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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Appellate Case No. 2025—000404

State of South Carolina..... Respondent,

vs.

Devin Zachary Elijah Ruttle……... Petitioner.

PETITION FOR WRIT OF CERTIORARI

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INDEX

CERTIFICATION OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals by Order dated January 31, 2025.

QUESTIONS PRESENTED

I. Should this case be vacated and remanded to give Petitioner, a criminal defendant, the opportunity to develop the record and establish the applicability of the new juror concealment framework announced for the first time after this case had already been briefed and argued before the Court of Appeals?

II. Where Petitioner's case was pending on direct review when the new rule prohibiting the giving of any implied malice charge in a self-defense case was enunciated in State v. Smith, 430 S.C. 226, 845 S.E.2d 495 (2020), did the Court of Appeals erred as a matter of law in holding that the implied malice jury charge issue was unreviewable on preservation grounds and that the charge of the court constituted harmless error?

III. Did the misapplication of Terwilliger's civil directed verdict standard and Curry's language, albeit misconstrued by bench and bar, allowing the automatic denial of immunity in cases with conflicting evidence constitute an error of law by subjecting Petitioner to a burden of proof far beyond a preponderance of evidence?

IV. Assuming arguendo that Petitioner should have known it was a bad idea to attempt to speak with decedent, was it an error of law for the court to debar Petitioner from his fundamental right of self-defense where his actions were not willingly and knowingly calculated to lead to combat?

V. Pursuant to Rowell's newly enunciated framework for juror concealment determinations, upon establishing a prima facie case of juror concealment justifying an evidentiary hearing, is the showing required of the movant merely proving prejudice by demonstrating the withheld information suggests a potential for bias, and, if so, that it would have been material to the use of peremptory strikes, or is the movant required to, without action or assistance of or inquiry by the court, to prove any and all relevant facts by clear and convincing evidence?

VI. In the face of unrefuted testamentary, photographic, videographic, documentary, and statistical evidence, did the Court of Appeals err as a matter of law in holding that Petitioner failed to establish the unity of identity between Juror 92, Nysha Jefferies, and the Nysha Jefferies that attended the church in which Petitioner was heavily involved and that was set up and led by Petitioner's father?

STATEMENT OF THE CASE

This is an appeal from criminal proceedings in the matter of State v. Devin Zachary Elijah Ruttle, in which Petitioner Devin Ruttle ("Mr. Ruttle") was charged with Murder and Unlawful Carrying of Handgun, and concerns matters of law in the self-defense immunity hearing that was held pursuant to S.C. Code Ann. §§ 16-11-450(A) and 16-11-440(C), and the subsequent jury trial of this case. See generally R. pp. 627-30.

The proceedings arise out of an incident wherein Mr. Ruttle, while on the grounds of the Timken Activity Center in Cowpens, South Carolina, admittedly utilized a concealed handgun carried about his person in self-defense, resulting in the death of Dalton Moore ("Decedent").

Mr. Ruttle filed a pretrial Motion for Statutory Immunity based on S.C. Code Ann. § 16-11-410 et seq., on the grounds that Mr. Ruttle was immune from prosecution because he had a legal right to use a firearm in self-defense when he was attacked by Decedent with a knife. R. pp. 32:17-33:21; 40:18-41:6. The pretrial hearing to consider Mr. Ruttle's Motion for Statutory Immunity was held on August 29, 2018. The pretrial hearing was conducted outside of the presence of the jury and was considered and ruled upon by Judge J. Derham Cole.

On September 5, 2018, Judge Cole issued a written Order denying Mr. Ruttle's Motion for Statutory Immunity because Judge Cole, applying State v. Curry, found that "[g]iven the actual testimony presented as well as reasonable interpretations or inferences to be drawn therefrom, it appears that the defendant's 'claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.'" R. p.4 (citing State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013)) (emphasis added).

Following the trial court's denial of Mr. Ruttle's pretrial Motion for Immunity, Mr. Ruttle was tried by jury from September 10 to September 13, 2018. The jury returned a guilty verdict against Mr.

Ruttle as to both the charges of Murder and Unlawful Carrying of Handgun and Judge Cole imposed a sentence of life imprisonment on Mr. Ruttle who was 19 at the time of the altercation and 21 at the time of trial. Following sentencing, Mr. Ruttle timely filed a Motion to Reconsider Sentence on September 19, 2018. A decision on Petitioner's Motion to Reconsider Sentence was not issued by the trial court until a year later on September 10, 2019, when Judge Cole issued a single page Order denying Mr. Ruttle's Motion to Reconsider.

Mr. Ruttle's Notice of Appeal was properly and timely served upon all parties of interest in this matter on September 12, 2019 seeking review of the trial court's Order denying Mr. Ruttle's Motion for Statutory Immunity, Mr. Ruttle's conviction, and the imposition of the life sentence. See R. p. 877. Mr. Ruttle was initially represented on appeal by the Appellate Division of the South Carolina Commission on Indigent Defense until undersigned counsel was retained by Mr. Ruttle and substituted as counsel of record by way of Order of this Court on March 2020. Realizing that an issue of juror concealment existed, undersigned counsel immediately drafted and filed a Motion to Suspend Appeal and for Leave to File Motion Regarding Disqualification of Juror ("Motion to Suspend") with the Court of Appeals on April 17, 2020. Mr. Ruttle's Motion to Suspend was granted on June 10, 2020 and Mr. Ruttle proceeded to file his Motion for New Trial with the trial court on June 25, 2020.

On July 21, 2020 counsel for the State emailed Judge Cole "request[ing] a formal, in- person, hearing to allow for proper examination and cross-examination of the witnesses" and stating that the State "anticipate[d] issuing some subpoenas for the hearing." See R. p. 849. On September 3, 2020 the Court informed counsel for the parties that Judge Cole "would like to schedule a hearing on Devin Ruttle's motion for a new trial", however due to difficulties arising from the pandemic, including the South Carolina Department of Corrections moratorium on prisoner transport, a hearing was not able to be held on Mr. Ruttle's Motion for New Trial until May 12, 2021. At the hearing, Mr. Ruttle, his

trial counsel, Rick Vieth, Mr. Ruttle's father and the founder and Pastor of New Life Deliverance Worship Center ("New Life"), and the Youth Pastor for New Life between 2012 and 2015, Travis Mimms, testified in support of Mr. Ruttle's Motion for New Trial. In addition to live testimony Mr. Ruttle also submitted photographs, videos, and court and law enforcement documents in support of his Motion. The State called no witnesses and presented no evidence in opposition to Mr. Ruttle's Motion for New Trial. Neither the court nor the parties subpoenaed the juror in question, Nysha Jefferies, Juror 92, to attend the hearing. Almost a year after the May 12, 2021 hearing, Judge Cole issued an Order denying Mr. Ruttle's Motion for New Trial on April 7, 2022.

