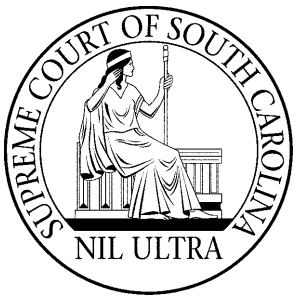

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 29
August 25, 2021
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Daniel Crawford Patterson, Respondent.

Appellate Case No. 2021-000730

Opinion No. 28054
Submitted August 12, 2021 – Filed August 25, 2021

DEFINITE SUSPENSION

Disciplinary Counsel John S. Nichols and Senior Assistant Disciplinary Counsel Ericka M. Williams, both of Columbia, for the Office of Disciplinary Counsel.

Daniel Crawford Patterson, of Easley, Pro Se.

PER CURIAM: In this attorney disciplinary matter, Respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct and consents to the imposition of a definite suspension ranging from nine months to three years. We accept the Agreement and suspend Respondent from the practice of law in this state for eighteen months. The facts, as set forth in the Agreement, are as follows.

I.

Matter A

On February 17, 2014, Respondent was retained to represent Client A in a foreclosure matter. Respondent was paid a $1,000 retainer fee by Client A's son. Respondent failed to respond to multiple messages and telephone calls seeking an

update on the case. Client A retained another attorney to write Respondent and request the return of the client file and any unearned legal fees.

Respondent failed to respond to the notice of investigation or the supplemental notice of investigation. Subsequently, ODC sent Respondent a reminder letter pursuant to *In re Treacy*, 277 S.C. 514, 290 S.E.2d 240 (1982). After no response from Respondent, ODC served Respondent with a subpoena and notice to appear for an on-the-record interview scheduled for September 30, 2014. Respondent failed to appear for the on-the-record interview. On October 6, 2014, Respondent submitted a written response and acknowledged that he should have handled Client A's case more diligently. Respondent subsequently contacted Client A and issued a full refund.

Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (requiring reasonable diligence); Rule 1.4 (requiring reasonable and prompt communication); and Rule 8.1(b) (prohibiting a knowing failure to respond to a disciplinary inquiry).

Matter B

In November 2012, Client B entered into an agreement and paid Respondent a $12,000 retainer fee for all legal services from November 12, 2012, through December 1, 2013. In the beginning of the relationship, Respondent responded promptly and worked diligently. However, beginning in February 2013, Respondent failed to maintain reasonable communication with Client B. In May and June 2013, the communication issues persisted, and Client B could not receive any information about several pending legal matters. In July 2013, Respondent contacted Client B and apologized for his lack of communication. Respondent requested the opportunity to continue working on the cases. Client B agreed to continue the attorney-client relationship.

On November 29, 2013, Client B paid Respondent another $12,000 retainer fee for all legal services from December 1, 2013, through March 31, 2015. In the beginning of 2014, Respondent returned phone calls, reviewed contracts, and drafted documents. However, beginning in April 2014, Respondent failed to return several messages from Client B or provide status updates on Client B's pending legal issues. Respondent failed to respond to the notice of investigation or subsequent *Treacy* letter. Several months later, on October 6, 2014, Respondent

submitted a written response and acknowledged his communication failures in Client B's matters.

Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (requiring reasonable diligence); Rule 1.4 (requiring reasonable and prompt communication); and Rule 8.1(b) (prohibiting a knowing failure to respond to a disciplinary inquiry).

Matter C

On December 30, 2013, Client C paid Respondent a $12,000 retainer fee to handle all legal services from January 2014 through December 2014. On March 7, 2014, a complaint was filed against Client C. Client C provided the complaint to Respondent within seven days. However, Respondent failed to file an answer for almost three months. A hearing was scheduled for July 1, 2014, but Respondent failed to appear for the hearing. The court entered a judgment against Client C in the amount of $7,580.

Client C was unaware of the July 1, 2014 hearing date and did not learn Respondent had missed the hearing until Client C received notice from the civil division of the Greenville County Sheriff's Department in September 2014. Respondent failed to return several phone calls from Client C. In October 2014, Client C finally made contact with Respondent. Respondent acknowledged he had "dropped the ball" and indicated he would "make it right."

