



IN THE SUPREME COURT OF THE STATE OF DELAWARE

NOAH SHARP,

Defendant Below,  
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,  
Appellee.

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No. 64,2023

On appeal from the Superior Court  
of the State of Delaware

**STATE’S ANSWERING BRIEF**

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# TABLE OF CONTENTS

	<b>Page</b>
Table of Authorities .....	ii
Nature of Proceedings.....	1
Summary of Argument.....	2
Statement of Facts .....	3
Argument.....	5
I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION OR OTHERWISE ERR WHEN IT DENIED SHARP’S MOTION TO STRIKE A JUROR.....	5
A. The Superior Court Properly Determined that Juror 8 Could be Impartial. ....	7
(1) Juror 8 Did Not Withhold Material Information. ....	14
(2) Sharp Has Failed to Demonstrate That There Was a Valid Basis to Challenge Juror 8 For Cause. ....	20
Conclusion .....	21

## TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<i>Amirault v. Fair</i> , 968 F.2d 1404 (1st Cir.1992).....	16, 19
<i>Anderson v. City of Bessemer City</i> , 470 U.S. 564 (1985).....	18
<i>Banther v. State</i> , 823 A.2d 467 (Del. 2003) .....	7, 15, 18, 20
<i>Connors v. United States</i> , 158 U.S. 408 (1895).....	12
<i>Fitzgerald v. Greene</i> , 150 F.3d 357 (4th Cir.1998) .....	16, 19
<i>Hall v. State</i> , 12 A.3d 1123 (Del. 2010) .....	7
<i>In re Murchison</i> , 349 U.S. 133 (1955).....	7
<i>Irvin v. Dowd</i> , 366 U.S. 717 (1961).....	7, 12
<i>Jackson v. State</i> , 374 A.2d 1 (Del. 1977) .....	15
<i>Jin Sig Choi v. Warren</i> , 2015 WL 4042016 (D.N.J. Jun. 30, 2015).....	13
<i>Knox v. State</i> , 29 A.3d 217 (Del. 2011).....	5, 6, 7, 11, 18
<i>McCoy v. State</i> , 112 A.3d 239 (Del. 2015).....	7
<i>McDonough Power Equip., Inc. v. Greenwood</i> , 464 U.S. 548 (1984).....	15, 18, .....19, 20
<i>Mu'Min v. Virginia</i> , 500 U.S. 415 (1991) .....	13
<i>Nebraska Press Ass'n v. Stuart</i> , 427 U.S. 539 (1976).....	7
<i>Parson v. State</i> , 275 A.2d 777 (Del. 1971).....	5, 10, 14, 16, 17
<i>Reynolds v. United States</i> , 98 U.S. 145 (1878).....	5
<i>Rideau v. Louisiana</i> , 373 U.S. 723 (1963).....	15

<i>Ristaino v. Ross</i> , 424 U.S. 589 (1976) .....	12, 15
<i>Ritchie v. Rogers</i> , 313 F.3d 948 (6th Cir. 2002) .....	13
<i>Schwan v. State</i> , 65 A.3d 582 (Del. 2013) .....	5, 6, 7, 11, 12, 16
<i>Skilling v. United States</i> , 561 U.S. 358 (2010) .....	13, 16, 17
<i>Smith v. Phillips</i> , 455 U.S. 209 (1982) .....	19
<i>United States v. Claxton</i> , 766 F.3d 280 (3d Cir. 2014) .....	13
<i>United States v. De Oleo</i> , 697 F.3d 338 (6th Cir. 2012) .....	17
<i>United States v. Dominguez</i> , 615 F.2d 1093 (5th Cir. 1980) .....	17
<i>United States v. Edmond</i> , 43 F.3d 472 (9th Cir. 1994) .....	16, 18, 19
<i>United States v. Mitchell</i> , 690 F.3d 137 (3d Cir. 2012) .....	19
<i>United States v. Penn</i> , 870 F.3d 164 (3d Cir. 2017) .....	17
<i>Uttecht v. Brown</i> , 551 U.S. U.S. 1 (2015) .....	20
<i>White v. Wheeler</i> , 577 U.S. 73 (2015) .....	20
<b><u>STATUTES AND RULES</u></b>	
10 <i>Del. C.</i> § 4511 .....	18
Del. Super. Ct. Crim. R. 24 .....	11
<b><u>OTHER AUTHORITIES</u></b>	
Del. Const. art. I § 7 .....	7
U.S. Const. amend. VI .....	7

