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Criminal Law - Voir Dire and Dishonesty - When a Verdict Should Be Set Aside Because of Juror Dishonesty at Voir Dire - Sampson v. United States

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CRIMINAL LAW—VOIR DIRE AND DISHONESTY-WHEN A VERDICT SHOULD BE SET ASIDE BECAUSE OF JUROR DISHONESTY AT VOIR DIRE—*SAMPSON V. UNITED STATES*, 724 F.3D 150 (1ST CIR. 2013).

A defendant in a criminal trial has a fundamental right to an unbiased jury guaranteed by the Sixth Amendment of the United States.[1] Courts have recognized voir dire as an appropriate method to help compile a jury that will act impartially and decide the case only on the evidence presented during trial.[2] Juror dishonesty during voir dire may result in a mistrial at the court's discretion, if the party moving for a new trial proves that the juror purposely failed to answer a material voir dire question honestly and the correct answer would have been a valid basis for a challenge on cause.[3] In *Sampson v. United States*, the United States Court of Appeals for the First Circuit affirmed the district court's ruling to set aside the death sentence for Gary Lee Sampson ("Sampson") after discovering that a juror was dishonest during voir dire.[4]

Sampson committed a series of bank robberies in North Carolina in May, June, and July of 2001; in addition, he murdered three people while on the run in New England.[5] Eventually, Sampson turned himself over to

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[1] *See* U.S. CONST. amend. VI (guaranteeing right to impartial jury in criminal trial). The Sixth Amendment expressly provides that "the accused shall enjoy the right to a speedy and public trial, by an impartial jury." *Id.*

[2] *See* Rosales-Lopez v. United States, 451 U.S. 182, 188 (1981) (plurality opinion) (explaining purpose of voir dire).

> *Voir dire* plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored. Without an adequate *voir dire* the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled.

Id.

[3] *See* McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 556 (1984) (setting legal framework to analyze juror dishonesty during voir dire). The Supreme Court held in order to obtain a new trial after discovering juror dishonesty, "a party must first demonstrate that a juror failed to answer honestly 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". *Id.*

[4] Sampson v. United States (*Sampson I*), 724 F.3d 150, 156 (1st Cir. 2013); *see also infra* notes 42-43 and accompanying text (explaining court's reasoning for setting aside Sampson's death sentence).

[5] *See* United States v. Sampson (*Sampson II*), 486 F.3d 13, 18 (1st Cir. 2007) (detailing

the Vermont State Police, waived his *Miranda* rights, and made several detailed confessions to the authorities.[6] Subsequently, on October 24, 2001, a federal grand jury indicted Sampson on two counts of carjacking resulting in the death of Phillip McCloskey and Jonathan Rizzo.[7] The government filed a superseding indictment that complied with applicable laws serving notice to seek the death penalty.[8] After Sampson entered a guilty plea to both counts of the superseding indictment, the district court empaneled a death-qualified jury to consider the sentence to be imposed.[9]

In preparation for the sentencing hearing, the district court and both parties knew the jurors would hear aggravating and mitigating evidence that may have affected their impartiality.[10] With this in mind, the court

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Sampson's crime spree). After Sampson committed the series of bank robberies, he then fled to Massachusetts. *Id.* Sampson called the Boston Office of the Federal Bureau of Investigation ("FBI") and attempted to self-surrender; however, the FBI failed to arrest him because the call had been disconnected. *Id.* The next day, July 24, 2001, Sampson murdered Philip McCloskey with a knife, after McCloskey picked up Sampson while he was hitchhiking in Weymouth, Massachusetts. *Id.* Sampson forced McCloskey out of his car and attempted to restrain him with his belt; however, McCloskey resisted. *Id.* Thereupon, Sampson stabbed him multiple times and slit his throat. *Id.* On July 27, 2001, Jonathan Rizzo, a nineteen-year-old college student, picked Sampson up on a Plymouth road. *Id.* Sampson forced Rizzo to drive him to Abington where he made a campsite. *Id.* Sampson tied Rizzo to a tree, gagged him with a sock and a bandana, stabbed him repeatedly in the neck and chest, and slit his throat. *Id.* On July 29, 2001, Sampson broke into a home on Lake Winnipesaukee and murdered Robert Whitney by tying him to a chair and strangling him to death; afterward, he stole his automobile. *Id.* On July 31, 2001, William Gregory picked up a hitchhiking Sampson and escaped after Sampson tried to kill him. *Id.*

[6] *See id.*; *see also* Miranda v. Arizona, 384 U.S. 436, 444-45 (1966) (allowing warned statements to authorities to be admissible at trial).

