

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Hampton County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BARRY SMART, JR.,

APPELLANT

APPELLATE CASE NO. 2025-000777

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion by denying Appellant's motion for a new trial based on juror misconduct when Appellant learned after the trial that Juror No. 185 knew Appellant and his family, failed to disclose her relationship with Appellant and his family during *voir dire*, and later informed the jury during deliberations that Appellant was known to wear a cap similar to the one described by witnesses as being worn by the perpetrator, and was known to carry a gun, evidence that was not presented during trial and was highly prejudicial to Appellant?

STATEMENT OF THE CASE

A Hampton County grand jury indicted Appellant on August 15, 2024, for armed robbery, carjacking, and possession of a weapon during the commission of a violent crime. R. * (Indictments). His case was called to trial on March 31, 2025, before the Honorable Carmen Mullen, and a jury. Tr. 1. Assistant Solicitor Reed Evans represented the state. Jeleesa Jenkins represented Appellant. Tr. 1. On April 1, 2025, the jury found Appellant guilty as indicted. Tr. 287, ll. 3-15.

On April 2, 2025, Appellant filed a motion for a new trial. R. * (Motion for a New Trial). A hearing was held on Appellant's motion on April 9, 2025, before Judge Mullen. At the conclusion of the hearing, Judge Mullen orally denied the motion. Tr. 64, l. 25 – 67, l. 11. She then sentenced Appellant to ten years for armed robbery, ten years for carjacking, and five years for the weapons offense. All sentences were ordered to be served concurrently. Tr. 84, ll. 6-24.

This appeal follows.

STATEMENT OF FACTS

Shortly before noon on June 15, 2024, Timothy Loadholt went to Wiggins & Sons, a local hardware store in Estill. After visiting the store, Loadholt walked across the street to where his Ford F-150 truck was parked. He got into the driver's seat and placed the bag of PVC pipes he had purchased onto the passenger seat. When Loadholt turned to close the driver's door, a man was standing in the door jamb about twelve to fourteen inches from him. Loadholt asked the man "What can I do for you." The man grabbed Loadholt by the neck with his left arm and began choking him. The man demanded Loadholt "move over." Tr. 190, l. 20 – 193, l. 17. Loadholt noticed a gun in the man's waistband on his right side. The man repeatedly yelled, "Move over. I'll murder you, White M-Fer." He eventually pulled the gun from his waistband. Loadholt grabbed the gun, but could not get it from the man. The two struggled over the weapon for about a minute. Eventually, Loadholt gave the man "one really hard push" which caused the man to stumble backward. Loadholt used this opportunity to flee the truck. He ran straight back to Wiggins & Sons and told the owner, Robert Wiggins, that there was a man with a gun outside. Tr. 197, l. 23 – 205, l. 23.

When Loadholt looked back across the street, he saw the man inside his truck.¹ However, Loadholt realized that he had the key fob for the truck in his pocket so the man would be unable to drive the truck. Eventually, Loadholt saw the man walking across the street toward Wiggins & Sons. Loadholt pointed the man out to Robert Wiggins and his son, Jackson Wiggins. The man continued walking and turned left away from the store. Loadholt did not follow the man because he knew the man was armed. Tr. 205, l. 21 – 207, l. 17.

¹ Loadholt later discovered that his iPhone, which was on the center console, was missing. Tr. 209, ll. 1-4.

Loadholt described the man as Black and in his mid-twenties. Tr. 193, ll. 21-24. He was wearing gray sweatpants or jogging pants and “a dark blue woolen cap.” Loadholt said it was a winter hat, which he found odd because it was a hot summer day. The man had the hat folded up on his head, but it could have been pulled down to protect his face and ears from cold temperatures in the winter. Tr. 196, l. 19 – 197, l. 22.

While Loadholt did not know the man, he claimed he had seen him two days prior on June 13, 2024. Loadholt said that on that day, he went to Nickle Pumpers to pick up lunch for his wife and daughter. His truck was parked in a “back alley.” After he had put the take out food on his passenger seat and closed the driver’s door, he heard tapping on his window. Loadholt claimed that when he looked up, the same man was at his window. Loadholt lowered his window about six inches and the man said he needed a ride. Loadholt claimed the man was trying to open his car door. He eventually put his window up and drove away without giving the man a ride. Tr. 194, l. 2 – 196, l. 6.

