STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2016-001778

THE STATE,

Respondent,

vs.

MICHAEL GLENN HALL,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse his broad discretion on jury-related matters by refusing to remove a seated and sworn juror during trial after the juror revealed she had been involved in an altercation over three decades earlier with her ex-husband and simply had not recalled that earlier incident during the jury selection process because the juror did not intentionally conceal that information during voir dire, was not prejudiced or biased by the fact she had previously been involved in a domestic incident, and assured the trial judge she could be fair and impartial in deciding Appellant's case. However, even if the trial judge somehow abused his discretion by failing to remove the juror and replace her with an alternate juror during trial, any error was entirely harmless and resulted in no prejudice to Appellant because he nonetheless received a fair trial by a fair and impartial jury, which was all he was entitled to under the law.

STATEMENT OF THE CASE

In January of 2016, Appellant Michael Glenn Hall was arrested following an investigation into a reported attack upon the mother of his children. In March of 2016, the York County Grand Jury indicted Appellant for one count of second-degree domestic violence. On August 10, 2016, a jury trial was conducted in the York County Court of General Sessions with the Honorable John C. Hayes, III, circuit court judge, presiding. At the conclusion of trial later that day, the jury convicted Appellant of the lesser-included offense of third-degree domestic violence. Following the verdict, the trial judge sentenced Appellant to a ninety-day term of imprisonment and suspended that sentence upon the service of a one-year term of probation. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On January 4, 2016, Jasmine Blake ("Victim"), a resident of Rock Hill, South Carolina, called 911 from her parents' residence and reported an incident involving her children's father, Appellant Michael Glenn Hall, that had occurred one day earlier.[1] (Tr. pp. 42-43; p. 49; p. 51; pp. 53-54). In response, Officer Michael Long of the Rock Hill Police Department responded to Victim's location, encountered her outside of the residence, and immediately noticed Victim had bruises and scratches around her neck that looked like "finger marks." (Tr. pp. 56-57; pp. 78-81). Based on his observations, Officer Long spoke with Victim, who appeared to be scared and upset, about her injuries, and Victim informed him Appellant had assaulted her in the living room of his parents' home and put his hands on her neck during the course of an argument that occurred around 5:00 p.m. on the preceding evening.[2] (Tr. pp. 44-47; p. 50; pp. 56-58; p. 75; p. 81; pp. 83-84). Victim further revealed she had not reported the incident immediately because she was afraid of what Appellant would do in response. (Tr. p. 84). Officer Long then photographed Victim's injuries, which were consistent with the details of the assault she described, and took a written statement from Victim, who again confirmed she had been assaulted by Appellant in that statement. (Tr. pp. 57-58; p. 65; pp. 81-82; pp. 86-87). Thereafter, Officer Long obtained a warrant for Appellant's arrest, and Appellant was eventually arrested after he surrendered to law enforcement. (Tr. pp. 83-84; p. 90).

Following his arrest, Appellant was indicted for second-degree domestic violence, and he subsequently proceeded forward to trial. (Tr. p. 4; Indictment). At the outset of trial, the trial

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[1] In addition to being the father of Victim's children, Appellant was involved in a long-term romantic relationship with Victim that was ongoing at the time of trial. (Tr. pp. 42-43; p. 75). However, in January of 2016, Victim indicated the two were "broken up." (Tr. p. 43).

[2] In reporting the incident to Officer Long, Victim told the officer her children were present and with her at the time of the assault. (Tr. pp. 58-59; p. 65; pp. 82-83). However, later on during trial, Victim asserted the children were actually outside Appellant's parents' home when the assault occurred. (Tr. pp. 58-59; pp. 65-66; p. 73).