After denial of Mr. Ruttle's Motion for New Trial, the case returned to the Court of Appeals, briefs were submitted in August of 2023, thereafter the case was argued before the Court on June 5, 2024. Subsequent to oral arguments, undersigned counsel read the Supreme Court's decision in State v. Rowell, 444 S.C. 109, 906 S.E.2d 554 (2024) in the July 17, 2024 Advance Sheets and, pursuant to Rule 208(b)(7), SCACR, immediately notified the Court of Appeals, "without argument" of the impact of the Rowell decision on the Mr. Ruttle's appeal. Despite Rowell overturning 43 years of juror concealment jurisprudence and announcing a previously unknown framework for analyzing juror concealment issues, the Court of Appeals provided the parties no additional opportunity to supplement the record or brief the new juror concealment framework. Instead, the Court of Appeals simply issued an Order denying Mr. Ruttle's appeal on November 27, 2024.

Mr. Ruttle timely filed his Motion for Rehearing on December 12, 2024, which was denied on January 31, 2025.

For the reasons stated in this Petition, it is the Mr. Ruttle's position that the Court of Appeals wrongly affirmed the decisions and actions of the trial court with regard to Mr. Ruttle's Motion for Immunity under the PPPA, Motion for New Trial on the grounds of juror concealment, and in

charging implied malice to the jury in a case in which the defendant admitted to unlawfully concealing a handgun about his person but maintained that he only armed himself and discharged the handgun in self-defense. Moreover, Mr. Ruttle maintains that the Court of Appeals, upon receiving Mr. Ruttle's supplemental citation to Rowell, wrongly failed to remand this case to the trial court for further evidentiary proceedings to ensure Mr. Ruttle a meaningful opportunity to establish the requisite evidentiary record and the applicability of the newly announced juror concealment framework. Accordingly, this Court should grant certiorari and remand this case for further evidentiary proceedings consistent with Rowell.

RELEVANT FACTS

Facts Pertinent to Motion for Self-Defense Immunity

This case arises out of an incident occurring May 5, 2017 in the parking lot of the Timken Community Center, located at 180 Foster Street, Cowpens, SC 29330 ("Timken Center"). See R. pp. 18-20; 32:17-33:21; R. pp. 174-75; 377:24-380:14.

The individuals involved in the events in question are Devin Ruttle, Lorenzo Calderon, a friend of Mr. Ruttle's ("Lorenzo"), Hunter Sizemore, who was a friend of Lorenzo's ("Hunter"), and Dalton Moore ("Decedent"). See R. pp. 25:24-26:10; 27:10–28:11; 30:21–33:21; 64:17-65:7; 66:7-67:16. Mr. Ruttle met Lorenzo at New Life Deliverance Worship Center ("New Life") where Mr. Ruttle's father is the Pastor and where Mr. Ruttle attended and assisted with worship services and youth group meetings. R. pp. 25:24-26:10; R. pp. 685:16-25; 732:22-734:12; 740:23-742:24. Mr. Ruttle knew of Decedent, but had no relationship with Decedent. R. pp. 25:15–26:16-17. While driving his car on the afternoon of May 5, 2017, Mr. Ruttle ran out of gas and reached out to Lorenzo to ask for a ride to a gas station. R. pp. 27:13-28:1; 61:19-62:11 Lorenzo showed up riding in Hunter's truck to give Mr. Ruttle a ride to the gas station. R. pp. 27:23–28:18.

After obtaining some gas, Mr. Ruttle retrieved his car and began driving to his girlfriend's house, at which time he drove past Decedent who appeared to be waving him down while walking along the side of the road near the Timken Center. See R. pp. 28:14–29:13; 31:1-8. Mr. Ruttle did not initially intend to stop, but due to an altercation that Mr. Ruttle witnessed between Lorenzo and Decedent a few weeks prior to the events of May 5, Mr. Ruttle decided that he would turn his car around and go speak with Decedent in hopes that he could speak peaceably to Decedent to let him know that he had no problems with or ill will towards him despite Decedent's issues with Lorenzo. See R. pp. 28:19–29:3; 31:1-15. Unbeknownst to Mr. Ruttle, after he had parted ways with Hunter and Lorenzo, Hunter, with Lorenzo riding in his truck, had driven in the same direction as Mr. Ruttle towards downtown Cowpens. R. p. 29:6-17. As Mr. Ruttle turned around in the school parking lot just beyond the Timken Center to go back and speak with Decedent, he saw Lorenzo jump out of the truck that Hunter was driving and approach Mr. Ruttle's car with a gun in his hand.[1] R. p. 31:10-20. Mr. Ruttle allowed Lorenzo to enter his car, but due to Lorenzo now being in the car with him, Mr. Ruttle did not want to try to speak to Decedent with Lorenzo present out of fear that Lorenzo might do "something violent towards [Decedent]."[2] R. pp. 31:10–32:5.

To keep separation between Lorenzo and Decedent while still attempting to peaceably speak

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[1] In direct contravention to the finding of the trial court, Hunter, who only knew Mr. Ruttle as "Dev," was driving his truck in which Lorenzo was a passenger—at no time did Lorenzo drive Hunter's truck, use it to follow Mr. Ruttle, or stop the truck in the roadway for him [Lorenzo] and Hunter to jump out of the truck. See R. p.2. Rather, Hunter slowed his truck down because Lorenzo began to, and did, jump out of the moving truck, after which time Hunter departed the area in his truck without ever having exited his truck. R. pp. 46:9-17; 64:17-65:7; 66:7-67:16; R. p. 243:9-18.

