2014 PA Super 52

SUSANNE CORDES, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF EDWARD D. CORDES, SR. Appellant v. ASSOCIATES OF INTERNAL MEDICINE; TRI-STATE MEDICAL GROUP, P.C.; TRI STATE MEDICAL GROUP, P.C. D/B/A/ ASSOCIATES OF INTERNAL MEDICINE; ANN MARIE RAY, M.D.; AND MARTHA LOUISE NEWMAN, P.A. Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1737 WDA 2011

Appeal from the Judgment Entered October 20, 2011
In the Court of Common Pleas of Beaver County
Civil Division at No.: 10763-2009

BEFORE: STEVENS, P.J.*, BENDER, J., BOWES, J., GANTMAN, J., DONOHUE, J., ALLEN, J., OLSON, J., OTT, J., and WECHT, J.

DISSENTING OPINION BY OLSON, J.: **FILED MARCH 12, 2014**

I respectfully dissent from the views set forth in the Opinions in Support of Reversal ("O.S.R.").[1] The law in Pennsylvania holds that indirect or mediated relationships between prospective jurors and case participants

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[1] While I differ from the views embraced in both Judge Wecht's Opinion in Support of Reversal (W.O.S.R.) and Judge Donohue's Opinion in Support of Reversal (D.O.S.R.), the balance of my discussion focuses exclusively upon the contentions addressed in the W.O.S.R. I note, however, that much of my rebuttal is applicable to the opinions expressed by both of my learned colleagues.

*Former President Judge Stevens did not participate in the consideration or decision of this case.

are insufficient to raise a presumption of prejudice. Therefore, in my view, jurors Richard Majors, Christine Kaelin, and Sean Snowden are not subject to exclusion as a matter of law. Moreover, since the trial court's consideration of the jurors' testimony was free of palpable error, I cannot conclude that the trial court otherwise erred in failing to grant Appellant's for-cause challenge to the empanelment of those jurors. I, therefore, write separately to express my disagreement with the W.O.S.R.'s approach to the resolution of the issues raised in this appeal.

Here, none of the challenged jurors had any relationship whatsoever **with** a party, case counsel, a victim, or a witness in the instant litigation.[2] In each case, the jurors' relationship to a party arose exclusively from their relationship to a third party with no role in the litigation. Thus, no matter how one seeks to characterize the jurors' connections to this case, those connections are, at best, indirect. Consequently, under well-settled principles of Pennsylvania law, not one of the prospective jurors maintains a relationship that implicates *per se* disqualification or *de novo* appellate review.

At issue in this case is whether the prospective jurors' connections to case participants, which arose through non-parties, should subject those

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[2] None of the challenged jurors knew Dr. Ray before trial commenced or were employed by the defendant entities. Hence the record is undisputed that the jurors are connected to the litigation only through an individual or entity common both to the juror and one of the defendants to this action.

jurors to compulsory or discretionary exclusion. This issue turns on the language of our governing legal standard, particularly that portion which addresses situations that compel a trial judge to presume prejudice and excuse a juror for cause as a matter of law. I believe that the text of the rule guides both our selection of the standard of review as well as the scope of compulsory exclusion from jury service. Under the standard, when a prospective juror's connection to a case participant stems from a relationship with a non-party, qualification for jury service becomes a matter for the trial court's discretion and should be reviewed accordingly.

The W.O.S.R. excludes the challenged jurors as a matter of law, not on grounds that that the trial court abused its discretion.[3] Ms. Kaelin and Mr. Snowden are precluded from serving as jurors because members of their

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[3] The W.O.S.R. does not claim to fault the trial court's consideration of the testimony offered by the challenged jurors as to their ability to examine the facts fairly and impartially. In fact, the W.O.S.R. admits, if resolution of this appeal turned on the answers and demeanor of the jurors during *voir dire* as observed by the trial judge, then the court's ruling is clearly sustainable because it is free of palpable error. ***See*** W.O.S.R. at 10 ("Were the fitness of the jurors in question dependent solely upon their indications under oath regarding their ability to be impartial, our deference to the trial court's findings with regard to these answers would compel affirmance."). Instead, the W.O.S.R. asserts that the trial court erred in failing to discern that the situational relationships existing among the challenged jurors, the parties, and non-parties were sufficiently close to compel exclusion as a matter of law. ***See id.*** ("[D]espite the trial court's focus on the jurors' own testimony, the challenge presented here turns instead upon the situational relationships of the challenged jurors to the parties and interested non-parties.")

families treat with Dr. Ray. Mr. Majors is excluded because of his employment with a company whose corporate affiliate owns Dr. Ray's medical practice.

I cannot agree with the W.O.S.R.'s election to review the trial court's decision to empanel the challenged jurors as a question of law. Our standard, articulated by this Court over 40 years ago, states:

> An analysis of case law indicates that there are two types of situations in which challenges for cause should be granted: (1) when the potential juror has such a close relationship, be it familial, financial or situational, with parties, counsel, victims, or witnesses, that the court will presume the likelihood of prejudice; and (2) when the potential juror's likelihood of prejudice is exhibited by his conduct and answers to questions at [v]oir dire. In the former situation, the determination is practically one of law and as such is subject to ordinary review. In the latter situation, much depends upon the answers and demeanor of the potential juror as observed by the trial judge and therefore reversal is appropriate only in case of palpable error.

Commonwealth v. Colon, 299 A.2d 326, 327-328 (Pa. Super. 1972).

As our standard makes clear, a trial court may grant a challenge for cause as a matter of law under the first category in ***Colon*** only when a prospective juror maintains such a close relationship **with a party, case counsel, a victim, or a witness** that the court will **presume** a likelihood of prejudice. ***Id*.** Because the trial court's decision in such circumstances is practically one of law, its determination is subject to more enhanced appellate review. ***See id*.** The learned W.O.S.R. does not dispute this

proposition. Instead, the W.O.S.R. quotes the following passage from ***Commonwealth v. Johnson***, 445 A.2d 509 (Pa. Super. 1982):

> The two situations [identified in ***Colon***] . . . are not mutually exclusive, and it is to be expected that some cases will present both situations. Thus a prospective juror may indicate by his answers on voir dire that he will not be impartial — the first situation — and the reason for his attitude may be that he has a particular relationship with someone involved in the case — the second situation.

