ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2012-206607

THE STATE,

Petitioner,

vs.

WILLIAM COAXUM, SR.,

Respondent.

BRIEF OF PETITIONER

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STATEMENT OF ISSUE ON APPEAL

Did the Court of Appeals err in reversing Coaxum's convictions based on the trial judge's allegedly improper removal of a juror during trial where Coaxum suffered no prejudice as a result of the juror's removal due to the facts that the juror was replaced with a qualified alternate juror, Coaxum received a fair trial decided by a competent and impartial jury, and the evidence of Coaxum's guilt was overwhelming?

STATEMENT OF THE CASE

In November of 2007, Respondent William Coaxum, Sr. was arrested after he attempted to flee from law enforcement officers, crashed his vehicle into a fire hydrant, and was struck by a pursuing officer's patrol car. In April of 2008, the Charleston County grand jury indicted Coaxum for two counts of armed robbery and two counts of possession of a firearm during the commission of a violent crime. On January 12, 2009, Coaxum proceeded to trial in the Charleston County court of general sessions with the Honorable R. Markley Dennis, Jr., circuit court judge, presiding. At the conclusion of trial, the jury convicted Coaxum of one count of armed robbery and one count of possession of a firearm during the commission of a violent crime. Thereafter, the solicitor elected to dismiss the remaining indicted charges, and the trial judge sentenced Coaxum to life imprisonment for the armed robbery conviction pursuant to S.C. Code Ann. § 17-25-45 and to a five-year term of imprisonment for the possession of a firearm conviction. Coaxum then timely filed and perfected an appeal.

Subsequently, following oral argument, the Court of Appeals reversed Coaxum's convictions and remanded Coaxum's case for a new trial. State v. Coaxum, Op. No. 2011-UP-496 (S.C. Ct. App. filed Nov. 7, 2011). After the Court of Appeals issued its decision, the State filed a petition for rehearing, and the petition was denied. The State then filed a petition for a writ of certiorari in the Supreme Court, and the petition was granted on July 25, 2013.

STATEMENT OF FACTS

At 10:00 p.m. on the evening of November 27, 2007, Keith Jennings began his shift as a security guard at the North Charleston Inn. (R. p. 122). While patrolling the motel, Jennings noticed two men pull up in an orange car and enter the motel lobby. (R. pp. 125-126). One of the men appeared to be a teenager while the other man was older, had a goatee, and was wearing a gray and white camouflage jacket. (R. pp. 126-127). As Jennings watched the men, the older man pulled out a shotgun and pointed it at the motel clerk's head. (R. pp. 123-124; p. 129). In response, Jennings quickly called 911 to report the robbery. (R. p. 123). The robbers then fled outside and left in the same orange vehicle they arrived in.[1] (R. p. 124).

Shortly thereafter, Tamera Brown, a shift manager at a Pizza Hut in North Charleston, was preparing to close the restaurant for the evening. (R. pp. 55-56). As she was emptying out the cash registers, Brown heard a knock at the restaurant's front door, which had already been locked for the evening. (R. pp. 56-57). Brown asked the restaurant's delivery driver to tell the person knocking on the door to go around to a side door. (R. pp. 57-58). The delivery driver exited through the side door, and then Brown heard him saying, "alright, alright," to someone outside. (R. p. 58). Brown looked up, and two men entered the restaurant behind the delivery driver and another employee. (R. p. 58). The taller of the two men, who was armed with a sawed-off shotgun and was wearing a camouflage hooded sweatshirt, quickly ordered Brown to open the restaurant's safe. (R. pp. 58-59; p. 68). Brown explained to him that she could not do so, so the gunman demanded she open the cash register. (R. p. 59). The gunman then took the money from the cash register before ordering Brown and the other employees to move to

[1] As the men were fleeing, the older of the two robbers looked directly at Jennings. (R. p. 124).

the back of the restaurant. (R. p. 61). They complied with the gunman's demands, and the robbers fled through the side door. (R. p. 61). Brown then made sure the door was closed and locked before calling 911. (R. p. 61). Law enforcement officers arrived on the scene several minutes later, and Brown provided them with a description of the robbers. (R. p. 62; p. 68).