[7] *See Sampson II*, 486 F.3d at 18-19 (detailing events after Sampson turned himself over to police). A federal grand jury charged Sampson with two counts of carjacking resulting in death. *See id.* The murder of Robert Whitney in New Hampshire and carjacking of William Gregory in Vermont were not charged in this case, but were considered non-statutory aggravating factors for sentencing purposes. *See* United States v. Sampson (*Sampson III*), 820 F. Supp. 2d 202, 212 (D. Mass 2011). Sampson offered to plead guilty in exchange for a sentence of life imprisonment without parole, but this proposal was rejected. *See id.*; *see also* 18 U.S.C. § 2119(3) (2012) (identifying statute pursuant to which Sampson was indicted).

[8] *See* 18 U.S.C. § 2119(3) (allowing maximum statutory penalty to be death when death results from carjacking); 18 U.S.C. § 3593(a) (2012) (explaining notice to seek death penalty is required before trial or defendant enters guilty plea); Ring v. Arizona, 536 U.S. 584, 609 (2002) (emphasizing right to jury in death penalty case).

[9] *See Sampson I*, 724 F.3d at 155 (describing events leading up to empanelment of a death-qualified jury); *see also* United States v. Green, 407 F.3d 434, 436 (1st Cir. 2005) (discussing death-qualified jury requirements). The requirements for a death-qualified jury allows the government to "those individuals whose personal opposition to the death penalty is such that it would prevent or substantially interfere with their ability to apply the law." *Green*, 407 F.3d at 436.

[10] *See* United States v. Sampson (*Sampson IV*), 820 F. Supp. 2d 151, 181-82 (D. Mass 2011) (listing evidence both parties intended to introduce during sentencing). The court knew that the jurors would be exposed to disturbing evidence of the three murders Sampson committed. *Id.* The court also knew that the trial would include evidence that Sampson threatened to shoot female bank tellers during the course of the bank robberies in North Carolina. *Id.* Moreover, it was

worked with all parties to develop a juror questionnaire that would "elicit all of the information necessary to determine whether a juror was eligible to serve in Sampson's particular capital case." [11] A jury of twelve, with six alternates, was selected after a seventeen-day voir dire that required the potential jurors to answer seventy-seven written questions accurately and honestly under oath for the purpose of selecting an unbiased jury.[12] On December 23, 2003, after the six-week penalty phase hearing, the jury unanimously recommended that Sampson be sentenced to death on both counts of the superseding indictment, and the district court followed this recommendation by sentencing Sampson to death.[13] The Court of Appeals for the First Circuit affirmed the death sentence and the Supreme Court declined to review the case.[14]

The Federal Death Penalty Act required Sampson be assigned a new lawyer for post-conviction proceedings and on April 6, 2010, Sampson filed an amended motion for a new trial pursuant to 28 U.S.C. § 2255 (2255 Motion).[15]

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well known to Sampson's counsel that the jury would hear evidence of Sampson's history of drug abuse and the toll it took on one of his marriages. *Id.* Sampson's counsel also knew that there would be testimony regarding Sampson's experiences in prison. *Id.* Furthermore, it was anticipated that the jury would hear evidence that Sampson's family abandoned him after he was charged with murder. *Id.*; *see also* Brief of Appellee Gary Sampson at 7-8, *Sampson IV*, 820 F. Supp. 2d 151 (D. Mass. 2011) (Cr. No. 01-10384-MLW), 2013 WL 210409, at *2 (listing anticipated evidence during sentencing). Mr. Sampson intended to introduce evidence that he attempted to turn himself in to the FBI, but the FBI switchboard operator dropped his call. *Id.*

[11] *See Sampson IV*, 820 F. Supp. 2d at 181-82 (explaining how juror questionnaire was prepared). The questions were designed to elicit information regarding "bias a juror realized that he or she had and was willing to reveal." *Id.* at 181. In addition, the questions were designed to prompt "life experiences that were relevant to determining whether a juror would be able to decide the issues presented based solely on the evidence, unimpaired by the influence of anything that he or she may have experienced personally." *Id.* at 181-82.

