

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

Order filed on July 23, 2025

RECEIVED

AUG 08 2025

SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Marc Yasin Mckeiver,

Appellant.

PETITION FOR REHEARING

Appellant Marc Mckeiver 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 denying Appellant's Motion to Hold Appeal in Abeyance and to Remand for a Hearing on a Motion for a New Trial Based on After-Discovered Evidence. Specifically, Appellant is requesting that this Court rehear the motion based on the following reasons:

(1) This Court did not provide any specific basis for denying the motion in the Order except for citing *State v. Prince*, 316 S.C. 57, 69, 447 S.E.2d 177, 184 (1993) (providing the five-factor test for seeking a new trial based on after-discovered evidence). Appellant requests a specific ruling to preserve this issue for appellate review because all five elements of the after-discovered evidence test are satisfied based on the affidavits of Winter Bennett, Appellant, and

Trial Counsel Thurmond Brooker.

(2) Ms. Bennett did not testify, and her affidavit presents an entirely different factual scenario regarding the origin and nature of the alleged drug transaction that contradicts the State's theory of the case (i.e., Appellant's alleged knowledge and participation in the drug transaction with the CI). Notably, Trial Counsel stated in his affidavit, "had I been aware of these facts and evidence [Bennett's affidavit], I would have compelled Bennett's testimony at trial regarding the facts and evidence disclosed in Exhibit A [Bennett's affidavit]." Therefore, this evidence would probably have changed the result if a new trial were granted.

(3) Trial Counsel also stated in his affidavit that he did not become aware of this information until after Ms. Bennett provided her affidavit on June 20, 2024. Appellant confirmed in his affidavit that he "became aware of this information when Ms. Bennett submitted her affidavit and [his] lawyer mailed a copy to the institution." Therefore, this evidence has been discovered since the trial.

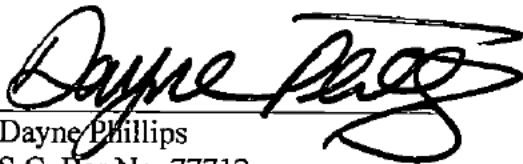
(4) Ms. Bennett also stated in her affidavit that she was scared and had been keeping this information secret for years. In his affidavit, Appellant denied any having knowledge of the drugs or involvement in the drug transaction with the CI. Therefore, Trial Counsel could not have discovered this evidence in the exercise of due diligence prior to the trial.

(5) Ms. Bennett further stated in her affidavit that she planted the drugs in Appellant's shoe box to get a better deal for her brother (who was the confidential informant) because he was facing life without the possibility of parole. Ms. Bennett is visible in the video recording worn by the CI, and Trial Counsel never had an opportunity to cross-examine the CI because he died prior to trial. Therefore, the after-discovered evidence is material to the jury's determination of Appellant's guilt.

(6) At trial, the State and Appellant did not present any evidence or cross-examination related to the after-discovered evidence. Notably, Ms. Bennett and the CI did not testify at trial. Therefore, the after-discovered evidence is not cumulative or impeaching to any evidence offered by the State or Appellant. *Cf Johnston v. Belk-McKnight Co. of Newberry*, 188 S.C. 149, 158, 198 S.E. 395, 399 (1938) (finding "[c]umulative evidence . . . supplements that which has already been testified"); *see also State v. South*, 310 S.C. 504, 427 S.E.2d 666 (1993) (holding after-discovered evidence must reflect upon the defendant's innocence).

CONCLUSION

Based on the foregoing reasons, the Appellant respectfully requests that this Court grant the Petition for Rehearing, grant the motion to hold the appeal in abeyance, and remand the case for an evidentiary hearing on the motion for a new trial based on after-discovered evidence.



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August 4, 2025

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SC Court of Appeals

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August 4, 2025

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

Re: State v. Marc Yasin Mckeiver
PETITION FOR REHEARING
Appellate Case No.: 2022-000324

Dear Ms. Kitchings:

I have emailed the Petition for Rehearing for filing today in the above-referenced case.

Thank you for your assistance with filing these documents. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

s/ Dayne C. Phillips
Dayne C. Phillips, Esq.
(803) 807-0234

cc: Marc Yasin Mckeiver
Mark Farthing, Esq.

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CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Petition for Rehearing has been served upon **Mark Farthing, Esquire**, at S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, on **August 4, 2025**.


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SUBSCRIBED AND SWORN TO before me
this 4th day of August, 2025.

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

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