

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County Court of General Sessions
The Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2018-000824

State of South Carolina.....Respondent,

v.

Nicholas McIver,.....Appellant.

**MOTION TO HOLD THE BRIEFING ORDER IN ABEYANCE
OR IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME**

COMES NOW the Appellant, Nicholas McIver, by and through undersigned counsel William G. Yarborough III and moves this Honorable Court to issue an order holding the timelines for this appeal in abeyance until repeated requests for the production of exhibits are fulfilled; or in the alternative, moves this Honorable Court to enter an order extending the time to file and serve Appellant's initial brief.

Before making the most recent referenced requests to the Clerk of Court's Office for Horry County, Counsel was given some discovery from the case, some of which was introduced as exhibits at trial, but Counsel's copies are not marked as such. In the transcript's exhibit list, many

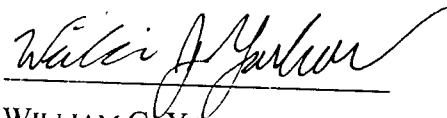
of the exhibits have the same description or are very vague without any specific identifying information. The testimony during which the exhibits are admitted is more revealing; however, the exhibits that pertain to the same location or item of evidence makes it difficult to distinguish them from one another. Counsel can only sufficiently identify and distinguish each exhibit from another by obtaining copies of all properly marked exhibits. Counsel's inability to identify to exhibits was the basis for past extension to this Court, and to obtain full clarity on all exhibits, Counsel began contacting the Horry County Clerk of Court to request all exhibits the week of September 10th, 2018 by telephone. The Clerk's office advised that no request would be processed until after Hurricane Florence. Counsel tried again to contact the Clerk's office the end of that same week and multiples times the week after by telephone and understandably, received no response. Counsel was able to get in touch with the Clerk's Office the last week of September by telephone. Counsel advised the Clerk's Office that the exhibits were necessary and urgent for a pending appeal. In telephone and email correspondence, Counsel was informed that a request pursuant to the South Carolina Freedom of Information Act would need to be submitted before the Clerk of Court would release any exhibits. The email correspondence has been attached to this motion. Conflicting descriptions of the process were given for Counsel to follow. Counsel also reached out to Appellant's trial counsel about obtaining a copy of any exhibits he may have but received no response and unfortunately, Counsel's work schedule does not allow for travel from Greenville to Horry Court during business hours this week or the upcoming weeks in order to attempt to obtain the exhibits in person.

Confirmation of the submitted FOIA request as per the email correspondence was given October 17, 2018. However, as of the date of this motion, Counsel has not received any response from numerous attempts by phone and email to obtain an estimate date for receipt of the exhibits

to provide to this Court for the purposes of the appeal and a extension motion. The exhibits are necessary to prepare Appellant's initial brief, as some exhibits are directly involved with the intended issues to be raised on appeal, and all exhibits are necessary for gaining a full understanding of the facts and context of the case and the evidence admitted. Counsel requests for the appeal to be held in abeyance because of the great number of exhibits requested to be produced and because the wide time limits set forth in SC FOIA may likely exceed the time given on one or more motions by Appellant for an extension of time file and serve the initial brief.

Counsel respectfully submits that holding the appeal and deadlines in abeyance may be appropriate due to the uncertainty of the date of receipt of the exhibits and the consequent delays in the appellate process due to the need to move for further extensions of time if the exhibits are not soon received. Counsel's alternate request for an extension of time is likewise not made with the intent to cause further undue delay or prejudice to Respondent. Counsel believes that either requested relief is warranted in the ends of justice, to provide Appellant with a full and fair opportunity to seek appellate relief, as well as safeguard his right to direct appeal and the right to effective assistance of counsel.

Respectfully submitted,



WILLIAM G. YARBOROUGH III, #10271
William G. Yarborough III, Attorney at Law, LLC

Greenville SC
October 26, 2018

Requested Court Exhibits for Nicholas McIver

Zack Beach <zackwgylaw@gmail.com>

Wed, Oct 3, 2018 at 4:33 PM

To: lewishea@horrycounty.org

Cc: laurenwgylaw@gmail.com, Bill Yarborough <wgyarborough@gmail.com>

Ms. Lewis,

I have attached scanned copies of the requested court exhibits from the *State v. McIver* case (No. 2016-GS-26-05556, 05557, 05558). You will find the requested exhibits highlighted in yellow.

