STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Orangeburg County

Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

COURTNEY LEOLA PRICE,

APPELLANT

APPELLATE CASE NO. 2016-000528

FINAL BRIEF OF APPELLANT

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2.

Whether the trial court erred in not removing a juror who failed to disclose during voir dire that a lawyer in the solicitor's office was a friend of her daughter's pursuant to State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001)?

STATEMENT OF THE CASE

On February 11, 2015, an Orangeburg County grand jury indicted appellant for murder. R. 1296. On February 22, 2016, appellant was tried before the Honorable R. Knox McMahon and a jury. R. 1. Ashley Cornwell represented the State. R. 1. Carl B. Grant represented appellant. R. 1. The jury acquitted appellant of murder, but convicted her of voluntary manslaughter. R. 1262, l. 17 – 1263, l. 8. Judge McMahon sentenced appellant to fifteen years' imprisonment. R. 1283, ll. 5 – 10. On June 27, 2017, this Court remanded the case to Judge McMahon for consideration of two outstanding sentencing motions and after a hearing on November 1, 2017, the court granted appellant credit for 251 days spent on home detention and found she was eligible for early parole consideration as a victim of domestic violence pursuant to S.C. Code Ann. § 16-25-20, et. seq. R. 1288 – 1295. This appeal follows.

STANDARD OF REVIEW

On Issue One, the standard of review is abuse of discretion. "The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id. at 429–30, 632 S.E.2d at 848.

On Issue Two:

> In criminal cases, the appellate court sits to review errors of law only" and is "bound by the trial court's factual findings unless they are clearly erroneous." State v. Wilson, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001) (citation omitted). "In order to receive a mistrial, the defendant must show error and resulting prejudice." State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998); see also State v. Galbreath, 359 S.C. 398, 402, 597 S.E.2d 845, 847 (Ct.App.2004) (requiring the defendant to show a prejudicial abuse of discretion (citing State v. Covington, 343 S.C. 157, 163, 539 S.E.2d 67, 69–70 (Ct.App.2000))).

State v. Coaxum, 410 S.C. 320, 326–27, 764 S.E.2d 242, 245 (2014).

ARGUMENT

1.

The trial court erred in refusing to exclude an inflammatory statement made by appellant's mother when she arrived at the scene that was inadmissible under the hearsay rules, Rule 401, and Rule 403.

Factual Background

In his Order granting appellant Courtney Price ("Price") early parole eligibility as a victim of domestic violence, Judge McMahon found that Price's relationship with the decedent, Samuel Simmons ("Simmons"), was "tumultuous" and "toxic" and that the "aggression between them frequently went both ways." R. 1288 – 1295. The trial court heard extensive evidence during an immunity hearing and during the trial about the violence Price suffered at Simmons' hands. On the night of September 27, 2014, the tumultuous relationship ended in Simmons' death and the State charged Price with his murder. R. 1296 – 1297. Price testified that she stabbed Simmons in self-defense. R. 956, l. 1 – 962, l. 12. The State's theory was that Price stabbed Simmons in the chest while he was asleep. R. 1203, ll. 9 – 18. The jury acquitted Price of murder, but convicted her of voluntary manslaughter. R. 1262, l. 21 – 1263, l. 5.

Price and Simmons met while Price was in high school. R. 912, ll. 18 – 24. They continued dating after Price graduated from high school in 2009 and enrolled at South Carolina State University. R. 912, l. 11 – 913, l. 22. In May 2013, Price and Simmons had a baby ("Child"). R. 935, ll. 1 – 2.

The evidence of Simmons' abuse during their relationship was abundant and Judge McMahon charged battered woman syndrome as part of his self-defense instruction. R. 1233, l. 11 – 1236, l. 1. Simmons choked Price in her dorm room in 2009. R. 914, ll. 4 – 19. He again

choked Price at college in 2009. R. 916, ll. 1 – 24. Simmons slapped Price multiple times. R. 917, l. 17 – 919, l. 25. Price's college roommate Breanna Tilley testified she saw Simmons drag Price on the floor by her hair. R. 777, ll. 6 – 9. She also saw marks on Price's body. R. 779, ll. 11 – 13.

