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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Honorable Clifton Newman, Circuit Court Judge

Opinion No. 2026-UP-393 (S.C. Ct. App. Filed August 5, 2026)

Lower Court Case Nos. 2021-GS-40-01292, -01294

THE STATE,

PETITIONER,

V.

ANTONIO VASHON BARNES, JR.,

RESPONDENT.

APPELLATE CASE NO. 2026-002249

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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STATEMENT OF THE CASE

In February 2019, Respondent lived in Apartment 14G at the Willow Run Apartments with Samuel Thomas and Antonio Dash, one of the decedents. It was a two bedroom apartment located in a "dangerous neighborhood" in Columbia. App. 908, ll. 12-15. Respondent and Thomas, who were listed on the lease, allowed Dash to live with them because he had nowhere else to stay. The three, who had been good friends for more than a decade, had been living together for at least a year. Thomas used the front bedroom, which was the first door on the right off the hallway. Respondent slept in the back bedroom, which was the second door on the right off the hallway. Dash, who did not have his own bedroom, slept on an air mattress in a large walk in closet at the very end of the hallway. Dash kept his belongings in this closet as well. App. 659, l. 20 – 660, l. 25. The apartment also had a bathroom, a kitchen, and a living room. The living room had little to no furniture. There was a table with a TV on top, "two church foldup chairs" and a second table with a "missing leg" in the corner that people would sit on. App. 916, ll. 14-18.

Thomas was the only roommate with a car. He routinely gave his roommates and other friends a ride to work or wherever else they needed to be. Thomas drove Dash to Wendy's where he worked every morning. Respondent quit his job a week before the shooting and had not gained new employment. However, he regularly worked and was working at AutoZone at the time of trial. Respondent also sold marijuana. Though, he was not "a big drug dealer" and did not make a lot of money selling weed. He only sold marijuana to support his own smoking habit. App. 975, l. 9 – 976, l. 9; App. 1048, ll. 12-23.

Respondent, Dash, and Thomas all routinely carried a firearm because they lived in a high crime neighborhood. About two weeks before the shooting in this case, Thomas and Dash

were robbed at gunpoint at The Corner Store, a convenience store located just down the road from their apartment. Both Thomas and Dash had a gun stolen from them during this robbery. Dash was able to obtain another gun from his brother after the robbery. However, Thomas had not acquired another gun. App. 668, l. 20 – 670, l. 17; App. 905, l. 21 – 908, l. 17.

Eric Griffin, the other decedent, had been Respondent's friend for seven years. App. 891, l. 20 – 892, l. 6. Griffin had recently been released from jail. Respondent had helped Griffin post bond. After Griffin was released from jail, he "started coming back over" to Respondent's apartment. App. 898, l. 23 – 899, l. 16.

On February 5, 2019, two days before the shooting, Griffin visited Respondent's apartment. Samuel Thomas and a woman named Katerra Harper were also at the apartment. The group was "chilling" and playing videogames. Antonio Dash was at work and was not present. For whatever reason, Thomas had the gun Dash had recently obtained from his brother. Initially, Thomas had the gun on his person. However, as the group was hanging out in the living room, Thomas placed the gun on the table in the corner. At some point, Respondent's brother called and asked for a ride to work. Thomas agreed to take Respondent's brother to work and the group dispersed. Griffin and Katerra left the apartment. Respondent also left and went to a friend's apartment nearby. App. 671, l. 1 – 673, l. 13; App. 899, l. 17 – 904, l. 20.

A few minutes after Respondent left, Thomas called Respondent and said Dash's gun, which he had placed on the table in the living room, was missing. Thomas "said the only thing he could think of" was that Griffin had taken the gun. Respondent immediately called Griffin and asked Griffin if he had taken the gun. Griffin denied taking the gun and Respondent believed him since Griffin was his friend. App. 904, l. 23 – 905, l. 12.

The following morning, February 6, 2019, Respondent woke up to the sounds of arguing. He walked into the living room and discovered Dash and Griffin arguing about the missing gun. Thomas and Katerra were also present. The argument between Dash and Griffin was "heated." Dash was holding Respondent's gun, which he had borrowed the night before to go to the store. Because the men were being aggressive, Respondent "snatched" his gun out of Dash's hand and attempted to deescalate the argument. He tried to be a mediator between the two. Griffin again denied taking Dash's gun. Eventually, Griffin left the apartment. App. 908, l. 18 – 910, l. 19.

Later that night, Respondent stayed up late playing videogames with Dash. Respondent learned while hanging out with Dash that Dash planned to go to work the following morning as usual. Respondent also talked on Facetime with his girlfriend into the early morning hours. The call with his girlfriend ended at 2:59 am. App. 865, ll. 1-6. Respondent then went to sleep. App. 912, l. 21 – 913, l. 9.

Respondent was awoken the following morning by a "loud boom." He thought the noise was the front door of his apartment being "kicked in." Respondent laid in bed for a minute or two and listened. He heard what sounded like "feet moving" and someone in the house "running." He also heard furniture "turning over" and then a loud crash, which he suspected was his TV falling to the floor. Respondent listened for the voices of his roommates, Samuel Thomas and Antonio Dash. However, he did not hear any voices he recognized. Based on their daily routine, Respondent did not believe Thomas or Dash were home. Thomas usually drove Dash to work around that time every morning and Dash told Respondent the night before that he had to work that day. App. 913, l. 15 – 915, l. 18.