Meanwhile, Sergeant David Singletary and Officer Jason Gamba of the North Charleston Police Department were dispatched to the restaurant in response to the armed robbery and were notified to be on the lookout for an orange vehicle. (R. p. 133; pp. 138-139). Sergeant Singletary observed an orange vehicle matching the description of the suspects' vehicle when he neared the restaurant and attempted to stop it, but the orange vehicle fled. (R. p. 140). Officers pursued the car for approximately two to two and a half miles before the suspects' vehicle crashed into a fire hydrant. (R. pp. 134-135; pp. 140-141; p. 144). Following the crash, two people got out of the orange vehicle and attempted to flee on foot. (R. p. 135; p. 141). However, the patrol car of a pursuing officer slid across water in the roadway and struck one of the men, Respondent William Coaxum, Sr., as he tried to flee. (R. p. 137; p. 141). After he was struck, multiple officers apprehended and arrested Coaxum. (R. p. 135; p. 141).

Within minutes of Coaxum's arrest, officers brought several witnesses to Coaxum's location to see if they recognized him as one of the robbers. (R. p. 62; p. 65; p. 128). Brown identified Coaxum as the gunman in the armed robbery of the Pizza Hut without any hesitation and indicated she was certain he was the perpetrator. (R. pp. 64-65; p. 142). Likewise, Jennings identified Coaxum as the gunman in the armed robbery of the North Charleston Inn. (R. p. 129; p. 142). Following Coaxum's arrest, officers searched Coaxum and the orange vehicle he was driving during his attempt to evade the

pursuing officers. (R. pp. 141-142). Inside the orange vehicle, officers found a sawed-off shotgun on the passenger seat. (R. pp. 141-142; p. 146). Additionally, officers located $396 in loose currency in Coaxum's left pocket and $622 in cash in a wallet in Coaxum's right pocket. (R. p. 136).

Later that evening, Coaxum's accomplice, Marquine Benbow, was arrested. (R. p. 73; p. 86; p. 90). Detective Shawn Patrick of the Charleston Police Department spoke with Benbow about the armed robberies, and Benbow implicated Coaxum in the crimes. (R. pp. 86-87; pp. 89-90). Benbow stated Coaxum picked him up in an orange car and told him that he was looking for a place to rob. (R. p. 89). Benbow claimed they then went to the North Charleston Inn and he acted as a lookout while Coaxum robbed the motel at gunpoint. (R. p. 89). After robbing the North Charleston Inn, Benbow stated they went to the Pizza Hut, Coaxum robbed it, they left, and then they were followed by a police officer. (R. pp. 89-90). Coaxum was subsequently indicted for two counts of armed robbery and two counts of possession of a firearm during the commission of a violent crime, and he proceeded to trial.[2] (R. pp. 9-10; pp. 174-177).

At the outset of trial, the trial judge began the jury voir dire process. (R. p. 1). During his questioning of the jurors, the trial judge asked the prospective jurors if anyone was related to Coaxum by blood or marriage or casually or socially connected to Coaxum. (R. p. 2). None of the jurors responded. (R. p. 2). Subsequently, the solicitor and defense counsel exercised their peremptory challenges and selected a jury for Coaxum's trial comprised of twelve primary jurors, including Juror # 7, and a single

[2] Benbow was also charged for his role in the armed robberies, pled guilty to the charges prior to Coaxum's trial, and was already serving a term of incarceration at the time of Coaxum's trial. (R. p. 73).

alternate juror.[3] (R. pp. 32-43). Neither the solicitor nor defense counsel exercised any peremptory challenges during the selection of the alternate juror. (R. p. 43).

Subsequently, during trial, Brown testified about the robbery of the Pizza Hut and identified Coaxum in court as the gunman who committed the crime.[4] (R. pp. 57-61; p. 66). Additionally, Benbow testified for the State and admitted to committing the robberies with an accomplice, but he denied remembering the name of his accomplice in the crimes. (R. p. 73; p. 77; p. 84). However, Detective Patrick testified about his conversation with Benbow after Benbow was apprehended on the night of the robberies. (R. p. 86). Detective Patrick stated Benbow implicated Coaxum in the crimes during their conversation. (R. pp. 86-87).

Following Detective Patrick's testimony, the trial judge received a note from the jury foreman stating: "This morning juror # 7 informed me that she recognized the family sitting in the courtroom. She knows the family of the defendant, but not the defendant himself. She would like to speak with you about this." (R. p. 108; App'x p. 183). The trial judge then brought out Juror # 7 to speak with her about the note. (R. p. 109-110). Juror # 7 indicated she recognized Coaxum's family members in the courtroom and worked with one of them. (R. p. 110). Furthermore, Juror # 7 stated one of the family members claimed they were distant cousins, but Juror # 7 was not sure if that was true. (R. p. 110). Juror # 7 further asserted the relationship would not influence her decision in the case and affirmed she would consider only the evidence presented and put any relationships out of her mind. (R. pp. 110-111).

