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Jun 06 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-000324
Trial Court Case No. 2019-GS-16-0996

The State of South Carolina,

Respondent,

v.

Marc Yasin Mckeiver,

Appellant.

**Motion to Hold Appeal in Abeyance and to
Remand for a Hearing on a Motion for a New Trial
Based on After-Discovered Evidence**

Appellant Marc McKeiver respectfully requests that this Court hold his appeal in abeyance and remand for an evidentiary hearing on a motion for a new trial based on after-discovered evidence in the circuit court. *See* Rule 29(b), SCRCrimP. The after-discovered evidence in this case involves an affidavit by Winter Bennett stating that she and her brother, William Clark, “set up” Appellant. (Attachment A: Winter Bennett Affidavit). Specifically, Appellant’s former girlfriend, Winter Bennett, confessed to placing drugs in Appellant’s “shoe box” to help her brother, William Clark. Ms. Bennett explained that her brother was the confidential informant (CI) in Appellant’s case and asked for her help because he was facing life without parole. Ms. Bennett also admitted that her brother (the CI) gave her “the bag of pills” to have Appellant arrested. Ms. Bennett further noted that she and her brother (the CI) had access to Appellant’s

social media because Appellant had lived with them since he was sixteen years old.

Procedural History

On March 12, 2020, the Dillon County Grand Jury indicted Appellant, Marc Yasin McKeiver, for Trafficking Methamphetamine, 100 grams or more, but less than 200 grams, first offense (Indictment 2019-GS-17-0996). (R. 427).

On January 10, 2022, Appellant proceeded to trial before the Honorable Paul M. Burch and a jury. (R. 1). Thurmond Brooker represented Appellant, and Assistant Solicitor Shipp Daniel prosecuted the case on behalf of the State. (R. 1). The jury returned a verdict of guilty on January 12, 2022. (R. 352, line 20 – 353, line 1). The Trial Court sentenced Appellant to twenty-five (25) years imprisonment. (R. 368, lines 19-25).

On January 20, 2022, Appellant filed a Motion for a New Trial. (R. 384). The parties appeared before Trial Court and presented their arguments on March 10, 2022. (R. 397). The Trial Court denied the motion at the conclusion of the hearing. (R. 423, lines 18-25). Appellant timely filed a Notice of Appeal on March 16, 2022.

Counsel for Appellant filed the Final Brief of Appellant and Record on Appeal on June 21, 2023. This appeal is currently ready for consideration by this Court.

State's Theory of the Case

During opening statement, the Prosecutor outlined the State's case and addressed the unique factual issue of the State's key witness being deceased prior to trial:

You're gonna hear from three witnesses. That's it. This ain't gonna [sic] be a long one. Three witnesses. They're all law enforcement agents. You're going to hear from J.T. Martin of [the South Carolina Law Enforcement Division (SLED)], who was overseeing a task force that was investigating the drug trade in Dillon County back in 2019.

...

You're going to hear from Alex Blake, who used to be with [SLED], now, works

for the FBI. You're going to hear about what they did. How they targeted this defendant. You're going to hear how they used a confidential informant, we call them CI's. He was a confidential informant. To go to where [Appellant] was and buy a bunch of pills from him.

...

You're not going to hear from the confidential informant himself because, unfortunately, he died a while back, a while, a while ago, in a completely unrelated situation having nothing to do with this defendant. So you can't hear from him. But you will hear from, from these three sled agents. That's it. Plain and simple, straightforward, but very important.

(R. 134, line 25 – 135, line 23) (emphasis added).

During pre-trial, the Prosecutor provided a more detailed explanation of the State's case to the Trial Court in anticipation of Defense Counsel's motions in limine:

This [CI] is now dead. He was murdered in an unrelated situation a while ago. The [CI] met with law enforcement on September 9 at whatever meeting location they had. The [CI] was searched by [SLED] agents. He had to make sure he didn't have any drugs, money, weapons, anything on him. He did not. They outfitted him with a camera. They get in the car. An undercover [SLED] agent drove the under, drove the [CI] to Mr. [Appellant's] house.

...

