STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
Madel C. Rivero, as Personal Representative for the Estate of Lilia Lorena Blandin, Plaintiff, v. Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County, Defendant.	)	Case No. Case No. 2013-CP-23-6522 **ORDER**

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This matter is before the court on two post-trial motions filed by Defendant, Sheriff Steve Loftis, in his capacity as Sheriff of Greenville County. The first motion is pursuant to Rule 59, SCRCP, on the ground of newly discovered evidence that a juror failed to disclose information in response to a *voir dire* question that would have caused Defendant to request that she be struck for cause or would have been a material factor in Defendant's use of its peremptory jury strikes. Defendant also filed a motion pursuant to Rule 60(b), SCRCP, for relief from the jury's verdict, again based upon alleged juror misconduct in failing to disclose information during *voir dire* that would have caused Defendant to request that the juror be struck for cause or would have been material to Defendant's jury strikes.

On December 17, 2015, the court held a hearing on these motions. Present for the Defendant were Russell W. Harter and Carly H. Davis of Greenville, South Carolina. Present for the Plaintiff were J. Christopher Wilson of Bamberg, South Carolina, Daniel J. Farnsworth, Jr., of Greenville, South Carolina, and John S. Nichols of Columbia, South Carolina. After hearing arguments and carefully considering the submissions of counsel, Defendant's motions are

denied.[1]

BACKGROUND

This was a wrongful death case in which the jury returned a verdict for Plaintiff against Defendant. During *voir dire*, the court asked the following question of the jury panel:

Is there anyone among you who has been a victim of criminal domestic violence?

In response to this question, one juror alerted the court that she had been in "a criminal domestic relationship" and that she could "not likely" be fair and impartial in this case. No other potential juror responded to this question.

After the verdict Defendant made several post-verdict motions. While those motions were pending Defendant made additional motions pursuant to both Rule 59 and Rule 60, SCRCP, asserting a juror, Robin Burns, had willfully failed to disclose that she had been a victim of criminal domestic violence in response to the *voir dire* question above.[2] Defendant asserts that the *voir dire* question required her to respond, and that had she responded Defendant would have used the information to challenge her for cause or would have used a peremptory strike to remove her.

The court denies Defendant's motions for the reasons set forth below.

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[1] Plaintiff waived any objection to the following items being admitted at the hearing for the limited purpose of determining whether any further hearings are warranted: The affidavits of the Simpsonville Police Officers, the affidavit of a 9-1-1 operator, the 9-1-1 tape itself, a certified transcript of the 9-1-1 tape, and defense counsel's several affidavits. Plaintiff, however, objected to any sworn statement from juror Michael Cornish that Defendant submitted. The court sustains the objection to the statement, finding it inadmissible as set forth herein, but the remainder of the submissions were considered without objection.

[2] A party is permitted to amend a Rule 59 motion within a reasonable time after discovery of evidence of alleged juror bias and prejudice. *Gray v. Bryant*, 298 S.C. 285, 379 S.E.2d 894 (1989).

I. THE JUROR'S SWORN STATEMENT

Defendant proffered a sworn statement from juror Charles M. Cornish, Jr., one of the twelve jurors seated in this case. Plaintiff objected on the ground that the sworn statement was improper and inadmissible. The court agrees.

Rule 606(b), SCRE, expressly bars juror testimony regarding deliberations in any inquiry into the validity of a verdict. The Rule provides:

> Upon an inquiry into the validity of a verdict or indictment, *a juror may not testify as to any matter or statement occurring during the course of jury's deliberations* or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

SCRE, Rule 606(b) (emphasis added). *See also Lynch v Carolina Self Storage*, 409 S.C. 146, 760 S.E.2d 111 (Ct. App. 2014) (noting Rule 606(b), SCRE, is the same as the federal rule, and finding testimony of alleged misconduct by other jurors during deliberations to be inadmissible under rule 606(b)); *Warger v. Shauers*, 574 U.S. ____, 135 S. Ct. 521 (2014) (US Supreme Court found an affidavit of a juror to establish that the jury foreperson had lied about her impartiality to award damages based on comments the foreperson had made during deliberations concerning the foreperson's own daughter having been involved in a fatal accident and that "a lawsuit would have ruined her life" because Rule 606(b), Fed.R.Civ.P. barred this type of juror testimony which went to the jury's deliberation process).

Mr. Cornish's proffered statement under oath is not admissible under Rule 606(b). The statement references only conversations that purportedly arose during the course of deliberations,

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and Mr. Cornish's individualized interpretations of those purported conversations. These statements are purely intrinsic to the deliberation process and the proffered evidence is, therefore, inadmissible pursuant to Rule 606(b).

II. DEFENDANT'S MOTION FOR NEW TRIAL

A party seeking a new trial based upon the disqualification of a juror must show: (1) the fact of disqualification; (2) the grounds for disqualification were unknown prior to verdict; and (3) the moving party was not negligent in failing to learn of the disqualification before verdict. *Gray v. Bryant*, 298 S.C. 285, 288, 379 S.E.2d 894, 896 (1989), *citing Thompson v. O'Rourke*, 288 S.C. 13, 339 S.E.2d 505 (1986).

The court finds that Defendant failed to establish the "fact of disqualification" of Juror Burns as required by *Gray v. Bryant*. The court reviewed the 9-1-1 incident report, the 9-1-1 tape and transcript, and the affidavits of the officers who responded to the call from Ms. Burns' home. All of this evidence indicates clearly and unequivocally that Juror Burns was not a victim of Criminal Domestic Violence. The question the court posed in *voir dire* was clear and unambiguous, and there is no evidence that Ms. Burns, either objectively or subjectively, concealed information. Simply put, the record in this case, and the public record in general, clearly indicate that Ms. Burns was not the victim of Criminal Domestic Violence. Accordingly, Defendant has failed to establish the "fact of disqualification" so as to obtain a new trial based upon disqualification of a juror.

Furthermore, after the court had published a brief summary of the allegations in this case, which included the fact that a wife had been killed by her husband, the court posed the following final question in *voir dire*:

> All right, ladies and gentlemen, is there anyone among you who for whatever reason feels as though you could not be a fair and impartial juror in the trial of this case and render a verdict in accordance with the law as I give it to you?

Although one juror responded who had previously indicated her inability to be impartial, Juror Burns did not respond. By failing to respond, Juror Burns clearly indicated that she could be fair and impartial in the trial of the case, notwithstanding her prior experiences. Defendant has failed to show that Juror Burns' failure to respond during *voir dire* was untruthful or deceitful so as to rise to the level of an intentional concealment of information. *See State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998) (finding no intentional concealment where question would not elicit the information appellant claimed was intentionally concealed).

The court agrees that had the Defendant known of Juror Burns' experience with the police concerning an argument with her husband, the Defendant would surely have used a peremptory challenge to strike Ms. Burns. However, having determined that there was no concealment or non-disclosure, the point is moot. *See, e.g., Johnson v. Finney*, 246 S.C. 366, 143 S.E.2d 722 (1965) (it becomes unnecessary for court to decide question where issue is made moot and academic).

Finally, following the hearing the court took the Defendant's motions under advisement and reviewed all materials submitted by both parties. Defendant requested that the court hold a hearing, summon Juror Burns to appear and question Ms. Burns further about the *voir dire* process. After very careful consideration of Defendant's request and the record in this case, the court finds that no additional evidentiary hearing in this matter is required.

CONCLUSION

For the foregoing reasons, Defendant's motions pursuant to Rules 59 and 60 on the ground of juror misconduct are

DENIED.

Robin B. Stilwell
Circuit Court Judge

February 9, 2016