Please have the exhibits sent to the provided address below:

Law Office of William G. Yarborough, III
522 North Church Street
Greenville, South Carolina 29601

Thank you,

--

Zackary M. Beach

Executive Assistant


Law Offices of William G. Yarborough, III

522 N. Church St.

Greenville, SC 29601

(O) [864-331-1612](tel:864-331-1612)(F) [864-370-0022](tel:864-370-0022)zackwgylaw@gmail.com

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 **Requested Exhibits - Nicholas McIver.pdf**

1208K



Lauren h <laurenwgylaw@gmail.com>

FOIA Form Requested for Nicholas McIver

Zack Beach <zackwgylaw@gmail.com>

To: laurenwgylaw@gmail.com

Fri, Oct 26, 2018 at 11:55 AM

Forwarded Conversation**Subject: FOIA Form Requested for Nicholas McIver**

From: Zack Beach <zackwgylaw@gmail.com>

Date: Thu, Oct 4, 2018 at 12:53 PM

To: <broskyk@horrycounty.org>

Cc: <laurenwgylaw@gmail.com>, Bill Yarborough <wgyarborough@gmail.com>

[Quoted text hidden]

From: Lauren h <laurenwgylaw@gmail.com>

Date: Thu, Oct 4, 2018 at 1:39 PM

To: Bill Yarborough <wgyarborough@gmail.com>, Zack Beach <zackwgylaw@gmail.com>

zack, do they know we represent him on appeal? we shouldnt need a FOIA request.

On Thu, Oct 4, 2018 at 1:19 PM Bill Yarborough <wgyarborough@gmail.com> wrote:

Sent from my iPhone

Begin forwarded message:

From: Zack Beach <zackwgylaw@gmail.com>

Date: October 4, 2018 at 12:53:35 PM EDT

To: broskyk@horrycounty.org

Cc: laurenwgylaw@gmail.com, Bill Yarborough <wgyarborough@gmail.com>

Subject: FOIA Form Requested for Nicholas McIver

Lauren C. Hobbis, Associate Attorney

William G. Yarborough III, Attorney at Law, LLC

A 522 North Church Street Greenville, SC 29601

O (864)-331-1612 W <https://www.wgylaw.com/>

IMPORTANT: The contents of this email and any attachments are confidential. They are intended for the named recipient(s) only. If you have received this email by mistake, please notify the sender immediately and do not disclose the contents to anyone or make copies thereof.

From: Brosky, Kelly <Broskyk@horrycounty.org>

Date: Thu, Oct 4, 2018 at 4:44 PM

To: Zack Beach <zackwgylaw@gmail.com>, Elvis, Renee <elvisr@horrycounty.org>

As I understand it, these exhibits are available through the Clerk of Court's Office. Please contact them to determine what records, if any, they may have pursuant to your request.



Lauren h <laurenwgylaw@gmail.com>

McIver Exhibits

Zack Beach <zackwgylaw@gmail.com>
To: laurenwgylaw@gmail.com

Fri, Oct 26, 2018 at 11:53 AM

----- Forwarded message -----

From: **Lewis, Heather** <LewisHea@horrycounty.org>
Date: Thu, Oct 4, 2018 at 11:58 AM
Subject: McIver Exhibits
To: Zack Beach <zackwgylaw@gmail.com>

Please find attached our FOIA Form. Please fill it out and submit it to Kelly Brosky. You may also want to attach the same attachment you sent to me earlier so they know exactly what you're requesting. It must be returned to our Public Information office. Once approved, they will submit it to me for completion. If you have any questions, please contact me or Kelly Brosky.

Thanks,

Heather D. Lewis**Horry County Clerk of Court****Office Manager****843-915-6744**

All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

Zackary M. Beach

Legal Assistant

Law Offices of William G. Yarborough, III

522 N. Church St.

Greenville, SC 29601

(O) 864-331-1612

(F) 864-370-0022

zackwgylaw@gmail.com

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Lauren h <laurenwgylaw@gmail.com>

McIver Exhibits

Zack Beach <zackwgylaw@gmail.com>
To: laurenwgylaw@gmail.com

Fri, Oct 26, 2018 at 11:53 AM

----- Forwarded message -----

From: **Lewis, Heather** <LewisHea@horrycounty.org>
Date: Thu, Oct 4, 2018 at 11:58 AM
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To: Zack Beach <zackwgylaw@gmail.com>

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Heather D. Lewis**Horry County Clerk of Court****Office Manager****843-915-6744**

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Zackary M. Beach

Legal Assistant

Law Offices of William G. Yarborough, III

522 N. Church St.

Greenville, SC 29601

(O) 864-331-1612

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zackwgylaw@gmail.com

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Lauren h <laurenwgylaw@gmail.com>

McIver Exhibits

Zack Beach <zackwgylaw@gmail.com>
To: laurenwgylaw@gmail.com

Fri, Oct 26, 2018 at 11:55 AM

Forwarded Conversation

Subject: McIver Exhibits

From: Lewis, Heather <LewisHea@horrycounty.org>
Date: Thu, Oct 4, 2018 at 11:58 AM
To: Zack Beach <zackwgylaw@gmail.com>

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Thanks,

Heather D. Lewis
Horry County Clerk of Court
Office Manager
843-915-6744



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From: Zack Beach <zackwgylaw@gmail.com>
Date: Wed, Oct 17, 2018 at 4:20 PM
To: <broskyk@horrycounty.org>

Ms. Brosky

Attached, you will find the FOIA request form filled out by our office for exhibits highlighted in yellow from *State v. McIver* case (No. 2016-GS-26-05556, 05557, 05558).

