

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
The Honorable G. D. Morgan, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

Respondent,

v.

KEOKI KENTA HARRIS,

Appellant.

Appellate Case No. 2024-001742

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
APPELLANT’S STATEMENT OF ISSUE ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	2
STANDARD OF REVIEW	4
ARGUMENT	4
I. The trial court did not abuse its discretion in replacing the juror with an alternate because there was a basis for bias raised, an articulation from the State that a peremptory strike would have been used had the disputed relationship been disclosed, and because there is no basis for prejudice against Appellant.....	4
CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases

<i>Irvin v. Dowd</i> ,	
366 U.S. 717, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961).....	12
<i>State v. Coaxum</i> ,	
410 S.C. 320, 764 S.E.2d 242 (2014)	10, 14, 15
<i>State v. Covington</i> ,	
343 S.C. 157, 539 S.E.2d 67 (Ct.App.2000).....	10
<i>State v. Galbreath</i> ,	
359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004).....	10
<i>State v. Gulledege</i> ,	
277 S.C. 368, 287 S.E.2d 488 (1982)	9, 14
<i>State v. Ivey</i> ,	
331 S.C. 118, 502 S.E.2d 92 (1998)	10
<i>State v. McDaniel</i> ,	
275 S.C. 222, 268 S.E.2d 585 (1980)	10
<i>State v. Rogers</i> ,	
263 S.C. 373, 210 S.E.2d 604 (1974)	9
<i>State v. Rowell</i> ,	
444 S.C. 109, 906 S.E.2d 554 (2024)	9, 10, 14
<i>State v. Smith</i> ,	
338 S.C. 66, 525 S.E.2d 263 (Ct.App.1999).....	4, 9
<i>State v. Woods</i> ,	
345 S.C. 583, 550 S.E.2d 282 (2001)	14
<i>United States v. Wood</i> ,	
299 U.S. 123, 57 S. Ct. 177, 81 L. Ed. 78 (1936).....	12
<i>Washington v. Whitaker</i> ,	
317 S.C. 108, 451 S.E.2d 894 (1994)	9

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in removing a juror over defense counsel's objection where there was no legal cause or necessity to remove the juror and where upon questioning the juror affirmed that he could be fair and impartial to both sides?

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Did the trial court commit a prejudicial abuse of discretion in replacing a juror with a qualified and impartial alternate after being informed by the juror that he had a work friendship with a member of Appellant's friends and family, where the juror independently expected that the relationship might be an issue for his jury service, where his initial statement of impartiality was not fully unequivocal, and where the solicitor noted that had the relationship been revealed he would have used a peremptory strike on the juror?

STATEMENT OF THE CASE

Keoki Kenta Harris (hereinafter “Appellant”) was indicted for murder, attempted murder, and possession of a weapon during the commission of a violent crime by a Greenville County grand jury during its October 2023 term. The indictment for murder was later amended. (9/23 Tr. p. 4) The case proceeded to a jury trial before the Honorable G.D. Morgan, Jr. on September 23-25, 2024. The State was represented by Assistant Solicitors Andrew Miller and Meghan Gasser. Appellant was represented by attorneys Sara Gorski and Rachel Kepley. The jury found Appellant guilty on all counts, and the court sentenced Appellant to forty-five years imprisonment for murder, thirty years for attempted murder, and five years for the possession of a weapon charge. All sentences were ordered to run concurrently. (Tr. p. 410). Appellant has sought to appeal his conviction, and this Brief of Respondent now follows.

STATEMENT OF FACTS

On the night of October 31, 2021, Appellant went to Club Reign in Greenville, South Carolina. There, he saw his girlfriend, Treva Young (“Treva”), Treva’s ex, Patrick Clement (“Patrick”), and Treva’s cousin, Torri Pone (“Torri”). At some point during the night, Appellant said he saw Patrick trying to hold Treva’s hand while talking to her. (Tr., p. 37; 297). Appellant testified that he saw Treva jerk her hand away as if she was having a heated discussion with Patrick, so he went over to check on Treva. Patrick tried to pull Treva away from Appellant, but before Appellant could say anything Torri jumped in between them. The situation turned physical and Torri began punching Appellant. Patrick put Appellant in a chokehold while Torri continued hitting and kicking him until security broke up the fight. (Tr., p. 19-27; 32-33; 251-259).

