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No. \_\_\_\_\_

FILED  
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

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DEVIN MARQUES CARTER — PETITIONER

Vs.

THE STATE OF IOWA — RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE IOWA COURT OF APPEALS

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DEVIN MARQUES CARTER Pro Se  
IOWA STATE PENITENTIARY  
P.O. BOX 316  
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## **QUESTIONS PRESENTED**

- I. DID THE STATE OF IOWA VIOLATE PETITIONER'S FEDERAL PRIVILEGES AND IMMUNITIES AND DUE PROCESS RIGHTS WHEN IT UPHELD AN IRRATIONAL JURY VERDICT?**
  
- II. SHOULD THIS COURT CLEARLY DELINEATE THE INTERPLAY BETWEEN THE PRESUMPTION-OF-INNOCENCE AND PROOF BEYOND A REASONABLE DOUBT IN ORDER TO PROTECT AGAINST FUTURE CONVICTIONS HAD UPON QUESTIONABLE EVIDENCE?**

## **LIST OF PARTIES**

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All parties of interest appear in the caption of the case on the cover page

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**In Re Winship**, 397 US 358 (1970)

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IN THE SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

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This Petition for Writ of Certiorari is from the Final Order of a State Court.

The highest state court to have addressed the merits of the instant cause is the Iowa Court of Appeals. The opinion of the Iowa Court of Appeals appears at Appendix A to the Petition, and, at the time of authoring this petition, petitioner has no knowledge of an official decision of the Iowa Court of Appeals regarding the publication of its opinion in this case.

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**JURISDICTION**

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This Petition for Writ of Certiorari is from the Final Order of the State Court.

The date on which the Iowa Court of Appeals decided the merits of the instant controversy was April 14<sup>th</sup>, 2021. A copy of that decision appears at Appendix A.

A timely application for further review was filed with the Iowa Supreme Court, being thereafter denied August 30<sup>th</sup>, 2021.

A copy of the Order denying further review appears at Appendix C.

The jurisdiction of this Court is invoked pursuant to and under the authority of 28 U.S.C § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**U.S. Const. art. IV § 2** — The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

**U.S. Const. Amend. V** — No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

**U.S. Const. Amend. VI** — In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

**U.S. Const. Amend. XIV** — .... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws ....

### **STATEMENT OF THE CASE**

This is an appeal from a conviction and sentence after a jury trial of Murder in the First Degree in Polk County Case Number FECR297798. On September 16<sup>th</sup>, 2016, the Defendant, Devin Carter, was charged with Murder in the First Degree in violation of Iowa Code 701.2; two counts of Attempt to Commit Murder in violation of Iowa Code 707.1; Intimidation with a dangerous weapon in violation of Iowa Code 708.6.

Defendant's case was tried to a jury on August 28<sup>th</sup>, 2017 through September 18<sup>th</sup>, 2017. The jury returned a Verdict of Guilty on all counts on September 19<sup>th</sup>, 2017.

On October 30<sup>th</sup>, 2017, the Court sentenced Carter to life imprisonment on count I, Fifty Years on counts II and III, and Ten Years on Count IV, to run concurrent.

An occasionally stated, yet seemingly rarely observed maxim of the law embraces the sentiment that it is better for ninety-nine guilty men to go free rather than to have one innocent man suffer the infliction of an undeserved punishment.

This fundamental truism of morally righteous justice was addressed by this Court more than fifty years ago in the *Winship* case. (In Re *Winship*, 397 US 358 (1970)).

Perhaps the time has come for this Court to revisit, reexamine, and realign the guardrails of justice which have been constructed over the last century...

This case arrives at the doorstep of this Court upon the back of Devin Marques Carter. And, to be sure, as an actually innocent person — the burden of carrying this case is quite heavy — both figuratively and literally.

As the Court is well aware, wrongful convictions are an inescapable truth in our system of justice. After all, human beings are imperfect creatures, and so we live in an imperfect world. This truth alone however cannot stand in the way of working to evolve the status quo. Justice is supposed to be based upon a higher moral understanding... Justice is supposed to be found in the truth...

I ask this Court, how can a conviction be true and just when it is submitted to the jury upon the shoulders of artifice and deceit? A case should never make its way to a jury in such a manner, however, that's exactly what happened in this case.