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[3] During the jury selection process, the solicitor only exercised two of his five available peremptory challenges. (R. pp. 32-33).

[4] Charles Jones, a chef at the Pizza Hut, also testified about the robbery on November 27, 2007. (R. pp. 45-48). Jones stated he did not see the robbers well enough to enable him to make a positive identification. (R. p. 49; p. 51). However, Jones testified Coaxum looked like the gunman. (R. p. 49).

After Juror # 7 was questioned about the note and her relationship to Coaxum's family members, the solicitor requested Juror # 7 be excused "out of an abundance of caution" due to the difficulty in putting those types of relationships out of one's mind. (R. pp. 112-113). Defense counsel opposed the request. (R. p. 113). During the ensuing colloquy, the solicitor indicated he would have exercised a peremptory challenge on Juror # 7 if he was aware of the information she disclosed during trial. (R. p. 113). The trial judge referenced the Supreme Court's decision in State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002), and noted the Supreme Court found the removal of a juror in Stone to be improper because the juror's failure to disclose was innocent and the information disclosed would not have been a material factor in a peremptory challenge or a challenge for cause. (R. pp. 113-114). The trial judge noted the solicitor had peremptory challenges available to him and found the relationship disclosed by Juror # 7 to be a compelling reason to exercise a peremptory strike. (R. pp. 115-116). In response, defense counsel stated he was concerned about replacing Juror # 7 with the alternate juror because he was worried an alternate juror was less likely to pay attention during trial than a juror who would have to decide the case from the outset of trial. (R. pp. 118-119). After considering the argument, the trial judge determined a peremptory strike of Juror # 7 would have been supported by a rational reason and granted the solicitor's request to replace the juror with an alternate juror.[5] (R. pp. 120-121).

After Juror # 7 was removed, Coaxum's trial continued, and Jennings identified Coaxum in court as the gunman involved in the robbery of the North Charleston Inn. (R.

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[5] In finding the relationship disclosed by Juror # 7 would have supported the exercise of a peremptory challenge, the trial judge compared the relationship of a prospective juror to a defendant's family to the relationship of a prospective juror to law enforcement personnel. (R. pp. 119-120). During the jury selection process, Coaxum exercised peremptory strikes on a juror married to a former police officer, a juror who was a retired police officer, and a juror whose sister was the victim of a robbery in the past. (R. pp. 11-12; pp. 22-23; pp. 34-38).

p. 130). Furthermore, the officers who apprehended Coaxum after he attempted to flee testified about Coaxum's arrest and the ensuing searches that led to the discovery of over $1,000 in cash in Coaxum's pockets and a sawed-off shotgun in Coaxum's car. (R. pp. 135-137; pp. 141-142; p. 146).

At the conclusion of trial, the jury convicted Coaxum of the armed robbery of the Pizza Hut along with possession of a firearm during the commission of the robbery of the Pizza Hut. (R. p. 157). The solicitor then dismissed the charges related to the armed robbery of the North Charleston Inn. (R. p. 163). Thereafter, the trial judge sentenced Coaxum to an aggregate sentence of life imprisonment, and Coaxum appealed his convictions. (R. p. 173; pp. 178-179).

On appeal, the Court of Appeals reversed Coaxum's convictions and remanded for a new trial. (App'x pp. 214-215). In reaching that decision, the Court of Appeals held:

> Here, there was no evidence the juror's failure to disclose her relationship was intentional. Under Woods and its progeny, the unintentional failure to disclose does not provide an automatic ground for the trial court to remove the juror. Thus, we hold the trial court abused its discretion in removing the juror. Accordingly, we reverse and remand for a new trial.

(App'x p. 215).

ARGUMENT

Did the Court of Appeals err in reversing Coaxum's convictions based on the trial judge's allegedly improper removal of a juror during trial where Coaxum suffered no prejudice as a result of the juror's removal due to the facts that the juror was replaced with a qualified alternate juror, Coaxum received a fair trial decided by a competent and impartial jury, and the evidence of Coaxum's guilt was overwhelming?

