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**Apr 04 2025**

**S.C. SUPREME COURT**

STATE v. RUTTLE  
Appellate Case No. 2025-000404

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**RESPONSE TO MOTION TO SUSPEND APPEAL AND REMAND OR  
ALTERNATIVELY FOR EXTENSION OF TIME**

**ATTACHMENT 1**

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April 7, 2022 Order, the Honorable J. Derham Cole  
(denying motion for a new trial)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
	)	
The STATE of South Carolina,	)	
	)	<b>ORDER</b>
Prosecutor,	)	
-vs-	)	
	)	
	)	
Devin Zachary Elijah RUTTLE,	)	Indictment Nos.: 2017-GS-42-05449
	)	2018-GS-42-04411
_____ Defendant.	)	

This matter was before the Court for hearing on the defendant's motion, by and through Christopher T. Brumback, *Esq.*, for a new trial on the grounds of juror disqualification. At a hearing held on the motion, the State was represented by Deputy Circuit Solicitor Derrick Balsa.

The defendant was tried for the crimes of murder and unlawful possession of a handgun resulting in his conviction by a jury and sentence by the court. He appealed his conviction and sentence, which is presently pending before the South Carolina Court of Appeals. The Court of Appeals, upon motion by the defendant, has suspended the appeal and granted leave for the defendant to make this motion now before this Court for a new trial.

MOTION FOR A NEW TRIAL

The defendant moves this Court to grant him a new trial on the ground of juror disqualification "due to a juror's intentional concealment of material information plainly and specifically requested during *voir dire*". The defendant claims that a juror, assigned the number 92, intentionally failed "to respond to multiple clear and unambiguous questions regarding school and church connections" that the juror had with the defendant during the court's pre-trial *voir dire* of the panel. The defendant asserts that the juror's intentional failure to disclose "material" information during *voir dire* relating to those "connections" "denied the trial court the ability to determine whether a 'for cause' ground existed to strike Juror 92" and the defendant to intelligently exercise his right to peremptory challenges, thereby depriving him of his Constitutional right to a trial by an impartial jury.

At the hearing on the motion, the defendant presented testimony from four witnesses; himself, his trial counsel, his father, and a former youth pastor at the New Life Deliverance Worship Center. The juror complained of was not subpoenaed nor was the Court asked to have the juror appear in order to provide testimony regarding the subject matter of the inquiry as to her disqualification.

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### APPLICABLE LAW

It is a fundamental principle of law that every defendant in the trial of a criminal case has the right to be tried by a fair and impartial jury. *U.S. CONST. amends. VI and XIV; S.C. CONST. art. I, Section 14*. As part of the process for determination of juror impartiality, the Court must conduct *voir dire* for discovery of the existence of any bias, prejudice, or interest that a potential juror might have in the case or against a party. *State v. Kelly*, 331 S.C. 132 (1998). Not only is the process designed to determine whether a potential juror should be excused for cause due to bias, prejudice, or interest but to also afford the parties a reasonable opportunity and ability to intelligently exercise peremptory challenges based upon reasonable and constitutional grounds. *State v. Gullede*, 277 S.C. 368 (1982).

A motion for a new trial based upon the ground of juror disqualification must be made within a reasonable time after discovery of any ground for disqualification or within a reasonable time after such ground for disqualification could have been discovered in the exercise of reasonable and due diligence.

A party seeking a new trial based upon the disqualification of a juror must establish: (1) the fact of disqualification; (2) the grounds for disqualification were unknown prior to the verdict; and (3) the movant was not negligent in failing to learn of the disqualification before the verdict. *Long v. Norris and Associates, LTD.*, 342 S.C. 561 (Cl.App. 2000).

"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 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 (2001). "The inquiry must focus on the character of the concealed information, not on the mere fact that a concealment occurred." *Thompson v. O'Rourke*, 288 S.C. 13 (1986). "Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn." *Woods*, at 588.

In *Woods* the Court held that "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 when 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." *Woods*, 345 S.C. at 588. "If the court finds no intentional concealment occurred, the inquiry ends there. *Carolina Self Storage Ctrs., Inc.*, 409 S.C. 491 (2014).

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"If a juror intentionally withholds material information requested on *voir dire*, bias and prejudice are inferred from the concealment." "Only where a juror's intentional nondisclosure does not involve a material issue, or where the nondisclosure is unintentional, should the trial judge inquire into prejudice." Woods, 345 S.C. at 589.

