

TAB 1



SUPREME COURT OF GEORGIA
Case No. S24E0818

July 2, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JOHN ESPOSITO v. SHAWN EMMONS, WARDEN.

Upon consideration of Esposito's application for a certificate of probable cause to appeal the dismissal of his claim of juror misconduct as procedurally barred, with that bar not being excused for several independent reasons, and upon consideration of the resulting denial of his second state habeas petition, the application is denied as lacking arguable merit. See Supreme Court Rule 36; *Redmon v. Johnson*, 302 Ga. 763 (809 SE2d 468) (2018).

All the Justices concur, except Warren, J., not participating and Pinson, J., disqualified.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Clerk

TAB 2

IN THE SUPERIOR COURT OF BUTTS COUNTY
STATE OF GEORGIA

Morgan V. Ward
Morgan V. Ward, Clerk
Butts County, Georgia

JOHN ANTHONY ESPOSITO,	*	CIVIL ACTION NO.
	*	2022-SU-HC-0003
PETITIONER,	*	
v.	*	
	*	
SHAWN EMMONS, Warden,	*	HABEAS CORPUS
Georgia Diagnostic and	*	
Classification Prison,	*	
	*	
RESPONDENT.	*	

FINAL ORDER

STATEMENT OF THE CASE

A. Facts of the Crimes

The Georgia Supreme Court summarized the facts established at trial regarding Esposito's crimes:

The evidence adduced at trial, including testimony recounting Esposito's confession to federal authorities, showed that on September 19, 1996, Esposito's co-conspirator, Alicia Woodward, persuaded Lola Davis to give her a ride from a parking lot in Lumberton, North Carolina. Woodward directed Davis to a nearby location where Esposito entered Davis' automobile. Esposito and Woodward then forced the elderly Davis, without the use of any weapons, to drive to a nearby parking lot and to move to the passenger seat of her automobile. Esposito removed one thousand dollars and Davis' checkbook from her purse, and Woodward drove Davis' automobile to a local bank where she cashed a check for three hundred dollars that she and Esposito had forced Davis to write. Woodward and Esposito then drove Davis to a remote location in Morgan County, Georgia, where Esposito led Davis into a hayfield, forced her to kneel, and beat her to death with tree limbs and other

debris. Esposito and Woodward then drove in Davis' automobile to Alabama where they disposed of Davis' automobile and purse. Davis' automobile was shown at trial to contain fingerprints, palm prints, and footprints matching Esposito's and Woodward's. Saliva on a cigarette butt found in the automobile was shown to contain DNA consistent with Esposito's DNA.

Evidence presented during the sentencing phase showed that, after murdering Davis, Esposito and Woodward traveled to Oklahoma, abducted an elderly couple, illegally obtained money using the couple's bank card, and then drove the couple to Texas where Esposito beat them to death with a tire iron. An FBI agent also testified during the sentencing phase that Esposito had described his and Woodward's plan to abduct and murder yet another elderly woman for money.

Esposito v. State, 273 Ga. 183, 183-84 (2000).

B. Trial Proceedings

The Morgan County grand jury indicted Esposito on December 10, 1996, for one count of malice murder, one count of felony murder, one count of armed robbery, and one count of hijacking a motor vehicle. *Esposito*, 273 Ga. 183, 183 n.1. Following a jury trial from September 23, 1998 through October 2, 1998, Esposito was convicted of all four counts. *Id.* Esposito was sentenced to death and was also sentenced to life imprisonment for armed robbery and twenty years for hijacking a motor vehicle, to be served consecutively. *Id.*

C. Motion for New Trial and Direct Appeal

Esposito filed a motion for new trial on October 29, 1998, which was denied on September 16, 1999. *Id.*

On direct appeal, the Georgia Supreme Court affirmed Esposito's convictions and sentence on October 30, 2000. *Id.*; *cert. denied*, *Esposito v. Georgia*, 533 U.S. 935, 121 S. Ct. 2564 (2001), *rehearing denied*, 533 U.S. 970,

122 S. Ct. 15 (2001). Esposito did not raise a challenge to the jury's conduct on direct appeal. *See id.*

D. State Habeas Proceedings

Esposito filed a state habeas petition in this Court on May 3, 2002 and his amended petition on November 6, 2006. The Court denied relief on April 5, 2011. Esposito filed a notice of appeal in the Superior Court of Butts County on May 6, 2011, and an application for a certificate of probable cause to appeal ("CPC") in the Georgia Supreme Court on June 30, 2011. On March 19, 2012, the Georgia Supreme Court issued a summary denial of Esposito's CPC application. Esposito did not file a petition for writ of certiorari in the United States Supreme Court.