judge conducted voir dire of the prospective jurors. (Tr. pp. 11-15). During voir dire, the trial judge asked the prospective jurors if any of them: (1) were related by blood or marriage or close personal friends with Appellant, Victim, or counsel for either side; (2) had been involved in the grand jury process in Appellant's case; (3) were aware of the allegations against Appellant; (4) had formed opinions about any matter or issue involved in Appellant's case; (5) had been or had an immediate family member who had been a victim of or accused of "what [they] would consider" to be domestic violence; (6) possessed any religious, moral, or philosophical beliefs that would prevent them from being fair and impartial; (7) had any connection to law enforcement, the solicitor's office, or the public defender's office; (8) were members of or contributors to groups affiliated with law enforcement or victims' rights; (9) had any connections to the possible witnesses in the case; or (10) knew of any reasons why they could not or should not serve as fair and impartial jurors during the trial. (Tr. pp. 11-15). In response to those questions, two jurors responded affirmatively in regard to whether they had any connection to law enforcement. (Tr. pp. 13-14). However, none of the prospective jurors responded to any of the trial judge's other questions, including the question regarding whether they had previously been accused of or been the victim of domestic violence. (Tr. pp. 11-15).

Thereafter, at the conclusion of voir dire, the trial judge began the jury selection process, and the parties selected a jury for the trial. (Tr. pp. 16-21). During the selection process, defense counsel exercised all five of his peremptory challenges before Juror # 73 was called as a potential juror, and Juror # 73 was seated on the jury without objection from either side.[3] (Tr.

[3] In exercising his peremptory challenges, defense counsel exclusively used his strikes on female prospective jurors, including on one who indicated during voir dire she had a connection to law enforcement. (Tr. pp. 16-21; pp. 139-141). Notably, the other juror who indicated he had a connection to law enforcement was seated on the jury after defense counsel exhausted all of his peremptory challenges on other prospective jurors. (Tr. pp. 16-21; pp. 139-141).

pp. 16-20; pp. 139-141). Additionally, a single alternate juror was selected without objection. (Tr. p. 21). Once a jury was selected, the trial judge asked the parties whether there were any issues with the jury selection process, and neither the solicitor nor defense counsel raised any objections in regard to Juror # 73.[4] (Tr. pp. 21-23). The jury was then sworn, the trial judge made some preliminary remarks to the jury, and the parties presented their opening statements. (Tr. pp. 25-35). After that, the trial judge recessed the trial for a lunch break. (Tr. p. 35).

Subsequently, when the trial resumed, the trial judge indicated he had received a note from Juror # 73. (Tr. p. 35). In the signed note, Juror # 73 stated:

> I did not even think of this when you asked. However, it dawned on me afterward, there was an altercation between myself and my ex husband. It occurred over 31 yrs ago and it does not cross my mind. We have been divorced since 1985 and I barely recall the two year marriage. This has no effect on my judgement but it did occur and I don't want to misrepresent myself.

(Tr. pp. 35-37; Court's Ex. # 1 (Jury Note)). Based on the note, the trial judge summoned Juror # 73 to the courtroom and questioned her outside of the presence of the other jurors. (Tr. pp. 35-36). During the questioning, Juror # 73 twice affirmed she could remain fair and impartial despite the earlier incident and asserted she did not even remember when the trial judge asked the question related to domestic violence during voir dire. (Tr. p. 36).

Thereafter, following the trial judge's questioning of the juror, defense counsel moved "just in good nature" for Juror # 73 to be removed from the jury and replaced with an alternate juror. (Tr. p. 37). In support of that motion, defense counsel asserted:

> It was the question that was asked and something between when it was asked and now triggered her memory throughout our opening statement the discussion of domestic violence. As of now what I know about the incident is very vague. I just know that it was triggered or that something made her remember based off of

[4] Although no objections were raised in regard to Juror # 73, defense counsel did raise a constitutional challenge to one of the two strikes exercised by the solicitor during the jury selection process. (Tr. p. 22). However, the solicitor provided a race-neutral reason for the strike, and defense counsel abandoned his challenge. (Tr. pp. 22-23).

> the kind of just tense envi[ron]ment relating to domestic violence. So just to be safe we would ask to relieve her.

(Tr. p. 37). However, the trial judge indicated he believed the juror could remain fair and impartial and denied defense counsel's motion. (Tr. pp. 37-38).

Subsequently, the trial proceeded forward with Juror # 73 serving on the jury, and Appellant was ultimately convicted of the lesser-included offense of third-degree domestic violence at the conclusion of trial. (Tr. p. 129). Following the verdict, the trial judge sentenced Appellant to a ninety-day term of imprisonment and suspended that sentence upon the service of a one-year term of probation. (Tr. p. 136).

