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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DILLON COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-000324
Opinion No. 2026-UP-066 (SC Ct. App. filed February 11, 2026)

The State,

Respondent,

Marc Yasin Mckeiver,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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INDEX

CERTIFICATE OF COUNSEL 1

QUESTIONS PRESENTED 2

STATEMENT OF THE CASE 3

ARGUMENT 13

I. THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION TO HOLD THE APPEAL IN ABEYANCE AND REMAND FOR A HEARING ON A MOTION FOR A NEW TRIAL BASED ON AFTER-DISCOVERED EVIDENCE WHEN THE COURT OF APPEALS DID NOT PROVIDE ANY SPECIFIC BASIS FOR THE DENIAL, AND WHERE THE AFFIDAVITS SATISFIED ALL FIVE ELEMENTS OF THE AFTER-DISCOVERED EVIDENCE TEST 13

II. THE COURT OF APPEALS ERRED IN FINDING THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING PETITIONER'S MOTION FOR A NEW TRIAL WHERE THE SUPPORTING AFFIDAVITS REQUIRED AN EVIDENTIARY HEARING TO EXAMINE JUROR NUMBERS 6 AND 53 AND THE AFFIANTS, AND WHERE THE COURT OF APPEALS FAILED TO PROPERLY ADDRESS THE NATURE OF THE ALLEGED INFORMATION WITHHELD BY JUROR NUMBERS 6 AND 53 18

CONCLUSION 21

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on March 17, 2026. (App. 565).

QUESTIONS PRESENTED

1. Did the Court of Appeals err in denying Petitioner's motion to hold the appeal in abeyance and remand for a hearing on a motion for a new trial based on after-discovered evidence when the Court of Appeals did not provide any specific basis for the denial, and where the affidavits satisfied all five elements of the after-discovered evidence test?

2. Did the Court of Appeals err in finding the trial court did not abuse its discretion by denying Petitioner's motion for a new trial where the supporting affidavits required an evidentiary hearing to examine juror numbers 6 and 53 and the affiants, and where the Court of Appeals failed to properly address the nature of the alleged information withheld by juror numbers 6 and 53?

STATEMENT OF THE CASE

Procedural History

On March 12, 2020, the Dillon County Grand Jury indicted Petitioner, Marc McKeiver, for Trafficking Methamphetamine, 100 grams or more, but less than 200 grams, first offense (Indictment 2019-GS-17-0996). (App. 431 – 432).

On January 10, 2022, Petitioner proceeded to trial before the Honorable Paul M. Burch and a jury. (App. 5). Thurmond Brooker represented Petitioner, and Assistant Solicitor Shipp Daniel prosecuted the case on behalf of the State. The jury returned a verdict of guilty on January 12, 2022. (App. p. 356, line 20 – p. 357, line 1). The Trial Court sentenced Petitioner to twenty-five (25) years imprisonment. (App. p. 372, lines 19-25).

On January 20, 2022, Petitioner filed a Motion for a New Trial based on juror misconduct. (App. 388). The parties appeared before the Trial Court and presented their arguments on March 10, 2022. (App. 401). The Trial Court denied the motion for a new trial without an evidentiary hearing. (App. p. 401; p. 427, lines 18-25).

On March 16, 2022, Petitioner filed a Notice of Appeal in the South Carolina Court of Appeals. Petitioner filed its Final Brief of Appellant on June 21, 2023, and the State filed its Final Brief of Respondent the same day. (App. p. 436-464; p. 465-516).

On June 6, 2025, Petitioner filed a motion to hold the appeal in abeyance and remand for a hearing on a motion for a new trial based on after-discovered evidence. (App. 517). Respondent filed its Return on June 16, 2025. (App. 535). The Court of Appeals denied the motion to hold the appeal in abeyance on July 23, 2025. Petitioner filed a Petition for Rehearing on August 4, 2025, and the Court of Appeals returned the petition without action on August 8, 2025. (App. pp. 550–554).

On February 11, 2026, the South Carolina Court of Appeals affirmed Petitioner's convictions and sentences. *State v. Marc Y. Mckeiver*, Op. No. 2026-UP-066 (S.C. Ct. App. filed February 11, 2026). (App. 555). Petitioner filed a Petition for Rehearing on February 26, 2026. (App. 561). The Court of Appeals issued an Order denying the Petition for Rehearing on March 17, 2026. (App. 565).

Petitioner respectfully requests a writ of certiorari to review the Court of Appeals' decision.

State's Theory of the Case

During opening statement, the Prosecutor outlined the State's case and addressed the significant 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 [Petitioner] 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.

(App. p. 138, line 25 – p. 139, line 23).

