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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Certiorari to Kershaw County

Honorable Gordon G. Cooper, Circuit Court Judge

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MITCHELL LOGAN HINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001643

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# BRIEF OF PETITIONER PURSUANT TO WHITE V. STATE

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## TABLE OF CONTENTS

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL ..... 1

STATEMENT OF THE CASE ..... 2

STANDARD OF REVIEW ..... 4

ARGUMENT

**The trial judge erred in refusing to conduct a hearing on Petitioner's motion for a new trial based on an allegation that the jury foreman failed to disclose his relationship with both the victim and Petitioner** ..... 5

CONCLUSION ..... 10

## TABLE OF AUTHORITIES

**Cases**

McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013) ..... 8

Photostat Corp. v. Ball, 338 F.2d 783 (10th Cir.1964) ..... 7

Remmer v. United States, 347 U.S. 227, 74 S.Ct. 450, 98 L.Ed. 654 (1954) ..... 8

Smith v. Phillips, 455 U.S. 209, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982) ..... 8

State v. Bryant, 354 S.C. 390, 581 S.E.2d 157 (2003) ..... 8

State v. Cason, 317 S.C. 430, 454 S.E.2d 888 (1995) ..... 6

State v. Covington, 343 S.C. 157, 539 S.E.2d 67 (Ct.App.2000) ..... 4

State v. Galbreath, 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004) ..... 4

State v. Gulledge, 277 S.C. 368, 287 S.E.2d 488 (1982) ..... 7

State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) ..... 6

State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct.App.1991) ..... 7

State v. Sparkman, 358 S.C. 491, 596 S.E.2d 375 (2004) ..... 8

State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) ..... 7

Thompson v. O'Rourke, 288 S.C. 13, 339 S.E.2d 505 (1986) ..... 7

**Statutes**

S.C.Code Ann. § 14-7-1020 (Supp.1997) ..... 6

**Other Authorities**

47 Am.Jur.2d Jury §§ 195 (1995) ..... 7

**Constitutional Provisions**

U.S. Const. amend. VI; S.C. Const., art. I, § 14 ..... 6

## STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to conduct a hearing on Petitioner's motion for a new trial based on an allegation that the jury foreman failed to disclose his relationship with both the victim and Petitioner?

## STATEMENT OF THE CASE

In March of 2011, the Kershaw County Grand Jury indicted Petitioner, Mitchell Logan Hinson, for burglary first degree, indictment #2011-GS-28-0220. On June 27, 2011, Petitioner proceeded to jury trial before the Honorable L. Casey Manning. C.J. "Neil" Riley represented Petitioner at trial. Ronald W. Moak prosecuted the case. The jury returned a verdict of guilty and Judge Manning sentenced Petitioner to fifteen (15) years. On July 8, 2011, Petitioner filed a timely motion for a new trial. (App. p. 205). Over four years later, on November 3, 2015, while the motion for new trial was still pending, Petitioner filed an application for post-conviction relief [PCR]. The application was dismissed without prejudice because the motion for a new trial was still pending. In an order signed March 24, 2016, filed April 4, 2016, the trial judge denied the motion for a new trial.

On November 4, 2016, Petitioner filed a second PCR application. Petitioner filed an amended application on May 24, 2017. The State filed a return on June 23, 2017. On July 19, 2017, an evidentiary hearing was held before the Honorable G. Thomas Cooper, Jr. Kristy Goldberg represented Petitioner at the PCR hearing. Jessica Kinard represented the State. In a written order filed April 12, 2018, Judge Cooper denied relief and dismissed the application. A timely motion to alter or amend was filed April 24, 2018, and then denied on September 5, 2018. A timely notice of intent to appeal was served on September 10, 2018. The petition for writ of certiorari was filed on April 26, 2019. The State filed a return on September 9, 2019. On September 24, 2019, the South Carolina Supreme Court, pursuant to Rule 243(l), transferred the case to the South Carolina Court of Appeals. On December 10, 2021, the South Carolina Court of Appeals granted the petition for writ of certiorari as to issues three (3) and four (4). In issue four

Petitioner alleged that the PCR judge erred in refusing to grant a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

In a motion dated April 5, 2022, the State, as Respondent, conceded that the PCR judge erred in finding Petitioner knowingly and intelligently waived his right to a direct appeal and moved to hold the time for filing the brief of Respondent in abeyance until the brief of Petitioner pursuant to White v. State is filed. In an order filed April 19, 2022, this Court denied the abeyance motion but directed Petitioner to file the White v. State brief. The brief of Petitioner pursuant to White v. State follows.