## NATURE OF PROCEEDINGS

On November 16, 2020, a New Castle County grand jury indicted Noah Sharp (“Sharp”) for Murder First Degree, Possession of a Deadly Weapon During the Commission of a Felony (“PDWDCF”), and Conspiracy First Degree. (A1 at D.I. 4; A15-16).<sup>1</sup> On March 8, 2021, the State reindicted Sharp for the same charges along with co-defendant Annika Stalczynski (“Stalczynski”). (A3 at D.I. 9; A17-18). After an eleven-day trial, a jury convicted Sharp of all charges. (A12 at D.I. 92, 93; A946-47). On February 3, 2023, the Superior Court sentenced Sharp to life in prison for Murder First Degree, 25 years of incarceration for PDWDCF, and 5 years of incarceration for Conspiracy First Degree, suspended after 3 years followed by decreasing levels of supervision. (A13 at D.I. 100; Opening Br. Exhibit B).

Sharp appealed and has filed an opening brief. This is the State’s answering brief.

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<sup>1</sup> A1 at D.I. 7; “D.I.” refers to docket item numbers on the Superior Court Criminal Docket in *State v. Sharp*, I.D. No. 2010002207.

## **SUMMARY OF ARGUMENT**

I. The appellant's argument is denied. The Superior Court did not abuse its discretion or otherwise err when it denied Sharp's motion to exclude Juror 8. The court questioned the juror and determined that he was willing and able to consider the evidence fairly and impartially and decide the case based only on the facts presented during the trial. The court personally questioned Juror 8 about his knowledge of the case and found that Juror 8's information stemmed from his wife's involvement in social media two years earlier. Juror 8 did not fail to disclose material information. He did not have a child that attended school with the victim, and his knowledge about the case obtained two years earlier from his wife's account on social media did not equate to material information. Moreover, Sharp cannot demonstrate that any valid basis exists to challenge Juror 8 for cause.

## STATEMENT OF FACTS

In 2018, Madison Sparrow (“Sparrow”) was a ninth grader. (A273). She was friends with Annika Stalczyński (“Stalczyński”) who was also a student at the same school. (A272). In fact, the two had been classmates for a long time and friends since eighth grade. (A272). Sparrow began dating Noah Sharp (“Sharp”). (A273, 275). Sharp spent a lot of time with Sparrow and her family, including a skiing trip to Virginia. (A273-74). In June or July of 2020, the relationship between Sparrow and Sharp ended. (A274-75). But Sharp was in love with Sparrow even after the breakup. (A276-77). Subsequently, Sharp graduated from Newark Charter High School and started spending time with Stalczyński. (A275-76, 614, 616).

Then Sharp began telling Stalczyński things that Sparrow was allegedly saying about her, like Sparrow wanted to fight Stalczyński and was calling Stalczyński names. (A613-14). At some point, Sharp grew to hate Sparrow and conspired with Stalczyński to kill Sparrow via text messages, on the telephone, on Facetime, and in person. (A612, 616, 620).

On Friday afternoon, October 2, 2020, Sparrow left her house to get ice cream with Stalczyński and to hang out. (A278-79, 425, 621). In reality, Stalczyński led Sparrow to her death.

Sharp waited for Sparrow to show up with Stalczyński in the woods behind McClary School and killed Sparrow by hitting her multiple times in the head with a

baseball bat. (A620-23). After hitting and killing Sparrow, Sharp and Stalczyński conspired to cover up the murder. (A441, 443-44, 447, 460, 618-19).

Later the same day Stalczyński told Sparrow's mother, Heather Sparrow-Murphy ("Sparrow-Murphy"), that she fought with Sparrow, and Sparrow called her a bitch. (A286).