[12] *See Sampson I*, 724 F.3d at 155 (describing jury selection). The potential jurors were required to honestly answer seventy-seven questions under oath; the questions were "carefully designed to elicit information concerning possible bias and life experiences that might have subconsciously affected an individual's ability to consider the defendant's sentence objectively." *Id.* The court was aware that some of the questions required answers that may have been private or sensitive. *See Sampson IV*, 820 F. Supp. 2d at 182. Therefore, the court instructed the jurors to write "private" next to any question that required a private or sensitive answer. *Id.* In the event that jurors were required to answer the question they marked "private," the court informed the jurors that they would conduct an individual voir dire in a session closed to the public. *Id.* The court excused jurors who had disturbing life experiences that were similar to events that occurred in this case and which evoked a "highly emotional response." *Id.* at 194.

[13] *See Sampson I*, 724 F.3d at 155 (stating Sampson was sentenced to death after jury recommendation).

[14] *See Sampson IV*, 820 F. Supp. 2d at 158 (discussing procedural history).

[15] *See* Gary Sampson's First Amended Motion for a New Trial and to Vacate, Set Aside, and Correct Conviction and Death Sentence Made Pursuant to 28 U.S.C. § 2255 and/or Rule 33 of the Federal Rules of Criminal Procedure at 8, United States v. Sampson (*Sampson V*), No. Cr. No.

Under the standard set in *McDonough*, in the 2255 Motion Sampson alleged among other things that he was denied his right to have his sentence decided by an impartial jury because it was discovered post-sentence that three jurors had answered voir dire questions inaccurately.[16] Pursuant to the 2255 Motion, the district court conducted evidentiary hearings over three non-consecutive days and discovered that one of the three jurors, Juror C, had intentionally and repeatedly answered a series of questions dishonestly.[17]

The district court was satisfied that Sampson proved every element of the *McDonough* test.[18] Sampson proved that had Juror C honestly an-

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01-10384-MLW, 2012 WL 1633296 (D. Mass. May 10, 2012) (Cr. 01-10384-MLW), 2010 WL 8625788 (explaining Sampson's claims for relief pursuant to 28 U.S.C. § 2255); Government's Opening Brief and Petition at 10, *Sampson I*, 724 F.3d 150 (2013) (Nos. 12-1643, 12-8019), 2012 WL 4831217, at *10 (explaining Sampson's reasoning for Claim IV in 2255 Motion). Sampson alleged that he discovered, within five years after his trial, that three jurors provided inaccurate answers to voir dire questions and inaccurate answers to the questions on their respective questionnaires. *See* Government's Opening Brief and Petition at 10, *Sampson I*, 724 F.3d 150 (Nos. 12-1643, 12-8019); *see also* 28 U.S.C. § 2255 (2012) (explaining federal prisoners' right to challenge sentence imposed in violation of Constitution).

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255(a).

[16] *See supra* note 3 and accompanying text (explaining *McDonough* standard); *see also Sampson IV*, 820 F. Supp. 2d at 158 (explaining assertions made in 2255 Motion). Sampson based his contention that he was deprived of his constitutional right to an impartial jury on evidence that three jurors answered material voir dire questions inaccurately. *See Sampson IV*, 820 F. Supp. 2d at 158.

[17] *See Sampson IV*, 820 F. Supp. 2d at 161 (explaining process of evidentiary hearings). On November 18, 2010, the court held an evidentiary hearing with all three jurors (Juror C, D, and G) that were accused of misconduct in the 2255 Motion. *Id.* On March 18, 2011, Juror C clarified previous testimony and testified to additional matters. *Id.* On August 8, 2011, Juror C was recalled again to testify to inconsistencies raised in Sampson Proposed Findings Of Fact And Conclusions of Law. *Id.* During the evidentiary hearings the district court discovered that Juror C had "intentionally and repeatedly answered a series of questions dishonestly in an effort to avoid disclosing or discussing painful experiences she had endured" in relation to her husband and daughter. *Id.* at 158. She was dishonest when she filled out her voir dire questionnaire in September 2003, again during individual voir dire in October 2003, and once again when she was required to testify during the 2255 proceedings. *Id.*

[18] *See Sampson IV*, 820 F. Supp. 2d at 158-59 (detailing elements Sampson had to prove in *McDonough* test). To obtain relief under *McDonough*, Sampson was required to prove by a preponderance of the evidence that

