STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF GENERAL SESSIONS FOR THE SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA	)	**ORDER**
vs.	)	2019A4210101625 to 2019A4210101640 19-GS-42-5213 to 19-GS-42-5215 19-GS-42-5217 to 19-GS-42-5219 19-GS-42-5224; 19-GS-42-5228 to 19-GS-42-5230
CODY HUDSON, DEFENDANT.	)	

This matter came before the Court for a hearing on Defendant's Motion for a New Trial. A hearing was held on October 25, 2023 before Judge R. Keith Kelly. Defendant was present and was represented by his attorney, E. Charles Gross, Esq. The State was represented by Assistant Solicitor Wendy Hallford and Assistant Solicitor Spenser Smith.

On July 21, 2023, a jury found Defendant guilty of incest and two counts of Criminal Sexual Conduct with a Minor, Second Degree. The jury acquitted Defendant of four counts of Criminal Sexual Conduct with a Minor, Second Degree and three counts of Criminal Sexual Conduct with a Minor, Third Degree. Defendant filed a Motion for a New Trial on July 28, 2023 where he alleged the following:

A. This Court erred by allowing law enforcement, in violation of his due process rights, to shackle Mr. Hudson during the reading of the verdict and polling of the jurors, and the State cannot demonstrate the error was harmless beyond a reasonable doubt.

B. This Court erred by not removing Juror No. 81 after he failed to disclose to the Court that he knows Sara Jumper and is friends with her on Facebook.

C. This Court erred by not giving the verbatim instruction required, when requested, by *State v. Logan.*

D. This Court erred by not conducting full voir dire to ensure that the potential jurors could be fair and impartial.

E. The Court erred by not disclosing the mental health records of Austin Abbott.

F. This court erred by not quashing the indictments for second-degree criminal sexual conduct with a minor as multiplicitous.

G. Alternatively, this Court should reconsider the sentences for the two counts of second-degree criminal sexual conduct with a minor because the court impermissibly

imposed consecutive sentences, exceeding the maximum penalty allowed by law, on these two indictments that are multiplicitous.

SHACKLING THE DEFENDANT

Prior to the reading of the verdict and subsequent polling of the jurors, Defense Counsel objected to Defendant being shackled during those proceedings. Defendant was not shackled in the presence of the jury before the verdict was reached. After the Court received the verdict and the jurors were polled, Defense Counsel renewed his objection; therefore, the issue was preserved for review.

During argument at the October 25, 2024 hearing on Defendant's Motion for a New Trial, Defendant failed to show that the trial court did not find a particular reason to shackle Defendant. The United States Court of Appeals for the Fourth Circuit noted in *United States v. Samuel,* 431 F.2d 610, 615 (4th Cir. 1970), "Whenever unusual visible security measures in jury cases are to be employed, we will require the district judge to state for the record, out of the presence of the jury, the reasons therefore and give counsel an opportunity to comment thereon, as well as to persuade him that such measures are unnecessary." In *State v. Heyward,* 895 S.E.2d 658, 663 (2023), the South Carolina Supreme Court noted, "In this case, the trial court made no effort whatsoever to assess whether the shackles were necessary, nor to ensure the jury could not see them."

Contrary to the circumstances in *Heyward,* this Court made a specific finding outside the presence of the jury that the handcuffs were necessary for security purposes. As recorded by the Court Transcript, in response to Judge Kelly's inquiry, courtroom officers advised that shackles are put on Defendant before the reading of the verdict to prevent Defendant from harming himself or others. Defendant was seated behind the defense table before the jury entered the courtroom and remained seated during the reading of the verdict and the polling of the jury. Defense Counsel provided no evidence that the jury could see the shackles; he only opined that it was possible. Defense Counsel offered no other alternative to shield the jurors from the shackles besides removing them completely. This Court finds Defendant was shackled for a necessary purpose but also finds that there was overwhelming evidence to convict Defendant of the charges for which the jury found him guilty, and therefore any error would be harmless.

It is therefore ordered that Defendant's Motion for a New Trial based upon Defendant being shackled during the reading of the verdict and the polling of the jurors is **DENIED**.