As part of the plan, Sharp sent a text message from Sparrow's phone number to Sparrow-Murphy. Sparrow-Murphy thought the text message was strange and was not from her daughter. (A284-85, 442). Sparrow-Murphy contacted the police and reported her daughter missing. (A284, 287-88, 487-88, 491-96).

On October 5, 2020, the police found Sparrow's body in a shallow grave just off I-95 near Newark, Delaware. (A618, 418-420, 491-95). They also found evidence showing that Sharp and Stalczyński conspired to murder Sparrow and then carried out the killing in a wooded area behind McClary School in Newark. (A418-426, 620-23).



## ARGUMENT

### I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION OR OTHERWISE ERR WHEN IT DENIED SHARP'S MOTION TO STRIKE A JUROR.

#### Question Presented

Whether the Superior Court abused its discretion or otherwise erred by denying Sharp's motion to strike Juror 8 based on the juror's late disclosure that he had heard information about the case two years before the trial but had honestly forgotten the information.

#### Standard of Review

A Superior Court judge's decision not to remove a juror for cause is ordinarily entitled to deference.<sup>2</sup> "The deference given to such determinations on appeal is based upon the judge's ability to assess the veracity and credibility of the potential juror."<sup>3</sup> "The question thus presented is one of mixed law and fact . . . . The finding of the trial court upon that issue ought not to be set aside by a reviewing court, unless the error is manifest."<sup>4</sup> If the Superior Court fails to sufficiently inquire into juror

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<sup>2</sup> *Schwan v. State*, 65 A.3d 582, 590 (Del. 2013); *Knox v. State*, 29 A.3d 217, 220 (Del. 2011) ("Customarily this Court reviews a trial judge's determination that a juror can fairly and objectively render a verdict for abuse of discretion.").

<sup>3</sup> *Schwan*, 65 A.3d at 589; *Parson v. State*, 275 A.2d 777, 781-82 (Del. 1971).

<sup>4</sup> *Schwan*; 65 A.3d at 589; *Reynolds v. United States*, 98 U.S. 145, 156 (1878).

bias, this Court must independently evaluate the fairness and impartiality of the juror, and the “examination is more analogous to *de novo* review.”<sup>5</sup>

### **Merits of Argument**

Sharp argues that the Superior Court erred when it denied his motion to strike Juror No. 8. (Opening Br. 12). He asserts Juror 8 failed to disclose material information to the court, namely, that one of his children was in school with a classmate of the victim and that his wife was active on a social media campaign called “team Madison.” (Opening Br. 5, 7, 8, 10-11). Sharp contends this undisclosed information was material because it was probative of bias, including Juror 8’s “formed feelings” about him. (Opening Br. 11). Sharp also contends defense counsel would have exercised a preemptory challenge for cause based on this information. (Opening Br. 11). He asserts the Superior Court excused four potential jurors for a similar basis. (Opening Br. 11). Sharp maintains that allowing Juror 8 to be empaneled “was so prejudicial that it jeopardized the fairness and integrity of the trial process.” (Opening Br. 10). He also argues that the court’s denial of his motion to strike Juror 8 allowed a biased juror to deliberate and deprived him of his inalienable right to an impartial jury. (Opening Br. 6, 12). Sharp’s argument is unavailing.

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<sup>5</sup> *Schwan*, 65 A.3d at 590; *Knox*, 29 A.3d at 220-21.

Under the Sixth Amendment of the United States Constitution and Article I, § 7 of the Delaware Constitution, all defendants have a fundamental right to trial by an impartial jury.<sup>6</sup> An essential element of these constitutional rights is for the jury panel to be comprised of impartial or indifferent jurors.<sup>7</sup> That right is violated “if only one juror is improperly influenced.”<sup>8</sup> “In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, ‘indifferent’ jurors. . . . ‘A fair trial in a fair tribunal is a basic requirement of due process.’”<sup>9</sup> “[The] verdict must be based upon the evidence developed at the trial.”<sup>10</sup>

**A. The Superior Court Properly Determined that Juror 8 Could be Impartial.**

Here, the Superior Court did not abuse its discretion or otherwise err because the court questioned Juror 8 and found that he was willing and able to hear the case fairly and impartially and based only on the facts presented in the case. (A293-97, 300-03). Once Juror 8 recognized that details discussed during the trial were the same as what his wife had previously told him about the case two years before the

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<sup>6</sup> *Knox*, 29 A.3d at 223–24.