Pre-trial, the Prosecutor also provided the following explanation to the Trial Court:

> *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. [Petitioner's] house.
>
> . . .
>
> [A]t least two phone calls were placed from [CI's] phone to [Petitioner's] phone. [Petitioner] 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 [Petitioner] answers the door. [Petitioner] 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 [Petitioner'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.

(App. p. 35, line 2 – p. 36, line 14) (emphasis added).

Specifically, Agent James Martin of the South Carolina Law Enforcement Division ("SLED") coordinated a drug investigation targeting Petitioner as a suspected drug dealer. (App. p. 99 – 100; p. 108; pp. 111–112; pp. 145–146). Agent Martin employed a confidential informant ("CI") for the purpose of attempting to buy drugs from Petitioner. (App. pp. 146–147; p. 210). SLED Agent, Alex Blake, assisted with the investigation as an undercover officer. Notably, the CI died prior to trial.

Agents Martin and Blake met the CI at an arranged location. (App. p. 99; p. 147; p. 150; p. 210; p. 217). The Agents purportedly searched the CI during this meeting to confirm the CI did not

possess any drugs, guns, or money. (App. pp. 148–149; pp. 171–172; pp. 211–213; p. 221). The Agents also equipped the CI with a hidden camera to record the transaction and another device to monitor the CI in real time. The Agents allegedly gave the CI seven hundred dollars ($700.00) in pre-recorded government funds for the drug transaction. (App. 149). The CI then rode in Agent Blake's vehicle to conduct the "controlled buy". (App. p. 99; p. 149).

The CI purportedly called Petitioner and received an address from Petitioner. (App. pp. 100–101; p. 104; p. 113; p. 163; pp. 213-215; p. 219). Agent Blake then drove the CI to that address. (App. p. 108; pp. 213–216; State's Ex. # 1 (Recording)). The CI entered the residence, and Petitioner escorted him to the back room. (App. p. 108; pp. 213–216; State's Ex. # 1 (Recording)). The hidden camera recorded what the State argued appeared as a plastic bag in Petitioner's hand. (App. p. 108; pp. 213–216; State's Ex. # 1 (Recording)). The CI left the residence and returned to Agent Blake's vehicle. (App. p. 108; pp. 213-216; State's Ex. # 1 (Recording)).

The Agents claimed that the CI purchased two bags of pills from Petitioner for five hundred dollars ($500.00). (App. p. 109; pp. 200–201; pp. 216–217; pp. 243–245; pp. 216–217; State's Ex. # 6 (Photograph)). Agent Blake and the CI then met with Agent Martin, where he supposedly took the pills and remaining funds from the CI. (App. p. 154; p. 177; pp. 217–219). Petitioner was subsequently arrested for selling the pills to the CI.

Jury Selection

During jury selection, the Trial Court asked the jury panel several voir dire questions pertaining to relationships, biases, and prejudices toward the parties. Specifically, the Trial Court asked the following question:

> Is anybody on the panel related by blood or by marriage or have any business, social, religious, or fraternal relationship with [Petitioner]? And with that said, I'm gonna ask [Petitioner], if he would, to stand

and let the jury take a look and make sure you, we covered the question about relationship.

(App. p. 10, line 16-21). Juror numbers 6 and 53 did not stand.

The Trial Court also asked the following questions:

TRIAL COURT: Winter Bennett. Anybody on the panel connected by blood or by marriage or have any business, social, religious or fraternal relationship with any of these potential witnesses? If so, we need you to raise your right hand.

(Whereupon, no one raises their hand)

TRIAL COURT: Anybody on the panel have any personal knowledge or have developed an opinion about this case, if so, we need you to raise your right hand but don't make any comment?

(Whereupon, no one raises their hand)

TRIAL COURT: Does anybody on the panel have any opinion, any biasness, or any prejudice toward either the State or the defendant whereby you cannot be a fair and impartial juror? We need you to raise your right hand but don't say anything.

(Whereupon, no one raises their hand)

TRIAL COURT: Does anybody on the panel know of any reason why you should not serve as a juror on this particular case, please raise your right hand?

(Whereupon, no one raises their hand)

(App. p. 14, line 5-25).

Post-Trial Motion for a New Trial: Juror Misconduct

On January 20, 2022, Petitioner filed a Motion for a New Trial based on juror misconduct. (App. p. 388). Specifically, Defense Counsel received affidavits from six (6) people after the trial maintaining that Juror numbers 6 and 53 failed to respond to the above questions during voir dire

and intentionally concealed their prior knowledge, bias, and prejudice against Petitioner.

