

include the claim in his motion for new trial. *Id.* The Court did so under plain error review as allowed by Rule 30.20. *Id.*

1. Juror Misconduct

Defendant's sole contention on appeal is that he suffered prejudice due to juror misconduct. Specifically, Defendant contends that Venire Person 18 (hereinafter "VP-18"), did not disclose relevant information that was asked about in the voir dire process, and this missing information hampered defense counsel's ability to properly assess the use of "for cause" and "preemptory" strikes in the selection process. VP-18 not only ended up becoming a member of the Defendant's jury but the jury's foreperson. In doing so, VP-18 prejudiced Defendant's constitutional right to a fair and impartial jury of his peers.

A. Factual Background

Defendant's jury trial on charges of Sexual Abuse in the First Degree and Kidnapping in the Third Degree commenced on January 22, 2025. The parties conducted voir dire on that date. Because of the nature of the charges, the Court, the State and defense counsel all specifically asked biased seeking questions to the panel about the issue of sexual assault, broadly, and more specifically. Additionally, it was made abundantly clear that due to the sensitive nature of the topic, panel members always had the option to answer these inquiries in private, but we needed all information possibly pertinent to the questions being asked.

The Court asked if anyone thought based on those charges alone, that this might not be the right case for some panel members, and multiple members responded, but not VP-18. The State asked if anyone on the panel, or their close friends or family, were ever victims of sexual assault. The State also asked if anyone on the panel, or their close friends or family were ever accused of sexual assault. Many members of the panel responded to these inquiries, but not VP-18. The State

also inquired whether any panel members had any legal experience. This was one of the only inquiries VP-18 responded to, providing that previously she was on a mock trial team. She did not indicate any further legal background.

Defense counsel informed the jury that these allegations took place at a work conference to determine if any panel members had seen these allegations portrayed in the media prior to trial. Defense counsel asked if anyone believed they should always believe a woman accuser in a sexual assault situation. Defense counsel also inquired if anyone had any opinions about the “Me Too” movement that might impact their ability to remain fair and impartial. Defense counsel covered the same questions as the State about whether any panel member or someone close to them was a victim of sexual assault. Defense counsel specifically asked the panel if any venireperson was a member of any victim support group. While most, if not all, of these inquiries generated responses from many panel members, VP-18 did not respond to any of these inquiries.

VP-18 was selected to be a juror. Defendant was found guilty by the jury on both counts, with VP-18 acting as the foreperson for that jury. Since the verdict, Defendant became aware of VP-18’s social media accounts. Affidavits attesting to Defendant’s findings are being filed in Court with this Motion. Specifically, VP-18’s LinkedIn and Facebook indicate that VP-18 worked for almost three years in various capacities at the “Violence Project.” This is an organization aimed at rooting out violence in society. Furthermore, VP-18’s personal webpage shows she worked with this organization to construct their website, “The Off-Ramp Project,” dedicated to training others on violence prevention techniques. VP-18’s LinkedIn also discloses that she worked as a “Summer File Clerk” for a law firm for 3 years and 3 months. Finally, VP-18’s LinkedIn discloses that she received a certificate for “Workplace Violence Prevention,” from the Violence Project.

VP-18 was specifically asked if there was anything about her life experiences that might make her biased in this case and not one time did VP-18 inform the Court or the parties about any of the information listed above. VP-18 was specifically asked about any legal background, and disclosed participation on mock trial, but failed to disclose a 3-plus-year history of clerking at a law firm. Someone who participated in mock trial, and clerked for such an extended period, would know the importance of such disclosures. Further, VP-18 heard specific inquiries about having any opinion or relationship to the “Me Too” movement and did not respond. VP-18 was specifically asked, along with the rest of the panel, if she was a part of any victim support groups and failed to respond. VP-18 was even made aware that these allegations were “workplace violence” in nature, and she did not disclose she had a specific interest and background in that subject. Let alone that she had been awarded a certificate in its prevention.

B. Legal Authority

A prospective juror must have an “open mind, free from bias and prejudice.” *State v. Mayes*, 63 S.W.3d 615, 624 (Mo. 2001), *quoting State v. Wheat*, 775 S.W.2d 155, 158 (Mo. banc 1989). Prospective jurors have a duty to answer all questions *fully*, fairly, and truthfully during voir dire. *Id.* (*emphasis added*). The failure to respond to an applicable question can deprive counsel of information needed to exercise a preemptory challenge or challenge for cause. *Id.* In determining whether to grant a new trial, the Court must determine whether a nondisclosure occurred at all, and, if so, whether it was intentional or unintentional. *Id.*

i. Intentional Nondisclosure

Intentional nondisclosure occurs when: (1) there is no reasonable inability to comprehend the information solicited by the question asked of the prospective juror, and (2) the prospective juror remembers the experience or that it was of such significance that the juror’s purported

forgetfulness is unreasonable. *State v. McFadden*, 391 S.W.3d 408, 418 (Mo. 2013). Biased and prejudice will normally be presumed if a juror intentionally withholds material information. *Id.* Accordingly, a finding of intentional nondisclosure of a material issue is tantamount to a per se rule mandating a new trial. *Id.*