On another occasion, Price was driving home when Simmons saw her and chased her in his truck. R. 920, l. 4 – 921, l. 23. Simmons hit Price's car with his truck several times at highway speeds. R. 920, l. 4 – 921, l. 23. Simmons eventually crashed his truck into a light pole. R. 922, ll. 2 – 21. Price's sister witnessed this incident and heard Simmons say, "I'm going to pistol whip that bitch." R. 793, l. 21 – 795, l. 22.

In the spring of 2011, Simmons called Price a "bitch," told her to mind her own business, and shoved her to the ground. R. 924, ll. 5 – 19. In January 2012, he grabbed Price around the neck, threw her to the ground, and dragged her across the yard. R. 928, ll. 2 – 24. Price called the police after this incident. R. 929, ll. 8 – 23.

In the spring of 2012, Price and Simmons had an argument in the car that resulted in Price asking him to stop the car so she could get out. R. 931, ll. 6 – 22. Just as Price put her foot out of the car, Simmons accelerated, scraping her foot on the pavement. R. 931, l. 23 – 932, l. 17. In October 2013, after Price filed a petition for child support, during an argument Simmons "mushed" Price's head into the furniture and the fight continued to the point that Price got a black eye from one of Simmons' punches. R. 936, l. 13 – 938, l. 18. A daycare worker saw Price with a black eye that Price tried to hide behind dark sunglasses. R. 812, l. 20 – 813, l. 8.

On the night of Simmons' death, Price was at home, put Child to bed at approximately 8:00 PM, and went to bed herself at 10:00 PM. R. 942, l. 20 – 944, l. 1. Around 3:30 AM, Price's phone began vibrating, she saw it was Simmons and answered, but only heard laughing and noise. R. 944, l. 18 – 945, l. 20. Assuming it might have been a "pocket dial," Price called him back to no avail.

R. 944, l. 18 – 945, l. 20. After playing phone tag, Simmons texted her telling her to open her door and that he had diapers for Child. R. 944, l. 18 – 945, l. 20. Simmons entered Price's house with the diapers, a case of beer, and a bottle of Hennessy. R. 944, l. 18 – 945, l. 20. Price could tell Simmons had already been drinking. R. 946, ll. 5 – 10. Simmons' blood alcohol level was 0.187 when it was tested after his death. R. 843, ll. 2 – 20.

Price and Simmons then had an argument about Simmons not paying for daycare and when Price "mentioned going through with putting him on child support," Simmons choked her and called her a bitch. R. 948, l. 2 – 949, l. 17. She asked him to leave, but they made up, drank alcoholic beverages, and watched television. R. 949, l. 18 – 950, l. 20. They went upstairs and had sex. R. 950, l. 21 – 951, l. 20.

After sex, Price and Simmons again argued about child support and again Simmons choked her. R. 952, ll. 2 – 14. Simmons refused to leave, despite Price's demand. R. 952, ll. 8 – 21. Price went downstairs to fix Child a bottle and Simmons remained upstairs. R. 952, l. 22 – 953, l. 11.

While Price was downstairs, she noticed that Simmons' phone "lit up." R. 953, ll. 12 – 14. Price looked through the messages on his phone and discovered that he had another child and had been paying daycare expenses for that child. R. 954, ll. 2 – 22. She yelled Simmons' name and he responded, so Price decided to confront Simmons about this other child. R. 955, l. 5 – 9.

Because Simmons already choked her twice that evening, Price got a knife to defend herself in case Simmons reacted violently and went upstairs with the knife by her side. R. 956, l. 1 – 957, l. 16. Simmons was in the bed with his feet hanging off the side. R. 957, l. 17 – 958, l. 14. Price said, "Sam you got another child." R. 958, ll. 17 – 19.

Simmons "eyes got huge and he said, What the fuck and he came at me." R. 958, ll. 20 – 24. He choked Price. R. 959, ll. 5 – 12. Price stabbed him. R. 959, ll. 13 – 15. Simmons grabbed

her by the arms and hair, shook Price, and kept asking "What the fuck." R. 960, l. 7 – 961, l. 14. Simmons fell, Price grabbed her son, and went outside. R. 961, l. 25 – 962, l. 12.