E. Original Federal Habeas Proceedings

Esposito filed his federal petition for writ of habeas corpus on May 8, 2012. On December 10, 2014, the district court denied relief and determined Esposito's juror misconduct claim was abandoned for failure to brief. The Eleventh Circuit Court of Appeals, in an unpublished decision, denied relief on June 23, 2020. *Esposito v. Warden*, 818 F. App'x 962 (11th Cir. 2020). Esposito sought certiorari review in the Supreme Court, which was denied on June 7, 2021. *Esposito v. Ford*, 141 S. Ct. 2727 (2021).

F. Successive Federal Habeas Proceedings

On December 29, 2021, Esposito filed a Federal Rule of Civil Procedure 60(b)(6) motion to reopen his 28 U.S.C. § 2254 proceeding based upon the juror misconduct claim he has currently pending before this Court. On March 30, 2022, the district court dismissed Esposito's motion as an improperly filed

successive federal habeas petition because he failed to acquire permission to file from the Eleventh Circuit Court of Appeals. Esposito filed a notice of appeal in the Eleventh Circuit on May 5, 2022, and the action was stayed pending the resolution of the petition currently before this Court.

G. Second State Habeas Proceeding

Esposito filed his second state habeas petition on March 7, 2022, which was corrected on March 31, 2022. The petition raised a claim of juror misconduct based upon alleged new information from juror Janice Lane. An evidentiary hearing was held on May 10, 2023, and July 14, 2023. Following post-hearing briefing, the parties filed proposed orders on January 23, 2024.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Esposito's juror misconduct claim is procedurally defaulted.

Esposito alleges that juror Janice Lane committed misconduct when she sought counseling from her pastor regarding her service as a juror in his trial. Esposito argues that Ms. Lane's contact with the pastor, which resulted in her reading Bible passages from the book of Romans, was an "improper extraneous influence" that kept her from being an impartial juror. Pet. at 11. However, Esposito's juror misconduct claim is procedurally defaulted because he failed to raise the claim on direct appeal. Because Esposito has failed to prove prejudice to overcome the default, this Court dismisses Esposito's claim as procedurally defaulted.

A. Standard of Review

“[C]laims that could have been raised on direct appeal but are raised for the first time in habeas corpus proceedings are procedurally defaulted, unless the petitioner meets the ‘cause and prejudice’ test.” *Schofield v. Meders*, 280 Ga. 865, 865 (2006) (citing OCGA § 9-14-48 (d); *Turpin v. Todd*, 268 Ga. 820 (1997)). “O.C.G.A. § 9-14-48 (d) places the burden on [Esposito] to show *both* ‘cause’ *and* ‘actual prejudice.’” *Todd*, 268 Ga. at 836 (emphasis added) (quoting *Black v. Hardin*, 255 Ga. 239, 240 (1985)). Cause “requires a showing that some objective factor external to the defense impeded counsel’s efforts to raise the procedurally-defaulted claim.” *Meders, supra* (citing *Chatman v. Mancill*, 280 Ga. 253, 254 (2006)). Prejudice “is satisfied only where the omission or waiver resulted in actual and substantial prejudice, infecting the entire trial with error of constitutional dimensions.” *Id.* at 866 (citing *Schofield v. Palmer*, 279 Ga. 848, 851 (2005)).

B. Esposito has failed to prove prejudice to overcome the procedural default of his claim.

Assuming, arguendo, that Esposito has shown cause to overcome the default, he has not met his burden of proving prejudice, which requires “showing ‘not merely that the errors at his trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.’” *Ballinger v. Watkins*, 315 Ga. 369, 378-79 (2022) (quotation marks omitted) (quoting *Todd*, 268 Ga. at 828)). Thus, this Court dismisses Esposito’s claim as procedurally defaulted.

1. Esposito bears the burden of proving actual prejudice.

Esposito argues that prejudice should be presumed, and Respondent bears the burden of overcoming the alleged prejudice. But this argument has been rejected by the Georgia Supreme Court. In *Todd*, the trial court ignored the procedural default prejudice test and instead, “cited *Battle v. State*¹ for the proposition that, when improper communications occur between a bailiff and jurors, *a presumption of prejudice* arises that must be rebutted by the State.” *Todd*, 268 Ga. at 830 (emphasis added). The Georgia Supreme Court reversed explaining:

The rule of *Battle v. State*, however, applies on direct appeal, and does not apply when a defendant is procedurally barred from raising an issue of improper communications between the bailiff and the jurors. Because of the procedural bar in this case, *Todd had the burden to establish actual prejudice, and the habeas court erred in placing the burden on the State to show that any error was harmless and in applying the presumption of prejudice.*

Id. (emphasis added).

