IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2020-001337
Trial Court Case No. 2015-CP-18-01571

Progressive Direct Insurance Co., and
USAA General Indemnity Company, ...Petitioners,

v.

Shanna Groves as the Personal Representative of the
Estate of Lynn Harrison.....Respondent.

REPLY

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The Respondent Estate spends twenty-two pages opposing the Petition for Writ of Certiorari, but it never once attempts to explain how gunshot injuries from the intentional firing of a rifle out of one vehicle into another are foreseeably identifiable with the normal use of an automobile. The reason is simple: they are not.[1] Instead, Respondent spends the entirety of its brief attempting to distract this Court from this key flaw in the Court of Appeals' decision.

In *State Farm Fire & Casualty Company v. Aytes*, this Court held injuries must be "foreseeably identifiable with the normal use of an automobile." 332 S.C. 30, 33, 503 S.E.2d 744, 745-46 (1998) (emphasis added). Otherwise, the injuries do not arise out of the ownership, maintenance or use of a vehicle. Following *Aytes*, this Court in *State Farm Mutual Automobile Insurance Company v. Bookert*, 337 S.C. 291, 523 S.E.2d 753 (2000), held that gunshot injuries from the intentional firing of a gun – the very injury at issue in this case – were not foreseeably identifiable with the normal use of an automobile. Therefore, Respondent's injuries were not foreseeably identifiable with the normal use of an automobile, and the Court of Appeals should have affirmed the Circuit Court.

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[1] "An assault by an armed assailant upon the driver of a car is not the type of conduct that is foreseeably identifiable with the *normal* use of a motor vehicle." *Nationwide Mut. Ins. Co. v. Brown*, 779 F.2d 984, 989 (4th Cir. 1985) (emphasis in original) (quoting *Detroit Auto. Inter-Insurance Exchange v. Higginbotham*, 95 Mich. App. 213, 290 N.W.2d 414 (1980)). *See also State Farm Mut. Auto. Ins. Co. v. Dehaan*, 393 Md. 163, 192-93, 900 A.2d 208, 225 (2006) ("Shooting people is likewise not the manner in which vehicles are normally used, or for which they are designed, i.e., vehicles are not normally necessary for shooting people."); *Kessler v. Amica Mut. Ins. Co.*, 573 So.2d 476, 478 (La. 1991) ("The risk that an occupant of another car might suffer a gunshot wound is not within the scope of the duty to stop at a stop sign."); *Farm & City Ins. v. Estate of Davis*, 629 N.W.2d 586, 589 (S.D. 2001) ("A majority of courts refuse to find that the insurer and insured contemplated that the conduct involved in a [vehicle-to-vehicle] drive-by shooting would be covered under the policy."); *State Farm Mut. Auto. Ins. Co. v. Spotten*, 610 N.E.2d 299, 302 (Ind. Ct. App. 3rd Dist. 1993) ("A random act of violence by a vehicle passenger . . . is not a risk reasonably contemplated by the parties and expressed in the [automobile] contract.").

Instead of addressing the key legal question in this case, Respondent relies on the same flawed logic used by the Court of Appeals. Respondent argues that, because this Court in *Wasau Underwriters Insurance Company v. Howser*, 309 S.C. 269, 422 S.E.2d 106 (1992), found gunshot injuries arose out of the ownership, maintenance or use of a vehicle, the injuries at issue in this case do so as well. Respondent's logical proof fails because *Howser* predates *Aytes* and *Bookert*. This Court in *Howser* did not have to address the question of whether the gunshot injuries in that case were "foreseeably identifiable with the normal use of an automobile" because that element was not yet part of the ownership, maintenance or use test. Therefore, in addition to being distinguishable on its facts, *Howser* is particularly inapposite to the "normal use" analysis. Neither Respondent nor the Court of Appeals ever explains how firing a rifle from one stationary car into another is a "normal use" of an automobile. Moreover, Respondent – and the Court of Appeals – fail to explain how the gunshot injuries in this case were "foreseeably identifiable with a normal use" of a vehicle. They were not. Therefore, Petitioners respectfully submit that the Petition for Writ of Certiorari should be granted, the Court of Appeals should be reversed, and the Circuit Court should be affirmed.

I. Pursuant to Rule 242(b)(3), this Court should grant the petition for writ of certiorari because the Court of Appeals' decision conflicts with this Court's prior decisions in *Aytes* and *Bookert*.

