

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
3/7/2025 1:37 PM
BERNICE A. RAMOS
CLERK OF THE COURT
Israel Monsivaiz

STATE OF NEW MEXICO,

Plaintiff,

v.

D-307-CR-2023-01613

Judge: James Foy

BRAD JUSTIN LUNSFORD,

Defendant.

**DEFENDANT'S SECOND (SUPPLEMENTAL) MOTION FOR NEW TRIAL BASED ON
NEWLY DISCOVERED EVIDENCE OF JUROR BIAS AND
REQUEST FOR IMMEDIATE RELEASE**

COMES NOW Brad Justin Lunsford, through his attorney Matthew Chandler, and pursuant to Rule 5-614 of the Rules of Criminal Procedure for the District Court, and the common law of New Mexico, moves this court to set aside the verdict and grant Mr. Lunsford a new trial based on newly discovered juror bias. As grounds, counsel states as follows:

I. Introduction

A. Factual Background

On August 2, 2022, Brad Lunsford, a police officer for Las Cruces Police Department, shot and killed Presley Eze.

On December 6, 2023, over sixteen months later, the New Mexico Attorney General's Office approved a charge of Voluntary Manslaughter against Mr. Lunsford. Mr. Lunsford was booked and released on his own personal recognizance. He entered a plea of not guilty to the charge and this matter was set for jury selection and jury trial to begin on February 3, 2025.

Prior to jury selection, the attorneys sent out a Court approved special questionnaire to all potential jurors, which included specific questions about this case. Each questionnaire was

numbered sequentially. One questionnaire, displaying Number #597, was returned to the Court after being filled out under oath and penalty of perjury by a prospective juror. See **Defendant's Exhibit A** which will be subsequently filed under seal to protect the identity of the jurors as ordered by this Court.

On February 3, 2025, approximately 146 jurors were summoned to the Dona Ana Courthouse for jury selection, one of which was Juror #597. When this Juror arrived at the Courthouse, he/she was seated in the courtroom in seat #17. Throughout the remainder of the jury selection process, this Juror became known as Juror#17.

The jury selection, also known as *voir dire*, lasted all day. Many questions were asked by the Court and the attorneys on both sides to help make informed decisions in challenging jurors for cause and in exercising their peremptory strikes. At the end of the day, based on the information known at the time, the Court excused numerous jurors for cause. The State exercised all their peremptory strikes and Defense used three out of five of his peremptory strikes, and did not use two of the strikes due to his confidence in the jurors based on their actual disclosures. The first twelve jurors were seated. Juror #17 was selected in the first twelve and reseated in the jury box as Juror #8.

At the conclusion of the trial, this Court instructed the jurors to return to the jury room, pick a foreperson, and then begin their deliberations.¹ For purposes of this motion, Juror #8 was selected as the "Foreperson" of the jury. A foreperson acts as a liaison between the Court and the jury and is responsible for signing the verdict forms that are provided with the Court's jury instructions. Many times, a foreperson takes the responsibility of leading the discussions in jury

¹ Unbeknownst to the parties, and without any cause whatsoever, Juror #11 and Juror #12 were substituted by the Court for Alternate Juror #3 and Alternate Juror #4. This matter is addressed in Defendant's First Motion for New Trial.

deliberations and ensuring the jury follows the instructions and rules of the Court. Further, the foreperson is often considered the leader of the jury and can have persuasion over the other members of the jury. For the purposes of this motion, the Foreperson (formally referenced as Juror #17) will simply be referred to hereafter as “Juror #8”.

After the verdict was announced and jurors were released from this case, it came to the attention of Defense that Juror #8 had an inherent bias in this case and failed to truthfully disclose the bias during *voir dire*, even though numerous questions were asked by both sides and jurors were given ample opportunity to discuss their bias and/or potential bias. Ultimately Juror #8’s bias prohibited Defendant from his right to a fair and impartial jury as guaranteed by the New Mexico Constitution, art. II, § 14.

