BRUMBACK & LANGLEY, LLC

ATTORNEYS & COUNSELORS AT LAW

CHRISTOPHER T. BRUMBACK, ESQ.
SPENCER D. LANGLEY, ESQ.

531 SOUTH MAIN STREET, SUITE 307
GREENVILLE, SOUTH CAROLINA 29601
TELEPHONE (864) 414-9097
FACSIMILE (866) 728-1205
E-MAIL: chris@brumbacklangley.com

GENERAL & COMPLEX LITIGATION
BUSINESS & CORPORATE LAW
APPELLATE PRACTICE
CRIMINAL DEFENSE
PERSONAL INJURY

April 18, 2022

VIA ELECTRONIC SUBMISSION
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *The State v. Devin Zachary Elijah Ruttle*
Appellate Case No.: 2019—001570

Dear Ms. Kitchings:

I hope this correspondence finds you well. I am writing today to inform the Court that Judge Cole has issued an Order dated April 7, 2022, and which undersigned counsel received on April 11, 2022, denying Mr. Ruttle's Motion for New Trial. A copy of Judge Cole's Order, which Appellant intends to challenge as a part of his previously filed and pending appeal, is attached hereto. As previously noted, a hearing was held before Judge Cole on Mr. Ruttle's Motion for New Trial on May 12, 2021, a transcript of which will be necessary for the prosecution of Mr. Ruttle's appeal. Accordingly, undersigned counsel will promptly order the transcript of the May 12, 2021 hearing pursuant to Rule 207, SCACR.

With kindest regards, I am

Truly yours,

s/Christopher T. Brumback

Christopher T. Brumback, Esq.
Brumback & Langley, LLC

CTB/

cc: Melody Brown, Esq. (via email.)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF **SPARTANBURG**)

The **STATE** of South Carolina,)
)
Prosecutor, **ORDER**
-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 Bulsa.

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.

#1

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. Gulledge*, 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 (Ct.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).*

#2

"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 ...".

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

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

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

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.

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

#8