Respondent failed to respond to the initial notice of investigation, and a *Treacy* letter was sent on February 19, 2015. On March 24, 2015, ODC received a written response from Respondent acknowledging his misconduct and committing to make Client C whole. Respondent has now made full restitution to Client C.

Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (requiring reasonable diligence); Rule 1.4 (requiring reasonable and prompt communication); and Rule 8.1(b) (prohibiting a knowing failure to respond to a disciplinary inquiry).

Matter D

In August 2013, Client D retained Respondent to file articles of incorporation for his new business. Respondent assured Client D he would accomplish the task within the next month. Respondent failed to return several messages from Client D seeking an update on the incorporation of his business. In May 2014, Client D finally received notification from the Secretary of State that his business had been incorporated. The Secretary of State informed Client D that all official documents had been sent to Respondent. From May 2014 until February 2015, Client D attempted numerous times to contact Respondent to obtain the incorporation documents. Respondent failed to return any of Client D's calls. Respondent failed to respond to the notice of investigation. Following a February 26, 2015 *Treacy* letter, Respondent submitted a written response to ODC on March 24, 2015.

Respondent admits his conduct in this matter violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (requiring reasonable diligence); Rule 1.4 (requiring reasonable and prompt communication); and Rule 8.1(b) (prohibiting a knowing failure to respond to a disciplinary inquiry).

Matter E

Respondent failed to respond to a notice of investigation or subsequent *Treacy* letter concerning his alleged violation of a family court order.[1] On February 10, 2017, ODC issued a subpoena and notice to appear, which was returned having been marked "moved left no address, unable to forward." Respondent failed to appear for the on-the-record interview scheduled for March 14, 2017. Respondent was subsequently placed on interim suspension for failing to cooperate with the disciplinary investigation.[2] *In re Patterson*, 419 S.C. 279, 798 S.E.2d 159 (2017).

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[1] We note any failure to make certain payments under the family court order is not a basis for this Court's imposition of discipline.

[2] Respondent was also administratively suspended for failing to pay his bar dues and comply with continuing legal education requirements. *In re Admin. Suspensions for Failure to Pay License Fees*, S.C. Sup. Ct. Order dated Feb. 21, 2017 (Shearouse Adv. Sh. No. 8); *In re Admin. Suspensions for Failure to Comply*

Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 8.1(b) (prohibiting a knowing failure to respond to a disciplinary inquiry); and Rule 8.4(e) (prohibiting conduct prejudicial to the administration of justice).

Matter F

At the time Respondent was placed on interim suspension, Peyre T. Lumpkin was appointed as Receiver to protect the interests of Respondent's clients. On April 20, 2017, the Receiver reported to the Commission on Lawyer Conduct (Commission) that Respondent had failed to cooperate with the Receiver as required by Rule 31(d)(1), RLDE, Rule 413, SCACR. On May 3, 2017, the Chairman of the Commission issued an order directing Respondent to cooperate with the Receiver. The Commission attempted service of the order, but the South Carolina Law Enforcement Division was unable to locate Respondent. Respondent admits his conduct in this matter was prejudicial to the administration of justice in violation of Rule 8.4(e), RPC, Rule 407, SCACR.

Matter G

The Receiver was never able to contact or communicate with Respondent, and the Receiver was relieved on March 8, 2018. *In re Patterson*, S.C. Sup. Ct. Order dated Mar. 8, 2018. In this order, this Court directed Respondent to reimburse the Lawyers' Fund for Client Protection within thirty days for the payment of fees and costs to the Receiver. On April 30, 2018, the Commission reported that Respondent had failed to reimburse the Lawyers' Fund for Client Protection as ordered. Respondent has now made full restitution and admits his conduct was prejudicial to the administration of justice in violation of Rule 8.4(e), RPC, Rule 407, SCACR.

II.

Respondent also admits his conduct constitutes grounds for discipline under the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule

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with Continuing Legal Educ. Requirements, S.C. Sup. Ct. Order dated Apr. 20, 2017 (Shearouse Adv. Sh. No. 17).