After the fight, Patrick and Torri left while Appellant stayed inside for a few minutes talking with security. (Tr., p. 44). After exiting the club, Torri and Patrick walked to the back of the parking garage and got in Torri's car to leave. Patrick testified that as they were pulling out of the garage, Appellant approached the car with a gun in his hand and began firing on them. Patrick also testified that they did not have any weapons inside the car. (Tr., p. 67-69).

Officer Pustizzi, who was working security outside of Club Reign that night, was also witness to these events. As Appellant was exiting the club, he walked past Officers Pustizzi and Rocco in their car and waved to them. Shortly thereafter, one of the club owners came outside and told the officers to keep an eye on Appellant, so the officers exited their vehicle and began following Appellant. (9/23 Tr., p. 122-124). As the officers turned a corner, they saw Appellant at the driver's door of Torri and Patrick's stopped car. Assuming a fight was about to break out, they began assessing the situation, at which point they saw muzzle flashes and heard a volley of several gunshots. (9/23 Tr., p. 125-126). After the firing stopped, the officers approached, apprehended Appellant, and retrieved the firearm from his waistband. (9/23 Tr., p. 130-131).

After being placed under arrest, Appellant told police that he was not a part of the fight inside the club and that he did not shoot Patrick and Torri. He claimed that he heard gunshots while he was sitting in his car and only exited his car after hearing the shots. After leaving his car, he walked towards the scene, finding a "free gun" on the ground, which he took. (Tr., p. 185-186). However, during testimony at trial, Appellant admitted that this story was a lie. (Tr., p. 275).

At trial, Appellant instead claimed that after a few minutes inside on the couch he left and went to his car where some friends met up with him. (Tr., p. 260-261). From his car, Appellant saw Torri and Patrick walking past so he followed them to ask why they attacked him. Appellant stated that he did not have a weapon when he approached their car. While confronting

them, Appellant claims that Torri pulled out a gun, so Appellant wrestled for the gun, took it, and ended up shooting Torri and Patrick with it. (Tr., p. 261-270; 282; 302-305).

Patrick was shot once in the left leg, twice in the right leg, and once in the right arm. He received immediate aid from police and EMS to keep him alive and was unable to walk for two months after the shooting. (Tr., p. 69; 81). Torri was shot through his back into his neck. The bullet lacerated his left carotid artery, jugular and trachea. He was transported to the hospital where he ultimately died. (Tr., p. 150-154). Forensic analysis determined that the gun retrieved from Appellant's person was the one used to shoot Patrick and Torri. (Tr., p. 168-171).

STANDARD OF REVIEW

A decision on whether to excuse a juror and replace him with an alternate is within the sound discretion of the trial court. Appellate courts will not reverse the court's decision absent an abuse of that discretion. *State v. Smith*, 338 S.C. 66, 71, 525 S.E.2d 263, 265 (Ct.App.1999).

ARGUMENT

- I. The trial court did not abuse its discretion in replacing the juror with an alternate because there was a basis for bias raised, an articulation from the State that a peremptory strike would have been used had the disputed relationship been disclosed, and because there is no basis for prejudice against Appellant.**

Issue as it was presented at trial

Following discussion of the objections to particular proposed voir dire questions (none of which related directly to the issue presented), the court proceeded to ask the following pertinent questions of the prospective jurors:¹

1. "Is there any member of the jury panel that has ever been related by blood or marriage to either the defendant in this case or any of the two victims, Patrick Clement or Torri Adaryl Pone?"

