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STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	))))	IN THE COURT OF COMMON PLEAS CASE # 2024-CP-18-00196
Michael Edward Greco, Plaintiff, vs. Dennis Patrick Cahalan Defendant.	)))))))))	**ORDER GRANTING MOTION FOR NEW TRIAL**

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SC Court of Appeals

On July 10, 2026, this Court held an evidentiary hearing on Plaintiff's Motion for a New Trial. Present for Plaintiff Greco were Jonathan D. Graham and Michael Cooper Klaasmeyer. Present for Defendant Cahalan were Adam Yount and Carlisle Brice Allen. The Court heard testimony from Juror 86 to the following effect: In leaving court during the trial, Juror 86 followed[1] Plaintiff Greco for some time on the road. Juror 86 testified that, at that time, she observed Plaintiff Greco "driving very fast" and "well over" the speed limit. Further, the record indicates that Juror 86 did not disclose a prior acquaintance with one of the witnesses at trial, Dr. Jason Highsmith.

While the Court finds that Juror 86's conduct was unintentional, the Court must grant Plaintiff Greco's motion for a new trial because both the lack of disclosure and the external information Juror 86 received were prejudicial to Plaintiff Greco. For the reasons set forth below, the Court grants Plaintiff's Motion and orders that this case will be called for a new trial.

[1] The Court notes that the use of the word "followed" here and throughout does not imply any intent or malfeasance on the part of Juror 86. Instead, the Court uses the word to mean only "travelled behind." As the Court noted at the hearing, there is only one well-known public entrance to and exit from the courthouse's parking lot, and it is no surprise that all parties and jurors would use that path or that a juror would end up traveling behind a party.

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Relevant Factual and Procedural History

I. *Trial and* voir dire *testimony.*

This case came to trial the week of June 23, 2025. Plaintiff Greco alleged that Defendant Cahalan improperly merged into his lane, striking Plaintiff Greco's vehicle. Defendant Cahalan disputed liability, alleging instead that Plaintiff Greco undertook to pass improperly when Defendant Cahalan was already merging into the lane. The parties also disputed causation and damages.

The parties selected the jury that same day. During *voir dire*, the Court asked standard questions regarding whether any member of the jury panel knew or "was acquainted with" any witness who would be called. In doing so, the Court stated that its definition of "acquainted with" was a "very, very general definition" to encompass "any relationship with [the witnesses] at all[.]" **Exhibit A**, Trial *Voir Dire* Tr. at 7:13–19.

The Court gave two examples to define "acquainted with." First, the Court identified someone a juror "may have gone to school with … 20 years ago," whom the juror had not seen in 20 years, as a "relationship, as limited as it is, as old as it is, [that] would be encompassed in [the Court's] definition" as "acquainted with." *Id.* at 7:20–8:3. Second, the Court identified someone whom the juror "simply worked at the same location with" and merely "waved at … across the parking lot" as a relationship that, "as limited as it is, would be encompassed within [the Court's] definition of 'acquainted with.'" *Id.* at 8:4–11. The Court then asked whether any juror was "acquainted with," among other witnesses, Dr. Jason Highsmith. *Id.* at 11:1–9. In response to that question, only Jurors 41 and 50 identified any acquaintance with any doctors. *Id.* at 11:16–13:25. Juror 86 did not disclose any acquaintance with Dr. Highsmith before being selected for the jury. Jurors 41 and 50 were not selected for the short jury list subject to peremptory strikes.

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II. Plaintiff Greco's Motion for New Trial

After the jury returned a verdict for Defendant Cahalan, Plaintiff Greco timely filed a Motion for a New Trial on three grounds: first, that there had been prejudicial external influence on Juror 86 when she witnessed Plaintiff Greco driving home; second, that Juror 86 had a previous acquaintance with Dr. Highsmith that she did not disclose; and third, the thirteenth juror doctrine. Plaintiff Greco requested an evidentiary hearing to take Juror 86's testimony.

On March 25, 2026, the Court held a preliminary hearing on Plaintiff's Motion. After hearing arguments of counsel and considering the record, the Court denied the portion of Plaintiff's Motion based on the thirteenth juror doctrine but granted Plaintiff's request for an evidentiary hearing at which Juror 86 was to testify regarding the roadway observation and the nondisclosure of her acquaintance with Dr. Highsmith. That hearing was subsequently scheduled for July 10, 2026.

III. Juror 86's Testimony

At the July 10 evidentiary hearing, Juror 86 testified that she had followed Plaintiff Greco from the parking lot onto the road, where Juror 86 observed Plaintiff Greco driving "very fast," **Exhibit B**, Hr'g Tr. at 5:25–6:1, and "well over" the posted speed limit, *id.* at 17:16–19. Juror 86 further stated that the observation did not affect her verdict because she was "able to separate [her] own personal opinions versus direct evidence in front of [her]." *Id.* at 13:1-5. Juror 86 also denied sharing her observations with her fellow jurors. *Id.* at18:19–24.

