that Appellant’s counsel purposely misquoted the sentence. Because there are lengthy citations in the middle of the sentence, counsel may have not noticed the second portion of the sentence.

evidence in the courtroom. *Morales*, ¶¶ 21-22. This Court’s analysis was consistent with this Court’s “state of mind” standard and the language of Mont. Code Ann. § 46-16-115(2)(j). Because this Court has properly applied the statute, there is no ground to reevaluate the meaning of the statute.

C. Phillips’s statements, when viewed as a whole, demonstrated that she could fairly and impartially reach a verdict.

The district court did not abuse its discretion when it denied Britzius’s motion to remove Phillips for cause. Although she had strong feelings about DUIs, her answers did not raise serious questions about her ability to set aside her concerns about DUIs to fairly and impartially decide the case. Similar to the potential jurors in *Normandy*, *Heath*, and *Russell*, whom this Court held did not have to be removed for cause, Phillips disliked the charged offense, but did not express bias that would prevent her from fairly weighing the evidence in the case.

The questioning of Phillips was brief. She volunteered that she had “strong feelings toward DUIs” based on her family members’ experiences with addiction. (6/28/21 Tr. at 88.) But she did not suggest that she would be more inclined to convict the defendant based on her experience. To the contrary, she stated that she would “have to know all the evidence” to make a determination on whether she could be a good juror. (*Id.*) This answer indicated that Phillips would properly base her decision on the evidence, not her personal experience.

Phillips’s hesitation about her ability to be a good juror in a DUI case did not demonstrate that she had a state of mind that would prevent her from being impartial. Instead, her hesitation came in response to a confusing, multipart question. Defense counsel asked Phillips whether she could “just brush [her experience] under a rug and forget about” it, or whether it would impact her ability to pay attention and be fair and impartial. (6/28/21 Tr. at 88-89.) In response, she stated that it “would be hard,” “I don’t know, it’s just hard to say.” (*Id.* at 89.)

It is unclear exactly what Phillips was unsure of because she was asked multiple questions. Defense counsel’s suggestion that she would have to be able to brush her experiences under the rug to be a fair juror was inaccurate. This Court has acknowledged that jurors come with personal experiences, but the question is whether they can fairly and impartially weigh the evidence to determine the defendant’s guilt. *Johnson*, ¶¶ 10-11. Defense counsel’s reliance on an incorrect standard made it difficult to determine whether Phillips believed she could weigh the evidence and decide the case impartially. Even if Phillips did initially question her ability to be impartial, that did not disqualify her when she later twice confirmed that she could be. *See Jay*, ¶ 20; (6/28/21 Tr. at 89, 119).

Following Phillips’s unclear response to the multipart question, defense counsel pushed Phillips farther, asking her if she felt like “maybe this isn’t the right

case for you?” (6/28/21 Tr. at 89.) Phillips replied, “I do feel like that.” (*Id.*)

Based on that brief discussion, defense counsel moved to remove Phillips for cause.

None of Phillips’s answers demonstrated that she had a state of mind that would prevent her from acting with impartiality. Instead, they created a need to clarify whether she believed she could decide the case fairly and impartially. The prosecutor provided that clarification when he asked Phillips whether she could “listen to all of the evidence and remain impartial,” and she replied, “Yes, I think I can.” (*Id.*) That was later confirmed when defense counsel asked Phillips whether she could be fair and impartial, and she replied, “Yes, I know that I would have to be, so yes.” (*Id.* at 119.)

Like the potential jurors in *Normandy*, *Heath*, and *Russell*, Phillips had personal experiences with DUIs that made her particularly concerned about the offense. But her responses did not indicate that she could not fairly and impartially weigh the evidence in the case. Further, as *Heath* demonstrates, a juror’s belief that she should not be a juror on a case with a particular offense does not disqualify the potential juror if she can still evaluate the evidence impartially. Phillips twice confirmed that she could.

Contrary to Britzius’s characterization, this is not a case where a juror spontaneously stated that she could not be a fair juror and was later improperly rehabilitated. Rather, Phillips’s spontaneous answers only demonstrated that she

had strong feelings toward DUIs. Similar to *Heath*, Phillips expressed hesitation about her ability to be a juror in response to leading questions from defense counsel. The prosecutor then properly asked her about her ability to be fair and impartial to clarify her previous answers, and she confirmed that she could. Based on the totality of Phillips's statements, the court properly denied Britzius's challenge to Phillips for cause.

CONCLUSION

Britzius's conviction for DUI should be affirmed because the district court did not abuse its discretion when it denied his challenge for cause to potential juror Phillips.

Respectfully submitted this 6th day of April, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,987 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Mardell Ployhar

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