W.O.S.R. at 7, *citing* ***Johnson***, 445 A.2d at 512. The W.O.S.R. then states that it will apply *de novo* review in this case, the more enhanced form of appellate scrutiny, because the first category of ***Colon*** involves a question of law.[4] While I agree that the first category of ***Colon*** involves a question of law, I find nothing in ***Johnson*** that brings this appeal within the narrow class of cases subject to compulsory exclusion and to which enhanced appellate review applies. Indeed, a careful review of ***Johnson*** confirms it

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[4] In citing to the statement in ***Johnson*** that the two categories in ***Colon*** are "not mutually exclusive," the W.O.S.R. appears to suggest that an appellate court may apply *de novo* review whenever the trial court's discretionary rulings are unassailable. I do not read ***Johnson*** as sanctioning such an open-ended approach to appellate adjudication. As I shall explain in greater detail below, in ***Johnson***, we did not examine a single ruling by the trial court under the *de novo* review standard. In fact, after considering the nature of the juror's connection to the participants in that case, we rejected compulsory exclusion and *de novo* review. Instead, we confined our analysis and holding strictly to the issue of whether the trial court abused its discretion. Thus, notwithstanding its declaration that the two categories listed in ***Colon*** are not mutually exclusive, ***Johnson*** supports discretionary review in cases where a prospective juror's relationship to a case participant arises indirectly through a connection with a non-party.

does not support a finding of compulsory exclusion and the application of *de novo* review in this case.

In ***Johnson***, the defendant was convicted of criminal conspiracy, robbery, possession of an instrument of crime, and simple assault. At trial, the court rejected defense counsel's request to excuse a prospective juror for cause. The basis for counsel's request was that the juror's daughter had been the victim of a rape and robbery that possessed several important similarities with the facts in ***Johnson***. The similarities greatly distressed the juror and his suffering became evident during *voir dire*. This led to the following extensive side-bar colloquy between the trial court and the juror, which was quoted at length in this Court's opinion:

> THE COURT: [Juror], you related to me that—about an incident that occurred to your daughter and during that incident you were emotionally upset, and I was aware of your emotion and that concerns me, so I'm going to ask you that supposing in this case—supposing in this case there would be some evidence like similar to—supposing one of the witnesses would say that this man—this is a hypothetical question, that this man wouldn't do something to her, sexually, if he didn't give the money or something of that sort; would that so overwhelm and emote [sic] you that you would be overwhelmed as to your conscience so that you couldn't be fair to both sides?
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> [JUROR]: Not only in answer to what you said but in thinking over my observation of my own reaction when I related this to you, I didn't realize how strongly I feel about this and if I consider that, I'm not what I thought I was and trying to be fair and consider the evidence in such a case and—
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> THE COURT: You believe you would be fair?
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> [JUROR]: I think it would be difficult because I can see how I'm reacting. I didn't realize how strongly I felt about this.

THE COURT: The charges here are not involving sex at all.

[JUROR]: I think just the fact that what happened to her in such an unusual condition, I think also was a robbery but at the last moment this is what the robbers did.

THE COURT: Okay. Now, the fact that that happened in that case, which is certainly unrelated to the evidence in this case, I mean what happened in one instance in another case—on another case under different circumstances doesn't mean it happened in this case. You are to consider only the evidence in this case.

[JUROR]: That's what I realize and that's what I thought sitting there before and realizing, thinking about it and realizing how I reacted just relating the incident signifies to me a much stronger—

THE COURT: Will you react to somebody else being molested? Will you react to that?

[JUROR]: I think it would bring back to mind the things I imagined happened at the time with my daughter.

THE COURT: Even though I instruct you that that's not a proper way to deal with it?

[JUROR]: I realize that, logically. It should not be so but I could see emotionally, I can see that I don't have full control in that case, because as I said, I didn't realize how strong it was in relating it to you and I didn't expect myself to break down, practically.

THE COURT: When it involves your daughter, I can see it, and you're relating a story involving your daughter but when it involves another person and you're asked to be a Juror because that's what we do and—

[JUROR]: I realize that. I'm wondering if I am able to do it.

THE COURT: You have to determine that whether the evidence is true in the other case, when you looked at your daughter, you said, well, my, why would my daughter go through this and what

happened to your daughter, you can visualize as having happened but here you have to first determine whether it's true and then if you determine that, then you apply the law.

[JUROR]: I see.

THE COURT: So, you see it isn't every time that somebody says something that it's true. You have to determine that at first. Can you do that without being so upset as to impair your ability of making fair judgments?

[JUROR]: All right. I'll do that.

THE COURT: You must commit yourself to that endeavor, and if you have any reservations, we want to hear about it. We can't have to [sic] so emotionally blank because something happens to you that you can't think, so you can apply yourself in a fair way. I mean, you know yourself best. We all have some emotional feelings about our members of our family. The question is whether that emotional feeling which is unrelated to this matter can overwhelm your faculties so that you could no longer be fair and be objective about a situation that's unrelated. That's the question. Can you be fair?

[JUROR]: Yes.

THE COURT: In an unrelated matter?

[JUROR]: Yes.

THE COURT: I'm going to repeat that again and going to say that supposing the evidence in this case should, for some reason, be that one of the victims may say and he threatened to do something to me sexually if I didn't give him the money, for some reason, would that so emote you as to overwhelm your faculties that you could no longer be fair?

[JUROR]: No. I think I could.

THE COURT: Be fair?

[JUROR]: Be fair.

THE COURT: All right. You may take your seat.

Johnson, 445 A.2d at 512-513.

In ***Johnson***, this Court acknowledged that a prospective juror's close relationship to a victim of a separate crime did not compel a finding of prejudice in every case; thus, we declined to adopt a rule requiring compulsory exclusion of family members of crime victims. ***Id.*** at 514. However, based upon the review of the juror's testimony on *voir dire*, the Court found the particular facts in ***Johnson*** to be "especially compelling." ***Id.*** This Court therefore observed:

> **[The juror] vividly demonstrated during voir dire that he would be likely not to be an impartial juror. He not only visibly manifested emotional distress but specifically expressed substantial doubts about his ability to be impartial at least five times.** Although he acknowledged that "logically" he could separate the robbery and rape of his daughter from the robbery of appellant's victims, he added at once that "emotionally, I can see that I don't have full control."

Id. (emphasis added). On the strength of these observations, this Court said that the juror's eventual assurance that he could be fair did not dispel the force of his prior candid admissions. ***Id.*** The Court also expressed skepticism about the juror's assurances given that they appeared to be the product of suggestive questioning by the court aimed at eliciting a judicially desired response. ***Id.*** For each of these reasons, this Court determined that "the [trial] court's refusal to excuse [the juror] for cause [constituted] **an abuse of discretion**." ***Id.*** (emphasis added).