[A]t least two phone calls were placed from [CI's] phone to [Appellant's] phone. [Appellant] answers. They have a conversation that was on speaker phone and the [SLED] agent heard the conversation where the CI was setting up the buy that was to take place shortly, thereafter. [SLED] agent drives confidential informant to the house. Broad daylight. Let's [CI] out in the front yard. [CI] walks up - and you see all this on video - walks up to the door and [Appellant] answers the door. [Appellant] takes the [CI] back to a back bedroom. You see in the, in the video, it's a little blurry, this particular part of it, but you see something that looks like a plastic bag in [Appellant's] hand to CI, has some sort of conversation. *The only - - there's only one other person that is visible in the video and that is the defendant's girlfriend, Winter Bennett . . . [.]*

...

[The CI] returns to the [SLED] agent's car. *He's only in the house for, I mean, not even two minutes.* When he returns to [SLED] agent's car he gives the [SLED] agent, two bags of pastel colored oddly shaped pills. These pills were sent to [SLED] and they turned out to be methamphetamine, 134, 136 grams of methamphetamine.

(R. 31, line 2 – 32, line 14) (emphasis added).

Winter Bennett Affidavit

On June 20, 2024, Winter Bennett, Appellant's former girlfriend provided Trial Counsel, Thurmond Brooker, with an affidavit attesting to the following information:

To Whom it may concern, I, Winter Bennett, is coming forth to speak on the information I have regarding Marc McKeivers case. *My brother, William Clark was the CI in his case but what the courts don't know is it was a setup, and that I helped him.*

My brother (Caine) came to me telling me that he was facing life w/o the chance of parole and needed my help, and at the time me and Duke were going through alot in our relationship. Caine told me it wouldn't be a big deal, that he wouldn't be a big deal, that he would get a bond and get right back out, that it would be years before the courts would do anything, and that he would only get 3-5 years if that and that he wouldn't mention my name and that nobody would know I helped him.

Duke was living with us since he was 16, him and my brother were close and thats how he had access to dukes social media. They would cover for each other if I ever went through his phone he would just blame it on Caine and I think as we got older Caine started to resent duke more & more because he wanted better for me and my son.

Caine came to Asla's that night and gave me the bag of pills and I took them in the room we was staying in and put them in Duke shoe box. It wasn't until the next morning when Caine was calling to come get the pills I told him that he brought them the night before and he payed me to hold them because he didn't want to ride with them and let duke know where they was so when cane came he could give them to him.

When the Judge read duke his sentence, I knew I needed to speak up but I was in distress and scared. Scared of what my family might do or say, scared that duke would hate me and scared I would get into trouble. I am coming forth now because my life has been a mess to say the least, *I feel like God is punishing me for what we did.*

My brothers passing and duke also being accused of helping in his death, *I knew that we set duke up for a long time I wanted to hate duke and believe the rumors but I know it is not true and so after his sentencing I then only mentioned the girl in the Jury because I was dealing w/ her boyfriend and I knew in my heart that she held that against him because of me and when that didn't help I just stayed quiet because I didn't want my family to feel as if I was choosing duke over my brother.*

Today I am and have not spoken to duke, I am in a relationship and 5 months pregnant and Im scared that bad karma will come back on someone I love or even

my kids. I am sorry for holding this secret in all these years and I pray not only God forgives me but duke can also find it in his heart to forgive me for what we did to him.

(Attachment A: Winter Bennett Affidavit) (emphasis added).

Thurmond Brooker Affidavit

On May 20, 2024, Trial Counsel, Thurmond Brooker, signed an affidavit stating, in part:

I was legal counsel for [Appellant] in connection with Indictment No. 2019-GS-17-0996 for trafficking in Methamphetamines in the Court of General Sessions, Dillon County, South Carolina. This is the same action currently pending before the South Carolina Court of Appeals, Case No. 2022-000324.

...

On June 20, 2024, Winter Bennett (“Bennett”) presented to my office at 238 Warley Street, Florence, South Carolina, and prepared a handwritten statement regarding facts and evidence relevant to the investigation and trial of [Appellant] . . .

During my representation of [Appellant], I was unaware of the facts and evidence Bennett disclosed in Exhibit A, and could not have discovered such facts and evidence through any other means. I first became aware of the facts and evidence Bennett discloses in Exhibit A on June 20, 2024.

It is my professional opinion that the facts and evidence disclosed by Bennett in Exhibit A are relevant to [Appellant’s] guilt, and had I been aware of these facts and evidence, I would have compelled Bennett’s testimony at trial regarding the facts and evidence disclosed in Exhibit A. . . .