This Court's precedent in *Bookert* and *Aytes* is binding. The Court of Appeals' decision directly conflicts with those holdings and attempts to justify that approach by stating that *Bookert* is "limited to the facts of that case." (App. P. 201). Because the Court of Appeals' decision conflicts with this Court's precedent, certiorari should be granted. *See* Rule 242(b)(3), SCACR.

Instead of pointing to a normal use of a vehicle that could result in intentional gunshot injuries, Respondent relies solely on this Court's prior decision in *Howser*. Before *Aytes*, this Court in *Howser* found injuries that were the culmination of an ongoing vehicular assault arose

out of the ownership, maintenance or use of a motor vehicle. In that case, the assailant used his vehicle to "bump" the victim's vehicle three times. When the victim accelerated to flee the assailant, the assailant sped up and chased the victim. As the culmination of this ongoing assault – in which the vehicle was used to both bump and pursue the victim – the assailant shot the victim while she was driving to flee the assailant. This Court held the "gunshot was the culmination of an ongoing assault, in which the vehicle played an essential and integral part." *Id.* at 273, 422 S.E.2d at 108. Importantly, this Court reached that decision without considering whether the victim's injuries were "foreseeably identifiable with the normal use of an automobile" because that element was not adopted until the later.

The undisputed facts in this case show that both vehicles were stationary when Redman fired his gun. (R. pp. 85 & 89, # 12). The vehicles never made any contact. (R. pp. 85 & 89, # 15). Harrison did not try to evade Redman, and instead was operating her vehicle in a normal and reasonably foreseeable manner. (R. p. 98, # 7). The only two facts that overlap between *Howser* and here are that both the shooters and victims were in vehicles and the victims were injured by the firing of guns. However, neither of these facts is sufficient to establish a causal connection. *See Holmes v. Allstate Ins. Co.*, 786 F. Supp. 2d 1022 (D.S.C. 2009) (distinguishing *Howser* and *Towe* and finding no causal connection when assailant spotted victim while driving down the road, turned around to pursue her, pulled up beside her when she parked, shot her, and drove away).

Respondent also relies on this Court's holding in *Home Insurance Company v. Towe*, 314 S.C. 105, 441 S.E.2d 825 (1994), which involved a passenger in a moving vehicle throwing a bottle at a street sign. When he missed, the bottle struck the operator of a tractor. This Court found a causal connection because the use of the vehicle placed the passenger in a position "to

throw the bottle at the sign and the vehicle's speed contributed to the velocity of the bottle increasing the seriousness" of the injuries. *Towe*, 314 S.C. at 107, 441 S.E.2d at 827 (emphasis added). Thus, the speed of the vehicle had a direct causal connection to the severity of the victim's injuries. Like *Howser*, *Towe* predated *Aytes*.

Here, the injuries resulted from the firing of a bullet from a stationary position. Redman's use of the vehicle had no causal connection to the severity of Harrison's injuries. Thus, the holding in *Towe* is irrelevant.

Respondent's reliance on *Howser* and *Towe* – like the Court of Appeals' reliance on those same cases – completely ignores the required "normal use" analysis. The "normal use" factor was not adopted until 1998 in *Aytes*.[2] [3] In *Bookert*, this Court held that firing a gun from a moving vehicle at a victim was not a "normal use" of a vehicle, and the resulting gunshot injuries were not "foreseeably identifiable with the normal use of an automobile." 337 S.C. at 293, 523 S.E.2d at 182.

Respondent claims *Aytes* did not change the law, so *Howser* is controlling. However, this Court in *Bookert* explained why it was reversing the Court of Appeals: "After the Court of Appeals

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[2] Respondent claims Petitioners did not raise this issue to the Court of Appeals. That is not correct. Petitioners argued to the Court of Appeals that Respondent's reliance on *Howser* was misplaced because it predated *Aytes*. (App. p. 166 n. 5 ("Likewise, the Supreme Court's decision of *Howser* does not address the 'normal use' factor because it predates *Aytes* and *Bookert*."). Petitioners raised this same argument in the Petition for Rehearing. (App. p. 205) ("Instead of applying the *Bookert* holding, this Court's July 22 Opinion relies almost exclusively on two cases that predated *Bookert* and that applied a former test that is no longer the applicable law in South Carolina.").