> (1) [Juror] C was asked a question during voir dire that should have elicited particular information; (2) the question was material; (3) [Juror] C's response was dishonest,

swered all material questions during voir dire, important events would have been revealed regarding her husband and daughter that made her feel "deeply ashamed, and . . . distraught when required to think about them." [19] If these matters had been revealed during voir dire, the court would have excused her for cause because she would not be able to decide Sampson's death sentence based solely on the evidence.[20] Therefore, the district court vacated Sampson's death sentence because he did not receive the fair trial guaranteed by the Constitution, and a new trial was granted to determine his sentence.[21] Although using different reasoning, the First Circuit Court of Appeals affirmed the district court's holding on appeal.[22]

The Sixth Amendment to the United States Constitution secures a criminal defendant's right to an "impartial jury."[23] Voir dire is used to protect this right by "exposing possible biases, both known and unknown, on the part of potential jurors."[24] However, exposing bias in voir dire is not an

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> meaning deliberately false, rather than the result of a good faith misunderstanding or mistake; (4) her motive for answering dishonestly relates to her ability to decide the case solely on the evidence and, therefore, calls her impartiality into question; and (5) the concealed information, when considered along with the motive for concealment, the manner of its discovery, and C's demeanor when required to discuss J [Juror C's daughter] and P [Juror C's former husband], would have required or resulted in her excusal for cause for either actual bias, implied bias, or what the Second Circuit characterizes as 'inferable bias.'

Id. at 159.

[19] *See Sampson IV*, 820 F. Supp. 2d at 159 (detailing events Juror C lied about during voir dire). Juror C intentionally lied in response to questions that should have revealed the following facts: Juror C feared physical abuse from her husband, her husband threatened her with a shotgun on one occasion, she had an abuse prevention order against her husband and he was later arrested for violating that order, her marriage ended because of her husband's substance abuse, and her daughter also had a drug problem, which resulted in her incarceration. *Id.* As Juror C came to discuss the events during the 2255 proceedings, she was "unable to discuss them candidly or coherently." *Id.*

[20] *See id.* at 159 (explaining Juror C would have been excused if court knew of dishonesty during voir dire).

[21] *See id.* (granting new death sentence trial). The perjury by Juror C resulted in a partial jury deciding Sampson's death sentence. *Id.*

[22] *See Sampson I*, 724 F.3d 150, 166, 170 (1st Cir. 2013) (holding that "district court misunderstood the applicable legal framework," but dismissed government's appeals).

[23] *See* U.S. CONST. amend. VI (guaranteeing defendant's right to impartial jury during criminal trial). Due process requires an impartial jury that is "capable and willing to decide the case solely on the evidence before it . . . ." Smith v. Phillips, 455 U.S. 209, 217 (1982) (guaranteeing defendant on trial for life right to impartial jury); Ross v. Oklahoma, 487 U.S. 81, 85 (1988) ("It is well settled that the Sixth ... Amendment[] guarantee[s] a defendant on trial for his life the right to an impartial jury.").

[24] *See* McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 554 (1984) (explaining how voir dire selects impartial jury). A juror may be excused for cause if they demonstrate their biases when they answer questions during voir dire. *Id.* In the event bias is not enough for dismissal on cause, the parties may still use indications of bias from the jurors' answers to exercise

easy task, as the Supreme Court has mentioned before:

> Bias or prejudice is such an elusive condition of the mind that it is most difficult, if not impossible, to always recognize its existence, and it might exist in the mind of one (on account of his relations with one of the parties) who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence.[25]

Therefore, it is crucial for jurors to be truthful during voir dire; otherwise, it will not serve its purpose.[26] Moreover, it is essential in a death penalty case that the sentence be dismissed upon discovery of a partial juror because the Federal Death Penalty Act provides if one juror finds the death penalty not to be justified, then the court shall not implement the sentence.[27]

In most cases, juror's honesty or dishonesty is the "best initial indicator" of whether a juror was impartial.[28] The Supreme Court has long held that a litigant is "entitled to a fair trial but not a perfect one, for there are no perfect trials."[29] The Supreme Court and Congress have adopted harmless error rules that "embody the principle that courts should exercise judgment in preference to the automatic reversal for 'error' and ignore errors that do not affect the essential fairness of the trial." [30] An essential element of a fair trial is an impartial jury that is "capable and willing to decide the case

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their peremptory challenges. *Id.*

[25] Crawford v. United States, 212 U.S. 183, 196 (1909) (explaining need for comprehensive voir dire to exclude bias jurors).

[26] *McDonough*, 464 U.S. at 554 (emphasizing need for juror honesty during voir dire).