Thanks,

522 N. Church St.
Greenville, SC 29601
(O) 864-331-1612
(F) 864-370-0022
zackwgylaw@gmail.com

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Zackary M. Beach
Legal Assistant
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11 attachments



image001.png
699K



image001.png
699K



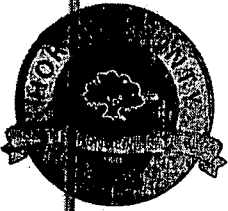
image002.jpg
4K

oledata.mso
676K

Exhibits - Nicholas McIver.pdf
1208K

FOIA Form 2.19.18.pdf
193K

Freedom of Information Act Request Form - Nicholas McIver.pdf



FREEDOM OF INFORMATION ACT REQUEST FORM

Date of Request: October 4th, 2018 (10/4/18)

Name: Law Office of William G. Yarborough

Street Address: 522 North Church Street

City: Greenville State: South Carolina Zip Code: 29601

Phone Number: (864) 331-1117

Email Address: wgyarborough@gmail.com

Information Requested (please be as specific as possible):

You will find requested exhibits on separate attachments provided. Each requested exhibit is highlighted in yellow.

PLEASE RETURN THE FORM TO THE HORRY COUNTY PUBLIC INFORMATION OFFICE, PO BOX 1236, CONWAY, SC 29528, 843-915-6390 (FAX) OR BRQSKYK@HORRYCOUNTY.ORG.

COPIES \$0.15 EACH-CASH OR MONEY ORDER-FEES ON REVERSE ~~NO PERSONAL CHECKS~~

In accordance with South Carolina law, any personal information (including, but not limited to, a person's name, date of birth, social security number, home address, home telephone number, driver's identification number, medical or disability information, financial information, etc...) obtained through the Freedom of Information Act cannot be used for commercial solicitation purposes directed to any person in this State. Anyone violating this provision is guilty of a misdemeanor, and upon conviction, may be fined up to \$500, imprisoned up to one year, or both.

FOR OFFICE USE ONLY

Request Assigned To: _____ Date of Completion: _____
Date of Assignment: _____ Fee for Services: _____
Date Response Due: _____ Method of Payment: _____

I N D E X

1		
2		
3	Charge Conference	<u>Pg.</u> 560
4	By the Court	567
5	Closing by DeBusk	568
6	Closing by Bellamy	588
7	Closing by Spratlin	603
8	By the Court	628
9	Charge to Jury	630
10	By the Court	642
11	<u>APRIL 27, 2018 - DAY FIVE</u>	
12	By the Court	648
13	Verdict of Jury	650
14	Polling of Jury	652
15	By the Court	654
16	Motions	655
17	Sentencing	657
18	Certificate of Court Reporter	665

E X H I B I T S

21	<u>No.</u>		<u>ID</u>	<u>EV</u>
22	S1	1 Photo		90
23	S2	1 Photo		88
24	S3	1 Photo	80	91
25	S4	Large Poster (aerial)		85

EXHIBITS

1	No.	<u>ID</u>	<u>EV</u>
2			
3	S28 Receipt		218
4	S29 CD/DVD		226
5	S30 1 Photo		229
6	S31 Receipt		229
7	S32 Receipt		229
8	S33 Photo of Victim	238	
9	S34 Photo of Victim	238	
10	S35 Styrofoam head		240
11	S36 1 Photo		297
12	S37 1 Photo		293
13	S38 1 Photo		293
14	S39 1 Photo		295
15	S40 1 Photo		295
16	S41 1 Photo		295
17	S42 1 Photo		295
18	S43 1 Photo		295
19	S44 6 Photos	256	320
20	S45 2 pgs paper document - Instructions Sheet		320
21	S46 Bag and contents (purse, etc.)		296
22	S47 Report		344
23	S48 Report		345
24	S49 Report		347
25	S50 Report		350



Lauren h <laurenwgylaw@gmail.com>

State v. Nicholas McIver - Requests for Exhibits for Currently Pending Appeal in the South Carolina Court of Appeals (2016GS05556, 05557, 05558, 2017-GS-26-2606, 02607, 02609)

Lauren h <laurenwgylaw@gmail.com>

Fri, Oct 26, 2018 at 12:48 PM

To: LewisHea@horrycounty.org, Broskyk@horrycounty.org

Cc: Bill Yarborough <wgyarborough@gmail.com>, Zack Beach <zackwgylaw@gmail.com>, T Trouton-Burr <ttroutonburr@gmail.com>, Yenovkianlaw@gmail.com

Good afternoon,

I hope this email finds you well.