<sup>7</sup> *McCoy v. State*, 112 A.3d 239, 257 (Del. 2015); *Banther v. State*, 823 A.2d 467, 481 (Del. 2003).

<sup>8</sup> *McCoy*, 112 A.3d at 257; *Schwan*, 65 A.3d at 587 (quoting *Hall v. State*, 12 A.3d 1123, 1127 (Del. 2010)).

<sup>9</sup> *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 551 (1976); *In re Murchison*, 349 U.S. 133, 136 (1955).

<sup>10</sup> *Nebraska Press Ass’n*, 427 U.S. at 551; *Irvin v. Dowd*, 366 U.S. 717, 722 (1961).

trial, he disclosed this fact to the bailiff who brought Juror 8 before the court for a discussion:

THE COURT: Your name is . . . . The bailiff advised me that you called to his attention that you have heard some things about this case?

JUROR 8: Well, just two years ago. So, you know, when we went through the original kind of do you know anything about this case, I did not recognize any names or anything like that. But I live right in the heart of Newark and, you know, when all this happened --

THE COURT: Where do you live generally?

JUROR 8: Generally, so like right by Downes Elementary School. So like we know families that ended up with kids at Newark Charter that are my kids' age. And then one of them was in this young lady's class.

THE COURT: What do you recall hearing about this?

JUROR 8: So just on social media -- I'm not on there, but my wife is. And so when it all went down, it was very -- you know, vigils and very one-sided, right, toward Madison; right.

THE COURT: Your wife is on social media, but you're not, if I understand it?

JUROR 8: Yeah, other than LinkedIn.

THE COURT: So did you look at what your wife was getting on her feed or --

JUROR 8: I mean, two years ago, yeah. I mean, she was showing me, right. She was telling me all about what was going on. But I didn't realize that until we did the openings. I didn't link the two until we started today.

THE COURT: So do you have a recollection of what you heard back then?

JUROR 8: So I mean it was pieces of what we heard this morning, right, that, you know, this girl was killed in the woods. And, you know, McVey and Maclary, so we're familiar with all the schools in the area. So we kind of knew that that stuff had happened. And then there was kind of like a couple people involved and like I said the two that were mentioned today. You know, I would like to think I can be impartial, right.

THE COURT: I will ask you some questions about that.

JUROR 8: Right.

(A293-95).

The Superior Court questioned Juror 8 about whether he had formed an opinion as to the guilt of the defendants, including Sharp. (A295). Juror 8 said he had “feelings, not necessarily an opinion.” (A295). Juror 8 said he recognized unconscious bias and admitted that he had heard things about the case two years prior to the trial, but he denied having already formed an opinion. (A294-95). And, Juror 8 confirmed that he could be unbiased. (A296).

The court stated that when selecting a jury, even with very high profile cases, the initial issue was whether Juror 8 had already formed an opinion. (A296). If so, the next issue was whether Juror 8 could set aside any opinion and base his verdict on what he would hear in the trial, “because everybody is entitled to a fair trial, both

the defense and the State. . . .”<sup>11</sup> (A296-97). As the United State Supreme Court has stated, “[t]he question is whether or not, irrespective of a prior opinion, the prospective juror can follow the instructions given by the trial judge, disregarding his prior opinion and deciding the issue of guilt or innocence upon the facts presented in the trial at bar.”<sup>12</sup>

Next, the court focused on whether Juror 8 would be able to decide the case based on the evidence that would be presented. (A296-97). Juror 8 told the court that he was an analytical engineer who did trouble-shooting for equipment and that he was able to compartmentalize information. (A297). He also stated, “So, you know, I’m very aware of kind of taking what’s present now and using that only and not trying to build from the past. So I feel like I’m okay.” (A297).

After Juror 8 stepped out of the courtroom, the court asked both the State and defense counsel whether they had additional questions for the juror. (A297-98). Then the court confirmed with Juror 8 that he had not discussed the case with any other juror, and he received the information from social media when his wife shared it with him. (A300). Sharp objected to Juror 8 remaining on the jury. (A299, 301).