[3] Respondent also contends Petitioners have not argued *Howser* and *Towe* are distinguishable. Again, Respondent is incorrect. (Pet. for Writ of Cert., p. 6) ("Moreover, both cases are distinguishable on their facts."); (App. pp. 166-171) (addressing in the Petitioners' brief before the Court of Appeals the distinctions between the facts of this case as compared to those in *Howser* and *Towe* and comparing the facts with those in *Holmes v. Allstate Ins. Co.*, 786 F. Supp. 2d 1022 (D.S.C. 2009); (App. pp. 207-213) (addressing the same in the Petition for Rehearing).

handed down its opinion [which relied on *Howser*] we decided *State Farm Fire & Casualty Co. v Aytes . . ..*" 337 S.C. at 293, 523 S.E.2d at 182. If *Aytes* did not change the law and *Howser* still controlled, then this Court would have distinguished *Bookert* from *Howser*. It did not. Instead, this Court's short opinion simply held "[w]e find Mary's policy does not cover Michael's injuries because they are not 'foreseeably identifiable with the normal use of an automobile.' *State Farm Fire & Casualty Co. v. Aytes, supra.*" *Id.*

Perhaps because Respondent cannot devise an explanation as to how intentionally shooting someone with a rifle while both cars are stopped at a stop light is a "normal use" of a vehicle, Respondent resorts to creating straw man arguments. Respondent incorrectly states Petitioners' position as claiming gunshot injuries are never foreseeably identifiable with the normal use of an automobile. However, as noted in the Petition for Writ of Certiorari, this Court in *Peagler v. USAA Insurance Company*, 368 S.C. 153, 628 S.E.2d 475 (2006), found that injuries from the accidental discharge of a hunting rifle while unloading the rifle from the cab of a pickup the morning after a hunting excursion were foreseeably identifiable with the normal use of an automobile. As this Court held in *Peagler*, "[m]any vehicles in South Carolina, and certainly many pickup trucks, are used for hunting purposes," including transporting firearms to and from hunting grounds.[4] *Id.* at 164, 628 S.E.2d at 481. Thus, Petitioners recognize that some gunshot injuries could be foreseeably identifiable with the normal use of an automobile. However, this Court in *Bookert* found gunshots intentionally fired from a vehicle were not foreseeably identifiable with the normal use of a vehicle. Because the very same injuries occurred here, *Bookert* is controlling.[5]

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[4] After finding the injuries were foreseeably identifiable with the normal use of a vehicle, the *Peagler* Court found the pickup truck was not an active accessory to the injury. *Id.*

[5] This distinction has been recognized by other jurisdictions. The Supreme Court of Arizona has found that accidental discharges while unloading a hunting rifle from a vehicle could arise out of

It is astonishing that Respondent never addresses Petitioners' primary argument, which was a principal argument adopted by the Circuit Court. Harrison's injuries resulting from the intentional firing of a rifle were not foreseeably identifiable with the normal use of an automobile. Respondent argues Redman drove his vehicle before the shooting, and he was "operating" his vehicle at the time of the shooting because he had his foot on the brake while stopped at the red light. (App. p. 98, # 8). Harrison was not injured by Redman's use of his brake. She was not injured by his use of his vehicle. Those "normal uses" – driving up to a red light and stopping at a red light – are not what injured Harrison. She was injured from an intentional gunshot. And no "normal use" of the vehicle by Redman would have caused Harrison's gunshot injuries.

II. The Court of Appeals' decision below is in direct conflict with the District Court's decision in *Holmes*.

The Circuit Court found the *Holmes* case persuasive. (R. pp. 3-4). Once again unable to address the case head on, Respondent misconstrues the facts in *Holmes* in an effort to distinguish it.

In *Holmes*, the assailant, an estranged ex-boyfriend, would follow the victim around town in his car – so much so that the victim's husband bought a new truck in hopes of avoiding the assailant. *Id.* at 1023-24. On the date of the shooting, the victim was at a friend's house. The assailant used his car to drive slowly back and forth in front of the house. *Id.* Later that day, the victim left to pick up a neighbor's child at a bus stop. While driving in the opposite direction, the assailant passed the victim. "He turned his vehicle around to go after her." *Id.* He then found the

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the use of a vehicle, but shots intentionally fired from one vehicle into another vehicle – even during a vehicular chase – did not arise out of the use of a vehicle. *See Ruiz v. Farmers Ins. Co. of America*, 177 Ariz. 101, 865 P.2d 765 (1993). The Supreme Court of Texas has made a similar distinction. *See Mid-Century Ins. Co. of Texas v. Lindsey*, 997 S.W.2d 153, 160-61 (Tex. 1999).

victim at the bus stop, drove up beside her, stopped, shot her, and drove away. *Id.* The District Court found the injuries did not arise out of the ownership, maintenance or use of an automobile.