On edge because he lived in a dangerous neighborhood, Respondent was scared. He believed his apartment was being "home invaded." He was afraid that if he remained in bed, the

intruders would find and kill him. Respondent grabbed his gun, which he always kept on the box spring under his mattress while he slept.[1] App. 917, ll. 1-19. He ran out into the hallway. His heart was "racing." Respondent quickly moved down the hallway, hugging the wall as he walked. As soon as he reached the corner, Respondent began firing in the area where he heard the sounds. He started shooting while he was still moving forward. Once he made it around the corner, Respondent saw two men on the ground. They were on top of each other. At first, Respondent did not recognize the men. Then he realized the man on the bottom who was facing upward was Antonio Dash. The man on top of Dash was Eric Griffin. The men were so close together, it looked like they were kissing. App. 915, l. 19 – 921, l. 10.

Respondent began to panic. Dash was his best friend and like a brother to him. Respondent was also close with Griffin. After accessing the scene, Respondent suspected Dash and Griffin had been in a physical altercation causing the commotion he had heard prior to the shooting. App. 921, l. 11 – 922, l. 22. The physical evidence supported this conclusion. Dash suffered blunt force trauma to the right side of his head and his left eyebrow. App. 841, l. 16 – 843, l. 9. One of Griffin's earrings had been ripped out of his ear lobe and was found on the floor next to his body. App. 731, l. 10 – 732, l. 10. Both Griffin and Dash had each other's DNA under their fingernails. App. 1065, l. 6 – 1071, l. 24. Ultimately, they both suffered multiple gunshot wounds and were pronounced dead at the scene. App. 804, l. 13 – 820, l. 12.

After the shooting, Respondent walked to the front door and opened it. He saw Griffin's mother and girlfriend walking up the stairs. Respondent held the door open for them. The women began screaming and crying at the sight of the bodies. App. 922, l. 4 – 923, l. 7. Respondent went to his bedroom, grabbed his phone, and called 911 at 8:55 a.m., within a

[1] Respondent legally owned and carried this firearm. He had purchased it and a prior gun he owned from Academy Sports and Outdoors. App. 977, ll. 8-15.

minute or so of the shooting. Other people also began to approach the apartment to find out what happened. Shakila Smalls, who lived two apartment buildings over, walked into the apartment, saw the bodies, and "snatched" the gun out of Respondent's hand.[2] Respondent then walked downstairs and gave his name and contact information to the police. App. 923, l. 8 – 925, l. 24.

Samuel Thomas testified that he "always" took Dash to work. App. 657, l. 22 – 658, l. 9. However, on the morning of February 7, 2019, Dash told Thomas that he had another ride. Because Dash did not need a ride, Thomas chose to go to the doctor. He left the apartment around 8:15 a.m. When he left, Dash was sitting in the living room. He had his work uniform on. Respondent was asleep. Based on their usual daily routine, Dash and Thomas would not have been home at the time of the shooting. App. 658, l. 10 – 659, l. 1; App. 661, l. 25 – 662, l. 16; App. 678, l. 13 – 680, l. 13. When Thomas returned to the apartment after visiting the doctor, he learned about the shooting. He spoke to investigators outside around 9:30 a.m. and told them that when he left one of his roommates was asleep and the other was about to leave for work. App. 680, l. 14 – 682, l. 21.

Griffin's mother, Wanda Griffin, and his girlfriend, Ieasha Washington, both testified that Griffin suddenly asked to stop by Respondent's apartment on their way to take Wanda to work that morning. Griffin did not say why he wanted to stop by. Washington, who was driving, parked the car directly in front of Respondent's apartment. Washington and Wanda both testified that no one else came or went from Respondent's apartment after Griffin entered. App. 573, ll. 14-17. After waiting for about five minutes, the women heard gunshots. Washington

[2] Law enforcement found the firearm in Smalls's apartment while executing a search warrant later that day. App. 652, l. 3 – 653, l. 4; App. 743, l. 5 – 748, l. 7. There is no evidence in the record as to why Smalls took the gun from Respondent. The state presumably did not call Smalls as a witness during trial because she had significant and obvious credibility problems as shown by the evidence presented during the immunity hearing.

immediately called Griffin. This call was placed at 8:54 a.m. The women then ran up the stairs to Respondent's apartment. Wanda knocked on the door and Respondent walked outside. Respondent walked straight to Washington and exclaimed, "What are they doing here? Why [were they] fighting? Who let him in? How did he get here?" App. 521, l. 16 – 535, l. 24; App. 550, l. 10 – 551, l. 1; App. 562, l. 12 – 569, l. 10. Washington testified that Respondent was "spazzing." He was pacing back and forth and pulling his hair. He told Washington that he had been asleep. Numerous people then started approaching the apartment. Washington saw Respondent walk down the hallway to his bedroom and then back outside. The next time Washington saw Respondent he was downstairs talking to the police. App. 575, l. 6 – 577, l. 5.