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<sup>11</sup> “The question is whether you formed opinions or not and whether you can—if you have formed an opinion, set aside that opinion and base your verdict on what you hear in the courtroom . . . .” (A296).

<sup>12</sup> *Parson*, 275 A.2d at 782.

The court denied Sharp's request to strike the juror and found that Juror 8 could remain on the jury:

THE COURT: Okay. I'm going to allow him to remain and I am going to allow him to remain for several reasons. First of all, he said that this information came to him a couple years ago and is not currently something he is seeing. Secondly, he is aware I guess of the possibility of unconscious bias. So I would think he would -- first of all, maybe I should back up. I was impressed with his candor and the way of explaining things. And to the extent there is a concern about unconscious bias, he is aware of that himself. So I think he could control that. He's an engineer, as he said, and gives him the mindset of being able to sort of put things in a particular cubbyhole or pigeonhole them and sort of not allow other things to enter into the consideration. And he said he can do it and I have no reason to doubt that. The test is, as I said, not whether somebody knows about something or heard about something, but whether you have an opinion they can't set aside and he doesn't have an opinion, so I'm going to allow him to remain. Okay. Mr. Frantz, you don't have to sit down. You can go back to the jury room and continue on with the trial.

(A300-03). The court's determination was correct.

Superior Court Criminal Rule of Procedure ("Rule") 24 requires that during the *voir dire* process, the court must personally determine whether a potential juror is unable or unwilling to hear the particular case fairly and impartially.<sup>13</sup> If a potential juror cannot, that individual should be removed from the panel for cause.<sup>14</sup>

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<sup>13</sup> Super. Ct. Crim. R. 24(a); *Schwan*, 65 A.3d at 590; *see Knox*, 29 A.3d at 224 (holding that because trial court did not conduct an in-court inquiry into juror's ability to be fair and impartial but instead relied solely on a deposition conducted out-of-court by counsel, the inquiry was inadequate as a matter of law).

<sup>14</sup> Super. Ct. Crim. R. 24(a).

If, however, a potential juror answers that she or he can reach a verdict impartially, on appeal this Court will give deference to the court's acceptance of that answer.<sup>15</sup> These same procedures apply after a juror has been seated and issues about that juror's impartiality are raised later.<sup>16</sup> Here, the trial judge personally questioned Juror 8 and determined that he had not formed an opinion about the case, that he could be fair and impartial, and that he agreed to make a decision based on the facts presented during the trial. *Voir dire* "is conducted under the supervision of the court, and a great deal must, of necessity, be left to its sound discretion."<sup>17</sup> Hence, the Superior Court's decision to allow Juror 8 to remain as a juror is entitled to deference.

Additionally, the United States Supreme Court has not held that a juror must be completely ignorant of the facts of a case to be considered as impartial.<sup>18</sup> "Even in instances where a juror has heard of or about the case, and of the allegations of a

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<sup>15</sup> *Schwan*, 65 A.3d at 589–90.

<sup>16</sup> *Id.*, at 590.

<sup>17</sup> *Ristaino v. Ross*, 424 U.S. 589, 594 (1976); *Connors v. United States*, 158 U.S. 408, 413 (1895).

<sup>18</sup> *See Irvin*, 366 U.S. at 722 ("It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case.").



defendant’s guilt, he may sit if he is still capable of abandoning his prior impressions and rendering a fair verdict on the evidence.”<sup>19</sup> Relatedly, “pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial.”<sup>20</sup> “[A] searching *voir dire* of the prospective jurors is the primary tool to determine if the impact of the publicity rises to th[e] level’ of actual prejudice.”<sup>21</sup> The United States Supreme Court has also “stressed the wide discretion granted to the trial court in conducting *voir dire* in the area of pretrial publicity and in other areas of inquiry that might tend to show juror bias. Particularly with respect to pretrial publicity, we think this primary reliance on the judgment of the trial court makes good sense.”<sup>22</sup>

Here, the Superior Court’s reasoning demonstrates that its decision was correct. The court concluded that Juror 8 could remain as a juror because (1) he had not currently heard about the case—he had heard the information two years earlier; (2) he was aware of unconscious bias and could control it because of his engineering skills; and (3) the court had no reason to doubt that Juror 8 could compartmentalize information and not allow other previously heard information to influence him. (A302-03). The trial judge’s searching inquiry led to the correct conclusion that

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<sup>19</sup> *United States v. Claxton*, 766 F.3d 280, 298 (3d Cir. 2014) (cleaned up).