Juror Number 6

Juror number 6 was initially seated as an alternate juror but was moved to the petit jury when another could not continue due to illness. Affiant Treasury Smith stated that Juror number 6 knew Winter Bennett and that Juror number 6 told Affiant Smith that Petitioner gave Ms. Bennett a sexually transmitted disease. Affiant Smith also stated that Juror number 6 that Petitioner was doing a lot of bad things in Dillon and had already determined that she was going to vote guilty. Affiant Smith further explained that Juror number 6 was close to the family of the deceased CI, and that they also wanted her to find Petitioner guilty (due to their belief that Petitioner had knowledge about the CI's death).

Juror Number 53

Defense Counsel's motion for a new trial included several affidavits indicating Juror number 53 was upset with Petitioner for fighting with his family or friends. The affidavits also indicated that Juror number 53 knew Petitioner well enough that he also disliked Petitioner for playing his music loudly in public.

Hearing

On March 10, 2022, the parties appeared before the Trial Court, and Defense Counsel argued that the Trial Court should grant a new trial, or in the alternative, grant an evidentiary hearing to examine the testimony of Juror numbers 6 and 53 and the affiants. (App. 402, line 14-18; App. 415, line 21—416, line 6). Defense Counsel also argued that, had that information been disclosed prior to jury selection, he would have either moved to strike those jurors for cause or would have used his peremptory strikes and struck those jurors. (App. pp. 401–429).

At the conclusion of the hearing, the Trial Court denied the motion for a new trial. (App.

pp. 426–427). The Trial Court noted that "it is very important to protect the sanctity of the jury process and the jury's decision" but also noted his concern with affidavits. The Trial Court further explained, "You have that situation in smaller counties where a lot of people know practically everyone that lives in the county unless they recently moved into that area." (App. p. 427). Notably, the Trial Court provided the following ruling:

> Both of these cases you handed up, Rowell and Woods, the key word is 'intentional concealment' to the voir dire questions posed by the Court, and I do not find enough credibility within these statements, nor what was presented to the Court, to justify any reason to overturn the jury's verdict and grant a new trial; therefore, the motion is denied. That's the way it is. There won't be any further hearings here; it will be in Columbia.

(App. pp. 427–428).

Motion to Hold Appeal in Abeyance and Remand for Evidentiary Hearing

On June 6, 2025, Petitioner filed a motion to hold the appeal in abeyance and remand for a hearing on a motion for a new trial based on after-discovered evidence. (App. pp. 517–534). The after-discovered evidence involved an affidavit by Winter Bennett stating that she and her brother, William Clark, "set up" Petitioner. Specifically, Petitioner's former girlfriend, Winter Bennett, confessed to placing drugs in Petitioner's "shoe box" to help her brother, William Clark, who was the CI in this case. Ms. Bennett explained that her brother was the CI and had asked for her help because he was facing life without parole. Ms. Bennett further noted that she and her brother (the CI) had access to Petitioner's social media account because Petitioner had lived with them since he was sixteen (16) years old.

Winter Bennett Affidavit

On June 20, 2024, Winter Bennett provided Defense 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.

(App. pp. 527–528).

Thurmond Brooker Affidavit

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

> I was legal counsel for [Petitioner] 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 [Petitioner]
>
> . . .
>
> During my representation of [Petitioner], *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 [Petitioner'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. . . .*

(App. 530) (emphasis added).

Petitioner's Affidavit

Petitioner filed his affidavit in support of the motion to hold the appeal in abeyance on July 5, 2025. (App. pp. 545–547). Petitioner denied any having knowledge of the drugs or involvement in the drug transaction with the CI.

Appellate Counsel's Affidavit

Appellate Counsel, Dayne Phillips, also provided an affidavit to accompany the motion based on the requirements of Rule 29(b) of the South Carolina Rules of Criminal Procedure. (App. pp. 532–533).

Order

On July 23, 2025, the Court of Appeals denied the motion to hold the appeal in abeyance. (App. pp. 548–549). Petitioner filed a Petition for Rehearing on August 4, 2025, and the Court of Appeals returned the petition without action on August 8, 2025. (App. pp. 550–554).

ARGUMENT

I. THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION TO HOLD THE APPEAL IN ABEYANCE AND REMAND FOR A HEARING ON A MOTION FOR A NEW TRIAL BASED ON AFTER-DISCOVERED EVIDENCE WHEN THE COURT OF APPEALS DID NOT PROVIDE ANY SPECIFIC BASIS FOR THE DENIAL, AND WHERE THE AFFIDAVITS SATISFIED ALL FIVE ELEMENTS OF THE AFTER-DISCOVERED EVIDENCE TEST.

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).

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.