## STANDARD OF REVIEW

"A denial of a new trial based on alleged jury misconduct is reviewed for an abuse of discretion. State v. Covington, 343 S.C. 157, 163, 539 S.E.2d 67, 69–70 (Ct.App.2000). Likewise, where the motion is based upon allegations that a juror gave misleading or incomplete answers during voir dire, the trial court's denial of that motion will be affirmed absent a prejudicial abuse of discretion. Id." State v. Galbreath, 359 S.C. 398, 402, 597 S.E.2d 845, 847 (Ct. App. 2004)

## ARGUMENT

**The trial judge erred in refusing to conduct a hearing on Petitioner's motion for a new trial based on an allegation that the jury foreman failed to disclose his relationship with both the victim and Petitioner.**

The jury found Petitioner guilty of going into a school mate's house at night and taking a Play Station Three gaming system console, three games, a game controller and a watch. The items were all returned. (App. p. 67, lines 15-17). Petitioner was seventeen years old at the time of trial. (App. p. 308, lines 18-19). Petitioner received a fifteen (15) year sentence. Following the jury's verdict Petitioner filed a timely motion for a new trial on July 8, 2011. (App. pp. 205-207). The first ground listed in the motion states, "The jury foreman is a ROTC teacher at the defendant's most recent school. According to the defendant he and the foreman have communicated and interacted with each other many times at school, and the foreman also knows the victims and their son. The foreman failed to reveal this information during *voir dire*, and that omission constitutes juror misconduct prejudicial to the defendant." (App. p. 205).

Almost five years later on March 24, 2016, the trial judge denied the motion for new trial without a hearing. The order is captioned, "Order Denying Motion for Reconsideration." (App. p. 208). The order reads, "This matter came before the Court on February 18, 2016[1], upon Defendant's Motion for Reconsideration of Sentence or in the Alternative for a New Trial. After reviewing the Defendant's Motion for reconsideration of sentence or in the alternative for a new trial, I find that the Defendant is not entitled to reconsideration of his sentence or a new trial. AND IT IS THEREFORE ORDERED, that the Defendant's Motion be denied." (App. p. 208). The trial judge did not address the alleged misconduct by the jury foreman in failing to disclose

[1] The motion for a new trial was filed and served on July 8, 2011. (App. pp. 205-207).

information on *voir dire.* The trial judge abused his discretion in refusing to conduct a hearing on Petitioner's motion for a new trial based on an allegation that the jury foreman failed to disclose his relationship with both the victims and Petitioner.

During *voir dire* the judge specifically asked the potential jurors if they knew the victims, James and Amy Eubanks and Petitioner, Mitchell Hinson. (App. pp. 8-9). The judge asked, "As I read these names out, if you know anybody, in any way shape or form, you need to stand up or raise your hand and let me know." (App. p. 8, lines 18-20). The judge then specifically named the victims, James and Amy Eubanks, among other witnesses. (App. p. 9, lines 4-10; 20-21). Two jurors, Juror #14 - Debbie Bowers and Linda McCaskill, indicated that they knew Mr. Eubanks, (App. p. 12, line 11 – p. 13, lines 1-16). Another juror, Juror #112- Grace Koon, indicated that she knew Ms. Eubanks. (App. p. 14, lines 7-18). None of these jurors were seated on the jury. (App. pp. 29-31).

The judge asked the jurors, "If any member of the jury panel knows Mr. Hinson or knows his family, grew up with him, went to church with him, or knows his family in any way now stand. Any member of the jury panel who knows Mr. Hinson, please stand." (App. p. 8, lines 4-8). There was no response from any of the potential jurors. (App. p. 8, line 9).