"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 (2004).

#### DISCUSSION

The subject juror was not summoned to appear at the hearing, nor was the Court requested to have her appear to provide testimony at the hearing, nor did any affidavit by the juror accompany the motion. In order to establish that there was a relationship or a connection with the defendant, he has to establish that the juror who served in the trial was the person he claims to have a connection. The defendant attempted to establish the identity of a young black female as the same young black female that was designated as Juror 92 and seated on the jury which rendered the verdict in Ruttle's trial. From the evidence presented by way of Facebook photos of a young black female, videos from the New Life Deliverance Worship Center, depicting people including a young black female, and the testimony of Travis Mims, who identified a young black female in a video as having the name "Nysha", the Court is unable to determine with any degree of conviction whether the two females are the same person, however, the Court will nevertheless address the issue presented as if the juror had been correctly identified so as to resolve the issue presented for purposes of appeal.

#### VOIR DIRE

Prior to jury selection, the Court conducted standard and case-specific *voir dire* of the jury panel. The first inquiry of the panel was knowledge of or connection with any of the participants or those which might be related or otherwise connected. Wherein the court stated:

"Now, before we begin with jury selection I've got some folks that I'm going to be introducing to you, and the purpose of the introductions is to find out if you have any connection whatsoever with anybody that's involved in the trial of this case or any members of their respective offices or any members of their respective families. I need to know ... any connection by blood or marriage ... work, school or church, have you met them, do you socialize with them, or do you know them in any fashion whatsoever ...".

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After each of the defendants, lawyers, and potential witnesses had been introduced or identified by the recitation of a potential witness list, several jurors stood to announce a connection or knowledge they had with someone introduced or identified. No juror, including Juror 92, responded to the question of having knowledge of or a connection with Ruttle.

Counsel argues that the juror intentionally, unjustifiably, and unreasonably failed "to disclose her various connections to Devin and his family through both school and church," and as it relates to school attendance, he asserts that her failure to respond was unreasonable in that "... [she] had only just finished high school, having graduated from Spartanburg High School in 2016, only one year after Devin graduated therefrom, and only two years prior to the trial of this case."

The Court was not asked to inquire of the venire as to whether any juror had attended or graduated from Spartanburg High School, nor was the venire informed that Ruttle had attended and graduated from that school in 2015. There was no inquiry of the panel as to any connection with Spartanburg High School, and there was no reason for a juror to think a connection with the school was in any way significant, so as to provide that information to the Court, unless the juror had a specific recollection as to knowledge of or a relationship with Ruttle, or any other person identified in court, was known to that juror arising from attendance at the same school.

Ruttle testified at the hearing on the motion that he was unaware of any interaction he could have ever had with the juror and did not have any personal knowledge of her from church or school. He was unaware of the existence of any type of relationship, whether casual or otherwise, between him and the juror arising out of attendance at Spartanburg High School. He simply asserts that she should have known him from the time they both were in attendance at the school, although he testified that he did not know her from school or recognize her at the time of her selection and throughout the trial of the case. He states he only took notice and thought her face looked "familiar" upon the post-verdict polling of the jury regarding their affirmation of the verdict.

It is a simple truth that a person may have an actual relationship or some connection with another and be completely unaware of it, as is not uncommon when determining familial relationships in certain contexts. It is axiomatic that the ability of a person to disclose a relationship or connection with another is dependent upon that person having knowledge or awareness of the relationship or connection. The defendant's assertion that the juror must have had knowledge of Ruttle from school is nothing more than mere speculation. The mere fact that they may have attended the same school, but in different class years, does not reasonably establish the juror's knowledge of the defendant or a "connection" with him arising from that attendance. It would be just as reasonable to assume, in the absence of evidence to the contrary, that the juror did not respond to the question regarding any school connection with Ruttle

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because, just like he has stated in regards to her, she had no personal knowledge of Ruttle or his attendance at the school and therefore was not aware of any school connection to disclose.

The defendant has failed to establish that even if there was a failure by the juror to disclose the information complained of, the failure to disclose was knowing or intentional on the part of the juror or that any such connection would have supported a challenge for cause or been a material factor in the intelligent exercise of a peremptory challenge, nor does he or his trial counsel even make the claim that a peremptory challenge would have been exercised to excuse the juror from service in the trial had the information been known to them.

