

Christopher Rosebrock appeals his convictions following a jury trial of burglary¹ as a Class B felony and theft² as a Class D felony, contending that the trial court violated his right to a fair and impartial jury when it refused to dismiss a juror who, after being impaneled, revealed that she was acquainted with the victims' family.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 3, 2008, Rosebrock and an accomplice entered the home of Kate and Daniel Harmon in Harrison County, Indiana and stole a Desert Eagle .44 caliber pistol, a television, and approximately \$1,700 in cash. A Harrison County Sheriff's Department officer encountered Rosebrock on June 24, 2008, and Rosebrock said, "I'm the one you're looking for." *Tr.* at 93. The officer placed Rosebrock in custody, advised him of his *Miranda* rights, and transported him to the Harrison County Justice Center. *Id.* at 93-95. Later that same day, after again receiving his *Miranda* advisements and signing a waiver of rights form, Rosebrock admitted in an unrecorded interview that he was the "driver" for the June 3 burglary. *Id.* at 122. He further admitted that during the commission of the burglary a Desert Eagle pistol, a television, and cash were stolen from the home. *Id.* Rosebrock made these same admissions during a second interview, which the police recorded. *Appellant's Br.* at 3.

On July 15, 2008, the State filed an information charging Rosebrock with Class B felony burglary and Class D felony theft. *Appellant's App.* at 5-6. Thereafter, the State

¹ See Ind. Code § 35-43-2-1.

² See Ind. Code § 35-43-4-2.

filed an information alleging that Rosebrock was an habitual offender based on his previous unrelated convictions for robbery and attempted theft. *Id.* at 15-16.

Voir dire for Rosebrock's jury trial began on October 14, 2008. The potential jurors swore to honestly answer questions regarding their qualification to sit as jurors. *Supp. Tr.* at 8-9. Before questioning individual jurors, the trial court informed the jury pool of factors that could disqualify a potential juror from serving on the jury. *Id.* at 9-34. As the court discussed each factor, various jurors were excused from the jury pool.

One of the factors that the court described as potentially disqualifying a juror from serving was being related within the fifth degree to the parties, the attorneys, or any of the witnesses subpoenaed in the case. *Id.* at 28. The prosecutor read the names of the State's witnesses, including those of the victims Kate and Daniel. The juror at issue, J.M., did not indicate that she was related within the fifth degree to any of the parties, attorneys, or witnesses in the case. When the trial court asked the jury pool whether anyone had a personal interest in the outcome of the trial or was biased for or against either side in the case, J.M. made no indication that she had a personal interest or bias. After the trial court concluded its questioning of jurors, the questioning of jurors by counsel began.

J.M. sat in the first panel of prospective jurors. When defense counsel asked all panel members if they knew any of the witnesses involved in the case, J.M. made no indication that she knew the Harmons. In response to defense counsel's questioning, J.M. stated that she was aware that Rosebrock was innocent until proven guilty, and that she would have to find him not guilty if the State failed to meet its burden of proof. *Id.* at 110. J.M. was selected to be on the jury.

As part of her juror oath, J.M. swore to render a verdict based upon the law and the evidence presented. “During its preliminary instructions, the trial court told the jury that, “[i]f, at any time, you realize that you know something about the case or you know a witness or the defendant you must inform the Bailiff privately at your earliest opportunity.” *Tr.* at 44.

Kate and Daniel Harmon testified as the State’s first two witnesses, and after their testimony, the trial court called a recess. During the recess, J.M. sent a note to the trial court stating, “I realize that their son . . . is one of my son’s best friends at school and Daniel works with my husband at the Post Office.” *Tr.* at 68. Rosebrock’s counsel objected to J.M.’s further service on the jury. To address the question of J.M.’s bias, the trial court called J.M. into the courtroom outside the presence of the other jurors and questioned her about her relationship with the Harmons. After determining that J.M. could remain a fair and impartial juror, the trial court refused to remove her from the jury. The jury found Rosebrock guilty as charged, after which he pled guilty to being an habitual offender. Rosebrock now appeals.

DISCUSSION AND DECISION

Rosebrock contends that the trial court’s failure to remove J.M. as a juror violated his right to a fair and impartial jury guaranteed by the United States and Indiana Constitutions. Specifically, he contends that “even the ‘possibility of bias’ tainted the verdict,” thus warranting a new trial. *Appellant’s Br.* at 10.

The Sixth Amendment to the United States Constitution and Article 1, section 13 of the Indiana Constitution provide, in pertinent part, that an accused in a criminal trial

shall have the right to an impartial jury; therefore, a biased juror must be dismissed. *May v. State*, 716 N.E.2d 419, 421 (Ind. 1999). Indiana Trial Rule 47(B) provides in part, “Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury returns its verdict, become or are found to be unable or disqualified to perform their duties.”