[2] Mr. Ruttle admitted in his testimony that when Lorenzo jumped out of Hunter's truck, and approached and entered his car, Lorenzo was "really mad at [Decedent]." R. pp. 31:25-32:1.

with Decedent, Mr. Ruttle parked his car on Marion Court, approximately 100 yards away and down a bit of a hill from where he believed Decedent was walking in the Timken Center parking lot, and demanded that Lorenzo stay in the car so that he [Mr. Ruttle] could speak with Decedent. R. pp. 32:6-33; 54:18-25. Before letting Mr. Ruttle leave the car to go speak to Decedent, Lorenzo pulled out a second gun and demanded that Mr. Ruttle take the gun "just in case." R. pp. 32:6-20. In hopes of convincing Lorenzo to stay in the car and away from Decedent, Mr. Ruttle took the gun offered by Lorenzo and concealed it in his waistband under his hooded sweatshirt. R. pp. 32:17-20; 36:3-9; 40:18–41:6.

Walking to the Timken Center parking lot, Mr. Ruttle found Decedent, who he approached in a non-aggressive manner with his empty hands out in the open and told him that he didn't want anything to do with whatever problem existed between Decedent and Lorenzo. R. pp. 32:21-33:2; 36:13-37:2; 39:15-41:6. In response to Mr. Ruttle's attempt to peaceably approach and speak with Decedent, Decedent reached behind his back and pulled a knife and began advancing aggressively on Mr. Ruttle.[3] R. pp. 32:21-33:17; 34:17-35:2; 36:13-37:10; 39:15-41:6. In response to Decedent pulling a knife and aggressively advancing on him, Mr. Ruttle armed himself in self-defense with the handgun that until that moment had been concealed and known only to Mr. Ruttle, entreated Decedent to "stop," and then, when Decedent continued his armed attack, fired in self-defense, striking Decedent once under the arm and killing him. R. pp. 32:21-33:21; 41:3-6. After the shock of the attack by Decedent and having to defend himself therefrom, Mr. Ruttle retreated to his car to find that Lorenzo had got in the driver's seat after hearing the shots. R. pp. 33:22-34:12; 55:11-

[3] During the immunity hearing the State admitted that there was in fact an open knife at the scene and that it was Decedent's knife. R. p. 85:3-4.

19. After Mr. Ruttle entered the passenger seat of his car, Lorenzo drove Mr. Ruttle's car away from the scene before Mr. Ruttle and Lorenzo switched places and Mr. Ruttle drove to his girlfriend's house where he gave her his money in anticipation of turning himself in to the authorities. R. p. 34:3-12.

Facts Pertinent to Juror Concealment

Prior to his arrest in 2017, Mr. Ruttle attended New Life since it was founded in 2010 by his father Bunty Desor, who was and still is the Pastor at New Life. As the Pastor's son, Mr. Ruttle not only attended worship services and youth group meetings, but also assisted with the running thereof. As identified by New Life's Youth Pastor, Travis Mimms, the girl he knew as Nysha, a black female who was a "young teenager" in 2012, and whom Mr. Mimms identified as the same individual by way of Facebook photographs as Nysha Jefferies, Juror 92, regularly and consistently attended New Life during 2012 and 2013 before her attendance became less consistent in 2014 and ultimately stopped thereafter. R. p. 715:2-721:22; 732:16-738:13; p. 782-833.

As confirmed by the family records presented to the court, including inscriptions on family photos, and court records of which Petitioner's counsel expressly requested the trial court take judicial notice, Nysha Jefferies' mother is Janie Jefferies, and her grandfather is Charles Rosemond, Sr. See R. 870; R. p. 732:16-738:13; 757:19. Sadly in 2015 Nysha Jefferies' grandfather was the victim of three (3) violent crimes, armed robbery, burglary, and kidnapping, that ultimately resulted in him being shot to death. R. p. 757:20-758:4; 758:18-759:8; 760:3-9; 760:3-18. The assailant, Aundra Hunter, Jr., responsible for the violent crimes against Nysha Jefferies grandfather was tried in the Greenville County General Sessions Court between September 10 and 13, 2018, the exact same dates during which Mr. Ruttle's trial occurred. Id.; see also State v. Aundra Hunter Jr., 2015A2330210945, 2015A2330210946, 2015A2330210948, 2015A2330210950, 2015A2330210952, Greenville

County Public Index (Disposition Date 9/13/2018).[4]

Prior to trial and in preparation therefor, Mr. Ruttle's trial counsel received the Juror Information Packet from the Spartanburg County Clerk of Court's Office. R. pp. 662:5-667:7. Trial counsel provided his client and his family copies of the juror information to review whether they knew any of the names of the potential jurors indicated in the Juror Information Packet. R. pp. 662:5-667:7; 670:11-23; 694:15-696:5. However, Juror 92's, Nysha Jefferies, Form 235 Juror Information Form was not included in the Juror Information Packet provided to counsel prior to commencement of the September 10, 2018 term of court because Nysha Jefferies, in contravention of the language requiring the return of the Form 235 Juror Information Form within three (3) days of receipt, did not return her Form 235 to the Clerk of Court's Office and instead was required to fill a Form 235 out upon arrival to the Spartanburg County Courthouse on Monday morning, September 10, 2018. See

[4] Pursuant to Rule 201(d), SCRE, "A court shall take judicial notice if requested by a party and supplied with the necessary information." (Emphasis added). Petitioner's counsel expressly requested three (3) times, twice in open court and once via email on May 25, 2021, that the court take judicial notice of the content of the court records concerning Nysha Jefferies, Janie Jefferies, Charles Rosemond, Sr., Aundra Hunter, Jr., and Thomas Lamont Rosemond, and even provided the court with printouts of the associated Greenville and Spartanburg County Public Index Reports, Spartanburg County Magistrate Court records, and information concerning arrest records that were publicly available on the Spartanburg County Sheriff's Office website and preserved by internet archive capture. Philips v. Pitt Cnty. Mem. Hosp., 572 F.3d 176, 180 (4th Cir. 2009) (Courts "may properly take judicial notice of matters of public record."); Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that the most frequent use of judicial notice of ascertainable facts is in noticing the content of court records.") (internal quotation marks omitted; emphasis added); see also Corbin v. Hearst-Argyle Television, Inc., 561 F. Supp. 2d 546, 550-51 (D.S.C. 2008) (holding that a court may take "judicial notice of matters of public record," and, "[a]ccordingly, the defendants are right to argue that the Court may consider [a] police report as a matter of public record") (internal quotation marks omitted). Dooly v. Sears, C/A 8:22-cv-01734-DCC-JDA, at *1 n.2 (D.S.C. Jul. 20, 2022) (accessing the Spartanburg County Public Index and taking judicial notice of and reviewing the records from the docket in plaintiff's state court action).

