

STATE OF SOUTH CAROLINA)

Court of General Sessions

COUNTY OF GREENWOOD)

State of South Carolina)

Case Number 2015-GS-24-0535
2015-GS-24-0536

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vs.

Adam Rowell

SC Court of Appeals

ORDER DENYING DEFENDANT'S
MOTION FOR NEW TRIAL

THIS MATTER CAME FOR HEARING before the undersigned on Monday, November 27, 2017 in Laurens, South Carolina by Defendant's Motion for New Trial. Present for the Defendant were Mr. Billy Garrett, Mr. Carson Henderson, Ms. Jane Merrill, and Mr. Rauch Wise. Representing the State were Solicitors Wade Dowtin and Micah Black.

The Defendant was tried for two counts of Felony Driving under the Influence during the week of February 13, 2017. He was found guilty on both counts and convicted on February 20, 2017. Subsequently, Defendant filed a Motion for New Trial and, later, a Supplemental Motion for the same.

Law & Analysis

"All the circuit courts of this State shall have power to grant new trials in cases in which there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law of the United States." S.C. Code § 17-23-110.

Defendant's Motion for New Trial is respectfully denied, based on the reasons herein:

I. Defendant's Arguments I-III, V-XIV

The majority of Defendant's arguments are issues that were argued during trial. These arguments are again denied, and the Court incorporates by reference its rulings and bases for those rulings in the record at trial.

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II. Defendant's Claims that the Hospital May Have Switched His Blood with another Patient's Sample

There is no credible evidence to support any suggestion that Defendant's first or second blood draw was swapped with another patient's blood, or that the blood samples used in Defendant's case did not come from the Defendant. The argument is far too speculative to warrant the granting of a new trial.

Furthermore, though not in the Motion, Defense Counsel represented to the Court that additional discovery was needed because, at the end of the first trial, members of the Defendant's family indicated that there was another patient in the trauma ward whose blood could have been labeled as the Defendant's. The fact that another white male appearing to be in his twenties also had blood drawn in the same area of the hospital as Defendant around the same time as Defendant could have been discovered before trial. This is not changed merely because that particular detail escaped Defendant's family members' memories until after the close of trial, making these claims improperly based on the "after discovered evidence" evidence rule. S.C. Crim. P. 29(b).

III. Defendant's Claims that Juror 164 Served as a Confidential Informant for Law Enforcement

At hearing, Defendant admitted that he could provide no credible evidence that Juror 164 served as a confidential informant for Greenwood City Police Department or the Greenwood Sheriff's Office. On that basis, this ground in support of the Motion for a New Trial is denied.

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IV. Juror 164's Nondisclosure of January 21, 2017 Arrest for Possession with Intent to Distribute Marijuana, Unlawful Neglect of a Child, and Purchasing a Controlled Substance within Proximity of a School

A juror's concealment of facts can be grounds for a new trial; the Court's inquiry is a "fact-intensive determination that must be made on a case-by-case basis" to decide whether the concealment was intentional or unintentional. *State v. Sparkman*, 358 S.C. 491, 596 S.E.2d 375 (2004). Where a juror's concealment is found to be unintentional, the Court ends its inquiry, and no new trial is granted. *Id.* Where a juror's concealment is found to be intentional, a new trial is warranted when the concealed information would have supported either a challenge for cause or would have been a material factor in the use of the parties' peremptory challenges. *State v. Woods*, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001); and *State v. Guillebeaux*, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (2004) (requiring a finding in addition to the concealment being intentional).

The test for whether a juror's concealment is intentional is two-fold: (1) the question is reasonably comprehensible to the average juror, and (2) the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. *Supra Woods*, 345 S.C. at 588; 550 S.E.2d at 284.

A juror's concealment is unintentional where: (1) the question is ambiguous or incomprehensible to the average juror, or (2) the subject of the question is so far removed in time that failure to respond is reasonable. *Supra Sparkman*, 358 S.C. at 496, 596 S.E.2d at 377.

In this case, the question to which Juror 164 failed to respond was; "Question One-- any member of the jury panel, any immediate family member or close personal friend ever been arrested and charged with any criminal offense through any state, local, or federal law enforcement agency." This was the first of ten (10) questions asked; and the panel was asked at the end of that litany of questions to come speak to the Court privately if any panel member needed to respond.

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On its face, the question at issue is reasonably comprehensible to the average juror. However, in practice, the question was the first of ten that the jury panel had to remember, consider, and, if needed, privately answer to the Court.¹ The manner in which the question was asked, and the amount of time between when the question was posed and when it was meant to be answered could be confusing to the average juror. For this reason, the Court finds that the Juror 164's concealment was unintentional.

However, even if the Court found that Juror 164's concealment was intentional, and that the intentionally concealed information would have provided a basis for either a challenge for cause or for a peremptory challenge by either party, the Court would not find that a new trial is warranted.

"Concealment" is the "act of preventing disclosure" and "the act of removing from sight or notice; hiding." Concealment, *Black's Law Dictionary* (10th ed. 2014). The vast majority of case law about jurors' failures to disclose information discusses the concealment of relationships, especially between potential jurors and witnesses. See, e.g., *supra* *Guillebeaux*, (where the information concealed was a social relationship with a witness); *State v. Galbreath*, 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004) (where the seated juror did not answer in *voir dire* that he knew the victim's mother and brother-in-law).

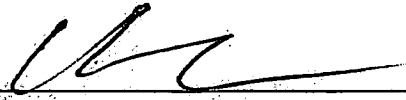
Here, though, Juror 164 is alleged to have "concealed" an arrest. An arrest record—unlike personal, private relationships—is public information. Juror 164 failed to answer a question, but he did not prevent Defendant or the State from seeking and seeing his arrest record. Juror 164 could not "remove from sight or notice" this public information—the fact that he had been arrested the month prior—such that the attorneys could not have possibly known about it.

The Motion and Supplemental Motion for New Trial are denied.

¹ A practice the Court has since modified considerably.

So Ordered.

Laurens, SC
December 27, 2017



Donald B. Hocker
Circuit Court Judge



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