Robert Wiggins, the owner of Wiggins & Sons, explained that about five or ten minutes after Loadholt left his hardware store, he came running back into the store yelling, “Bob, lock the door, lock the door. That guy has a gun.” Robert immediately looked outside. “The storefront is all glass.” The front door was glass and it was surrounded by “4-by-8 windows.” Robert saw a young man walking across the street about thirty feet in front of him. The man was wearing “almost like a lady stocking mask” from the nose down. Robert claimed he looked the man in the eyes and saw him put a gun “in his side.” According to Robert, the man continued walking toward the side of the store and into an “open lot” between the buildings. He claimed he viewed the man for about ten seconds before he disappeared. While Robert did not know the man’s name, he said he had seen the man before. He claimed the man “walked and rode bikes in the

streets of Estill for a long time” and had been in Wiggins & Sons once or twice before. Tr. 226, l. 1 – 229, l. 15.

Jackson Wiggins, Robert Wiggins’s son and the assistant manager of Wiggins & Sons, testified that about two minutes after Loadholt had purchased items and left the store, he returned “in a panic” and said he had “been held at gunpoint.” According to Jackson, Loadholt pointed to a man walking across the street in front of the store. The man walked toward the side of the building where there is a grass lot. As the man was walking, Jackson saw him “tuck something into his pants” and “cover it with his shirt.” However, Jackson did not see what the object was. Jackson claimed he “got a good look at” the man, yet only saw him for about five to seven seconds. While Jackson did not know the man’s name, he said he had seen the man “around town before” and two or three times at Wiggins & Sons. According to Jackson, the man was wearing a white shirt, black casual shorts or pants, and a “ski mask” on top of his head. The ski mask had “little eye cutouts where your eyes would go if you were to pull it over your face.” However, nothing was covering the man’s face at the time Jackson viewed him. Tr. 238, l. 9 – 245, l. 21.

Chauncey Solomon, the Chief of Police for the Estill Police Department, went to Wiggins & Sons in response to a 911 call. He spoke to Loadholt and Robert and Jackson Wiggins about what happened. The only description of the man Loadholt gave was that he was Black and had a winter hat on top of his head. Robert and Jackson only described the man as Black. Solomon immediately got into his patrol car and began looking for the man, but was unsuccessful. Solomon then visited several stores nearby to see whether they had any surveillance footage of the encounter. The only store that had surveillance footage was an auto shop about one hundred

yards away. While this camera captured the event, because of the distance, Solomon was unable to identify the perpetrator from the footage. Tr. 146, l. 17 – 154, l. 16.

Because Loadholt, Robert, and Jackson did not know the man's name and only provided a vague description of the man, Solomon "started asking questions" around town. He asked various people, "Did you hear anything? What happened? Can you give me a call and let me know what's going on?" He was told he "needed to look at Barry Smart [Appellant]" also known as "Boo Bear." Solomon had known Appellant all his life and knew Appellant's mother and grandmother. Tr. 154, l. 17 – 156, l. 19. As a result of this lead, Solomon contacted the South Carolina Law Enforcement Division (SLED) and asked its "fusion center" to provide a photographic lineup with Appellant's photograph included. Once the lineup was provided, Solomon showed the lineup to Loadholt, Robert, and Jackson separately on June 17, 2024. All three identified Appellant as the person they saw that day. Tr. 156, l. 25 – 172, l. 10. Based on these identifications alone, Appellant was arrested.

STANDARD OF REVIEW

“On appeal, the denial of a new trial motion will be disturbed only upon a showing of an abuse of discretion.” State v. Zeigler, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005) (citing State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) and State v. Smith, 316 S.C. 53, 447 S.E.2d 175 (1993)). “A denial of a new trial based on alleged jury misconduct is reviewed for an abuse of discretion.” Id. (citing State v. Covington, 343 S.C. 157, 539 S.E.2d 67 (Ct. App. 2000)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

ARGUMENT

The trial court abused its discretion by denying Appellant's motion for a new trial based on juror misconduct when Appellant learned after the trial that Juror No. 185 knew Appellant and his family, failed to disclose her relationship with Appellant and his family during *voir dire*, and later informed the jury during deliberations that Appellant was known to wear a cap similar to the one described by witnesses as being worn by the perpetrator, and was known to carry a gun, evidence that was not presented during trial and was highly prejudicial to Appellant.