ARGUMENT

The trial judge did not abuse his broad discretion on jury-related matters by refusing to remove a seated and sworn juror during trial after the juror revealed she had been involved in an altercation over three decades earlier with her ex-husband and simply had not recalled that earlier incident during the jury selection process because the juror did not intentionally conceal that information during voir dire, was not prejudiced or biased by the fact she had previously been involved in a domestic incident, and assured the trial judge she could be fair and impartial in deciding Appellant's case. However, even if the trial judge somehow abused his discretion by failing to remove the juror and replace her with an alternate juror during trial, any error was entirely harmless and resulted in no prejudice to Appellant because he nonetheless received a fair trial by a fair and impartial jury, which was all he was entitled to under the law.

Appellant contends the trial judge reversibly erred by not removing Juror # 73 from the jury and replacing her with an alternate juror after she revealed during trial she had previously been involved in – and had completely forgotten about – an altercation with her ex-husband over thirty-one years earlier. In support of that contention, Appellant maintains the fact Juror # 73 was allegedly a victim of domestic violence was a potential source of bias and would have been a material factor in the exercise of his peremptory strikes.[5] Appellant further maintains he would have saved a peremptory strike for Juror # 73 if he had known about the prior domestic violence incident. Importantly though, Juror # 73 did **not** intentionally conceal the information regarding the decades-old altercation with her ex-husband and was not prejudiced or biased by the fact she had previously been involved in that altercation. Likewise, the trial judge specifically determined Juror # 73 could be fair and impartial after questioning her both during voir dire and after the information about the altercation was disclosed during trial. Under those circumstances, the trial judge did not abuse his broad discretion on jury-related matters by declining to remove the seated and sworn juror from the jury during trial and replace her with the only available

[5] Notably, despite the fact Appellant contends on appeal Juror # 73 was a prior victim of domestic violence, no information of any kind was presented during trial to establish Juror # 73 was, in fact, a victim as opposed to being the aggressor in the earlier altercation, and defense counsel did not raise such a contention to the trial judge during trial. (Tr. pp. 35-38; Court's Ex. # 1).

alternate juror. However, even assuming the trial judge's decision was somehow erroneous, any error was entirely harmless because Appellant received a fair trial by a jury comprised of fair and impartial jurors, which was all he was entitled to under the law. Therefore, the trial judge's decision not to remove Juror # 73 does not warrant a reversal of Appellant's conviction. Appellant's conviction should be affirmed.

A. Propriety of the Trial Judge's Decision Not to Remove Juror # 73

In presiding over the trial, the trial judge is entrusted with the duty to ensure a jury comprised solely of fair, impartial, and unbiased jurors is impaneled. State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998); see State v. Holland, 261 S.C. 488, 495, 201 S.E.2d 118, 122 (1973) ("It is the duty of the trial judge to assure himself that each and every prospective juror is unbiased, fair, and impartial."); see also S.C. Code Ann. § 14-7-1010 ("The presiding judge shall at each term of court ascertain the qualifications of the jurors."). If information reflecting on a seated juror's qualifications or partiality is discovered during trial, the trial judge has discretionary authority to address the situation in a number of different ways, including by proceeding forward with the trial without removing the juror, replacing the juror with an alternate juror, or declaring a mistrial. State v. Coaxum, 410 S.C. 320, 328, 764 S.E.2d 242, 246 (2014); see generally State v. Lindsey, 372 S.C. 185, 194, 642 S.E.2d 557, 562 (2007) (finding a trial judge did not abuse his discretion in declining to remove a juror and replace the juror with an alternate juror and further noting such a decision rested within the trial judge's discretion); State v. Simmons, 360 S.C. 33, 43, 599 S.E.2d 448, 452 (2004) (finding a trial judge did not abuse his discretion in removing a juror for communicating with his wife about the case in defiance of the trial judge's express admonition not to do so).

