

**RECEIVED**

**Sep 10 2025**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

*Certiorari to the Court the Court of Appeals*

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

---

State of South Carolina .....RESPONDENT

V.

Devin Zachary Elijah Ruttle. .... PETITIONER

---

Appellate Case No. 2025-000404

---

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 14244

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

PETITIONER’S QUESTIONS PRESENTED.....1

RESPONDENT’S COUNTER STATEMENT OF QUESTIONS PRESENTED .....2

STATEMENT OF THE CASE.....3

STANDARD OF REVIEW .....6

ARGUMENT .....6

CONCLUSION.....12

## PETITIONER'S 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 err 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?

## **RESPONDENT'S STATEMENT OF QUESTIONS PRESENTED**

**I. Whether any further fact-finding for evaluating Ruttle's claim of juror concealment is warranted since Ruttle has already received a hearing on his claim, and the trial found that Ruttle had failed to show not only that juror at issue was the juror in church videos from his father's church, but it was, Ruttle demonstrated no "potential for bias" against him. The Court of Appeals exercised ordinary review of the new trial motion issue and affirmed the trial court's denial. Ruttle fails to present any issue that merits certiorari review.**

**[Petitioner's Questions I, V, and VI].**

**II. Whether the Court of Appeals exercised ordinary and proper appellate review of the trial judge's denial of immunity under an abuse of discretion standard?**

**[Petitioner's Questions III and IV]**

**III. Whether the Court of Appeals properly found Ruttle's challenge to the jury instruction was not preserved for merits review where Ruttle plainly failed to raise the issue to the trial judge?**

**[Petitioner's Question II]**

## STATEMENT OF THE CASE

Ruttle was indicted at the October 2017 term of the grand jury for Spartanburg County for murder, and later, at the August 2018 term, for unlawfully carrying a handgun. (R. 627-30).

The facts at trial would show that Ruttle shot and killed the victim, Dalton Moore, at the Timken Activity Center in Cowpens, South Carolina, after improperly concealing a pistol without a permit. Victim was merely walking down a public road when he came in sight of Ruttle, who was in his own car. Lorenzo Calderon got into Ruttle's car, too. Soon shots were fired, Moore lay dying as neighbors rushed to help. The evidence at trial would show that Ruttle admitted to shooting Moore and "taking care of some business." (R. 298, 307).

Ruttle was prosecuted by Deputy Solicitor Derrick Bulsa and Assistant Solicitor Jesse Williams; Ruttle was represented by Richard Vieth, Esq. (R. 172). His co-defendant, Lorenzo Calderon, was indicted for accessory after the fact to a felony and was represented by Monier Abusoft, Esq. (R. 118, 121). Ruttle claimed he acted in self-defense and requested immunity from prosecution and requested a hearing under the Protection of Persons and Property Act, S.C. Code §§ 16-11-410 to 440.

The Honorable J. Derham Cole held a pre-trial hearing Ruttle's motion on August 29, 2018. (R. 14-98). Ruttle claimed he was entitled to immunity from prosecution because he fired his weapon in self-defense after the victim advanced with a knife. According to Ruttle's immunity hearing testimony, after Ruttle stopped to speak with Moore, Lorenzo gave him a gun "just in case." (R. 31-32). Again according to Ruttle's immunity hearing testimony, he stopped to talk to Moore to let Moore know that though Calderon had issues with Moore, Ruttle did not. However, Moore allegedly pulled out a knife. Calderon had given Ruttle a gun "just in case" to carry as he approached Moore. Ruttle would eventually shoot and kill Moore. (R. 32-33). However, SLED

Special Agent Owens testified at the hearing that a witness had seen one of the men jump out of a silver Ford belonging to Hunter Sizemore to go to Ruttle's car. The man wore a teal hoody, and that man was identified as Calderon. (R. 64-65). Calderon then tells the investigator a different story – that Ruttle had an existing disagree with Moore, and Calderon sees Ruttle exit the vehicle toward Moore and he then heard shots. Ruttle came back the car and admitting shooting Moore. (R. 68-69). Judge Cole issued a written Order denying immunity on September 5, 2018, finding Ruttle did not prove, by a preponderance of the evidence, that he was without fault in bringing on the difficulty. (R. 3-4).