In reversing Coaxum's convictions and remanding for a new trial, the Court of Appeals determined the trial judge erred in removing a juror during trial and replacing her with an alternate juror after the removed juror disclosed for the first time during trial that she knew Coaxum's family members. The Court of Appeals' decision was erroneous. Initially, Coaxum suffered no prejudice as a result of the removal of the challenged juror because the juror was replaced with a qualified alternate juror and Coaxum's case was decided by a fair and impartial jury. Thus, absent some resulting prejudice, any trial error in the removal of the challenged juror did not warrant reversal. Additionally, Coaxum received a fair trial decided by a competent and impartial jury, which was all he was entitled to under the law. Furthermore, even if the removal of the challenged juror had resulted in some articulable prejudice, any error was entirely harmless in light of the overwhelming evidence of Coaxum's guilt presented during trial. For those reasons, the decision of the Court of Appeals should be reversed, and Coaxum's convictions should be affirmed.

A. Receipt of a Fair Trial

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Errors of law that are not prejudicial do not warrant reversal. State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "The burden is upon the appellant to satisfy [the appellate] court that there has

been **prejudicial** error." State v. Smith, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956) (emphasis added).

Critically, the requirement that an error must be prejudicial before reversal is warranted applies to rulings on the excusal of a juror. State v. Rogers, 263 S.C. 373, 382, 210 S.E.2d 604, 609 (1974). Therefore, unless an appellant demonstrates prejudice from the excusal of a juror, the appellant is not entitled to a new trial on that basis. Cf. State v. McDaniel, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980) ("[T]he procedure employed by the trial court, however irregular, was not sufficient to deprive appellant of his right to a jury trial. There is no right to be tried by a jury composed of particular individuals. The alternate juror had been approved by both sides at the inception of the trial, and there is no showing that the appellant withdrew that approval at the time of substitution. Moreover, appellant has failed to establish in what manner this procedure prejudiced him." (citations omitted)).

Notably, while a criminal defendant has a constitutional right to a fair trial by **an** impartial jury, a defendant in South Carolina does not have a right to a trial by a jury composed of any particular jurors. See Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) ("[T]his Court has held that a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury."); see also U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury**[.]" (emphasis added)); S.C. Const. art. I, § 14 ("The right to trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial **by an impartial jury**[.]" (emphasis added)). Thus, the removal of a particular juror from an otherwise competent and impartial jury is insufficient to constitute a denial of a defendant's right to

a jury trial so long as the impartiality of the jury is not compromised.[6] See McDaniel, 275 S.C. at 224, 268 S.E.2d at 586 (finding the trial judge's removal of a juror who was observed making improper remarks and gestures and replacement of the juror with an alternate did not deprive McDaniel of his right to a jury trial because "[t]here is no right to be tried by a jury composed of particular individuals").

In State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 52 (1996), a juror walked over and shook hands with a reverend he knew who was sitting next to Williams at the counsel table at the conclusion of the second day of Williams' trial. After finding a problem "may have arisen" based on the fact that the reverend was sitting next to Williams, the trial judge removed the juror and replaced him with an alternate juror. Id. Thereafter, Williams was convicted, and he appealed. Id. at 458, 469 S.E.2d at 51. On appeal, Williams challenged the removal of the juror, and this Court initially found the

[6] Notably, a juror has a constitutionally-protected right to serve on a jury without suffering from improper discrimination based on race, gender, religious beliefs, or some other unconstitutional basis. See J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 141-142 (1994) (prohibiting discrimination in the jury selection process on the basis of gender and instructing that all prospective jurors "have the right not to be excluded summarily because of discriminatory and stereotypical presumptions that reflect and reinforce patterns of historical discrimination"); see also State v. Sapp, 366 S.C. 283, 290, 621 S.E.2d 883, 886 (2005) ("The exclusion of venire persons simply because they voice general objections to the death penalty or express conscientious or religious scruples against its infliction is unconstitutional."); State v. Floyd, 353 S.C. 55, 58, 577 S.E.2d 215, 216 (2003) (holding a juror's constitutional rights were violated after the jury was excused based on the juror's religious principles); State v. Adams, 322 S.C. 114, 125, 470 S.E.2d 366, 372 (1996) ("When the trial court improperly upholds such [racially discriminatory peremptory] challenges, there has been a violation of the stricken jurors' Fourteenth Amendment equal protection rights."). However, the right to serve on a jury without suffering from impermissible discrimination belongs to the juror and not a party to the trial. State v. Garris, 394 S.C. 336, 353, 714 S.E.2d 888, 897 (Ct. App. 2011). Accordingly, a party to a trial can only challenge the improper removal of a juror where the party suffers some cognizable injury or prejudice as a result of the juror's removal, which unquestionably occurs when a juror is excused in an unconstitutionally-discriminatory fashion. See Powers v. Ohio, 499 U.S. 400, 410-411 (1991) ("We have recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: The litigant must have suffered an 'injury in fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute . . . ; the litigant must have a close relation to the third party . . . ; and there must exist some hindrance to the third party's ability to protect his or her own interests. . . . The discriminatory use of peremptory challenges by the prosecution causes a criminal defendant cognizable injury, and the defendant has a concrete interest in challenging the practice. This is not because the individual jurors dismissed by the prosecution may have been predisposed to favor the defendant; if that were true, the jurors might have been excused for cause. Rather, it is because racial discrimination in the selection of jurors 'casts doubt on the integrity of the judicial process,' . . . and places the fairness of a criminal proceeding in doubt." (citations omitted)).