R. pp. 694:15-696:5; R.785-818; R. p. 784.

At the commencement of voir dire the court explained the purpose of voir dire to the potential jurors and unequivocally sought for potential jurors to disclose "any connection whatsoever" with anyone involved in the trial. R. p. 119:22-120:20. At the conclusion of voir dire, the court, after again asking all witnesses and related family members in the gallery, which included Devin's father the founder and pastor of New Life, to stand and face the jury panel, sought for the potential jurors to disclose if any potential juror believed they had "seen somewhere," recognized, knew, or had "any connection" to the witnesses or related family members. R. pp. 144:21-145:16. Despite several jurors responding affirmatively to the court's request to disclose "any connection" to any of the parties, attorneys, witnesses, or their families, which resulted in potential jurors disclosing even attenuated connections, such as knowing the mother of Mr. Ruttle's attorney "years ago," Nysha remained silent.

The court also asked the following specific voir dire questions relevant to this case:

- Do you or any members of your immediate family attend or have you ever attended the New Life Deliverance Worship Center…. R. p. 131:7-10.

- Has any member of the jury panel or any members of your immediate family ever been the victim of, or have you or that family member ever been accused of having committed[,] any type of criminal offense that might be characterized or described as a violent offense? You or a family member has been the victim of such or you or a family member has been accused of such. And violent offenses might include the crimes of 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 offense. Have you or that family member ever been the victim of such or ever been accused of having committed such? If so, please stand. R. pp. 131:17-132:6.

Even though, unbeknownst to Mr. Ruttle, Nysha Jefferies had regularly attended New Life and its weekly youth group meetings between 2010 and 2014, she did not reveal this information when asked on voir dire. R. p. 127:9-16; R. pp. 715:2-721:22; 732:16-738:13; 757:19-762:16; R. 781-83; R. p.

870. In response to the inquiry regarding whether any juror or their immediate family members had been the victim of a violent crime, six (6) jurors did respond, three (3) of whom were excused from service including one who was excused on the basis that the juror's nephew was murdered in a shooting. R. pp. 132:7-136:20. Despite presumably listening to the judge's question and the various responses of other jurors, Nysha Jefferies did not disclose that her grandfather had been the victim of a 2015 burglary, kidnapping, and armed robbery that resulted in his death.[5]

Mr. Ruttle had seven (7) peremptory challenges remaining when Nysha's name was drawn for service on the jury and she was seated.[6] R. pp. 143:11-148:19.

ARGUMENT

I. Introduction

As an initial matter, given the complete break in the four decades of juror concealment jurisprudence, Petitioner respectfully requests the Court grant certiorari in this case, dispense with further briefing and remand this case for further evidentiary proceedings consistent with Rowell and the newly adopted framework by which issues of juror concealment are now analyzed and decided. Failure to remand this case for further evidentiary proceedings given the sea change effected by Rowell would constitute a substantial constitutional due process violation by denying Petitioner a meaningful opportunity to establish an appropriate record from which to obtain relief. Moreover, immediate remand will ensure significant judicial economy for both the courts and the parties either by providing

[5] As noted, coincidentally, the assailant who perpetrated the violent crimes against Nysha's grandfather was actually standing trial in Greenville County at the same time as this trial. See 13th Circuit Public Index Records.

[6] One of Mr. Ruttle's peremptory strikes was utilized to strike Juror 125, who was one of the jurors who responded to the question regarding violent crimes and indicated that her family member was the victim of a crime. R. pp. 135:25-136:18; pp. 152:24-153:4.

a potential dispositive resolution to all issues on appeal or by allowing all issues that will need appellate consideration to be decided at one time as opposed to in a piecemeal manner.

Even in the event the Court elects not to grant immediate remand based on Rowell, the Court should nonetheless grant certiorari on the remaining questions presented on the grounds that the Court of Appeals decisions with regard to self-defense and the PPPA, the sufficiency of evidence to establish identity, and the giving of an implied malice jury charge in a self-defense case and the harm arising therefrom are in direct conflict with settled decisions of the Supreme Court and implicate fundamental constitutional rights. Although not in direct conflict with Supreme Court precedent, the remaining issues presented in this Petition concerning the standard and burden of proof applicable to questions of juror concealment under the new Rowell framework is a novel question of law that begs determination by the Court and would provide significant guidance to the bench and bar as to the burdens and duties attributable to the parties and the trial court judge.

II. Given that 43 years of juror concealment jurisprudence was overruled and replaced by the framework announced in State v. Rowell, 444 S.C. 109, 906 S.E.2d 554 (2024), the Court of Appeals opinion should be vacated and the case immediately remanded on the question of juror concealment to give Petitioner, a criminal defendant, the opportunity to argue and develop the record consistent with the newly announced framework illuminated in Rowell.

"Fundamentally, due process requires notice, a meaningful opportunity to be heard, and judicial review." Thompson v. State, 415 S.C. 560, 566, 785 S.E.2d 189, 192 (2016) (citation omitted). To ensure a meaningful opportunity to be heard "mandates that a litigant be placed on notice of the issues which the court is to consider. Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002). Consequently, where a seismic shift such as that effected by Rowell occurs, overturning decades of well-settled jurisprudence in favor of new and previously unknown framework, the notice requirements of procedural due process demand remand in favor of further evidentiary proceedings

to ensure that litigants, and particularly defendants subject to criminal prosecution, receive a meaningful opportunity to develop the necessary factual record and the applicability of the previously unknown legal framework. 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.").

Accordingly, 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 Petitioner 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 Court to immediately remand the case for another hearing consistent with the newly announced Rowell framework. State v. Rowell, 444 S.C. at 117, 906 S.E.2d at 558 ("Accordingly, we reverse the court of appeals' opinion and remand for an evidentiary hearing on Juror 164's failure to disclose his pending criminal charges. At the hearing, the circuit court shall decide whether Rowell 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.").