Ruttle stood trial before a jury from September 10 to 13, 2018. Ruttle was tried jointly with his co-defendant, Calderon. (R. 14). Several neighborhood witnesses could identify the boys heading toward Moore and recalled hearing the shots. Maria Calderon testified Ruttle “snapchatted [her] and told [her] he had shot Dalton” as a way of “taking care of some business.” (R. 298) Brittni Gossett testified to being with Maria Calderon when she received the message and verified that was what she read, as well. (R. 307). The jury returned a verdict finding both guilty as charged. (R. 558). Lorenzo Calderon received 15 years suspended to 5 years in jail with five years of probation. (R. 567).

Ruttle was sentenced the next day, on September 14, 2017, to life in prison for murder and one year on the weapon conviction. (R. 568, 586-587). Ruttle also pled guilty to three other indictments: 2017-5446 possession with intent to distribute 11 bags of marijuana, 2017-5447 possession of 162 alprazolam pills, and 2017-05448 possession of less than one gram of methamphetamine. (R. 573-586). Ruttle received concurrent sentences of 5 years, 6 months, and 3 years respectively. (R. 573-587). Ruttle filed a motion to reconsider the sentence which Judge Cole denied on September 16, 2019. (R. 5). Ruttle then timely filed a notice of intent to appeal.

On April 17, 2020, appellate counsel filed a motion in the Court of Appeals to suspend the appeal and requested leave to file a new trial motion regarding whether a juror had intentionally concealed information during *voir dire*. The State opposed the motion. The Court of Appeals granted the motion on June 10, 2020, and appellate counsel filed a new trial in the circuit court. (*See* R. 633-650). The matter was again before Judge Cole who held a hearing on the allegations on May 12, 2021. (R. 651). Judge Cole denied the motion by written order dated April 8, 2022. (R. 6-13).

Ruttle returned to the Court of Appeals and briefed his issues, including the new trial motion based on the allegation of juror concealment. After briefing by each party, the Court of Appeals heard argument on the issues on June 5, 2024. By Unpublished Opinion filed November 27, 2024, the Court of Appeals affirmed the conviction and sentence. (*State v. Ruttle*, Unpublished Opinion No. 2024-UP-398 (S.C.Ct.App. filed November 27, 2024)). On December 12, 2024, Ruttle filed a petition for rehearing. Without requesting a response, the Court of Appeals denied the petition on January 31, 2025.<sup>1</sup> Ruttle then turned to this Court for additional review.

On March 24, 2025, Ruttle filed motion in this Court to suspend the time limits for filing his petition for writ of certiorari and for a remand for another hearing on the juror concealment allegation, or alternatively for an extension of time in which to file the petition. By return filed on April 4, 2025, the State opposed another hearing on the juror concealment allegation but consented to the request for an extension of time in which to file the petition. By order dated June 4, 2025, this Court denied the motion as to the requested remand but granted an extension of time in which to file the petition. This Court accepted Ruttle's petition and appendix for filing on July 24, 2025. This return follows.

---

<sup>1</sup> All filings in the Court of Appeals are available under Appellate Case No. 2019-001570.