7(a)(1) (violating the Rules of Professional Conduct); Rule 7(a)(3) (willfully violating a valid order of the Supreme Court or Commission on Lawyer Conduct); and 7(a)(5) (engaging in conduct tending to pollute the administration of justice).

III.

We accept the Agreement and definitely suspend Respondent from the practice of law in this state for a period of eighteen months, retroactive to March 21, 2017, the date of his interim suspension. Within fifteen days of the date of this opinion, Respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR. Within thirty days of the date of this opinion, Respondent shall pay or enter into a reasonable plan to repay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission. Respondent shall also complete the Legal Ethics and Practice Program Ethics School within one year of submitting a petition for reinstatement.

DEFINITE SUSPENSION.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

The Supreme Court of South Carolina

In the Matter of Richard Guy Bush, Respondent

Appellate Case Nos. 2021-000876 and 2021-000877

ORDER

The Office of Disciplinary Counsel asks this Court to place Respondent on interim suspension pursuant to Rule 17(b) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition also seeks appointment of the Receiver pursuant to Rule 31, RLDE, Rule 413, SCACR. Respondent consents to interim suspension and the appointment of the Receiver.

IT IS ORDERED that Respondent's license to practice law in this state is suspended until further order of this Court.

IT IS FURTHER ORDERED that Peyre T. Lumpkin, Esquire, is hereby appointed to assume responsibility for Respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Respondent's clients. Mr. Lumpkin may make disbursements from Respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of Respondent, shall serve as an injunction to prevent Respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Peyre T. Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Peyre T. Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive Respondent's mail and the authority to direct that Respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

s/ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina
August 19, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Adam Rowell, Appellant.

Appellate Case No. 2018-000022

Appeal From Greenwood County
Donald B. Hocker, Circuit Court Judge

Opinion No. 5832
Heard September 22, 2020 – Filed July 7, 2021
Withdrawn, Substituted, and Refiled August 25, 2021

AFFIRMED

Billy J. Garrett, Jr., of The Garrett Law Firm, PC, Carson McCurry Henderson, of The Henderson Law Firm, PC, Jane Hawthorne Merrill, of Hawthorne Merrill Law, LLC, and Clarence Rauch Wise, all of Greenwood, all for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Jonathan Scott Matthews, both of Columbia, and Solicitor David Matthew Stumbo, of Greenwood, all for Respondent.

LOCKEMY, C.J.: Adam Rowell appeals his convictions for felony driving under the influence (DUI) resulting in death and felony DUI resulting in great bodily injury. On appeal, Rowell argues the trial court abused its discretion in admitting blood samples into evidence without the proper chain of custody and because the samples were taken (1) after 50% of Rowell's blood volume was replaced, and (2) after 150% of Rowell's blood volume was replaced. Rowell also asserts the trial court erred in failing to conduct an evidentiary hearing with a juror who failed to disclose his pending charges during voir dire. We affirm.

FACTS/PROCEDURAL HISTORY

On November 15, 2014, Rowell was in a head-on automobile accident, which seriously injured Matthew Sanders and killed Jeremy Cockrell. Cockrell was driving a red pickup truck with Sanders in the passenger seat, and Rowell was in a dark blue pickup truck. Following the collision, Rowell was indicted for felony DUI resulting in death and felony DUI resulting in great bodily injury.

During voir dire, the trial court asked, "[Has] any member of the jury panel or any member of your immediate family members or close personal friends ever been arrested and charged with any criminal offense through whatever state, local or federal law enforcement agency?" The trial court asked another nine questions before asking the jurors to approach the bench if any of the questions applied to them. Juror 164 did not respond and was seated on the jury.

At trial, Sanders testified he and Cockrell were driving to Greenwood when Rowell's truck crashed into them. Cockrell died from blunt force trauma at the scene. Officer Kelly Anderson, a member of the Multidisciplinary Accident Investigation Team (MAIT), explained the collision occurred because Rowell's truck drifted into Cockrell's lane. According the MAIT investigation, one second prior to the collision, Rowell was traveling at sixty-nine miles per hour and Cockrell's truck was traveling at twenty-four miles per hour.