Relevant Facts

During *voir dire*, the trial court asked the jury panel, "Is there anyone here who has a friendship, a special friendship, professional relationship, or just any kind of business with Mr. Smart, Jr., or anyone in his family? If so, please stand." Tr. 21, ll. 9-12. Only Juror No. 105 stood. She stated that she and Appellant grew up together and were friends. The trial court excused her. Tr. 21, ll. 13-25. Notably, Juror No. 185 did not stand and disclose that she knew Appellant and his family.

On April 2, 2025, the day after Appellant was convicted, he filed a motion for a new trial based juror misconduct. R. * (Motion for New Trial). A hearing was held on Appellant's motion on April 9, 2025, before the trial court. During this hearing, Appellant presented the testimony of two jurors: Juror No. 165 and Juror No. 185. Appellant also submitted the affidavit of a third juror, Juror No. 171, who served as the foreperson of the jury. Juror No. 171 was unavailable to testify on the day of the hearing.

Defense counsel explained at the beginning of the hearing that after Appellant's trial, members of the Fourteenth Circuit Public Defender Office spoke with "a number of the jurors who brought some things to our attention about what was said . . . during jury deliberations."

Counsel explained that it was discovered that Juror No. 165 knew the complainant, Timothy Loadholt, but did not stand during *voir dire* and disclose that he knew Loadholt. As to Juror No. 185, it was discovered that she knew Appellant, but also did not disclose during *voir dire* that she knew him. Finally, Juror No. 171, the foreperson, disclosed that Juror No. 185 knew Appellant and told the jury that Appellant was known to walk around Estill carrying a weapon. Counsel asserted that this juror misconduct deprived Appellant of a fair trial. Tr. 4, l. 22 – 6, l. 22.

Juror No. 165 testified that when he was fourteen or fifteen years old, he worked with Loadholt as part of a youth development program in Hampton.² More specifically, Juror No. 165 testified that he worked on a one time project with Loadholt planting pine trees in the community. Tr. 7, l. 9 – 9, l. 21. He maintained that he did not remember that he knew Loadholt until he later recognized Loadholt in the courtroom. Tr. 12, ll. 4-6. Juror No. 165 testified that he did not tell any of the other jurors that he knew Loadholt and his knowledge of Loadholt did not affect his verdict. He said his verdict was based solely on the evidence presented in the courtroom and the law as the court gave it. Lastly, he maintained that none of the other jurors mentioned that they knew Loadholt or Appellant nor discussed anything improper. Tr. 7, l. 9 – 9, l. 21.

Juror No. 185 testified that she is from Estill and knew Appellant, his mother, his uncle, and his grandmother. She maintained that she did not “hang” out with Appellant, but she held conversations with Appellant’s mother and grandmother, who were both present in the courtroom during Appellant’s trial (and at the post-trial hearing). She testified that at some point, although she did not specify as to when, Appellant “stayed” with her nephew. Tr. 20, l. 15

² Juror No. 165 was sixty-one years old at the time of the hearing. Tr. 9, ll. 14-16. Loadholt was seventy-four years old at the time of trial. Tr. 202, ll. 18-20.

– 21, l. 7; Tr. 23, l. 12 – 24, l. 3. Juror No. 185 later clarified, “I knew him [Appellant] by hanging around on the street. I didn’t know him as getting together, phone conversations, chilling out together, nothing like that. He chilled with my nephew, he don’t chill with me.”³ Tr. 26, l. 21 – 27, l. 2.

Juror No. 185 admitted that she told the jury during deliberations that she “knew Mr. Smart [Appellant] from the streets . . . and that he wore that cap that everyone was describing.” However, she claimed she did not tell the jury that Appellant was known to carry a gun. Tr. 21, l. 8 – 23, l. 1. When asked whether she told defense counsel and the circuit public defender something different, Juror No. 185 said that sometimes she says things and later does not remember what she said. Tr. 23, ll. 2-11.

When questioned by defense counsel, Juror No. 185 admitted that she told counsel the day before that Appellant was known to carry a gun around Estill. However, again, she denied telling the jury that Appellant was known to carry a gun and she denied telling counsel that she told the jury that Appellant was known to carry a gun. Tr. 25, l. 16 – 26, l. 18.

When questioned by another defense attorney, Juror No. 185 again admitted that she told the jury that she knew Appellant and that she knew Appellant to wear a cap that was similar to the cap that was described in the courtroom during trial. She testified that she “said a lot” during deliberations, but claimed her “words did not hinder their [the other jurors’] decision.” She subsequently admitted that she did not know whether her words affected the jury’s verdict. Tr. 28, l. 18 – 29, l. 25.