JUROR NO. 81

Defense Counsel contends this Court erred by not removing Juror No. 81 after he failed to disclose during voir dire that he knew one of the State's witnesses. The witness in question was listed as Sarah Hudson on the State's witness list, but Juror No. 81 knew her as Sarah Jumper. During an *in camera* hearing, Juror No. 81 stated he only realized he knew Ms. Jumper when he saw her testify. When questioned about the nature of their relationship, Juror No. 81 advised he met Ms. Jumper at a job he had several years prior delivering goods to a convenience store where Ms. Jumper worked; he was also friends with her on Facebook. He further noted he had not seen any Facebook posts from her regarding the case and asserted he could be fair and impartial.

"[T]he court should not grant a mistrial based on a juror's concealment of information "unless absolutely necessary." *State v. Coaxum,* 410 S.C. 320, 327, 410 S.C. 242, 245 (2014). In *State v. Guillebeaux,* 362 S.C.270, 274, 607 S.E.2d 99, 101 (Ct. App. 2004), the Court stated, "A new trial is warranted if the court finds: (1) the juror intentionally concealed the information; and (2) the concealed information would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." The *Guillebeaux* court further noted that "a determination that a juror did not intentionally conceal information ends the court's inquiry." *Id.*

Defense Counsel did not provide any evidence that Juror No. 81 intentionally concealed his knowledge of Sara Jumper or that Defendant was prejudiced by the circumstances. "If a juror's nondisclosure of information during voir dire is unintentional, the trial court may exercise its discretion in determining whether to proceed with the trial with the jury as is, replace the juror with an alternative, or declare a mistrial." *Id.* at 327, 410 S.C. 246. This Court finds that Juror No. 81 did not intentionally conceal his relationship with Sarah Hudson and it was properly within its discretion not to remove Juror No. 81.

It is therefore ordered that Defendant's Motion for a New Trial based upon Juror No. 81 not being removed is **DENIED**.

JUROR INSTRUCTION FROM STATE V. LOGAN

Defense Counsel argues this Court erred by failing when requested to charge verbatim the circumstantial evidence charge from *State v. Logan,* 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013). This Court finds that it substantially complied with the *Logan* jury charge for both direct and circumstantial evidence.

It is therefore ordered that Defendant's Motion for a New Trial based upon whether this Court failed to give the verbatim jury instruction from *Logan* is **DENIED.**

REQUESTED VOIR DIRE QUESTIONS

Defense Counsel asserts this Court erred by not conducting full voir dire to ensure that the potential jurors could be fair and impartial. This Court finds that it conducted voir dire properly, and that is is in the discretion of the trial judge to determine which questions will be asked.

It is therefore ordered that Defendant's Motion for a New Trial based upon whether this Court erred in not conducting full voir dire is **DENIED.**

MENTAL HEALTH RECORDS OF AUSTIN ABBOTT

Defense Counsel asserts that the Court erred by not disclosing the mental health records of Austin Abbott. After a review pursuant to *State v. Blackwell,* 420 S.C. 127, 801 S.E.2d 713 (2017), the Court declined to disclose the records. As the decision whether to release mental health records is in the discretion of each judge, this Court finds not releasing the mental health records of Austin Abbott was proper.

It is therefore ordered that Defendant's Motion for a New Trial based upon whether this Court erred in not disclosing the mental health records of Austin Abbott is **DENIED.**

QUASHING INDICTMENTS

Defense Counsel avers that this Court erred by not quashing the indictments for second-degree criminal sexual conduct with a minor as multiplicitous. This Court finds the indictments for second-degree criminal sexual conduct with a minor were not duplicitous as each one constituted its own statutory crime.

It is therefore ordered that Defendant's Motion for a New Trial based upon whether this Court erred in failing to quash the indictments is **DENIED.**

RECONSIDERING SENTENCES

Defense Counsel asserts that this Court should reconsider the sentences for the two counts of second-degree criminal sexual conduct with a minor because the court impermissibly imposed consecutive sentences exceeding the maximum penalty allowed by law. This Court will not reconsider the sentences for the two counts of second-degree criminal sexual conduct with a minor.

It is therefore ordered that Defendant's request that this Court reconsider the sentences is **DENIED.**

IT IS SO ORDERED.

s/ R. Keith Kelly

The Honorable R. Keith Kelly
Administrative Judge, Seventh Judicial Circuit

7 March, 2024
Spartanburg, South Carolina