Emergency responders testified they could smell alcohol when they arrived. Open and unopened beers were in Rowell's truck, spilled alcohol was on Rowell's floorboard, and multiple beer cans were on the ground near the collision. Rowell, who was also seriously injured in the collision, received 2000 milliliters of intravenous (IV) fluid and a 500 milliliter blood transfusion on site, and was airlifted to Greenville Memorial Hospital. The flight records show the helicopter arrived at the hospital at 8:59 p.m.

The trial court held an in camera chain of custody hearing to address whether blood drawn from Rowell when he arrived at the hospital (Sample A) was admissible. Angela Waites, the flight nurse, stated it took twenty-four minutes to get Rowell to Greenville Memorial Hospital. She testified she observed Amanda Baker, an emergency room (ER) nurse, draw Sample A and believed it was drawn from Rowell's right arm because Baker was standing on Rowell's right-hand side.

Nurse Baker testified she did not recall Rowell as a patient because she cares for and draws blood samples from hundreds of patients. She explained that Rowell's medical documentation indicated Dr. Bradley Snow took Sample A from a central line and handed it to her. Nurse Baker testified that after blood is drawn from a central line, a technician takes it to the lab. Bill Evans was the technician listed on the medical records. Rowell's medical records indicated his blood was drawn at 9:08 p.m.; however, the hospital's audit trail indicated it was drawn at 8:54 p.m.

Robert Smith, the lab technician at Greenville Memorial Hospital, testified that according to the audit trail for Sample A, he received it in the lab at 9:24 p.m. Smith did not remember receiving this sample specifically because of the large number of specimens he regularly tested. He testified it was hospital policy to hand-deliver ER specimens to the lab and test them right away.

Dr. John Reddic, an expert in clinical chemistry from Greenville Memorial Hospital, testified the hospital's audit trail showed Nurse Baker drew Sample A and Robert Smith received it for testing. According to Reddic, Sample A showed a blood alcohol concentration (BAC) between .175 and .189. Dr. Reddic noted Sample A was controlled and handled within the hospital's normal protocol.

Rowell argued the conflicting time reports in the medical records suggested there were two separate blood draws, one at 8:54 p.m. and one at 9:08 p.m. However, the State asserted there was only one audit trail for blood and the records did not reflect a second draw. The trial court ruled the State established the chain of custody, the audit trail reflected an 8:54 p.m. blood draw, and a discrepancy in the notation of the time of the blood draw did not render the evidence inadmissible. During trial, the relevant medical witnesses testified similarly to their in camera testimony.

Dr. Reddic testified that a "clock slop" time discrepancy of several minutes can occur where records have been created based on clocks that were not synced. He also explained there is a lag time between when a doctor orders a blood draw, the

drawing of the blood, and the subsequent transport of the blood draw to the lab, and "thirty minutes is appropriate."

Dr. Snow, Rowell's surgeon, testified that during surgery, Rowell received 3,150 milliliters of blood, 360 milliliters of plasma, 3,000 milliliters of saline, and 3,000 milliliters of Plasma-Lyte. He stated 53% of Rowell's blood was replaced and he would have died without the transfusion.

After Rowell's surgery, Officer Smith acquired a search warrant for Rowell's blood (Sample B). Rowell objected to the admission of Sample B, arguing that when it was taken, 52% of his blood had been replaced and a BAC test of that blood would be unreliable. The trial court held another in camera hearing.

Dr. Jimmie Valentine, a defense expert, testified that when Sample B was drawn from Rowell, he had received fluids that totaled 161.7% of his blood volume. He explained Sample B was not an accurate indication of what Rowell's blood was like during the collision. He stated that "any value that one would find or try to attach to [Sample B] has very little scientific meaning because of th[e] volume that [went] into him." Dr. Valentine explained Sample B included 4.9 milligrams per liter of Benadryl, which was a toxic dose, and Rowell's medical records indicated the hospital did not give him Benadryl. Further, he explained Sample B had acetones, which was indicative of someone who was diabetic and Rowell's medical records did not indicate he had diabetes. Dr. Valentine testified the methodology and science used in the BAC testing was reliable; however, he questioned the validity of the results.