Counsel further requested, and the Court asked the panel the following question to which no juror, including Juror 92, responded.

"Do you or any members of your immediate family – and for purposes of all of my questions an immediate family member refers to a parent or a spouse or a child or a sibling – parent, spouse, child, or sibling. Do you or any members of your immediate family attend or have you ever attended the New Life Deliverance Worship Center ...?"

After each of the defendants, lawyers, and potential witnesses had been introduced or identified for the benefit of the jury, counsel requested that the Court ask a number of other people in the courtroom seated directly behind the prosecution and defense tables, which included the defendant's father Bunty Desor, to stand and for the venire members to announce any connection or knowledge any juror may have with any of those additional persons. No juror, including Juror 92, responded to the question of having knowledge of or a connection with any of those additional persons standing for the purpose of the question.

Counsel argues that the juror intentionally, unjustifiably, and unreasonably failed to disclose a connection he claims she had with Devin and his father Bunty Desor through the New Life Deliverance Worship Center.

In his testimony, Ruttle stated that he did not know the juror from church or school, as previously discussed, but that her face seemed "familiar" to him at the time of the post-verdict polling of the jury panel. He stated that he was unaware of her name or of ever having had any type of interaction with the juror at any time or at any event held at the Center.

Bunty Desor testified that he was the father of Ruttle and the pastor at the New Life Deliverance Worship Center. He stated that he had no knowledge of or any relationship with the juror through the New Life Deliverance Worship Center or otherwise. He testified that the Center periodically sponsored community youth events where inner-city youth were transported to the Center to be entertained with Hip-Hop music. He testified that some of these events were video and audio recorded and that Ruttle served as a videographer for such events. He further stated

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that no record of attendees was generated or maintained by the Center. He testified that he did not lead or participate in the events and that a youth leader organized and took charge of the events. He stated that there was no particularized discussion of the juror until a post-trial expression by Ruttle to him that the juror looked "familiar," after which he reviewed videos of the community youth events at the Center to see if any video might depict attendance by the juror. After review of the videos, Travis Mims informed Desor that he recognized a young black female in the videos as a person he knew as Nysha. Neither video depicts any interaction between Desor or Ruttle and the juror and Desor does not claim any personal knowledge of or relationship with the juror.

Travis Mims testified that he was a youth pastor at the New Life Deliverance Worship Center between 2012 and 2015. He stated that he organized and presided over youth-oriented community events at the Center on Friday nights. He stated that between ten and fifty youth would often be gathered from the surrounding community and transported to the Center to be provided food and musical entertainment for the evening and then returned to their respective homes. Mims identified one of many young black females in the video as one he knew as "Nysha" but did not know her age or last name. He further testified that he knew a lot of the other kids that attended the Friday night Center events but could not recall the names of any of the other youth depicted in the video or the name of any friends of "Nysha" that were present at an event or depicted in the videos.

Ruttle's trial counsel Rick Vieth, testified that he reviewed the jury list and shared it with the family of his client for any information anyone might have about a particular potential juror. He stated that he was unaware of any connection that Juror 92 had with Ruttle or his father or the New Life Deliverance Worship Center. He further testified that he would "probably" want a member of the Center's congregation on the jury had he known of such unless there was a particular reason why the juror might be determined to be unfavorable to the defendant.

The question posed by the court, "do you ... attend or have you ever attended the New Life Deliverance Worship Center ..." could easily be described as ambiguous as having two or more possible meanings or interpretations. "Intentional nondisclosure occurs ... where there exists no reasonable inability to comprehend the information solicited by the question asked ..." "Unintentional nondisclosure" may be shown to exist where a juror could "reasonably misunderstand the question posed." *Woods*, 345 S.C. at 588. When asked to pose the question, the Court understood the request of counsel to be made for the purpose of seeking to determine if any juror was or ever had been a member of the congregation or regularly attended the Center as a worshiper at normal religious services and therefore likely to have been exposed to or had contact with Ruttle or his father or both. This same understanding could have easily been that of the juror, and therefore she did not feel compelled to respond to the question. If a juror was asked, "do you attend or have you ever attended Spartanburg High School", it could be easily

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understood by a juror that the inquiry was directed toward whether or not the juror was or had ever been a student at the school, not whether the juror had attended a football game or some other event held at the school where he or she was not a student.