III. Petitioner's case was pending on direct review when the new rule for the conduct of criminal prosecutions prohibiting the giving of any implied malice charge in a self-defense case was enunciated in State v. Smith, 430 S.C. 226, 845 S.E.2d 495 (2020), and, accordingly, the Court of Appeals erred as a matter of law in holding that the implied malice jury charge issue was unreviewable on preservation grounds and that the charge of the court constituted harmless error.

The Court of Appeals correctly concluded that "the trial court did err in providing both an implied malice and a self-defense jury instruction," however the Court of Appeals committed an error of law in concluding the issue was unpreserved. State v. Ruttle, No. 2019-001570, 2024 WL 4903883, at *5 (S.C. Ct. App. Nov. 27, 2024). The Court of Appeals mistake is due to a misinterpretation of the language of State v. Belcher, 385 S.C. 597, 613, 685 S.E.2d 802, 810 (2009), overruled on other grounds by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), and other cases that state that "[b]ecause our decision represents a clear break from our modern precedent, today's ruling is effective in this case and for all cases which are pending on direct review or not yet final where the issue is preserved." Belcher, 385 S.C. at 612, 685 S.E.2d at 810 (emphasis added). Despite being separated by the disjunctive "or," the Court of Appeals conveniently and improperly appends the "where the issue is preserved" qualifier to both cases that are not yet final and those on direct review. However, "[t]he word 'or'…, is a disjunctive particle that marks an alternative. The word 'or'…imports choice between

two alternatives and as ordinarily used, means one or the other of two, but not both." Brewer v. Brewer, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963) (citations omitted). Thus, interpreting the Supreme Court's language so as to give effect to each word, the scope of the effect of Belcher and similar decisions should properly be read as applying to all case 1) on direct review, and 2) not yet final where the issue is preserved.

This conclusion is confirmed by this Court's citation to Griffith v. Kentucky, 479 U.S. 314, 323, 107 S. Ct. 708, 713, 93 L. Ed. 2d 649 (1987), which plainly explains why the "where the issue is preserved "qualifier does not apply to cases pending on direct review, stating that:

> If we do not resolve all cases before us on direct review in light of our best understanding of governing constitutional principles, it is difficult to see why we should so adjudicate any case at all.... In truth, the Court's assertion of power to disregard current law in adjudicating cases before us that have not already run the full course of appellate review, is quite simply an assertion that our constitutional function is not one of adjudication but in effect of legislation….
>
> Second, selective application of new rules violates the principle of treating similarly situated defendants the same. As we pointed out in United States v. Johnson, the problem with not applying new rules to cases pending on direct review is "the actual inequity that results when the Court chooses which of many similarly situated defendants should be the chance beneficiary" of a new rule. Although the Court had tolerated this inequity for a time by not applying new rules retroactively to cases on direct review, we noted: "The time for toleration has come to an end."

Id. (citations omitted; second emphasis in original). The soundness of the logic of applying new rules such as that enunciated in Smith to all cases pending on direct review, but only those net yet final where the issue is preserved is further confirmed by the fact that parties whose cases are already pending on direct review do not have the opportunity to raise the issue to the trail court and obtain a ruling thereon whereas if a case is still pending before the trial court and, as such, not yet final, the parties have an opportunity, and thus an obligation, to raise the issue to the trail court an obtain a ruling thereon. The proffered interpretation is clearly the correct interpretation in that it

simultaneously achieves and honors the tripartite purpose of our issue preservation rules, "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments[, to] serve[] as a keen incentive for a party to prepare a case thoroughly[, and to] prevent[] a party from keeping an ace card up his sleeve-intentionally or by chance-in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case," I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000), where preservation is possible, and where not possible, i.e., once a case has proceeded past a final verdict in the trial court and is pending on direct review, it protects against the "actual inequity" resulting from the "selective application of new rules" and "not resolv[ing] all cases…on direct review in light of [appellate courts'] best understanding of governing constitutional principles." Griffith, 479 U.S. at 323. Accordingly, since this case was already pending on direct review when Smith enunciated the new rule prohibiting any implied malice charge in self-defense cases, the trial court's jury charge on implied malice is reviewable by this Court regardless of whether the issue was expressly preserved at trial.[7] To decide otherwise would be to elevate form over substance and to "denigrate[] the primary purpose of the

[7] Assuming arguendo that the "where the issue is preserved language" applies across the disjunctive "or" to cases already pending on direct review, the impropriety of the implied malice charge was tangentially mentioned and raised when Mr. Ruttle's trial counsel requested the trial court charge self-defense to the jury under circumstances like those in Smith, in which "[i]n claiming self-defense, Smith admitted he had an express intent to kill, but argued his intent to kill was legally justified due to an imminent threat to his life from the rival group. Thus, there was no need for the jury to infer his malice from the circumstances surrounding the shooting. Rather, the jury was faced with the choice of either believing Smith's story and finding he acted in self-defense, or believing Smith had a self-admitted intent to kill that was *not* legally justified—the very definition of express malice. State v. Smith, 430 S.C. 226, 233, 845 S.E.2d 495, 498 (2020); R. p. 455:13-14. Though "[t]his might well be the bare minimum of what an appellant must do to preserve an issue for appeal. But this state's jurisprudence pairs its insistence on preservation with a hesitance to make it a straitjacket. Hughes on behalf of Est. of Hughes v. Bank of Am. Nat'l Ass'n, No. 2018-001443, 2021 WL 4770165, at *4 (S.C. Ct. App. Oct. 13, 2021) (holding "passing" reference to timeliness in a memorandum footnote preserved the issue for appeal), aff'd as modified, 442 S.C. 113, 898 S.E.2d 102 (2024).

judiciary, which is to serve the citizens and the business community of this state by settling disputes and promoting justice." Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 332, 730 S.E.2d 282, 287 (Toal, C.J., concurring in result and dissenting in part); Moses v. State, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (Ct. App. 2024) (quoting State v. Morales, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023)) ("However, appellate courts are to be mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner and thus should not apply preservation rules in a manner that elevat[es] form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.") (internal quotations omitted).