Dr. Valentine stated the BAC from Sample B was consistent with Rowell's blood having been diluted by transfusions. He explained a person with a BAC of .18 would normally have a BAC of .12 after four hours and that the dilution of the blood due to a transfusion could explain why Sample B's BAC was .09. Dr. Valentine agreed that Sample B would have included a percentage of Rowell's blood that had remained in his system after the transfusion.

The trial court held that because Dr. Valentine did not attack the validity of the methodology of the test, Sample B was admissible. Specifically, the trial court clarified it did not find the results reliable, only that the methodologies and procedures used in the testing were reliable.

Rowell testified he did not have diabetes, nor did he use Benadryl. He stated he drank twenty-four ounces of beer approximately four hours before the accident. The jury convicted Rowell of felony DUI resulting in death and felony DUI resulting in great bodily injury. The trial court sentenced him to thirteen years' imprisonment. After trial, Rowell learned Juror 164 had been arrested and charged with a crime in Greenwood County shortly before his trial. Rowell moved for a new trial, arguing—among other things—that Juror 164 failed to disclose his arrest during voir dire. However, Rowell did not request that the trial court conduct an evidentiary hearing.

At the hearing on Rowell's motion for a new trial, he argued he would not have seated Juror 164 on the jury had he known of his arrest because the juror could have had an incentive to help the State. Rowell stated he did not contact Juror 164 because Juror 164 was represented by counsel, who told them Juror 164 would not be speaking with them. Rowell did not request a separate evidentiary hearing on the juror issue and did not subpoena Juror 164. Following the hearing and before the trial court issued an order, Rowell sent an email to the trial court requesting a hearing with the juror.

The trial court denied Rowell's motion for a new trial. The trial court stated that on its face, the question asked during voir dire was comprehensible to the average juror; however, the court noted that it was the first of ten questions the juror had to remember and the amount of time between question and answer "could be confusing to the average juror." The trial court further opined because an arrest is a public arrest record, the juror did not conceal his arrest. This appeal followed.

ISSUE ON APPEAL

1. Did the trial court err by admitting Sample A into evidence because the chain of custody was insufficient?

2. Did the trial court err by admitting Sample A into evidence because 50% of Rowell's blood had been replaced when Sample A was taken?

3. Did the trial court err by admitting Sample B into evidence because 150% of Rowell's blood had been replaced when Sample B was taken and the sample contained Benadryl and acetones?

4. Did the trial court err by failing to conduct an evidentiary hearing regarding a juror who failed to disclose his pending criminal charges?

STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review errors of law only . . . ." *State v. Robinson*, 410 S.C. 519, 526, 765 S.E.2d 564, 568 (2014). "Because the admission of evidence is within the sound discretion of the trial court, appellate courts should not reverse the decision of the trial court absent an abuse of discretion." *Id*. "The denial of a motion for a new trial will not be reversed absent an abuse of discretion." *State v. South*, 310 S.C. 504, 507, 427 S.E.2d 666, 668 (1993).

LAW/ANALYSIS

I. Chain of Custody for Sample A

Rowell argues the inconsistency between the time that he landed at Greenville Memorial Hospital and the time Sample A was taken established it was factually impossible for Sample A to be Rowell's blood. He asserts the chain of custody was not complete because Bill Evans walked Sample A from Nurse Baker to the lab but never testified. Rowell also asserts an unidentified person brought the blood from the ER to the lab and the sample was unaccounted for during a period of thirty minutes. We disagree.

Our supreme court has held, "a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as *practicable*." *State v. Pulley*, 423 S.C. 371, 377, 815 S.E.2d 461, 464 (2018) (emphasis added) (quoting *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011)). "Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts." *Hatcher*, 392 S.C. at 94, 708 S.E.2d at 754.

Our supreme court has stated it has "never held the chain of custody rule requires every person associated with the procedure be available to testify or identified personally, depending on the facts of the case." *Id.* at 93, 708 S.E.2d at 754 (quoting *S.C. Dep't of Soc. Servs. v. Cochran*, 364 S.C. 621, 629, 614 S.E.2d 642, 646 (2005)). "[W]e have consistently held that the chain of custody need be established only as far as practicable, and we reiterate that every person handling the evidence need not be identified in all cases." *Id.* at 95, 708 S.E.2d at 755.