The defendant contends that the juror attended one or more events held at the Center for the entertainment of groups of community youth at various times over some period of time where the evidence shows that Hip Hop music, dancing, and food was provided for entertainment of the youth. The defendant asserts simply that the juror should have had knowledge of him, his father, or both as a result of her attendance at one or more of these community youth events, although neither the defendant or his father claims any personal relationship with the juror arising from the Center. Neither claims to have ever met the juror, even if just to exchange pleasantries, nor does either claim to have any personal knowledge of the juror ever attending an event at the Center. Neither claims to have ever taken notice of the juror during a four-day trial until the defendant asserts he thought her face might look "familiar" after the post-trial polling of the jury regarding the verdict.

Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. The evidence presented does not reasonably establish any relationship or connection the juror had with the defendant, his father, or the Center. The Court cannot reasonably infer from the evidence that the juror was partial in the case and the juror was not summoned to be examined on the question of her failure to respond to the questions posed, and any justification, or lack thereof, able to be determined. The question relating to attending the Center was not one central or significant to the case. The purpose of the question was to determine any connection a juror might have with the defendant or his father. The lack of any such connection with the defendant and his father has been established by the defendant's own presentation of evidence at the hearing.

Even if a persuasive argument could be made, and the Court finds it has not, that the juror should have responded to the question regarding whether she had "ever attended the New Life Deliverance Worship Center", there has been presented no testimony or any other evidence, direct or circumstantial, which reasonably tends to establish that the juror had any knowledge of or any connection with the defendant or his father arising from any attendance at an event held at the Center.


The defendant has failed to establish that, even if there was a failure by the juror to disclose the information complained of by the defendant, the failure to disclose was knowing or intentional on the part of the juror, or that any such connection would have supported a challenge for cause or been a material factor in the intelligent exercise of a peremptory challenge. Nor does the defendant or his trial counsel claim that a peremptory challenge would have been exercised to excuse the juror from service in the trial had the information been known to them.

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CONCLUSION

“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 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.” *Woods*, 345 S.C. at 587. After consideration of the presentation made in support of the motion and the applicable law, this Court finds that the defendant has failed to establish his entitlement to a new trial. The Court finds that he has failed to establish that: (1) Juror 92 is the young black female he has identified as the trial juror from photos, videos, and testimony presented at the hearing; (2) the juror “intentionally” failed to disclose information of which inquiry was made during *voir dire*; (3) the juror actually had any relationship or connection with Ruttle; (4) the juror actually had any relationship or connection with Ruttle’s father; (5) the juror actually “attended” or “ever attended” the New Life Deliverance Worship Center within a reasonable interpretation of the term; (6) any information not provided by the juror was central or significant to the case; (7) had the juror made a disclosure of the information claimed by the defendant to have been concealed, such fact would have reasonably supported a challenge for cause; (8) had the juror made a disclosure of the information claimed by the defendant to have been concealed, that such fact would have been a material factor in the exercise of a peremptory challenge, as trial counsel testified he would have considered it desirable for a juror who was a congregant at the Center to be seated for service in the trial; and (9) that under any scenario there exists a reasonable belief that the defendant was prejudiced by the nondisclosure of the information.

The defendant’s **MOTION** for a **NEW TRIAL** on the ground of juror disqualification should be and **IS** therefore **DENIED**.

  
\_\_\_\_\_  
J. DERHAM COLE, RESIDENT JUDGE  
The Seventh Judicial Circuit Court

April 7, 2022

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STATE v. RUTTLE  
Appellate Case No. 2025-000404

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**RESPONSE TO MOTION TO SUSPEND APPEAL AND REMAND OR  
ALTERNATIVELY FOR EXTENSION OF TIME**

**ATTACHMENT 2**

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*State v. Ruttle*, Unpublished Opinion No. 2024-UP-398  
(S.C.Ct.App. filed November 27, 2024)

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Devin Zachary Elijah Ruttle, Appellant.

Appellate Case No. 2019-001570

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Appeal From Spartanburg County  
J. Derham Cole, Circuit Court Judge

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Unpublished Opinion No. 2024-UP-398  
Heard June 5, 2024 – Filed November 27, 2024

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**AFFIRMED**

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Christopher Todd Brumback and Spencer Davis Langley,  
both of Brumback & Langley, LLC, of Greenville, for  
Appellant.