¹ Similar questions were then asked in relation to the listed witnesses for the case, and in relation to the attorneys for the defense and the State. (9/23 Tr. p. 43-45).

2. “Is there any member of the jury panel who’s ever had any close personal or social relationship with either the defendant or Patrick Clement or Torri Adaryl Pone?”

Juror #35 (hereinafter “Mr. Brown”) did not respond affirmatively to any of these questions. However, when asked if he or any member of his family or a close personal friend had ever been a victim of or a witness to a violent crime, he informed the court that his older brother had been convicted of a violent crime about 20 years ago. When asked if he could still be fair and impartial in light of this fact, he responded: “Absolutely.” (9/23 Tr. p. 52-53; 59). Later, Mr. Brown was called and seated as a juror. At the time, Mr. Brown was the eighth seated juror, and the State still had nine peremptory strikes still available. (9/23 Tr. p. 61-70).

After opening statements, the jury was excused to take up a matter that had been brought to the prosecution’s attention. Assistant Solicitor Miller indicated that a member of the victim’s family “overheard one of the jurors talking about how they know the defendant from some previous encounter.” (9/23 Tr. p. 92-93). Assistant Solicitor Gasser followed by explaining:

Your Honor, one of the victim’s family members saw the juror, No. 4, from the left in the purple shirt seated in the front row, speak with and make a hand gesture to one of the defendant’s family members in the hallway. Obviously we would have grave concern that that was not elicited – or that that was not brought up earlier.

...

When they were walking in for selection, Your Honor, the bailiffs bring them up. Because it’s such a large group of people, they bring them up through the courthouse hallways. I do know that the defendant’s family has been here since this morning. The victim’s family did arrive while we were waiting for jury selection. She asserts that when the jury pool was being brought in that that’s when that hand gesture – it was a fist bump, Your Honor.

(9/23 Tr. p. 93-94). The court sought a bit more clarity on the issue, and it was at that time that the individual in question, whom had been sitting in the courtroom, apparently exited the courtroom

during this discussion. (9/23 Tr. p. 94-95). To address the matter, the court brought Mr. Brown out for colloquy, and the following exchange took place:

The Court: Mr. Brown? It's come to the attention that you may know someone from the defendant's family."

Juror: I know one person. I don't see him. I don't know if -- I didn't know that was his family member, but also a guy that I work with.

The Court: And you don't see him in the courtroom now?

Juror: No.

The Court: Okay. Now how do you know him?

Juror: The guy I work with or --

The Court: The guy that you saw here. Did you fist bump him when you saw him?

Juror: I did. I did and when I came in, I seen him because we used to do some business together a couple of years ago. And then when I seen him - - and then I got selected to the jury and seen him back there, I felt that that probably was gonna be an issue, especially with the guy that I work on third shift.

The Court: And you work with him on third shift?

Juror: Absolutely.

The Court: Okay. And at the time you didn't know that he was involved in this at all?

Juror: No. I've never seen the defendant or -- all I know is the guy that I work with and the guy that I did the business with.

The Court: Okay. All right. Well, let me ask you this. The fact that you do know this individual that -- or you work with him, now let me ask you this. Was it just a working relationship or did you know him personally, socially, anything like that?

Juror: No, just work environment. Never met him before. When it comes to work, outside of work, first time ever meeting him was when I got hired.

The Court: And how long ago was that? When are we talking about?

Juror: Back in April.

The Court: April of this year?

Juror: Yes.

The Court: Okay. And that was the first time you met him?

Juror: First time I ever met him.

The Court: And do you work on the same shift together?

Juror: Yeah, different departments.

The Court: Different departments?

Juror: Yes

The Court: How often do you see him during your work shift?

Juror: Maybe once a night.

The Court: Once a night?

Juror: Yeah.

The Court: And up until seeing him here, out there, did you have any relationship with him or any member of the family?

