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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

PETITION FOR REHEARING

On July 1, 2026, this Court held that "the trial court erred by excusing Juror 191 without making an inquiry into whether the trial court could accommodate his hearing impediment." *State v. Lee*, Op. No. 6151 at *5 (S.C. Ct. App. filed July 1, 2026).

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the State requests that this Court rehear this matter because the trial court's determination that Juror 191 was disqualified to serve was based not on Juror 191's hearing difficulties, but rather on Juror 191 belatedly informing the trial court that he only heard *some part* of the voir dire questioning due to his hearing difficulties. As a trial court is only required to conduct an individual voir dire at the request of either party, the trial court here had no obligation to conduct additional voir dire

questioning, which Appellant notably never requested. *See* S.C. Code Ann. § 14-7-1020 ("The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection.").

The Court's initial citations to South Carolina authority make it clear that a trial court has the final determination regarding a juror's qualification to serve which must not be disturbed on appeal. *See* S.C. Code Ann. § 14-7-1010 ("The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law."); S.C. Code Ann. § 14-7-810 ("[N]o person is qualified to serve as a juror in any court in this State if: . . . [h]e is incapable by reason of . . . physical infirmities to render efficient jury service *The trial judge must make the final determination of the qualifications of a juror as set out in this section and his decision must not be disturbed on appeal.*" (emphasis added)).

Further, the South Carolina authority cited by this Court specifically states that a juror's competence is within the trial court's discretion and is not reviewable—much less reversible—on appeal unless **wholly unsupported** by the record. *See State v. Gaskins*, 284 S.C. 105, 113, 326 S.E.2d 132, 138 (1985) ("A juror's competence is with the trial judge's discretion and not reviewable unless *wholly unsupported* by the evidence." (emphasis added) (quoting *State v. Spann*, 279 S.C. 399, 402, 308 S.E.2d 518, 520 (1983))).

Moreover, the South Carolina authority cited by this Court also specifically states that if a reasonable basis exists from which the trial court could have concluded the potential juror would not have been able to discharge their duties as a juror, then appellate courts will not disturb the disqualification. *See State v. Wise*, 359 S.C. 14, 23-24, 596 S.E.2d 475, 479 (2004) ("An appellate

court will not disturb the trial court's disqualification of a prospective juror when there is a *reasonable basis* from which the trial court could have concluded the juror would not have been able to faithfully discharge his responsibilities as a juror under the law."). Trial courts have wide discretion in conducting voir dire. *See State v. Dawkins*, 268 S.C. 110, 111, 232 S.E.2d 228, 228 (1977) (noting that a trial court has wide discretion in conducting voir dire examination).

Here, as the trial court stated, the issue was not whether Juror 191 could hear. (R. 78-79). Instead, the issue was that Juror 191, by his own **late** admission, did not hear all the voir dire questioning. (R. 78-79, 117). As the trial court indicated, it could not be sure that Juror 191 did not have a disqualification based on potential witnesses or other disqualifying attributes because Juror 191 did not hear all voir dire questions. (R. 117). Moreover, the trial court had a conversation with Juror 191 on the record where the trial court would have been able to assess, in an informal capacity, Juror 191's hearing ability. (R. 78-79). Juror 191 stated, without prompting, that he had a growth in his ear that caused his hearing impairment. (R. 79). Thus, the trial court did inquire and determine that Juror 191 could not discharge the duties of a juror based on Juror 191's own admission that he did not hear everything that was asked of him during voir dire questioning.

The record supports the trial court's determination that Juror 191 was not qualified to sit as the second alternate juror based on Juror 191's *late* admission that he did not hear all of voir dire. The trial court had a reasonable basis to conclude Juror 191 would not have been able to discharge his duties because Juror 191 did not inform the trial court at any time during voir dire that he was unable to hear any part of the questioning. Instead, Juror 191 waited until specifically asked by the trial court at the end of jury selection, which indicated that Juror 191 might not speak up if he did not hear something at trial unless specifically asked. This should have been the end of this Court's analysis as South Carolina law does not permit further invasion of the trial court's discretion

on appeal when the record supports the trial court's decision and where a reasonable basis to conclude the potential juror would not be able to discharge their duties exists. *See State v. Maxey*, 218 S.C. 106, 110, 62 S.E.2d 100, 102 (1950) ("The findings of the trial court on questions of fact relating to the fitness of a juror are conclusive, and will not be disturbed on review unless manifestly erroneous. This principle of law is so well established it hardly becomes necessary to cite authority to sustain it.").

This Court's reliance on foreign authority to impose a requirement on the trial court to further inquire if Juror 191's hearing loss could be accommodated is also without merit. This court need not look farther than established South Carolina law because the record supports the trial court's decision and Juror 191 provided a reasonable basis for that decision by his lack of timely disclosure and admission that he did not hear all of voir dire questioning.

Therefore, the State requests this Court revisit its opinion and hold that the trial court did not abuse its discretion in finding Juror 191 disqualified to serve as the second alternate juror when Juror 191 himself provided the support for the trial court's decision that also served as a reasonable basis to conclude Juror 191 could not faithfully discharge his duties as a juror.

Section 14-7-1020 of the South Carolina Code

The State appreciates this Court's reliance on section 14-7-1020 of the South Carolina Code to support its holding that because either party can request the trial court to conduct further voir dire questioning regarding a potential juror's indifference and biases, the trial court abused its discretion by making no effort to engage in a sua sponte voir dire questioning of Juror 191. *See* S.C. Code Ann. § 14-7-1020 ("The court shall, *on motion of either party in the suit*, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice

therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection." (emphasis added)).

However, the Court's reliance on this statute is misplaced. Appellant did not request additional voir dire questioning of Juror 191. Instead, his only request was for the trial court to inquire if Juror 191's apparent hearing impairment could be accommodated. These are not the same request. As the trial court noted, an accommodation inquiry would not have cured or addressed the concerns about Juror 191 not hearing the voir dire questioning posed to the pool of potential jurors. (R. 117). Thus, because the statute only requires further voir dire questioning *when requested*, this Court's reliance on section 14-7-1020 is inappropriate because Appellant never made such a request on the record.

Prejudice

As Juror 191 would have served as the *second* alternate juror had he been seated and no alternate jurors replaced any of the twelve jurors in this case, Appellant cannot show that he was denied a fair trial or that he was otherwise prejudiced by Juror 191's absence as the second of two non-utilized alternate jurors. (R. 666). *See State v. Bonneau*, 276 S.C. 122, 125, 276 S.E.2d 300, 301 (1981) ("It is, of course, incumbent on an appellant [on appeal] to prove that he was denied a fair trial."); *see also State v. Grovenstein*, 335 S.C. 347, 352, 517 S.E.2d 216, 218 (1999) (holding the burden was on the defendant to demonstrate prejudice on appeal where an alternate juror participated in jury deliberations). Therefore, as Appellant cannot show he suffered prejudice from Juror 191's disqualification to sit as the second alternate juror, this issue should be affirmed.

[conclusion and signature block on following page]

Conclusion

Based on the arguments set forth above as well as those in the Final Brief of Respondent, the State requests that this Court rehear this case, determine that the trial court did not abuse its discretion by finding Juror 191 disqualified to serve on as the second alternate juror, and consider the remaining six issues on appeal.

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Petition for Rehearing on E. Charles Grose, Jr., Esq., counsel of record for the Appellant, by electronic mail to the address listed for counsel in South Carolina Attorney Information System.

I further certify that all parties required by Rule 262(c) of the South Carolina Appellate Court Rules to be served have been served.

This 15th day of July 2026.



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