(Attachment B: Thurmond Brooker Affidavit) (emphasis added).

Appellant Counsel’s Affidavit

The undersigned Counsel has provided an affidavit to accompany this motion based on the requirements of Rule 29(b) of the South Carolina Rules of Criminal Procedure. (Attachment C: Dayne Phillips Affidavit).

ARGUMENT

Rule 29(b) of the South Carolina Rules of Criminal Procedure provides:

A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. A motion for a new trial based on after-discovered evidence may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion. Leave of the appellate court is not required if no appeal has been taken or if the appeal has been finally decided in the appellate court.

See Rule 29(b), SCRCrimP.

To prevail on a motion for a new trial based on after-discovered evidence, the moving party must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. *State v. Spann*, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99 (1999).

Would Probably Change the Result of Appellant's Trial

In this case, Winter Bennett's testimony would probably change the result if a new trial were granted because this evidence contradicts the State's evidence that Appellant knowingly possessed the methamphetamine. Specifically, Ms. Bennett admitted that she conspired with her brother (the CI) to "set up" Appellant by planting drugs that were given to her by the CI. (Attachment A: Winter Bennett Affidavit). Ms. Bennett also admitted that brother (the CI) asked for her help to incriminate Appellant because her brother said he was facing life without parole. Notably, Ms. Bennett is visible in the video recording worn by the CI.

The unique facts of this case also support that Ms. Bennett's statement would probably change the outcome of Appellant's trial. Trial Counsel never had an opportunity to cross-examine the CI (Bennett's brother) because he died prior to trial. Bennett is also Appellant's former girlfriend

and had lived with him for years having access to possessions. Preventing Appellant from having an evidentiary hearing based on Bennett's affidavit would constitute "a denial of fundamental fairness shocking to the universal sense of justice." See *Johnson v. Catoe*, 345 S.C. 389, 401, 548 S.E.2d 587, 593 (2001) (Waller and Pleicones, J. , dissenting in separate opinions) (finding "to deny [a defendant] a new trial in the face of a confession by someone who was admittedly present when the murder was committed would constitute "a denial of fundamental fairness shocking to the universal sense of justice") (quoting *Butler v. State*, 302 S.C. 466, 468, 397 S.E.2d 87, 88 (1990) (citations and internal quotations omitted)).

Special Agent Alex Blake of the Federal Bureau of Investigation (FBI) testified that he had never spoken to or met with Appellant prior to the alleged drug buy with the CI. (R. 99, line 12 – 100, line 1). Agent Blake also admitted that the only information regarding illegal activity connected to Appellant was provided by the deceased CI and the other Special Agent. (R. 101, lines 15). Notably, Special Agent James Martin of SLED maintained that he did not recall whether the video feed was live when the deceased CI went into Appellant's residence but conceded to the "audio being transmitted live". (R. 113, lines 13-23).

During a pre-trial hearing, Special Agent James Martin of SLED testified that he presented a search warrant for Snapchat and that the magistrate judge signed the warrant. (R. 108, lines 12-25). Agent Martin conceded on cross-examination that he did not subpoena any records from a cell phone provider to identify the account owner of the specific number provided by the deceased CI. (R. 110, lines 12-23). Agent Martin further admitted he had no personal knowledge that the cell phone number was associated with Appellant. (R. 110, line 23 – 111, line 2). Notably, the State never subpoenaed any phone records to substantiate the allegation that the phone number was associated with Appellant and could not prove that Appellant posted pictures on Snapchat.

(R. 106, lines 7-15).

Furthermore, Trial Counsel motion for a new trial filed on March 10, 2022, arguing for a new trial, or in the alternative, an evidentiary hearing regarding two jurors who intentionally concealed information in response to the Court's *voir dire* questions (when Trial Counsel would have struck them had the jurors not concealed the information). (R. 397-425). Juror Number 6 purportedly knew Ms. Bennett, the deceased CI, and did not like Appellant. Notably, Ms. Bennett references this juror in her affidavit.

Discovered since McKeiver's Trial

Ms. Bennett did not disclose this exculpatory statement to Trial Counsel until after Appellant's trial on June 20, 2024.

Could Not in the Exercise of Due Diligence Have Been Discovered Prior to Trial

Neither Appellant nor Trial Counsel could have discovered, in the exercise of due diligence, this statement from Ms. Bennet until she made the decision to confess this information in her affidavit on June 20, 2024. Trial Counsel also had no way of knowing that Ms. Bennett had planted the drugs to her brother (the CI) to conduct an investigation into this issue.