When questioned by the assistant solicitor, Juror No. 185 admitted that she had spoken to Appellant before and that Appellant knew her name prior to trial because he hung out with her

³ Juror No. 185 testified that she was fifty-six years old. The trial court noted that Appellant was thirty-eight years old. Tr. 20, l. 23 – 21, l. 3.

nephew at her sister's house. She testified that Appellant knew her and that he had seen her "in Estill every day" or every other day. While she first claimed she had never had any conversations with Appellant, she later contradicted herself and admitted that she "will speak to [Appellant] if [she] sees him." Juror No. 185 maintained that she has known Appellant for about thirty years and is close with Appellant's mother and grandmother. When Juror No. 185's mother died, Appellant's grandmother went to Juror No. 185's house. Tr. 30, l. 23 – 32, l. 24.

When the solicitor asked Juror No. 185 why she did not tell the court during *voir dire* that she knew Appellant, she claimed she was talking to the person next to her and did not hear the question. She then denied having a close, personal relationship, a business relationship, or a familial relationship with Appellant. Tr. 32, l. 25 – 33, l. 24.

Timothy Loadholt confirmed that he worked for a youth program from about 1976 to 1978 and that he knew Juror No. 165. He said Juror No. 165 was one of the "finest persons" he knew when he was younger and he knew Juror No. 165 "to be a Christian individual." However, Loadholt did not recognize Juror No. 165 in the courtroom during trial. Tr. 36, l. 13 – 38, l. 2.

Juror No. 171, who served as the foreperson of the jury, stated in her affidavit that during deliberations, "the female juror from Estill [Juror No. 185] told us that she knew Barry [Appellant]" and "she knew him to walk the streets of Estill." She further averred that "the man from Estill said he also knew Barry [Appellant] and agreed with the lady." R. * (Court's Exhibit No. 1 – Affidavit).

Stephanie Smart-Gittings, the Fourteenth Circuit Public Defender, testified that Juror No. 165 told her after the trial that he would believe anything that Loadholt said. Juror No. 165 told her that he knew Loadholt from the youth program and that Loadholt was "a really good guy" and "trustworthy." Juror No. 165 said to her, "I just believe him [Loadholt], because I know

him, I believe him.” Tr. 43, l. 11 – 45, l. 15. Smart-Gittings later clarified that Juror No. 165 did not realize he knew Loadholt until Loadholt took the stand, but at that point Juror No. 165 thought “it was okay for him to serve on the jury” because he had already disclosed that his daughter was the Clerk of Court for Hampton County. Tr. 50, l. 21 – 51, l. 25.

Smart-Gittings further testified that either Juror No. 165 or Juror No. 171 or both told her that there were two jurors from Estill, a man and a woman, “who said that they knew him [Appellant] from the streets, they knew that he walked the alley . . . and they knew he carried a gun.” Smart-Gittings clarified that Juror No. 165 and Juror No. 171 did not know that Appellant carried a gun. Juror No. 165 and Juror No. 171 said they were told by the two jurors from Estill that they knew Appellant and that they knew Appellant carried a gun in the alley. Tr. 46, l. 3 – 48, l. 3.

At the conclusion of the *in camera* testimony, defense counsel argued Appellant should be granted a new trial based on juror misconduct. Counsel focused on Juror No. 185, who admitted that she knew Appellant and his family, but failed to disclose this relationship during *voir dire*. Counsel argued that the defense would have used one of its preemptory strikes to remove Juror No. 185 if it had known about this relationship. After failing to disclose her relationship with Appellant and his family during *voir dire*, Juror No. 185 subsequently told the jury during deliberations that she knew Appellant, knew him to be around Estill, and knew that he wore a cap similar to the one that was described by the witnesses during trial. Counsel also argued that while Juror No. 185 did not admit so during her testimony, there was evidence that she told the jury that Appellant was also known to carry a gun. He concluded that this jury misconduct denied Appellant his right to a fair trial. Tr. 52, l. 23 – 57, l. 5.

The assistant solicitor argued that Juror No. 185 did not withhold any information during *voir dire* because, based on her testimony during the post-trial hearing, she was not close, personal friends with Appellant nor had any business relationship with him. He emphasized that Hampton is a very small county and people are going to know each other. The solicitor concluded that Appellant was afforded a fair jury selection and a fair trial. Tr. 57, l. 7 – 64, l. 24.

