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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

ROBERT L. O'SHIELDS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001175

APPENDIX

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	2014-GS-42-2280
COUNTY OF SPARTANBURG)	2014-GS-42-2281
)	
)	
)	
)	
STATE OF SOUTH CAROLINA,)	
PLAINTIFF,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
ROBERT LEE O'SHIELDS,)	
DEFENDANT.)	
_____)	

September 8, 2015
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE J. DERHAM COLE, JUDGE

A P P E A R A N C E S:

BARRY JOE BARNETTE, ESQ.
Solicitor

TIMI POULOS, ESQ.
Assistant Solicitor

N. DOUGLAS BRANNON, ESQ.
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Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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There were no witnesses called.

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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S-2	9-1-1 Phone Call	5	
S-3	9 mm Luger Cartridge Case (SCSO #1)	5	
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	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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2				
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21	S-46	Photo of Academy Sports Bag with Gun Box	5	
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P R O C E E D I N G S

(WHEREUPON, State Exhibit Nos. 1 through 65 were marked for identification, and Defense Exhibit No. 1 was marked for identification.)

MR. BARNETTE: May it please the Court while I call the case State vs. Robert Lee O'Shields, Senior.

THE COURT: All right. Mr. Barnette?

MR. BARNETTE: Your Honor, the defendant's going to plead guilty to the following three indictments. The first one is 2014-GS-42-2280, violation of order of protection, Your Honor. And then the other two counts, Your Honor, is on Indictment 2014-GS-42-2281. Count 1 is for murder; Count 2 is possession of a firearm during the commission of a violent crime.

Your Honor, he's pleading guilty to these charges, guilt by a mental ill. Mr. Brannon and Mr. Hodge represent him. These have been true-billed to the grand jury. They do have a report from Selman Watson, their doctor expert, they're going to be entering as Court's Exhibit 1, Your Honor. It's the State's position guilt by a mental ill plea on this case, Your Honor.

And may I approach the bench, Your Honor?

And, Your Honor, I do have 65 exhibits I'll be entering as part of the plea also at the appropriate time.

(Pause in proceedings.)

1 THE COURT: You are Robert Lee O'Shields, Senior?

2 DEFENDANT O'SHIELDS: Yes, Your Honor.

3 THE COURT: Mr. Brannon and Mr. Hodge are your
4 lawyers?

5 DEFENDANT O'SHIELDS: Yes, Your Honor.

6 THE COURT: How long have they been representing you
7 on these cases that are before us today?

8 DEFENDANT O'SHIELDS: I'd say about 15 months.

9 THE COURT: You're charged in two separate indictments
10 with three separate and distinct offenses. Those crimes
11 are the crime of murder, also possession of a firearm
12 during the commission of a violent crime, and also
13 violation of an order of protection. You've indicated by
14 your signatures that you wish to enter pleas of guilty to
15 each of these charges; is that true?

16 DEFENDANT O'SHIELDS: Yes, Your Honor.

17 THE COURT: Mr. Barnette has also indicated that you
18 are entering pleas of guilty but mentally ill to each of
19 these charges pursuant to 17-24-20; is that true?

20 DEFENDANT O'SHIELDS: Yes, Your Honor.

21 THE COURT: And you discussed that with Mr. Brannon
22 and Mr. Hodge?

23 DEFENDANT O'SHIELDS: Yes, Your Honor.

24 THE COURT: They've been representing you for the last
25 15 months?

1 DEFENDANT O'SHIELDS: Yes, Your Honor.

2 THE COURT: Have you had plenty of time and
3 opportunity to talk to them about the nature of these
4 charges as well as your apparent decision to plead guilty
5 to them?

6 DEFENDANT O'SHIELDS: Yes, Your Honor.

7 THE COURT: And have they been over each of these
8 indictments with you and explained to you what the State
9 claims that you did?

10 DEFENDANT O'SHIELDS: Yes, Your Honor.

11 THE COURT: Indictment 2014-2281, that's the
12 indictment for murder and possession of a firearm during
13 the commission of a violent crime, alleges that you did
14 here, in Spartanburg County, on or about April 30, 2014,
15 willfully and with malice aforethought kill one Mariann
16 O'Shields by shooting her with a firearm, and that she died
17 as a proximate result of that gunshot wound. Do you
18 understand that charge?

19 DEFENDANT O'SHIELDS: Yes, Your Honor.

20 THE COURT: Do you understand that that charge carries
21 a potential sentence of life in prison, but it requires a
22 mandatory minimum sentence of not less than 30 years?