The record in the present appeal stands in stark contrast to the facts before this Court in ***Johnson***. Each of the challenged jurors in the instant case professed his or her ability to deliver a verdict based upon a fair and impartial consideration of the evidence introduced at trial. Moreover, each of the jurors confirmed that his or her relationship with non-parties would not impair his or her ability to perform his or her duties in an unbiased manner. The trial court found their sworn testimony during *voir dire* to be worthy of belief and the W.O.S.R. concedes an "undisputed absence of admissions of partiality" (W.O.S.R. at 9) and finds no fault in the trial court's assessment of the juror's statements in *voir dire.* ***See*** W.O.S.R. at 10 ("Were the fitness of the jurors in question dependent solely upon their indications under oath regarding their ability to be impartial, our deference to the trial court's findings with regard to these answers would compel affirmance."). Unlike the juror in ***Johnson***, the challenged jurors here gave unwavering assurances of impartiality. In view of these significant factual distinctions, I do not find that ***Johnson*** offers compelling guidance for finding error in the present case.

I also cannot agree that ***Johnson***, in stating that the two categories identified in ***Colon*** are not mutually exclusive, allows an appellate court to consider questions of law when the relevant juror/case participant relationships are indirect and the discretionary determinations of the trial court are free of error. ***Johnson***'s rationale does not support such a

proposition. This Court acknowledged, in ***Johnson***, that the juror's daughter was the victim of a prior robbery and rape. In terms of the claims and arguments raised in the present appeal, the juror in ***Johnson*** had a close familial relationship with a non-party (his daughter) that, in turn, gave rise to an indirect situational connection with a case participant (a sympathetic predisposition toward the victim of the crimes then under review). Despite our awareness of these facts, this Court **refused** to apply *de novo* review and find *per se* prejudice. Instead, we restricted our analysis to the trial court's conduct and assessment of the juror's testimony during *voir dire*, which fell exclusively within the scope of the trial court's discretionary authority. The conclusion in ***Johnson***, *i.e*. that a new trial was warranted because the trial court abused its discretion, confirms the limited scope of our inquiry. Unlike the W.O.S.R. in the present case, this Court in ***Johnson*** did not attempt to transfer the intimacy and depth of the juror's relationship with his daughter to the indirect situational connection between the juror and the victim and then, in turn, review the case as one that involved the legal question of whether a sufficiently close relationship compelled exclusion. Thus, while ***Johnson*** states that the case categories identified in ***Colon*** may not be mutually exclusive, ***Johnson*** confirms that discretionary review is appropriate where a juror maintains only an indirect connection to a case participant.

Moreover, as made clear in ***Colon*** and ***Johnson***, neither enhanced appellate review nor compulsory exclusion is triggered in this instance merely because there is the prospect or appearance of partiality or bias of the three jurors. Although the W.O.S.R. views the potential loyalties of the jurors as its central concern in this case (***see*** W.O.S.R. at 9), the mere potential for bias or impartiality does not justify *per se* exclusion or *de novo* appellate review because such a formulation would inevitably cast a wider net for compulsory exclusion than that which is permitted under the governing standard. In every case in which even a tangential connection exists, a prospective juror's potential for bias could conceivably be called into question. Yet, our standard does not envision compulsory exclusion and heightened appellate scrutiny in every such instance. Given the obvious difference between a mere "potential for bias" and the far higher threshold of a "presumption of the likelihood of prejudice," I cannot agree with the W.O.S.R.'s effort to equate these vastly divergent formulations.

The W.O.S.R.'s holding in this case illustrates this tension. On one hand, the W.O.S.R. finds that the challenged jurors' situational and financial relationships with non-parties compel their exclusion as a matter of law. Indeed, as the W.O.S.R. concedes, its ruling will "militate strongly in favor of the exclusion of immediate family members of individuals who treat with a defendant physician." ***Id.*** at 33 n.13 (continuation) (emphasis omitted). On the other hand, the W.O.S.R. expresses reluctance to follow suit in similar

cases. ***See Id***. at 25 ("We do not posit that no one may be qualified to sit in judgment of a physician simply for knowing or being related in some way to a patient thereof."), 32 ("Nor do we intend **in any way** to establish a new bright-line rule disqualifying all jurors with any family or business relationships in all cases to come[.]") (emphasis added), and 34 ("We conclude **only** that the close situational, familial, and financial relationships presented **in the instant case** necessarily stripped the trial court of its discretion to rely upon the challenged jurors' assurances of impartiality.") (emphasis added). I believe that this creates uncertainty as to the scope and extent of the W.O.S.R.'s holding. If the challenged jurors are legally ineligible, then all similarly situated jurors must be excluded in future cases, as the W.O.S.R. purports to do with "immediate family members" of those who treat with a defendant physician. If, however, the W.O.S.R. has decided this case on its own unique facts and the holding is not meant to establish new bright-line rules for future cases, then the W.O.S.R. has essentially undertaken a review of the trial court's discretionary determinations but issued its conclusion as a pronouncement of law. I would avoid this confusion and hold that, in the absence of a disqualifying **direct** relationship with a case participant, a juror's exclusion from service should remain within the discretionary authority of the trial court and we should review the court's determination for an abuse of that discretion.

Our decision in the leading authority confirms my approach. In ***Colon***, the Commonwealth charged the defendants with various offenses arising from the robbery of a bar, including shooting at police officers with the intent to kill. During *voir dire*, the trial judge refused to dismiss a local police commissioner from the jury for cause. The jury acquitted the defendants of allegedly shooting at the police but convicted them of the other crimes.

On appeal, we considered "whether law enforcement officials, because of their occupational relationship to criminal cases, should automatically be removed for cause, or whether they should be removed only if their likelihood of prejudice is manifested by their answers and demeanor on [v]oir dire." ***Colon***, 299 A.2d at 328. We held that law enforcement officers were not subject to compulsory exclusion from criminal cases generally, noting that "[a]bsent any real relationship to the case, the removal of an enforcement officer should depend on the sound exercise of discretion by the trial judge."[5] ***Id.*** In reaching this conclusion as to the exclusion of classes

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[5] The record in ***Colon*** showed that the police commissioner gave uncertain answers during *voir dire* concerning his ability to impartially evaluate police testimony and that his responses raised doubts about his potential bias. ***Id.*** ***Colon,*** 299 A.2d at 328 (Spaulding, J., dissenting). Hence, we ultimately held that because some of the crimes charged involved risks to police officers similar to those faced by the police commissioner, there was a likelihood of prejudice which should have led the trial court to exercise its discretion in excusing the commissioner for cause. ***Id.*** at 328-329.

of jurors as a matter of law, we reasoned that "**[t]he categories of relationships which automatically call for removal should be limited** because it is desirable to have a jury composed of persons with a variety of backgrounds and experiences." ***Id*.** (emphasis added).

