

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

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S.C. SUPREME COURT

The State, Respondent,

v.

Adam Rowell, Petitioner

Appellate Case № 2022-000571

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Greenwood County
Donald B. Hocker, Circuit Court Judge

Opinion № 28215
Heard February 7, 2024 - Filed July 17, 2024

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Adam Rowell, the Petitioner above named, hereby Petitions this court to rehear this matter based upon the following grounds:

This court in the Opinion ordered a hearing to include the testimony of Juror 164. In ordering the hearing, this court stated as to determining bias, “This will typically turn on the

nature of the information withheld, rather than the nature of the juror's state of mind in not disclosing it." *State v. Rowell*, Op. № 28215 (S.C.Sup.Ct. filed July 17, 2024)(Howard Adv. № 17 at 13). In this case the record establishes that the juror withheld information as to not having any pending criminal charges. As this court has held that the state of mind of the juror is not relevant to the decision, there is no new information that could be obtained at a hearing. Under the ruling of this court, the juror is not entitled to be a judge of his own bias. When this court properly abolished the artificial distinction between intention and unintentional failure to disclose, a remand will serve no purpose.

In *Ex parte Dixon*, 55 So.2d 1257 (2010), the Alabama Supreme Court said, "[W]e conclude that the juror's bare assertion of impartiality is not sufficient to rebut the prima facie evidence, both direct and inferential, that Dixon was prejudiced by her failure to disclose her pending criminal charges." *Id.* at 1264. The Alabama court found a prima facie case of prejudice because the record contained the testimony of the trial counsel that he would have struck the juror had they known of the criminal record. The same facts exist in this case. At the November hearing, defense counsel was very clear that he would not have wanted a juror with pending charges with the solicitor's office on their jury. App. at 1407, 118. A remand for a hearing will not change this fact.

The question this court has not answered, is exactly what will the lower court be deciding? The lower court cannot now decide the juror answered the question. Nor can the lower court decide the juror inadvertently failed to answer and, therefore, Mr. Rowell was not prejudiced. Nor can the lower court find Mr. Rowell was not prejudiced because the present record shows trial counsel would have used a strike.

The lower court could address the issue of whether the juror, had a truthful answer been given, been excused for cause. This is a factual issue for the trial judge. The answer to this question is not needed in this case as the denial of the right of the defendant to use a peremptory strike is a sufficient basis to show prejudice and grant a new trial.

In remanding this case, this court said, “[A] new trial may be ordered only when prejudice is proven by showing the concealed information reveals a potential for bias *and* would have made a difference in the moving party’s use of a peremptory strike or resulted in a successful challenge for cause.” *Id.* at 14. A juror having pending criminal charges as a matter of law has the potential for bias. If this were not true, then there is no need to even ask the question about pending charges. The question is asked to determine this potential for bias. The record in this case also establishes that defense counsel would have used a peremptory strike to excuse the juror. So, what exactly is the lower court to decide that has not already been determined? Is there any factual scenario that could be developed at a hearing that would prevent Mr. Rowell from obtaining a new trial?

In a very similar case, the Alabama Supreme Court granted a new trial in a case where a juror failed to disclose they had pending charges. At the hearing the juror testified that the pending charges had no impact on his verdict. In reversing the case, the court said:

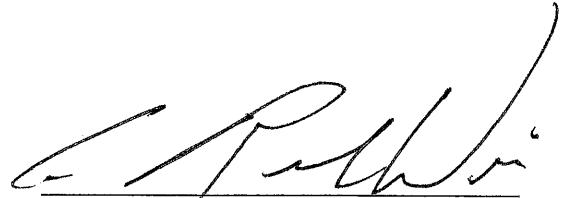
The State cites no authority and makes no legal argument to support the assertion that the presumption of prejudice can be rebutted merely by a juror's conclusory statement that his or her verdict was not affected by the potential source of bias. In any event, the juror's own testimony as to his or her impartiality in rendering a verdict does nothing to rebut evidence that trial counsel would have challenged the juror for cause or would have used a peremptory challenge to strike that juror had the juror responded truthfully to the question. The point of peremptory challenges is to reduce the effect of hidden or unconscious biases.
Id. at 1264

The exact same principles apply in this case.

CONCLUSION

As no factual issues can be developed that would prevent Mr. Rowell from receiving a new trial, this court should rehear this matter and modify the opinion to hold Adam Rowell is entitled to a new trial.

August 1, 2024



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