[27] *See* Woodson v. North Carolina, 428 U.S. 280, 305 (1976) (explaining importance of impartial jury in death sentence case, considering difference from life sentence). The Court in *Woodson* concluded that:

> the penalty of death is qualitatively different from a sentence of imprisonment, however long. Death, in its finality, differs more from life imprisonment than a 100–year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Id.; *c.f.* Morgan v. Illinois, 504 U.S. 719, 729 (1992) ("If even one such [partial] juror is empaneled and the death sentence is imposed, the State is disentitled to execute the sentence.").

[28] *See McDonough*, 464 U.S. at 556 (Blackmun, J., concurring) (agreeing with first prong of Court's test); *see also* Clark v. United States, 289 U.S. 1, 11 (1933) ("If the answers to the questions are willfully evasive or knowingly untrue, the talesman, when accepted, is a juror in name only.").

[29] *McDonough*, 464 U.S. at 553 (internal quotation marks omitted) (citing Brown v. United States, 411 U.S. 223, 231-32 (1973)).

[30] *McDonough*, 464 U.S. at 553; *see also* Kotteakos v. United States, 328 U.S. 750, 760 (1946) (noting error must have affected defendant's substantive rights for reversal).

solely on the evidence before it."[31]

In *McDonough*, the Supreme Court held that a new trial may be granted when there is juror dishonesty during voir dire if a party can prove that a juror answered a material question dishonestly, and had that juror answered honestly, it would have warranted a challenge for cause.[32] Prior to *McDonough*, federal courts developed different legal frameworks to deal with the post-verdict discovery of juror non-disclosure at voir dire, which included an objective standard and an implied-bias doctrine. [33] In

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[31] Smith v. Phillips, 455 U.S. 209, 217 (1982) (recognizing importance of impartial jury to satisfy due process).

[32] *See McDonough*, 464 U.S. at 556 (describing binary test for determining whether new trial should be granted). In *McDonough*, a juror in a products liability case failed to disclose that his son was hurt in a truck tire explosion when asked whether he or any members of his immediate family had been hurt in an accident. *See id.* at 549-51. The district court denied the respondents' motion for a new trial following the discovery of this information, and the court of appeals reversed. *Id.* at 555. The Supreme Court asserted that the juror's "mistaken, though honest response" did not rise to the level so as to warrant a new trial. *See id.* at 555-56. Moreover, the Court emphasized that "[t]he 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." *Id.* at 556. Therefore, a party is entitled to a new trial when they can prove "that a juror failed to answer honestly 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." *Id.* at 556; *see also* Amirault v. Fair, 968 F.2d 1404, 1405-06 (1st Cir. 1992) (interpreting McDonough). In *Amirault*, defense counsel discovered post-verdict that a juror failed to inform the court during voir dire that she had been raped forty years prior when she was fourteen, brought charges against the man, and testified at his trial. *See Amirault*, 968 F.2d at 1405. The state trial court conducted an evidentiary hearing, at which point the juror claimed she had no memory of the rape, but admitted that something happened to her as a child. *Id.* The state trial court concluded that the juror had genuinely suppressed any memory of her rape, and therefore answered the voir dire question honestly. *Id.* The First Circuit Court of Appeals held there was no implied bias, even though *McDonough* required the district court to further investigate whether the juror was bias even if the juror answered honestly. *See id.* at 1405-06 (finding situation did not rise to level of finding implied bias); *see also* Dall v. Coffin, 970 F.2d 964, 972 (1st Cir. 1992) (explaining post-verdict questioning of jurors permitted only in "extraordinary situations as are deemed appropriate").

[33] *See* Joshua S. Press, *Untruthful Jurors in the Federal Courts: Have We Become Comfortably Numb?*, 21 ST. THOMAS L. REV. 253, 266-69 (2009) (explaining different ways federal courts dealt with post-verdict juror non-disclosure prior to *McDonough*). Prior to *McDonough*, federal courts developed different ways to deal with post-verdict discovery of juror non-disclosure. *Id.* at 266. Some courts were overly sensitive to juror non-disclosure and would require new trials even when the potential for juror partiality was low or failure to respond to a question was inadvertent. *Id.* at 266-67. For example, the Tenth Circuit attempted to design an objective standard test based on an "average juror." *See id.* at 267; *see also* Greenwood v. McDonough Power Equip., Inc., 687 F.2d 338, 343 (10th Cir. 1982), *rev'd sub nom.* McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548 (1984). After the discovery of juror non-disclosure at voir dire, the court attempted to design a test that would decide whether an "average prospective juror" would have disclosed the information. *See Greenwood*, 687 F.2d at 343. The test next required the court to determine whether the non-disclosed information would be "significant and cogent evidence" of the juror's probable bias. *See id.* Although the objective standard might have been effective in protecting defendant's Sixth and Seventh Amendment rights, it was costly to have so many new trials. *See* Press, *supra*, at 267. Another approach to juror non-disclosure was the implied bias