Discussion

In this case, the Court of Appeals erred in denying Petitioner's motion to hold the appeal in abeyance and remand for a hearing on a motion for a new trial based on after-discovered evidence when the Court of Appeals did not provide any specific basis for the denial, and where the affidavits satisfied all five elements of the after-discovered evidence test. Specifically, the Court of Appeals did not provide any specific basis for the denial 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).

In his petition for rehearing, Petitioner requested that the Court of Appeals provide 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, Petitioner, and Defense Counsel Thurmond Brooker. (App. 550-553).

Would Probably Change the Result of Petitioner's Trial

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., Petitioner's alleged knowing participation in the drug transaction with the CI). Ms. Bennett admitted that she conspired with her brother (the CI) to "set up" Petitioner. Ms. Bennett also admitted that brother (the CI) asked for her help to incriminate Petitioner because he was facing life without parole. Bennett is also Petitioner's former girlfriend and had lived with Petitioner for years and having access to his possessions and social media. Notably, Ms. Bennett is visible in the video recording worn by the CI, and Defense 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]."

Defense Counsel also never had an opportunity to cross-examine the CI because he died prior to trial. Agent Blake testified that he had *never* spoken to or met with Petitioner prior to the alleged drug buy with the CI. (App. p. 103, line 12 – p. 104, line 1). Agent Blake also admitted that the *only* information regarding illegal activity connected to Petitioner was provided by the deceased CI and the other Special Agent. (App. p. 105, lines 15). 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. (App. p. 114, lines 12-23). Agent Martin further admitted he had no personal knowledge that the cell phone number was associated with Petitioner. (App. p. 114, line 23 – 115, line 2). Notably, the State never subpoenaed any phone records to substantiate the allegation that the phone number was associated with Petitioner. (App. p. 110, lines 7-15).

Furthermore, Ms. Bennett referenced Juror number 6 in her first affidavit, and Juror number 6 purportedly knew Ms. Bennett, the deceased CI, and did not like Petitioner. Preventing Petitioner 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 generally 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)). Therefore, this after-discovered evidence would probably have changed the result of Petitioner's trial.

Discovered since Petitioner's Trial

Defense Counsel also stated in his affidavit that he did not become aware of this information until after Ms. Bennett provided her affidavit to him on June 20, 2024. Petitioner stated 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.

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

Neither Petitioner nor Defense Counsel could have discovered, in the exercise of due

diligence, the information contained in Ms. Bennett's affidavit until she made the decision to confess on June 20, 2024. Defense Counsel also had no way of knowing that Ms. Bennett had conspired with her brother (the CI) to "set up" Petitioner.

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

At trial, the State and Petitioner did not present any evidence or cross-examination related to the after-discovered evidence. Ms. Bennett and the CI did not testify at trial. Ms. Bennett stated in her affidavit that she planted the drugs in Petitioner's shoe box to get a better deal for her brother (who was the CI) because he was facing life without the possibility of parole.

Material to Petitioner's Case

Ms. Bennett's statement contradicts the State's evidence and goes directly to the heart of the question presented to the jury in determining Petitioner's guilt. *See generally State v. South*, 310 S.C. 504, 427 S.E.2d 666 (1993) (holding after-discovered evidence must reflect upon the defendant's innocence). Ms. Bennett's statement is also 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 Petitioner at trial because there was no testimony concerning the CI's plan to have Bennett "set up" Petitioner, 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 agents did not know of their plan to "set up" Petitioner. Therefore, the after-discovered evidence is material to the jury's

determination of Petitioner's guilt and is not cumulative or impeaching to any evidence offered by the State or Petitioner. *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").

II. THE COURT OF APPEALS ERRED IN FINDING THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING PETITIONER'S MOTION FOR A NEW TRIAL WHERE THE SUPPORTING AFFIDAVITS REQUIRED AN EVIDENTIARY HEARING TO EXAMINE JUROR NUMBERS 6 AND 53 AND THE AFFIANTS, AND WHERE THE COURT OF APPEALS FAILED TO PROPERLY ADDRESS THE NATURE OF THE ALLEGED INFORMATION WITHHELD BY JUROR NUMBERS 6 AND 53.

Our state and federal constitutions guarantee a party the right to an impartial jury, and "voir dire can be an essential means of protecting this right." *Warger v. Shauers*, 574 U.S. 40, 50 (2014); U.S. Const. amends. VI, XIV; S.C. Const. art. I, § 14. If a party challenges a juror for cause, the trial court must examine the juror to determine if the juror "is sensible of any bias or prejudice" about the case. S.C. Code Ann. § 14-7-1020 (2017).