## STANDARD OF REVIEW

“A writ of certiorari is not a matter of right, but of sound judicial discretion[.]” Rule 242, SCACR. “This Court has held that it will grant certiorari to the Court of Appeals “only where special reasons justify the exercise of that power.” *Haggins v. State*, 377 S.C. 135, 136, 659 S.E.2d 170 (2008) (citing *In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases*, 321 S.C. 563, 471 S.E.2d 454 (1990)). Rule 242 sets out the types of issues or circumstances that may support a grant of certiorari review such as: (1) in cases presenting “novel questions of law” to decide; (2) a judge in the Court of Appeals has written a dissent in the matter; (3) the opinion offered for review “is in conflict with a prior decision of” this Court; (4) the case presents “substantial constitutional issues” to resolve; and (5) the Court of Appeals’ opinion shows a resolution of a federal issue which “conflicts with a decision of the United States Supreme Court.” Rule 242(b), SCACR. However, this Court’s decision to grant certiorari review remains broad and is not limited to the listed reasons. *Id.*

## ARGUMENT

**I. No further fact-finding for evaluating Ruttle’s claim of juror concealment is warranted since Ruttle has already received a hearing on his claim, and the trial found that Ruttle had failed to show not only that juror at issue was the juror in church videos from his father’s church, but it was, Ruttle demonstrated no “potential for bias” against him. The Court of Appeals exercised ordinary review of the new trial motion issue and affirmed the trial court’s denial. Ruttle fails to present any issue that warrants certiorari review.**

**[Questions I, V, and VI].**

Ruttle argues 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). (Pet. 11-13). However, Ruttle’s reliance on *Rowell* for a new hearing is

misplaced. Ruttle has already received a hearing on the matter and *Rowell* does not entitle him to a second hearing on the same allegation.

Judge Cole held a hearing on Ruttle's new trial motion on May 12, 2021. (R. 651). Judge Cole denied the motion by written order dated April 8, 2022. (R. 6-13). The order is comprehensive to the claim and the evidence. At issue was whether a juror (Juror #92) failed to disclose a connection with Ruttle's father's church and that her grandfather was a victim of a violent crime. (R. 8, 10).<sup>2</sup> Notably, Judge Cole found initially found that Ruttle had failed to satisfactorily prove that the juror was same individual in various photographs that a youth minister at the church identified as "Nysha," and related to possible community events held at the church. (R. 8, 11). Even so, Judge Cole considered the arguments as if that connection had been made and resolved that Ruttle still had not shown he was entitled to any relief. (R. 8).

As to the connection with the church, curiously, neither Ruttle nor his father testified, to the best of their personal knowledge, that the juror had a connection with the church. (R. 10). Further, Judge Cole considered the *voir dire* question posed, which indicated attendance of the church, as in a regular member of the congregation or regularly in attendance. (R. 11). The judge resolved that the evidence did not support that a "relationship or connection" actually existed "between "the defendant, his father, or the" church and the juror, and that Ruttle "failed to establish" an intentional concealment, or even that such information would have "been a material fact in the intelligent exercise of a peremptory challenge," much less a basis to challenge the juror for cause. (R. 12, 13). Indeed, trial counsel testified at the new trial hearing that likely would have favored having a juror with a connection to the church. (R. 11).

---

<sup>2</sup> Ruttle also argued that the same juror "must have known him from the time they were both in" high school. (R. 9). However, Ruttle did not press that claim in his brief to the Court of Appeals. (Unpublished Op. at 3, n. 4). That matter has been waived and abandoned.

The Court of Appeals likewise examined the new trial evidence and the record in considering Ruttle's argument of error and determined that the record did not show any abuse of discretion. (Unpublished Op. at 2). Though Ruttle argues heartily for a new hearing under *Rowell*, that case provides no support for him.

In *Rowell*, this Court abandoned "the intentional versus unintentional distinction." *Rowell*, 444 S.C. at 115, 906 S.E.2d at 557. However, undisturbed is still a showing of potential bias and prejudice: "when a juror untruthfully answers or fails to answer a material *voir dire* question, the juror's bias may not be presumed, and a new trial may be ordered only when prejudice is proven by showing the concealed information reveals a potential for bias *and* would have made an objectively material difference in the moving party's use of a peremptory strike or resulted in a successful challenge for cause." *Id.*, at 115–16, 906 S.E.2d at 557. In essence, this Court "simplify[ed] the inquiry" and took the focus on the juror and placed the focus on the information. *Id.*, at 115, 906 S.E.2d at 557.

