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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM CHESTERFIELD COUNTY  
Court of General Sessions  
Donald B. Hocker, Circuit Court Judge

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Case No.(s): 2014-GS-13-602 - 604; 2014-GS-13-76, 77  
2017-UP-037 (S.C. Ct. App. filed Jan. 11, 2017)  
Appellate Case No. 2014-002322

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The State, ..... Respondent,

v.

Curtis Brent Gorny, ..... Petitioner.

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**PETITION FOR WRIT OF CERTIORARI**

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## **CERTIFICATE OF COUNSEL**

Counsel for Petitioner Curtis Brent Gorny certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on February 21, 2017.

### **INTRODUCTION**

Pursuant to Rules 240 and 242, SCACR, Mr. Gorny (hereinafter “Appellant”) hereby requests that this Court issue a writ of certiorari to review the Court of Appeals’ decision in *State v. Curtis Brent Gorny*, 2017-UP-037 (S.C. Ct. App. filed Jan. 11, 2017). The Court of Appeals affirmed the circuit court’s order denying Appellant’s motion for change of venue based on pre-trial publicity and inherent prejudice to the jury. The jury convicted Appellant of attempted murder, possession of a weapon during the commission of a violent crime, and failure to stop for a blue light.

Appellant requests that this Court grant this petition, permit briefing and argument, reverse the decisions below, and remand the matter with instructions to enter a judgment in his favor or permit him a new trial.

### **QUESTIONS PRESENTED**

- I. Did the trial court err in denying Appellant’s motion for change of venue due to prejudice to Appellant in conducting the trial at the scene of the alleged crime?

### **STATEMENT OF THE CASE**

On or about January 28, 2014, Appellant was indicted on one count of Failure to Stop for Blue Light/Siren in violation of S.C. Code Ann. § 56-5-750(B)(1) and one count of Attempted Murder in violation of S.C. Code Ann. § 16-3-29. Subsequently, on or about September 2, 2014,

Appellant was indicted on one count Possession of a Weapon During the Commission of a Violent Crime in violation of S.C. Code Ann. § 16-23-490 and two additional counts of Attempted Murder in violation of S.C. Code Ann. § 16-3-29. Prior to Appellant's jury trial and before jury selection, counsel for Appellant filed a motion for change of venue based on pre-trial publicity and because the scene of the alleged crimes was within the curtilage of the Chesterfield County Courthouse. A short while after jury selection, a two day hearing was conducted on Appellant's motion and the motion was denied by the trial court. On or about October 21-22, 2014, Appellant was tried and convicted on the charges contained in the five aforementioned indictments.

Appellant appealed. The Court of Appeals initially granted oral argument, but later chose to submit the appeal on the record and briefs for the December, 2016 term without oral argument. The Court of Appeals affirmed. Appellant sought rehearing and Court of Appeals denied his request.

This petition follows.

## **ARGUMENT**

### **I. FAILURE TO GRANT APPELLANT'S MOTION FOR CHANGE OF VENUE DEPRIVED APPELLANT OF DUE PROCESS, A FAIR TRIAL, AND AN IMPARTIAL JURY.**

Constitutional rights are to be strictly adhered to and every citizen is entitled due process under the law. "[N]o one [can] be punished for a crime without 'a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power.'" *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966). Criminal trials must be conducted in "calmness

and solemnity.” *Id.* On rare occasions, the State employs a procedure so consumed by “the probability that prejudice will result that it is deemed inherently lacking in due process.” *Id.*, quoting *Estes v. Texas*, 381 U.S. 532,542-543 (1965) (both involving a media circus inside the courtroom); *Irvin v. Dowd*, 366 U.S. 717,723 (1961) (“wave of public passion” created by massive pretrial publicity); *Turner v. Louisiana*, 379 U.S. 466 (1965) (sustained contact between the state’s key witnesses and the jury).

A criminal defendant’s right to trial by an impartial jury is guaranteed by the Sixth Amendment to the United States Constitution and Article I Section 14 of the South Carolina Constitution. The Sixth Amendment to the United States Constitution guarantees to criminal defendants “the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.” Such right is applied to the states by the Fourteenth Amendment’s Due Process Clause. *Parker v. Gladden*, 385 U.S. 363, 87 S.Ct. 468, 17 L.Ed.2d 420 (1966).

Accordingly, it has been held that “due process requires that the accused receive a trial by an impartial jury free from outside influences.” *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966). Further, “the requirement that a jury’s verdict must be based upon the evidence developed at the trial goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury.” *Turner v. State of Louisiana*, 379 U.S. 466, 85 S.Ct. 546, 13 L.Ed. 2d 424 (1965). “Due process requires that the accused receive a trial by an impartial jury free from outside influences.” *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966). When a

courtroom practice creates “an unacceptable risk” of “impermissible factors coming into play,” that practice causes inherent prejudice to the defendant’s right to a fair trial. *Estelle v. Williams*, 425 U.S. 501, 504-05 (1976).

A motion to change the venue of a trial is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion. *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760 (1997).