For Devin Carter this unfortunate turn of events began in the late hours of August 5<sup>th</sup>, 2016.

#### Part 1:

##### The Buildup & The Shooting

In the late evening hours of August 5<sup>th</sup>, 2016 Devin Carter was enjoying his night at home with the aid of some intoxicating beverages. He had no plans other than to stay in, eventually going to sleep. This all changed however when his cousin Terrance Rice called him to invite him out. Carter, decided he would get together with his cousin and made the now fateful decision to meet his cousin at the local drinking establishment known as "Johnny Mac's".

Unbeknownst to Carter, a young man by the name of Dylan Freeman was also present at the bar that night. Dylan was accompanied by an entourage of friends, including the individuals who would later be victims of a shooting in the bar's parking lot. Dylan Freeman's entourage included the following persons: William Dawson Sr., William Dawson Jr., Ashley Dawson, Chelsie Dawson, Carley Toomey, Brooke Archer, Bonnie Young, and Jessica Hall.

It should be noted at this time that Dylan Freeman's cousins, "Cody Freeman," "Steven Freeman," and their mother "Tammy Freeman," were also present at Johnny Mac's that night, however these three "Freeman's" had arrived with a different group of people and casually mingled with Dylan throughout the night.

When Devin Carter arrived at Johnny Mac's bar he was greeted by his cousin Terry Rice and a gal by the name of Jasmin Ruiz. Ms. Ruiz would later testify regarding greeting Carter at the bar. Ms. Ruiz greeted Carter with a hug, and as she later testified to in court, she did not feel the presence of a gun in his pants pockets or waistband. It should be noted that Mr. Carter was wearing a tight fitting t-shirt, so not only was a firearm not visible on Mr. Carter's person, witness testimony establishes that one could not even be felt on his person during a tight embrace.

(TT Vol. 8, pt. 2; pgs. 85-89)

In Devin Carter's world everything was going well that night. He was enjoying the company of his cousin, and generally mingling with other patrons of Johnny Mac's. Mr. Carter, at that point, was completely oblivious to any drama which had begun to unfold within the entourage of Dylan Freeman.

At some point in the evening Dylan Freeman gave \$7.00 to Jessica Hall, who is believed to be the girlfriend of William Dawson Sr., and asked her to buy him a pitcher of beer, as Dylan was underage at the time and couldn't buy the pitcher for himself. Dylan started to get upset when Ms. Hall hadn't yet returned with the pitcher, and in speaking to others around him he began accusing Ms. Hall of stealing his \$7.00. As a bit more time passed, Dylan became more agitated, and decided to seek out William Dawson Sr. in order to confront him with the allegation that his girlfriend ran off with Dylan's \$7.00. (TT Vol. 6; pg. 28: L. 2-9)

After the initial confrontation of William Dawson Sr. by Dylan Freeman, a group of people from the entourage went out to the parking lot of Johnny Mac's.

Dylan was clearly agitated, angry, and upset. William Dawson Jr. tried to calm Dylan down, and at that time Dylan made his way back toward the bar. (TT Vol. 4; pg. 68: L. 5-16, & pg. 69: L. 2-9)

Around this same time Mr. Carter had gone outside to smoke a cigarette. Mr. Carter stood within the vicinity of the bar's outdoor smoke deck; several other people were also present at that time, including Dylan Freeman's Cousin Steven, and lay witness Heather Santos. As Mr. Carter smoked outside Dylan Freeman approached from the parking lot and made his way over to his cousin Steven. As Dylan approached he told his cousin Steven that three black guys were trying to jump him. (TT Vol. 7; pg. 64: L. 7-12)

Dylan Freeman with his cousin in tow then made their way back out to where the Dawson's and others were still lingering in the parking lot of Johnny Mac's. (TT Vol. 7; pg. 64: L. 7-12)

Having heard the comment about "three black guys," Mr. Carter decided to follow along to see if "the three black guys" comment was referring to his cousin Terrance and Terrance's two friends, as they were the only group of three black guys Mr. Carter had knowledge of. Mr. Carter didn't know the Dawson's or Dylan Freeman.

As all made their way into the parking lot it was clear to several of the testifying witnesses that Dylan wanted a piece of William Dawson Sr.

