

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

SFP 10 2019

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JARVIS STRIPLING,

APPELLANT

APPELLATE CASE NO. 2018-002038  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

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## **STATEMENT OF ISSUE ON APPEAL**

Whether the court erred where it removed a juror who failed to disclose that she had once met briefly with two of the state's witnesses, and where the juror explained that she was uncertain whether the witnesses were the same two officers she met on the prior occasion until she heard them testify, since an innocent failure to disclose a scant acquaintance does not support a challenge for cause or comprise a material factor in a party's exercise of its peremptory challenges?

## STATEMENT OF THE CASE

On June 2, 2017, a Spartanburg County Grand Jury indicted appellant for the offenses of: murder; first degree burglary; attempted armed robbery; possession of a weapon during the commission of a violent crime; and two counts of kidnapping. R. 326 – 335. Appellant was tried before the Honorable J. Derham Cole, and a jury from November 6 – 8, 2018. R. 1. Charles Snyder, III, represented appellant. R. 1. James Hunter and Allison Mabbs represented the state. R. 1.

The jury found appellant not guilty of murder and possession of a weapon during the commission of a violent crime. R. 316, ll. 12-16. The jury found appellant guilty of first degree burglary, attempted armed robbery, and two counts of kidnapping. R. 315, l. 19 – 316, l. 10. Appellant was sentenced to concurrent terms of thirty years for first degree burglary; twenty years for attempted armed robbery; and thirty years for each count of kidnapping. R. 323, ll. 4-20.

This appeal follows.

### STANDARD OF REVIEW

“A decision on whether to dismiss a juror and replace her with an alternate is within the sound discretion of the trial court, and such decision will not be reversed on appeal absent an abuse of discretion.” *State v. Bell*, 374 S.C. 136, 147, 646 S.E.2d 888, 894 (Ct. App. 2007). *Accord State v. Burgess*, 391 S.C. 15, 18-19, 703 S.E.2d 512, 514 (Ct. App. 2010); *State v. Stone*, 350 S.C. 442, 449, 567 S.E.2d 244, 248 (2002) (holding trial court abused its discretion in removing juror). “It is within the discretion of the trial court to determine whether bias results from a juror’s reception of outside information concerning the case being tried.” *Washington v. Whitaker*, 317 S.C. 108, 118, 451 S.E.2d 894, 900 (1994).

## ARGUMENT

The court erred where it removed a juror who failed to disclose that she had once met briefly with two of the state's witnesses, and where the juror explained that she was uncertain whether the witnesses were the same two officers she met on the prior occasion until she heard them testify, since an innocent failure to disclose a scant acquaintance does not support a challenge for cause or comprise a material factor in a party's exercise of its peremptory challenges.

During deliberations, Juror 193 told the court that she believed she previously met officers Nelson and Taylor at the hospital while her relative was be treated after being shot, although she had not recognized the witnesses' names when they were read in voir dire. Juror 193 explained that she only realized they were the same officers upon hearing them testify. The court's removal of this juror was error, since Juror 193's failure to disclose her scant acquaintance with the officers was innocent.

### ***Relevant facts***

During jury qualifications, the judge stated,

I've got some folks to introduce to you, and those are the lawyers involved in the case, the defendant, any potential witnesses that might be called during the trial. The reason those folks are being introduced to you is because I need to find out if you have any connection with anybody involved in the trial of this case or any members of their respective families, because I have to determine whether or not there's any reason why any one of you should not be selected to participate in the trial of this particular case because you have some reason why you could not be fair and/or impartial as a juror.

So when these folks are introduced to you, I'm going to ask that you please stand, and we'll determine what that connection is, if you have one, and whether or not it would affect your judgment.

Now when I mention connection with anybody, I mean when someone is introduced do you know that person, or do you know any members of their respective families, do you go to school with them, do you attend church with them, do you work at the same place they work, do you socialize with them, do you have any connection with them—professional or social. In other words, do you know these folks in any fashion whatsoever.

Should you have such a connection, then I'll ask that you stand, identify the person that you have a connection with, tell me what that connection is, and we'll determine if it would affect your judgment in the case.

R. 11, l. 19 – 12, l. 20. Thereupon, the court introduced the defendant, defense counsel, and the prosecuting attorneys. R. 12, l. 21 – 13, l. 10. No one stood.

The court continued, “Potential witnesses that might be called during the trial include . . . [people] employed with the Spartanburg City Police Department. They include Cameron Adams; Joshua Sexton; William Washington; Sandra Adorno; Jeff Kirby; Shawn Cloran; Christy Norkett; **Louis Nelson; Chris Taylor;** Mark Norungolo; Za'kirra Smith; and Stacy Smith.” R. 13, l. 18 – 14, l. 1 (emphasis added). Juror 193 did not stand.

When the court asked whether any potential juror had “heard, seen or read anything about this particular case?” no one stood. R. 19, ll. 13-19. The court also asked whether any potential juror had a family member who had been the victim of a violent crime. R. 21, l. 24 – 22, l. 3. Juror 193 stood and spoke with the court at a bench conference that was held off the record. R. 25, ll. 22-25. It appears that Juror 193 told the court her brother, Jermaine Spearman, had been murdered. R. 292, ll. 6-17. Juror 193 was the first potential juror called during jury selection and she was seated on the jury. R. 35, ll. 9-17.