When exercising discretion in such a situation, the trial judge should look to several factors to determine if the juror's failure to disclose the discovered information could affect the impartiality of the jury. Coaxum, 410 S.C. at 328-329, 764 S.E.2d at 246; cf. State v. Sparkman, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004) ("The Court developed a two-part test to determine whether a juror's failure to disclose a potential bias warranted granting the defendant a new trial."). Specifically, the trial judge should first determine whether the juror intentionally concealed the information, which is significant because a juror's unjustified concealment of material information supports an inference the juror is not impartial. Coaxum, 410 S.C. at 328-329, 764 S.E.2d at 246; see State v. Woods, 345 S.C. 583, 587-588, 550 S.E.2d 282, 284 (2001) ("Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial."). Next, the trial judge should determine if the concealed information would have supported a challenge for cause or would have been a material factor in the use of a party's peremptory challenges. Coaxum, 410 S.C. at 328-329, 764 S.E.2d at 246. Importantly though, a juror's unintentional failure to disclose information – including material information – does not support an inference of partiality or bias, and a party objecting to the juror bears the heightened burden of establishing the juror's concealment prejudicially prevented the party from exercising a strike based on a potential material source of bias. Id. at 329, 764 S.E.2d at 246; see Woods, 345 S.C. at 589, 550 S.E.2d at 282 ("[W]here the failure to disclose is innocent, no inference of bias can be drawn.").

Significantly, a decision as to whether to dismiss a juror and replace the juror with an alternate juror falls within the sound discretion of the trial judge. State v. Bell, 374 S.C. 136, 147, 646 S.E.2d 888, 894 (Ct. App. 2007); see Simmons, 360 S.C. at 43, 599 S.E.2d at 452 (recognizing decisions regarding the removal of jurors rest in the sound discretion of the trial

judge). On appeal, an appellate court will not reverse such a decision absent a prejudicial abuse of discretion. See State v. Rogers, 263 S.C. 373, 382, 210 S.E.2d 604, 609 (1974) ("[T]he general principle that error must be prejudicial in order to grounds for reversal applied to rulings on excusing a juror."); see also Coaxum, 410 S.C. at 331, 764 S.E.2d at 247 ("[T]o receive a new trial, the defendant must show a prejudicial abuse of discretion.").

In the case sub judice, the trial judge and the parties learned earlier on during the trial Juror # 73 had previously been involved in – and had subsequently forgotten – an altercation with her ex-husband over three decades earlier, which was information that had not been revealed during voir dire. See generally BLACK'S LAW DICTIONARY 327 (9th ed. 2009) (defining "concealment" as "[t]he act of refraining from disclosure; esp., an act by which one prevents or hinders the discovery of something; a cover-up"). As a result, the trial judge had a duty to determine whether Juror # 73 could be a fair and impartial member of the jury despite her failure to reveal that information during voir dire, and the appropriate method in South Carolina for him to carry out that duty was to ascertain whether the juror intentionally concealed the information and whether the concealed information would have supported a challenge for cause or would have been a material factor in the use of a party's peremptory challenges. Coaxum, 410 S.C. at 328-329, 764 S.E.2d at 246.

Looking to the first factor in Appellant's case, Juror # 73 clearly did not intentionally conceal the information regarding her decades-old altercation with her ex-husband because she personally and candidly revealed it as soon as she remembered it and only did not reveal it during voir dire due to the fact she had forgotten about it based on how very, very long ago it had occurred. See Woods, 345 S.C. at 588, 550 S.E.2d at 284 ("Unintentional concealment . . . occurs where the question posed is ambiguous or incomprehensible to the average juror, or

where the subject of the inquiry is insignificant or so **far removed in time that the juror's failure to respond is reasonable under the circumstances.**" (emphasis added)). Critically, the fact Juror # 73 did not intentionally conceal information, which is a fact Appellant readily concedes on appeal, was highly significant as to whether she could be fair and impartial in deciding Appellant's case because an unintentional failure to disclose even material information does not support an inference of partiality or bias on the part of a juror. See id. at 589, 550 S.E.2d at 282 ("Where the juror's failure to disclose information is 'without justification,' i.e., intentional, the juror's bias will be inferred. Conversely, **where the failure to disclose is innocent, no inference of bias can be drawn.**" (emphasis added)). Therefore, under the circumstances of Appellant's case, the trial judge had no reason to infer Juror # 73 was not impartial or to believe she would jeopardize Appellant's right to a fair trial by **an** impartial jury, which was all he was entitled to under the law. See Rogers, 263 S.C. at 382, 210 S.E.2d at 609 ("[T]he defendant has no right to a trial by any particular jury or jurors and has the right only to a trial by a competent and impartial jury.").