Regarding Dr. Highsmith, Juror 86 testified that her first case during a surgical internship was with Dr. Highsmith. Juror 86 specifically testified that she "remember[ed] being asked a question of how long have you known [Dr. Highsmith]." *Id.* at 9:8–17. The Court asked whether Juror 86 "stood up and [] said whatever you said," and Juror 86 replied, "If I can remember

correctly, yes." *Id.* at 9:20–23. Juror 86 testified that she would defer to the record, but she did "remember standing up." *Id.* at 10:23–11:2. Juror 86 nevertheless denied considering herself "acquainted with" Dr. Highsmith. *Id.* at 18:9–12.

Legal Standard

"When an allegation is made that extraneous information may have improperly influenced jurors, the [r]elevant factors to be considered … are the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice." *State v. Galbreath*, 359 S.C. 398, 402, 597 S.E.2d 845, 847 (Ct. App. 2004). The Court may consider a juror's testimony about "whether any outside influence was improperly brought to bear upon any juror," Rule 606(b), SCRE, but not the effect of that outside influence on "the jurors' deliberative process." *State v. Murdaugh*, 448 S.C. 1, 27, 931 S.E.2d 294, 308 (2026). "External influence" includes information dealing with the parties when such "information reaches a juror without being introduced in evidence." *State v. Galbreath*, 359 S.C. 398, 405, 597 S.E.2d 845, 848–49 (Ct. App. 2004) (citing *State v. Robinson*, 336 N.C. 78, 443 S.E.2d 306, 329 (1994)).

Parties to litigation enjoy the constitutional right to a fair trial by an impartial, unbiased, and fair jury, and this Court has a "solemn duty" to safeguard that right. *State v. Rowell*, 444 S.C. 109, 113, 906 S.E.2d 554, 556 (2025). Where a juror conceals 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 116, 906 S.E.2d at 557 (overruling the "intentional versus unintentional" framework). The Court must consider whether "the concealed information reveals a potential for bias *and* would have made an objectively material difference in the moving party's

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use of a peremptory strike or resulted in a successful challenge for cause." *Id.* at 116–17, 906 S.E.2d at 557 (emphasis in original).

Analysis

I. Juror 86's reception of highly prejudicial extraneous information warrants a new trial.

The Court first exercises its discretion to order a new trial because Juror 86 received extraneous prejudicial information that went to the heart of the dispute between the parties and for which no curative instruction could be issued. In observing Plaintiff Greco driving "well over" the posted speed limit, Juror 86 received external evidence about a party to this litigation—evidence on which the Court was not permitted to deliberate regarding relevance or admissibility. Indeed, had Defendant Cahalan offered similar evidence, this Court would almost certainly have excluded the proffered evidence as improper propensity evidence under Rule 404(b), SCRE. It is a well settled principle of South Carolina law that propensity evidence is highly prejudicial and may only be admitted in limited circumstances. *See, e.g.*, *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 483, 609 S.E.2d 286, 300 (2005) (noting highly prejudicial nature of evidence other accidents). The Court thus finds that Juror 86 entered deliberations having received extraneous information that was highly prejudicial.

The Court must then turn to the factors enunciated in *Galbreath*: (1) the number of jurors affected; (2) the weight of the evidence properly before the jury; and (3) the likely effectiveness of curative measures. *See* 359 S.C. at 402, 597 S.E.2d at 847. Here, it is true that Juror 86 testified that only she did not share her observation with other jurors, and thus only she could have considered it. Nevertheless, state law entitles civil litigants to a jury of twelve competent and impartial jurors—not nine, ten, or even eleven. *Cf. Murdaugh*, 448 S.C. at 29, 931 S.E.2d at 308 (noting that criminal defendants are "entitled to be tried by 12, not 9 or even 10, impartial and

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unprejudiced jurors"); *see also* S.C. Code Ann. § 14-7-1050 (requiring that parties to civil cases be given twenty "competent and impartial jurors" from which to strike a jury of twelve). That a single juror received prejudicial evidence is some evidence of prejudice. Thus, while a single juror's knowledge runs less risk of prejudice to the verdict, the Court must consider it with the other factors to reach its decision.

The weight of the evidence before the jury supports a new trial. A core dispute between the parties—the dispute where the jury sided with Defendant Cahalan—was over the mechanism of and liability for the crash. This was the colloquial "he-said, he-said" case, with only the parties providing testimony as to how the crash happened. The only agreement was that the collision was a sideswipe: Plaintiff Greco alleged Defendant Cahalan merged into Plaintiff's lane improperly, while Defendant Cahalan alleged that Plaintiff Greco sped up and overtook Defendant Cahalan who was already in the process of merging. This is not a case where the weight of the evidence was overwhelmingly in favor of one party. *Cf. Galbreath*, 359 S.C. at 403, 597 S.E.2d at 847 (noting that "the State presented four witnesses who testified that Galbreath hit Rogers in the head with a shotgun"). Thus, the fact that any juror observed Plaintiff Greco driving at "well over" the speed limit introduces a significant risk of prejudice to Plaintiff Greco in the mind of that juror, since such an observation would suggest that juror adopt Defendant Cahalan's version of events on the grounds of improper propensity evidence.

