

PETITION FOR A REHEARING EN BANC FOR A SENTENCE  
AFFIRMED BY THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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Appellate Case No. 2018-000099

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**RECEIVED**

JUL 20 2020

SC Court of Appeals

The State, Respondent

v.

LáParis Flowers, Appellant

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PETITION FOR REHEARING EN BANC OF APPELLANT

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LáParis Flowers appeals the decision of the Court of Appeals to affirm his conviction for Murder without considering new rule of Constitutional Law made retroactive to cases on directed review by the Supreme Court, in regard to the Malice Jury Charge Instructions which resulted in the denial of the Appellant's appeal on July 1, 2020.

In the Court of Judgment, the following situations exist:

- 1) A material factual or legal matter was overlooked;
- 2) A change in the law occurred after the submission of the case and was overlooked;
- 3) The Opinion conflicts with a decision of the Supreme Court, this Court or another Court of Appeals and the conflict was not addressed;
- 4) The case involves one or more questions of exceptional importance.

INDEX

QUESTIOINS PRESENTED ..... Page 2

ARGUMENT ..... Page 3

CONCLUSION ..... Page 4

## QUESTIONS PRESENTED

- 1) Did the Court of Appeal commit an error in affirming conviction without considering the issue regarding that malice can be inferred from the use of a deadly weapon, that was raised in the supplemented brief and submitted to the Court before a decision was made to affirm based on other issues raised in initial brief?
- 2) Did the Trial Court commit reversible error when the Court instructed the Jury that malice can be inferred from the use of a deadly weapon – an element of Murder? (Statute S.C. Code 16-3-10)
- 3) Did the Trial Court refuse to give additional charge instructions based on the agreement by both attorneys in Charge Conference?
- 4) Did the review in the colloquy between the Trial Court and counsel convince the Court of Appeals that the position of each was made well known prior to the Commencement of the Charge and any further objection was required under these facts in order to preserve the right of the Defendant? (5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> Constitutional Amendment Right to Due Process and a fair trial)

## ARGUMENT

1) The Court of Appeals committed error as well as exist in conflict with a decision of the Supreme Court when it made the decision to affirm my conviction for Murder without ruling on supplemented evidence regarding inferred malice Jury Instruction that was submitted to the Court after submission of Initial Brief due to new ruling of law in State v. Burdette (S.C. 2019). A change in the law occurred after submission of the case and was overlooked.

2) The Trial Court committed reversible error when it instructed the Jury that:

“Malice may be inferred from conduct showing the total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon...” Tr. Tr. pg 606 (line 8-11)

The record also reveals that Defense Counsel agreed to the additional instructions at trial, (stipulation) without defendant consent:

“There was one addition to the charge this morning. They asked me to give them copies of my charge, which I was happy to do so. I have been over that addition to the charge, which involves the fact that inference of malice is a wrongful presumption. They both agree that should be added. I met them concerning that addition in chambers.”

As such, the issue is otherwise preserved for the review by this Court.

In Burdette, this Supreme Court ruled that S.C. Code 16-3-10, which was enacted in 2019: “Regardless of the evidence presented at trial, Courts should no longer infer malice from the use of a deadly weapon.” In this case, Trial Court charged the Jury:

“Malice may be inferred from conduct showing the total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon.”

This is the exact instruction that the Supreme Court decision in Burdette makes clear as reversible error of Law for which I request the opportunity to be heard.

CONCLUSION

The Court of Appeals should grant this Petition for a Rehearing En Banc.

Respectfully Submitted,

LáParis Flowers, Pro Se

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Bishopville, SC

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**RECEIVED**

JUL 20 2020

SC Court of Appeals

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Appeal from Allendale County  
Honorable Perry M. Buckner, Circuit Court Judge

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THE STATE,

RESPONDENT

V.

LAPARIS SHMEL FLOWERS,

APPELLANT

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true copy of the Petition of a Rehearing En Banc in the above referenced case has been served upon Attorney General Alan McCrory and Senior Assistant Deputy Attorney General Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519 Columbia, SC 29201, this 8<sup>th</sup> day of July, 2020.

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