The Georgia Supreme Court reaffirmed that actual prejudice must be proven by a petitioner for a procedurally defaulted claim in *Watkins*, a case relied upon by Esposito. The Court held that “[t]he habeas court’s determination that *Watkins* must prove actual prejudice would seem to be well grounded in a habeas petitioner’s typical burden to show both cause and actual prejudice to overcome the procedural bar for claims raised in habeas proceedings.” *Watkins, supra*. “As [the Court] explained in *Greer v. Thompson*, [], [e]ven if the law presumes prejudice for certain errors when they are timely

¹ *Battle v. State*, 234 Ga. 637, 639 (1975).

raised, a convicted defendant who ... is seeking to overcome a procedural bar ... does not have the benefit of that presumption of prejudice, and must instead meet the actual prejudice test.” *Id.* (citation omitted) (quoting *Greer v. Thompson*, 281 Ga. 419, 421-22 (2006)).

Therefore, the Court finds Esposito is not entitled to a “presumption of prejudice” but instead must show that “that the alleged error actually prejudiced the sentencing phase of his trial.” *Todd*, 268 Ga. at 830.

2. Esposito has failed to prove misconduct.

Esposito argues that Juror Lane visited her pastor after voir dire began and after the trial court informed the jurors not to “discuss the case with anyone,” thereby committing misconduct by allegedly violating the court’s instructions and allegedly seeking information from an extraneous source regarding Esposito’s case. HT:151. Regarding the burden of proof argument made by Esposito, the Court notes that even if Esposito’s “presumption” applied in this case, the *presumption arises only when a juror engages in misconduct*. See, e.g., *Henry v. State*, 265 Ga. 732, 738 (1995) (“[t]here is a presumption of prejudice to the defendant *when an irregularity in the conduct of a juror is shown*”) (emphasis added). Thus, even under Esposito’s arguments, he bears the burden of first proving misconduct.

In Juror Lane’s 2022 affidavit obtained by Esposito in this proceeding, she states that she sought counsel from her pastor after being questioned “*during the voir dire process*.” HT:127, ¶5 (emphasis added). However, when Juror Lane testified live before this Court, she admitted she could not recall if she spoke with her pastor *before* being called for voir dire or *after* voir dire

commenced. HT:51-52 (emphasis added). Juror Lane also admitted during the hearing that she had informed counsel for Respondent that she visited her pastor *before* voir dire began and thus before she was instructed by the trial court not to “discuss the case with anyone.” HT:151 (emphasis added). Additionally, she explained in her direct examination by counsel for Esposito that she had a “stroke in 2000,” which affected her memory. *Id.* at 47. The Court finds that based on Juror Lane’s testimony her memory was impaired on the timing of her visit with her pastor in 1998. *See id.* at 40-51.

Esposito urges the Court in his post-hearing briefing to disregard Juror Lane’s contradictory live testimony and find her 2022 affidavit admitted by the Court as the most credible testimony from Juror Lane.² *See, e.g.,* Pet. Post-Hearing Brief at 16. But the record shows that Juror Lane gave three different versions of her memory of a meeting that occurred over two decades ago—i.e. she testified in an affidavit that she met with the pastor *during* voir dire, she testified live before this Court and admitted that she informed counsel for Respondent that she met with her pastor *before* voir dire commenced, and she testified live that she did not recall when she met with her pastor. Consequently, the Court is unable to find that Esposito has proven that Juror Lane visited her pastor after voir dire commenced based on this contradictory record and thus has failed to prove Juror Lane committed misconduct.

Yet even assuming Juror Lane did speak with her pastor *during* voir dire, the Court still finds she did not commit misconduct. The trial court informed

² Esposito also relies on juror Lane’s unsworn affidavit but that affidavit, as conceded by Esposito, is inadmissible. *See* O.C.G.A. § 9-14-48 (a), (c).

the jurors prior to voir dire that they were not “to discuss the case with anyone.” HT:151. Juror Lane testified that she did not discuss the case with her pastor. *Id.* at 52. Instead, she only asked her pastor if she could serve as juror in a capital trial under her Christian faith. *See, e.g., id.* at 53. Juror Lane was clear that her pastor did not suggest any sentence for the crimes and did not provide any testimony that suggested she asked her pastor what sentence should be imposed. *Id.* at 53.