"Whether the chain of custody has been established as far as practicable clearly depends on the unique factual circumstances of each case." *Id.* at 94, 708 S.E.2d at 754 (quoting *Cochran*, 364 S.C. at 629 n.1, 614 S.E.2d at 646 n.1). "The trial [court's] exercise of discretion must be reviewed in the light of the following factors: '. . . the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.'" *Id.* at 94-95, 708 S.E.2d at 754-55 (omission in original) (quoting *United States v. De Larosa*, 450 F.2d 1057, 1068 (3d Cir. 1971)).

"In examining issues regarding the chain of custody, a mere suggestion that substitution could possibly have occurred is not enough to establish a break in the chain of custody." *Id*. at 94, 708 S.E.2d at 754.

We hold the trial court did not err in admitting Sample A. During the in camera hearing, the State presented evidence that (1) Sample A was drawn by Dr. Snow via a central line; (2) it was handed to Nurse Baker; (3) Bill Evans was on duty and walked Sample A to the lab, and (4) Robert Smith, the lab technician, received the blood and facilitated the testing. This evidence identified who was in possession of Sample A. Although Evans did not testify and most of the witnesses in the chain did not recall these specifics, the State established through testimony and documentation Sample A's chain of custody as far as practicable given the circumstances.

Further, the circumstances surrounding the preservation and custody of Sample A diminished the likelihood it was tampered with. *See Hatcher*, 392 S.C. at 94-95, 708 S.E.2d at 754-55 ("The trial [court's] exercise of discretion must be reviewed in the light of the following factors: . . . the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it." (omission in original) (quoting *De Larosa*, 450 F.2d at 1068)). Here, Sample A was collected for medical purposes to save Rowell's life and not for any investigative purpose, which makes it unlikely it was tampered with. *Id.* at 95, 708 S.E.2d at 755 ("The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be."); *cf. Ex parte Dep't of Health & Envtl. Control*, 350 S.C. 243, 250, 565 S.E.2d 293, 297 (2002) ("The trustworthiness of medical records is presumed, based on the fact that the test is relied on for diagnosis and treatment.").

As to the timing of the draw for Sample A, the inconsistency within the medical records and flight records regarding the landing time and the time of the blood

draw did not establish either a break in the chain of custody or that the blood was from someone else. The factual circumstances of this case reflect that the exact syncing of times between medical and flight personnel records was unlikely. A brief time discrepancy between organizations does not alter the chain of custody analysis because each person who possessed the sample was identified. *See Hatcher*, 392 S.C. at 94, 708 S.E.2d at 754 ("Whether the chain of custody has been established as far as practicable clearly depends on the unique factual circumstances of each case." (quoting *Cochran*, 364 S.C. at 629 n.1, 614 S.E.2d at 646 n.1)); *State v. Patterson*, 425 S.C. 500, 508, 823 S.E.2d 217, 222 (Ct. App. 2019) ("Minor discrepancies in the chain of custody implicates the credibility of the evidence, but does not render the evidence inadmissible."). This discrepancy, as well as the discrepancy of thirty minutes between drawing the blood and delivery to the lab, goes to weight and credibility of the evidence, not its admissibility. *See State v. Johnson*, 318 S.C. 194, 196, 456 S.E.2d 442, 444 (Ct. App. 1995) (holding a two-day discrepancy in the chain of custody regarding the dates an investigator turned in drug evidence to the evidence custodian did not establish the drugs were inadmissible); *id.* ("A reconciliation of this [two-day] discrepancy was not necessary to establish the chain of custody, but merely reflected upon the credibility of the evidence rather than its admissibility."). Therefore, the trial court did not abuse its discretion in admitting Sample A into evidence.[1]