B. Grounds for Mistrial Based on Juror’s Failure to Disclose Information

All parties are entitled to full and accurate responses to their *voir dire* questions to help make informed decisions in challenging jurors for cause and in exercising their right to peremptory strikes of jurors. When jurors fail to answer questions honestly or omit information that the parties are attempting to gather, the parties are denied this right. This is known as juror misconduct.

For the justice system to work, the court and the parties must rely on a juror to answer the questions posed in *voir dire* and answer honestly:

“It is the duty of a juror to make full and truthful answers to such questions as are asked, neither falsely stating any fact **nor** concealing any material matter. If a juror falsely represents his interest or situation or conceals a material fact relevant to the controversy and such matters, if truthfully answered, might establish prejudice or work a disqualification of the juror, the party misled or deceived thereby, upon discovering the fact of the juror’s incompetency or disqualification after trial, may assert that fact as ground for and obtain a new trial, upon a proper showing of such facts, even though the bias or prejudice is not shown to have caused an unjust verdict, it being sufficient that a party,

through no fault of his own, has been deprived of his constitutional guarantee of a trial of his case before a fair and impartial jury.” *State v. Mares*, 83 N.M. 225, 490 P.2d 667 (1971).

Similarly, in Federal Court, to obtain a new trial, a party must demonstrate that a juror failed to disclose relevant and material information when requested by the court or the parties, and said information, if known at the time, would provide a valid basis for a challenge for cause. *McDonough Pwr. Equip. v. Greenwood*, 464 U.S. 584 (1984). When the United States Supreme Court reviewed this Tenth Circuit case, it reasoned that “[*V*]oir dire examination serves to protect the right to a fair trial by exposing possible biases, both known and unknown, on the part of potential jurors. Demonstrated bias in the responses to questions on *voir dire* may result in a juror’s being excused for cause and hints of bias not sufficient to warrant challenge for cause may assist parties in exercising their peremptory challenges. The necessity of truthful answers by prospective jurors, if this process is to serve its purpose, is obvious. *Id.* at 464 US 555.

When a juror provides less than accurate information, by way of a lie or an omission, the defendant has lost his ability to examine the juror for any hint of bias, and thus to challenge him for cause. *United States v. Scott*, 854 F.2d 697, 698 (5th Cir. 1988). Indeed, “by not mentioning [material information, the juror] withdr[aws] from defense counsel and the court the decision as to whether he should nevertheless serve as a juror and ma[kes] that decision himself.” *Id.*

Losing the right to exercise a challenge for cause because of a juror’s failure to disclose material information violates a defendant’s substantial right to select a fair and impartial jury. Because challenges for cause are the mechanism through which the impartial jury right is ensured, removing the defendant’s ability to challenge a juror for cause directly infringes upon his Sixth Amendment rights and his rights under Article II, Section 14 of the New Mexico Constitution.

In this case, Juror #8 failed to disclose material information that would have given rise to strike Juror #8 for cause. Or, at a minimum, would have given Defense Counsel the right to further inquire into any potential bias, and the ability to use one of his peremptory strikes to assemble a fair and impartial jury. Because Juror #8 did not disclose a history of bias, the Defendant was barred from his right to a fair and impartial jury of his peers and should be granted a new trial.

II. Juror Sequence Number 597's lack of candor when answering the Court's Juror Questionnaire

In preparing to select a fair and impartial jury panel, this Court sent prospective jurors a summons with questions about a juror's background, followed by a more detailed questionnaire tailored specifically to allow the parties to select a fair and impartial jury based on the unique circumstances of this case.

Questionnaire "Juror Sequence Number 597" was completed by Juror #8 and returned to the Court. Within this questionnaire, Juror #8 claimed under oath and penalty of perjury, the following answers:

*I have not heard anything about this case. This seems like an important case.
I have not discussed the case with anyone.*

The questionnaire then asked, "Have you formed any opinions regarding the District Attorney's Office, the Attorney General's Office, the Las Cruces Police Department, the New Mexico State Police, Defense Counsel, or the Court in relation to this case that would make it difficult for you to decide the case based only on the evidence that comes out of trial?"