Trial courts have broad discretion in determining whether to replace a juror with an alternate. *May*, 716 N.E.2d at 421. “Trial judges have ‘significant leeway’ in making this determination because ‘they see jurors firsthand and are in a much better position to assess a juror’s ability to serve without bias or intimidation and decide the case according to law.’” *Barnes v. State*, 693 N.E.2d 520, 523 (Ind. 1998) (quoting *Jervis v. State*, 679 N.E.2d 875, 881-82 (Ind. 1997)). The decision to replace a juror with an alternate is reviewed for an abuse of discretion.³ *Id.* “An abuse of discretion occurs only if the decision placed the defendant in substantial peril.” *Harris v. State*, 659 N.E.2d 522, 525 (Ind. 1995). Generally, proof that a juror lied on voir dire or was biased entitles the defendant to a new trial.⁴ *Alvies v. State*, 795 N.E.2d 493, 499 (Ind. Ct. App. 2003), *trans. denied*.

A juror’s bias may be actual or implied. *Joyner v. State*, 736 N.E.2d 232, 238 (Ind. 2000). “Actual bias arises when a factual bias for or against one of the parties is

³ This discretion applies to removal of a prospective juror from a panel or removal as a result of developments during trial; the discretion does not apply, however, to the removal of a juror after deliberations have begun based on conduct in the jury room. *See Riggs v. State*, 809 N.E.2d 322, 327 (Ind. 2004).

⁴ Rosebrock does not contend that J.M. lied during voir dire. Therefore, to prevail in this appeal, Rosebrock must show that J.M. was sufficiently biased such that her presence as a juror denied him a right to a fair and impartial jury. *See Lee v. State*, 735 N.E.2d 1112, 1114 (Ind. 2000) (in the absence of a showing that juror lied during voir dire, defendant had to prove bias).

shown to exist.” *Smith v. State*, 477 N.E.2d 311, 313 (Ind. Ct. App. 1985). Implied bias is a bias attributable by law to a prospective juror, regardless of actual partiality, due to the existence of a relationship between the juror and a person connected to the case. *Id.* “Stated differently, a juror’s relationship with one of the parties may raise a presumption of implied bias.” *Alvies*, 795 N.E.2d at 499. Where an inference of implied bias arises, a trial court should analyze such potential bias by considering the nature of the connection and any indications of partiality. *Lee v. State*, 735 N.E.2d 1112, 1115 (Ind. 2000); *Alvies*, 795 N.E.2d at 499. “The court ‘must weigh the nature and extent of the relationship versus the ability of the juror to remain impartial.’” *Lee*, 735 N.E.2d at 1115 (quoting *McCants v. State*, 686 N.E.2d 1281, 1284-85 (Ind. 1997)).

Here, during voir dire, J.M. learned the names of persons involved in the case, including those of the victims Kate and Daniel Harmon. J.M. did not initially recognize the Harmons’ names. Kate was the State’s first witness. During her testimony, she stated that she and her husband had two sons, but did not mention where they attended school. Kate also testified that her husband worked part-time at the Corydon Post Office. When called to the stand, Daniel also testified about his job and having two sons. The trial court then took a short recess.

During the recess, J.M. sent a note to the trial court stating, “I realize that [the Harmons’] son . . . is one of my son’s best friends at school and Daniel works with my husband at the Post Office.” *Tr.* at 68. Rosebrock’s counsel objected to J.M.’s further service on the jury. As a result, the trial court held a hearing with the attorneys and J.M. outside the presence of the other jurors.

J.M. stated that although she had recognized Kate's face, she did not know her personally. *Id.* J.M. also stated that she did not recognize Daniel, but knew that her husband worked at the same Post Office branch where Daniel said he worked.⁵ *Id.* at 69. The trial court engaged in the following colloquy with J.M. concerning her relationship with the Harmons:

THE COURT: Okay. Let me ask you this . . . do you see these folks socially?

JUROR: Yes. At school. But I knew her.

THE COURT: You mean like at Fall Festival?

JUROR: Yeah.

THE COURT: Do you see them . . . I mean when was the last time you went to dinner with them?

JUROR: Oh, we haven't.

THE COURT: Haven't ever?

JUROR: No.

THE COURT: Have you been to their house?

JUROR: No

THE COURT: Okay. So you've never been to their house. You have never been to dinner with them. You just . . . It's kind of like you have children in the same class at school and you see them casually at a soccer game or a fall festival or some kind of school activity. Is that what you're telling me?

⁵ Rosebrock makes no argument on appeal that J.M.'s alleged bias arises through her husband and Daniel Harmon working at the same branch of the Post Office. That argument, however, would likely have failed. Where, as here, there is no evidence that fellow employees know each other, our Supreme Court has refused to find bias where a juror and a State witness work together absent any evidence that they know each other. *McCants v. State*, 686 N.E.2d 1281, 1284-85 (Ind. 1997).

JUROR: That's right.

THE COURT: Okay. Have you received any information from your son about this case?

JUROR: No.

THE COURT: Okay. So you knew nothing about this case before you come [sic] here?

JUROR: No.