Material to Appellant's Case

Ms. Bennett's statement contradicts the State's evidence and goes directly to the heart of the question presented to the jury—did Appellant knowingly possess 100 grams or more, but less than 200 grams of methamphetamine. Ms. Bennett's statement is highly probative based on the extraordinary facts and circumstances presented in this case.

Not Merely Cumulative or Impeaching Evidence

Ms. Bennett's statement is not cumulative to any of the evidence offered by the State or Appellant at trial because there was no testimony concerning the CI's plan to have Bennett "set

up” Appellant and Bennett did not testify at trial. The primary use of Bennett’s statement would not be to challenge the credibility of the State’s witnesses because the law enforcement officers did not know of the plan to “set up” Appellant.

CONCLUSION

Based on the foregoing reasons, Counsel for Appellant Marc McKeiver respectfully requests that this Court hold his direct appeal in abeyance and remand this case to the Dillon County Court of General Sessions for an evidentiary hearing on a motion for a new trial based on this after-discovered evidence.

Respectfully Submitted,

s/ Dayne C. Phillips

Dayne C. Phillips, Esq.



PRICE BENOWITZ LLP
1614 Taylor Street, Suite D.
Columbia, SC 29201
O: 803-272-4503
C: 803-807-0234
F: 803-380-8035
dayne@pricebenowitz.com

June 6, 2025

ATTACHMENT

A

June 20, 2024

To whom it may concern, I, Winter Bennett, is coming forth to speak on the information I have regarding Marc McKeivers case.

My brother, William Clark was the CI in his case but what the courts don't know is it was a setup, and that I helped him.

My brother (Caine) came to me telling me that he was facing life w/o the chance of parole and needed my help, and at the time me and Duke were going through alot in our relationship. Caine told me it wouldn't be a big deal, that he would get a bond and get right back out, that it would be years before the courts would do anything, and that he would only get 3-5 years if that and that he wouldn't mention my name and that nobody would know I helped him. Duke was living with us since he was 16, him and my brother were close and that now he had access to dukes social media. They would love for eachother if I ever went through his phone he would just blame it on Caine and I think as we got older Caine started to resent Duke more & more. Because he wanted better for me and my son. Caine came to Astors that night and gave me the bag of pills and I took them in the room we was staying in and put them in Duke shoe box. It wasn't until the next morning when Caine was calling to come get the pills I told him that he brought them the night before and he payed me to hold them because he didn't want to ride with them and let Duke know where they was so when Caine came he could give them to him. When the Judge read Duke his sentence, I knew I needed to speak up but I was in distress and scared. Scared of what my family might do or say, Scared that Duke would hate me and scared I would get into trouble. I am coming forth now because my life has been a mess to say the least, I feel like God is punishing me for what we did. My brother's passing and Duke also

being accused of helping in his death, I knew that we set duke up so for a long time I wanted to hate duke and believe the rumors but I knew it was not true and so after his sentencing I then only mentioned the girl in the jury because I had dealing w/ her boyfriend and I knew in my heart that she held that against him because of me and when that didn't help I just stayed quiet because I didn't want my family to feel as if I was choosing duke over my brother. Today I am and have not spoken to duke, I am in a relationship and 5 months pregnant and am scared that bad karma will come back on someone I love or even my kids. I am sorry for holding this secret in all these years and I pray not only God forgives me but duke can also find it in his heart to forgive me for what we did to him.

With Bunt

Sworn to before me this
20th day of June 2024

Thermit Brooks

My Commission Expires

ATTACHMENT

B

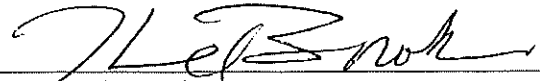
STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
_____)

AFFIDAVIT OF THURMOND BROOKER

I, Thurmond Brooker, Esq., duly sworn and deposed, state the following as my true and lawful statement:


