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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY  
General Sessions Court  
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2025-000404

State of South Carolina.....Respondent,

vs.

Devin Zachary Elijah Ruttle.....Appellant.

**MOTION TO SUSPEND APPEAL AND REMAND FOR PROCEEDINGS CONSISTENT WITH STATE V. ROWELL, OR, ALTERNATIVELY, FOR EXTENSION OF TIME TO FILE**

Pursuant to the Supreme Court’s decision in State v. Rowell, 444 S.C. 109, 906 S.E.2d 554 (2024), and specifically the seismic change in the test applicable to juror concealment, Appellant hereby moves the Court to suspend this appeal and to remand this case to the trial court for a second hearing so that Juror 92 can be examined by the trial court in light of the new juror concealment test laid down in Rowell—in the alternative Appellant requests a fourteen (14) day extension of time to file and sever Petitioner’s Petition for Certiorari and Appendix. This Motion is being made in good faith and for good cause on the grounds that well after the new trial hearing was held and even after this appeal had been extensively briefed, argued before the Court of Appeals, the Supreme Court completely changed the forty year old framework for

questions of juror concealment and announced a new test for the analysis thereof. The break from forty years of juror concealment jurisprudence completely shifted the focus of the analysis and the relevant elements that should be considered in determining whether a party is entitled to relief. On August 6, 2024, immediately upon becoming aware of the Supreme Court's decision in Rowell, undersigned counsel provided the Court with a letter notifying the Court of Appeals of the Rowell decision pursuant to Rule 208(b)(7), SCACR, and raised the fact that the Rowell decision "affected a seismic shift in the proper framework by which Issues on Appeal I and II, as presented in Appellant's Final Amended Brief, are required to be inquired into, analyzed, and decided." See Appellant's August 6, 2024 letter to Court of Appeals. In light of Rowell's substantive and material change in the required analysis of juror concealment questions, if the Court of Appeals believed that the new framework was controlling in this appeal and intended to render a decision based on that new framework, including imposing a requirement upon Appellant to establish bias, the proper action according to Rowell was for the Court of Appeals to "remand" the case to the trial court for a "second hearing" on the Motion for New Trial so the trial court can conduct "an evidentiary hearing on Juror [92's] failure to disclose" and Appellant has a meaningful opportunity to establish the necessary record from which "the circuit court [can] decide whether [Appellant] has proven prejudice by demonstrating the withheld information suggests a potential bias, and, if so, whether it would have supported a challenge for cause or would have been material to his use of peremptory strikes." Rowell, 444 S.C. at 117, 906 S.E.2d at 558; State v. Key, 431 S.C. 336, 339, 848 S.E.2d 315, 316 (2020) (remanding for further evidentiary proceedings on the grounds that a party to a criminal prosecution "should be given the opportunity to establish the applicability of a [new rule announced for the first time

while the case was pending before the South Carolina Supreme Court]”; favorably discussing the United States Supreme Court’s decision to remand a case, “[b]ecause the defendant did not have the opportunity to make [] a showing [illuminated by a newly announced rule],...to allow the defendant to attempt to make the showing”); Poch v. Bayshore Concrete Prods./S.C., Inc., 405 S.C. 359, 383, 747 S.E.2d 757, 770 (2013) (Pleicones, J., concurring) (stating that where a new test for determining the relationship between parent and subsidiary was adopted by the Supreme Court, “we should remand the case in order to allow the parties to present any additional relevant evidence, and to allow [the fact finder] to make a factual determination.”); S.C. Dep’t of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 672, 667 S.E.2d 7, 22 (Ct. App. 2008) (Hearn, C.J., concurring in part) (“Moreover, while I agree with the majority’s conclusion that the Master erred in the method he used to value the Tenant’s interest, were I to adopt a new method of valuation, I would reverse and remand. I believe it is highly inequitable...not to afford Tenant the benefit of a remand in order to develop the record under a method of valuation which has heretofore never been recognized in South Carolina.”).

In light of the requirements of due process and fundamental fairness dictating that, in the face of a new rule being announced for the first time, a criminal defendant, particularly one facing life in prison without parole, be given a meaningful opportunity to establish an appropriate record from which to obtain relief, and the dispositive impact if Appellant is able to satisfy the newly stated juror concealment test established in Rowell, it is in the interest of justice and judicial efficiency and economy for the Supreme Court to grant the requested stay for Appellant to immediately return to the trial court to develop the record consistent with Rowell’s newly established juror concealment test that overruled the existing forty (40) years of juror

concealment jurisprudence. In the alternative, if the Court will not grant Appellant a stay and remand this case for further development of the record consist with the newly established test in Rowell, Appellant respectfully moves the Court for a fourteen (14) day extension of time in which for Appellant to file his Petition for Certiorari and Appendix. This Motion is being made in good faith and for good cause under novel circumstances that rarely present themselves even when new tests and rules are announced by the Supreme Court. In light of these circumstances, and as previously stated, undersigned counsel has been diligently working on this appeal, examining and researching the impact of the Rowell decision, and specifically the proper and appropriate means and timing to seek permission to supplement the record in accordance with Rowell. However, given undersigned counsel's focus on the potentially dispositive impact of this request, if this request is denied, a brief extension would be needed to finalize Appellant's other arguments supporting a grant of certiorari by the South Carolina Supreme Court. Should the Court deny Appellant the stay and the opportunity to make the showing required by the newly stated juror concealment test and instead grant this request for extension, undersigned counsel will take all action necessary to ensure that any further delay of the appellate process will be unnecessary.

***[Signature Block on Following Page]***

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