Colon articulated a preference for a narrowly circumscribed set of relationships that qualified for compulsory exclusion and elevated appellate scrutiny. Hence, after reviewing cases, this Court in ***Colon*** determined that compulsory exclusion would extend only to cases in which "the potential juror had such a close relationship, be it familial, financial or situational, **with parties, counsel, victims, or witnesses**." ***Id*.** at 327 (emphasis added). The plain text of the rule that emerged from ***Colon*** demands that a disqualifying relationship be a direct and immediate connection that exists between the prospective juror and a party, case counsel, a victim, or a witness.[6] Conspicuously absent from ***Colon***'s definition of the relationships

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[6] My reference to a "direct and immediate connection" between a prospective juror and a case participant as the exclusive triggering factor for *per se* disqualification and enhanced appellate review arises from the language and application of our well-settled standard. Hence, the phrase "direct relationship" enjoys over four decades of support in Pennsylvania case law. As even the W.O.S.R. recognizes, our controlling standard provides that a presumption of prejudice arises "when the potential juror has such a close relationship, be it familial, financial, or situational, **with parties, counsel, victims, or witnesses**." ***See*** W.O.S.R. at 7 (emphasis added), *quoting* ***Colon, supra***. The W.O.S.R. cites this binding precedent but then ignores it by sweeping juror relationships **with non-parties** into the narrow class of cases that require compulsory exclusion and call for enhanced appellate scrutiny.
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that compel *per se* disqualification are relations between prospective jurors and **non-parties** who, in turn, maintain some connection to a case participant. The W.O.S.R.'s approach, which finds a presumption of prejudice because of a juror's relationship with a non-party, represents a

(Footnote Continued) ———————————

While I agree that many of our prior cases have spoken in terms of "real" or "close" relationships, I would point out that **all** of our cases have required record evidence of a tangible connection between a prospective juror and a case participant before *per se* prejudice is found. ***See Colon***, 299 A.2d at 328 (police officer's occupational relationship with non-party law enforcement organization insufficient to constitute real or close relationship with case participant that compelled exclusion from jury as a matter of law). Thus, whether the standard is framed in terms of a "close," "real," or "direct" relationship, Pennsylvania law holds that juror connections that arise solely through non-parties do not meet the criteria for compulsory exclusion or *de novo* review. ***See Commonwealth v. Blasioli***, 685 A.2d 151, 159 (Pa. Super. 1996) (juror's physician-patient relationship with wife of prosecutor constituted attenuated, not direct, connection and thus did not support finding of *per se* prejudice), *aff'd*, 713 A.2d 1117 (Pa. 1998). The W.O.S.R. cites to ***Schwarzbach v. Dunn***, 381 A.2d 1295 (1977) for support; however, like ***McHugh*** and ***Johnson, Schwarzbach*** is distinguishable from the case before us. In ***Schwarzbach,*** the record was devoid of any facts from which the court could determine what the relationship was between the juror's wife and plaintiff's attorney and whether the juror was properly or improperly empaneled. As this Court made clear, if the facts had been established, it was possible that there would have been no harm in having the juror hear the case. As this Court noted, "the relationship of the juror in this case may have caused [defense] counsel to exercise a peremptory challenge as to the juror if he had been appraised as to the relationship. [Defense] counsel, however, learned of the relationship only after the verdict had been rendered . . . thus, there was no reason for the defense to question the prospective jurors on *voir dire* about this inherently prejudicial situation." ***Id.*** at 1298 (internal quotation omitted). In this case, there was extensive *voir dire* and the evidence is undisputed that the challenged jurors did not know Dr. Ray and that they lacked any personal connection with the case participants. Hence, Appellant has not demonstrated any relationship - whether real, close, or direct - that disqualified the challenged jurors as a matter of law.

sharp departure from prior precedent because it ushers in an entirely new category of cases in which compulsory exclusion must be found and to which enhanced appellate review must be applied. Until now, such indirect relationships did not meet the criteria for compulsory disqualification or heightened review and instead fell within the scope of the trial court's discretionary determinations. ***See McHugh v. P&G Paper Prods. Co.***, 776 A.2d 266, 270 (Pa. Super. 2001) (Superior Court will presume prejudice to ensure fairness "[w]hen presented with a situation in which a juror has a close relationship **with participants in the litigation**[″]) (emphasis added); ***see also Commonwealth v. Blasioli***, 685 A.2d 151, 159 (Pa. Super. 1996) (juror's physician-patient relationship with wife of prosecutor constituted attenuated, not direct, connection and thus did not support finding of *per se* prejudice), *aff'd*, 713 A.2d 1117 (Pa. 1998).

Without even a hint of reservation, these more recent decisions have consistently followed ***Colon***'s refusal to apply compulsory disqualification to cases in which a prospective juror's connection to litigation emerges solely through a relationship with a non-party. In these cases, we were careful to distinguish between challenges for cause alleging indirect or mediated relationships (*i.e.* cases in which a prospective juror's connection to a case participant arose through a non-party), and challenges for cause claiming direct connections between potential jurors and litigants, case counsel, victims, or witnesses. As to the former, we flatly rejected *per se*

disqualification, applied a more deferential standard of review, and demanded proof of palpable error on the part of the trial court before awarding relief.

In ***Blasioli***, the prospective juror testified during *voir dire* that she worked at the same hospital as the prosecutor's wife, who also served as her family doctor. ***Id.*** at 158. The juror also stated that she had seen the prosecutor on a few occasions in social settings at the hospital, such as fundraisers, but they had not interacted. ***Id.*** After the juror agreed to do her best to be impartial and set aside her doctor-patient relationship with the prosecutor's wife, the trial court rejected defense counsel's motion to strike for cause. ***Id.*** at 159. We affirmed the trial court's ruling, concluding that, in view of the juror's statements during *voir dire*, the trial court's decision was free of palpable error. ***See id.*** We deferred to the trial court's observations of the juror's conduct and demeanor during *voir dire* because we found that the juror's "patient-physician relationship with the wife of the prosecutor did not rise to the level where the trial court could have presumed the likelihood of prejudice." ***Id.*** We were cautious in ***Blasioli*** to contrast the indirect and mediated relationship *sub judice* with the direct and substantial connection under review in ***Commonwealth v. Perry***, 657 A.2d 989 (Pa. Super. 1995). ***See Blasioli***, 685 A.2d at 159 n.15. In ***Perry***, this Court held that the trial court should have excused a potential juror for cause as a matter of law when that juror testified that he was best friends

with the arresting officer and that he had no doubts regarding the officer's veracity. ***Perry***, 657 A.2d at 991. We observed in ***Perry*** that these facts demonstrated a direct relationship between the juror and a witness which, in turn, created a likelihood of prejudice that could not be ignored despite the juror's testimony that he could be impartial and assess the officer's credibility fairly. ***Id*.**