1. I was legal counsel for Marc Yasin McKeiver ("McKeiver") in connection with Indictment No. 2019-GS-17-0996 for trafficking in Methamphetamines in the Court of General Sessions, Dillon County, South Carolina. This is the same action currently pending before the South Carolina Court of Appeals, Case No. 2022-000324.
2. McKeiver's trial began on January 10, 2022, and ended on January 13, 2022, with a jury verdict of guilty.
3. On June 20, 2024, Winter Bennett ("Bennett") presented to my office at 238 Warley Street, Florence, South Carolina, and prepared a handwritten statement regarding facts and evidence relevant to the investigation and trial of McKeiver. A copy of Bennett's statement is attached hereto and incorporated herein as Exhibit A.
4. During my representation of McKeiver, I was unaware of the facts and evidence Bennett disclosed in Exhibit A, and could not have discovered such facts and evidence through any other means. I first became aware of the facts and evidence Bennett discloses in Exhibit A on June 20, 2024.
5. It is my professional opinion that the facts and evidence disclosed by Bennett in Exhibit A are relevant to McKeiver's guilt, and had I been aware of these facts and evidence, I would have compelled Bennett's testimony at trial regarding the facts and evidence disclosed in Exhibit A.

I, Thurmond Brooker, under penalty of perjury, hereby declare and affirm that this statement, to the best of my knowledge and recollection, is true and correct.

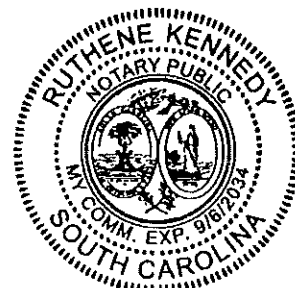


Thurmond Brooker, Esq.,

SWORN TO BEFORE ME THIS
20 DAY OF May, 2025



NOTARY PUBLIC OF SOUTH CAROLINA
My Commission Expires: Sept 6, 2034



ATTACHMENT

C

STATE OF SOUTH CAROLINA)	IN THE SOUTH CAROLINA COURT OF APPEALS
)	
COUNTY OF DILLON)	
)	
THE STATE,)	
)	
RESPONDENT,)	
)	
V.)	AFFIDAVIT OF DAYNE C. PHILLIPS
)	
MARC YASIN MCKEIVER)	
)	
APPELLANT.)	
_____)	

Personally appeared before me, Dayne C. Phillips, who duly sworn, deposes and states:

- (1) I am over the age of eighteen and a member of the South Carolina Bar.
- (2) I have been practicing law in South Carolina since 2011, and I am currently employed as an attorney at Price Benowitz LLP.
- (3) I represent Appellant Marc McKeiver for his direct appeal before the South Carolina Court of Appeals (Appellate Case No. 2022-000324).
- (4) I filed the Final Brief of Appellant and Record on Appeal in this matter on June 21, 2023.
- (5) Appellant is appealing his conviction and sentence imposed by the Honorable Paul M. Burch on January 13, 2022.
- (6) Trial Counsel, Thurmond Brooker, filed a motion for a new trial on January 20, 2022, and the trial court denied the motion on March 10, 2022. Trial Counsel timely filed the Notice of Appeal on March 16, 2022.
- (7) I received Winter Bennett's and attorney Thurmond Brooker's sworn affidavits on May 22, 2025.
- (8) Based on the trial transcript and attorney Brooker's affidavit, the information provided in Ms. Bennett's affidavit constitutes after-discovered evidence within one year after the date

of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. See Rule 29(b), SCRCrimP.


(9) Counsel for Appellant is filing a motion to hold Appellant Marc McKeiver's appeal in abeyance and remand for an evidentiary hearing on a motion for a new trial based on after-discovered evidence in the circuit court. See Rule 29(b), SCRCrimP.

(10) I support this motion.

FURTHER AFFIANT SAYETH NOT.


Dayne Phillips

SUBSCRIBED AND SWORN TO before me
this 6th day of June, 2025.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 01/26/2034.



RECEIVED

Jun 06 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-000324
Trial Court Case No. 2019-GS-16-0996

The State of South Carolina,

Respondent,


v.

Marc Yasin Mckeiver,

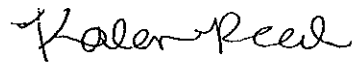
Appellant.

CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Motion to Hold Appeal in Abeyance and to Remand for a Hearing on a Motion for a New Trial based on After-Discovered Evidence has been served upon **Mark Farthing, Esquire**, at S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, and **The Hon. Marquita Britton, Dillon County Clerk of Court**, PO Box 1220, Dillon, SC 29536, on **June 6, 2025**.