Consequently, as the record does not show that Juror Lane discussed the case with her pastor and the record is unclear as to when Juror Lane visited the pastor—either *before* or *during* voir dire—Esposito has not carried his burden that Juror Lane committed misconduct.

3. Even assuming juror Lane committed misconduct in speaking with her pastor, Esposito still has not shown actual prejudice.

“[S]pecific to juror misconduct, [the Georgia Supreme Court has] explained that a court assessing prejudicial impact properly considers ‘the type of extrajudicial information at issue (e.g., whether the information concerned sentencing or the underlying substantive law),’ ‘how the extrajudicial ... information might have been relevant to the issues decided by the jury,’ and ‘whether the record evidence suggested that this ... information would affect the jury’s decision on guilt or innocence.’” *Watkins*, 315 Ga. at 378-79 (quoting *Harris v. State*, 314 Ga. 51, 53 n.4 (2022)). Applying these principles, considering the record, and assuming Juror Lane committed misconduct, the Court finds Esposito has failed to meet his burden of proving prejudice.

Prior to her visit with her pastor, Juror Lane testified that: "I knew that I believed in the death penalty, but as a Christian, I wanted to know what the Bible said about the death penalty." HT:29. Regarding her visit to her pastor, Juror Lane provided the following testimony on direct examination:

Q: And when you went to see the pastor, what did you ask him?

A: I asked him to tell me if the Bible indicated that it was okay to issue the death penalty.

Q: And what did he tell you?

A: He referred me to the book of Romans. I cannot tell you what scripture he referred me to. I don't remember that, but that's basically all he said. He never gave me his opinion or anything.

Q: And, after you met with him, did you read the passages that he recommended?

A: I don't recall.

Q: Do you remember the gist of what the passage said? Could you describe it for the Court?

A: I just remember what he paraphrased for me. He said that there was a law made that man was supposed to abide by, and if you did not abide by it, then the law was set up to take care of people's offenses.

HT:29-30.

After counsel for Esposito then suggested Romans, Chapter 13, Verse 1, was the Bible passage Juror Lane's pastor mentioned during the meeting, Juror Lane read the passage: "Let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God." HT:33. Esposito

requested that Juror Lane read further but Respondent objected as Juror Lane had not testified that she recalled any other passage, and the Court sustained the objection. Moreover, Juror Lane testified that she did not recall if she read a Bible passage after she met with her pastor, but only that she thought her pastor “paraphrase[d] it.” *Id.* at 32.

Juror Lane was asked again about which passage she read, and the following colloquy occurred:

Q: At some point in time, however, did it come to you -- your recollection that you had been referred to Romans 13?

A: No, it did not. All I knew was it was in the book of Romans.

HT:44.

On cross-examination, juror Lane provided the following testimony regarding her visit with her pastor:

Q: During this [pastoral] meeting, did you discuss anything about Esposito’s case?

A: No, I did not.

Q: Did you discuss any of the facts in Esposito’s case?

A: No, I did not.

Q: Did you discuss what the appropriate sentence was in Esposito’s case?

A: No, I did not. I simply asked what the Bible says about the death penalty.

Q: And was the purpose of that to determine whether or not you could give a death sentence, based up on your faith?

A: Correct.

Q: And that's as opposed to not being able to give a death sentence based upon your faith?

A: Correct.

Q: Okay. Did the pastor, at any time, suggest to you the appropriate sentence in this case?

A: No, he did not.

Q: Did the pastor read the verse and chapter in Romans?

A: No. He just said there was a verse in Romans that talked about the laws being created for this type of situation.

Q: And what was your understanding of what the pastor was telling you to read?

A: That it was appropriate to give the death penalty in extreme cases.

Q: Is another way to say that is that it's appropriate to give a death sentence based upon your Christian faith?

A: Yes.

Q: But, your Christian faith does not -- is it fair to say that your Christian faith does not mandate any particular sentence?

A: Correct.

HT:51-53.

Juror Lane also provided the following testimony regarding her recollection of Romans on cross-examination:

Q: When -- from what you recall, your reading in Romans, did that influence your decision to sit on this jury -- Mr. Esposito's jury?

A: I felt it was appropriate to choose to sit on the jury after I had been told that there were laws in Romans.

Q: Was there anything that you recall in reading Romans that suggested to you what an appropriate sentence was in Mr. Esposito's case?

A: No, there was not.

Q: Was the sole purpose of you seeking advice from your pastor to determine whether or not, as a Christian, you could sit on a death penalty case?

A: Absolutely.

HT:58.