In State v. Kelly, 331 S.C. 132, 145–46, 502 S.E.2d 99, 106 (1998), the South Carolina Supreme Court wrote:

> The United States and South Carolina Constitutions guarantee a criminal defendant the right to an impartial jury. U.S. Const. amend. VI; S.C. Const., art. I, § 14. To protect both parties' right to an impartial jury, the trial judge must ask potential jurors, *inter alia,* whether they have formed an opinion about a case or are aware of any bias or prejudice against a party. State v. Cason, 317 S.C. 430, 454 S.E.2d 888 (1995); S.C.Code Ann. § 14-7-1020 (Supp.1997). This Court has recognized trial judges and attorneys cannot fulfill their duty to screen out biased jurors without accurate information.

> Necessarily it is expected and required that jurors in their answers shall be completely truthful and that they shall disclose, upon a general question, any matters which might tend to disqualify them from sitting on the case for any reason. It therefore becomes imperative that the answers be truthful and complete. False or misleading answers may result in the seating of a juror who might have been discharged by the Court, challenged for cause by counsel or stricken through the exercise of peremptory challenge.

State v. Gulledge, 277 S.C. 368, 371, 287 S.E.2d 488, 490 (1982) (quoting Photostat Corp. v. Ball, 338 F.2d 783 (10th Cir.1964)); *see also* 47 Am.Jur.2d *Jury* §§ 195, 208-09 (1995).

All of the jurors in the present case, including the foreman, were expected and required to be completely truthful in answering the judge's clear and specific questions about whether they knew, in any way, shape, or form, the Eubanks or Petitioner.

In State v. Woods, 345 S.C. 583, 587–88, 550 S.E.2d 282, 284 (2001), the South Carolina Supreme Court wrote:

> When a juror conceals information inquired into during *voir dire,* a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct.App.1991).

The Court in Woods then defined intentional concealment writing:

> We hold that intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.

345 S.C. at 588, 550 S.E.2d at 284.

The questions the judge asked potential jurors in the present case about knowing the Eubanks or Petitioner were clearly comprehensible to the average juror and any failure to respond was unreasonable. Any concealment with regard to knowing the Eubanks or Petitioner would be intentional. Any concealed information about knowing the Eubanks or Petitioner would have been a material factor in the use of peremptory strikes. The trial judge abused his discretion in refusing to conduct a hearing on Petitioner's motion for a new trial based on an allegation that the jury foreman intentionally concealed his relationship with both the victims and Petitioner.

As noted by the South Carolina Supreme Court in McCoy v. State, 401 S.C. 363, 371–72, 737 S.E.2d 623, 628 (2013), "[E]valuating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing. See State v. Sparkman, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004)('Whether a juror's failure to respond [during *voir dire*] is intentional is a fact intensive determination that must be made on a case-by-case basis.')." "In cases where a juror's partiality is questioned after trial, it is appropriate to conduct a hearing in which the defendant has the opportunity to prove actual juror bias. Smith v. Phillips, 455 U.S. 209, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982); Remmer v. United States, 347 U.S. 227, 74 S.Ct. 450, 98 L.Ed. 654 (1954)." State v. Bryant, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003). An evidentiary hearing was required in the present case.

Petitioner presented sufficient information in the motion to warrant an evidentiary hearing to determine if the jury foreman intentionally concealed information about knowing the Eubanks and Petitioner. The present case does not involve an allegation of extraneous influence proved by juror affidavit. Instead, this case involves an allegation of intentional concealment by the foreperson during *voir dire* made by Petitioner in the motion for a new trial. The trial judge abused his discretion in waiting almost five years and then denying the motion for new trial without a

hearing and without addressing the alleged misconduct by the jury foreman. A hearing was required to address the allegations of intentional concealment during *voir dire*. The error requires reversal and a remand for a new trial. Alternatively, the error requires a remand for an evidentiary hearing on the allegation of intentional concealment by the jury foreman.

## CONCLUSION

Based on the above argument, this Court should reverse the conviction and remand for a new trial. Alternatively, this Court should remand for an evidentiary hearing on the allegation of juror misconduct.

Kathrine H. Hudgins
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This 19th day of May, 2022.