Our office was retained to represent Mr. McIver in his pending appeal. I understand that a FOIA request has been submitted several times now for all the trial exhibits (State Exhibits: 1 -- 61, Defendant Exhibits: 1-2, Court Exhibits: 1-8).

I was wondering if there is any update on the requests for these exhibits and whether there is an estimate date range that our office might receive them. The exhibits are imperative to prepare and draft his appellate brief, and I would like to inform the Court of Appeals of where we are in the process for the purposes of updating the briefing order and extending the time to file and serve our initial appellate brief.

Please let me know if there is a rushed shipping and handling fee that we can remit to your office.

Please do not hesitate to call our office at (864) 331-1612 if you would like to discuss this further. Thank you. I appreciate your time and attention to this matter.

Sincerely,

Lauren C. Hobbis, Associate Attorney

William G. Yarborough III, Attorney at Law, LLC

A 522 North Church Street Greenville, SC 29601

O (864)-331-1612 **W** <https://www.wgylaw.com/>

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Lauren h <laurenwgylaw@gmail.com>

Emailing: Exhibits - Nicholas McIver.pdf

Lewis, Heather <LewisHea@horrycounty.org>

Fri, Nov 9, 2018 at 4:34 PM

To: Lauren h <laurenwgylaw@gmail.com>, "zackwgylaw@gmail.com" <zackwgylaw@gmail.com>

Attached is a list of the exhibits you requested. The exhibits will follow in a series of emails. I scanned everything that I could so it could be sent by email. The DVDs, CDs, etc. was put in the mail to you.

Please contact me if you should have any questions.

Heather D. Lewis
Horry County Clerk of Court
Office Manager
843-915-6744

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 Exhibits - Nicholas McIver.pdf
1208K

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County Court of General Sessions
The Honorable Steven H. John, Circuit Court Judge

RECEIVED

DEC 27 2018

SC Court of Appeals

Appellate Case No. 2018-000824

State of South Carolina.....Respondent,

v.

Nicholas McIver,.....Appellant.

PROOF OF SERVICE

WILLIAM G. YARBOROUGH III

LAUREN C. HOBBS

William G. Yarborough III, Attorney at Law, LLC

522 North Church Street

Greenville, South Carolina 29601

(864) 331-1612

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

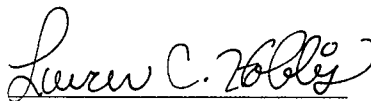
The undersigned hereby certifies that Appellant's opening brief, designation of matter, and motion to allow late filing were mailed by US mail for filing and service upon Respondent respectively, with sufficient postage attached and addressed as follows:

The Honorable Kitchings, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Senior Assistant Attorney General Benjamin J. Aplin
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

The undersigned further certifies that all parties required to be served under the South Carolina Appellate Rules have been served.

This 23 day of November, 2018



William G. Yarborough III, Attorney at Law, LLC

LAW OFFICE OF WILLIAM G. YARBOROUGH, III

522 N. Church St. Greenville, SC 29601 • Office: (864) 331-1612 • wgyarborough@gmail.com

November 23, 2018

The Honorable Jenry Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RECEIVED

DEC 27 2018

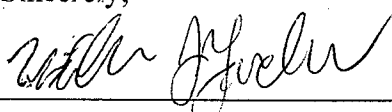
SC Court of Appeals

Re: The State of South Carolina v. James D. White
Appellate Case No. 2016-001302

Dear Ms. Kitchings,

I apologize for the delay in responding to your letter regarding my availability for oral argument in the above-captioned case. I have no current conflicts with the dates outlined in your letter and have blocked off these dates in my calendar to prevent any conflicts from arising. Thank you.

Sincerely,



William G. Yarborough III

5 P11
02 1P \$0
0000284392 NOV
MAILED FROM ZIP C

Law Office of William G. Yarborough III
522 N. Church Street
Greenville SC 29601

~~SC Court of Appeals
1220 Senate St,
Columbia, SC 29201~~

RECEIVED
DEC 27 2018
SC Court of Appeals

Send to P.O. Box 11629
Columbia SC 29211