issue was not preserved for appellate review. Id. at 459, 469 S.E.2d at 52. However, critically, this Court further determined that Williams suffered no discernible prejudice from the removal of the juror based on the fact that the juror was replaced with a qualified alternate juror. Id. at 460, 469 S.E.2d at 52. In reaching that conclusion, this Court specifically noted that a defendant has "no right to be tried by a jury composed of particular individuals." Id.

Just as in Williams, the challenged juror removed in Coaxum's case was replaced by a qualified alternate juror, and Coaxum received a fair trial decided by twelve competent, impartial jurors. Critically, nothing appearing in the record suggests that the jury that ultimately decided Coaxum's case was composed of anything other than fair, competent, qualified, and impartial jurors. Furthermore, nothing appearing in the record suggests that the alternate juror who was seated in the removed juror's place was unqualified in any articulable way. In fact, Coaxum had an opportunity to exercise a peremptory challenge on the seated alternate juror during the jury selection process but found no reason to do so at the time. Therefore, the competency and impartiality of the jury in Coaxum's case was not adversely impacted by the removal of the challenged juror, and, thus, Coaxum suffered no prejudice as a result of the juror's removal.

Because the dismissed juror was replaced with a qualified alternate juror and Coaxum received everything he was entitled to pursuant to his constitutional right to trial by a fair and impartial jury, there was no justifiable basis to reverse the verdict returned in Coaxum's case by a fair and impartial jury. See Rogers, 263 S.C. at 382, 210 S.E.2d at 609 ("[T]he law is well settled that the defendant has no right to a trial by any particular jury or jurors and has the right only to a trial by a competent and impartial jury."); see also United States v. Gonzales-Balderas, 11 F.3d 1218, 1222 (5th Cir. 1994) ("In any

event, Gonzales-Balderas does not contest the impartiality of the panel that actually judged his case. This is fatal to his objection. We held in Prati that improper removal of a member of the venire is not grounds for reversal in a non-capital case unless the jurors who actually sat were not impartial within the meaning of the sixth amendment."); Lowry v. State, 963 So. 2d 321, 327 (Fla. Dist. Ct. App. 2007) ("Even if there was error [from the removal of a juror], it was harmless because the juror was replaced by a duly selected alternate who was present for the entire proceedings, and we could conclude beyond a reasonable doubt that using the alternate did not affect the verdict."); Ortiz v. State, 835 So. 2d 1250, 1251 (Fla. Dist. Ct. App. 2003) ("[A]ny error in removing a sleeping juror was harmless because the juror 'was replaced by a duly selected alternate who had been present during the entire proceedings and appellant has not shown that he was prejudiced by the substitution.' " (citations omitted)); State v. Stafford, 255 Kan. 807, 823, 878 P.2d 820, 831 (Kan. 1994) ("A defendant has no right to any particular juror or to the original 12 jurors who are impaneled to hear a case."); Myers v. State, 58 Md. App. 211, 234-235, 472 A.2d 1027, 1039 (Md. Ct. Spec. App. 1984) (finding the trial judge's removal of a seated juror based on a clear factual error to be harmless and non-prejudicial where the juror was replaced with a qualified alternate and the jury that decided the case was not objectionable); Grant v. State, 205 P.3d 1, 16 (Okla. Crim. App. 2009) (declining to reverse the trial judge's decision to remove a seated juror over Grant's objection after determining Grant suffered no prejudice from the juror's removal due to the fact that the juror was replaced with a qualified alternate juror); Thornburg v. State, 985 P.2d 1234, 1244 (Okla. Crim. App. 1999) ("Although Juror Collins may have been improperly removed, she was replaced by an alternate juror who had been passed upon by both the State and defense. Appellant has shown no prejudice from having his case decided by

