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S.C. SUPREME COURT

The STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2022-000571

Opinion No. 28215

THE STATE,

Respondent,

v.

ADAM ROWELL,

Petitioner.

PETITION FOR REHEARING

On July 17, 2024, this Court issued an opinion vacating the court of appeals' opinion affirming Petitioner's convictions for two counts of felony DUI and remanding the case to the trial court for an evidentiary hearing on Petitioner's motion for a new trial based on a claim of juror concealment during voir dire. State v. Rowell, Opinion No. 28215 (S.C.Sup.Ct. filed July 17, 2024) (Howard Adv.Sh. No. 27 at 10). Pursuant to Rule 242 of the South Carolina Appellate Court rules, the State respectfully petitions for rehearing. The State is in full agreement with the Court returning the focus of juror concealment claims to whether the juror in question is biased. However, the State seeks clarification of certain language in the opinion.

1.

Regarding the test for bias, the Court explained: “Where a party claims a juror has withheld material information in response to a voir dire question, the trial court must determine, preferably after a hearing, whether the juror’s withholding suggests bias.” *Id.* at 13 (emphasis added). However, the Court subsequently wrote that “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 (emphasis added). Again, when giving remand instructions to the lower court, the Court wrote the lower court should determine whether the “withheld information suggests a potential bias . . .” *Id.* at 15 (emphasis added).

Respectfully, the phrase “potential for bias” sets too low of a bar for the proponent of a post-verdict claim of juror bias. The mere potential for bias is not sufficient to justify a new trial, and this language could encourage numerous post-trial challenges to the composition of the jury premised on possible or conceivable bias. A searching post-trial investigation could uncover the potential for bias in nearly any juror. The State believes the proper test is whether the information indicates the juror is actually biased, or simply, as the Court wrote earlier in its opinion, that the withheld information “suggests bias.” *See State v. Bryant*, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003) (“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 bias.”). Alternatively, the Court could use the phrase “strong potential of juror bias” to make clear that the danger of juror bias must be substantial, not merely conceivable. *See Long v. Norris & Assocs., Ltd.*, 342 S.C. 561, 573, 538 S.E.2d 5, 12 (Ct. App. 2000) (emphasis added).

This language better conveys the substantial burden upon the movant to justify a new trial based on post-verdict allegations of juror bias.

2.

Regarding the test for prejudice, the Court wrote “a new trial may be ordered only when . . . [the concealed information] 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. The State agrees this is the proper test, but respectfully suggests the Court may wish to clarify that this is to be judged by an objective standard, whereby the party’s decision to exercise a peremptory strike should be assessed based on reasonableness in the circumstances. A party’s mere assertion that he would have exercised a peremptory strike is not in itself enough to establish prejudice; with the benefit of hindsight, every attorney will assert he would have used a strike if that is all that is required to get a new trial. Instead, the movant must persuade the court that the concealed information was so important that it would have led a reasonable, similarly-situated attorney to exercise a peremptory strike.

CONCLUSION


The State respectfully requests this Court should grant the petition on the above-stated grounds.

Respectfully submitted,

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