Kevin Archie, who performed maintenance for the apartments, testified that Respondent told him while they were downstairs minutes after the shooting that he was "back there" asleep, that he thought "they were trying to rob him," that Dash and Griffin were "in there fighting," and that Respondent "came out the back" and "started blasting." App. 592, l. 21 – 595, l. 25.

Respondent gave numerous statements to law enforcement that day. He was always consistent in his account of what occurred.[3] App. 635, l. 22 – 637, l. 7.

A Richland County grand jury indicted Respondent on April 13, 2021, for two counts of murder, for the killings of Antonio Dash and Eric Griffin, and possession of a weapon during the commission of a violent crime. App. 1260-1263. A pretrial hearing on Respondent's motion for immunity pursuant to the Protection of Persons and Property Act was held on March 30-31, 2022, before the Honorable DeAndrea Benjamin. App. 1. Assistant Solicitors Dale Scott, Paul Walton, and Nick Fowler represented the state. Laura Young, Luke Shealy, Brian Shealy, and

[3] At trial and on appeal, the state disingenuously asserted Respondent gave different "explanations" of what occurred that morning. See *i.e.*, Pet. for Writ of Certiorari at 5. Again, Respondent was always consistent in his account of what happened that morning.

Caroline Latimer represented Respondent. App. 1. By order filed June 14, 2022, Judge Benjamin denied Respondent's motion for immunity. App. 469-483.

Respondent's case was called for trial on December 5, 2022, before the Honorable Clifton Newman, and a jury. Assistant Solicitors Dale Scott, Paul Walton, and Nick Fowler represented the state. Laura Young, Luke Shealy, Brian Shealy, and Carolina Latimer represented Respondent. App. 484. On December 8, 2022, the jury acquitted Respondent of one count of murder related to the killing of Antonio Dash, but found him guilty of the second count of murder for the death of Eric Griffin as well as the weapons offense. App. 1215, l. 18 – 1216, l. 10.

On December 13, 2022, Judge Newman sentenced Respondent to thirty-five years for murder and five years concurrent for the weapons offense. App. 1220, ll. 15-17. On December 22, 2022, Respondent filed a motion for a new trial. App. 1248-1258. By order filed September 7, 2023, Judge Newman denied Respondent's motion for a new trial. App. 1259.

Respondent filed a timely notice of appeal. After briefing and oral argument, the Court of Appeals reversed Respondent's convictions and remanded for a new trial in an unpublished opinion. See State v. Antonio Vashon Barnes, Jr., 2026-UP-393 (S.C. Ct. App. filed August 5, 2026). The state filed a petition for rehearing on August 19, 2026. At the request of the Court of Appeals, Respondent filed a return to the petition for rehearing on September 10, 2026. The Court of Appeals denied the petition by order filed September 15, 2026. On November 5, 2026, the state filed a petition for writ of certiorari with this Court.

This return follows.

ARGUMENT

The Court of Appeals correctly held that the trial court abused its discretion by admitting lyrics from a song Respondent rapped and posted on YouTube when the state failed to disclose the evidence to the defense in violation of Rule 5, SCRCrimP, and *State v. Lawton*, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009).

Relevant Facts

During the pretrial immunity hearing, the solicitor questioned Christopher Watkins, the digital forensic analyst who extracted Respondent's phone and analyzed the data, about a "rap video" that was downloaded on January 18, 2019, from Instagram on Respondent's phone and discovered as part of the extraction.[4] Defense counsel objected to the admission of the rap video, which was marked as State's Exhibit No. 17, pursuant to Rule 402, SCRE, Rule 403, SCRE, and Rule 404, SCRE. She argued the video was not relevant and that the state only sought to admit the video to make Respondent "look like a bad guy." App. 259, l. 15 – 261, l. 21.

The assistant solicitor argued the video was relevant because "it clearly goes to his [Respondent's] state of mind, clearly shows motive, and it clearly shows intent." He asserted that Respondent's defense was self-defense and "mistake of fact." However, the video "shows what he [Respondent] has warned others he would do if anybody stole from him" and there are allegations of a stolen gun in the case. App. 261, l. 24 – 262, l. 15.

[4] The state incorrectly asserts in its petition for writ of certiorari that Respondent's phone was seized and that the state provided the defense with the rap video downloaded from Instagram on January 18, 2019, that was discovered on Respondent's phone. See Pet. for Writ of Certiorari at 11, 13. However, law enforcement never seized Respondent's phone. Rather, the defense obtained Respondent's phone from his property at the detention center shortly after his arrest and retained a digital forensic analyst to extract and analyze the data. The defense turned over the extraction to the state before the pretrial immunity hearing, which is how the state gained possession of the rap video downloaded from Instagram that was discovered on Respondent's phone. See App. 224, l. 20 – 229, l. 8; App. 232, l. 20 – 235, l. 2.

Defense counsel emphasized that there was no evidence as to when the rap video was made. She also argued the video had nothing to do with Respondent's state of mind: "That's like saying when an author writes a book about murder, then they have murder on their mind. That's completely absurd. He wrote a song and he rapped about it. It doesn't have anything to do with what happened in his apartment that day. Just because someone creates art does not mean that's always their state of mind or it's somehow always in their mind." App. 262, l. 16 – 263, l. 2.