<sup>20</sup> *Id.* (quoting *Skilling v. United States*, 561 U.S. 358, 384 (2010)).

<sup>21</sup> *Jin Sig Choi v. Warren*, 2015 WL 4042016, at \*17 (D.N.J. Jun. 30, 2015) (quoting *Ritchie v. Rogers*, 313 F.3d 948, 962 (6th Cir. 2002)).

<sup>22</sup> *Mu’Min v. Virginia*, 500 U.S. 415, 427 (1991).

Juror 8 could render an impartial and fair verdict despite having heard information about the case two years before the trial.<sup>23</sup>

**(1) *Juror 8 Did Not Withhold Material Information.***

Sharp argues that Juror 8 failed to disclose material information to the Superior Court. (Opening Br. 5). He asserts that Juror 8 neglected to disclose to the court that one of his children was in school with a classmate of the victim and that his wife was active on a social media campaign for the victim of Sharp's crimes. (Opening 5, 7). Sharp misapprehends the record.

First, the Superior Court determined that Juror 8's child was not in school with a classmate of the victim. (A300-301). Juror 8 stated that he lives in the heart of Newark Delaware, and his family knew "families that ended up with kids at Newark Charter" that were his kids' age "[a]nd then one of them was in this young lady's class." (A293). He clarified by saying that his wife "has a Facebook friend with a woman who lives down the street from us. My kids and their kids play little league together and stuff. And her daughter was in Madison's class in Newark Charter."

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<sup>23</sup> See *Parson*, 275 A.2d at 781-82 (holding that despite having formed an opinion about the defendant's guilt and believing that she could not presume him to be innocent at that time, the Superior Court properly denied motion to remove the juror because juror also stated the opinion she had formed would not prevent her from following the court's instructions to presume defendant was innocent until a conviction was reached).

(A300). Thus, it was a neighbor’s child who was in the same class as the victim—not one of Juror 8’s children.

Next, the Superior Court concluded that Juror 8 had forgotten about the information that his wife had told him about the case two years earlier. (A302). This Court has previously stated “that the impartial administration of justice is severely compromised when the juror's nondisclosure of material information during *voir dire* is deliberate.”<sup>24</sup> To constitute reversible error when a juror fails to accurately answer a question on *voir dire*, Sharp must first demonstrate that the juror failed to honestly answer a material question, and further demonstrate that a correct response would have provided a valid basis for a challenge for cause.<sup>25</sup> The “determination of impartiality, in which demeanor plays such an important part, is particularly within the province of the trial judge.”<sup>26</sup> “Determinations of juror bias depend on the trial court’s assessment of the potential juror's demeanor, credibility and state of mind. It is for this reason that we accord deference to the trial court’s findings.”<sup>27</sup> “Reviewing courts are properly resistant to second-guessing the trial judge’s

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<sup>24</sup> *Banther*, 823 A.2d at 484; *Jackson v. State*, 374 A.2d 1, 2 (Del. 1977).

<sup>25</sup> *Banther*, 823 A.2d at 484; *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 555–56 (1984).

<sup>26</sup> *Ristaino*, 424 U.S. at 594–95; *Rideau v. Louisiana*, 373 U.S. 723, 733 (1963) (Clark, J., dissenting).