Juror #8's answer was:

In general, I trust local and state police. I am also aware of the charge for less deadly policing.

III. Juror #8's failure to disclose relevant bias against Defendant and in favor of decedent, Presley Eze.

At multiple points during *voir dire*, Juror #8 had the opportunity to truthfully disclose feelings, bias, and opinions and failed to disclose material information relevant to this case. Juror #8's omissions deprived the Defendant of an opportunity to challenge Juror #8 for cause or exercise a peremptory challenge, thereby violating the Defendant's right to a fair and impartial jury.

The following are examples of Juror #8's failure to disclose material information necessary to select a fair and impartial jury.

A. Failed to Disclose that Juror was Familiar with the Case

In the *Audio Log Notes* of jury selection, at 9:59:36 AM, the Court specifically asked whether any jurors were familiar with the case; Juror #8 remained silent. However, as a reminder, Juror #8 had previously answered under oath and penalty of perjury that he or she had not heard anything about the case, had no fixed opinion about the case, and not discussed the case with anyone.

Upon good information discovered after the verdict, Juror #8's claims were presumably false or not corrected when Juror #8 had the chance.

Post-verdict, it came to the attention of Defense that even *prior* to the jury selection process, Juror #8 hosted a gathering to celebrate a birthday. At this gathering, Juror #8 shared with others that he or she was "selected" to appear in a case involving "excessive force of a police officer" and how "exciting" it was. This comment alone shows that Juror #8 had predetermined that Brad Lunsford used excessive force in this case.

B. Failed to Disclose Strong Emotions, Bias, and Opinions

Juror #8 also failed to disclose bias during jury selection when given the chance to disclose certain facts to determine if a juror has any preconceived bias or opinions.

In the Court filed *Audio Log Notes* of the jury selection, at 2:35:58 PM, Defense Counsel diligently inquired as to whether a case involving a White police officer and the death of a person of color stirred emotions for any jurors. More specifically, in the Court's audio recording of the jury selection process, recording "*Voir Dire #6*", at mark 1:07:35, Defense Counsel asked the following question:

"In this case, Mr. Eze was a Black gentleman, and Mr. Lunsford was a White gentleman. There's been a lot of media attention the last few years about allegations of police brutality and if people of color are being treated fairly. Does anyone have strong feelings about a case with a White police officer and a Black gentleman that was killed ... does that stir up any emotions that you think it's just wrong and because of that, I think people of color are being treated badly? To the point that I can't be fair because this is not right."

Juror #8 sat in silence. However, Juror #3 responded truthfully and explained his or her feelings which ultimately led to Juror #3's removal for cause. Juror #3 answered the question by stating the following answer:

"I think of George Floyd and one man in Missouri that was left dead in the street for hours and the young lady in South Georgia that was killed in her bed. My perception is White on Black violence ... It's hard to get these cases out of my head. ... I don't know if I can get it out of my head. If I were to make a commitment that I could abide by those instructions. ... I understand it would be my duty to apply (those instructions) but I have so much inner conflict. ... I am not sure."

With that, this Court asked the Juror #3 point blank if she could be fair based on her statement, and Juror No. 3 stated, "*I'm not sure.*"

Again, Juror #8 did not reveal his or her background and feelings about this issue. If Juror #8 had revealed his or her actual history and background, it is probable that Juror #8 would have been removed for cause as the best evidence of what would happen was revealed with Juror #3's fate.

Later, during the selection process held outside the presence of the jury panel, in Court audio recording labeled "*Voir Dire #8*", the Court and the parties discussed the truthful opinion and answer of Juror #3 to determine if cause existed to excuse Juror #3 from service. At that time, at 49:10 of the audio recording, the Court ruled, "*Juror No. 3 can't be fair. Any objection?*", to which neither party objected to Juror #3 being stricken for cause, and the Court stated, "*Juror No. 3 is out.*"

If Juror #8 had truthfully answered this question, one can only assume for the sake of a fair and impartial jury trial, that Juror #8 would have had the same fate as Juror #3. Or, at the least, if Juror #8 disclosed what was discovered after the post-verdict, Defense counsel would have had the opportunity to use a peremptory strike of Juror #8.