The trial court recognized that "things are said in rap music that is not necessarily true. A lot of times, it's a whole lot of bluffing." The court expressed concern with the lack of foundation given it had not heard any evidence as to when the video was made or posted on social media. App. 263, ll. 3-23.

Watkins testified that the metadata showed the video originated from Instagram on January 18, 2019, which means it was not recorded by Respondent's phone. Rather, it was recorded by another device and then downloaded onto Respondent's phone on the specified date. App. 266, l. 17 – 269, l. 4.

The trial court sustained Respondent's objection. The court found the state did not properly authenticate the video as there was no evidence as to when the video was created. All that was presented was that the video originated from Instagram on January 18, 2019. The court further found the video was not relevant since it was downloaded nearly twenty days before the shooting in this case and the allegations concerning the stolen gun arose only a day or two prior to the shooting. Consequently, the lyrics were not relevant to Respondent's state of mind. For the same reasons, the court found the video was not admissible pursuant to Rule 404, SCRE, as it did not establish motive or intent. App. 270, ll. 3-22.

Anticipating that the state may seek to admit the rap video downloaded from Instagram on January 18, 2019, during Respondent's jury trial, Respondent filed a motion pretrial to exclude the rap lyrics. Respondent argued the state could not properly authenticate the video, the video was not relevant, any probative value of the video was outweighed by the danger of unfair prejudice, and the video would be improper character evidence. App. 1235-1242.

At the beginning of Respondent's trial, defense counsel raised the motion before the trial court. Counsel argued that the rap video downloaded from Instagram on January 18, 2019, should be excluded, as it was during the pretrial immunity hearing, because the state could authenticate it. She also argued the rap video was not relevant because it was downloaded before Respondent was ever "perceived to be a victim of any kind of theft." Lastly, counsel again asserted any probative value of the video was outweighed by its prejudicial effect and it was inadmissible "bad character evidence." App. 494, l. 1 – 496, l. 10.

The assistant solicitor maintained the lyrics "would be fodder for cross-examination should he [Respondent] take the stand." He claimed, "Some of these lyrics are going to his [Respondent's] state of mind. At least one of his rap songs specifically references him killing his two - - the victims in this case." App. 496, ll. 12-22. The trial court indicated it would address the objection later in the trial. App. 496, ll. 23-24.

At the beginning of the state's cross-examination of Respondent, the assistant solicitor asked Respondent who is "Big Hood Lyfe?" Respondent stated it was his "rap name." The solicitor then asked Respondent whether he had made a rap song about killing the decedents. After Respondent answered no, defense counsel objected pursuant to Rule 5, SCRCrimP, Rules 402, 403, and 404, SCRE, and the First Amendment.

The solicitor told the court that the state had *twenty-two* rap videos Respondent posted on YouTube between December 16, 2018, and August 31, 2022. Despite initially stating the videos were discovered on Respondent's phone, the solicitor later clarified that only one song was obtained from the extraction of Respondent's phone. The others the state found on YouTube. The solicitor stated "as early as last week, we typed in Big Hood Lyfe in Google" and discovered Respondent's rap videos. The solicitor further argued the rap lyrics were relevant. He explained that in one song Respondent said, "T.O. was like my brother. When the time comes, everybody freeze but I'm cold with that cut." The solicitor contended that this song seemed to be "celebrating the killing of these people" since T.O. is what Respondent called Antonio Dash. In a song from December 21, 2018, almost eight weeks before the shooting, Respondent rapped, "I heard you trying to jack. I heard you trying to rob me. I'm scared to take a loss. I'm a business thread your cross." Then in a song posted on January 20, 2019, the solicitor said Respondent rapped, "I'll kill you. I'll kill you if you steal from me." The solicitor claimed Respondent "has telegraphed what [he] was thinking." He claimed the following lyrics were evidence of malice, a critical element of murder, "My heart is as black as a kettle. No, I'm not a grave digger. Grave filler, that's my name." App. 944, l. 24 – 947, l. 3.

Defense counsel asserted that only one rap video came from Respondent's phone extraction. She argued that if the state intended to use any other rap videos or lyrics as impeachment, the state was required to provide the evidence to Respondent pursuant to Rule 5, SCRCrimP. In support of her argument, counsel cited to State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009), which held that "everything that is material to the defense has to be turned over even if it's just for impeachment." Counsel clarified that she was not claiming a Rule 5 violation as to the video discovered on Respondent's phone. However, any additional rap

videos the state "found somewhere on the internet that they intend to impeach him [Respondent] with" should have been provided to the defense pursuant to Rule 5. App. 947, l. 5 – 950, l. 2. She contended that the lyrics were "material to the defense" because the evidence "goes to whether Mr. Barnes [Respondent] will take the stand and testify. . . . This isn't trial by ambush." App. 956, ll. 5-10.

Defense counsel argued that rap musicians are artists and their music is art. Rap artists and other types of artists are not always autobiographical. Rap artists often rap about robbing and killing people. However, such lyrics are not representative of their mental state. She asserted, "When someone makes music, there is no . . . way to determine whether . . . it's something they're pulling out of the air, completely made up, something they'd never do." Counsel maintained that in this case, the lyrics from Respondent's songs are not relevant pursuant to Rule 402, SCRE. She also cited to State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001), where this Court held the admission of Cheeseboro's rap lyrics was error because any probative value of the lyrics was outweighed by the danger of unfair prejudice. App. 950, l. 4 – 953, l. 17. Counsel contended that the lyrics in this case are likewise "overly prejudicial" and should be excluded pursuant to Rule 403, SCRE. Lastly, counsel argued the lyrics were inadmissible bad character evidence that the state only sought to admit to "make him [Respondent] look bad because he raps." App. 956, l. 15 – 958, l. 4.