Dylan was agitated in a physically animated way. He was jumping around, pulling at his own pants, and he was also shoving William Dawson Sr. as well as grabbing at Mr. Dawson's shirt. (TT. Vol 4; pg. 72: L. 5-14, pg. 135: L. 3-18, pg. 136: L. 2-10, pgs. 141-143)

The Dawson's and company argued with Dylan. The argument escalated, and then shots rang out. William Dawson Jr., Carley Toomey, and William Dawson Sr. were all shot. (TT Vol. 4; pg. 73: L. 5-11)

Upon hearing the first shot William Dawson Jr. began running away from the altercation, being shot as he fled. He was shot in the middle left and right sides of his back as well as his left calf and right foot. (TT Vol. 4 pg. 79 L. 10-25)

Carly Toomey was also shot multiple times. She received six gunshot wounds to her leg, with one shot appearing to have hit her in the femoral artery.

William Dawson Sr. was shot twice. He received one gunshot wound to the leg, and was fatally shot in the head.

Ashley Dawson is the daughter of the decedent. She was present in the parking lot at the time of the shooting. Ashley Dawson testified at trial. She said that immediately after the shooting she grabbed Dylan Freeman and began to hit him as she exclaimed that he had just killed her dad. (TT. Vol. 6; pgs. 30-31: L. 24-4)

Dylan Freeman fled the scene of the shooting immediately following his confrontation with Ashley Dawson.

In his attempts to flee the scene, Dylan Freeman first approached his female cousin Cody Freeman. He ran to Cody and told her she needed to get him out of there because he wasn't supposed to be there. Cody told Dylan that she couldn't help him because her car was blocked in, and that's when Dylan Freeman fled from Johnny Mac's on foot.

Trial testimony establishes that around the time Dylan was fleeing the scene on foot he was called by his mother who had heard about the shooting. Immediately after speaking with her son, Dylan's mother called Dylan's aunt, "Bobbi Jo Burden," conveying to Ms. Burden that Dylan needed someone to pick him up because he was walking around crying and drunk. Ms. Burden, in turn, contacted Dylan and told him that she was sending her friend "Danny Weir" to pick him up. She further advised him to hide until his ride arrived.

Dylan discarded his shirt somewhere along the way as he made his escape from the scene of the shooting. He ran from Johnny Mac's Bar, located at 2279 Hubbell Ave. to "The Barage," located at approximately 2027 Maple. St.

The significance of this fact cannot be understated, as a black gun, (later identified as the murder weapon), was found lodged in a in a wooden fence which runs along the alleyway between East 22 St. and Hubble Ave.

The fence where the gun had been stashed is adjacent to the alleyway where witnesses later testified as to having seen a shirtless Dylan Freeman with a black gun. (TT Vol. 13; pgs. 56, 67-69)

Upon arriving at The Barage Dylan Freeman hid in the alleyway next to the house. ("The Barage" is a privately run after-hours hangout in a residential garage). This is from where witnesses saw him emerge just before he frantically jumped into a mistaken vehicle.

The vehicle which Dylan Freeman mistakenly believed to be his ride was driven by Chad Van Waardhuizen, along with Kelli Heimbaugh who was his passenger. The Van Waardhuizen/Heimbaugh vehicle was being followed closely by their friend's vehicle, driven by Brandi Brown.

Mr. Van Waardhuizen, Ms. Heimbaugh, and Brandi Brown all testified at trial. Their testimony establishes the following facts:

Dylan Freeman emerged from the shadows and jumped into Mr. Van Waardhuizen's vehicle, having mistaken it for Danny Weir's vehicle, this surprised Mr. Van Waardhuizen as he did not know Dylan Freeman. Mr. Van Waardhuizen immediately confronted Mr. Freeman, whereupon Mr. Freeman bolted from the vehicle, and Mr. Van Waardhuizen chased after him for a short distance. After the short chase Mr. Van Waardhuizen returned to his vehicle where he exclaimed to his passenger: "I think that was the shooter! He had a gun."