Esposito argues that Juror Lane's meeting with her pastor unduly influenced her sentencing decision. But to get to that conclusion, Esposito speculates, attributes interpretations of Bible passages not given by Juror Lane, and largely ignores Juror Lane's actual testimony. Juror Lane plainly testified that she did not seek guidance on what sentence should be imposed and that nothing she was told by the pastor or that she read in the Bible suggested a particular sentence. The Court finds Esposito failed to prove that the alleged extrajudicial communication between Juror Lane and her pastor affected her sentencing decision. *Watkins*, 315 Ga. at 378-79.

Additionally, the Georgia Supreme Court has held, even under the *presumptive standard* that Esposito asks this Court to apply, that even where a juror has improper communication with a third party the error may be harmless. In *State v. Clements*, 289 Ga. 640 (2011), a juror discussed her selection with her husband, who requested that she not serve on the jury because it may affect how he would be treated at his place of employment. The

Court determined the “irregularity ...was inconsequential in light of the uncontradicted evidence that juror Henderson and her husband did not discuss the merits of the case but only her selection for the jury.” *Id.* at 643. *See generally Lamons v. State*, 255 Ga. 511, 512 (1986) (even where prejudice is presumed on direct appeal, the Court “also recognized that some irregularities are inconsequential”); *Henry v. State*, 265 Ga. 732, 738 (1995) (sequestered juror had unauthorized contact with girlfriend but no harm where facts established conversation did not involve discussion about the merits of the case); *Sims v. State*, 266 Ga. 417, 420 (1996) (no reversible error arising out of juror misconduct by violating court orders not to discuss the case because the substance of the communication was established without contradiction and the statements “did not involve extrajudicial information, or demonstrate that they were deliberating the case prior to the close of evidence, or that one juror was attempting to persuade another on any issue or testimony in the case”). Here, even assuming there was an irregularity, the communication between Juror Lane and her pastor was even more inconsequential, as the pastor made no suggestion whether Juror Lane should serve or what sentence should be given in Esposito’s case. Nor was there any discussion whatsoever about the merits of the case between Juror Lane and her pastor.

In a recent case, *Monroe v. State*, 315 Ga. 767, 776-77 (2023), a juror spoke with his spouse and relayed a message to other jurors that there would be “trouble” when the jury rendered its verdict. However, the jurors testified that the “information they heard would not affect their ability to remain fair and impartial.” *Id.* at 776. Again, under the *presumptive standard*, the Court held

that “the trial court was authorized to conclude that the State had carried its burden in establishing beyond a reasonable doubt that [the juror’s] alleged misconduct was harmless.” *Id.* at 777. The Court came to this conclusion “[b]ecause ‘no evidence was presented that the juror’s conduct contributed to the conviction such that the verdict is inherently lacking in due process.’” *Id.* at 778 (quoting *Hodges v. State*, 302 Ga. 564, 569 (2017)). Likewise, here, Juror Lane testified that her meeting with her pastor did not contribute to her sentencing decision, and nothing in the record suggests otherwise. *See, e.g.*, HT:58. Rather, the record shows that the only information she gathered from the meeting was merely that serving on a capital trial did not conflict with her Christian faith.

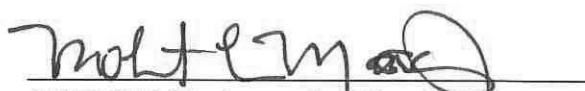
Esposito does not cite to any binding precedent that holds an exchange similar to Juror Lane’s and her pastor’s meets the *actual prejudice* test. And the Court rejects Esposito’s arguments that the Court should attribute specific meaning to Juror Lane’s understanding of Bible passages from Romans or her exchange with her pastor that are not reflected in the record. The Court also finds Esposito’s distinguishment of the cases above fails to show they do not provide guidance on the issue of prejudice.

As stated above, under the actual prejudice test, Esposito must show “the alleged error actually prejudiced the sentencing phase of his trial.” *Todd*, 268 Ga. at 830. Juror Lane provided no testimony that suggested her meeting with her pastor was to determine Esposito’s sentence or to seek guidance on whether she should impose a particular sentence, and Esposito’s arguments to the contrary are conjecture, especially when compared to Juror Lane’s live

testimony before this Court. Instead, the Court finds Juror Lane's testimony, taken as a whole, shows she spoke with her pastor to determine whether her Christian faith allowed her to consider imposing a death sentence.

This Court holds Esposito has failed to prove actual prejudice and **DISMISSES** his juror claim as procedurally defaulted and **DENIES** state habeas relief.

SO ORDERED, this 22nd day of February, 2024.



JUDGE Robert L. Mack, Jr
Superior Court of Butts County
Sitting By Designation

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