The State presented evidence of Price's statements that were inconsistent with her trial testimony. An officer who arrived at the scene testified Price told her, "I'm tired of his shit. I saw the phone while he was asleep; saw that he was messing with a bitch; and he had another child; and I cut him." R. 451, ll. 4 – 8. Another officer testified about a recorded statement that was entered into evidence on which Price said after Simmons put his hands around her neck it "teed [her] off," she went downstairs, got the knife, argued, and she hit Simmons and stabbed him. R. 604, ll. 7 – 15. State's Ex. 73. In another interview, Price said she was on top of Simmons in the bed when she first confronted him, then Simmons pushed her before the stabbing. State's Ex. 73. Price has "juvenile diabetes, insulin base." R. 964, ll. 23 – 25. Her blood sugar was tested at 461, which Price testified was the highest it had been in her life. R. 965, l. 2 – 966, l. 13. Price testified that when she gave her statements, she was "in a state of shock, loopy, dazed out." R. 972, ll. 21 – 25.

The pathologist testified that Simmons' wound was consistent with a person laying down and being stabbed by a person on top of him. R. 698, ll. 9 – 12. She also testified that "the direction of the stab wound doesn't tell me exactly the positions of the body." R. 698, ll. 6 – 8. On cross-examination, she agreed with defense counsel that "standing up and stabbing is just as consistent with any argument that he was standing or lying down." R. 700, ll. 8 – 11.

Discussion

During the immunity hearing, the State called SLED investigator Latisha Walker ("Walker"), who previously worked at the Orangeburg County Department of Public Safety. R. 268, ll. 4 – 14. She went to the scene, looked inside the apartment, and looked at Price. R. 268, l. 15 – 270, l. 3. The police were waiting on Price's mother to arrive to take Child before they

took Price into custody. R. 270, ll. 4 – 9. The solicitor then asked Officer Walker, "Did the mother say anything when she arrived on scene?" R. 270, ll. 10 – 11.

Defense counsel objected on hearsay grounds. R. 270, ll. 14 – 15. The solicitor said Price's mother's statement "would fall under the excited utterance exception." R. 270, ll. 16 – 17. The trial judge ruled, "I'll allow it." R. 270, ll. 18 – 19. Officer Walker then testified, "When she got out of the car she was yelling; and she said I know Courtney did not kill that boy after all he does for that baby." R. 270, ll. 21 – 23.

The issue of Beverly Price's statement arose again after the conclusion of the immunity hearing. R. 391, l. 18 – 393, l. 14. After the solicitor finished her argument, Judge McMahon asked for any reply argument from Price. R. 391, ll. 18 – 19. Defense counsel said he stood on his previous argument, but then made an extensive argument that Officer Walker's testimony should be excluded during the trial. R. 391, l. 20 – 393, l. 6.

Defense counsel first informed the court that he had spoken to Beverly Price and she denied making the statement. R. 392, ll. 6 – 9. He argued that the statement was "rank hearsay," not an excited utterance, and the State was offering it for the truth of the matter asserted. R. 392, ll. 6 – 14. He also argued the statement was irrelevant and more unfairly prejudicial than probative, citing Rule 403, SCRE. R. 392, l. 15 – 393, l. 6. Judge McMahon then made an extensive ruling on the immunity issue and the admissibility of appellant's statements to police, but did not rule on the admissibility of Officer Walker's account of Beverly Price's statement before trial. R. 393, l. 16 – 408, l. 2.

During the trial, the State again called Officer Walker to testify. R. 565, ll. 15 – 24. She again testified about her observations when she arrived at the scene. R. 567, l. 20 – 575, l. 7. Officer Walker testified that she was standing outside the residence waiting on Beverly Price to

arrive and pick up Child. R. 575, ll. 8 – 21. The solicitor then asked, "And as you were standing outside and she drove up, when she got out of her car, did she make any excited utterances to you?" R. 575, ll. 22 – 24. Defense counsel objected, stating he had a matter of law, and Judge McMahon excused the jury. R. 575, l. 25 – 576, l. 7.

Price argued the statement was inadmissible on several grounds. R. 576, l. 17 – 580, l. 3. First, Price argued the statement was hearsay and being offered for the truth of the matter asserted. R. 576, l. 17 – 580, l. 3. Price argued the statement was not relevant under Rule 401, SCRE, and had no tendency to prove Price's guilt or innocence or any element of the crime. R. 576, l. 17 – 580, l. 3. Defense counsel stated that it is irrelevant what Price's mother thought when she arrived at the scene and that she had "no idea what may have happened before she got there." R. 577, ll. 5 – 16. Citing Rule 403, Price also argued that it was more prejudicial than probative for the jury to hear that the mother said "about killing the man or the man being good to the child." R. 577, ll. 13 – 23.