After summarizing Respondent's argument, the court ruled that the lyrics that were disclosed to the defense were admissible. It reasoned, "The defense saw fit to explore the defendant's mind and thinking before, during, and after, including his . . . nightmares. . . . So I believe that particular lyrics/song involving the - - one of the victims in the case is relevant for

impeachment purposes, and I'll allow that one at this stage of this case." App. 960, l. 19 – 962, l. 3.

After the court ruled, defense counsel asked to clarify what the lyrics were since the evidence still had not been turned over to the defense. The solicitor disagreed stating the lyrics were discussed during the pretrial immunity hearing. However, defense counsel stated that she understood the court's ruling to be that the state could impeach Respondent with the lyrics that referenced "T.O." The assistant solicitor finally provided defense counsel with a copy of these lyrics. Counsel again clarified that the parties did not discuss those lyrics at the immunity hearing, that the lyrics did not come from the rap video on Respondent's phone, and that the state failed to turn over the evidence to Respondent. App. 962, ll. 6-23.

The solicitor offered to tell the court the specific lyrics he sought to admit that referenced "T.O." The title of the song is *Let Me Explain* and the lyrics, according to the solicitor, were:

> Nobody know what happened. But everybody got something to say. But if the shoe was on the other foot, would you feel the same way? An N word talking about robbing me. An N word run into my house and try to harm me. You know I fuck with both of y'all. But T.O. is like a brother to me. Everybody say what they going to do but they freeze. I'm cold with that cutter. Watch him fall. It don't matter if it's T.O. I'm going to stand on business forever and always. That gangster shit be making me shoot these N words. I swear to God I'll beat the trial. I'm a soldier. I don't mean no truces. It's me against the rest of y'all. I'm a barber with a cutter. Watch me burn like alcohol.

Defense counsel again argued that the state's failure to turn over the lyrics was a Rule 5 violation. The assistant solicitor asked, "which one of the Shealeys [defense counsel] asked me which rap song we were going to be talking about?" Luke Shealey answered, "That was me. I was trying to get you to disclose some evidence and you were generally pretty vague about it." The solicitor stated, "I told you it was on Google, right?" Luke Shealey responded, "You just said something about the Google machine. But you refused to answer my direct question - - on

the matter." The trial court interpreted and simply stated, "The court has ruled." App. 962, l. 24 – 965, l. 2.

Once the jury returned to the courtroom, the solicitor questioned Respondent about the lyrics contained in the song, *Let Me Explain*. Respondent denied writing the song about killing Griffin and Dash. He also testified that the solicitor incorrectly recited the lyrics. The solicitor then went through the lyrics line by line with Respondent. Respondent corrected the solicitor wherever he inaccurately stated the lyrics. The solicitor repeatedly suggested the lyrics were written about the shooting in this case, which Respondent denied. Respondent testified that his brother wrote the song and Respondent recorded himself rapping it. App. 965, l. 7 – 975, l. 5.

On appeal, after briefing and oral argument, the Court of Appeals correctly held the trial court abused its discretion in admitting the rap lyrics evidence pursuant to Rule 5(a)(1)(A), SCRCrimP, and State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009). The court noted that the lyrics were not disclosed to the defense before trial. The court concluded that the lyrics were material to Respondent's defense because the evidence likely would have affected Respondent's decision to testify. The court found that the lyrics directly refuted Respondent's remorse and called into question his self-defense theory. In holding the error was not harmless, the Court of Appeals emphasized that there was no evidence presented apart from Respondent's own testimony at trial and the accounts of what he told others to corroborate his account of why he shot the decedents. See State v. Antonio Vashon Barnes, Jr., 2026-UP-393 (S.C. Ct. App. filed August 5, 2026).

Discussion

The Court of Appeals correctly held that the trial court abused its discretion in admitting lyrics from a song Respondent rapped and posted on YouTube because the state failed to

disclose the evidence to the defense in violation of Rule 5, SCRCrimP, and State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009).

Rule 5, SCRCrimP

Rule 5(a)(1)(A) provides:

> (A) Statement of Defendant. Upon request by a defendant, the prosecution shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecution agent.

Rule 5(a)(1)(C) provides:

> (C) Documents and Tangible Objects. Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

In State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009), the Court of Appeals held there is no distinction between the state's obligation to provide materials it uses for impeachment purposes versus materials it uses in its case in chief under Rule 5(a)(1)(A). Lawton was convicted of first degree burglary and possession of a weapon during the commission of a violent crime. Lawton testified that he would frequently visit his ex-girlfriend's trailer at night even after they ended their relationship. One night, Lawton entered the trailer through the doggy-door, which he claimed was not uncommon. Lawton's ex-girlfriend, awakened by her dogs barking, went to her living room and saw an intruder coming through the

doggy-door. After she retrieved her handgun, a struggle ensured and Lawton, who was also armed, was shot in the leg. Id. at 124-25, 675 S.E.2d at 455-56.