IV. Newly discovered information revealing that Juror #8 has a documented history of anti-police bias based on her belief that police discriminate against people of color.

Additionally, following the verdict, newly discovered information revealed that Juror #8 has a long history of strong emotions on this subject as evidenced by a history of participating in protests over presumably the same subject matter Juror #3 referenced when he or she stated she has thoughts of a man in Missouri that was left dead in the street due to a police shooting.

A. Failed to Disclose Appearance on Podcast Linked to Bias

Specifically, it was discovered post-verdict that Juror #8 not only participated in protests in Kansas City, Missouri, but also participated in podcasts related to proclaimed racial injustice in America and police use of force. In one podcast recorded prior to the trial, but discovered post-verdict, Juror #8 made the following comments:

“And the thing that is happening in the United States is that it’s clearly a society that, um, is founded on racism and continues to be a racist society.”

“... White people have a privilege. Um, they’re much less likely, um, to encounter violence by the police. And that, um, we can use that privilege to support movements for racial justice. And along with plenty of those conversations, um, that were aided by movies and books, we also participated in, um, some marches and protests where children got to experience, um, standing up for racial justice.”

“One exciting thing that I have seen happen since, um, Black Lives Matter uprising and, um, the uprising after the murder of George Floyd is so many more, um, white moms who I know are, are reading and trying to understand, and they’re doing that identity work, and they’re starting to have more conversations with their own children and with, and um, I’ve seen some, some really surprising, um, conversations of, of, of white moms calling out other white moms and, and it’s, I don’t want to promote a callout culture where, you know, I’m more woke than you are.”

“My daughter, when she was younger, um, I think it was second or third grade, she created a sign about police brutality, and, and in the little zine that she created at a zine con, so another one of those community events that we went that gave them opportunities to think about, you know, to interact with people and to, to see how different, racialized current events effected different people and they make something. So she created a zine about police brutality and drew pictures of white officers shooting a black person. And so we live in a time, and maybe there’s always, maybe it’s always this time in the United states, but now we live in a time where children are seeing the physical effects of racism, and so they can see, black people are incurring more violence than, than white people.”



Figure 5.6 My Daughter's Zine Page 1
"Don't hurt me. To: [our minister] From: [my daughter]"

In the podcast, the host asked Juror #8, *"What made you passionate about inequalities in society?"* Juror #17 answered,

"It's something that I have always cared about, um, a lot about, and I don't know that I can pinpoint it."

B. Failed to Disclose Organizational Affiliations Linked to Bias

Moreover, Juror #8 failed to disclose organizational affiliations that should have resulted in removal for cause, or again, at the least, should have allowed Defense Counsel to further inquiry and the use of a peremptory strike.

In Court filed *Audio Log Notes* of the jury selection process, at 2:46:48 PM, and in the Court recorded audio of Jury Selection, at *"Voir Dire 6"*, at 1:18:50, Defense Counsel asked if any juror engaged in organizations that support or oppose law enforcement. Specifically, Defense Counsel asked the jury panel the following question:

"Is there anyone here that belongs to any kind of professional group that support law enforcement or the other side that supports changes to law enforcement because they believe the system is not working. Anyone a part of any group like that?"

Juror #35 and Juror #90 answered in the affirmative giving the attorneys and the Court the ability to judge the jurors partiality or bias. However, Juror #8, once again, sat silent. However, after the trial, it was discovered that Juror #8 is a member of *Showing Up for Racial Justice (SURJ) Kansas City*, which is a subchapter of *SURJ National*, an organization that, according to their own website, actively campaigns to defund police and end police murders.

The following are excerpts from *SURJ's* website, which are each highly relevant in a case involving a police officer accused of unlawfully taking the life of another person in the course of his duty as a police officer:



Defund the police toolkit

In the midst of the Black-led mass uprisings across the globe calling for an end to police murders, SURJ created this toolkit for white communities to learn and take action around calls to invest money in communities and divest from Police.