23 DEFENDANT O'SHIELDS: Yes, Your Honor.

24 THE COURT: And you want to plead guilty to it?

25 DEFENDANT O'SHIELDS: Yes, Your Honor.

1 THE COURT: The second count of the indictment charges
2 that you did, in Spartanburg County, on or about
3 April 30, 2014, visibly display a firearm during the
4 commission of a violent crime, that violent crime being the
5 murder charge as stated in Count 1. Possession of a
6 firearm during the commission of a violent crime carries an
7 additional punishment of up to five years in jail. Do you
8 understand that charge and potential punishment?

9 DEFENDANT O'SHIELDS: Yes, Your Honor.

10 THE COURT: Do you still want to plead guilty to it?

11 DEFENDANT O'SHIELDS: Yes, Your Honor.

12 THE COURT: Indictment 2014-2280 charges you with
13 violation of an order of protection. The State alleges
14 between April 14th and April 30, 2014, you did willfully
15 and unlawfully violate the terms and conditions of an order
16 of protection issued under the protection from a Domestic
17 Violence Abuse Act by a Family Court order in violation of
18 a particular code section. If convicted of violation of a
19 court order of protection, you could receive an additional
20 sentence of up to 30 days in jail and a fine of \$500. Do
21 you understand that charge and potential punishment?

22 DEFENDANT O'SHIELDS: Yes, Your Honor.

23 THE COURT: But you still want to plead guilty to it?

24 DEFENDANT O'SHIELDS: Yes, Your Honor.

25 THE COURT: Did Mr. Brannon and Mr. Hodge explain to

1 you what the State would have to prove in court before you
2 could be found guilty of the crime of murder?

3 DEFENDANT O'SHIELDS: Yes, Your Honor.

4 THE COURT: Of the crime of possession of a firearm
5 during the commission of a violent crime?

6 DEFENDANT O'SHIELDS: Yes, Your Honor.

7 THE COURT: And violation of a court order of
8 protection?

9 DEFENDANT O'SHIELDS: Yes, Your Honor.

10 THE COURT: And do you understand what they would have
11 to establish?

12 DEFENDANT O'SHIELDS: Yes, Your Honor.

13 THE COURT: And did you tell them everything you know
14 about these allegations that they've made against you?

15 DEFENDANT O'SHIELDS: I believe so, Your Honor.

16 THE COURT: And did you and they discuss whether or
17 not you have some defense to any charge to which you're
18 offering to plead guilty?

19 DEFENDANT O'SHIELDS: No, Your Honor. I ---

20 THE COURT: My question was, did you discuss with
21 them the possibility that you have a defense to some
22 charge?

23 DEFENDANT O'SHIELDS: Yes, Your Honor.

24 THE COURT: And you understand what a defense is?

25 DEFENDANT O'SHIELDS: Yes, Your Honor.

1 THE COURT: It's a reason why you should not be found
2 guilty.

3 DEFENDANT O'SHIELDS: Yes, Your Honor.

4 THE COURT: When you plead guilty, you give up your
5 right to assert any defense that you might have. Do you
6 understand that?

7 DEFENDANT O'SHIELDS: Yes, Your Honor.

8 THE COURT: And they've explained that to you?

9 DEFENDANT O'SHIELDS: Yes, your Honor.

10 THE COURT: And is that what you wish to do?

11 DEFENDANT O'SHIELDS: Yes, Your Honor.

12 THE COURT: Did they also explain to you each of the
13 constitutional rights you have that you must give up if you
14 want to plead guilty?

15 DEFENDANT O'SHIELDS: Yes, Your Honor.

16 THE COURT: Did they explain to you that you have a
17 right to remain silent?

18 DEFENDANT O'SHIELDS: Yes, Your Honor.

19 THE COURT: And, of course, that means you don't have
20 to say anything.

21 DEFENDANT O'SHIELDS: Right.

22 THE COURT: It also means you don't have to testify.

23 DEFENDANT O'SHIELDS: Yes.

24 THE COURT: You don't have to make any statement. You
25 don't have to answer any questions. You don't have to

1 answer my questions right now unless you want to plead
2 guilty, because if you want to plead guilty, then you have
3 to answer my questions because these questions are designed
4 for me to make a determination that you understand fully
5 what you're doing and that nobody has forced you into this
6 decision. You've made the decision freely and voluntarily
7 and understand the consequences of it. So that's why I
8 have to ask the questions.