(TT Vol. 13; pg. 78: L. 18-22)

Kelli Heimbaugh corroborated Mr. Van Waardhuizen's statements at trial. Ms. Heimbaugh testified that she recalled seeing Dylan Freeman on the morning of August 6<sup>th</sup>, 2016, identifying him as the young shirtless man whom she had seen in the alley sweating, with a gun in his waistband. (TT Vol. 13; pg. 136: L. 16-22)

Brandi Brown further corroborated the trial testimony of Van Waardhuizen and Heimbaugh, stating she had been following behind them in her vehicle when she saw Dylan Freeman in the alley. She further testified as to seeing a shirtless Freeman with a gun in his waistband.

(TT Vol. 13; pg. 78: L. 23-25, pg. 110: L. 3-11)

The witness testimony from the above three witnesses is given further indicia of reliability by the fact that Dylan Freeman having ditched his shirt after fleeing from Johnny Mac's was not common knowledge. The fact that Dylan had discarded his shirt was independently introduced into the trial record by Dylan himself, his aunt Bobbi Jo, and also by DMPD Detective Lorna Garcia. (TT Vol. 12; pg. 78-79: L. 10-14) After the incident wherein Freeman mistakenly entered the wrong vehicle he was then picked up by Danny Weir and driven to Bobbi Jo Burden's residence.

Dylan was bawling when he arrived at Bobbi Jo's house around 2:30 or 3 a.m. He said that his uncle and best friend had been shot, and that he didn't want it to happen. He also relayed to Ms. Burden that Bonnie Young was freaking out on him, saying he did it, that Ashley Dawson was telling him that he killed her dad, and he said that he felt hot blood come onto his shirt, but never said he saw the shooting or shooter. Dylan was urged to go to the police station that morning, but said he didn't want to go because he was scared. His aunt then took him to her brother's house to figure out what to do. Dylan left behind his cellphone when he departed his aunt's residence. Sometime after arriving at her brother's house, Dylan Freeman's uncle took him to the police station. (TT Vol. 8, part 2; pg. 25: L. 15-17, pg. 19-20, 22: L. 16-1, pg. 24-25, 28: L. 19-1, pg. 29: L. 3-5, pgs. 31 & 34: L. 4-24)

Part 2:

The Scene after the shooting

Officer Derek Huxford was the first officer to arrive at the scene after the shooting. He had been just down the street when the call came out, and he is believed to have arrived less than a minute after the call went out. Upon his arrival bystanders told him *the shooter had left*.

(TT Vol. 6; pg. 68-67: L. 6-12, pg. 70-71: L. 25-5)

Officer Huxford then made his way to the scene of the shooting victims and immediately rendered aid to Carley Toomey, who was unconscious and lying in a large pool of blood. It appeared to Officer Huxford that she had been hit in the femoral artery. He indicated that without intervention you will bleed out in about three minutes if shot in the femoral artery. (TT Vol. 6 pgs. 71 & 72)

In stark contrast to the actions of Dylan Freeman, Mr. Carter never fled from Johnny Mac's that night.

Immediately after the shooting Mr. Carter ran to his truck, as he wanted to find safety. Mr. Carter stayed at his truck for a short period, and then headed back toward the smoke deck of Johnny Mac's. As he made his way back to the bar he passed "Heather Santos," who would later testify to as much, stating also that she did not see a gun on his person. (TT Vol. 7; pg. 81: L. 3-5)

After passing Heather Santos Mr. Carter encountered Tammy Freeman. Tammy also testified to the fact that Mr. Carter was still on scene after the police arrived, but Dylan Freeman was not. (TT Vol. 7; pg. 127-128: L. 14-17)

After the shooting Cody Freeman was in the back parking lot for a short period. This is when she had the encounter with Dylan, however, she also encountered Bonnie Young — the paramour of Dylan Freeman — and at that time Bonnie Young was saying a black man with an afro did it. Cody Freeman called 911. (TT Vol. 7; pg. 146: L. 8-25)

Sometime shortly thereafter Cody Freeman also spoke with Mr. Carter. She asked Mr. Carter if he knew what had happened and he replied: "I don't know." She further testified that Carter was scared just like everyone else over what had happened, and that Carter did not have an afro.

(TT Vol. 7; pg. 147 & 157: L. 16-23 & 8-23)

Carter as well as many other bystanders remained at Johnny Mac's for approximately 20-30 minutes after the shooting had occurred. Many first responders were on the scene at that time, and not once did any bystanders or lay witnesses point out Devin Carter as the shooter.