Dayne Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 6th day of June, 2025.



(L.S.)
Notary Public for South Carolina
My Commission Expires: 01/26/2034.



PB | PRICE BENOWITZ LLP

DAVID BENOWITZ
ADMITTED DC, MD & VA

DAYNE PHILLIPS
ADMITTED SC

JOHN YANNONE
ADMITTED MD & DC

KERRI CASTELLINI
ADMITTED DC, MD & VA

KUSH ARORA
ADMITTED MD & DC

NICOLAS TORRES
ADMITTED FL

SEAN O-BRIEN
ADMITTED IL

PETER KENT ODOM
ADMITTED DC, MD, VA, NH & GA

RAMMY BARBARI
ADMITTED DC & VA

MARVIN OCHOA
ADMITTED MD

ARREN WALDREP
ADMITTED DC, MD & SC

KENNETH LADUCA
ADMITTED DC, MD & VA

JEFF STICKLE
ADMITTED MD & DC

FARRAL HABER
ADMITTED FL, VA & DC

PAULETTE PAGÁN
ADMITTED DC, MD & MD

RYAN HUTYAR
ADMITTED VA

DONNA MURPHY
ADMITTED VA & DC

JEANNE BROWN
ADMITTED VA & DC

TAYLOR COMSTOCK
ADMITTED MD, DC & VA

ÉLIANE MAKHLOUF
ADMITTED MD & DC

TONY MUNTER
ADMITTED DC, MA & MD

DRAKE BIRNBAUM
ADMITTED DC & MD

1614 TAYLOR STREET
SUITE D
COLUMBIA, SC 29201

OFFICE: (803) 272-4503
DIRECT: (803) 807-0234

FAX: (803) 380-8035

SETH PRICE
ADMITTED DC & NY

TAMMY BEGUN
ADMITTED DC & MD

KARIN RILEY PORTER
ADMITTED VA

SETH OKIN
ADMITTED MD

DENNIS SOMECH
ADMITTED DC & VA

ABIGAIL BEICHLER
ADMITTED MD

JOEL NIED
ADMITTED VA, PA & GA

MICHAEL LEE
ADMITTED VA & CO

CHAD PROPST
ADMITTED SC

DAMIEN SMITH
ADMITTED DC & VA

W. ANDREW PATZIG
ADMITTED DC & VA

SUKHPREET "VICK" SINGH
ADMITTED SC

KEN KOPPELMAN
ADMITTED IL, DC & VA

RAYAN MOMENAH
ADMITTED DC & MD

HANNAH AMUNDSON
ADMITTED FL, DC & MD

JUSTIN TURNER
ADMITTED MD & DC

KIMBERLY PHILLIPS
ADMITTED VA & DC

ANDREW LINDSEY
ADMITTED VA

EVA SWANSON
ADMITTED VA

ASHLEY WILSON
ADMITTED VA & DC

BRIAN MORRIS
ADMITTED DC, TX & IL

KEVIN KELLEY
ADMITTED MD, SC & FL

*OF COUNSEL

409 7TH STREET NW, SUITE 200
WASHINGTON, DC 20004

10505 JUDICIAL DRIVE, SUITE 203
FAIRFAX, VA 22030

June 6, 2025

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

Re: **State v. Marc Yasin Mckeiver**
MOTION TO HOLD APPEAL IN ABEYANCE
Appellate Case No.: **2022-000324**

Dear Ms. Kitchings:

I have emailed the Motion to Hold Appeal in Abeyance and to Remand for a Hearing on a Motion for a New Trial based on After-Discovered Evidence to the Court of Appeals for filing today in the above-referenced case.

Thank you for your assistance with filing these documents.

[Page 1 of 2]

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State v. Marc Yasin Mckeiver

MOTION TO HOLD APPEAL IN ABEYANCE

Appellate Case No.: **2022-000324**

June 6, 2025

Page 2 of 2

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

Sincerely,

A handwritten signature in black ink, appearing to read "Dayne C. Phillips", written over a horizontal line.

Dayne C. Phillips, Esq.

SC Bar No. 77712

Price Benowitz LLP

1614 Taylor Street, Suite D.

Columbia, SC 29201

O: 803-272-4503

C: 803-807-0234

F: 803-380-8035

dayne@pricebenowitz.com

cc: **Marc Yasin Mckeiver**
Mark Farthing, Esq.