During cross-examination, the state produced a letter Lawton had written to his ex-wife that stated in part, "I know that my story is full of lies, but no more than hers, mine just have to be better than hers." Lawton immediately objected to the use of the letter based on the state's failure to disclose it prior to trial pursuant to Rule 5, SCRCrimP. Specifically, Lawton argued the state was required to produce the letter in response to his Rule 5 motion under subsection (a)(1)(A) because it qualified as a relevant written statement made by Lawton that was within the state's control. The trial court ruled the letter was admissible because it was only being used for impeachment. Id. at 125, 675 S.E.2d at 456.

Lawton later argued the letter also should have been produced in response to his Rule 5 motion pursuant to subsection (a)(1)(C), asserting the letter was material to Lawton's defense. The trial court found the letter was not relevant under subsection (a)(1)(A), but was a collateral matter having to do with the credibility of the witness and therefore allowed the state to impeach Lawton pursuant to Rule 608, SCRE. Id. at 126, 675 S.E.2d at 456.

The Court of Appeals held the trial court erred in failing to suppress the letter because of the state's failure to comply with subsection (a)(1)(A). The court determined the letter was "clearly relevant" and should have been provided by the state in response to Lawton's Rule 5 motion. The court further held Lawton was prejudiced by the state's failure to turn over the letter before trial since disclosure of the letter was "clearly material" to the preparation of Lawton's defense because it likely would have affected his decision to testify, a fundamental right. The Court of Appeals concluded that there was "a reasonable probability Lawton would not have testified had he known the state processed such strong impeachment evidence." "The

state's strategy in failing to disclose the letter and instead surprising Lawton with it during cross-examination clearly prejudiced Lawton." Consequently, the court reversed Lawton's conviction and remanded for a new trial. Id. at 126-27, 675 S.E.2d at 456-57.

In this case, the Court of Appeals correctly held that the trial court erred by failing to suppress the rap lyrics based on the state's failure to comply with Rule 5, SCRCrimP. The lyrics should have been disclosed to Respondent pursuant to both subsection (a)(1)(A) and (a)(1)(C). Defense counsel specifically requested the assistant solicitor disclose which lyrics the state intended to use during trial, but the solicitor refused. The defense was only aware of the rap song Respondent downloaded from Instagram that was found on Respondent's phone and turned over to the state.

The lyrics should have been disclosed to Respondent pursuant to subsection (a)(1)(A) because the evidence consisted of a "relevant written or recorded statement made by the defendant . . . within the possession, custody, or control of the prosecution, the existence of which is known . . . to the attorney for the prosecution." The assistant solicitor knew of the lyrics, had possession of the lyrics, and failed to disclose them to Respondent, even after a specific request by defense counsel midtrial. Moreover, it is clear that the solicitor intended to use the lyrics for impeachment purposes if Respondent testified, which in fact occurred. Additionally, the lyrics should have been disclosed pursuant to subsection (a)(1)(C) because the evidence was indisputably material to the preparation of Respondent's defense.

In its petition for writ of certiorari, the state argued that Lawton is factually distinguishable from this case. Pet. for Writ of Certiorari at 15. The state first asserted that this case is different than Lawton because in Lawton the state "was in sole and exclusive control of the one and only letter" the state used to impeach Lawton with during cross-examination. Pet.

for Writ of Certiorari at 15. However, in this case, the state claimed it "exercised zero possession, custody, or control over the video content in question." Pet. for Writ of Certiorari at 15. Respectfully, this is simply not true. The state was in possession of the lyrics it intended to impeach Respondent with if Respondent testified. The state knew before trial what the lyrics were and how it intended to use them. However, the state chose not to disclose the lyrics to the defense even upon request and instead surprised Respondent with the lyrics during cross-examination.

Second, the state asserted that this case differs from Lawton because in Lawton, the state did not disclose its possession of the letter nor make its intent to use the letter for impeachment purposes known to the defense. Pet. for Writ of Certiorari at 16. The state argued that Lawton was clearly "caught off guard by the existence of the letter." However, in this case, the state maintained Respondent had "notice" of the state's "awareness of multiple rap videos . . . before his trial even began" and "a fair opportunity to consider his decision to testify." Pet. for Writ of Certiorari at 16. More specifically, the state argued that during the "motion in limine hearing . . . the solicitor disclosed its knowledge [of] and access to Respondent's multiple rap videos."[5]

[5] This argument differs significantly from the argument the state raised in its petition for rehearing before the Court of Appeals. In its petition for rehearing, the state argued, "It is perfectly clear from the record that the defense knew the State was aware of [Respondent's] rap videos, his rap name, and by way of the immunity hearing and pretrial discussions, the State's anticipation that his rap lyrics would provide impeachment material. It is also clear from the record that the solicitor told defense counsel that their knowledge of [Respondent's] rap videos was not limited to the phone dump data; they *explicitly* told [Respondent] how they discovered the other publicly accessible materials – a simple Google search of Big Hoodlyfe." Pet. for Rehearing at 2 (emphasis added). The state likely changed its argument after Respondent demonstrated in the return to the petition for rehearing that the argument was not supported by the record. See Return to Pet. for Rehearing at 3. The state did not explicitly tell Respondent how it discovered the other rap videos or what the lyrics were, even after defense counsel asked the solicitor midtrial. See App. 962, l. 24 – 965, l. 2. Instead, the assistant solicitor was purposely "hiding the ball" and ambushed Respondent with the lyrics on cross-examination.