Juror: No. No. Like I said, I don't know any Harrises or anything like that, so when I seen him I was like okay, his last name is Harris, so I kind of figured that they might be related because of the T-shirt that he had on, so, yeah.²

The Court: All right. Okay. Well, I appreciate you letting me know. I'll excuse you back there. Well, let me ask you this. Considering that you do know the gentleman, you met him in April and this member – he's a member potentially of the defendant's family, could you still be fair and impartial to both sides in this case?

Juror: I could, but I guess it's up against the prosecution, what they would decide, how they feel about it.

The Court: Well, let me ask you. How do you – could you set that all aside and still be fair and impartial to both the State and the defendant in the case?

Juror: I could be.

The Court: You could be. Okay. You could set aside, view the – I mean, make a decision based solely on the evidence?

Juror: I could.

The Court: Okay. All right. Thank you, sir.

(9/23 Tr. p. 95-98). The court then asked Mr. Brown to retire back to the jury room while the matter regarding him and the member of Appellant's friends and family (hereinafter "Mr. McKelvey") was addressed.

Following the questioning, the Solicitor asked that the juror be excused and noted multiple reasons for the request. First, notwithstanding his claim that he could be impartial, he would be in daily presence at work with someone close to the defendant's family; such would be an uncomfortable position to be placed in given his duty to hear and pass judgment on the case. Second, he noted that the claim of impartiality came with the independent acknowledgment that his impartiality "is up against" the State, given the circumstances. The fact that the juror even

² According to the assertions of defense counsel, the coworker individual's last name is McKelvey. (9/23 Tr. p. 110).

spoke of this was characterized as a suggestion that a certain level of bias may exist, despite the juror's best efforts, and that the State may have more than the usual burden of proving their case to this juror. (9/23 Tr. p. 99).

In response, the defense objected to the removal of the juror. Appellant articulated that the relationship in question was only a workplace relationship between the juror and the boyfriend of Appellant's mother. She argued that the juror does not appear to know the defendant, and that the relationship is only tenuous or nebulous in nature. (9/23 Tr. p. 99-100; 104-105).

The State followed by noting that the relationship was close enough to warrant a fist-bump, and that this individual would likely be sitting in the gallery for the entirety of the trial, could extend to their third shift work during trial, that this relationship will resume after trial, and the thought of such would have an impact on the jurors mind despite his desire to remain impartial. The State later argued that had this relationship been disclosed as part of the voir dire process, the State would have exercised one of its peremptory strikes on the basis of this relationship. The State also pointed out that the juror became independently aware of the connection between this person and the Appellant's family. Mr. Brown 1) believed the individual to be a family member (the explanation and inference being based on the shirt Mr. McKelvey was wearing at the trial that apparently denoted the name "Harris" in support of the Appellant, 9/23 Tr. p. 97-98), 2) believed it may be an issue (9/23 Tr. p. 96), but 3) still failed to disclose it.³ (9/23 Tr. p. 100-103; 105-106). The arguments of these basic points continued. (9/23 Tr. p. 106-112).

The trial court found that it would not have stricken the juror for cause, because grounds did not exist to do so. (9/23 Tr. p. 107; 113). However, the court concluded a basis for discretionary

³ It also came to light that one other family member related to the Victim also knows and sees this person regularly. (9/23 Tr. p. 111-112).

excusal was presented. The court noted the strong arguments presented by both counsel but concluded that the juror did possess some relationship with a family member of the Appellant, albeit a work relationship. The court noted that the relationship was established enough to result in a fist-bump and further noted that the juror even recognized that this individual was in some way related or closely connected to the Appellant's family. The court considered such an important fact and an acknowledged concern. The court then noted that the State, credibly, would have appropriately utilized a strike had this relationship been disclosed. (9/23 Tr. p. 112-113). For those reasons, the trial court chose to excuse the juror and replace him with one of the selected alternates.