[READ MORE -](#)

**CALL TO ACTION
TELL GOVERNOR PARSON
DON'T PARDON A KILLER COP**



On December 3rd, 2019 KCPD Officer Eric DeValkenaere shot and killed Cameron Lamb, an unarmed Black man in his own backyard. Despite being convicted, Cameron Lamb's killer has yet to serve a day in his sentence four years later. Now Governor Parson is considering pardoning DeValkenaere, sending the message that police can get away with murder.

JOIN US IN CONTACTING GOVERNOR PARSON

- Governor Parson - Don't pardon DeValkenaere
- Uphold the law equally for everyone
- Hold DeValkenaere accountable for his actions

CALL: 573-751-3222
EMAIL: GOVERNOR.MO.GOV/CONTACT-US/MO-GOVERNOR
AND CARRIE SCRIPT VISIT: KCLEAP.ORG/GOVERNOR



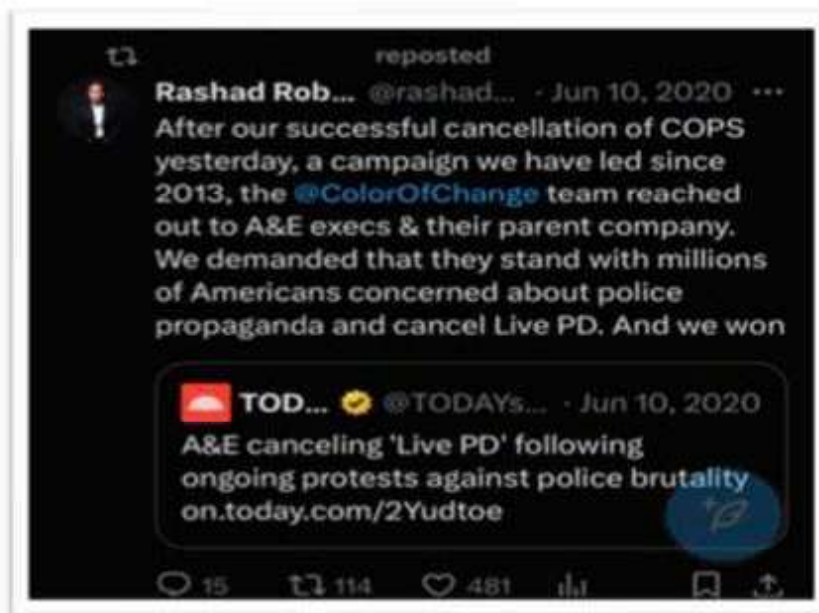
Showing Up for
@ShowUp4RJ



showingupforracialjustice

White people: no matter what happens, now is the time for us to be recommitting to the work of building a world where George Floyd would not have been murdered in the first place. All of us will benefit from a world where we invest in our communities by defunding police.

Juror #8 also failed to disclose to the Court and parties that he or she has socially endorsed, by retweeting, efforts to cancel A&E television shows, known as “COPS” and “Live PD”. Below is a clip from Juror #8’s Twitter account, which was discovered post-verdict, with the Juror #8’s name redacted as ordered by the Court:



C. Failed to Disclose Academic Works Linked to Bias

After the verdict, it was also discovered that Juror #8 has authored multiple academic works regarding race, policing, and “anti-Blackness” to include a 441-page dissertation, all of which will also be submitted as a continuation of **Exhibit A** under seal as ordered by this Court to protect the identity of Juror #8.

In contrast to Juror #8’s juror questionnaire and truthful *voir dire* responses, or lack thereof, Juror #8’s history of well-developed and passionate fixed opinions on the topics central to the case, had they been known or disclosed, would have without question given cause to remove this juror from service based upon the fact that Juror #8 is clearly impartial.