Carter left his vehicle in the parking lot, as there were many responding vehicles at the scene, and his truck was stuck in the middle of the scene.

Mr. Carter ended up leaving Johnny Mac's with his cousin Terrance Rice. They left in the vehicle of one of Mr. Rice's friends.

### Part 3

#### The Investigation and Trial

Steven Freeman was interviewed by DMPD Detective Lorna Garcia on August 6<sup>th</sup>, 2016. During that interview Steven Freeman pointed the finger at Devin Carter. Steven made many statements in his interview with law enforcement which would later prove to be inconsistent with physical evidence, as well as his other under oath statements.

Almost ten months after his interview with law enforcement, on April 24<sup>th</sup>, 2017, Steven Freeman was deposed by defense counsel in this case. During that deposition he stated under oath that he could not identify the shooter. He was asked about it at least three times. (TT Vol. 7; pg. 195-196: L. 24-9)

Then, the Friday before Carter's trial, Steven Freeman had an interview with the Polk County Attorney's Office wherein a discussion was held regarding perjured testimony. Steven Freeman then claimed to have lied in his prior deposition testimony under guise of threat, and that he would now again provide favorable testimony for the State by identifying Carter as the shooter.<sup>1</sup>

(TT Vol. 8; pg. 34: L. 13-20)

In examining Steven Freeman on the stand the State relied heavily on Steven's prior interview wherein he gave a multitude of inaccurate statements regarding where Devin Carter was, whom he —Steven Freeman— left with, where he went, and whom he spoke to.

Later in his sworn testimony Steven Freeman denied ever having been threatened with perjury by the Polk County Attorney's Office, despite having testified to it in his deposition and in previous testimony to the court.

(TT Vol. 8; pg. 57-60: L. 1-7, pg. 60-62: L. 20-14)

Christina Boles, who also testified at trial, stated that Steven rode with her when she departed Johnny Mac's, and Steven never said anything about seeing the shooter or about knowing who did the shooting. (TT Vol. 9; pg. 34: L. 1-13)

The lead detective in this case was Lorna Garcia. She testified for the State at trial.

It became readily apparent throughout the testimony of Detective Garcia that she pursued an investigation which was anchored upon confirmation bias.

As soon as the finger was pointed at Devin Carter, Detective Garcia pursued only evidence and statements that would support such a theory, and completely discounted, disregarded, or flat out ignored statements, evidence, and potential evidence which would clearly indicate that Devin Carter was not the shooter.

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<sup>1</sup> The police launched an investigation into witness tampering, and no one was ever charged.

One glaring example of this is the fact that Detective Garcia never seized Dylan Freeman's shorts, even though he was wearing those shorts during his interview with the Detective. She was made aware of the fact that they were indeed the same shorts he had been wearing during the shooting. Moreover, Dylan acknowledged that he had discarded his shirt after fleeing from the shooting scene, and, shockingly, claimed he did so because his shirt was torn up and had blood on it. (TT. Vol. 13; pg. 85: L. 5-25 & pg. 86)

The evidentiary value of the clothing Dylan Freeman wore at the time of the shooting cannot be understated in any way.

Another example of Detective Garcia's confirmation bias reveals itself during her interrogation of Devin Carter.

Mr. Carter's vehicle had been impounded by police, and because Mr. Carter briefly sought refuge at his vehicle immediately following the shooting, Detective Garcia continually pressed Devin about the gun, saying that they were going to find it in his truck so he better come clean. Obviously Garcia had her sights set on Mr. Carter. She believed he committed the shooting then ran and stashed his gun in his truck.

This is significant because Mr. Carter never went back to his vehicle at any point after the brief moment he spent there immediately following the shooting, and no other person was seen entering his vehicle at any point in time prior to the vehicle being impounded by law enforcement. Additionally, Mr. Carter was surrounded by other people after the shooting, with not a single person saying they saw Devin with a gun after the shooting, or disposing of one.

Mr. Carter's vehicle is within the frame of Johnny Mac's surveillance video, which shows that Mr. Carter, nor any other person went back to his vehicle after the brief moment he ran there for safety.