9 DEFENDANT O'SHIELDS: Yes, Your Honor.

10 THE COURT: But you don't have to answer them if you
11 don't want to plead guilty.

12 DEFENDANT O'SHIELDS: Yes, Your Honor.

13 THE COURT: Do you understand your right to remain
14 silent?

15 DEFENDANT O'SHIELDS: Yes, Your Honor.

16 THE COURT: Do you wish to give that right up in order
17 to enter your plea of guilty?

18 DEFENDANT O'SHIELDS: Yes, Your Honor.

19 THE COURT: Did they also explain to you that you have
20 a right to confront and to examine witnesses in court?

21 DEFENDANT O'SHIELDS: Yes, Your Honor.

22 THE COURT: In other words, you've got a right to make
23 the State prove you're guilty in court. They do that by
24 calling witnesses to the witness stand. Those witnesses
25 testify under oath in your presence so that you can see who

1 they are, you can hear what they have to say. Your lawyers
2 could cross-examine them on their testimony in order to
3 test their credibility and the reliability of the
4 information they are providing. When you plead guilty,
5 that doesn't happen. The witnesses -- there may be some
6 witnesses in court, but they're not going to testify and
7 they're not going to be subjected to examination like they
8 would if they were testifying during the course of a trial.
9 Do you understand your right to confront and to examine
10 witnesses in court?

11 DEFENDANT O'SHIELDS: Yes, Your Honor.

12 THE COURT: You understand when you plead guilty, that
13 does not occur?

14 DEFENDANT O'SHIELDS: Yes, Your Honor.

15 THE COURT: Do you wish to give that right up in order
16 to plead guilty?

17 DEFENDANT O'SHIELDS: Yes, Your Honor.

18 THE COURT: Did Mr. Hodge and Mr. Brannon also explain
19 to you that you have a right to have a jury trial and have
20 a jury decide if you're guilty or not?

21 DEFENDANT O'SHIELDS: Yes, Your Honor.

22 THE COURT: You understand if you have a jury trial,
23 12 jurors are selected. Those 12 jurors listen to the
24 testimony. They consider the evidence. They decide what,
25 if anything, happened back on April 30, 2014, as it relates

1 to these allegations. They determine, based upon their
2 determination of fact and the law that I provide them,
3 whether or not you're guilty of any crime the State claims
4 you committed. Before a jury can find you guilty, all
5 12 jurors have to be convinced of your guilt beyond a
6 reasonable doubt. Do you understand your right to have a
7 jury trial?

8 DEFENDANT O'SHIELDS: Yes, Your Honor.

9 THE COURT: And understanding that right, do you wish
10 to give it up in order to plead guilty?

11 DEFENDANT O'SHIELDS: Yes, Your Honor.

12 THE COURT: Has anybody promised you anything that
13 caused you to make your decision?

14 DEFENDANT O'SHIELDS: No, Your Honor.

15 THE COURT: Has anybody threatened you?

16 DEFENDANT O'SHIELDS: No, Your Honor.

17 THE COURT: Has anybody coerced you?

18 DEFENDANT O'SHIELDS: No, Your Honor.

19 THE COURT: Has anybody forced you?

20 DEFENDANT O'SHIELDS: No, Your Honor.

21 THE COURT: Has anybody put any kind of pressure upon
22 you of any kind that caused you to make a decision to plead
23 guilty that you otherwise would not have made?

24 DEFENDANT O'SHIELDS: No, Your Honor.

25 THE COURT: Are you pleading guilty freely and

1 voluntarily?

2 DEFENDANT O'SHIELDS: Yes, Your Honor.

3 THE COURT: It was your decision?

4 DEFENDANT O'SHIELDS: Yes, Your Honor.

5 THE COURT: You've had plenty of time to reflect upon
6 it?

7 DEFENDANT O'SHIELDS: Yes, Your Honor.

8 THE COURT: And you're satisfied with that decision?

9 DEFENDANT O'SHIELDS: Yes, Your Honor.

10 THE COURT: Did your lawyers explain to you that
11 murder is classified as a violent offense under the law?

12 DEFENDANT O'SHIELDS: Yes, Your Honor.

13 THE COURT: That murder is classified as a most
14 serious offense under the law?

15 DEFENDANT O'SHIELDS: Yes, Your Honor.

16 THE COURT: That murder is classified as a no-parole
17 offense under the law?

18 DEFENDANT O'SHIELDS: Yes, Your Honor.

19 THE COURT: And do you understand the significance of
20 those designations?

21 DEFENDANT O'SHIELDS: Yes, Your Honor.

22 THE COURT: Do you understand that when you plead
23 guilty to a crime, that nobody in this courtroom can tell
24 you whether or not you could ever be paroled on any
25 sentence? That's not something that's in the control of

1 anybody in this courtroom. You understand that?