Respondent claims the assailant in *Holmes* did not need to use his car to put himself in a position to shoot the victim and that the assailant in *Holmes* "could have spotted the vehicle while on foot, walked up to the window, and shot the victim, but [in contrast] Redman could not have kept pace with Harrison's car and positioned himself to shoot her but for his use of the automobile." (Return to Pet., p. 16). Respondent misstates the facts in *Holmes* and the facts in this case.

The assailant in *Holmes* could not have simply walked up to the victim. He saw her when she was driving in the opposite direction and "[h]e turned his vehicle around to go after her." *Id.* The Respondent Estate conveniently avoids this fact by misstating it in its argument.

Respondent also misstates the facts in this case, arguing "Redman could not have kept up with Harrison from stop light to stop light without a car." (Return to Pet., p. 20). However, there is no such fact in the Record on Appeal. Tellingly, Respondent cites to Appendix pages 97-98, a response to Respondent's Request to Admit number 3, as the purported source for this fact. That admission merely states, "Admit that both Jimi Carl Redman, Jr. and Lynn Harrison's vehicles were turned on and in drive at the time of the shooting." (App. pp. 97-98, #3). The parties in this case agree that both vehicles were stopped at the red light at the time of the shooting. (App. pp. 85 & 89, # 12). Thus, the admission that both vehicles were "on and in drive at the time of the shooting" does not show Redman "closely pursued" Harrison, and it makes no reference to a "stoplight to stoplight" interaction.

As the party seeking coverage, Respondent bore the burden of proving a vehicular pursuit. It failed to present evidence to support that showing. The first and only evidence of interaction between the vehicles was that, as the vehicles approached the red light, a witness observed Redman

making hand gestures or blowing kisses at Harrison. (App. p. 97, # 1). This is not evidence of a vehicular pursuit. Respondent is creating facts outside the Record on Appeal in an effort to distinguish this case from *Holmes*.

The District Court in *Holmes* correctly read and distinguished the *Howser* and *Towe* cases. Like Respondent here, the claimant in *Holmes* relied on *Howser* and *Towe*. As to *Howser*, the *Holmes* Court held that case:

> found a causal connection based on its consolidation of both the vehicular chase and the gunshot as a single "ongoing assault." This categorization stemmed from the assailant's use of his vehicle to ram Howser's vehicle numerous times as it continuously pursued her in a chase on a public highway and from the assailant's reliance on his vehicle to keep up with Howser's position to shoot her.

Id. at 1026. As in *Holmes*, and unlike the facts in *Howser*, Redman did not use his vehicle to ram Harrison, Harrison did not attempt to flee Redman, and Redman did not pursue Harrison.

The only evidence in the record is that the two vehicles were driving in adjacent lanes and both came to a stop at a stop light. Harrison "was operating her vehicle in a normal and reasonably foreseeable fashion" – i.e., she was not driving in any way that indicated she was fleeing from another vehicle or even aware of Redman's presence in the vehicle beside her. (App. p. 98, # 7). This was the Court of Appeals' finding: "Redman did not use his automobile to keep up with Harrison and did not make contact with her vehicle. There also is no evidence Harrison saw Redman driving beside her or that she was aware of Redman's gestures towards her." (R. p. 6).

The Court of Appeals' decision below conflicts with the District Court's decision in *Holmes*. Even setting aside the various distinctions noted by the District Court in *Holmes*, the District Court relied on *Bookert*, holding:

> In this case, Williams appears to have used his vehicle in the same manner in which the vehicle was used in *Bookert*: to locate Plaintiff, to position himself next to Plaintiff's vehicle, and to leave the scene of the crime. While Plaintiff likens the assault on her with that of a

> drive-by shooting, *Bookert* establishes that such use of a vehicle will not satisfy the causal connection requirement necessary to invoke insurance coverage, since such conduct is not foreseeably identifiable with the normal use of an automobile.

Id. at 1027 (emphasis added).