This defect in Detective Garcia's theory is glaring. Dylan Freeman was identified after the shooting by three witness who stated they saw him shirtless with a gun in his waistband. The evidence clearly established that the only person potentially linked to the murder weapon, and with an opportunity to dispose of it, was Dylan Freeman.

Bonnie Young, the paramour of Dylan Freeman, testified at trial. During her testimony she stated that Dylan drinks frequently and is a hothead who likes to fight when he gets drunk. (TT Vol. 9, pg. 103-104: L. 9-5)

The State's case hinged upon the testimony of Steven Freeman. He was thoroughly impeached at trial, and his cousin Dylan was the only likely suspect.

Upon a sincere review of the record in this case, any rational person will clearly see that the State failed to present proof beyond a reasonable doubt as to the charges levied against Petitioner Devin Marques Carter.

## **REASONS FOR GRANTING THE WRIT**

### **I. THE STATE OF IOWA VIOLATED PETITIONER'S FEDERAL PRIVILEGES AND IMMUNITIES AND DUE PROCESS RIGHTS WHEN IT UPHELD AN IRRATIONAL JURY VERDICT.**

"A properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt".

*Jackson v. Virginia*, 443 US 307, 317 (1979)

Petitioner respectfully submits that the truism acknowledged in *Jackson* is exactly what occurred in the case at bar.

At trial the State presented two witness upon which the identification of the shooter hinged. These two witnesses are Steven Freeman and Billy Dawson, Jr.

At trial Billy Dawson Jr. did not specifically identify Mr. Carter as the shooter, rather, he identified “a black male” as the shooter. This was the first time Billy Dawson, Jr. could be said to have implicated Mr. Carter. When Dawson, Jr. was initially interviewed by law enforcement he stated that he was unable to see the shooter.

Steven Freeman, the cousin of Dylan Freeman, is the witness upon whom the State hung its identification hat.

Steven Freeman was impeached multiple times and told contradicting stories while under oath. A week before the Petitioner’s trial Steven Freeman was threatened with a perjury charge by the Polk County Attorney’s Office. Thereafter he changed his deposition testimony and was now willing to again implicate Devin Carter in the shooting. (TT Vol. 8; pg. 60-62: L. 20-14)

The State’s case was based upon conjecture and speculation premised almost entirely on Devin Carter’s mere proximity to the shooting.

The State cannot place the murder weapon in Mr. Carter’s hand, nor can it show that he had anything to do with disposing of it.

A 9mm handgun was used to commit the shootings in this case. That handgun was later discovered stashed in a fence located between Hubbell Ave. and 1248 E. 22<sup>nd</sup> Street, which happens to be within the very vicinity where witnesses would later testify as to seeing a shirtless Dylan Freeman with a black gun in his waistband.

Several witnesses testified that they hugged or had their arms around Devin Carter on the night at issue. Not a single witness indicated that they noticed or felt any sort of firearm on Mr. Carter’s person. Moreover, video evidence from the night shows that Mr. Carter was wearing shorts and a tight white t-shirt.

Immediately after the shooting Devin Carter briefly ran to his vehicle to seek safety. He then returned to the premises of Johnny Mac's and never returned to his vehicle before it was impounded by law enforcement.

Video evidence establishes that neither Mr. Carter, nor any other person went to his vehicle after he briefly went there seeking safety, until it was ultimately impounded.

Mr. Carter had no logically cognizable opportunity to retrieve and then dispose of the gun which was used in this case. As opposed to the theory continually pressed by Detective Garcia during her interrogation of Mr. Carter.

Moreover, the actions of Mr. Carter on the night at issue are in stark contrast to the actions of the likely shooter, Dylan Freeman.

Testimony established that Dylan Freeman was angry, drunk, and accusing. He started an altercation with the very man who ended up dead, and indeed, two people at the scene accused him of killing William Dawson Sr. immediately after the shooting.

Additionally, the first officer to arrive on scene was informed by bystanders that the shooter had already fled the scene. This cannot be taken in anyway as implicating Devin Carter in the shooting. Mr. Carter, after all, did not flee from Johnny Mac's. Rather, Devin Carter was still at Johnny Mac's while law enforcement was on scene.