The grounds for my departure from the W.O.S.R.'s approach do not end with prior decisions issued by this Court. Our Supreme Court has never endorsed the W.O.S.R.'s expansive view, which compels exclusion for cause based solely upon a prospective juror's relationship with a non-party even where there is **no** relationship between the juror and any participant in the litigation. To the contrary, in cases that involve indirect and mediated relationships between jurors and case participants, our Supreme Court has consistently endorsed a deferential approach to appellate review of the trial court's findings and rulings. For example, in ***Commonwealth v. Koehler***, 737 A.2d 225 (Pa. 1999), a juror advised the trial court that she had an attenuated familial relationship with the appellant's co-defendant. In response to questioning by the trial court, the juror stated that the relationship would not affect her ability to be fair and impartial in her consideration of the evidence. Thereafter, the trial court rejected defense counsel's request to remove the juror for cause. On appeal, our Supreme Court held that the trial court did not abuse its discretion in refusing to strike

the juror. The Court quoted with approval the trial court's opinion in which it found that the juror's relationship was attenuated, that she dutifully disclosed the connection after becoming aware of it, and that she testified credibly as to her ability to act impartially. ***Koehler***, 737 A.2d at 238. In affirming the order rejecting counsel's request to exclude the juror, the Supreme Court reasoned that the trial court was in a superior position to assess the credibility of the juror and to refuse to excuse the juror when it believed she qualified as a fair and impartial arbiter of the facts. ***Id.***; ***see also Commonwealth v. Briggs***, 12 A.3d 291, 332-334 (Pa. 2011) (applying palpable abuse of discretion standard to order denying appellant's request to excuse for cause three jurors who possessed only attenuated relationships to homicide victims and their families); ***Commonwealth v. Wilson***, 672 A.2d 293, 299-300 (Pa. 1996) (refusal to remove venireperson whose brother was a police officer in same district where capital murder occurred was not an abuse of discretion, where venireperson indicated no difficulty in being fair, stated that he assumed defendant was innocent and that he could be a fair juror, and affirmed that he would not tell his brother he was serving on jury); ***Linsenmeyer v. Straits***, 166 A.2d 18 (Pa. 1960) (according wide latitude to trial court's discretion in ruling on challenges for cause and concluding that prospective jurors who knew plaintiff's counsel and had legal relationship with firm representing plaintiff were not disqualified from service on those grounds).

The W.O.S.R.'s response to this line of authority is to suggest that the challenged relationships in the cases cited above were more attenuated than the relationships currently under review. ***See*** W.O.S.R. at 16 n.5 (continuation). This is unconvincing. As a preliminary matter, the W.O.S.R.'s response fails to bring this appeal within the traditional line of authority in which *per se* disqualification has been found based on a direct relationship between a prospective juror and a case participant. Moreover, the W.O.S.R.'s response simply begs the question: How in future cases will a trial judge be able to discriminate between cases that involve a juror/non-party relationship that is so indirect or mediated that exclusion should remain a matter within the court's discretion and cases that involve such a "sufficiently close" relationship that exclusion is compelled as a matter of law? While it is clear to the W.O.S.R. that the relationships at issue in this case are "sufficiently close" so as to invalidate jury participation as a matter of law, today's decision lacks any consistent and objective criteria by which trial judges can distinguish cases of the first type from cases falling within the latter category. ***See id*.** at 25 ("We do not posit that no one may be qualified to sit in judgment of a physician simply for knowing or being related in some way to a patient thereof.") and 32-33 ("Nor do we intend in any way to establish a new bright-line rule disqualifying all jurors with any family or business relationships in all cases to come; there are innumerable variations on the facts and circumstances of this case that cannot be

anticipated.").[7] We are left, then, with a judicial pronouncement, issued as a proclamation of law, where even the W.O.S.R. admits to uncertainty as to the parameters and application of its ruling in cases to come. Such an *ad hoc* approach to appellate review will inevitably hinder, not aid, trial courts tasked with the duty to apply our decision in the jury selection process.

Thus, the cases dealing with for-cause challenges to jury service reveal that Pennsylvania law is quite clear and consistent. A motion to strike a juror for cause should be granted where: 1) questioning by the trial court or counsel demonstrates a **direct**[8] familial, financial, or situational relationship

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[7] While the W.O.S.R. purports to eschew establishment of new bright-line rules, this is clearly inconsistent with its declaration that immediate family members of individuals who treat with defendant physicians will, except in extraordinary instances, no longer be eligible to serve as jurors. W.O.S.R. at 33 n.13. Moreover, given that we deal here with decisions that are made "practically as a matter of law," I believe that the precedential impact of the W.O.S.R.'s holding will extend much further. Under the W.O.S.R.'s view, all employees of companies with **any** potential adverse financial exposure to the outcome of litigation will be forbidden to serve on juries in such cases. ***See*** W.O.S.R. at 29 (stating that employment "by a business with a financial interest in [litigation compels exclusion]" and that "even the financial interest of a non-party business entity may disqualify a juror"). I envision that the W.O.S.R.'s approach will needlessly complicate the empanelment of juries in many of our less populated counties where connections, whether indirect or direct, between litigants and prospective jurors are a common occurrence.

[8] As explained ***supra*** at footnote six, the term "direct" is employed to make clear that compulsory exclusion is required only where the potential juror has a close relationship **with a case participant**. It is my view that the presence of an intermediary to complete the jurors' connection to a case participant renders the juror's relationship indirect and, therefore, defeats the call for *per se* exclusion and heightened appellate scrutiny. Jurors
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between a juror and the parties, counsel, victims, or witnesses such that the court must presume a likelihood of prejudice; or 2) a likelihood of prejudice arises from the juror's conduct or his answers to questions posed by the court and/or counsel. In the first situation, where the facts demonstrate a close relationship between a juror and a case participant, we consider the trial court's determination to be "practically one of law" which is subject to ordinary review,[9] a more enhanced level of appellate scrutiny than that which is applied to the second category identified above.[10] In the latter

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connected to a case participant through an intermediary may be excluded for cause, but only at the discretion of the trial court.

[9] Ordinary review by an appellate court calls for determining whether the trial court abused its discretion or erred as a matter of law. ***McHugh***, 776 A.2d at 270.

