

**STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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Certiorari to the Court of Appeals  
Appeal from Barnwell County  
The Honorable Doyet A. Early, III, Circuit Court Judge

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Opinion No. 5846 (S.C. Ct. App. filed August 11, 2021)  
2017-GS-06-00066

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**RECEIVED**  
**Nov 12 2021**  
**SC Court of Appeals**

THE STATE,

PETITIONER,

v.

DEMONTAY MARKEITH PAYNE,

RESPONDENT.

Appellate Case No. 2021-001087

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**REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## ARGUMENT

### **I. The physical evidence does not corroborate Respondent's contention that Victim shot at Respondent first during the altercation.**

Petitioner offers this brief Reply to the Return to Petition for Writ of Certiorari to address certain assertions made by Respondent. Respondent's interpretation of the physical evidence, and the arguments made on the basis of that evidence, are not supported by the record. Specifically, Respondent argues that:

*[T]wo witnesses saw the deceased pull a gun and shot (sic) at Respondent prior to Respondent returning fire. This was corroborated by physical evidence. The police officers recovered two types of shell casings from the area around the shooting. The .380 shell casings corresponded with the gun Respondent said he was using. However, the .40 shell casing, which was indisputably not shot from the gun used by Respondent, was found very close to the deceased's body. Further, there was evidence that the deceased actually shot a gun. According to the forensics testing conducted on the gunshot residue kit administered on the deceased, there was gunshot primer residue on his hands.*

(Return to Petition for Writ of Certiorari, p. 18)(emphasis added). *The physical evidence does not corroborate the contention that Victim shot at Respondent first; the evidence does not even corroborate that Victim shot a gun at all. Correction and clarification of the facts relied upon by Respondent is required.*

All three witnesses articulated that the shooting took place at the intersection of Wingo Estates and Emerald Lane. (R. p. 19, line 3 through p. 20, line 25; p. 113, line 2 through p. 117, line 7; p. 110, line 24 through p. 111, line 2; p. 155, lines 3-11; p. 161, lines 12-15). However, *both Alicia and Tyeisha* testified that Victim ran from the location where the shooting took place and ultimately fell in between two other residences.<sup>1</sup> (App., p. 22, line 6 through p. 23, line 10; p. 117,

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<sup>1</sup> Mr. Payne testified that he did not see where Victim ran because he was "looking back running" himself. He only testified to looking left and seeing him "on the ground" as he drove away. (R. p. 157, lines 2-8).

line 13 through p. 118, line 24). As the evidence from the record shows, and as Respondent concedes, the only shell casing recovered by police that did not match the .380 casings fired by Respondent was found beside Victim's body where he fell – *not at the location of the shooting*. (R. p. 89, line 17 through p. 90, line 4). Such evidence is in no way supportive of Respondent's conclusion that Victim was the first to fire a weapon at the intersection. Second, the evidence in the record does not demonstrate beyond mere speculation that Victim actually fired a weapon at all. No gun was recovered by police on Victim's person or in his vicinity, and the expert testimony of Tyler Sturkie demonstrated that gunshot residue can be expected to be found on a victim of a gunshot, whether he fired a gun himself or not. (R. p. 74, line 5 through p. 75, line 19; p. 76, line 2 through p. 77, line 15). Victim's gunshot wounds were testified to by expert witness, forensic pathologist Janice Ross. Gunshot wound number 1 contained evidence of stippling consistent with Victim having been approximately 18 to 24 inches away from Respondent's gun at the time he was shot. (R. p. 183, line 22 through p. 184, line 25). Contrary to Respondent's argument, the physical evidence of this case is entirely unresponsive of the contention that Victim fired a gun first during the altercation, and is at best speculative that he possessed or fired a weapon at all.

### **CONCLUSION**

For all the foregoing reasons set forth in Petition for Writ of Certiorari and this Reply, Petitioner respectfully petitions this Court to grant certiorari in this matter.

(Signature block on following page)

Respectfully submitted,

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Columbia, South Carolina  
November 12, 2021

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**PROOF OF SERVICE**  
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I, Donna D'Alessio, am an employee of the Petitioner, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Reply to Return to Petition for Writ of Certiorari, and Proof of Service has been forwarded to Respondent's counsel, Susan Hackett, Esq., via email today, November 12, 2021 to [shackett@sccid.sc.gov](mailto:shackett@sccid.sc.gov), as well as to her assistant, [cstock@sccid.sc.gov](mailto:cstock@sccid.sc.gov).

I further certify that all parties required by Rule to be served have been served.

This 12<sup>th</sup> day of November, 2021.



\_\_\_\_\_  
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