McDonough, the Court does not set any bright-line test to recognize bias.[34] There are a number of factors used to determine whether the juror has both "the capacity and the will" to be an impartial juror.[35]

In *Sampson I*, the First Circuit had to decide whether juror dishonesty during voir dire in a post-conviction sentencing hearing was a valid basis to set aside the defendant's sentence and order a new hearing.[36] The First Circuit disagreed with the district court's interpretation of *McDonough*, particularly the district court's categorical approach when deciding a valid basis for excusal from bias under the binary test.[37] In spite of this, the appropriate legal framework would have resulted in the same decision.[38] Instead of a categorical approach, the decision to excuse a juror for

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test adopted by the Sixth Circuit. *See* McCoy v. Goldston, 652 F.2d. 654, 659 (6th Cir. 1981) (reasoning juror bias can be actual in fact, or implied by law). In *Goldston*, the plaintiff discovered post-trial that one of the jurors failed to disclose her son was training to be a parole officer. *See id.* at 656. Before trial, the district court posed the following question to all of the prospective jurors, to ascertain any possible or probable bias: "[d]o any of you have any close friends or relatives who are connected or associated with any law enforcement agency or police department." *Id.* The trial court, however, denied both a new trial and a post-trial evidentiary hearing. *Id.* at 657. The Sixth Circuit Court of Appeals reversed the trial court's ruling and held that even if the juror's non-disclosure of her son's status as a parole officer would not have given rise to a legal basis for a challenge for cause, it should still presumed to be a bias on the part of the juror. *See id.* at 659. Ultimately, the court asserted that a new trial should be granted whenever a juror's concealed information would have actually caused the juror to be disqualified. *See id.*; *see also* Press, *supra*, at 268.

[34] *See supra* note 33 and accompanying text (explaining that *McDonough* test depends on circumstances).

[35] *See Sampson I*, 724 F.3d 150, 165-66 (1st Cir. 2013) (listing factors used to determine whether or not a juror is impartial). Courts have compiled a list of several factors useful to determine a juror's impartiality. *See, e.g.*, Dennis v. Mitchell, 354 F.3d 511, 518-19 (6th Cir. 2003) (considering juror's ability to separate emotions from her duties as factor); Skaggs v. Otis Elevator Co., 164 F.3d 511, 516 (10th Cir. 1998) (listing juror's motive for lying as factor); Dyer v. Calderon, 151 F.3d 970, 983-84 (9th Cir. 1998) (examining scope and severity of juror's dishonesty); United States v. Torres, 128 F.3d 38, 47-48 (2d Cir. 1997) (noting similarities between juror's and defendant's activities as factor for inferring bias); United States v. Scott, 854 F.2d 697, 698-700 (5th Cir. 1988) (treating juror's interpersonal relationships as factor). The court in *Sampson* asserted that "[a]lthough any one of these factors, taken in isolation, may be insufficient to ground a finding of a valid basis for a challenge for cause, their cumulative effect must nonetheless be considered." *Sampson I*, 724 F.3d at 166.

[36] *See Sampson I*, 724 F.3d at 166-68 (laying out First Circuit's reasoning in upholding district court's decision to set aside death sentence).

[37] *See Sampson I*, 724 F.3d at 166 (finding district court misunderstood McDonough test); *see also Sampson IV*, 820 F. Supp. 2d 151, 162-67 (D. Mass 2011) (explaining actual bias, implied bias, and inferable bias). When determining whether or not a juror should be dismissed because of dishonesty during voir dire, judges consider actual bias, implied bias, and inferable bias. *See Sampson IV*, 820 F. Supp. 2d at 162; *see also supra* note 32 and accompanying text (detailing binary test).