Attorney General Alan McCrory Wilson, Deputy  
Attorney General Donald J. Zelenka, and Senior  
Assistant Deputy Attorney General Melody Jane Brown,  
all of Columbia; and Solicitor Barry Joe Barnette, of  
Spartanburg, all for Respondent.

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**PER CURIAM:** Devin Zachary Elijah Ruttle was convicted of murder and the unlawful carrying of a handgun. On appeal, Ruttle argues (1) the trial court erred in denying his motion for a new trial by concluding juror number 92, Nysha Jeffries, did not give false or misleading answers during voir dire; (2) the trial court's denial of immunity under the South Carolina Protection of Persons and Property Act (PPPA)<sup>1</sup> was improper; and (3) the trial court committed reversible error by providing both an implied malice and a self-defense jury instruction. We affirm.

1. The trial court did not abuse its discretion by concluding Jeffries did not give false or misleading answers during voir dire and by denying Ruttle's motion for a new trial on this basis. *See State v. Bell*, 374 S.C. 136, 147, 646 S.E.2d 888, 894 (Ct. App. 2007) (determining a court's choice of whether or not to dismiss a juror will not be reversed absent an abuse of discretion); *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support."); *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014) ("[T]he abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the trial court's assessment of witness credibility."); *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001) ("All criminal defendants have the right to a trial by an impartial jury."), *overruled in part on other grounds by State v. Rowell*, 444 S.C. 109, 115, 906 S.E.2d 554, 557 (2024); *State v. Coaxum*, 410 S.C. 320, 327, 764 S.E.2d 242, 245 (2014) ("To protect both parties' right to an impartial jury, the trial court must conduct voir dire of the prospective jurors to determinate whether the jurors are aware of any bias or prejudice against a party, as well as to 'elicit such facts as will enable [the parties] intelligently to exercise their right of peremptory challenge.'" (alteration in original) (quoting *Woods*, 345 S.C. at 587, 550 S.E.2d at 284)), *overruled in part on other grounds by State v. Rowell*, 444 S.C. 109, 115, 906 S.E.2d 554, 557 (2024); *Woods*, 345 S.C. at 590, 550 S.E.2d at 285 ("A juror should be disqualified by the court if it appears to the court the juror is not indifferent in the case. The decision to strike a juror for cause is within the sound discretion of the trial [court]."); *Coaxum*, 410 S.C. at 327, 764 S.E.2d at 245 ("Should jurors give false or misleading answers during voir dire, the parties may mistakenly seat a juror who could have been excused by the court, challenged for cause by counsel, or stricken through the exercise of a peremptory challenge."); *id.* ("In the event of such juror misconduct, the trial court must inquire into whether the withheld information affects the jury's impartiality. . . . '[T]he trial [court]

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<sup>1</sup> S.C. Code Ann. §§ 16-11-410 to -450 (2016).

should exhaust other methods to cure possible prejudice before aborting a trial." (quoting *State v. Kelly*, 331 S.C. 132, 141-42, 502 S.E.2d 99, 104 (1998)).<sup>2</sup>

During voir dire, the trial court instructed the prospective jurors to notify the court if any juror or an immediate family member was the victim of a violent crime;<sup>3</sup> if any juror or his or her immediate family attend or had ever attended New Life Deliverance Worship Center (the Church); or if a juror has ". . . any connection by blood or marriage . . . work, school,[<sup>4</sup>] or church" or otherwise "met[,] . . . socialize with . . . or know" Ruttle or his father "in any fashion whatsoever."<sup>5</sup> In his motion for a new trial, Ruttle alleged that (1) her grandfather was the victim of a violent crime, (2) she had previously attended the Church, and (3) she knew Ruttle and or his father from her past attendance at the Church.<sup>6</sup>

Jeffries did not conceal that her grandfather was the victim of a violent crime when asked whether she or an immediate family member was the victim of a violent crime. The trial court defined an immediate family member as "a parent, spouse, child, or sibling." This definition did not include grandfather, so Jeffries concealed no information when she failed to respond to the question.