[1] The State argues the trial court did not err in admitting Sample A into evidence based on our supreme court's opinion in *Jamison v. Morris*, 385 S.C. 215, 227, 684 S.E.2d 168, 174 (2009) (stating that when a blood sample is drawn at a hospital for medical purposes as part of its medical treatment of a patient, the results would have been a part of the patient's medical record and presumed reliable as a business record regardless of a chain of custody). Although we acknowledge the State submitted a supplemental citation to *Jamison* prior to oral argument and raised this argument in its petition for rehearing, the State did not raise this argument to trial court or in its appellate brief. Thus, we decline to address this argument on the merits. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("Of course, a respondent may abandon an additional sustaining ground . . . by failing to raise it in the appellate brief."); *see also* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

II. Blood Transfusion and Testing of Sample A

Rowell argues the trial court erred in admitting Sample A into evidence because roughly half his blood was replaced with liquids prior to the hospital's blood draw. He asserts the State failed to establish the reliability of the BAC test after he received a transfusion. We find this issue unpreserved for our review.

Rowell never raised to the trial court the issue that a blood transfusion caused Sample A's BAC testing results to be unreliable. At trial, Rowell extensively challenged the chain of custody for Sample A; however, he never objected to Sample A's admission on the basis that the test was unreliable because he had previously received 500 milliliters of blood and 2000 milliliters of IV fluids. Thus, this issue was not preserved for appellate review because this argument was not raised to and ruled on by the trial court. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

III. Blood Transfusion and Testing of Sample B

Rowell argues the trial court erred in admitting Sample B into evidence because more than 150% of his blood had been replaced by blood and other fluids before Sample B was drawn. Even if the admission of Sample B was so unreliable that its admission was error, this error was harmless. The jury received clear evidence of Rowell's intoxication from Sample A, the evidence of open containers in his truck, the alcohol spilled on the floor of his truck, and testimony that his breath smelled of alcohol at the accident scene. *See State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012) ("An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result."); *State v. Howard*, 296 S.C. 481, 485, 374 S.E.2d 284, 286 (1988) ("Where guilt is conclusively proven by competent evidence and no rational conclusion can be reached other than that the accused is guilty, a conviction will not be set aside because of insubstantial errors not affecting the result.").

IV. Jury Voir Dire

Rowell argues the trial court erred in denying his request for an evidentiary hearing with Juror 164 when he failed to disclose his criminal charges during voir dire. He

asserts that by failing to have a hearing, the trial court abused its discretion because it did not know the basis for Juror 164's failure to answer truthfully. We disagree.

> When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges.

State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). "Whether a juror's failure to respond is intentional is a fact intensive determination that must be made on a case-by-case basis." *State v. Sparkman*, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004). "The inquiry must focus on the character of the concealed information, not on the mere fact that a concealment occurred." *State v. Kelly*, 331 S.C. 132, 147, 502 S.E.2d 99, 106 (1998) (quoting *Thompson v. O'Rourke*, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986)). In *Woods*, our supreme court held,

> intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.

345 S.C. at 588, 550 S.E.2d at 284.

Rowell failed to provide a sufficient record to support reversal because he failed to subpoena Juror 164 for the post-trial hearing at which the trial court addressed the juror concealment issue. *See* S.C. Code Ann. § 19-7-60 (2014) (providing criminal defendants have a compulsory process for obtaining witnesses to testify in their favor); *State v. Lyles*, 379 S.C. 328, 341, 665 S.E.2d 201, 208 (Ct. App. 2008) (providing section 19-7-60 "allow[s] criminal defendants to compel witnesses to appear in their favor and to produce witnesses and evidence at trial"); *State v.*

Tyndall, 336 S.C. 8, 17, 518 S.E.2d 278, 283 (Ct. App. 1999) ("An appellant has a duty to provide this [c]ourt with a record sufficient for review of the issues on appeal."). Rowell was afforded the opportunity for a hearing, yet he failed to subpoena Juror 164 to attend. Without Juror 164's testimony or some other supporting evidence, the record is insufficient to overturn the trial court's order denying Rowell's motion for a new trial.

CONCLUSION

Based on the foregoing, we find the trial court did not err in admitting Sample A into evidence and any potential error as to Sample B was harmless. Further, we find Rowell failed to provide a sufficient record to overturn the trial court's consideration of Juror 164's failure to disclose his pending charges. Accordingly, Rowell's convictions are

AFFIRMED.

KONDUROS and MCDONALD, JJ., concur.