Here, the Court of Appeals looked to the record as to the purported church connection. Yes, Judge Cole did find no intentional concealment based on the interpretation of the question, (R. 11-13), but that was one of many reasons to deny the motion and there is no indication that was a dispositive point for the Court of Appeals. Respondent suggests that more important is the lack of bias finding, consistent with *Rowell*, and lack of evidence that would have affected a peremptory strike or disqualification. Indeed, as Judge Cole noted, neither Ruttle nor former trial counsel indicated "that a peremptory challenge would have been exercised to excuse the juror from service had the information been known to them." (R. 12). Even strong, trial counsel testified, "I would want someone that went to the church to be on that jury most of the time." (R. 674). As

the Court of Appeals correctly pointed out, much of the pre-*Rowell* precedent is still generally consistent with *Rowell*. (Unpublished Op. 3 n.2).

Notably, Ruttle argued in his rehearing that the Court of Appeals applied a new test, the *Rowell* test, without further proceeding, (Pet. Rhrgr. ¶ 4), but that does not aid in this argument in two distinct ways. First, the argument acknowledges that the evidence supports the *Rowell* test that he maintains should be applied. Second, the argument is not quite supported by the opinion, rather, the Court of Appeals still reviewed of Judge Cole's factual determinations, it did not make *de novo* review of the evidence from the new trial hearing. (Unpublished Op. at 6 n. 9). Third, the precise language of the footnote on *Rowell* speaks to who should have subpoenaed the juror (who was not presented). The Court of Appeals correctly pointed out that it could “distinguish *Rowell* from the instant case in which a posttrial hearing was held and Ruttle did not produce” the juror for questioning. (Unpublished Op. at 6 n.9). Again, no additional hearing is warranted in light of the comprehensive fact-finding already made by Judge Cole and found to support affirmance by the Court of Appeals, in connection with Ruttle's new trial motion.

Lastly, as to the issue of whether the juror had concealed that her grandfather was a victim of a violent crime, there is no direct ruling on that issue in the April 8, 2022 order. However, the possibility of intentional concealment is largely extinguished by reference to the trial record; the trial court's definition of “immediate family member” to identify, which is shown just a few lines, therefore given in close time to the inquiry on violent crime, included only “a parent, spouse, child or sibling” and a caution that that definition applied “for the purpose of all of [the judge's] questions[.]” (R. 131). Again, the Court of Appeals did not premise affirmance on the intention or unintentional distinction abandoned in *Rowell*, rather, the Court of Appeals found the jury “concealed no information” at all because the question – presumably a good indicator of what is

considered “material” information for a strike or disqualification, specifically did not include grandparents. Ruttle has not shown an additional is necessary. Rather, the Court of Appeals reasonably agreed that the record supported that Ruttle had failed in his burden of proof. (Unpublished Op. at 4-5). Ruttle has shown no compelling cause or important reason to grant his petition. Ruttle has failed, in fact, to point to any error in law or fact. The petition should denied.

**II. The Court of Appeals exercised ordinary and proper appellate review of the trial judge’s denial of immunity under an abuse of discretion standard and certiorari review is not warranted.**

**[Petitioner’s Questions III and IV]**

The Protection of Persons and Property Act (“The Act”) provides immunity from criminal prosecution for a person who has used deadly force if the trial court, after a *Duncan* hearing, finds the person was justified in using such force. S.C. Code Ann. §§ 16-11-410 to 450 (2015); *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011) (setting forth the procedure, standard of review, and burden of proof for an immunity determination). To put it plainly, to obtain immunity, a defendant must either satisfy all four elements of self-defense by a preponderance, to the trial court’s satisfaction, or three of the elements plus Sections (A) and (B) or Section (C) of the Act if it applies. *State v. Glenn*, 429 S.C. 108, 838 S.E.2d 491 (2019).