alternate Juror Boren rather than Juror Collins and we decline to find any. Reversal is not warranted."); see, e.g., Anderson v. Dun & Bradstreet, Inc., 543 F.2d 732, 735 (10th Cir. 1976) ("A party to a lawsuit has no vested right to any particular juror; the right of challenge is the right to exclude incompetent jurors, not to include particular persons who may be competent."); Lee v. State, 340 Ark. 504, 514, 11 S.W.3d 553, 559 (Ark. 2000) ("[A]n appellant must show prejudice, when the trial court removes a juror and seats an alternate in the juror's place."); Heinze v. State, 309 Ark. 162, 164, 827 S.W.2d 658, 659 (Ark. 1992) ("[T]he appellant argues that the trial court erred in excusing a juror during the trial when it was discovered that the juror was not a registered voter and seating an alternate juror, Mrs. Ward, in his place. The quick answer to this issue is that the appellant has not shown how he was prejudiced by the seating of the alternate juror. This court has repeatedly held that an appellant must show prejudice, because we will not reverse for harmless error."); People v. Johnson, 757 P.2d 1098, 1100 (Colo. Ct. App. 1988) ("Although defendant is entitled to a trial by a fair and impartial jury, he is not entitled to any particular jury. Moreover, defendant has failed to show that the remaining jurors were unfair or biased, or that he was actually prejudiced by the dismissal and replacement of this particular juror. Prejudice will not be presumed." (citations omitted)); State v. Pettigrew, 116 N.M. 135, 141, 860 P.2d 777, 783 (N.M. Ct. App. 1993) ("The alternate juror who replaced the excused juror was . . . selected and approved by Defendants along with the excused juror. Defendants presented no evidence to show that the alternate juror was biased, partial, or disqualified for any reason. When a seated juror is excused and replaced by an alternate juror prior to deliberations, the verdict is not affected, and a defendant is considered to have been tried by the same jury. . . . [W]e hold that Defendants in this case have failed to show that the substitution of an alternate

juror interfered with their ability to receive a fair trial or prejudiced them in any way." (citations omitted)). Accordingly, in light of the lack of prejudice resulting from the removal of the challenged juror, the Court of Appeals erred in reversing Coaxum's convictions and remanding for a new trial, which, notably, would again be decided by a fair and impartial jury **not** containing the removed juror.

Prior to the Court of Appeals' decision in the case sub judice, no criminal conviction had previously been overturned by a South Carolina appellate court based solely on the improper removal of a juror during trial.[7] Notably, in State v. Stone, 350 S.C. 442, 449, 567 S.E.2d 244, 248 (2002), this Court determined that the trial judge abused his discretion in removing a juror during the penalty phase of a capital trial after finding the juror did not intentionally fail to disclose relevant information and the information the juror failed to disclose would not have supported a challenge for cause or a peremptory strike. However, after finding the trial judge's removal of the juror constituted an abuse of discretion, this Court then found **reversible** error in the trial

[7] In Greer v. Norvill, 21 S.C.L. (3 Hill) 262, 265 (1837), the Court of Appeals reversed a civil judgment based on a juror's decision to excuse himself with the permission of the trial judge after counsel for the plaintiff raised an objection to the juror following the commencement of trial. In reaching that result, a majority of the Court of Appeals concluded: "After a trial has commenced, and the jury is charged with the case, no juror can withdraw except from necessity, the consent of the parties, or the permission of the law; as where a juryman is taken ill, is withdrawn to make a mis-trial, or where the term has expired before the termination of the case. As soon as the trial commences the parties acquire their rights, and can compel the jury charged with the case to decide on it." Id. at 263. After finding the juror was improperly prompted to excuse himself during the trial, the majority remanded the case for a new trial even though it determined the new trial would likely result in the same verdict. Id. at 265. Notably though, subsequent to the majority's decision in Greer, appellate courts in South Carolina have determined that a trial error generally must result in some articulable prejudice to one of the parties to a case in order to warrant reversal on appeal, including an error involving the excusal of a juror. See King, 367 S.C. at 136, 623 S.E.2d at 867 ("Error without prejudice does not warrant reversal."); see also Rogers, 263 S.C. at 382, 210 S.E.2d at 609 ("[T]he general principle that error must be prejudicial in order to be ground for reversal applies to rulings on excusing a juror."). Moreover, the majority's holding in Greer has been called into question and implicitly overruled by this Court's decisions in more recent cases in which the replacement of a juror during trial with a qualified alternate juror was found not to constitute reversible error even if the juror's replacement was improper due to the lack of resulting prejudice to the appellant. See Williams, 321 S.C. at 460, 469 S.E.2d at 52 ("[W]e discern no prejudice to Williams from the seating of the alternate juror here."); McDaniel, 275 S.C. at 224, 268 S.E.2d at 586 (finding the removal of a juror during the middle of trial was not prejudicial where the removed juror was replaced with a qualified alternate juror).