The trial court denied Appellant's motion for a new trial. The court commented, like the solicitor, that in a small town, many people know each other, and if potential jurors were asked whether they had any connection to a witness or defendant, then the court would "never get a jury in a smaller county." The court noted that it would not have removed any of the jurors for cause "as a result of knowing of somebody." However, it acknowledged that the defense may have used one of its preemptory strikes to remove one of the jurors. As to Juror No. 185, the court found that, if anything, this juror may have been biased in favor of Appellant since she knew Appellant and his family. Juror No. 185 may have given Appellant the "benefit of the doubt." The court further found that Juror No. 165 and Juror No. 185 testified truthfully during the post-trial hearing that "they listened to the evidence, they weighed the evidence." The court determined that the testimony of Timothy Loadholt, Robert Wiggins, and Jackson Wiggins during trial was "compelling and convincing." Finally, it concluded that there was no "bias or prejudice" and that the verdict was not "made in error." Accordingly, the court denied the motion for a new trial. Tr. 64, l. 25 – 67, l. 11.

Discussion

The trial court abused its discretion by denying Appellant's motion for a new trial based on juror misconduct when Appellant learned after the trial that Juror No. 185 knew Appellant and his family, failed to disclose her relationship with Appellant and his family during *voir dire*,

and later informed the jury during deliberations that Appellant was known to wear a cap similar to the one described by witnesses as being worn by the perpetrator, and was known to carry a gun, evidence that was not presented during trial and was highly prejudicial to Appellant. This extraneous evidence undoubtedly affected the jury's verdict. Such juror misconduct violated Appellant's due process rights to a fair trial and denied him fundamental fairness.

"Our state and federal constitutions guarantee a party the right to an impartial jury, and '*voir dire* can be an essential means of protecting this right.'" State v. Rowell, 444 S.C. 109, 113, 906 S.E.2d 554, 556 (2024) (citing Warger v. Shauers, 574 U.S. 40, 50 (2014); U.S. Const. amends. VI, XIV; S.C. Const. art. I, § 14). "The trial court has the solemn duty to ensure 'that every juror is unbiased, fair and impartial.'" Id. (quoting State v. Gullledge, 277 S.C. 368, 370, 287 S.E.2d 488, 489 (1982)). "Jury selection is a pivotal stage of any trial, and it is vital that jurors truthfully answer *voir dire* questions." Id. (citing Gullledge, 277 S.C. at 371, 287 S.E.2d at 490). "The trial court, the parties, and their counsel rely on these responses in assessing whether a juror should be dismissed for cause or peremptorily struck during the selection process." Id.

"The right to peremptory strikes is not constitutionally guaranteed but is granted by statute." Id. at 113-14, 906 S.E.2d at 556 (citing State v. Potts, 347 S.C. 126, 131, 554 S.E.2d 38, 40 (2001); S.C. Code Ann. § 14-7-1050; S.C. Code Ann. § 14-7-1110). "By allowing parties to reject a certain number of jurors who cannot be challenged for cause, the peremptory strike right enhances the fairness of the trial process, which in turn elevates public confidence in our justice system." Id. at 114, 906 S.E.2d at 556.

"Challenges for cause are also provided by statute. If a party challenges a juror for cause, the circuit court must examine the juror to determine if the juror 'is sensible of any bias or prejudice' about the case." Id. (quoting S.C. Code Ann. § 14-7-1020). "The challenging party

may also present supporting evidence, and the juror must be excused if ‘the juror is not indifferent to the cause.’” Id. (quoting S.C. Code Ann. § 14-7-1020).

“Where a party claims a juror has withheld material information in response to a *voir dire* question, the trial court must determine, preferably after a hearing, whether the juror’s withholding suggests bias. This will typically turn on the nature of the information withheld, rather than the nature of the juror’s state of mind in not disclosing it.” Rowell, 444 S.C. at 115, 906 S.E.2d at 557. “The ultimate question remains whether the juror was biased and whether the bias, in turn, caused prejudice.” Id.

“A new trial may be ordered only when prejudice is proven by showing the concealed information reveals a potential for bias *and* would have made an objectively material difference in the moving party’s use of a peremptory strike or resulted in a successful challenge for cause.” Id. at 115-16, 906 S.E.2d at 557. “Materiality is to be judged by an objective standard, i.e. whether a reasonable party would have exercised a strike had the requested information been disclosed.” Id. at 117, 906 S.E.2d at 558.