In addition to erring with regard to the reviewability of the implied malice charge in light of Smith, the Court of Appeals further erred in concluding that the giving of the implied malice charge constituted harmless error. Holding the implied malice charge was harmless error is in patent and direct conflict to this Court's holding in Smith. 430 S.C. at 233, 845 S.E.2d at 498. As in Smith, throughout the course of the trial, in opening statements and again in closing arguments, counsel for Mr. Ruttle conceded that he concealed a handgun on his person without a concealed weapons permit. R. p. 173:5-10; pp. 510:19-511:4; pp. 514:20-515:7; p. 517:16-20. "In doing so, [Mr. Ruttle] implicitly acknowledged he had an express intent to kill the [Decedent] at whom he was shooting, but asserted his actions were justified given his belief that he faced an imminent threat to his own life." Smith, 430 S.C. at 229, 845 S.E.2d at 496. The harm caused by the court's implied malice charge was exponentially magnified by the State's closing argument that Mr. Ruttle was illegally armed with a firearm and that "based on these circumstances and the shooting and the number of shots that you can infer malice…If you carry a gun somewhere to hurt somebody, I submit you're going there with malice." R. p. 482:3-4, pp. 483:22-484:2. Between the, admittedly, erroneous implied malice charge and the State's inferred malice closing, the trial court and the State "essentially eliminated [the State's]

own burden to prove all of the elements of [] murder beyond a reasonable doubt, specifically that [Mr. Ruttle] acted with malice aforethought. Smith, 430 S.C. at 233, 845 S.E.2d at 498. "For a constitutional error of this magnitude, 'We need go no further than saying we cannot conclude the error was harmless beyond a reasonable doubt.' Belcher, 385 S.C. at 611, 685 S.E.2d at 809 ('[W]e are firmly convinced that instructing a jury that 'malice may be inferred by the use of a deadly weapon' is confusing and prejudicial where evidence is presented that would reduce, mitigate, excuse or justify the homicide. A jury charge is no place for purposeful ambiguity.')." Id. at 233-34, 845 S.E.2d at 498-99.

IV. The denial of Petitioner's motion for immunity under the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 et. seq. (the "Act" or "PPPA") was controlled by a clear error of law including the misapplication of State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013) and Terwilliger v. Marion, 222 S.C. 185, 72 S.E.2d 165 (1952).

Despite this Court's recent and repeated admonition and rejection of the applicability of Curry, 406 S.C. 364, 752 S.E.2d 263 to typical pre-trial self-defense immunity hearings, the Court of Appeals seemingly willfully ignored the fact that the trial court's denial of immunity to Mr. Ruttle inextricably relied upon Curry to deny Mr. Ruttle immunity on the ground that his "claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution." R. p. 3; State v. Andrews, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019) (clearly rebuking, rejecting, and overturning a trial court's denial of immunity based on the trial court incorrectly and inappropriately relying on Curry, 406 S.C. 364, 752 S.E.2d 263); State v. Cervantes-Pavon, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019) ("Circuit courts utilize pretrial hearings to determine whether a defendant is entitled to immunity under the Act, employing a preponderance of the evidence standard."). As opposed to some cases in which the Court has found that trial judges have merely given lip-service to Curry while still satisfying their obligation to act as the ultimate finder of fact for purposes of the immunity hearing, Judge Cole's butchered and incomplete "quotation" of Terwilliger

v. Marion, 222 S.C. 185, 188, 72 S.E.2d 165, 155 (1952) for the proposition that "[i]f there is anything tending to create distrust in his truthfulness, the question must be left to the jury," confirms that the trial court was not merely giving lip-service to the Curry directed verdict standard, but rather used Curry as the lynchpin for the automatic denial of pre-trial immunity.[8] R. p. 3.

Beyond the misquotation, the court's reliance on Terwilliger is more problematic because review of the actual language of the opinion makes clear that, similar to the procedural stance in Curry, it involves the denial of a directed verdict not a pretrial immunity hearing governed by a preponderance standard and requiring the trial judge to act as the ultimate fact finder. Unfortunately, in addition to Terwilliger being a directed verdict case, it was also a civil property dispute, not a criminal prosecution, which appears, from the Judge Cole's references to "reasonable inferences," to have resulted in the court deciding the question of pre-trial immunity not by the correct preponderance of evidence standard or even the criminal directed verdict standard, which while still incorrect would at least be applicable to criminal proceedings, but by utilizing the wholly inapplicable civil directed verdict. See R. p. 3-4 ("[I]t might be reasonably inferred…it would be reasonable…to conclude…Given the actual testimony presented as well as reasonable interpretations or inferences to be drawn therefrom, it appears that the defendant's 'claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.'");

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[8] The quotation utilized by the court from Terwilliger, 222 S.C. at 188, 72 S.E.2d at 155, properly reads:

> [T]here still remains the question of its inherent probability and the credibility of the witness or his interest in the result. To justify a Court 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.

compare Steinke v. S.C. Dep't of Labor, Licensing & Reg., 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999) ("In ruling on motions for directed verdict or [JNOV], the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions."), with State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) ("A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'") (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)); R. p.3. That said, regardless of whether civil or criminal, the misapplication of the directed verdict standard to decide the pre-trial immunity determination constituted an egregious error of law that wrongfully required Mr. Ruttle to establish entitlement to self-defense immunity beyond any "question" or "anything tending to create distrust in his truthfulness," a standard that certainly exceeds the correct preponderance of the evidence standard applicable to pre-trial immunity determinations. Id.

The misapplication of Curry and the compounding of that error through reliance on Terwilliger to "automatically deny immunity" because Judge Cole believed "reasonable [] inferences" presented a "quintessential jury question" was and is in direct conflict with the controlling Supreme Court decisions in Andrews and Cervantes-Pavon. Consequently, the Court should grant certiorari and reverse or vacate and remand for a new hearing the trial court's denial of pre-trial immunity.

V. It was an error of law for the Court of Appeals to find Petitioner was debarred from PPPA immunity on the grounds that Petitioner "brought on the difficulty" because even if Petitioner should have known that attempting to speak with the decedent was a bad idea, Petitioner's actions were not willingly and knowingly calculated to lead to combat.