In analyzing a claim of juror bias, our appellate courts have recently abandoned the distinction between intentional versus unintentional concealment. The proper inquiry is now as follows, "Where a party claims a juror has withheld material information in response to a voir dire question, the trial court must determine, preferably after a hearing, whether the juror's withholding suggests bias. This will typically turn on the nature of the information withheld, rather than the nature of the juror's state of mind in not disclosing it." *State v. Rowell*, 444 S.C. 109, 115, 906 S.E.2d 554, 557 (2024).

Further, evaluating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing. *See State v. Sparkman*, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004) ("Whether a juror's failure to respond [during voir dire] is intentional is a fact intensive determination that must be made on a case-by-case basis."); *McCoy v. State*, 401 S.C. 363, 371, 737 S.E.2d 623, 628 (2013) ("[E]valuating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing").

Discussion

In this case, the Court of Appeals erred in finding the Trial Court did not abuse its discretion by denying Petitioner's motion for a new trial where the supporting affidavits required an evidentiary hearing to examine juror numbers 6 and 53 and the affiants, and where the Court of Appeals failed to properly address the nature of the alleged information withheld by Juror numbers 6 and 53. The Court of Appeals' opinion improperly found that Petitioner "had ample opportunity to notify counsel and the court of potential juror biases" without providing *any* basis for *how* and *when* Petitioner knew this information about those jurors. The Court of Appeals' speculative finding is misplaced and not supported by the record. The Court of Appeals also failed to specifically address the Trial Court's denial of Petitioner's request for an evidentiary hearing to examine Juror numbers 6 and 53 and the affiants regarding the allegations of intentional concealment of bias and prejudice against Petitioner.

Notably, the Trial Court did not provide *cogent* and *compelling* reasons for not granting an evidentiary hearing. *See Rowell*, 444 S.C. at 115, 906 S.E.2d at 558 (noting "[a]lthough we stop short of requiring a full-blown evidentiary hearing based on the mere allegation of juror nondisclosure, a trial court must document cogent and compelling reasons for not holding one. We hold it was error for the circuit court to decline the request for an evidentiary hearing so Juror 164 could be examined as to whether his pending charges could have caused him to be biased.").

As for Juror number 6, Affiant Treasury Smith stated in her affidavit that Juror number 6 knew Winter Bennett and that Juror number 6 told Affiant Smith that Petitioner gave Ms. Bennett a sexually transmitted disease. Affiant Smith also stated that Juror number 6 that Petitioner was doing a lot of bad things in Dillon and had already determined that she was going to vote guilty. Affiant Smith further explained that Juror number 6 was close to the family of the deceased CI, and that they also wanted her to find Petitioner guilty (due to their belief that Petitioner had

knowledge about the CI's death).

Most concerning is that Juror number 6 purportedly told others that she was going to vote for a guilty verdict. In each instance alleged in the affidavits, Juror Number 6 would have a bias or prejudice against Petitioner and even developed an opinion regarding Petitioner's guilt; all of which were questions asked by the Trial Court. Had Juror number 6 come forward during the voir dire process, she would have been struck—if not for cause, then certainly by the Defense Counsel's use of a peremptory strike.[1]

As for Juror number 53, Petitioner presented affidavits of potential bias and prejudice against Petitioner. Defense Counsel's motion for a new trial included several affidavits indicating Juror number 53 was upset with Petitioner for fighting with his family or friends. The affidavits also indicated that Juror number 53 knew Petitioner well enough that he also disliked Petitioner for playing his music loudly in public. Had Juror number 53 come forward during the voir dire process, she would have been struck—if not for cause, then certainly by the Defense Counsel's use of a peremptory strike.

In other words, the post-trial hearing was insufficient for the Trial Court to properly assess the reliability and credibility of these allegations based on the affidavits alone in violation of his right to a fair trial by an impartial jury. Therefore, a full evidentiary hearing was reasonable and necessary for the Trial Court to properly rule on the motion for a new trial. *See Sparkman*, 358 S.C. at 496, 596 S.E.2d at 377 (finding evaluating the merits of a juror misconduct claim is a fact-intensive inquiry, which is most appropriately conducted after a hearing).

[1] At the time Juror number 6 was seated as an alternate juror, Petitioner had two strikes remaining to use. (App. p. 29, lines 2-13).

CONCLUSION

Based on the foregoing reasons, Petitioner respectfully requests this Court grant a writ of certiorari to review the Court of Appeals' decision, reverse his convictions and sentences, and remand the case to the Dillon County Court of General Sessions for a new trial or for an evidentiary hearing on the motions for a new trial.

Respectfully submitted,

s/ Dayne Phillips

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April 16, 2026