An unequivocal question triggers a venireperson's duty to disclose information. *State v. Ess*, 453 S.W.3d 196, 204 (Mo. 2015). A venireperson's silence to an unequivocal question establishes juror nondisclosure, if the information is known to the juror. *Id.* A prospective juror's qualifications are not determined from a single response but rather from the entire voir dire examination. *Id.*

ii. Unintentional Nondisclosure

If a nondisclosure is unintentional, a new trial is not warranted unless prejudice resulted from the nondisclosure that may have influenced the jury's verdict. *Mayes*, at 624. Unintentional nondisclosure exists where, for example, the experience forgotten was insignificant or remote in time, or where the venireperson reasonably misunderstands the question posed." *McFadden*, at 418. In the case of unintentional nondisclosure, the party seeking the new trial has the burden of proving prejudice. *Id.*

C. Argument

VP-18's failure to disclose her past work at the Violence Project, her obtainment of a "Workplace Violence Prevention" certificate, and her failure to disclose more expansive work in the legal industry, all constitute nondisclosures. The length of her employment at both the Violence Project, and clerking for a law firm, further support these were intentional non-disclosures. But because these nondisclosures are indisputably prejudicial, their intentionality matters little.

As the case law instructs, a prospective juror's qualifications are determined from a holistic review of their entire voir dire examination, not a single response. But when a prospective juror fails to respond, repeatedly, counsel is left in the dark about a possibly prejudicial background. That is obviously the case here.

VP-18's only noted response in voir dire was disclosure of her prior participation on mock trial team. At the time, defense counsel noted that she answered with language to the effect of, "but this experience will not prejudice me in any way," further corroborating her knowledge of the voir dire process and past participation in the mock trial team. But at that time, she did not report clerking for a law firm for over 3 years, as supported by the evidence entered through an affidavit in the form of VP-18's LinkedIn profile.

VP-18 was also questioned, along with the rest of the panel, about having any life experiences, personally, or for those close to them, involving sexual assault. VP-18 was informed that these allegations were from a work conference, so the case would touch directly on workplace violence. The entire panel was asked if they held strong opinions on the "Me Too" movement. The entire panel was even specifically asked if they were a part of any victim support groups. VP-18 did not answer affirmatively to any of these questions. At no time did VP-18 divulge this prior work history to the parties. And this was not simply a forgettable internship.

VP-18 worked for the Violence Project for almost 3 years. She started as an intern for 4 months. She was then given an "Operations Manager" position, which she maintained for 1 year and 2 months, before being promoted to their "Webmaster and Technology Consultant." She retained that position for 1 year and 5 months. It appears her employment with the Violence Project ended a mere 2 years before the trial, in January of 2023. During VP-18's time with the Violence Project, she constructed their "online violence prevention training program" in the form of a

website called the “Off-Ramp Project.” Finally, VP-18 also specifically received a “Workplace Violence Prevention” certificate from the Violence Project.

The Court, the State, and defense counsel all asked the panel to be as open and honest as possible when answering questions in voir dire. They asked the panel to answer any question that might be applicable to them in any way so the parties could learn more. The Court and both parties then specifically asked if any life experiences touched on sexual assault. The parties also shared that these allegations were workplace violence allegations and asked if panel members’ life-experiences would impact their impartiality based on the workplace nature of these allegations.

VP-18’s prior experience on the mock trial team further supports the proposition that this was intentional nondisclosure. Voir dire is a skill that is often practiced by participants of mock trial. Thus, one can presume VP-18 knew the parties were there to learn as much about panel members as possible, and specifically if any panel members had life experiences that could cause them to be biased in the given case. The panel was informed repeatedly that the only wrong answer was having an answer and not giving it. They were instructed to answer ANY time a panel member thought the question might pertain to them.

And yet, not once did VP-18 believe this work background would be relevant to evaluating her bias in judging an allegation of workplace violence. To believe that VP-18 did not think these questions were applicable, that her work history was not relevant to our biased seeking quest, strains credulity. These were intentional non-disclosures, and thus per se prejudicial under the law.

But, even if we were to adopt the notion that she just wasn’t asked a direct enough question to elicit divulging this work history, the work history itself shows clear prejudice. This panel member had spent almost 3 years of her life working for an organization with the stated goal of

rooting out all violence. In her time with that organization she constructed an entire website, designed to train others on violence prevention methods. She also took enough courses herself to become certified in workplace violence prevention. And then, she not only sat on a jury that contemplated an accusation of workplace violence, but she was also its foreperson. This means she was tasked with leading the conversation in the deliberation room. And these past life experiences likely bled into that deliberation as a result.

D. Conclusion

VP-18's failure to disclose the information laid out above is a clear case of non-disclosure, and thus juror misconduct. VP-18 worked for the Violence Project only 3 years before this voir dire taking place. She worked there for almost 3 years, constructing a website to train others in violence prevention. And she was certified in "workplace violence prevention." These nondisclosures were almost certainly intentional but uncontrovertibly prejudicial. Therefore, Defendant's requests this Court enter an order granting Defendant's request for a new trial in this matter.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify by way of the above signature that on April 3rd, 2025, the foregoing was electronically filed with the Clerk of the Court to be served by operation of the Courts electronic filing system.