Looking to the second factor relevant to the analysis, the information not revealed by Juror # 73 during voir dire did not establish she was either biased or potentially biased and likely would not have been materially significant to the manner in which the parties exercised their peremptory challenges. Critically, the fact Juror # 73 could not even initially remember the long-past incident was strong evidence that incident was not particularly significant or pertinent towards whether she would warrant the exercise of a peremptory challenge, and she repeatedly affirmed her involvement – which could have been either as a victim or as the aggressor – in the prior altercation with her ex-husband would have no impact on her decision in Appellant's case. Likewise, defense counsel had exhausted all five peremptory challenges before Juror # 73 was

seated on the jury, and, thus, defense counsel could not have exercised a peremptory challenge on her even if he had wanted to do so. Cf. Woods, 345 S.C. at 590, 550 S.E.2d at 285-286 ("When Juror B's name was selected from the venire, [Woods] **had one peremptory challenge remaining.** [Woods]'s trial counsel stated that had he known of Juror B's relationship with the solicitor's office, he would have used a peremptory challenge to remove her from the jury. Nothing in the record refutes this assertion. It is reasonable to conclude that a juror's previous three year relationship as a victims' advocate with the prosecuting solicitor's office would be a material factor in the use of a criminal defendant's peremptory challenges." (emphasis added)). Moreover, at no point during the trial proceedings did defense counsel suggest he would have exercised a peremptory challenge on Juror # 73 – or would have attempted to save a peremptory challenge for Juror # 73 – in the event he had known the information about her prior incident with her ex-husband during the jury selection process, and he did not make any statements suggesting he believed one of his peremptory challenges would have better used on Juror # 73 as opposed to on any of the five women he struck before she was seated on the jury. Instead, he simply indicated he was seeking her removal from the jury "in good nature" and believed she should be replaced with the sole alternate juror available "just to be safe." Under those circumstances, the juror's innocent non-disclosure during voir dire of the information about the altercation with her ex-husband that occurred many, many years earlier did not necessitate her removal from the jury during the course of Appellant's trial.

Because Juror # 73 did not intentionally conceal the information about the decades-earlier altercation with her ex-husband and that information did not reflect adversely on her ability to be fair and impartial in deciding Appellant's case, there was no reason for the trial judge to believe he needed to replace Juror # 73 with an alternate juror in order for Appellant to receive a fair

trial. See Coaxum, 410 S.C. at 330, 764 S.E.2d at 247 (recognizing a trial judge likely would have been justified in **refusing** to excuse a juror where there was no allegation the juror intentionally failed to disclose a potential relationship to the defendant until the middle of trial); see also Sparkman, 358 S.C. at 497, 596 S.E.2d at 378 ("Because [the juror]'s concealment was unintentional our inquiry is over[.]"); State v. Kelly, 331 S.C. 132, 145-146, 502 S.E.2d 99, 106-107 (1998) ("[Kelly] maintained that had he been aware of Juror P's activities, he would have exercised a preemptory strike to exclude Juror P from the juror. . . . Here, we find no abuse of discretion because Juror P did not intentional conceal information during voir dire."). As a result, the trial judge did not abuse his broad discretion on jury-related matters by declining to remove Juror # 73 from the jury during Appellant's trial, particularly where the juror expressly assured the trial judge she could be fair and impartial despite her involvement in the earlier altercation with her ex-husband. See State v. Ivey, 331 S.C. 118, 122-123, 502 S.E.2d 92, 94 (1998) ("The trial judge properly inquired into the effect Juror Young's knowledge of 'Fletch' would have on her ability to be fair and impartial. Juror Young unequivocally stated her knowledge of 'Fletch' would have no effect on her ability to render an impartial verdict. The trial judge did not abuse his discretion in allowing Juror Young to remain on the jury."); see also State v. Simpson, 325 S.C. 37, 41, 479 S.E.2d 57, 59 (1996) ("A juror's competence is within the trial judge's discretion and is not reviewable on appeal unless wholly unsupported by the evidence."); cf. Coaxum, 410 S.C. at 330, 764 S.E.2d at 247 ("Here, there is no allegation that Juror # 7's failure to disclose was intentional. While the trial court likely **would have been justified in refusing to excuse Juror # 7** from the jury, its decision to remove her is not an abuse of discretion[.]" (emphasis added)). Accordingly, under those circumstances, the trial judge's decision not to remove Juror # 73 from the jury was not an abuse of discretion and does