<sup>27</sup> *Jackson v. State*, 684 A.2d 745, 750 (Del. 1996).

estimation of a juror’s impartiality, for that judge’s appraisal is ordinarily influenced by a host of factors impossible to capture fully in the record—among them, the prospective juror’s inflection, sincerity, demeanor, candor, body language, and apprehension of duty.”<sup>28</sup> The Superior Court conducted a searching inquiry into Juror 8’s impartiality once the juror disclosed that he had heard discussions about Sharp’s case. Initially, Juror 8 did not recognize the names of any of the parties involved. (A293). He said he did not realize until the opening statements that he had previously heard about the case. (A294). The trial judge considered Juror 8’s explanation for not previously disclosing his prior knowledge about the case, and concluded that Juror 8 was being forthright.<sup>29</sup> (A302). In fact, the court was impressed with Juror 8’s candor and his manner of explaining things. (A302).

The Superior Court’s determination that Juror 8 had forgotten his earlier knowledge about the case is entitled to deference. “The deference given to such determinations on appeal is based upon the judge’s ability to assess the veracity and credibility of the potential juror.”<sup>30</sup> Trial judges “are in the best position to view a

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<sup>28</sup> *Skilling*, 561 U.S. at 386.

<sup>29</sup> See *Fitzgerald v. Greene*, 150 F.3d 357, 362–63 (4th Cir.1998) (juror’s interpretation of *voir dire* question did not indicate dishonesty but rather factual accuracy); *United States v. Edmond*, 43 F.3d 472, 473–74 (9th Cir. 1994) (simple forgetfulness of juror did not indicate lack of impartiality); *Amirault v. Fair*, 968 F.2d 1404, 1405–06 (1st Cir.1992) (juror’s genuine blocking of incident from memory did not indicate dishonest response).

<sup>30</sup> *Schwan*, 65 A.3d at 589; *Parson*, 275 A.2d at 781–82.

juror’s demeanor and determine whether she [or he] is able to shoulder the obligations of jury service,” and “it is within the trial judge’s sound discretion to remove a juror whenever the judge becomes convinced that the juror’s abilities to perform his duties become impaired.”<sup>31</sup> “Reviewing courts are properly resistant to second-guessing the trial judge’s estimation of a juror’s impartiality, for that judge’s appraisal is ordinarily influenced by a host of factors impossible to capture fully in the record—among them, the prospective juror’s inflection, sincerity, demeanor, candor, body language, and apprehension of duty.”<sup>32</sup> Here, the Superior Court’s decision to allow Juror 8 to remain as a juror was based on the trial judge’s assessment of the credibility of the juror’s responses to the court’s searching inquiry.. Importantly, the Superior Court asked Juror 8 questions and found that he could be unbiased and decide the verdict based on the information that he would hear during the trial.<sup>33</sup> (A64, 294, 296-97, 302-03). “When findings are based on determinations regarding the credibility of witnesses, the level of deference is even

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<sup>31</sup> *United States v. Penn*, 870 F.3d 164, 171 (3d Cir. 2017) (quoting *United States v. De Oleo*, 697 F.3d 338, 342 (6th Cir. 2012); *United States v. Dominguez*, 615 F.2d 1093, 1095 (5th Cir. 1980)).

<sup>32</sup> *Skilling*, 561 U.S. at 386.

<sup>33</sup> *Parson*, 275 A.2d at 782 (“The question is whether or not, irrespective of a prior opinion, the prospective juror can follow the instructions given by the trial judge, disregarding his prior opinion and deciding the issue of guilt or innocence upon the facts presented in the trial at bar.”).

higher.”<sup>34</sup> The Superior Court properly concluded that Juror 8 could remain as an impartial juror.

Nor did the participation of Juror 8’s wife in a social media campaign for the victim qualify as material information that Juror 8 deliberately had withheld. Juror 8 was not a victim of a violent crime,<sup>35</sup> was not participating in an active criminal case,<sup>36</sup> and was not himself participating in social media.<sup>37</sup> (A293-94, 298-300). Nor could there be an implied bias here; such presumption arises where there is “revelation that the juror is an actual employee of the prosecuting agency, that the juror is a close relative of one of the participants in the trial or the criminal transaction, or that the juror was a witness or somehow involved in the criminal

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<sup>34</sup> *Banther*, 823 A.2d at 483; *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985).