The State responded that the evidence was admissible under the present sense exception and excited utterance exceptions to the hearsay rule, citing Rule 803(1) and 803(2), SCRE. R. 578, l. 13 – 579, l. 5. The solicitor said the statement was probative because defense counsel "in his opening brought character into this trial discussing how the—you know, that Courtney had to ask her mother to provide for the child because this defendant [sic] didn't provide for the child." R. 578, ll. 17 – 21. Defense counsel responded that under the solicitor's illogical position, when anyone arrived at the scene of a crime and expressed their opinion, that statement would be admissible as an excited utterance or present sense impression. R. 579, ll. 8 – 25. He further argued:

> Oftentimes in every situation, there are crimes that are committed throughout society, people walk up to the scene, man that's messed up. I can't believe Joe did that. Now, the guy that says that, does he become a witness for the prosecution just because he thinks that Joe killed Sam? He didn't see the crime. He has not seen the crime scene, he doesn't know anything about what went on, but his comment can be used as evidence against the defendant? I really think, Judge, that that would be incredible and I think it would truly violate my client's right to a fair trial.

R. 579, ll. 15 – 25.

Judge McMahon then ruled the statement was admissible. R. 580, l. 8 – 582, l. 13. The court first dismissed Price's argument that what a person who did not witness the crime thought as a bystander at a crime scene is irrelevant because Beverly Price was the defendant's mother had had been summoned to the scene to pick up Child. R. 580, ll. 8 – 17. The court then ruled that the statement fit into the hearsay exceptions under Rules 803(1) and (2). R. 580, l. 18 – 581, l. 9. The court also discussed res gestae, but did not explicitly say that res gestae made the statement admissible.[1] R. 581, ll. 3 – 7. The court ruled the statement was relevant to Price's character. R. 581, ll. 16 – 20. Citing State v. Collins, 398 S.C. 197, 727 S.E.2d 751 (Ct. App. 2012) rev'd State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014), Judge McMahon ruled that the danger of unfair prejudice did not outweigh what he called "highly probative" evidence. R. 581, l. 21 – 582, l. 13.

When Officer Walker's testimony resumed, Price made a contemporaneous objection and the trial judge overruled the objection. R. 599, ll. 5 – 15. Officer Walker testified that Price's mother said, "I know Courtney did not kill that boy after all he does for that baby. She also asked me if I was going to notify Mr. Simmons' family. She went on to state that it would only

[1] "The hearsay exceptions of present sense impression and excited utterance have replaced the *res gestae* hearsay exception in South Carolina law." State v. Burdette, 335 S.C. 34, 41, 515 S.E.2d 525, 529 (1999).

be right for me to notify them because they had a right to know what happened." R. 599, ll. 17 – 23.

The Statement Was Hearsay

The State did not dispute that Beverly Price's statement was hearsay and only argued that it was admissible under two exceptions. R. 478, ll. 13 – 25. Hearsay is an out of court statement offered for the truth of the matter asserted. Rule 801(c), SCRE. Beverly Price's two-part statement was offered for the truth of the matter asserted. The second part of the statement—"after all he does for that baby"—was offered to prove as the solicitor stated, that Simmons did provide for the child. R. 478, ll. 13 – 25. The first part of the statement—"I know Courtney did not kill that boy"—was offered to prove that Beverly Price thought her own daughter was capable of murder. Even though the statement is grammatically phrased as a negative proposition, the statement is itself an indication of Beverly Price's belief that Price killed Simmons. Therefore, the State properly conceded and the trial judge properly concluded that the statement was hearsay, but erred in finding it fit into any hearsay exception.

The Statement Was Not Admissible as a Present Sense Impression

Hearsay is not admissible unless an exception applies. State v. Parvin, 413 S.C. 497, 503, 771 S.E.2d 1, 4 (Ct. App. 2015). The present sense impression exception does not apply to Beverly Price's statement because it meets none of the elements for admission under this exception. State v. Hendricks, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014). "There are three elements to the foundation for the admission of a hearsay statement as a present sense impression: (1) the statement must describe or explain an event or condition; (2) the statement must be contemporaneous with the event; and (3) the declarant must have personally perceived the event." Id.