Ruttle claims the Court of Appeals failed to correct a clear error of law – that Judge Cole simply found that the evidence in the immunity hearing created a question for the jury and made no fact-findings as required. (Pet. 17). However, Judge Cole’s order, while acknowledging the evidence boiled down to the “quintessential jury question,” he did so while *quoting Curry*. (R. 4). There is no indication that he rested his denial on that point. To the contrary, Judge Cole set out that he found “especially convincing” that it was likely the victim, if armed, armed himself in self-defense given that men were approaching him with firearms. (R. 3). Moreover, Judge Cole noted

the burden of proof on Ruttle and that Ruttle failed to meet his burden: "... the defendant has failed to establish by a preponderance of the evidence that he is entitled to immunity pursuant to S.C. Code Section 16-11-440 (C).

As the Court of Appeals found, the record shows that Judge Cole exercised his discretion and did not abuse it – there was no error of law. (Unpublished Op. 7). Simply, approaching the victim with the gun, where the victim is simply walking outside without any anticipation of confrontation by approaching men with guns, presents a series of facts that is difficult to see any other way than Ruttle was not without fault in bringing on the difficulty. However, as the Court of Appeals resolved, it mattered not whether the Court of Appeals agreed; only that the record showed that the trial court did not abuse its discretion either by resting its decision on unsupported fact-finding or an error of law. (Unpublished Op. at 7). Though the *Curry* quote was included, it is amply shown by the detailed order that Judge Cole acted as the fact-finder as required. *See State v. Andrews*, 427 S.C. 178, 182, 830 S.E.2d 12, 14 (2019) (affirming a trial court order where it was clear that "the record is ... adequate for a reviewing court to determine that the circuit court applied the correct burden of proof and made findings that supported its denial of immunity consistent with a correct application of this Court's precedent."). Ruttle's claim of legal error should be rejected.

**III. The Court of Appeals properly found Ruttle's challenge to the jury instruction was not preserved for merits review where Ruttle plainly failed to raise the issue to the trial judge. Consequently, Ruttle fails to show this issue warrants certiorari review.**

**[Petitioner's Question II]**

Ruttle continues to argue for review of this issue that the Court of Appeals found was not preserved by any objection or argument at trial. (Pet. 13). However, the record shows that Ruttle made no objection or argument on why implied malice should not have been explained in this

murder case. Thus, the Court of Appeals simply applied ordinary, established procedural rules to find that the issue was not preserved for a merits review. (Unpublished Op. 8). Further, Ruttle’s reliance on *State v. Smith*, 430 S.C. 226, 232, 845 S.E.2d 495, 498 (2020), an attempted murder case, is misplaced. Defining implied malice in a murder is necessarily tied to defining the offense itself. “Murder is the unlawful killing of any person with malice aforethought, either express or implied.” S.C. Code § 16-3-10.<sup>3</sup> But the Court need not go that far as the issue is plainly barred. *See State v. Daniels*, 401 S.C. 251, 255, 737 S.E.2d 473, 475 (2012) (“It is axiomatic that a party cannot raise an objection to a jury charge for the first time on appeal.”). The Court of Appeals did not err in finding the issue procedurally unavailable on this record. Further, like the review of the above issue, the disposition required only application of ordinary and well-established review procedures. Ruttle fails to show any compelling or important reason to grant certiorari review.

### CONCLUSION

Based on the foregoing, this Court should deny the petition.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 14244

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

---

<sup>3</sup> The Court of Appeals rejected the State’s distinguishing *Smith* from this case based on the difference between attempted murder (or in *Smith*, attempted felony murder) and a murder charge. (Unpublished Op. at 8).

September 10, 2025

By: s/Melody J. Brown.  
ATTORNEYS FOR RESPONDENT