V. Constitutional Requirements for a Fair and Impartial Jury

As cited by the Attorney General's Office in their response to *Defendant's First Motion for New Trial and Request for Immediate Release*, "An accused is entitled to a trial by a fair and impartial jury." N.M. Const. art. II, § 14. "An impartial jury means a jury where each and every one of the twelve is totally free from any partiality whatsoever." *State v. Wiberg*, 1988-NMCA-022, ¶ 21, 107 N.M. 152.

In the most on point case in New Mexico, the New Mexico Supreme Court found that:

"Full knowledge of all relevant and material matters that might bear on possible disqualification of a juror is essential to a fair and intelligent exercise of the right of counsel to challenge either for cause or peremptorily. It is the duty of a juror to make full and truthful answers to such questions as are asked, neither falsely stating any fact nor concealing any material matter. If a juror falsely represents his interest or situation or conceals a material fact relevant to the controversy and such matters, if truthfully answered, might establish prejudice or work a disqualification of the juror, the party misled or deceived thereby, upon discovering the fact of the juror's incompetency or disqualification after trial, may assert that fact as ground for and obtain a new trial, upon a proper showing of such facts, even though the bias or prejudice is not shown to have caused an unjust verdict, it being sufficient that a party, through no fault of his own, has been deprived of his constitutional guarantee of a trial of his case before a fair and impartial jury." *State v. Mares*, 83 N.M. 225, 490 P.2d 667 (1971).

A prospective juror's silence can be the same as a negative answer upon which a party has a right to rely. *47 Am.Jur.2d, Jury, s 208*. Defense Counsel was very diligent and pointed to ask questions about bias surrounding the circumstances of this case and was forced to rely on Juror #8's silence as her answer.

With this newly discovered evidence, it is without question that Juror # 8 (the actual foreperson) entered deliberations with a hidden and undisclosed bias which had a significant

impact on the outcome of the trial. An impartial jury is one “where each and every one of the twelve members constituting the jury is totally free from any partiality whatsoever.” *State v. McFall*, 67 N.M. 260, 354 P.2d 547 (1960).

A trial court may, in its discretion, set aside a jury verdict where there is evidence that a juror failed to truthfully respond to sufficient and well-directed questioning on voir dire concerning bias or prejudice of the juror and that prejudice resulted in a violation of a right to a fair and impartial jury. *State v. Pierce*, 109 N.M. 596, 788 P.2d 352 (1990); *Lamphere v. Agnew*, 94 N.M. 146, 607 P.2d 1164 (Ct.App.1979); see also *Pekelder v. Edgewater Automotive Co.*, 68 Ill.2d 136, 11 Ill.Dec. 292, 368 N.E.2d 900 (1977). This Court can correct an egregious act of juror misconduct by setting aside the jury verdict due to Juror #8 failing to truthfully respond to sufficient and well-directed questioning concerning bias, which greatly prejudiced the Defendant and his Constitutional right to a fair and impartial jury.

VI. Conclusion

Based on this newly discovered evidence a new trial is justified. Juror #8 knowingly failed to disclose and/or conceal material information from the Court and the attorneys during *voir dire*, and the omitted information would have provided a basis for a challenge for cause or a peremptory strike.

The concealment of such bias deprived the Defendant of a fair and impartial jury. The totality of information now known demonstrates that Juror #8 had a pre-existing interest in serving on the jury and had strong opinions on issues central to the case – none of which were known until after the verdict was rendered.

Juror #8’s silence in response to diligently crafted and direct questions about bias would have given this Court cause to strike Juror #8 just as it did other jurors with disclosed biases.

Due to the urgency in this matter, and newly discovered juror misconduct, undersigned counsel hereby requests Defendant be released from custody pending the hearing scheduled for March 21, 2025.

Counsel for the State is deemed opposed to the motion and request for release.

WHEREFORE, based upon the aforementioned information, and considering the newly discovered bias of Juror #8, Defense Counsel prays that this Court immediately release Defendant from custody, grant Defendant's motion for new trial, and order any other relief the Court may find just and proper.

Respectfully submitted by,

Payne, Powell, Truitt & Chandler



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