[10] It is important to bear in mind that the type of appellate review we apply reflects the nature of the trial court's determination. We apply a more exacting standard of review in the first category of cases because these matters involve a decision which deals with readily ascertainable relationships between the juror and case participants and is practically one of law. ***Cf. Blasioli***, 685 A.2d at 159 (juror's physician-patient relationship with wife of prosecutor constituted attenuated, not direct, connection; thus, relationship did not support finding of *per se* prejudice and discretionary review was appropriate); ***Perry***, 657 A.2d at 991 (juror who was best friends with arresting officer and who had no doubt as to officer's veracity had sufficiently close relationship with case participant to compel exclusion from jury as a matter of law); ***Colon***, 299 A.2d at 328 ("[t]he categories of relationships which automatically call for removal should be limited"). In such cases, the trial court enjoys very little leeway since we, as an appellate court, can review a cold record and determine, with reasonable confidence, whether the trial court correctly assessed an alleged disqualifying relationship in making its empanelment determination. By contrast, when a potential juror's connection to a case is more indirect and the second

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circumstance, where a direct relationship as described in the first category does not exist and the likelihood of prejudice derives from the juror's conduct and answers to questions, a presumption of prejudice may not be inferred as a matter of law. Instead, the trial court exercises its discretion to determine, based on the prospective juror's conduct, demeanor, and answers to questions during *voir dire*, whether the juror would be able to set aside any perceived bias and decide the case fairly and impartially. The court's ruling is subject to reversal only in the case of palpable error, a more deferential form of review, as much depends upon the trial court's impression of the answers and demeanor of the prospective juror and the trial court occupies a far better position to make the relevant assessments than an appellate court. ***See McHugh***, 776 A.2d at 270. Pennsylvania courts have adopted this approach in recognition that "[t]he mere fact that jurors may show some indicia of pretrial prejudice is not enough to require that they be stricken from the jury. We do not expect jurors to be free from

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category comes into play, our review grows more deferential as much depends on the trial court's impression of *voir dire* testimony, which the trial court is better suited to evaluate. ***See McHugh***, 776 A.2d at 270.

It is undisputed here that there is no disqualifying direct relationship as between any of the challenged jurors and the participants in this litigation. Instead, the relationships are mediated. It requires an expansive discussion by the W.O.S.R. to explain why *per se* exclusion could even conceivably extend beyond traditional limits and include relationships between jurors and non-parties. Rather than alter the discrete contours of the first category, I would hold, pursuant to settled Pennsylvania case law, that the second category applies here and our review should be for an abuse of discretion.

all prejudices . . . rather, the law requires them to be able to put aside their prejudices and determine guilt or innocence on the facts presented." ***Blasioli***, 685 A.2d at 159 (case citation and internal quotation omitted).

I also part ways with the W.O.S.R. because I believe that its application of *de novo* review and its finding of *per se* prejudice under the particular facts of this case are misplaced. Two simple syllogisms lie at the core of the W.O.S.R.'s rationale with respect to the jurors in this case. One involves Ms. Kaelin and Mr. Snowden and the second involves Mr. Majors. The first points out that doctors share a close relationship with the patients that they treat. W.O.S.R. at 25. Next, the W.O.S.R. observes that parents and children and husbands and wives share intimate bonds. ***Id.*** at 25-26 Lastly, based upon these relationships, the W.O.S.R. infers that doctors must share a close and intimate bond with the **non**-treating spouses and children of their patients. ***Id.*** at 26. The second logical chain proceeds in similar fashion. First, the W.O.S.R. notes that employees possess a bond of loyalty with their employers. Next, the W.O.S.R. states that a company maintains a financial interest with its corporate affiliates. Finally, on the strength of those connections, the W.O.S.R. infers that an employee of a non-party has a close financial relationship with the corporate affiliate of his employer. ***Id.*** at 28-29.

I agree that: 1) Dr. Ray maintains close relationships with the patients that she treats; 2) Ms. Kaelin shares an intimate bond with her

parents; 3) Mr. Snowden shares an intimate bond with his wife; 4) Mr. Majors possesses a bond of loyalty with his employer, Heritage Valley; and, 5) Heritage Valley has a financial interest in its corporate affiliate, Tri-State. What I do not share is the W.O.S.R.'s willingness to transfer the strength, intimacy, and depth of these direct relationships to the mediated and indirect connections between the challenged jurors and case participants, particularly where the facts of record unambiguously establish that **no** direct relationships exist between the jurors and the parties and that **no** bias arose from any indirect bond.

The W.O.S.R. holds that "the clinical relationships of Ms. Kaelin's and Mr. Snowden's close family members with Dr. Ray were sufficiently close and real to warrant a finding of *per se* prejudice." W.O.S.R. at 24. This holding speaks only to the relationships between the jurors' family members and Dr. Ray; it says nothing about any connection between Dr. Ray and the jurors. The clinical relationships that the W.O.S.R. deems central to this case simply do not exist between the jurors and Dr. Ray.

The testimony offered by Ms. Kaelin and Mr. Snowden confirms that no relationship existed between the jurors and Dr. Ray. Although Ms. Kaelin testified that her parents treated with Dr. Ray and went to see her frequently, she did not know how long they treated with the doctor. N.T., 5/6/11, at 180. Ms. Kaelin recalled that she went to Dr. Ray's office with her mother on a single occasion but she sat in the waiting room. ***Id.*** Ms. Kaelin

never met Dr. Ray and she did not view her parents' favorable impression as a reason to believe Dr. Ray's testimony over that of another witness, adding that she would reject Dr. Ray's testimony if the doctor was discredited. ***Id.*** at 180-181. Significantly, Ms. Kaelin confirmed that she could find Dr. Ray negligent if the evidence supported such a determination. ***Id.*** at 181. Mr. Snowden's testimony was even less supportive of a finding of *per se* prejudice. He was unaware that his wife even treated with Dr. Ray until he discovered this fact by chance after trial commenced. N.T., 5/11/11, at 2 and 5. He, too, did not know Dr. Ray personally and said that his wife's status as Dr. Ray's patient would not affect his ability to render a fair verdict in this case. ***Id.*** at 5. Given the absence of personal acquaintance, the near non-occurrence of any visits by the jurors to Dr. Ray's office, the fact that the jurors' family members were not witnesses and had no role in this case, and counsel's failure to demonstrate a fixed pretrial opinion or bias in the minds of the jurors, I believe that there is no basis to find *per se* prejudice or a "close" or "real" relationship between the jurors and Dr. Ray.[11] ***See***,

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[11] I see no basis for the W.O.S.R.'s conclusion that the jurors' family members "implicitly" endorsed Dr. Ray's competency. W.O.S.R. at 25. More importantly, the record is devoid of testimony showing that the jurors adopted any such "implied" endorsements as their own. I also discern no basis for finding *per se* prejudice in the "explicit" endorsement of Dr. Ray made by Ms. Kaelin's parents. Ms. Kaelin testified that her parents liked Dr. Ray as a doctor. N.T., 5/6/11, at 180. It is unclear whether this comment referred to Dr. Ray's competence as a medical professional or some other facet of her practice. Counsel had every opportunity during *voir dire* to
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e.g., ***Commonwealth v. Rough***, 418 A.2d 605, 609-610 (Pa. Super. 1980) (juror's prior discussion of defendant's crimes with neighbor did not establish sufficiently "close" or "real" relationship that compelled exclusion as a matter of law where neighbor was not called as a witness or otherwise related to the case and juror had not formed fixed opinion about matters raised at trial).