After receiving the case, the jury deliberated for several hours before breaking for the night. R. 281, ll. 21-22; R. 282, ll. 20-24. The court did not release the alternate jurors. R. 283, ll. 11-12. The next morning, the jury foreman reported that he believed Juror 193 had prior

knowledge of the case. R. 286, ll. 20-23. The court questioned Juror 193, who said she had not received any outside information about the case. R. 289, ll. 3-14. Juror 193 explained to the court that the foreperson misunderstood her comment during deliberations, which was actually about a different case, when they were discussing hypothetical situations. R. 291, ll. 4-23. Juror 193 further explained that she felt the foreman was targeting her because she was “the only one that’s questioning the evidence.” R. 289, ll. 22-25. Juror 193 said the foreman was attempting to make her “agree to something I don’t agree with.” R. 290, ll. 17-22.

However, in the course of her discussions with the court, Juror 193 disclosed that two of the state’s witnesses, officers Chris Taylor and Louis Nelson, met with her briefly, once, at the hospital regarding her brother’s shooting. R. 294, l. 13 – 296, l. 2; R. 294, ll. 16-20. Juror 193 explained that while the officers may well have provided their names when they met with her, she was “in shock” at the time. R. 297, ll. 8-15.

Juror 193 said she had not recognized the officers’ names when they were read during voir dire. R. 294, ll. 3-4. She explained she was not sure the officers in appellant’s case were the same officers that met with her in the hospital until she heard them testify. R. 298, ll. 2-6. “It was after they started talking that I knew that that was them.” R. 298, ll. 5-6. Juror 193 said that upon hearing testimony, she asked herself, “Is that the man that interviewed me, because that night it’s a—like a blur.” R. 301, ll. 3-4.

The solicitor asked that Juror 193 “be disqualified as a juror.”<sup>1</sup> R. 308, ll. 5-6. Defense counsel responded that while, “It appears that she had a brief conversation with investigators . . . I don’t see how that would affect her impartiality.” R. 308, ll. 8-10.

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<sup>1</sup> The state also claimed Juror 193 was being deceitful as it had documentation that Jermaine Spearman was not her brother but was instead her cousin. R. 309, l. 14 – 310, l. 1.

The court found that Juror 193 should be removed from the case and an alternate was substituted. R. 309, ll. 10-13. The court stated its reasoning that “the foreperson says that he and a number of other jurors are confident” that Juror 193 “has prior knowledge from some source about this case that she did not receive during the course of the trial.” R. 308, ll. 16-19. The judge also said he did not believe Juror 193 was being honest with the court when asked whether she knew officers Nelson and Taylor. R. 309, ll. 3-9.

### ***Discussion***

“All criminal defendants have the right to a trial by an impartial jury. U.S. CONST. amends. VI and XIV; S.C. CONST. art. I, § 14.” *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). “The trial judge has the duty to assure himself that every juror is unbiased, fair and impartial.” *State v. Gulledge*, 277 S.C. 368, 370, 287 S.E.2d 488, 489 (1982).

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.” *State v. Savage*, 306 S.C. 5, 8, 409 S.E.2d 809, 810 (Ct. App. 1991).

“[I]ntentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable.” *State v. Woods*, 345 S.C. at 588, 550 S.E.2d at 284. “Unintentional concealment, on the other hand, 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.” *Id.* In *Woods*, the South Carolina Supreme Court approved the Missouri Supreme Court’s rationale that, “Unintentional nondisclosure exists where, for example, the

experience forgotten was insignificant or remote in time, or where the venireman reasonably misunderstands the question posed.” *Id.*, citing *Williams By and Through Wilfred v. Barnes Hosp.*, 736 S.W.2d 33, 36 (Mo. 1987).

Juror 193 did not intentionally conceal information—her failure to respond to the question was a reasonable misunderstanding, since she was in shock when she met the officers. Juror 193 was at the hospital bedside of a relative who had just been shot. That she would not remember the names of the officers who met with her briefly on a single occasion and under such circumstances is reasonable.

“Where the failure to disclose is innocent, no inference of bias can be drawn.” *Id.* at 589, 550 S.E.2d at 285. “Accordingly, the moving party has a heightened burden to show that the concealed information indicates the juror is potentially biased, and that the concealed information would have been a material factor in the party’s exercise of its peremptory challenges.” *State v. Coaxum*, 410 S.C. 320, 329, 764 S.E.2d 242, 246 (2014). “In other words, the moving party must show that it was prejudiced by the concealment because it was unable to strike a potential—and material—source of bias.” *Id.* See also *State v. Woods*, 345 S.C. at 587, 550 S.E.2d at 284 (citing *Thompson v. O’Rourke*, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986)) (when a juror conceals information inquired into during voir dire, a new trial is required only where the juror intentionally concealed information that would have supported a challenge for cause or would have been a material factor in the use of the party’s peremptory challenges).