judge's failure to instruct the jury on statutory mitigating factors and Stone's ineligibility for parole. See id. at 450, 567 S.E.2d at 248 ("Accordingly, the trial court's refusal to instruct on the statutory mitigating circumstances of S.C. Code Ann. § 16-3-20(C)(b)(6) & (7) and its instruction concerning voluntary intoxication require reversal."); id. at 452, 567 S.E.2d at 249 ("Accordingly, the trial court's failure to instruct that Stone would be ineligible for parole if sentenced to life imprisonment requires reversal."). Thus, this Court's decision in Stone did not stand for the proposition that the improper removal of a juror alone constitutes reversible error without any showing of prejudice. Instead, this Court has consistently required a showing of prejudice before reversing a conviction based on the removal of a juror who is subsequently replaced with a qualified alternate juror. Cf. Williams, 321 S.C. at 460, 469 S.E.2d at 52 (finding no reversible prejudice resulted from the removal and replacement of a juror at the end of the second day of trial); McDaniel, 275 S.C. at 224, 268 S.E.2d at 586 (finding the removal of a juror during the middle of trial was not sufficient to deprive McDaniel of his right to a jury trial because the juror was replaced with a qualified alternate, which resulted in no prejudice to McDaniel). Accordingly, the Court of Appeals erred in reversing Coaxum's convictions without identifying any prejudice that resulted from the removal of the challenged juror and the replacement of that juror with a qualified alternate juror. See Rogers, 263 S.C. at 382, 210 S.E.2d at 609 ("[T]he general principle that error must be prejudicial in order to be ground for reversal applies to rulings on excusing a juror.").

Significantly, the societal costs resulting from a retrial are substantial and should only be sustained in situations where the defendant suffered some actual prejudice as the result of an alleged trial error. See United States v. Mechanik, 475 U.S. 66, 72 (1986) ("The reversal of a conviction entails substantial social costs: it forces jurors, witnesses,

courts, the prosecution, and the defendants to expend further time, energy, and other resources to repeat a trial that has already once taken place; victims may be asked to relive their disturbing experiences. . . . These societal costs of reversal and retrial are an acceptable and often necessary consequence when an error in the first proceeding has deprived a defendant of a fair determination of the issue of guilt or innocence. But the balance of interest tips decidedly the other way when an error has had no effect on the outcome of the trial." (citations omitted)); see also Calderon v. California, 525 U.S. 141, 146 (1998) ("The social costs of retrial or resentencing are significant. . . . The State is not to be put to this arduous task based on mere speculation that the defendant was prejudiced by trial error; the court must find that the defendant was actually prejudiced by the error." (citations omitted)). In Coaxum's case, Coaxum received a fair trial decided by twelve competent, qualified, and impartial jurors, which was all Coaxum was entitled to under the law. See State v. Evins, 373 S.C. 404, 416, 645 S.E.2d 904, 910 (2007) ("[A] defendant has no right to trial by a particular jury."); State v. Bonneau, 276 S.C. 122, 126, 276 S.E.2d 300, 302 (1981) ("The defendant was entitled to a fair trial, but not necessarily one satisfactory to him. This he has had."); see also Delaware v. Van Arsdall, 475 U.S. 673, 681 (1986) ("As we have stressed on more than one occasion, the Constitution entitles a criminal defendant to a fair trial, not a perfect one."). The Court of Appeals erred in reversing Coaxum's convictions based on the allegedly improper removal of a juror without first determining Coaxum suffered some articulable prejudice as a result of that error. See United States v. Nelson, 102 F.3d 1344, 1349 (4th Cir. 1996) ("A finding that a district court acted on an irrelevant legal basis or lacked factual support for the conclusion that a juror was unable or disqualified to perform his duty amounts to a finding that the court abused its discretion. To obtain a new trial, however, the objecting

party must nevertheless establish prejudice."). Because the removed juror was replaced with a qualified alternate juror in Coaxum's case, Coaxum suffered no prejudice as a result of the removal of the challenged juror. Accordingly, his convictions should not have been reversed and his case should not have been remanded for retrial as the result of a non-prejudicial error. See State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) ("While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal."); see, e.g., Thomasko v. Poole, 349 S.C. 7, 17, 561 S.E.2d 597, 602 (2002) ("It is well established that an appellant seeking reversal of a decision by the trial court must show both error and prejudice."). The decision of the Court of Appeals should be reversed, and Coaxum's convictions should be affirmed.