Beverly Price's statement does not describe or explain an event or condition. It only conveys her belief that Price was capable of killing Simmons. The statement was not contemporaneous with the event nor did Beverly Price personally perceive the event because she was not there when the killing occurred. None of the elements of the present sense impression are satisfied by this statement.

In Hendricks, the challenged hearsay was the victim's mother statement to a 911 operated that the defendant raped and sodomized her daughter. Id. at 532-34, 759 S.E.2d at 438. The mother's statement was based on what her daughter told her, not on her own observations. Id. at 529-30, 759 S.E.2d at 436. The Court ruled that the event was the rape and because the mother did not perceive the rape, the present sense impression exception did not apply. Id. at 532-34, 759 S.E.2d at 438. Under the Hendricks analysis, the event in this case was the killing and because Beverly Price did not perceive the killing, the exception does not apply. See also State v. Davis, 371 S.C. 170, 638 S.E.2d 57 (2006) ("Furthermore, because there is insufficient evidence Hill witnessed the shooting, the State's alternate argument that his statement was properly admitted under the present sense impression exception is without merit.").

The Statement Was Not Admissible as an Excited Utterance

Nor was Beverly Price's statement admissible under the excited utterance exception. "[T]here are three elements that must be met to find a statement to be an excited utterance: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition." State v. Ladner, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007). Again, the same analysis applies. While Beverly Price may have been upset to learn of Simmons' death, her statement related to her belief about the killing and she did not witness

the killing. Also because she did not witness the killing, the statement could not have been caused by the killing. At best, the statement was caused by learning about the killing—not witnessing it. Therefore, the court erred in applying this exception and the statement was inadmissible hearsay.

The Statement Was Not Relevant

While the solicitor claimed the statement was relevant to character, Beverly Price's opinion that her daughter was capable of this specific was not relevant. Rule 401, SCRE. She did not witness Simmons' death. Unlike the defense's character witnesses, she did not offer an opinion about her daughter's reputation in the community for being a law-abiding person or peacefulness. R. 769, ll. 2 – 12. Opinions about general characteristics are admissible, but an opinion on whether a person was capable of a specific crime in a specific instance is irrelevant unless the person has personal knowledge of the facts. The State offered no foundation for Beverly Price's statement or belief. As defense counsel adroitly argued, the opinions of bystanders who happen on the scene of the crime are irrelevant if they are not witnesses of any material facts. Beverly Price's statement is not somehow converted into relevant evidence because she was Price's mother.

The Statement Was Not Admissible Under Rule 403

Even if the statement was minimally relevant to Price's character, the unfair prejudice outweighed its limited probative value and Rule 403 bars its admission. Rule 403, SCRE. Beverly Price was not a witness to the events surrounding Simmons' death. She had no personal knowledge of what happened. Without any actual knowledge of what happened, her opinion was rank speculation. The probative value of her statement was negligible.

As defense counsel argued, the statement was highly inflammatory. The jury heard that Price's own mother thought her capable of an unlawful killing. The State sought its admission based on this unfair prejudice. In State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007), Rule 403 prevent irrelevant and confusing information from being presented to the jury regarding police tactics during an interrogation. In an attempt to get a confession from a suspect, the police doctored an aerial photograph to show the defendant's car at the crime scene. Gillian at 612-13, 646 S.E.2d at 878. The defendant argued the evidence was probative of the police's belief in the strength of their case. Id. The defendant reasoned that the police thought their case was so weak they stooped to the level of a ruse to attempt to secure a confession. Id. The Court held the ruse was not relevant to the circumstances of the victim's death. Id.

Gillian is analogous to Price's case. Much the same way as the defendant in Gillian argued the police ruse was relevant to the police's opinion of the strength of their case, the only probative value here is what Beverly Price thought about her daughter's culpability. In this case, the connection is even more attenuated than in Gillian because Beverly Price was not part of the investigation and had no personal knowledge about the circumstances of Simmons death at the time she made that statement. The probative value here is negligible.

