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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

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

Appellate Case No. 2025-000404

THE STATE ....RESPONDENT,

v.

DEVIN ZACHARY ELIJAH RUTTLE.. PETITIONER.

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

On November 27, 2024, the Court of Appeals issued an unpublished opinion affirming Ruttle's convictions for murder and the unlawful carrying of a handgun. Ruttle's petition for rehearing was denied on January 31, 2025. This Court granted an extension of time in which Ruttle could file a petition for writ of certiorari through March 24, 2025. On March 24, 2025, Ruttle filed a motion to suspend the appeal and remand for further proceedings, or alternatively, for a fourteen-day extension of time to file the petition and appendix. This Court called for a response to be filed on or before April 4, 2025. This return follows.

Respondent objects to the motion to suspend the appeal and remand, but consents to the motion for an extension of time in which to file a petition for writ of certiorari and appendix. In support of this position, Respondent would respectfully show the Court:

Ruttle alleges that this Court should remand the matter to the trial court to allow Ruttle's juror concealment argument(s) to be considered in light of *State v. Rowell,* 444 S.C. 109, 906 S.E.2d 554 (2024). Respondent objects because Ruttle has already received a hearing on the matter. For context, Respondent offers a brief summary of the major points in Ruttle's appellate proceedings, including his previous remand and hearing on the juror issue.

Ruttle timely appealed in 2019. Though initially represented by appointed counsel from the Division of Appellate Defense, counsel was eventually retained for the appeal. Counsel moved to suspend the appeal to allow filing of a motion for new trial based on allegations that one juror concealed "disqualifying" information during voir dire. The Court of Appeals granted the motion on June 10, 2020, and the motion for new trial was filed on June 25, 2020. On May 12, 2021, Judge Cole held a hearing and received testimony from four witnesses, but not the juror because the juror "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." (Attachment 1, at 6). On April 7, 2022, Judge Cole issued an order denying the motion. (Attachment 1). Judge Cole determined that Ruttle had failed in his burden of proof. (Attachment 1, at 8).

Ruttle returned to the Court of Appeals and raised an issue alleging Juror 92 had intentionally concealed that she had a church association with the Ruttles and did not reveal her grandfather was the victim of a violent crime. In the unpublished opinion, the Court of Appeals resolved that Ruttle failed to show an abuse of discretion in Judge Cole's resolving that the juror "did not give false or misleading answers during voir dire," and the resulting denial of Ruttle's motion for a new trial. (Attachment 2, ¶ 1). In his petition for rehearing Ruttle maintained that there was error, and also asserted that the Court of Appeals, if it intended to apply the holding in

Rowell, should have "directed the parties to hold a new hearing on the new trial motion...." (Appellate Case No. 2024-UP-398, Pet. Rhrg. ¶ 4).

However, the Court of Appeals did not apply any test for evaluation of the evidence for the first time on appeal. Rather the Court of Appeals noted:

> *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.***

(Attachment n.9).

The Court of Appeals merely acknowledged the distinguishing feature here from *Rowell* – the trial court held a hearing. *See generally Rowell*, at 116, 906 S.E.2d at 558 ("We hold it was error for the circuit court to decline the request for an evidentiary hearing so Juror 164 could be examined as to whether his pending charges could have caused him to be biased."). The only test the Court of Appeals applied was that which should be applied: the standard of review. *See* Attachment 2, ¶ 1 (with the following notations: "*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.').").

Ruttle has submitted no argument that the Court of Appeals erred in this respect, but if he should wish to do so, Respondent submits it would be most properly a matter for his petition for writ of certiorari. At that time, the opinion and petition for rehearing can be compared to the ultimate argument(s) to be made before this Court.[1] Stated differently, it would be a benefit for the Court to have the issue raised and addressed through the certiorari process, with the additional benefit of the appendix, to allow for a fully informed decision as to whether any further action is due in context of the facts and circumstances of this particular case.

As to the extension of time, Respondent consents to a fourteen-day extension of time in which to file the petition and appendix.

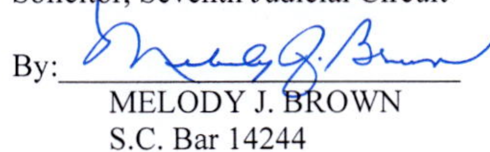
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit



By:________________________

MELODY J. BROWN
S.C. Bar 14244

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

April 4, 2025

ATTORNEYS FOR RESPONDENT

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[1] Respondent is at a disadvantage to address the procedural defenses that may be available to specific arguments as the petition has not yet been filed. *See generally* Rule 242(d)(1), SCACR ("[o]nly those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition"). Therefore, Respondent respectfully reserves the right to argue any and all available defense and expressly does not waive the right by virtue of the above statement.