THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2016-001084

The State,

Respondent,

v.

Roryes A. Patterson,

Appellant.

PETITION FOR REHEARING

Appellant Royres A. Patterson (Appellant), by and through the undersigned counsel, filed his Petition for Rehearing from the dismissal of his appeal filed May 30, 2018, copy of Unpublished Opinion No. 2018-UP-218 attached hereto and incorporated herein by reference. Patterson asserts the Court of Appeals erred in dismissing his appeal. Appellant asserts the State failed to timely disclose a critical piece of evidence in direct violation of Appellant's Rule 5 Discovery and ***Brady*** request. Specifically, the State failed to disclose and turn over to the defense a cellphone belonging to one of Appellant's co-defendants. It was not until ***after*** the verdict of guilty was returned that the Solicitor informed trial counsel of the potentially exculpatory evidence. The lead detective Danny Barton

informed the Solicitor, after trial he had forgotten about a co-defendant's cellphone. The cellphone was in Detective Barton's desk. It had not been listed on any evidence sheet provided Defendant.

The State's case was predicated on the testimony of Appellant's co-defendants and cellphone ping records to establish the defendants were in the area where the shooting occurred. Appellant asserts the failure of the State to turn over the co-defendant's cellphone prevented Appellant from (1) effectively cross-examining the co-defendants; and (2) effectively challenging ping record evidence. The failure to disclose and provide Appellant the co-defendant's cellphone denied Appellant a fair trial by denying Appellant the ability to fully defend himself against the charge of murder. (R p 570-598). The failure to turn over the co-defendant's cellphone when the State's case was based on the testimony of the co-defendants and cell town ping records makes the failure to disclose all the more prejudicial and a clear violation of Appellant's right to a fair trial.

Brady v. Maryland, 373 U.S. 83 (1963) holds that suppression of evidence favorable to a defendant upon request violates due process where the evidence is material either to guilt or punishment, irrespective of good faith or bad faith of the prosecution. ***Brady at 87.*** The cellphone discovered in Detective Barton's desk **after the verdict was returned should be imputed against the State**. ***United States v. Bagley, 473 U.S. 419 (1995).*** The Supreme Court of the United States

has held that "the question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence, he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. ***Kyles v. Whitley, 514 U.S. 434 (1995).***

Utilizing the materiality standard from **Bagley,** and the five part after-discovered evidence standard in ***State v. Spann, 334 S.C. 618 (1999),*** the Court of Appeals should remand the case for new trial. (1) Appellant made his discovery request; (2) the State had the evidence in its possession; (3) the State failed to disclose the evidence; (4) the evidence was material; and (5) the failure to disclose the evidence (cellphone) undermines confidence in the verdict. The Court of Appeals erred in dismissing this appeal in an Unpublished Dismissal. The Court of Appeals failed to address the State's suppression of a co-defendant's cellphone despite Appellant's Rule 5 discovery and ***Brady*** request which compounded the denial of due process in this case.

Appellant respectfully request the Court of Appeals grants the Appellant a

rehearing with oral arguments in this case.

Respectfully submitted,

Bruce A Byrholdt

Bruce A. Byrholdt SC Bar 1071
2315 N. Main St., Ste. 117
Anderson, SC 29621
(864) 261-3977
(864) 261-39789 – fax
Attorney for Appellant Roryes A. Patterson

June 14, 2018

Other Counsel of Record:

Alan Wilson
Attorney General
John B. Aplin
Ass't Deputy Attorney General
Box 11549
Columbia, SC 29211

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The State, Respondent,

v.

Royres Antwon Patterson, Appellant.

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R. Scott Sprouse, Circuit Court Judge

Unpublished Opinion No. 2018-UP-218
Submitted May 1, 2018 – Filed May 30, 2018

APPEAL DISMISSED

Chief Appellate Defender Robert Michael Dudek, of Columbia, and Royres Antwon Patterson, pro se, both for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General John Benjamin Aplin, both of Columbia, for Respondent.

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PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.[1]

APPEAL DISMISSED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.