Devin Carter had no vested interest in the altercation between Dylan Freeman and William Dawson, Sr.

Carter provided a perfectly logical explanation as to why he followed Steven and Dylan out to the back parking lot.

After the shooting Dylan Freeman immediately fled the scene. After fleeing the scene Dylan Freeman was seen by three people who later testified regarding their observations of him.

One gave chase, and all three testified as to seeing a shirtless Dylan Freeman with a gun in his waistband.

It is perfectly logical to conclude that Dylan Freeman disposed of the murder weapon after being seen by three people and having been chased by one of them.

Likewise, Dylan Freeman was observed by the three witnesses in the general vicinity of where the gun was later discovered.

The State presented not a single shred of direct physical or scientific evidence connecting Devin Carter to the murder weapon or shooting.

The only evidence in this case which supports the State's theory is provided through the impeached witness testimony of the likely shooter's cousin, and through circumstantial evidence in the form of statements made by Carter which weren't completely accurate, or were otherwise taken out of context. To the extent that Devin Carter said anything considered untruthful, this alone cannot be considered circumstantial evidence of killing a man in cold blood and seriously injuring two others while endangering the lives of other bystanders. Any comments made by Carter which the State considers to be evidence of a guilty mind are easily attributable to innocent explanation as opposed to a consciousness of guilt.<sup>2</sup>

Physical evidence was ignored or overlooked. This case should not have been charged against Devin Marques Carter in the first place, but such having been the case, it never should have been submitted to the jury.

The evidence in this case was legally insufficient to warrant a conviction, and the jury acted irrationally when it found Mr. Carter guilty of the charged offenses.

Cases such as this cannot be allowed to stand under our system of justice.

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<sup>2</sup> For a more detailed analysis of evidentiary issues, Petitioner respectfully directs the court to the dissenting opinion filed in the Iowa Court of Appeal's decision.

**II. THIS COURT SHOULD CLEARLY DELINEATE THE INTERPLAY BETWEEN THE PRESUMPTION-OF-INNOCENCE AND PROOF BEYOND A REASONABLE DOUBT IN ORDER TO PROTECT AGAINST FUTURE CONVICTIONS HAD UPON QUESTIONABLE EVIDENCE.**

“Prior to conviction, the accused is shielded by the presumption of innocence, the bedrock, axiomatic and elementary principle whose enforcement lies at the foundation of the enforcement of our criminal law.”

*Betterman V. Montana*, 194 L.Ed.2d 723, 730 (2016). (Cleaned up. Internal citations and quotations omitted)

This case presents a clear example of what happens when juries don’t give proper weight to the Presumption of Innocence, and seemingly disregard the quantum of evidence required to satisfy the high bar set by the standard of proof in criminal trials — Beyond A Reasonable Doubt.

Petitioner posits that the time has come for this court to revisit the concept of the presumption-of-innocence and the beyond-a-reasonable-doubt standard in order to forcefully stress the importance of these judicial paradigms.

Petitioner urges this Court to consider how a jury would respond to instructions which explain the importance of recognizing the impeachment of witnesses. Petitioner further urges the court to consider jury instructions on how a lack of direct evidence should be considered when weighing circumstantial evidence in any given case. Petitioner believes this would not be detrimental when it comes to the presentation of strong circumstantial cases, but could help to reduce irrational convictions such as what occurred in the instant case.

In the case at bar the jury had to ignore crucial impeachment evidence coupled with a willingness to overlook the fact that no direct evidence pointed to the Defendant.

Moreover, the jury had to disregard clear evidence of confirmation bias regarding the investigation and prosecution of Mr. Carter.

The Petitioner respectfully urges the Court to consider the dissenting opinion filed in this case, and asks that the Court apply the logic of the dissent when considering his contention that more should be done to instruct juries on the weight which is to be given the presumption-of-innocence in relation to the evidentiary bar of proof-beyond-a-reasonable-doubt. (See: *In Re Winship*, 397 US 358 (1970)).

### **CONCLUSION**

Petitioner respectfully requests that the Petition for Writ of Certiorari to the Iowa Court of Appeals be granted, and that the Court issue any order it deems necessary in the furtherance of justice.

Respectfully submitted,

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Devin Marques Carter

Date: \_\_\_\_\_