[38] *See Sampson I*, 724 F.3d at 165 (explaining bias is state of mind rather than pedagogical conception).

bias depends on the particular circumstances surrounding a case.[39] In the event of juror dishonesty, the court is required to inquire into potential biases in using context-specific criteria, and the inquiry depends on the following:

> whether a reasonable judge, armed with the information that the dishonest juror failed to disclose and the reason behind the juror's dishonesty, would conclude under the totality of the circumstances that the juror lacked the capacity and the will to decide the case based on the evidence (and that, therefore, a valid basis for excusal for cause existed)." [40]

The Court reasoned that because Juror C failed to answer material voir dire questions honestly, even though she knew that she was under oath, the first element of the binary test was satisfied.[41] Moreover, the second element of the binary test was proved by:

> (i) Juror C's habitual dissembling; (ii) the intense emotions Juror C exhibited when belatedly relating her life experiences involving P and J; and (iii) the similarities between Juror C's unreported life experiences and the evidence presented during the penalty-phase hearing.[42]

Therefore, the Court reasoned that Juror C's reasons for lying about her family impaired her ability to decide the case solely on the evi-

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[39] *See Sampson I*, 724 F.3d at 165-66 (explaining McDonough test). Cognizable juror bias is a valid basis for excusal; however, *McDonough* did not impose a test that required cognizable bias to be placed in particular subcategories. *Id.* at 165.

[40] *Id.* at 166-67 (detailing framework of inquiry for potential bias); *see also* United States v. Wood, 299 U.S. 123, 146 (1936) ("[T]he Constitution lays down no particular tests and procedure is not chained to any ancient and artificial formula.").

[41] *See Sampson I*, 724 F.3d at 166 (applying facts to legal framework). "The first part of the binary test [was focused] on whether Juror C failed to answer honestly one or more material voir dire questions." *Id.* Juror C knew truthfulness was required during voir dire, and later admitted she intentionally lied to avoid talking about her husband and daughter because it was too painful. *Id.* The second part of the binary test focused on whether the dishonest voir dire answers "go to the heart of juror impartiality," thus making them material. *Id.* at 167.

[42] *Sampson I*, 724 F.3d at 167. Juror C repeatedly lied in both the voir dire and the post evidentiary hearings, which proved that she harbored powerful emotions about her husband and daughter because she would rather lie in court than tell the truth about her family. *Id.* The facts in the *Sampson* case were similar to the events that Juror C lied about. *See id.* at 167-68. For instance, Sampson used a gun and knife on his victims, much like how Juror C's husband threatened her with his gun and fists; Sampson had substance abuse problems as did Juror C's daughter and husband; and finally, Sampson was incarcerated for robbery, similar to how Juror C's daughter was incarcerated for larceny. *See id.* at 168.

dence.[43]

Even though Sampson plead guilty to the charges of brutally murdering innocent good Samaritans while on a crime spree, he is still entitled to an impartial jury and, even more so when facing a death sentence.[44] When a juror's dishonesty or non-disclosure of information at voir dire is discovered post-verdict, the moving party must demonstrate that the juror failed to answer a material voir dire question honestly and that the correct response would have been a valid basis for a challenge for cause.[45] The information the juror concealed at voir dire must be compared to facts of the trial and if the concealed information is similar in nature to material facts being litigated, then the juror is likely biased.[46] Moreover, the scope and severity of the juror's dishonesty, the juror's motive for lying, the similarities between the juror's experience and the facts presented at trial, the juror's ability to separate his/her emotions form his/her duties, and the juror's interpersonal relationships all must be investigated.[47]

The First Circuit Court of Appeals in *Sampson I* correctly interpreted the *McDonough* test and applied the appropriate legal framework, thus standing for the principle that not every juror non-disclosure at voir dire is entitled to a new trial.[48] In order to effectively filter out partial jurors, counsel needs to prepare thorough voir dire questions to gain insight into the jurors' subconscious because bias is such an elusive state of mind that can be unintentionally withheld at voir dire.[49] With this in mind, the voir dire questions must be clear enough for an average juror to understand them in the event post-verdict, a judge has to rule on whether the juror in-

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[43] *See id.* at 168. "When a juror has life experiences that correspond with evidence presented during the trial, that congruence raises obvious concerns about the juror's possible bias. In such a situation, the juror may have enormous difficulty separating her own life experiences from evidence in the case." *Id.* at 167 (citations omitted).

[44] *See* cases cited *supra* note 27 and accompanying text (explaining heightened importance of impartial jury when defendant is facing death penalty).

[45] *See supra* note 3 and accompanying text (illustrating legal framework established by Supreme Court to analyze juror dishonesty during voir dire).

[46] *See Sampson I*, 724 F.3d at 167-68 (explaining juror likely bias when non-disclosed life experiences are similar to facts of trial).

[47] *See supra* note 35 and accompanying text (listing factors court may consider when determining juror's impartiality).

