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May 07 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions
R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2023-001586

The State of South Carolina,

Respondent,

v.

Diontrae Travon Epps,

Appellant.

PETITION FOR REHEARING

Appellant Diontrae Travon Epps respectfully petitions for rehearing pursuant to Rule 221(a), SCACR, on the basis that this Court overlooked and misapprehended material facts and principles of law in affirming his conviction and sentence. Specifically, Petitioner is requesting that this Court rehear the issues raised on appeal based on the following reasons:

(1) The Trial Court erroneously granted the State's motion for continuance to Appellant's *detriment*. (R. 47, lines 7-20). The Trial Court allowed the State to use the continuance as a shield and sword against Appellant by being able to admit *additional* and "*voluminous*" amount of untimely disclosed evidence at the *subsequent* trial (e.g., the Facebook video clip, medical diagram, and the list outlined in Court's Exhibit #4). (R. 253, line 6 – 254, line 21). *See General Sessions Docket Management Order* (S.C. Sup. Ct. dated May 24, 2023) (emphasis added); *see* Rule 5(c), SCRCrimP; *Cf. State v. Price*, 441 S.C. 423, 895 S.E2d 633 (James, J., dissenting) (noting "[w]e

should not permit the State to resort to the judicial branch for relief from the State's own poor choices, as embarrassing as they may be for the State.”); *Cf. State v. Rowell*, Op. No. 28215 (S.C. Sup. Ct. refiled on September 18, 2024) (noting “[t]he nature of the fox’s disguise matters little to the chicken.”). Notably, Defense Counsel repeatedly expressed his willingness to proceed with the original trial and his concern about the *resulting prejudice* created by a continuance. (R. 43, lines 2-8; R. 45, line 14 – 46, line 1; R. 46, lines 5-7; R. 110, lines 15-21; R. 115, lines 2-22; R. 925 – 933).

(2) The Trial Court erroneously denied Appellant’s motion to dismiss despite it being the best remedy to correct the prior error in granting the continuance. (R. 254, line 22 – 256, line 3). The State’s admission of its negligence in disclosing evidence to Appellant proves that a *Brady* violation occurred, and the unnecessary continuance rewarded that misconduct. (R. 235, lines 5-9). *See Gibson*, 334 S.C. at 528, 514 S.E.2d at 326 (citations omitted) (finding “[i]t does not matter whether the prosecutor’s misconduct in failing to reveal *Brady* evidence is due to negligence or an intentional act because a court may find a *Brady* violation irrespective of the good faith or bad faith of the prosecutor.”).

(3) The Trial Court erred in refusing to suppress the Facebook video clip of Appellant purportedly threatening Decedent because the untimely disclosure by the State resulted in unfair prejudice denying Appellant’s right to a fair trial. *See* U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3, 14; Rule 5(d)(2), SCRCrimP. This unjust and unfairly prejudicial behavior will continue until the State suffers the appropriate consequences for their actions instead of benefiting from its admitted negligent actions. Therefore, the Trial Court failed to suppress the untimely disclosed evidence and failed to sanction the State for the egregious nature of the discovery violations. (State’s Exhibit #1; R. 925 – 933).

(4) The Trial Court erroneously found that the State authenticated the Facebook video clip when the Decedent's girlfriend conceded that she did *not* create the video, did *not* know when the video was recorded, did *not* receive the video from the person who created it, did *not* know the individuals in the video, and agreed that it was *not* the complete video recording. (R. 285 – 288). *See* Rule 901(b), SCRE. Investigator McFadden admitted that he does *not* know who recorded the video and does *not* know when it was recorded. The erroneous admission of this prejudicial evidence was not harmless because it likely affected the outcome. Therefore, the Trial Court erred by admitting a Facebook video clip of Appellant purportedly threatening the Decedent because the State's witness did not have sufficient knowledge to authenticate the video. *See* Rule 901, SCRE.

CONCLUSION

Based on the foregoing reasons, the Appellant respectfully requests that this Court grant the Petition for Rehearing.

s/ Dayne Phillips 

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S.C. Bar No. 77712

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May 7, 2026

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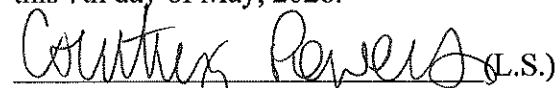
CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Petition for Rehearing has been served upon **Melody Brown, Esquire**, via email and at S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, on **May 7, 2026**.



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SUBSCRIBED AND SWORN TO before me
this 7th day of May, 2026.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

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The Honorable Jenny Kitchings
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State of South Carolina v. Diontrae Travon Epps
PETITION FOR REHEARING
Appellate Case No.: 2023-001586

Dear Ms. Kitchings:

I have attached a Petition for Rehearing that I emailed for filing today in the above-referenced case. Thank you for your assistance with filing this document.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Enclosure (noted)
cc: **Diontrae T. Epps**
Melody Brown, Esq.

s/ Dayne C. Phillips
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