Then "defense counsel and the solicitor had some discussions regarding these videos." The state argued that "collectively, this was sufficient for establishing disclosure under the rule." See Pet. for Writ of Certiorari at 16. The Court of Appeals correctly held that this falls wholly short of proper disclosure pursuant to Rule 5, SCRCrimP.

The record demonstrates that Respondent was only aware of one rap video—the video downloaded from Instagram on January 18, 2019, that was discovered as part of the extraction of his phone. This video was discussed during Respondent's pretrial immunity hearing. See App. 259, l. 15 – 270, l. 22. Anticipating that the state may seek to admit *this* rap video during trial, Respondent filed a motion pretrial to exclude the rap lyrics. See App. 1235-1242. Notably, the motion only refers to "the rap video" in the singular. See App. 1235-1242.

At the beginning of Respondent's trial, defense counsel orally raised the motion before the trial court. Counsel argued the rap video downloaded from Instagram on January 18, 2019, and discovered on Respondent's phone extraction, should be excluded, as it was during the pretrial immunity hearing, because the state could not authenticate it, the rap video was not relevant, any probative value of the video was outweighed by its prejudicial effect, and it was inadmissible "bad character evidence." App. 494, l. 1 – 496, l. 10. In response, the assistant solicitor maintained the lyrics "would be fodder for cross-examination should he [Respondent] take the stand." The solicitor claimed, "Some of these lyrics are going to his [Respondent's] state of mind. *At least one of his rap songs specifically references him killing his two - - the victims in this case.*" App. 496, ll. 12-22 (emphasis added). The trial court indicated it would address the objection later in the trial. App. 496, ll. 23-24.

This was the first time the existence of more than one rap video was disclosed to Respondent. Notably, this occurred *during Respondent's trial*. At most, Respondent was now

aware that more than one rap video *may* exist and be in the possession of the state. However, despite the state's argument in its petition for writ of certiorari, the defense was not aware of Respondent's rap name as this was not disclosed during the early trial discussions. See Pet. for Writ of Certiorari at 16. It was not until cross-examination when the assistant solicitor began questioning Respondent about "Big Hood Lyfe" and his rap videos that the defense learned of Respondent's rap name and the existence of additional rap videos posted on YouTube.

After defense counsel objected to the state using the lyrics as impeachment, the solicitor told the court that the state had twenty-two rap videos Respondent posted on YouTube between December 16, 2018, and August 31, 2022. Despite initially stating the videos were discovered on Respondent's phone, the solicitor later clarified that *only one song* was obtained from the extraction of Respondent's phone. The others the state found on YouTube. The solicitor stated "as early as last week, we typed in Big Hood Lyfe in Google" and discovered Respondent's rap videos. App. 944, l. 24 – 947, l. 3 (emphasis added). Defense counsel correctly argued that if the state intended to use any other rap videos or lyrics as impeachment, besides the one video discovered on Respondent's phone, the state was required to provide the evidence to Respondent pursuant to Rule 5, SCRCrimP. Counsel clarified that she was not claiming a Rule 5 violation as to the video discovered on Respondent's phone. However, any additional rap videos the state "found somewhere on the internet that they intend to impeach him [Respondent] with" should have been provided to the defense pursuant to Rule 5. App. 947, l. 5 – 950, l. 2.

This case is no different than Lawton. Respondent did not learn of the state's possession of the rap lyrics and what the rap lyrics were until the state's use of them on cross-examination. The state maintained, "The purpose of Rule 5 is to inform the defense as to what the State has as its disposal so as to ensure a fair trial – the state did so and Appellant [sic] and his counsel were

freely able to review his posted rap content *in preparation for trial*."[6] Pet. for Writ of Certiorari at 18. Apparently, the state argues that it complied with Rule 5 by informing defense counsel *midtrial* about "the Google machine." See App. 964, l. 13 – 965, l. 1. The Court of Appeals correctly held that this falls wholly short of complying with Rule 5. Pursuant to Rule 5, the state was required to inform Respondent prior to trial about the rap lyrics its intended to use to impeach Respondent if he were to testify. As defense counsel asserted at trial, "Your Honor, if they had these lyrics last week, why didn't they produce them? . . . It is a Rule 5 violation."