Discussion

Well established law, new precedent, and the presented facts of this case all demonstrate that there is no basis for reversal in this matter. The trial court did not abuse its discretion in removing a juror and replacing him with an alternate. Based upon the juror's confirmation of an existing work friendship, the frequency at which the two see each other, his admission that he recognized it might be a problem, his failure to disclose his concern, the lack of established prejudice against Appellant, and the State's credible assertion that had the relationship been disclosed it would have used a peremptory strike on the juror, the court was well within its discretion to excuse Mr. Brown from the case. This court should therefore affirm.

"The trial court has the solemn duty to ensure 'that every juror is unbiased, fair, and impartial.'" *State v. Rowell*, 444 S.C. 109, 113, 906 S.E.2d 554, 556 (2024) (quoting *State v. Gullledge*, 277 S.C. 368, 370, 287 S.E.2d 488, 489 (1982)). A decision on whether to excuse a juror and replace him with an alternate is within the sound discretion of the trial court, and such a decision will not be reversed on appeal absent an abuse of discretion. *State v. Smith*, 338 S.C. 66, 71, 525 S.E.2d 263, 265 (Ct.App.1999). Juror misconduct is not the sole requirement. Instead, the

potential presence of bias can trigger the discretionary decision, such decisions are not reviewable on appeal unless wholly unsupported by the record. See *State v. Rogers*, 263 S.C. 373, 381, 210 S.E.2d 604, 608 (1974); *Washington v. Whitaker*, 317 S.C. 108, 118, 451 S.E.2d 894, 900 (1994); *State v. Ivey*, 331 S.C. 118, 123, 502 S.E.2d 92, 94 (1998). Moreover, in order to warrant reversal, an appellant must do more than simply demonstrate abuse of discretion in the decision to remove a juror. He must also demonstrate that the decision to remove the juror and replace him with an alternate *prejudiced* him at trial. See *Rogers*, 210 S.E.2d 604, 609; *State v. McDaniel*, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980); *State v. Galbreath*, 359 S.C. 398, 402, 597 S.E.2d 845, 847 (Ct. App. 2004) (citing *State v. Covington*, 343 S.C. 157, 163, 539 S.E.2d 67, 69–70 (Ct.App.2000)). Appellant is not entitled to a jury of particular individuals, and in the absence of concern for partiality from his *resulting* jury, he cannot meet his burden for reversal and a new trial. *State v. Coaxum*, 410 S.C. 320, 331, 764 S.E.2d 242, 247 (2014), overruled on other grounds by *State v. Rowell*, 444 S.C. 109, 906 S.E.2d 554 (2024).⁴

Often in appellate review, the context of judging juror bias at trial involves the defense believing a certain juror harbored a bias and the decision of the court to allow that juror *to remain*. Such is not the case here. Here, we have simply the State’s concern for bias regarding Juror #35 (Mr. Brown), the excusing of the juror, and the absence of any basis for bias in the resulting alternate that replaced him. Appellant would have this Court believe that the critical question lies solely within the application of *Rowell*, the precise voir dire questions asked, and what he argues to be the limited nature of the friendship. Appellant is mistaken, both in regard to the *proper*

⁴ While *Rowell* eliminated the need to evaluate intent on the part of a juror in their nondisclosure of material information during voir dire, it did not overturn the underlying burden of proof that exist in demanding a new trial due to the excusal of a juror followed by their replacement with a sworn alternate.

inquiry which asks – was a basis for potential bias demonstrated so as to support the discretionary excusal – as well as the improper inquiry of whether juror misconduct existed. And definitively, as the matter is one of discretion for the court, Appellant fails to demonstrate that he suffered any prejudice from the court’s use of an alternate juror, and he therefore cannot be entitled to relief.