The only Pennsylvania case to consider the issue of whether a juror should be disqualified based upon a family member's physician-patient relationship with a defendant doctor is the Commonwealth Court's decision in ***Estate of Hannis v. Ashland State Gen. Hosp.***, 554 A.2d 574 (Pa. Cmwlth. 1989), *appeal denied*, 574 A.2d 73 (Pa. 1989). In ***Hannis***, the appellant argued that it was error for the trial court to deny a challenge for cause where the child of a prospective juror received ongoing treatment from the defendant physician in a medical malpractice action. ***See id.*** at 578. In affirming the trial court's refusal to remove the juror, the Commonwealth Court held that there was no abuse of discretion where the juror credibly testified that she had no reservations about deciding issues relating to the doctor. ***Id.*** at 578. Insofar as whether such circumstances

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clarify the nature of this comment but he failed to do so. Even if we were to assume that this affirmative endorsement referred to Dr. Ray's competence, the record does not establish that Ms. Kaelin agreed with it or accepted it as her own. I cannot conclude that Ms. Kaelin's mere awareness of her parents' endorsement of Dr. Ray demonstrates *per se* prejudice in the absence of proof that she shared their opinion.

warrant compulsory or discretionary exclusion, I find ***Hannis*** to be persuasive and supportive of my view that removal of the three jurors in this case should remain subject to the discretionary authority of the trial court.

The W.O.S.R. sees the issue differently. The W.O.S.R. declines to follow ***Hannis*** because the Commonwealth Court "failed even to acknowledge the *per se* prejudice that [this Court has] recognized arises in the context of certain close relationships, and made no assessment as to whether the relationship there at issue caused such prejudice as a matter of law." W.O.S.R. at 24. Given the fact that there is no Pennsylvania authority for the proposition that exclusion must be ordered as a matter of law because of a juror's relationship with a non-party, I do not believe that the Commonwealth Court failed to spot the issue. In my view, the Commonwealth Court's decision to address the issues in ***Hannis*** as claims arising within the discretionary authority of the trial court enjoyed over four decades of support under Pennsylvania law.[12] Hence, I would follow that decision here.

I also disagree that Mr. Majors' employment with Heritage Valley Health System ("Heritage Valley"), a company with no role in the litigation,

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[12] This is not to say that a juror whose family member treats with a defendant doctor must be empaneled; however, if such a juror is to be disqualified, it should be ordered through an exercise of the trial court's discretion.

supports the W.O.S.R.'s finding of *per se* prejudice or the existence of a "close" or "real" financial relationship with a party. The record shows that Mr. Majors worked for Heritage Valley, overseeing the leases for which Heritage Valley served as landlord, preparing annual budgets for two of its hospitals, managing financial statistical data, and preparing reports. He did not participate in, or provide, medical treatment services. Heritage Valley was not a defendant in this action but was the parent company of Tri-State Medical Group ("Tri-State"), a defendant in this action that owned Dr. Ray's medical practice group.

Mr. Majors' testimony during *voir dire* refuted any claim of bias or *per se* prejudice and offered no basis upon which to conclude that he had a close relationship with any of the defendants or a financial interest in the outcome of the litigation. Mr. Majors was not employed by a party to this action and did not know Dr. Ray personally. Although he testified the he and Dr. Ray "technically ha[d] the same employer," N.T., 5/6/11, at 111, this clearly was not the case. Mr. Majors was employed by Heritage Valley. Dr. Ray was employed by Tri-State. Heritage Valley and Tri-State are separate entities. Mr. Majors testified without hesitation that his employment with Heritage Valley and Dr. Ray's employment with Tri-State would not cause him to hesitate in finding Dr. Ray negligent if the evidence supported such a determination. ***Id.*** at 112. Mr. Majors also affirmed under oath that while a verdict in favor of Appellant might affect Heritage Valley's financial status, it

would not deter him from considering the evidence in a fair and impartial manner or awarding damages against Dr. Ray if she was negligent in rendering medical services. ***Id.*** at 108-112. Counsel for Appellant **did not ask** Mr. Majors if he believed that a verdict in favor of Appellant would have an adverse impact on his employment with Heritage Valley or his personal financial security. Based upon this testimony, the trial court correctly determined that Mr. Majors was able to render a fair and impartial verdict and properly denied Appellant's motion to challenge Mr. Majors for cause.

The W.O.S.R. relies on ***McHugh***, ***supra*** to assert that a sufficiently close financial relationship existed between Mr. Majors and Heritage Valley, a non-party, and by extension, Dr. Ray and Tri-State, to compel Mr. Majors' exclusion from the jury.[13] ***McHugh*** is easily distinguishable from the present case and, therefore, does not support the W.O.S.R.'s contention.

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[13] The W.O.S.R. also relies, in part, on cases in which stockholders in corporate parties or insurance companies bound to indemnify a defendant have been disqualified from jury participation. ***See*** W.O.S.R. at 18-19 (citing cases). These analogies are inapposite. In those cases, the jurors maintained direct financial relationships with parties to the respective actions which would invalidate their eligibility for jury service as a matter of law under the traditional parameters of Pennsylvania jurisprudence. ***See Seeherman v. Wilkes-Barre Co.***, 99 A. 174 (Pa. 1916) (owner of bond issued by defendant company disqualified from jury service); ***Salt River Valley Water Users' Ass'n v. Berry***, 250 P. 356 (Ariz. 1926) (upholding challenge for cause against stockholders of private corporation in action against the company); ***McLaughlin v. Louisville Electric Light Co.***, 37 S.W. 851 (Ky. 1896) (concluding, without discussion, that stockholder in corporation that owned stock in defendant company had a disqualifying interest); ***Ozark Border Electric Cooperative v. Stacy***, 348 S.W.2d 586