The Court of Appeals erred as a matter of law in holding that doing something that may in retrospect be unwise because it affords an opportunity for conflict forfeits one's right to self-defense

despite the act not willingly and knowingly being calculated to lead to combat. State v. Douglas, 411 S.C. 307, 321n.8, 768 S.E.2d 232, 240 n.8 (Ct. App. 2014) (affirming grant of immunity under subsection440(C) and trial court's "implicit finding" that respondent was without fault despite respondent having prior violent experience with decedent whereby he "should have known that sharing almost two full bottles of vodka with [decedent] was a bad idea" because "[o]ne who merely does an action [that]affords an opportunity for conflict is not thereby precluded from claiming self-defense…Before an act may cause forfeiture of the fundamental right of self-defense it must be willingly and knowingly calculated to lead to conflict") (emphasis in original; citation omitted). Regardless of the fact that a Monday-morning quarterback sitting on the bench or in a jury box might see Mr. Ruttle's desire to speak with the decedent as unwise, i.e., a "bad idea," and creating the possibility for conflict, none of the actions cited by the Court of Appeals, i.e., Mr. Ruttle's friend having problems with Decedent, Mr. Ruttle driving by Decedent going to and from a store, and Mr. Ruttle approaching the decedent with a weapon that was concealed until Decedent pulled out a knife and charged Mr. Ruttle, establish that Mr. Ruttle's actions were willingly and knowingly calculated to lead to combat.

This Court has made abundantly clear that for an act to debar an individual from his fundamental right to self-defense as guaranteed by the Second Amendment to the United States Constitution, the defendant's conduct must be "reasonably calculated to provoke [the] difficulty," such that it is the "proximate cause of the incident." State v. Glenn, 429 S.C. 108, 120, 838 S.E.2d 491, 497 (2019); State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1993) (holding the "burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide."). Although Mr. Ruttle possibly "should have known" that trying to go speak with the Decedent who had ongoing issues with Mr.

Ruttle's friend, Lorenzo, "was a bad idea," the fact is that "fault" or "provocation" of that nature is not sufficient to deny one's fundamental right of self-defense. State v. Jacobs, 78 S.C. 29, 4 S.E. 799, 800 n.1 (1888) (affirming trial court's statement of the law of the first element of self-defense: "A defendant cannot invoke the plea of self-defense if he provoked or brought on the difficulty, or is not reasonably free from fault. The acts provoking the combat must be clearly calculated to have such effect.") (emphasis added). Thus, applying the proper interpretation of the "without fault" element of self-defense, there is no evidence to support a conclusion that Mr. Ruttle clearly calculated to provoke combat with the Decedent.

VI. Pursuant to Rowell the Court of Appeals erred as a matter of law in affirming the trial court's misapplication of State v. Aldert, 333 S.C. 307, 509 S.E.2d 811 (1999) to erroneously impose upon Petitioner a heightened burden of proof of clear and convincing evidence for the establishment of juror concealment.

Because a criminal defendant's liberty is at stake, both the United States and the South Carolina Constitutions provide rigorous protections to the inviolate right to a fair trial by a competent and impartial jury. U.S. Const. Amends. VI and XIV; S.C. Const. Art. I § 14; see also Long v. Norris & Assocs., LTD., 342 S.C. 561, 578, 538 S.E.2d 5 (Ct. App. 2000) ("A raison d'etre for the jury system in this country is to provide litigants the assurance of a fair and impartial trial."). To protect the rights of both parties to an impartial jury the "trial court must conduct voir dire of the prospective jurors to determin[e] whether the jurors are aware of any bias or prejudice against a party, as well as to 'elicit such facts as will enable the [the parties] intelligently to exercise their right of peremptory challenge.'" Coaxum, 410 S.C. at 327, 764 S.E. 2d at 245 (quoting State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001)).

Despite the fact that "[i]t is the duty of the trial judge to ascertain the qualifications of the jurors, and when the discharge of this responsibility is thwarted by mischance, or otherwise, it is within

the court's inherent power to remedy the situation when brought to his attention," the lower courts misapplied State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999), which is properly "limited solely to circumstances where the jury engages in premature deliberations," to impose upon Mr. Ruttle the burden to produce Nysha Jefferies and to prove through live testimony of Nysha Jefferies that she, Juror 92, was the same Nysha who attended New Life and the same Nysha Jefferies whose grandfather was the victim of violent crimes resulting in his death by clear and convincing evidence. Gray v. Bryant, 298 S.C. 285, 287, 379 S.E.2d 894, 895-96 (1988); Coaxum, 410 S.C. at 327, 764 S.E.2d at 245 ("In the event of [false or misleading answers during voir dire], the trial court must inquire into whether the withheld information affects the jury's impartiality). The misapplication of Aldret to Mr. Ruttle's Motion for New Trial imposed upon Mr. Ruttle the duty to request the reassembly of the juror(s) and the attendant "clear and convincing" burden imposed by Aldret in cases of early deliberation jury misconduct. Aldret, 333 S.C. at 315, 509 S.E.2d at 814 (holding that the "party claiming [premature deliberation] juror misconduct has burden to prove prejudice by clear and convincing evidence"); id. ("At such an evidentiary hearing, the trial court may, upon request of the moving party, reassemble the jurors and conduct voir dire to ascertain the nature and extent of the premature deliberations") (emphasis added); see also R. p. 8 ("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."). This Court has never assigned the obligation to the moving party raising an issue of juror concealment to either 1) reassemble the jurors, or 2) to conduct voir dire the reassembled jurors. To the contrary, this Court has time and again stated that it is the duty of the trail court to inquire into whether the withheld information affects the jury's impartiality. Coaxum, 410 S.C. at 327, 764 S.E.2d at 245 ("[T]he trial court must inquire…").

Counterintuitively, there does appear to have been one benefit of the trial court's

misapplication of Aldret, which is the fact that the decision by the trial court to hold a hearing on Mr. Ruttle's Motion for New Trial appears to confirm that the trial court found the affidavits of Travis Mimms and Rick Vieth credible and indicative of misconduct. Rowell, 436 S.C. at 68, 870 S.E.2d at 182 (citing Aldret for the holding that "if the trial court finds the affidavits credible and indicative of misconduct it should hold an evidentiary hearing to assess whether such deliberations occurred"); Tucker, 815 S.E.2d at 472 ("Unless the trial judge finds the moving party's affidavits credible, our rules wisely forbid exposing jurors to open-ended inquiries into how they performed their duty.").