At trial the State presented a basis for which potential bias might exist. Irrespective of voir dire, the solicitor was alerted to a potential relationship existing between a member of Appellant’s friends and family, and one of the jurors. That relationship was explored, and the court was informed of the following:

- Mr. Brown, a prospective juror at the time, admittedly fist-bumped a member of Appellant’s friends and family in the courthouse while awaiting the jury selection process (9/23 Tr. p. 95, line 17 through p. 96, line 11);⁵
- This exchange was witnessed by a member of Victim’s family (9/23 Tr. p. 92-94);
- Mr. Brown stated that he did not know any Harrises, but upon seeing this coworker he surmised that his last name was Harris and that he was related to Appellant, due to the individual wearing a certain T-shirt (details of the T-shirt were not provided, but via context, it would seem that the family of Appellant had T-shirts made in solidarity) (9/23 Tr. p. 97, line 21 through p. 98, line 3);
- Mr. Brown was “then” selected to the jury (9/23 Tr. p. 96, line 8);
- Mr. Brown admitted that he felt that his coworker connection with Mr. McKelvey “probably was gonna be an issue” (9/23 Tr. p. 96, lines 9-10);

⁵ One interpretation of Mr. Brown’s explanation, albeit unclear and disjointed, would *seem* to suggest he knew *two* people in connection with Appellant. An individual he used to conduct business with a few years prior, *and* a coworker at his current job. If that was in fact Mr. Brown’s meaning, it would appear that the focus of the court and the parties was directed solely on the coworker.

- Mr. Brown explained that this individual was a coworker that also worked the third shift with him at his company, but he worked in a different department (9/23 Tr. p. 96, lines 10-13; p. 97, lines 13-15);
- Mr. Brown admitted that he would see this individual once a night at work. (9/23 Tr. p. 97, lines 16-20);
- In considering this coworker relationship, when first asked by the court if he could be fair and impartial to both sides of the case, Mr. Brown responded: “I could, but I guess it’s up against the prosecution, what they would decide, how they feel about it.” (9/23 Tr. p. 98, lines 7-14);
- According to defense counsel, Mr. McKelvey was the boyfriend of Appellant’s mother. (9/23 Tr. p. 100, lines 6-7).

Despite the absence of a *blood* relationship, which Appellant attempted to accentuate at trial, the facts demonstrate that one of the jurors has an existing coworker relationship with an individual closely connected to Appellant’s own mother. Additionally, that relationship would create circumstances where after trial, and potentially during trial, these two coworker friends may encounter each other every day at work. There are certainly relationships that could be more personal, but judging the potential for bias is not strictly a comparative exercise. “‘Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular tests and procedure is not chained to any ancient and artificial formula.’” *Irvin v. Dowd*, 366 U.S. 717, 724, 81 S. Ct. 1639, 1643, 6 L. Ed. 2d 751 (1961) (quoting *United States v. Wood*, 299 U.S. 123, 145-146, 57 S. Ct. 177, 185, 81 L. Ed. 78 (1936)). The court was well within its discretion to recognize that a work relationship existed between the two individuals sufficient enough to result in a fist-bump upon

seeing one another, and that this individual was a “family member” of the defendant. It is axiomatic that close relationships can exist with or within a family that are not strictly based on blood kinship or marriage. The spirit of voir dire is to attempt to learn of relationships that bear concern for impartiality, and a work friendship with the man that is in an intimate relationship with Appellant’s mother would certainly qualify.

It is also important to note that Mr. Brown’s first response to his ability to remain impartial was not unequivocal, both in isolation and in comparison to other responses he had given the court. In isolation, the fact that Mr. Brown would even answer the question of his impartiality with concern for it being “up against” the prosecution is concerning. While it may not be definitive in such a way as to provide a basis for excusing him “for cause,” the lack of a genuinely clear and confident response is notable and weighs in favor of the court’s decision. Also, as demonstrated in other areas of the record, when asked to affirm his ability to remain impartial despite his brother’s prior conviction, Mr. Brown responded: “Absolutely.” (9/23 Tr. p. 59, line 22). That same certainty is absent from his subsequent response, and the confidence in his answer is further diminished by Mr. Brown’s own recognition that his relationship with a family member of the defendant was “probably gonna be an issue.” Regardless of whether there was juror misconduct and regardless of whether there was *actual* bias, the basis for potential bias was presented and the court was permitted to exercise its discretion in judging the circumstances and replacing the juror. The court did so properly.