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McHugh involved a personal injury action brought by McHugh against Proctor & Gamble Products Company ("Proctor & Gamble"). At trial, one of Proctor & Gamble's employees, Patrick Fellin, served as the company's representative, sitting at counsel table throughout the trial. During interviews of the venirepersons, counsel asked prospective jurors whether any of them knew Fellin. Five prospective jurors responded in the affirmative. Of these, three currently worked at the subject Proctor & Gamble facility, one had retired from the location, and one was Fellin's father-in-law. ***See McHugh***, 776 A.2d at 268. At that point, counsel for McHugh asked the trial court to remove all potential jurors employed by Proctor & Gamble and to strike Fellin's father-in-law for cause. The trial court denied McHugh's motion. In reversing the trial court's order as to the four Proctor & Gamble employees, we concluded that a motion to strike for cause must be granted if a juror is employed by a party-litigant. ***Id*.** at 271. Moreover, as to Fellin's father-in-law, we said that his close familial relationship to the personal representative of the defendant precluded his

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(Mo.Ct. App. 1961) (noting general rule that stockholder in corporation is incompetent to serve as juror in action where company is a party or has a direct pecuniary interest); ***Citizens' Light, Heat & Power Co. v. Lee***, 62 So. 199 (Ala. 1913) (stockholder in insurer bound to indemnify defendant subject to disqualification for cause); ***Wallace v. Alabama Power Co.***, 497 So.2d 450 (Ala. 1986) (shareholder in parent company of corporate defendant subject to disqualification for cause).

participation on the jury.[14] ***Id.*** at 272. None of these factors is present in this case. Hence, ***McHugh*** does not support reversal of the trial court's ruling allowing Mr. Majors to serve on the jury.

The W.O.S.R. concedes that ***McHugh*** does not support the removal of Mr. Majors for cause based solely upon his employment relationship with Heritage Valley. ***See*** W.O.S.R. at 17 ("Our analysis in ***McHugh*** . . . [is] not entirely dispositive of our determination as to whether the trial court should have [excluded] the jurors at issue . . . in the instant case.") and 29 ("Mr. Majors was not employed by a named defendant in this case[.]"). Notwithstanding these concessions, the W.O.S.R. asserts that Mr. Majors' employment "by an entity that he believed loomed over himself and the other defendants," coupled with his acknowledgement that his employer

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[14] The W.O.S.R. cites ***McHugh*** as an example in which this Court excluded a juror based upon mediated financial relationships to parties. Referring to Fellin, who it claims was not a party, a witness, a victim, or an attorney, the W.O.S.R. argues that "[p]recedent makes clear that even a vicarious relationship . . . may create a risk of partiality great enough to warrant disqualification without regard to the juror's assurances [of impartiality]." W.O.S.R. at 32. This contention misreads ***McHugh***. As a preliminary matter, Fellin's father-in-law was excluded from the jury because of his close familial relationship to Fellin, who sat at counsel's table as Proctor & Gamble's designated corporate representative. Fellin, in his capacity as a designated representative of the corporation at trial, clearly qualified as a case participant because of his status as a party's authorized agent. ***Utica Mutual Ins. Co. v. Contrisciane***, 473 A.2d 1005, 1013 (Pa. 1984) (a corporation can only act through its directors, officers and agents). ***McHugh*** does not extend *de novo* review or compulsory exclusion to cases in which a prospective juror's relationship to a case participant arises only through a connection with a non-party.

could be harmed by a verdict in favor of Appellant, was sufficient to create a risk of *per se* prejudice that disqualified him for jury service as a matter of law.[15] ***See id.*** at 29. ***McHugh***, however, did not speak to employment with a non-party; it held only that a motion to strike for cause must be granted if a juror is employed by a party-litigant.[16] ***See McHugh***, 776 A.2d at 271. Thus, ***McHugh*** supports neither the W.O.S.R.'s conclusion that Mr. Majors should be disqualified from jury service as a matter of law nor its suggestion that we should subject the trial court's ruling to more enhanced appellate scrutiny.

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[15] In reaching its decision regarding Mr. Majors, the W.O.S.R. relies heavily upon his *voir dire* testimony that he "technically" shared an employer with Dr. Ray but rejects his statement that this would not influence his decision. ***See*** W.O.S.R. at 27-29, *citing* N.T., 5/6/11, at 107, 111-112. In other words, in concluding that Mr. Majors was subject to compulsory exclusion, the W.O.S.R. credits certain aspects of Mr. Majors' testimony and rejects other statements which the trial court found worthy of belief. The W.O.S.R.'s re-weighing of the trial court's discretionary determinations is contrary to settled principles of appellate scrutiny.

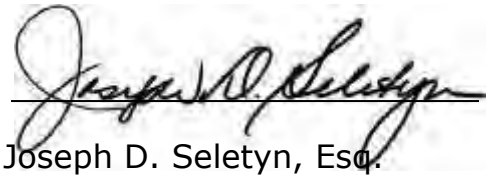
I also believe that, similar to the cases of Ms. Kaelin and Mr. Snowden, the W.O.S.R.'s conclusions here relate only to Mr. Majors' relationship with his employer, Heritage Valley, which was not a party to the litigation. The W.O.S.R. makes no tangible connection between Mr. Majors and any defendant. ***McHugh*** does not compel exclusion or sanction *de novo* review under these circumstances.

[16] Heritage Valley's status as a pervasive regional employer aside, Heritage Valley was not a party in this case and, therefore, I believe that any comparison to Proctor & Gamble's status in ***McHugh*** is not proper. Hence, given the limited scope of our holding in ***McHugh***, I cannot agree with the W.O.S.R.'s citation to that case as support for its criticism of the trial court's refusal to excuse Mr. Majors from the jury.

I must stress that my position in this case does not foreclose all avenues of relief for parties who seek to challenge jurors who have mediated relationships with case participants and who, therefore, are not subject to *per se* disqualification. Such parties remain free to seek relief pursuant to the trial court's discretionary authority. During *voir dire*, trial counsel may ask questions of prospective jurors and explore relevant relationships in an effort to develop a record in support of a motion to strike for cause. In presenting the motion, counsel may emphasize the concerns raised by the W.O.S.R. such as the appearance of impartiality, the absence of any factors that would impede the empaneling of a qualified jury, and the potential effects that an attenuated relationship might have upon the fairness of a prospective juror. If the court denies the motion, then the challenging party is free to take an appeal raising the court's abuse of discretion in light of a well-developed record.

In this case, I would hold that the trial court correctly determined that the facts of this case did not give rise to a sufficiently close relationship between Appellees and the challenged jurors such that a presumption of prejudice arose as a matter of law. Moreover, I discern no basis upon which to conclude that the trial court committed palpable error in considering the demeanor and responses of the prospective jurors during the course of *voir dire*. Accordingly, I would affirm the judgment entered by the trial court.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/12/2014