In contrast to the language in Aldret requiring the moving party to request the reassembly of jurors, once "the situation [concerning Nysha Jefferies' intentional concealment] [was] brought to his attention," it was the "duty of the trial judge," Gray, 298 S.C. at 287, 379 S.E.2d at 896, "to inquire into whether the withheld information affects the jury's impartiality." Coaxum, 410 S.C. at 327, 764 S.E.2d at 245. Furthermore, more recent applications of Aldret even appear to acknowledge the authority of the court to sua sponte summon jurors when it concludes that a hearing is required by credible affidavits of juror misconduct. Ethier v. Fairfield Mem'l Hosp., 429 S.C. 649, 653, 842 S.E.2d 355, 358 (2020) (noting that after counsel filed an affidavit regarding juror misconduct with the trial court the "court first called [the offending juror]…[and] [t]hereafter, the court called the remaining members of the jury"); see also Holy Cross v. Orkin Exterminating Co., 384 S.C. 441, 682 S.E.2d 489, 491, 494 (2009) (reinstating trial court's decision concerning juror misconduct where the judge notified the parties that he was informed by an alternate juror of possible juror misconduct, "[t]he judge summoned the jurors to appear at the courthouse on September 7, 2005, for sworn examinations," and "[t]he judge's thorough fact- finding inquiry led him to the conclusion" that the jury was not improperly influenced by the juror misconduct) (emphasis added).

Accordingly, it was within the "inherent power" of the court to sua sponte summon to

the hearing and, if it felt necessary, to question Nysha Jefferies if the court had any lingering question as to the unity of identity between Nysha Jefferies and the individual. Reliance on Aldret to excuse the trial court from its duty to actively protect the sanctity and fairness of the jury box was a clear error of law that would dictate the reversal of the Court of Appeals decision and the remanding of this case for further evidentiary proceedings even had the Court not recently issued the Rowell decision and completely changed the framework of the juror concealment analysis.

VII. The Court of Appeals erred as a matter of law in holding that Petitioner failed to establish the unity of identity between Juror 92, Nysha Jefferies, and Nysha Jefferies who attended the church in which Petitioner was heavily involved and that was established and led by Petitioner's father.

It was a clear error of law for the lower courts to conclude that Mr. Ruttle failed to sufficiently prove the unity of identity between Nysha Jefferies, Juror 92, and the Nysha Jefferies who attended Mr. Ruttle's church. State v. Johnson, and numerous other opinions from jurisdictions throughout the country establish that, even in a criminal case where identity must be established beyond a reasonable doubt, concordance of name alone is sufficient to show unity of identity particularly where the name in question is sufficiently uncommon and the opposing party offers no evidence to rebut the unity of identity. 350 S.C. 543, 548, 567 S.E.2d 486, 488 (Ct. App. 2002) ("The State proffered certified copies of court records showing that a Demarco Johnson pled guilty in 1997 to two [charges]. Johnson offered no evidence to suggest he was not that Demarco Johnson. Under these circumstances, the evidence was sufficient to show that Johnson and the individual previously convicted were one and the same.").[9] In addition to disregarding weight of cases from both South Carolina and numerous

[9] Johnson, 350 S.C. at 548 n.17, 567 S.E.2d at 488 n.17 (citing Lewis v. State, 234 Ga.App. 873, 508 S.E.2d 218, 222 (1998) for the holding that "where the defendant presented no evidence contradicting that he was the person named in the certified court documents, '[c]oncordance of name alone is some evidence of identity' and was sufficient to show the defendant and the individual previously convicted

other jurisdictions, the Court also overlooked the numerous and unrefuted corroborating facts presented to the trial court through live testimony and documentary evidence and to this court through analysis of Social Security Administration, Baby Names from Social Security Card Applications - National and State-Specific Data that clearly supported the conclusion, to a high degree of certainty, that a unity of identity existed between Nysha and Juror 92, Nysha Jefferies.[10]

CONCLUSION

Petitioner respectfully requests that this Court GRANT A WRIT OF CERTIORARI to review the Court of Appeals' decision, and grant the relief outlined in the Introduction, supra.

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Date: July 19, 2025
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were the same person" and Murphy v. State, 399 So.2d 340, 346 (Ala.Crim.App.1981) for the holding that a "certified copy of prior conviction of individual with the same name as the defendant was sufficient as it 'raised a prima facie presumption of the sameness of the person' and '[t]here was no attempt to rebut that presumption'); see also State v. Wooten, 92 S.C. 61, 64, 75 S.E. 212 (1912) (affirming conviction and increased repeat offender sentence based on identification of defendant "Ed Wooten" through the admission of court records that disclosed the prior conviction of one "W.E. Wooten"); California v. Luckett, 1 Cal.App.3d 248, 253 (Cal. App. 1969) (holding "the name Samuel Luckett is sufficiently uncommon that, quite apart from the testimony of the witnesses, the finding of identity of person is supported by an inference based on identity of name" and that "the strength of the inference will depend in particular cases on whether the name is common or unusual."); Hefferman v. United States, 50 F.2d 554, 557 (3rd Cir. 1931) (holding that evidence of the "same very unusual name" with the "same address" in the "same city" was sufficient to establish identity); see, e.g., Idaho v. Lawyer, 244 P.3d 1256, 1260 (Idaho App. 2010) (compiling cases and holding that "a combination of personal and nonpersonally identifying evidence, when considered together, may at some point be sufficient to establish identity beyond a reasonable doubt. To hold otherwise is to require absolute certainty which the reasonable doubt standard does not require.").

[10] Contrary to the weight of South Carolina case law, statutory, and regulatory laws, the Court also erred in concluding that a grandparent is not a parent or an "immediate family" member. Dorchester Cnty. Assessor v. Middleton Place Equestrian Ctr., LLC, 414 S.C. 453, 467, 778 S.E.2d 919, 926 (Ct. App. 2015) ("Our review of the record reveals that in 1970, Duell inherited this property from his grandfather, an immediate family member.").