As to the allegation that Jeffries attended the Church and as a result knew Ruttle or his father, Ruttle presented evidence at the hearing for his motion for a new trial that he asserted proved Jeffries had previously attended the Church. This included videos from events at the Church between the years of 2011 and 2012 depicting a

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<sup>2</sup> *Woods* and *Coaxum* were overruled in part by *Rowell*, which provides a new test for juror concealment. The statements above from *Woods* and *Coaxum* are limited to trial rights, voir dire procedure, and juror concealment generally and are consistent with *Rowell*.

<sup>3</sup> The court identified "murder, manslaughter, armed robbery, burglary, criminal sexual conduct, domestic violence of a high and aggravated nature, common-law robbery, aggravated assault and battery[,] or any other similar type of an offense" as violent crimes.

<sup>4</sup> Ruttle alleged in his memorandum in support of his motion for new trial that Jeffries concealed she graduated from the same high school as Ruttle. This issue was not appealed.

<sup>5</sup> Ruttle's father was the Church's acting minister at the time Jeffries was alleged to have attended.

<sup>6</sup> Neither Ruttle nor his father ever claimed to know Jeffries. No one ever asserted Jeffries was a member of the Church. Ruttle only mentioned Jeffries "looked familiar" to his attorneys during posttrial polling.

young Black female and testimony from former youth pastor, Travis Mims, that this individual had the same first name, "Nysha," as Jeffries. The trial court "was unable to determine with any degree of conviction whether the two females are the same person." The trial court did not abuse its discretion in making this finding. Ruttle argues that at the posttrial hearing, the trial court engaged in improper burden shifting by requiring him to produce Jeffries at the hearing or otherwise prove she was the same Nysha who attended the Church. However, *Ruttle* had the burden to provide evidence to support *his* motion. See *State v. Tucker*, 423 S.C. 403, 414, 815 S.E.2d 467, 472 (Ct. App. 2018) ("As the party alleging misconduct, [the defendant] bore the burden of proving [the juror] was biased or could not otherwise follow her oath."). Ruttle never subpoenaed Jeffries, nor produced an affidavit or other form of sworn testimony from Jeffries, nor requested the trial court require Jeffries to appear. We cannot say based on the videos and Mims's testimony, it is either clear and convincing or more likely than not that Jeffries is the same Nysha who attended the Church. See *State v. Covington*, 343 S.C. 157, 164, 539 S.E.2d 67, 70 (Ct. App. 2000) (finding evidence of juror misconduct is evaluated under a clear and convincing standard); *State v. Fletcher*, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008) ("Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. Such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal."); *Covington*, 343 S.C. at 164, 539 S.E.2d at 70 (finding that a clear and convincing standard need not be applied when juror concealment cannot first be proven under the lesser preponderance of the evidence standard); *Groesbeck v. Marshall*, 44 S.C. 538, 545, 22 S.E. 743, 744-45 (1895) (finding to establish a defense under a preponderance of the evidence standard, a party must convince the trial court the grounds for its defense are more likely than not to have occurred). Accordingly, the trial court did not abuse its discretion in finding Jeffries did not give false or misleading answers during voir dire.

During oral arguments, Ruttle heavily relied on *Hand v. Savannah & Charleston Railroad Co.*, which he submitted as a supplemental citation following arguments. 17 S.C. 219 (1882). We accepted the citation; however, we distinguish it from the present case. In *Hand*, the defendant company sought to estop persons funding bonds from claiming a prior lien under a former act. *Id.* at 222-25. Our supreme court found when evidence was presented that a person who held a bond and whose name also appeared in the company's ledger,

such concurrence and coincidence would be at least presumptive that the bonds [that] [the person] now holds

are the bonds [that] he held at the time he funded the coupons, and the burden of proof is upon him to show that he did not hold the bonds [that] he now holds at the time of the funding.

*Id.* at 224.

Ruttle also cites *State v. Rawls* in his supplemental citation. 11 S.C.L. (2 Nott & McC.) 331 (1820). In *Rawls*, the court found a name was presumptive of identity when a witness, who did not know the defendant, testified he heard on two occasions the defendant be addressed by a name, respond to that name, and the defendant later pleaded to the indictment under that same name. We do not interpret *Hand* or *Rawls* to mean concurrence and coincidence of name in all circumstances leads to a presumption of identity. The facts, circumstances, procedural postures, and standards of review of *Hand*, *Rawls*, and the present case differ drastically.<sup>7</sup> Also, both *Hand* and *Rawls* contain corroborating facts beyond name alone to support the presumption.<sup>8</sup> The facts in the present case do not sufficiently support the presumption. Accordingly, Ruttle failed to prove identity, and therefore that Jeffries concealed information.

