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Case Number 64,2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NOAH SHARP,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	**No. 64, 2023**
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

APPELLANT'S REPLY BRIEF

ON APPEAL FROM THE SUPERIOR COURT
IN AND OF NEW CASTLE COUNTY

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DATE: January 26, 2024

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I. SHARP WAS NOT AFFORDED HIS RIGHT TO A TRIAL BY AN IMPARTIAL JURY AS A RESULT OF THE COURT'S DECISION TO DENY HIS MOTION TO STRIKE A JUROR WHO FAILED TO DISCLOSE MATERIAL INFORMATION DURING VOIR DIRE AND LATER CAME FORWARD DURING THE TRIAL ADMITTING TO HAVING IMPARTIALITY CONCERNS.

The State properly acknowledges "that the 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." Ans. Br. at 7. It also does not dispute that "an essential element of these constitutional rights is for the jury panel to be comprised of impartial or indifferent jurors" and "[t]hat right is violated if only one juror is improperly influenced."[1] Ans. Br. at 7. Here, Sharp's fundamental right was violated by Juror 8.

The State hangs its argument on Juror 8 asserting that he had "feelings, not necessarily an opinion." Ans. Br. at 9. However, the State fails to recognize that "feelings" and "impressions" from "opinions" is a meaningless distinction. A feeling by definition is an opinion.[2] Unprompted, Juror 8 questioned his own impartiality. A294. Even more problematic is the fact that Juror 8 admitted forming "feelings" about Sharp and whether he was guilty. A295. This should have been enough to strike him at defense counsel's request.

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[1] *McCoy v. State*, 112 A.3d 239, 257 (Del. 2015).

[2] https://dictionary.cambridge.org/us/dictionary/english/feeling.

Like the Superior Court, the State misconstrues the concept of unconscious bias. Recognizing unconscious bias does not allow Juror 8 to negate such bias. Ans. Br. at 9. Once Juror 8 admitted to having feelings and impressions, any discussion or analysis of "unconscious bias" is futile because he is fully and consciously aware of it. The Superior Court was correct in focusing on the question of whether Juror 8 had formed an opinion, and if so, could he set it aside. A300. However, if the juror doesn't even understand that he has formed an opinion (and instead believes feelings and impressions to be unconscious bias) then his self-evaluated conclusion that he can set aside an opinion he has formed is completely unreliable. Moreover, it is astonishing that the State argues that Juror 8 "was aware of unconscious bias and could control it because of his engineering skills". Ans. Br. at 13. The State fails to align any authority to support that engineering skills enable one to control unconscious bias and there is also none in this record, or in their brief.

The State's argument that "[t]he 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", is plainly wrong and not supported by the record. Ans. Br. at 19. The State's position fails to acknowledge that Juror 8's odd and troubling response to the ruling that he was permitted to stay, "awesome" suggests otherwise. A303. His response was motivated by a personal desire to be on the jury, as opposed to

just a desire to ensure a fair trial. "Allowing Juror No. 8 to be empaneled in this case was so prejudicial that it jeopardized the fairness and integrity of the trial process".[3]

One of the State's final lines of argument is perhaps the most dubious of all. The Answer misconstrues the record in asserting that "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." Ans. Br. at 17. The ruling was not a credibility determination. Following Juror 8's explicit admission to having developed anti-Sharp bias, feelings, and impressions as a result of exposure to pretrial advocacy for the victim, his statements about being able to set aside that bias were inherently equivocal. Thus, even assuming Juror 8 is perfectly credible, his statements acknowledge the possibility that his bias would impact the verdict. At one point while answering a series of questions he posed to himself, Juror 8 stated: Do I think I can be unbiased? Yes." A100. His statements both before and after this unprompted assertion clarify that "think" was intended to express the uncertainty which recognizes, rather than unequivocally disclaims, the possibility that he cannot be impartial: "I would like to think I can be impartial," A98 "I think I'm okay." A101 "feel like I'm okay." A101. Numerous courts have recognized that once evidence of juror bias is established, equivocal statements like Juror 8's are

[3] *Knox v. State*, 29 A.3d 217, 223 (Del. 2011).

insufficient to rehabilitate and keep the juror.[4] Thus, Sharp's convictions must be reversed.

[4] *People v. McGuire*, 956 N.Y.S.2d 635, 637 (App. Div. 2012) ("Where a prospective juror's statements raise serious doubts concerning possible bias or the inability to render an impartial verdict, the court must remove that challenged juror for cause unless he or she unequivocally states that he or she can be fair and impartial, set aside any bias, and render a verdict based solely on the evidence"); *Miller v. Webb*, 385 F.3d 666, 674 (6th Cir. 2004) ("when left with only a statement of partiality without a subsequent assurance of impartiality or rehabilitation through follow-up questions, "juror bias can always be presumed from such unequivocal statements"); *People v. Johnson*, 730 N.E.2d 932 (N.Y. 2000) (holding statement by potential juror suggesting possible bias can be cured if the juror "provides *unequivocal* assurance that he or she can set aside any bias and render an impartial verdict based on the evidence") (emphasis added); *White v. State*, 290 S.W.3d 162, 166 (Mo. Ct. App. 2009) ("Where a venireperson's answer suggests a possibility of bias, that person is not qualified to serve as a juror unless, upon further questioning, he or she is rehabilitated by giving unequivocal assurances of impartiality.") *Com v. Long*, 647 N.E.2d 1162, 1166 (Mass. 1995) (holding juror's admission of possible bias was not cured by statements that he "hoped" it would not impact the verdict, and that he would "do [his] best" to decide the case fairly because equivocal statements meant "he might not be able to set aside his impressions [] and render verdicts based on the evidence presented in court.").

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Noah Sharp's convictions should be reversed.

\s\ Santino Ceccotti
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