The state cited to Hyman v. State, 397 S.C. 35, 47, 723 S.E.2d 375, 381 (2012), in support of its argument. See Pet. for Writ of Certiorari at 18. In Hyman, this Court held the state complied with Rule 5 when it allowed defense counsel to view the videotape of a controlled drug buy and provided the defendant with still shots from the video while the parties were engaged in plea negotiations. In short, as the state summarized in its petition for writ of certiorari, the state in Hyman disclosed the existence of the drug sale videotape and made the videotape available for inspection by defense counsel. The state argued that it did the same in this case. More specifically, the state argued, "Respondent's rap content was collectively disclosed by the solicitor, and it was available for review by the defense." Pet. for Writ of Certiorari at 19. Respondent disagrees with this assertion. At no point did the state make the defense aware of the additional rap videos and make the videos available for review. When defense counsel directly asked the assistant solicitor *midtrial* which rap lyrics the state intended to use as impeachment, the solicitor admitted he merely told counsel "it was on Google." See App. 964, l. 13 – 965, l. 1. This is hardly disclosing the additional rap videos and making them available for inspection or

[6] Respondent and his counsel were not able to review the rap lyrics *in preparation for trial* because the state failed to disclose the lyrics. As argued above, the defense only learned of the potential existence of additional rap videos during trial when counsel first argued the rap lyrics from the video discovered during the extraction of Appellant's phone should be excluded.

review. Moreover, the assistant solicitor admitted during arguments on Respondent's objection that there were twenty-two rap videos posted to YouTube, much unlike one video of a controlled buy in Hyman.

The state also complains that the Court of Appeals only mentioned this Court's opinion in Early v. State, 418 S.C. 255, 792 S.E.2d 226 (2016), in a footnote, and that Early is only dicta. Pet. for Writ of Certiorari at 18. Respondent disagrees that this Court's holding in Early that the state violated Rule 5, SCRCrimP, by failing to disclose Early's "See ya" message posted on the victim's Facebook page is dicta. This Court concluded that the PCR court in Early correctly found that the state should have disclosed the "See ya" message Early posted to the victim's Facebook page prior to trial pursuant to Rule 5 because it was relevant as evidence of witness intimidation. Early, 418 S.C. at 268-69, 792 S.E.2d at 233. Just like in Early, in this case, the state was required to disclose the rap videos and lyrics it discovered on YouTube to the defense prior to trial pursuant to Rule 5.

In Commonwealth v. Correia, 210 N.E.3d 407 (Mass. 2023), the Massachusetts Supreme Judicial Court held the state was obligated to disclose the defendant's rap lyrics it discovered on YouTube during pretrial discovery. Correia engaged in a fist fight with the decedent in a park. Id. at 413. During the fight, Correia stabbed the decedent multiple times. Id. At trial, Correia testified that he stabbed the decedent in self-defense after he believed the decedent was reaching for a gun. Id. As part of his self-defense strategy, Correia testified about, and offered into evidence, posts he had seen on the decedent's Facebook account of the decedent seated with a pistol, the decedent seated in a car with a knife in his hand, and the decedent seated in front of a motorcycle with a pistol in his lap. Id. at 414. Correia testified that he saw the last post on the day of the fight and that because of these social media posts together with a statement the

decedent made during the fight, he believed the decedent possessed and was prepared to use a gun. Id.

During cross-examination, the Commonwealth asked Correia about his own social media posts, including four rap songs Correia wrote and posted to his "channel" on YouTube. Id. The Commonwealth questioned Correia about select lyrics from these songs. Id. Correia's counsel objected to the prosecution's references to the lyrics because the Commonwealth failed to disclose the lyrics before trial. Id. The objection was overruled. Counsel later moved for a mistrial arguing that had the lyrics been properly disclosed, counsel would have advised Correia not to testify. This motion was denied. Id.

Pursuant to the Massachusetts's rules of criminal procedure, the Commonwealth is required to "disclose to the defense any written or recorded statements, and the substance of any oral statements, made by the defendant provided they are relevant to the case and are in the possession, custody, or control of the prosecutor." Id. (cleaned up). In considering the phrase "possession, custody, or control," the appellate court emphasized that the discovery rules "were created to permit defense counsel to learn, through discovery of the government's evidence, what the defendant faces in standing trial, and to assist in preventing trial by ambush." Id. at 415. In response to the Commonwealth's argument that the lyrics were on a third party website and it did not control them, the court held that once a third party record becomes part of the prosecutor's case file, discovery obligations are triggered. Id. The court considered the lyrics to be part of the Commonwealth's case file because the prosecutor "obviously had access to the statements" since she quoted them during her cross-examination. Id. Accordingly, the Massachusetts Supreme Judicial Court concluded that the government was obligated under the rules of criminal procedure to disclose them. Id.

Like in Correia, the state was obligated to disclose Respondent's rap lyrics it discovered on YouTube pursuant to Rule 5, which contains very similar language to the language in the Massachusetts's discovery rule.

Finally, unlike the state argues, the Court of Appeals properly applied the harmless error doctrine. The rap lyrics were used by the state to refute Respondent's remorse and call into question his self-defense case. Respondent's credibility was essential to his defense. The Court of Appeals correctly concluded that there was no evidence presented apart from Respondent's own testimony and accounts of what Respondent told others to corroborate his account of why he shot the decedents.

Respectfully, this Court should deny certiorari as the Court of Appeals correctly applied Rule 5(a)(1)(A) and Lawton in holding that the state failed to properly disclose Respondent's rap lyrics to the defense before trial and that the trial court's error in admitting the lyrics was not harmless.

CONCLUSION

Based on the foregoing argument, Respondent respectfully requests this Court deny the petition for writ of certiorari.

Respectfully Submitted,

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Appellate Defender

ATTORNEY FOR RESPONDENT

This 10th day of November, 2026.