B. Harmlessness of Any Error in Light of the Overwhelming Evidence of Guilt

After an error is discovered, the appellate court must then determine whether the error was harmless. See State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "When guilt has been conclusively proven by competent evidence

such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

In the case at bar, the evidence of Coaxum's guilt was absolutely overwhelming, rendering any error in the removal of the challenged juror harmless. Turning to the evidence presented during trial, Coaxum was positively identified as the gunman involved in the robbery of the Pizza Hut by one of the victims both shortly after the crime without any hesitation and in the courtroom during trial. Similarly, a security guard working at the North Charleston Inn at the time of the robbery identified Coaxum as the gunman involved in the robbery of the motel both shortly after the crime and in the courtroom during trial, and he further linked Coaxum to the orange car involved in the police chase after the robberies. In addition to the eyewitness identifications of Coaxum as the robber, Detective Patrick testified that Coaxum's accomplice identified Coaxum as the gunman in the robberies following his arrest shortly after the crimes were committed. Furthermore, Coaxum was arrested within minutes of the robberies after he attempted to flee from officers trying to stop his vehicle, engaged in a high-speed chase, crashed his car into a fire hydrant, and was struck by a police vehicle as he attempted to flee from the wreck on foot. See, e.g., Illinois v. Wardlow, 528 U.S. 119, 124 (2000) ("Headlong flight – wherever it occurs – is the consummate act of evasion: It is not necessarily indicative of wrongdoing but it is certainly suggestive of such."). Finally, following Coaxum's flight and arrest, officers discovered the sawed-off shotgun used in the robberies in the front seat of Coaxum's vehicle and over $1,000 in cash in the pockets of Coaxum's pants. Collectively, the evidence presented during trial conclusively established Coaxum's guilt.

Based on the absolutely overwhelming evidence of guilt consisting of the positive in-court and out-of-court identifications of Coaxum as the gunman in the robberies, the accomplice's statements to police implicating Coaxum in the crimes, Coaxum's unsuccessful attempts to flee from officers both in a vehicle and on foot, the discovery of the weapon used during the robberies in the car that Coaxum fled in, and the discovery of a substantial quantity of money in Coaxum's pockets, Coaxum's guilt was conclusively established beyond a reasonable doubt. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt). The removal of the challenged juror could not have had any impact on the strength of the evidence presented during trial and could not have affected the verdict in light of the overwhelming nature of the evidence presented. See Fletcher, 379 S.C. at 25, 664 S.E.2d at 484 ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."). Accordingly, since the removal of the challenged juror, who was replaced with a competent and qualified alternate juror, could not have had any impact on the verdict in Coaxum's case, there was no practical or compelling reason warranting the reversal of Coaxum's convictions based on an error that did not have and could not have had any actual impact on the verdict. See Bailey, 298 S.C. at 5, 377 S.E.2d at 584 ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result."). Therefore, any error resulting from the removal of the challenged juror was harmless.

The Court of Appeals erred in reversing Coaxum's convictions without first considering the materiality of the error in the improper removal of the juror in relation to

the case as a whole. See United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]"). Based on the nature of the asserted error in relation to the case as a whole, any error was entirely harmless in light of the insubstantial nature of the error coupled with the overwhelming evidence of Coaxum's guilt. See Van Arsdall, 475 U.S. at 681 ("[A]n otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt. The harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence . . . and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error." (citations omitted)). Coaxum suffered no prejudice as a result of the removal of the challenged juror and, thus, was not entitled to a reversal of his convictions based on the removal of that juror. As a result, the decision of the Court of Appeals should be reversed, and Coaxum's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals be reversed and vacated and the judgment and conviction of the trial court be affirmed.

Respectfully submitted,

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October 25, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2012-206607

THE STATE,

Petitioner,

vs.

WILLIAM COAXUM, SR.,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Petitioner complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Brief of Petitioner on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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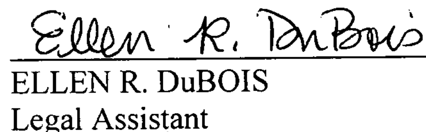
I further certify that all parties required by Rule to be served have been served. This 25th day of October, 2013.



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