During *voir dire*, the trial court asked the jury panel, “Is there anyone here who has a *friendship*, a special friendship, professional relationship, *or just any kind of business with Mr. Smart, Jr., or anyone in his family?* If so, please stand.” Tr. 21, ll. 9-12. Juror No. 185 did not stand and disclose that she knew Appellant and his family. During the post-trial hearing, Juror No. 185 admitted that she had known Appellant for roughly thirty years and that she was friends with Appellant’s mother and grandmother. She described significant family connections between her family and Appellant’s family. Therefore, despite the state’s argument during the post-trial hearing, Juror No. 185 indisputably failed to answer this material *voir dire* question even though it applied to her.

This concealed information revealed Juror No. 185 had the potential for bias against Appellant and any reasonable defense attorney would have exercised a strike to prevent Juror No. 185 from sitting on the jury had this information been disclosed. The potential for bias was obvious, particularly given the facts of this case (where Juror No. 185 admitted she informed the jury that Appellant was known to where a cap similar to the one described by the witnesses as being worn by the perpetrator). Juror No. 185's relationship with Appellant and his family reasonably could have caused her to be biased against Appellant and affected her verdict. At the time Juror No. 185 was called during jury selection, Appellant had one preemptory strike remaining. There is a reasonable probability that defense counsel (or any reasonable defense attorney) would have struck Juror No. 185 had counsel known of her relationship with Appellant and his family. Consequently, Appellant was prejudiced by Juror No. 185's failure to disclose this information during *voir dire*.

Moreover, Juror No. 185 later engaged in misconduct during deliberations when she admittedly shared with the jury that Appellant was known to walk the streets of Estill wearing a cap similar to the one described by witnesses as being worn by the perpetrator. While Juror No. 185 denied telling the jury that Appellant was also known to carry a gun, there was credible evidence, through the testimony of Stephanie Smart-Gittings, that she did in fact share this damning evidence with the jury.

"In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences." State v. Covington, 343 S.C. 157, 163, 539 S.E.2d 67, 70 (Ct. App. 2000) (quoting State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998). See State v. Salters, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979) ("A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury; and, in order to fully safeguard this

basic protection, it is required that the jury render its verdict free from outside influences.”). “Where the defendant seeks a new trial on the ground of impropriety involving the jury, he is required to prove both the alleged misconduct and the resulting prejudice. Id. (citing State v. Grovenstein, 335 S.C. 347, 351-52, 517 S.E.2d 216, 218 (1999)). See State v. Smith, 338 S.C. 66, 72, 525 S.E.2d 263, 266 (Ct.App.1999) (“The general test for evaluating alleged juror misconduct is whether there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence.”).

Initially, the trial court must make a factual determination as to whether juror misconduct has occurred. Id. (citing Smith, 338 S.C. at 71, 525 S.E.2d at 266. “Only if the trial court finds a juror is guilty of misconduct must the judge determine whether the misconduct affected the verdict, warranting a new trial.” Id. (citing State v. Aldret, 333 S.C. 307, 315-16, 509 S.E.2d 811, 815 (1999)).

Here, Juror No. 185’s misconduct was undisputed. She admitted under oath during the post-trial hearing that she told the jury during deliberations that Appellant was known to walk the streets of Estill, where the carjacking and armed robbery occurred, wearing a cap similar to the one described by witnesses as being worn by the perpetrator. There was also credible evidence presented through Stephanie Smart-Gittings that Juror No. 185 also told the jury that Appellant was known to carry a gun.

Appellant was clearly prejudiced by this juror misconduct. The only evidence against Appellant was the identifications made by Loadholt and Robert and Jackson Wiggins, who all gave vague descriptions of the perpetrator, mainly identifying his race. Neither Robert nor Jackson saw the actual carjacking. They only viewed the alleged perpetrator for mere seconds as he was walking across the street. There was no physical or forensic evidence of Appellant’s

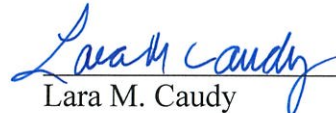
guilt nor a confession. Knowledge that Appellant was known to wear a hat similar to the hat described as being worn by the perpetrator would have affected the verdict, as would knowledge that Appellant was known to carry a gun. This extraneous evidence was highly prejudicial to Appellant.

Respectfully, this Court should hold the trial court abused its discretion by denying Appellant's motion for a new trial based on juror misconduct, reverse Appellant's convictions, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of September, 2026.