THE COURT: Okay. Have you received any information about this case from any other source than from coming here for jury duty?

JUROR: No.

THE COURT: All right. And, uh, now the fact that you now realize who these people are does that make any difference about your ability to decide the case fairly and impartially?

JUROR: No.

Id. at 70-71.

Thereafter, both the State and defense counsel asked J.M. questions to explore the nature of the relationship. Responding to questions from defense counsel, J.M. stated that, while it will be difficult to see the Harmons in the future should the jury find Rosebrock not guilty, she will likely not discuss the case with them. She further stated, "I [will] be fair but it will be very uncomfortable."⁶ *Id.* at 72-73. The State then asked, "Uncomfortable [sic] aside . . . can you still listen to everything with a fair, impartial, and

⁶ Rosebrock contends that, because J.M. compared her discomfort about remaining on the jury to that of the labor for childbirth, J.M. was sufficiently biased so as to be unable to remain impartial. J.M.'s comparison, however, only arose in response to the trial court's questioning. When J.M. was asked whether she had done other things that were uncomfortable or unpleasant, and specifically was asked about uncomfortable aspects of raising children, J.M. responded, "Labor was uncomfortable." *Tr.* at 73. When asked directly whether being on the jury would be easier than going through labor, J.M. said, "Yes." *Id.* at 74.

neutral mind?” J.M. answered, “Yes.” *Id.* at 73. The court concluded, “There’s no real close relationship with the alleged victims. There’s only connection through [J.M.’s] eight-year-old son.” *Id.* at 79.

Our supreme court has addressed claims of bias in cases involving casual relationships between a juror and a witness. In *Woolston v. State*, 453 N.E.2d 965, 968 (Ind. 1983), our Supreme Court held that the trial court did not abuse its discretion in refusing the defendant’s request to remove a juror because of his mere familiarity with a witness. In that case, one of the jurors informed the court that an expert witness—a doctor who had testified regarding the defendant’s insanity defense—had treated the juror’s father and that the juror “had little respect for the doctor.” *Woolston*, 453 N.E.2d at 968. Still, the juror stated that he would try to treat the doctor’s testimony the same as that given by any other witness. *Id.* The trial court concluded that the juror could be fair and impartial. Our Supreme Court found no abuse of discretion because there was no evidence in the record that the “defendant was placed in substantial peril” by the juror’s relationship with a witness. *Id.*

In *Alvies*, a juror named Carr told the trial court that she knew Dudley, the Coroner who was testifying as a witness in the case, because Dudley had installed carpeting in Carr’s home. 795 N.E.2d at 502. Our court noted that a juror’s familiarity with a witness does not necessarily constitute bias. *Id.* Finding the relationship even less problematic than the one found in *Woolston*, our court said,

Indeed, unlike Carr, the juror in *Woolston* affirmatively stated that he did not respect the witness but, nevertheless, indicated that he would be fair and impartial. Carr gave no indication that she had any opinion of Dudley in

his capacity as Coroner and, instead, made it clear that her knowledge of Dudley would not affect her ability to serve as a juror. Again, we must conclude that the court did not abuse its discretion when it denied Alvies' motion to remove Carr.

Id. at 502-03.

Here, we likewise find no abuse of discretion in the court's denial of Rosebrock's request to remove J.M. from the jury. By asking its own questions and also allowing counsel to ask J.M. questions, the trial court properly analyzed the potential bias and considered the nature of J.M.'s connection to the victim and any indications of partiality. *Lee*, 735 N.E.2d at 1115; *Alvies*, 795 N.E.2d at 500. J.M.'s responses indicated that she had not formed an opinion regarding Rosebrock's guilt or innocence and would base her decision solely on the testimony. *See Alvies*, 795 N.E.2d at 500. In addition, her testimony regarding her relationship with the Harmons showed that any connections she had with the victims were attenuated. *Id.* Based on her testimony as a whole, it was reasonable for the trial court to conclude that J.M. was not prejudiced against Rosebrock. Further, there was no evidence in the record that the "defendant was placed in substantial peril" due to J.M.'s relationship with the Harmons.⁷ *See Harris*, 659 N.E.2d at 525. Thus, we cannot conclude that the trial court abused its discretion when it denied Rosebrock's request to remove J.M. from the jury.

While we recognize that J.M.'s acquaintance with the Harmons raised questions as to bias and another trial court may have exercised its discretion differently and replaced J.M. as a juror, Rosebrock has failed to show there existed a bias sufficient to prove that

⁷ In fact, a significant factor in the jury's finding of guilt likely came from Rosebrock himself through his statement to the police that he drove to the scene of the crime where his accomplice stole a Desert Eagle pistol and cash.

he was denied the right to a fair trial. Here, the trial court questioned J.M. extensively and was in the best position to make such a determination. We affirm Rosebrock's convictions for burglary and theft, and the determination that he is an habitual offender.

Affirmed.

NAJAM, J., and BARNES, J., concur.