In this case, the Court of Appeals incorrectly found that injuries from intentionally firing a gun from one vehicle into another are foreseeably identifiable with the normal use of an automobile. The District Court in *Holmes* – a published decision – reads this Court's holding in *Bookert* otherwise. The cases are in conflict. Because the District Court relies on this Court's precedent, it will be required to continue applying *Holmes* and *Bookert*. *See Progressive Southeastern Ins. Co. v. McLeod*, 489 Fed. Appx. 669, 671 (4th Cir. 2012) ("While sitting in diversity, the federal courts are not bound by the precedent of intermediate appellate courts, but must adjudicate legal questions consistent with the precedent of the state's highest court ...."). Thus, this Court's guidance is important.

III. This case presents an opportunity for this Court to answer the question it did not get to answer in *Sylva*.

Respondent's only response to the arguments regarding acceptance of the certified question in *Sylva v. Allstate Property & Casualty Insurance Company*, 242 S.C. 512, 818 S.E.2d 753 (2018), is that this is not one of the factors enumerated in Rule 242, SCACR. However, Rule 242(b) states that the enumerated list is "neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general . . .." Rule 242, SCACR. To the contrary, the fact this Court accepted a certified question on this issue indicates this Court believed the question was worthy of consideration.

IV. Respondent's Return is a tacit admission that the Court of Appeals considered facts not in the Record on Appeal.

The Court of Appeals' finding that Redman closely pursued Harrison is not in the Record on Appeal. Moreover, this finding is one of the primary bases of the Court of Appeals' holding in this case. Recognizing that the Court of Appeals has placed its ruling on a weak limb, Respondent attempts to minimize the importance of the Court of Appeals' errant finding. Respondent argues: "It is important to note that whether Redman closely pursued is not the legal test applied by the Court of Appeals. The Court of Appeals use of the term 'closely pursued' is not material to its decision." (Return to Pet. p. 21). However, even a cursory reading of the Court of Appeals' decision disproves Respondent's contention. In the causal connection section of the Court of Appeals' decision, the Court of Appeals finds:

> Finally, the facts of the case at bar are on all fours with the facts in *Howser*. We note that the stoplight, where Redman was able to quickly catch up with Harrison and shoot her, may have been the only thing that prevented Redman's pursuit of Harrison from turning into an extended chase as in *Howser*. Accordingly, we do not find that the brevity of Redman's pursuit, resulting from Harrison's compliance with the stoplight, distinguishes *Howser* from the case at bar.

(App. p. 195) (emphasis added). The Court of Appeals goes on to find Redman's vehicle was an active accessory because "After spotting Harrison, Redman used his vehicle, like the assailant in *Howser*, to closely pursue her to the point where he shot her. Had Redman not been in his vehicle, he would not have been able to keep pace with and follow Harrison." (App. p. 196) (emphasis added). The Court of Appeals reiterates this unsupported factual finding when it attempts to distinguish this case from *Holmes*. (App. p. 197) ("Conversely, Redman could not have kept pace with Harrison's car and positioned himself to shoot her but for his use of the automobile.").[6] Thus,

[6] The Court of Appeals' decision is replete with findings that rely on the "closely pursued" factual finding. (App. p. 198) ("Conversely, Redman would not have been able to keep pace with Harrison

Respondent's contention that Court of Appeals' finding that Redman "closely pursued" Harrison was "not material to its decision" is, at best, an unfair reading of the Court of Appeals' decision.

Respondent fails to point to competent evidence in the Record on Appeal showing there was a vehicular pursuit. Respondent points to a few facts and suggests that these confirm a vehicular pursuit, namely:

1) Harrison was driving eastbound on Old Trolley Road just before the intersection of Old Trolley Road and Bacons Bridge Road before stopping at the stop light. (R. pp. 84-85 & 89, ## 7 & 9).

2) Redman was also driving on the same road in the lane to Harrison's right, and he stopped at the same light. (R. pp. 84 & 89, ## 8-9).[7]

3) As the two vehicles approached the light, Redman was seen blowing kisses and making hand gestures toward Harrison. (R. p. 97, # 1)

4) Some time thereafter, while both vehicles were at the stop light, Redman shot Harrison. (R. pp. 85 & 89, # 10).

These facts do not show a vehicular pursuit. In fact, Respondent admits that at all times "Harrison was operating her vehicle in a normal and reasonably foreseeable fashion." (R. p. 98, # 7). Unlike the driver in *Howser*, there was no evidence Harrison was being chased or was fleeing. In fact, the evidence shows she remained stopped at the red light even when Redman pointed a rifle at her and shot her. Her conduct indicates she was not even aware of Redman.

