

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI****NO. 2017-M-00818-SCT****ROBERT SHULER SMITH****APPELLANT****VS.****THE STATE OF MISSISSIPPI****APPELLEE****MOTION TO STAY TRIAL COURT PROCEEDINGS**

Pursuant to MISSISSIPPI RULE OF APPELLATE PROCEDURE 5(f), Appellant Robert Shuler Smith (“Smith”), moves this Court to stay trial court proceedings in the case styled *State of Mississippi v. Robert Shuler Smith*, in the Circuit Court of the First Judicial District of Hinds County, Mississippi, Cause No. 25CI1:16-cr-00836-LER, until this Court has ruled upon Robert Smith’s Second Petition for Interlocutory Appeal by Permission, which was filed on or about June 14, 2017, in Mississippi Supreme Court No. 2017-M-00818-SCT. For grounds, Smith says:

1. Smith was tried on charges of conspiracy to hinder prosecution and of aiding a criminal defendant for three (3) weeks in December 2016 and in January 2017. Smith never had an opportunity for an acquittal. Unknown to Smith, there was a juror on the case who determined – based upon outside information obtained from her employment at the Jackson Police Department – that she would either persuade the jury to convict or would cause a mistrial. Using her outside information, this juror was able to cause the jury not to agree, resulting in a mistrial.

2. A second trial for Smith is set to begin on July 31, 2017.

3. On June 14, 2017, Smith filed Robert Smith’s Second Petition for Interlocutory Appeal by Permission. In this second Petition, Smith alleges that a second trial for the same offense violates the double jeopardy clause of the Fifth Amendment to the United States Constitution. (*See*

Robert Smith’s Second Petition for Interlocutory Appeal by Permission, filed in Mississippi Supreme Court No. 2017-M-00818-SCT, less exhibits, attached hereto as Exhibit “A.”)

4. Under *Abney v. United States*, 431 U.S. 651 (1977), the Fifth Amendment confers not only the right to be free from conviction at a second trial, but also confers the right to be free from a second trial. *Abney* held that the Fifth Amendment “guarantee’s protections would be lost if the accused were forced to ‘run the gauntlet’ a second time before an appeal could be taken . . . .” *Abney v. United States*, 431 U.S. 651, 662 (1977).

5. Robert Smith’s Second Petition for Interlocutory Appeal by Permission demonstrates that Smith has a “colorable” double jeopardy claim. (See Robert Smith’s Second Petition for Interlocutory Appeal by Permission, less exhibits, attached hereto as Exhibit “A.”) This Court should, therefore, stay the proceedings of the trial court until such time as the Court decides whether or not a second trial is barred by the Fifth Amendment’s protection against double jeopardy.

WHEREFORE, PREMISES CONSIDERED, Appellant Robert Smith requests that this Court stay the trial court proceedings in the case styled *State of Mississippi v. Robert Shuler Smith*, in the Circuit Court of the First Judicial District of Hinds County, Mississippi, Cause No. 25CII:16-cr-00836-LER, until this Court rules upon Robert Smith’s Second Petition for Interlocutory Appeal by Permission.

RESPECTFULLY SUBMITTED, this the 19th day of June, 2017.

ROBERT SHULER SMITH, Appellant

By: /s/ Jim Waide

Jim Waide, MS Bar No. 6857

[waide@waidelaw.com](mailto:waide@waidelaw.com)

WAIDE & ASSOCIATES, P.A.  
332 North Spring Street  
Tupelo, MS 38804-3955  
Post Office Box 1357  
Tupelo, MS 38802-1357  
(662) 842-7324 / Telephone  
(662) 842-8056 / Facsimile

ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

This will certify that undersigned counsel for Appellant has this day served a true and correct copy of the above and foregoing **Motion to Stay Trial Court Proceedings** upon the following individuals via electronic mail and First-Class U.S. Mail, postage-prepaid:

**Robert Gilmon Anderson, Esquire**  
**Mississippi Attorney General's Office**  
**Public Integrity Division**  
**Post Office Box 220**  
**Jackson, MS 39205-0220**  
**rande@ago.state.ms.us**

**Larry Gus Baker, Esquire**  
**Mississippi Attorney General's Office**  
**Public Integrity Division**  
**Post Office Box 220**  
**Jackson, MS 39205-0220**  
**lbake@ago.state.ms.us**

**Marvin Lawayne Sanders, Esquire**  
**Mississippi Attorney General's Office**  
**Public Integrity Division**  
**Post Office Box 220**  
**Jackson, MS 39205-0220**  
**msand@ago.state.ms.us**

**Honorable Larry E. Roberts**  
**Senior Status Judge**  
**Post Office Box 1002**  
**Meridian, MS 39302-1002**  
**lroberts\_judge@yahoo.com**

DATED, this the 19th day of June, 2017.

*/s/ Jim Waide*

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Jim Waide