The highly prejudicial nature of the evidence in question also calls into question whether any curative measures were or would have been appropriate. Propensity evidence has "the inevitable tendency … to raise a legally spurious presumption of guilt in the mind of the jurors." *State v. Lyle*, 125 S.C. 406, 417, 118 S.E. 803, 807 (1923). Because it is "highly prejudicial," evidence of other similar acts faces a "stringent standard for admissibility" when offered under an

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exception to their general exclusion. *See Branham v. Ford Motor Co.*, 390 S.C. 203, 230, 701 S.E.2d 5, 19 (2010), *superseded by statue on other grounds as recognized in Fay v. Grand Strand Regional Med. Ctr., LLC*, 412 S.C. 185, 202, 771 S.E.2d 639, 649 (Ct. App. 2015). When such evidence is received, courts give specific instructions that require jurors to limit their use of the information in deliberations and not to apply the other similar incident information to the liability portion of the trial. The parties and the Court were unaware of Juror 86's extrinsic knowledge, and thus no such instruction was requested or given. Instead, the Court gave only a generic instruction that the jurors must deliberate on the evidence presented and the reasonable inferences they might draw from that evidence. Neither was Plaintiff Greco afforded the opportunity to ask that Juror 86 be removed and an alternative juror replace her. As a result, the curative efforts would have done little to address the prejudice to Plaintiff Greco.

Taking the factors together, the Court finds a new trial warranted. That only one juror received the prejudicial information does not obviate the fact that the prejudicial information went directly to the heart of the dispute between the parties and that no adequate curative instructions were or could have been given. The highly prejudicial propensity evidence received by Juror 86 strikes at the fundamental fairness of both the trial and the verdict that this Court is charged with protecting. Plaintiff Greco was entitled to a fair trial and a fair jury of twelve; by happenstance, he received neither. Thus, Juror 86's inadvertent reception of highly prejudicial information warrants a new trial, and it is so ordered.[2]

[2] The Court is sensitive to Defendant Cahalan's concerns, expressed at the July 10 evidentiary hearing, that this is a slippery slope. Multiple times, Defendant Cahalan's counsel raised the question, "where does it end?" The Court's ruling today does not suggest that any verdict can be attacked or will be overturned simply because a juror observed a party. But the law does not, and cannot, draw the line to exclude situations where a juror, even by chance, receives objectively improper propensity evidence regarding a party. To do so would strike at the heart of a fair trial.

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II. Juror 86's nondisclosure of her acquaintance with Dr. Highsmith warrants a new trial.

Applying the new objective standard our supreme court defined in *Rowell*, the Court finds that Juror 86's nondisclosure of her acquaintance with Dr. Highsmith likewise warrants a new trial. The Court's questioning and definition made clear that the *venire* was to disclose any contact, no matter how passing, with any witness. Juror 86 was herself adamant that she stood up, indicating that she understood the call of the question. Yet the record is devoid of Juror 86's disclosure of any contact with Dr. Highsmith. Thus, she "fail[ed] to answer a material *voir dire* question." *Rowell*, 444 S.C. at 115, 906 S.E.2d at 558.

The Court's inquiry thus turns to whether "the concealed information reveals a potential for bias *and* would have made an objectively material difference" in Plaintiff Greco's use of a peremptory strike. The Court notes that the question of prejudice relates to Plaintiff's use of strikes, not to the outcome of the case. Thus, Defendant Cahalan's argument at the July 10 hearing that "the jury didn't reach damages in this case" and thus there was no prejudice to Plaintiff is unavailing, as it misapprehends the point at which a party would have been prejudiced. Even a passing contact with Dr. Highsmith in a surgical internship would have afforded Juror 86 the opportunity to form an opinion about Dr. Highsmith—one which the Court would have questioned her about but was unable to as Juror 86 did not disclose that contact. Her contact with Dr. Highsmith would also have afforded her an opportunity to form an opinion about the causation of the kinds of injuries which Plaintiff Greco alleged he suffered in this crash. A negative opinion on either of these issues could result in a negative assessment of Plaintiff Greco's credibility. As noted above, the jury had only the testimony of the parties regarding how the crash happened. As either issue could have caused a negative bias toward Plaintiff Greco's credibility, the first prong—a potential for bias—is satisfied.

The second prong—whether a reasonable plaintiff would have used his strikes differently—is also satisfied. Parties receive little information regarding potential jurors during *voir dire*, so every piece of information informs parties usage of peremptory strikes. It is reasonable that a plaintiff would not want a *venire* member who had any relationship with the plaintiff's doctor on the jury, especially in the face of little to no additional information about the nature and extent of that relationship. Asking questions regarding contact between potential jurors and the witnesses would serve no purpose if parties did not intend to employ that information in using their strikes.

Juror 86's non-disclosure, inadvertent though it may have been, warrants a new trial. The question was clear and Juror 86's actions indicate she understood it. The concealed information reveals a potential for bias, and a reasonable plaintiff would incorporate that information into his or her peremptory strike strategy. Thus, Juror 86's nondisclosure constitutes a second, independent grounds for a new trial, and it is so ordered.

IT IS THEREFORE ORDERED that the verdict in this case be vacated and that this case be called for a new trial.

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It is so Ordered!

s/Diane S. Goodstein