The next part of the analysis addresses Mr. Brown’s circumstances and the court’s decision in light of the voir dire. First, based upon the record, the precise questions asked of the jurors regarding relationships based upon blood or marriage with Appellant would not expressly include Mr. Brown’s friendship with Mr. McKelvey. However, Mr. Brown’s answers to the court’s

questions revealed that he believed this individual was somehow related to Appellant and/or had the last name Harris, and again, he admitted that he harbored concern for the relationship in connection to his potential service as a juror. Based upon what Mr. Brown believed at the time it is difficult to explain why he would not give notice to his connection to the family, even if he did not fully know the details of the familial relationship. It can be fairly argued that Mr. Brown possessed information he believed relevant to the voir dire and should have disclosed his coworker friendship. It can be fairly stated that any juror who independently harbors a concern about his relationship with the family of the defendant, should make such concerns known regardless of the semantics of voir dire.

Under prior precedent, the question of juror misconduct constituting bias used to require a showing of *intentional* untruthfulness or omission in relation to voir dire. See *State v. Gullledge*, 277 S.C. 368, 287 S.E.2d 488 (1982); *State v. Coaxum*, 410 S.C. 320, 328, 764 S.E.2d 242, 245–46 (2014); *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001). However, prior to the trial of this case, the South Carolina Supreme Court simplified the inquiry by removing any need to consider the distinction between intentional and unintentional nondisclosures, and focus instead on the nature of the information withheld and whether there is a suggestion of bias that arises from the circumstances. A new trial may only be ordered when prejudice is proven, by showing the concealed information reveals a potential for bias and would have made an objectively material difference in the moving party’s use of a peremptory strike or resulted in a successful challenge for cause. *State v. Rowell*, 444 S.C. 109, 116, 906 S.E.2d 554, 557 (2024).

When this test is applied to the case at hand, it again satisfies the use of discretion by the court. However, the question of juror misconduct is ultimately off the mark for the nature of the question in this case. A new trial is not being sought because of the impact of a potentially biased

juror, a new trial is being sought because a potentially biased juror was excused and replaced with an alternate juror for whom there is no disputed concern at all. Nevertheless, the court appropriately took into consideration how the newly discovered information may have impacted the party's use of peremptory challenges, had the information come to light during voir dire. The court correctly found that the State's insistence that it would have used a peremptory strike on a juror who knows and works alongside a family member of the defendant was a reasonable conclusion to argue. This type of relationship is precisely the kind that a party would seek to prohibit from the jury by way of peremptory strike. There was no abuse of discretion on the part of the trial court in excusing Mr. Brown.

Finally, and definitively, in order to prove a *reversible* abuse of discretion, an appellant must show that the court's decision was prejudicial. Appellant has failed to do so. Appellant is not entitled to any particular juror or jury. Appellant is only entitled to a fair and impartial jury, and the court provided such. The first alternate was qualified and selected by both parties without dispute. Our Supreme Court has previously ruled, even where the court's decision to excuse a juror comes under dispute, if the jury was unquestionably impartial after a specific juror's removal and replacement, a defendant is not entitled to a new trial. *State v. Coaxum*, 410 S.C. 320, 331, 764 S.E.2d 242, 247 (2014), overruled on other grounds by *State v. Rowell*, 444 S.C. 109, 906 S.E.2d 554 (2024). As the Court in *Rowell* concluded, its newly established standard "for a juror's concealment of information during voir dire *focuses on the potential bias of the juror and how the bias may prejudice a party*. This protects a party's fundamental right to a fair and impartial jury, as well as society's interest in the finality of judgments." *Id.*, at 557 (emphasis added). The potential bias was identified, discussed, and ultimately eliminated by excusing the juror. Therefore, no prejudice arises to either party, and Appellant's fundamental right to a fair and impartial jury

was properly protected. There is no basis for abuse of discretion and Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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