[48] *See Sampson I*, 724 F.3d at 166-67 (explaining correct interpretation of *McDonough* test); *see also* Press, *supra* note 33, at 266-67 (arguing pre-*McDonough* courts incorrectly ordered new trials for every juror non-disclosure at voir dire); *supra* note 39 and accompanying text (explaining *McDonough* does not require bias to be categorized). Some courts were too sensitive to juror non-disclosure at voir dire, thus making it too costly to have a new trial for each sentence that was set-aside. *See* Press, *supra* note 33, at 266-67.

[49] *See* Crawford v. United States, 212 U.S. 183, 196 (1909) (explaining how difficult it is to decipher bias of juror at voir dire).

tentionally withheld information, as in *Sampson I*, and to allow for insight into possible juror bias.[50] In a perfect world, all jurors will answer voir dire questions honestly and accurately, and judges could excuse impartial jurors, or either side could effectively challenge the juror's impartiality, but unfortunately there is always the possibility a juror may be withholding information during voir dire; thus, it is essential to develop systematic, clear, and concise questions that will divulge any potential bias that may be harbored in a juror's subconscious.[51]

When juror dishonesty is suspected post-verdict, counsel should make their best attempt, during the evidentiary hearings, to discover as much information about the juror's life that is substantially related to the suspected dishonest answers at voir dire.[52] In the event a juror was dishonest at voir dire, the next step is to compare the non-disclosed information to the context of the case, similar to the analysis in *Sampson I*.[53] Counsel should structure an argument that demonstrates the juror's dishonesty to the voir dire questions that "[goes] to the heart of juror impartiality."[54] In the event the non-disclosed information is similar to the facts of the case, as it was in *Sampson I*, counsel should look to the number of factors listed by the court in *Sampson I* to convince the court that the juror did not have "the capacity and will to decide the case solely on the evidence."[55] In this case, Sampson discovered past events in Juror C's life and was able to show possible bias because the events were very similar to the crimes charged, and would have resulted in excusal of the juror at trial.[56]

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[50] *See supra* note 41 and accompanying text (explaining how *Sampson I* court applied *McDonough* test); *see also supra* note 19 and accompanying text (detailing how Juror C intentionally and repeatedly lied at voir dire and later proceedings); *supra* notes 11-12 and accompanying text (providing clear instruction to answer all questions even if private or sensitive). The district court in *Sampson IV* was aware that some questions required answers that might require private or sensitive information. *See Sampson IV*, 820 F. Supp. 2d 151, 182 (D. Mass. 2011). Therefore, the jurors were instructed to write "private" next to any questions that require individual voir dire questioning in a private session. *Id.*

[51] *See supra* note 2 and accompanying text (explaining voir dire process).

[52] *See Sampson IV*, 820 F. Supp. 2d at 158-61 (explaining questioning of juror to discover reason for dishonesty).

[53] *See supra* note 42 and accompanying text (comparing context of voir dire questions to context of case in order to show bias). The context of information that Juror C lied about at voir dire was similar to the behavior of Sampson during his crime spree. *See Sampson I*, 724 F.3d at 167; *see also supra* note 17 and accompanying text (explaining context of information Juror C lied about during voir dire and evidentiary hearings).

[54] *See supra* note 41 and accompanying text (explaining second prong of *McDonough* test).

[55] *See supra* note 35 and accompanying text (indicating non-disclosed juror information during voir dire should be applied to list of factors).

[56] *See supra* note 17 and accompanying text (identifying Juror C as juror who withheld information during voir dire).

In *Sampson I*, the First Circuit Court of Appeals considered whether the post-verdict discovery of a juror's intentional non-disclosure at voir dire should result in a death sentence verdict being set aside. Although the majority came to the same conclusion as the district court, they did not agree with the district court's categorical approach to identifying bias, as interpreted from *McDonough*. Therefore, the court applied its interpretation of *McDonough* and held that Sampson's death sentence should be set aside because Juror C intentionally withheld information that was substantially similar to Sampson's crimes. The non-disclosed information was material to impartiality in this case because Juror C was still bothered about the past incidents when she finally revealed them to the court. Furthermore, this would have been a valid reason for a reasonable judge to excuse a juror for possible bias. Federal prosecutors will hold a second death penalty trial for Gary Lee Sampson in the near future. The purpose of the *McDonough* test was to save courts from costly re-trials because of non-disclosures at voir dire. Even though Sampson pled guilty to heinous acts, he is still entitled to an impartial jury when facing the death penalty.

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