In the present case, Appellant was deprived of the constitutional rights bestowed by the United States Constitution and South Carolina Constitution. Pursuant to the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution, Appellant’s life, liberty, and freedom were at stake, yet in denying his motion to change venue, the trial court deprived Appellant of his right to a fair and impartial jury. The State of South Carolina cannot simply provide a jury. It must provide a panel of “impartial, indifferent jurors.” *Turner*, 379 U.S. at 471-472. “This is true, regardless of the heinousness of the crime charged [or] the apparent guilt of the offender . . . .” *Id.*

Appellant’s trial was held at the same courthouse in which the alleged crimes occurred and as soon as the jury was sworn, prejudice to Appellant existed. Every courthouse employee in Chesterfield County was, in some form, a witness to the crimes alleged. In *Turner*, two key state witnesses were deputies who also served as “shepherds” for the sequestered jury. *Id.* at 467-468. The deputies swore they had not discussed the case with the jury, thus no outward prejudice was shown. *Id.* at 469. Nonetheless, the Court found “even if it could be assumed that the deputies

never did discuss the case directly with members of the jury, it would be blinking reality not to recognize the extreme prejudice inherent in this continual association throughout the trial between the jurors and these two key witnesses for the prosecution.” *Id.* at 473. The potential for prejudice rendered *Turner’s* trial “little more than a hollow formality.” *Id.* After all, “any judge who has sat with juries knows that in spite of forms they are extremely likely to be impregnated by the enviroing atmosphere.” *Id.* at 472. *Turner’s* convictions and death sentence were reversed. *Id.* at 474. In Appellant’s case, the trial court never ordered the jury to sustain from any communication or contact with other courthouse employees or Sheriff deputies who guard the door. The jury was in continual association with other courthouse employees throughout the trial, whether it be directly or indirectly, and it would be incorrect to assume that this did not cause any inherent prejudice to the jury.

Here, the Court of Appeals relies, in large part, on *State v. Hernandez*, 970 P.2d 149 (N.M. Ct. App. 1998) in their affirmation of the trial court’s decision wherein Hernandez’s trial took place in the same courthouse in which the shooting incident occurred. *Id.* Before trial, defendant moved for a change of venue on the grounds that “there are no measures which can be taken to ensure that the jury will not have unauthorized viewing of the crime scene.” *Id.* The trial court denied the motion, but toured the area before trial and ordered specific measures to prevent jurors from improperly viewing the crime scene. *Id.* These measures included using a courtroom in another part of the building, requiring jurors to enter and exit the courthouse through a different doorway, curtaining off part of the lobby, and stationing court personnel to ensure that jurors did not stray into the designated area. Furthermore, the jury was given a tour

of the crime scene under the court's supervision during the trial. *Id.* In *Hernandez*, the Court of Appeals concluded that the trial court did not abuse its discretion by holding the trial in the same courthouse where the shooting occurred because the trial court took precautions to prevent unauthorized viewing of the crime scene. *Id.*

The precautions taken in *Hernandez* alleviated prejudice to the jury, unlike in the present case. The only precaution to prevent any unauthorized viewing of the crime scene that was afforded to Appellant was the jury instruction given by the trial court. The jury in Appellant's case was free to roam throughout the crime scene, traveling the course of Appellant and the alleged victim, to view the crime scene, and to park directly within the bounds of the crime scene. As in *Hernandez*, the trial court here could have taken more appropriate measures to prevent such unauthorized viewings by allowing the jury to enter and exit through a different doorway, and disallow jury members from parking within the bounds of the crime scene. Here, the Court of Appeals wants to draw a distinct line separating the courthouse where Appellant's trial took place and the parking lot within the curtilage of the courthouse. Given the layout and proximity of the location of the alleged crime to the courthouse, this is inherently impossible.

The State argues that there is no prejudice to the jury here because the alleged crimes occurred outside the courthouse premises and then later, further on down the road. Appellant does not dispute that some of the crimes alleged in the indictments occurred away from the courthouse. However, the allegations against Appellant begin within the threshold of the courthouse door and carry over into the parking spaces located within mere feet of the courthouse itself. Appellant's jurors entered the crime scene for *voir dire* and spent their days in

continual association with the crime scene. The probability that this bizarre procedure created prejudice is too great for our system to endure. The trial court's disregard for the jury untethered access to the scene of the alleged crimes invoked inherent prejudice toward Appellant.

The jury serves as "an appendage" of the trial court. *Turner*, 379 U.S. at 472. It must exercise "calm and informed judgment." *Id.* No citizen of Chesterfield County could sit in their courthouse and remain "indifferent" while walking the path the alleged crimes followed, while entering through the doorway where the alleged altercation began, or parking within the crime scene itself, mere feet from the outer walls of the courtroom in which the State conducted Appellant's trial. Extraordinary prejudice was invoked by the trial court in allowing the State to conduct the trial of Appellant within the scene of the alleged crime. As was found to be true in *Turner* so applies to Appellant : "what happened in this case operated to subvert [the] basic guarantees of trial by jury." *Id.* at 473.

### **CONCLUSION**

For the reasons stated this Court should grant this petition, permit briefing and argument, and reverse the judgment below.

*Signature Page to Follow*

Respectfully submitted,



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March 22, 2017

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM CHESTERFIELD COUNTY  
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**PROOF OF SERVICE**

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The undersigned hereby certifies that on the date indicated below he served counsel of record with a copy of the *Petition for Writ of Certiorari* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

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