In addition to proving a juror concealed information, the party moving for a new trial must also establish bias. *See State v. Zeigler*, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005) ("Where a defendant seeks a new trial on the basis of juror misconduct, he is required to prove both the alleged misconduct and the resulting prejudice."). Our supreme court recently revised the framework used to assess alleged juror concealment. *See State v. Rowell*, 444 S.C. 109, 115, 906 S.E.2d 554, 557 (2024) ("The juror's intent may bear on the inquiry, but the ultimate question remains whether the juror was biased and whether the bias, in turn, caused prejudice."). Under this new framework, trial courts need not distinguish between intentional and unintentional concealment. Further,

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<sup>7</sup> *Hand* was a civil case, which began when the plaintiff sought to enjoin the defendant railroad company from selling a road. Though *Rawls* is a criminal case, the cited portion is from the hearing before the Constitutional Court of Appeals of South Carolina. Further, the defendant's identity was at issue in *Rawls*, not a juror's.

<sup>8</sup> In *Hand*, bond owners were identified by proof of bond ownership corroborated by their names in the company's official ledger to verify time of acquisition. Similarly, in *Rawls*, the witness's testimony that he heard the defendant called by a certain name was corroborated when the defendant pleaded under the same name.

the juror's bias may not be presumed, and a new trial may be ordered only when prejudice is proven by showing the concealed information reveals a potential for bias and would have made an objectively material difference in the moving party's use of a peremptory strike or resulted in a successful challenge for cause.

*Id.* at 16.

Assuming Jeffries and the Nysha shown in the Church videos were the same person, Ruttle did not show the allegedly concealed information would have made a difference in the *moving* party's use of a peremptory strike or challenge for cause. Ruttle failed to prove Jeffries concealed information and her alleged association with the Church reveals no potential for bias against Ruttle. Accordingly, we affirm the trial court's denial of Ruttle's motion for a new trial.<sup>9</sup>

2. The trial court did not abuse its discretion by failing to grant Ruttle immunity under the PPPA. *See State v. Manning*, 418 S.C. 38, 43, 791 S.E.2d 148, 150 (2016) (finding circuit courts utilize pretrial hearings to determine whether a defendant is entitled to immunity under the PPPA by applying a preponderance of the evidence standard); *id.* at 45, 791 S.E.2d at 151 ("[Appellate courts] review immunity determinations under an abuse of discretion standard."); *Jones*, 416 S.C. at 290, 786 S.E.2d at 136 ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support."). Section 16-11-440(C) provides immunity from prosecution if a person is found to be justified in using deadly force under the PPPA. *See State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) ("There are four elements required by law to establish self-defense in this case. First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.

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<sup>9</sup> *Rowell* held the trial court erred by "declin[ing] the [defendant's] request for an evidentiary hearing so [a] [j]uror . . . could be examined as to whether his pending charges could have caused him to be biased." *Id.* at 116, S.E.2d at 558. Our supreme court's reasoning was that "[e]valuating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing." *Id.* (quoting *McCoy v. State*, 401 S.C. 363, 371, 737 S.E.2d 623, 628 (2013)). We agree but distinguish *Rowell* from the present case in which a posttrial hearing was held and Ruttle did not produce Jeffries at that hearing.

Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. [<sup>10</sup>] If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance"); *See also State v. Cervantes-Pavon*, 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019) (finding when the evidence conflicts as to the issue of immunity, "the court must sit as the fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the [PPPA]" and then, "if the circuit court determines the movant has not met his burden of proof as to immunity, the case will go to trial, and the issue of self-defense may—depending upon the evidence presented at trial—be presented to the trial jury"); *Terwilliger v. Marion*, 222 S.C. 185, 188, 72 S.E.2d 165, 166 (1952) ("The fact that evidence is not contradicted by direct evidence does not render it undisputed, as there still remains the question of its inherent probability and the credibility of the witness or his interest in the result. To justify a [c]ourt in instructing a jury that a witness has told the truth, and in directing a verdict based on the truthfulness of his evidence, there must be nothing in the circumstances or surroundings tending to impeach the witness or to throw discredit on his statements. If there is anything tending to create distrust in his truthfulness, the question *must* be left to the jury." (emphasis added) (quoting *Green v. Greenville County*, 176 S.C. 433, 180 S.E. 471, 473 (1935))). Here, none of the exceptions allowing a presumption of imminent fear apply. Therefore, Ruttle had to meet all four of the self-defense elements outlined in *Davis* under a preponderance of the evidence standard to be entitled to immunity from prosecution. This court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). A knife was recovered at the scene, which Ruttle alleged the victim, Dalton Moore, threatened him with. However, evidence supports the trial court's finding that Ruttle did not act in self-defense but brought on the difficulty and his use of deadly force was not reasonable under the circumstances given the following facts: Ruttle's friend and codefendant, Lorenzo Calderon, had prior conflicts with Moore including an altercation earlier on the day

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<sup>10</sup> A rebuttable presumption of imminent fear is provided under section 16-11-440(A), (D), and (E); however, this consideration is limited to circumstances in which someone enters a residence, vehicle, or business without permission or attempts to remove someone against his or her will.

of the killing; after spotting Moore from the road, Ruttle followed Moore in his car with Calderon in the passenger seat; while Calderon waited in the car, Ruttle, armed with a concealed handgun Calderon provided, approached Moore; after killing Moore, Ruttle fled the scene with Calderon driving; and Ruttle disposed of the clothes he was wearing at the time of killing and the handgun and lied about his whereabouts when questioned by law enforcement. Accordingly, Ruttle failed to establish by a preponderance of evidence he was entitled to immunity, and we affirm the trial court's denial of immunity under the PPPA.

3. Although the trial court did err in providing both an implied malice and a self-defense jury instruction, this issue was unpreserved. Alternatively, if preserved, the error was harmless. *See State v. Smith*, 430 S.C. 226, 234, 845 S.E.2d 495, 499 (2020) (per curiam) ("[A]n implied malice charge should not be given if there has been evidence presented that the defendant acted in self-defense."<sup>11</sup>). The State argues *Smith* only addressed an implied malice instruction in the context of a felony attempted murder. We disagree. *Smith* established that a jury may not be instructed on both implied malice and self-defense. *Id.* Our supreme court reasoned that because malice is admitted in a self-defense claim but excused for the protection of oneself or others, providing both instructions is contradictory and risks misleading a jury. *Id.* However, Ruttle never raised this issue with the trial court and we cannot consider unpreserved issues on appeal. *See State v. Nichols*, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) ("An issue may not be raised for the first time on appeal, but must have been raised to the trial [court] to be preserved for appellate review."); *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004) ("There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." (quoting Jean Hoefler Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002))).

Further, even had the issue been properly preserved, the error was harmless. *See Burdette*, 427 S.C. at 496, 832 S.E.2d at 578 ("An erroneous instruction alone is

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<sup>11</sup> Notably, this differs from the rule established by *Smith's* predecessor, *State v. Burdette*. 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019). In *Burdette*, our supreme court held a jury instruction that malice can be inferred from the use of deadly weapon may not be given. *Id.* Though Ruttle alleges the trial court gave such an instruction, we disagree. The trial court gave an implied malice instruction; however, this instruction never indicated malice could be inferred from Ruttle's use of the handgun in the killing.

insufficient to warrant [an appellate court's] reversal."); *Smith*, 430 S.C. at 233, 845 S.E.2d at 498 ("[E]rroneous jury instructions are subject to a harmless error analysis."); *Burdette*, 427 S.C. at 496, 832 S.E.2d at 578 ("When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" (quoting *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014))); *id.* at 496, 575 S.E.2d at 578-79 ("In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." (quoting *State v. Kerr*, 330 S.C. 132, 145, 498 S.E.2d 212, 218 (1998))); *State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) ("'[O]verwhelming evidence' of a defendant's guilt is a relevant consideration in the harmless error analysis."). Given the overwhelming weight of the evidence of guilt, any error in the jury instructions was harmless. Therefore, although the trial court erred in providing both a malice and self-defense instruction, the error is unpreserved and harmless. Ruttle's conviction is

**AFFIRMED.**

**WILLIAMS, C.J., and KONDUROS and TURNER, JJ., concur.**