Also like in Gillian, the prejudice was unfair. The unfair prejudice in Gillian would be painting the police as corrupt and willing to do whatever it took to convict the defendant. Here, the unfair prejudice is a jury hearing Price's own mother's belief that she unlawfully killed Simmons. When balanced against the—at best—miniscule amount of probative value, the inflammatory and unfair prejudice of Beverly Price's statement required its exclusion.

2.

The trial court erred in not removing a juror who failed to disclose during voir dire that a lawyer in the solicitor's office was a friend of her daughter's pursuant to *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001).

"When a juror conceals information inquired into during *voir dire,* a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." State v. Woods, 345 S.C. 583, 587, 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. On the other hand, where the failure to disclose is innocent, no such inference may be drawn." Id.

During voir dire, the trial judge asked the solicitor to list "any other member of the solicitor's staff that may be assisting you during the trial of this case." R. 290, ll. 15 – 18. The solicitor included in her list "Assistant Solicitor Sara Ford." R. 290, ll. 19 – 24. The trial judge had defense counsel introduce himself and his staff. R. 291, ll. 5 – 20. Judge McMahon then asked the jurors, "Is any member of the jury panel related by blood or marriage, or close personal friends, have any social, personal, business, or professional relationship with any of the attorneys in this matter, Assistant Solicitor Cornwell, or Mr. Grant? If so, please stand." R. 291, l. 23 – 292, l. 2. Juror 36 did not stand.

On Wednesday morning, after the State called four witnesses the previous day, Judge McMahon brought Juror 36 into the courtroom. R. 504, l. 6 – 505, l. 3. The trial judge reminded the juror that he asked whether members of the panel "knew certain individuals and such like

that" and then asked the juror, "Do you know Sara Ford?" R. 505, ll. 9 – 15. Juror 36 responded, "She's a friend of my daughter's." R. 505, l. 16. When asked if she knew Ms. Ford, she replied, "Not really." R. 505, l. 22. Juror 36 did know Sara Ford was an attorney, but said she did not know she was employed by the solicitor's office. R. 505, ll. 23 – 24.

After the juror said she had no doubt she could be impartial, Judge McMahon asked, "So if I had called the name, Sara Ford, which I think I did, you wouldn't even know that was the Sara Ford that was a friend of your daughter." R. 506, ll. 20 – 22. Juror 36 replied, **"I recognized her."** R. 506, l. 23 (emphasis added).

Citing the Sixth Amendment, defense counsel asked for Juror 36 to be removed an alternate to take her place. R. 507, l. 5 – 509, l. 19. Defense counsel argued that Juror 36 recognized Sara Ford's name when called and that she "might have some kind of hidden agenda." R. 507, ll. 9 – 21. The trial judge ruled that Juror 36 could be fair and impartial and did not remove her. R. 509, l. 20 – 511, l. 14.

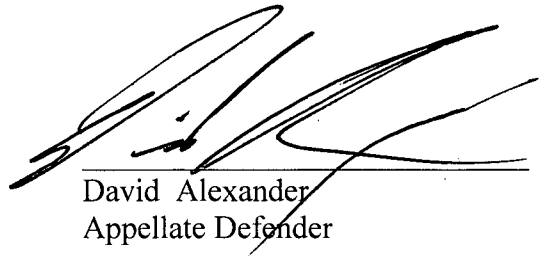
Under Woods, the trial judge erred in not removing Juror 36 because she intentionally concealed her family's relationship with an attorney with the solicitor's office. The court's question was unambiguous during voir dire and the juror admitted she recognized Ms. Ford. Had defense counsel known of the relationship, it would have been the basis for a peremptory strike. As such a new trial is required because it is inferred that the juror is not impartial. State v. Coaxum, 410 S.C. 320, 328-29, 764 S.E.2d 242, 245-46. In Coaxum, the Court stated:

> Thus, should the trial court fail to replace such a juror or grant a mistrial, the party need only demonstrate the error of the trial court's decision by proving the concealment was, in fact, intentional; however, the party need not show prejudice, as the bias against the moving party is inferred, and prejudice from the moving party's inability to strike the juror is apparent.

Id. Appellant need not prove prejudice and the trial judge erred in keeping the juror based on her statement that she could remain fair and impartial. Under the rule of Woods, this Court should reverse and grant appellant a new trial.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case should be remanded for a new trial.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of October, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 30, 2018

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