Here, where the state did not meet its heightened burden to show that the information concealed by Juror 193 demonstrated she was biased, it was error to remove her from the jury. Instead of a jury fairly chosen, appellant was tried by a jury whose composition only the prosecution desired. A close reading of the record indicates that the prosecution’s desire to

remove Juror 193 was occasioned by the fact that she was critically questioning the state's evidence. Had the concealed information been disclosed during voir dire, the prosecution would have had no reason to strike Juror 193—the mere fact that a person's relative was the victim of a violent crime does not, without more, show bias by that person against the state. Because the prosecution did not show it was prejudiced by the concealment, it was error to remove Juror 193. *Coaxum*, 410 S.C. at 329, 764 S.E.2d at 246.

Moreover, any finding that Juror 193 received outside information about the case was not supported by the evidence before the trial judge, since Juror 193 denied that she had received any outside information. Juror 193 explained to the court that the foreperson misunderstood her comment, which was actually about a different case, when they were discussing hypothetical situations.

In *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (2002), the South Carolina Supreme Court addressed a similar factual scenario to the case at hand. Although the name of a witness, Bernice Perry, had been announced to the jury at the start of voir dire, a juror did not indicate that she knew Perry until the witness was placed on the stand. *Id.* at 448, 567 S.E.2d 247. The juror explained that she did not know the Perry's name, having only lived down the street from the witness several years earlier. *Id.* The court removed the juror at the state's behest, and the Supreme Court found the removal was error. *Id.* at 247-48, 567 S.E.2d at 448-49.

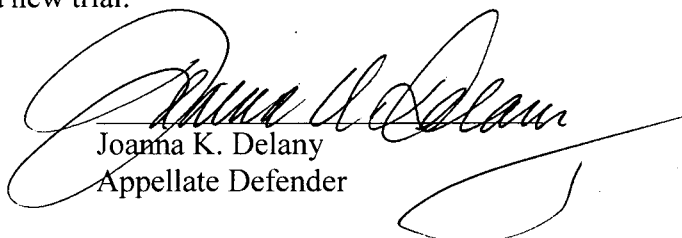
The South Carolina Supreme Court in *Stone* explained that where an innocent failure to disclose a "scant acquaintance would neither have supported a challenge for cause nor would it have been a material factor in the state's exercise of its peremptory challenges," the trial court abused its discretion when it removed the juror. *Id.* Here, Juror 193's acquaintance with the officers was scant—she spoke with them briefly on one occasion. Juror 193's failure to disclose

the acquaintance was innocent, as she explained she was unsure of the officers' names. Juror 193's scant acquaintance with the officers would not have supported a challenge for cause or have been a material factor in the state's use of peremptory challenges. *Stone*, 350 S.C. at 449, 567 S.E.2d at 248.

This Court should reverse.

**CONCLUSION**

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

A handwritten signature in black ink, appearing to read 'Joanna K. Delany', is written over a horizontal line. The signature is fluid and cursive.

Joanna K. Delany  
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of September, 2019.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

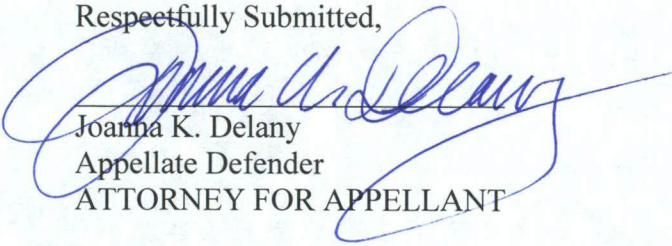
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Counsel for Jarvis Tremaine Stripling states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge J. Derham Cole, which was held on November 6 - 9, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Jarvis Tremaine Stripling.

Respectfully Submitted,

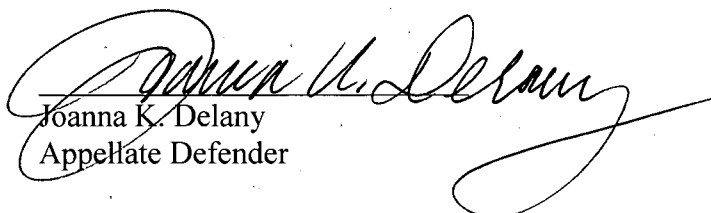
  
Joanna K. Delany  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 10th day of September, 2019.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders 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."

September 10, 2019.



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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

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Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

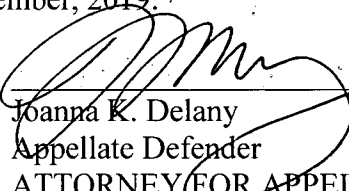
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JARVIS STRIPLING,

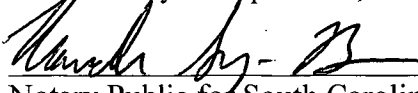
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Jarvis Tremaine Stripling, 378264, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 10th day of September, 2019.

  
Joanna K. Delany  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 10th day of September, 2019.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 26, 2028