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from the moment he spotted her until the moment he shot her but for the use of his vehicle"); (App. p. 199 ("However, this argument ignores the fact that Redman used his vehicle to drive from the point where he first spotted Harrison to the point where he shot her at the stoplight while also keeping pace with her vehicle."); (App. p. 201) ("Conversely, but for the use of his vehicle, Redman would not have been able to keep pace with Harrison from the point he spotted her to the stoplight where he shot her.").

[7] Neither party admitted to Redman's intent when he stopped at the red light. (R. pp. 89 # 9 and p. 97 # 2). Because Redman's intent was not admitted and as the party seeking coverage, Respondent bore the burden of proof on this issue. Respondent never presented evidence of Redman's intent when he stopped at the red light, and Respondent did not present evidence that Redman had formed any intent to shoot Harrison prior to stopping at the red light.

Respondent again tortures the Record on Appeal, emphasizing the fact that both vehicles were "turned on and in drive" when the shooting occurred, inferring that the shooting happened during a vehicular chase. However, both vehicles were turned on an in drive while stopped at a stop light. (R. pp. 85 & 89, # 12) ("Admit that neither the 2010 GMC Terrain nor the red Ford Escape were in motion at the time of the shooting." (admitted)).

In short, there is no evidence of what happened immediately before the two vehicles were "driving toward the stop light" at the intersection. (R. p. 94, # 1). The Court of Appeals' finding that Redman "closely pursued" Harrison was critical to the Court of Appeals' decision, and it is not in the Record on Appeal. In fact, the Circuit Court found the exact opposite: "Redman did not use his automobile to keep up with Harrison and did not make contact with her. . . . There was no attempt by Harrison to evade Redman." (R. p. 4).

Likewise, Respondent never identifies any evidence in the Record on Appeal suggesting Redman used his vehicle to "conceal" his gun. Respondent points to an unsworn statement that someone driving behind Redman did not see the gun. That is not evidence that Redman used the vehicle to conceal the gun, which explains why Respondent never argued this fact to the Circuit Court or the Court of Appeals. The Court of Appeals made a *sua sponte* factual determination and then relied on that determination in the "active accessory" and "intervening act" prongs of its analysis. In doing so, the Court of Appeals deviated from the standard of review.

As the party seeking coverage, the Respondent Estate bore the burden of presenting facts to show Harrison's injuries arose out of Redman's ownership, maintenance or use of an automobile. *See e.g., Garrett v. Pilot Life Ins. Co.*, 241 S.C. 299, 303, 128 S.E.2d 171, 173 (1962) ("[T]he insured had the burden of showing that his injury was covered by the terms of the policy."); *Jericho State Capital Corp. of Florida v. Chicago Title Ins. Co.*, 431 S.C. 437, 445, 848 S.E.2d

572, 576 (Ct. App. 2020) (same). By adopting facts that were not in the Record on Appeal and for which the Respondent failed to present any evidence, the Court of Appeals improperly shifted the burden of proof. The Court of Appeals then went even further, finding facts that were never even argued by the Respondent. In doing so, the Court of Appeals applied an incorrect standard of review.

CONCLUSION

The Court of Appeals failed to follow this Court's binding precedent set forth in *Aytes* and *Bookert*. Shooting a person with a rifle out of the driver's side window of a vehicle is not a "normal use" of an automobile. Also, Harrison's injuries are not foreseeably identifiable with the normal use of an automobile. The Court of Appeals' opinion and Respondent's lengthy Return avoid even engaging these issues because there is no explanation for how injuries resulting from Redman's firing of a gun were foreseeably identifiable with the normal use of an automobile. Cars do not shoot bullets.

The Court of Appeals' decision stands in conflict with *Bookert* and *Aytes*. Moreover, the Court of Appeals' decision stands in conflict with the decisions of the District Court that apply the holdings in *Bookert* and *Aytes*. Finally, this Court recently accepted a certified question on a similar issue in *Sylva*, but it was unable to answer the question. This case presents an important opportunity for this Court to provide needed guidance on this issue.

Lastly, the Court of Appeals made factual findings that are not in the record. In doing so, the Court of Appeals improperly shifted the burden of proof.

For the above-stated reasons, Petitioners respectfully move and petition this Court for a writ of certiorari to answer these important questions and to provide clarity on this issue of law.

Respectfully submitted,

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