<sup>35</sup> *See Banther*, 823 A.2d at 483 (finding that defendant facing first-degree murder charge would have had a valid basis to challenge jury forelady for cause because juror untruthfully denied being the victim of a violent crime during *voir dire*); *Edmond*, 43 F.3d at 474 (holding lower court abused its discretion when it concluded juror’s simple forgetfulness fell within the scope of dishonesty as defined by *McDonough Power Equip., Inc.*, 464 U.S. 548).

<sup>36</sup> *Knox*, 29 A.3d at 221 (“Even in factually unrelated cases, the victim’s experience with the Department of Justice, whether good or bad, previous or ongoing, will affect the victim’s perspective. In these situations, courts must be wary of the victim’s ability to be fair and impartial in the role of a juror.”).

<sup>37</sup> *See also* 10 *Del. C.* § 4511(c) (“A person who is not disqualified may be excluded from jury service by the Court only upon a finding that such person would be unable to render impartial jury service or would be likely to disrupt or otherwise adversely affect the proceedings.”).

transaction.”<sup>38</sup> Juror 8 simply did not recognize the connection between the information that his wife had previously told him or shown him on social media two years prior to the trial. (A294). As the Superior Court noted, Juror 8 recognized the facts of the case because he was paying attention to the evidence during the trial. (A299).

Even if the participation of Juror 8’s wife in a social media campaign for the victim equated to material information that Juror 8 had mistakenly withheld, the Superior Court correctly determined that Juror 8 did not deliberately fail to disclose this information during *voir dire*.<sup>39</sup> “The motives for concealing information may vary, but only those reasons that affect a juror’s impartiality can truly be said to affect the fairness of a trial.”<sup>40</sup> The Superior Court heard Juror 8’s explanation as to why he did not say anything earlier than he did and believed that he was being candid. (A293-94, 297, 300, 302-03). “A trial court’s ‘finding may be upheld even

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<sup>38</sup> *United States v. Mitchell*, 690 F.3d 137, 144 (3d Cir. 2012) (quoting *Smith v. Phillips*, 455 U.S. 209, 222 (1982)).

<sup>39</sup> *See Fitzgerald*, 150 F.3d at 362–63 (juror’s interpretation of *voir dire* question did not indicate dishonesty but rather factual accuracy); *Edmond*, 43 F.3d at 473–74 (simple forgetfulness of juror did not indicate lack of impartiality); *Amirault*, 968 F.2d at 1405-06 (juror’s genuine blocking of incident from memory did not indicate dishonest response).

<sup>40</sup> *McDonough Power Equip*, 464 U.S. at 556.

in the absence of clear statements from the juror that he or she is impaired.”<sup>41</sup> The Superior Court’s findings were correct.

**(2) *Sharp Has Failed to Demonstrate That There Was a Valid Basis to Challenge Juror 8 For Cause.***

Sharp has the burden to show that Juror 8 withheld material information *and* had Juror 8 provided a correct answer initially, the answer would have provided a valid basis for Sharp to challenge the juror for cause.<sup>42</sup>

Sharp cannot demonstrate that Juror 8 was actually biased, thus providing him with a basis to challenge Juror 8 for cause. As noted above, the trial judge conducted a searching inquiry once Juror 8 alerted the court to his concerns. The court questioned Juror 8 about his impartiality and ability to hear the evidence and decide the case based only on the evidence presented. Satisfied with Juror 8’s answers, the trial judge determined that the juror could remain on the jury. Sharp has failed to meet his burden of demonstrating that there was a valid basis to challenge Juror 8 for cause.

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<sup>41</sup> *White v. Wheeler*, 577 U.S. 73, 77 (2015) (quoting *Uttecht v. Brown*, 551 U.S. 1, 7 (2015)).

<sup>42</sup> *Banther*, 823 A.2d at 484 (finding that “[a] party must first demonstrate that a juror failed to honestly answer a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause.”); *McDonough Power Equip*, 464 U.S. at 555-56.



## CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Superior Court.

Respectfully submitted,

*/s/ Julie M. Donoghue*

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Date: January 8, 2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NOAH SHARP,	§	
	§	No. 64,2023
Defendant Below,	§	
Appellant,	§	On appeal from the Superior Court
	§	of the State of Delaware
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

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2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains **4,997** words, which were counted by Microsoft Word.

Date: January 8, 2024

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