not warrant a reversal of Appellant's conviction on appeal. See Coaxum, 410 S.C. at 330, 764 S.E.2d at 247 ("[A]s we have previously stated, ' 'a new trial is *required* only when the court finds the juror *intentionally* concealed the information . . . .' ' " (citations omitted)). Appellant's conviction should be affirmed.

B. Absence of Prejudice and Harmlessness of Any Error

In every criminal case tried in South Carolina, a defendant has a constitutional right to a fair trial. Woods, 345 S.C. at 587, 550 S.E.2d at 284; see State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000) ("The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors."). That right guarantees to a defendant a trial by a panel of impartial, indifferent jurors. State v. Parker, 381 S.C. 68, 96, 671 S.E.2d 619, 633 (Ct. App. 2008). Importantly though, a defendant in South Carolina does not have a right to be tried by a jury composed of any particular jurors. See Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) ("[T]his Court has held that a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury."); see also U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury**[.]" (emphasis added)); S.C. Const. art. I, § 14 ("The right to trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial **by an impartial jury**[.]" (emphasis added)).

In the case at bar, any error that occurred as a result of the trial judge refusing to replace Juror # 73 – even assuming one did occur – was entirely harmless and resulted in no prejudice to Appellant because no evidence was presented of any kind suggesting Appellant did not receive a fair trial decided by a fair and impartial jury. See State v. Bonneau, 276 S.C. 122, 125, 276

S.E.2d 300, 301 (1982) ("It is, of course, incumbent upon an appellant . . . to prove that he was denied a fair trial."). Critically, after questioning Juror # 73 both during voir dire and after she disclosed the decades-old incident involving her husband during the course of trial, the trial judge expressly determined she could be fair and impartial, and no evidence was presented supporting a conclusion to the contrary. 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 establishing it hardly becomes necessary to cite authority to sustain it."). In fact, defense counsel did not even suggest at any point during the trial Juror # 73 could not be fair and impartial based on the information she disclosed. Because Juror # 73 was a fair and impartial member of the jury, the trial judge's decision not to replace her with an alternate did not have any impact on Appellant's receipt of a fair trial by a fair and impartial jury, which was all he was entitled to under the law. See Rogers, 263 S.C. at 382, 210 S.E.2d at 609 ("[T]he defendant has no right to a trial by any particular jury or jurors and has the right only to a trial by a competent and impartial jury."); see also Delaware v. Van Arsdall, 475 U.S. 673, 681 (1986) ("As we have stressed on more than one occasion, the Constitution entitles a criminal defendant to a fair trial, not a perfect one."); cf. Sparkman, 358 S.C. at 497, 596 S.E.2d at 378 ("[I]n this case, the juror testimony is clearly 'contrary' to an inference of bias or prejudice, and the trial judge was in the best position to make a factual decision concerning the effects of Scott's alleged misconduct."). Therefore, Appellant suffered no prejudice as a result of the trial judge's decision not to remove Juror # 73 from the jury, and the trial judge's decision – even assuming it was somehow erroneous – could not have constituted reversible error. See Coaxum, 410 S.C. at 331, 764 S.E.2d at 247 ("[T]o receive a new trial, the defendant must show a prejudicial abuse of

discretion."); see also Calderon v. California, 525 U.S. 141, 146 (1998) ("The social costs of retrial or resentencing are significant. . . . The State is not to be put to this arduous task based on mere speculation that the defendant was prejudiced by trial error; the court must find that the defendant was actually prejudiced by the error." (citations omitted)). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

May 24, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
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THE STATE,

Respondent,

vs.

MICHAEL GLENN HALL,

Appellant.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Kathrine H. Hudgins, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 24th day of May, 2017.

KEELY CARTER
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

May 24, 2017

Kathrine H. Hudgins, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Michael Glenn Hall – Appellate Case No. 2016-001778

Dear Ms. Hudgins:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services