2 DEFENDANT O'SHIELDS: Yes, Your Honor.

3 THE COURT: So when you make a decision to plead
4 guilty, you have to make that decision with the idea that
5 whatever sentence I impose, you may have to serve it every
6 day of whatever I give you, whether it be a life sentence,
7 whether it be 30 years or something in between. Do you
8 understand nobody can assure you that you would ever get
9 paroled on any sentence, that you might have to max the
10 sentence out, serve it day for day? Do you understand
11 that?

12 DEFENDANT O'SHIELDS: Yes, Your Honor.

13 THE COURT: Understanding that, do you still wish to
14 go forward and plead guilty?

15 DEFENDANT O'SHIELDS: Yes, Your Honor.

16 THE COURT: All right. I want to ask the -- let me
17 ask this. I have a report from Dr. Selman Watson who
18 conducted a psychological evaluation of the defendant,
19 Robert O'Shields. You participated fully in that
20 evaluation?

21 DEFENDANT O'SHIELDS: Yes, Your Honor.

22 THE COURT: And a report has been generated and has
23 been handed up to the Court. Have you and your lawyers
24 discussed this report?

25 DEFENDANT O'SHIELDS: Yes, Your Honor.

1 THE COURT: And based upon this report is why your
2 lawyers have discussed with the prosecutor allowing you to
3 plead guilty but mentally ill to each of these charges; is
4 that true?

5 DEFENDANT O'SHIELDS: Yes, Your Honor.

6 THE COURT: Solicitor, you're in agreement with the
7 guilty but mentally ill plea?

8 MR. BARNETTE: Yes, sir. I've looked at the report,
9 understand the findings that they made that he knew the
10 difference between right and wrong but he couldn't conform
11 his activity, what happened that day, which is guilty by a
12 mental ill.

13 THE COURT: All right. And you -- and this goes for
14 the defense, too, but both the defense and the State accept
15 Dr. Watson's report as being a valid, credible and accurate
16 report?

17 MR. BARNETTE: Yes, sir.

18 MR. BRANNON: Yes, Your Honor.

19 MR. HODGE: Yes, Your Honor.

20 THE COURT: And none of you request to have a hearing
21 on the issue of mental illness pursuant to 17-24-20?

22 MR. BARNETTE: No, sir.

23 MR. BRANNON: No, sir.

24 THE COURT: All right. Listen to what the solicitor
25 tells me about the facts related to the case. And this is

1 what he claims you did. This is what he says he's going to
2 offer to prove at trial. So listen to what he tells me
3 because when he's through, I might ask you some additional
4 questions about it.

5 MR. BARNETTE: Thank you, Your Honor.

6 Going back to April 30, 2014, Your Honor, Mariann
7 O'Shields was living at the Safe Homes shelter there on
8 Floyd Road Extension, Your Honor, near that area. Caitlyn
9 [phonetic] O'Shields was living with her at the time. They
10 had left the residence in Lyman. She had left the
11 defendant, actually got an order of protection on
12 April 8, 2014, Your Honor, where her and the defendant
13 appeared there. They both consented to the order of
14 protection in that case, Your Honor, and was in effect when
15 this incident occurred.

16 She was walking Caitlyn to the bus stop there to meet
17 the -- where she's going to elementary school. We actually
18 have a video showing Caitlyn getting on the bus, looking
19 for her mom. The bus pulls off -- and that's actually
20 Exhibit No. 10 that I'll be introducing, Your Honor. And
21 you see Mr. O'Shields walking behind, and then you see the
22 van that was driven by Mr. O'Shields. That van was a
23 silver 2005 Dodge Caravan with South Carolina tag JSW 140,
24 Your Honor.

25 Scott Faust was actually following not too far behind

1 Mr. O'Shields. He heard gunshots as he was going down the
2 road. When he got there, Mr. O'Shields -- right through
3 there is a fence. We have pictures of this where she was
4 lying against the fence. He went by with the van.
5 Mr. O'Shields got out and shot her again then left the
6 scene.

7 Then after that, there was a report on 9-1-1 she
8 identified him as the shooter several times. There's a
9 9-1-1 tape, Your Honor, State's Exhibit 2, where she
10 identified him as well as the other witnesses there, Your
11 Honor. She died shortly after that at Spartanburg Regional
12 from her wounds, Your Honor.

13 I have 65 exhibits, Your Honor, that I'm going to
14 enter in as part of the evidence in this case. I have a
15 State's exhibit list for the trial, Your Honor, showing the
16 first 64, and that includes the order of protection, which
17 is State's Exhibit 58; the 9-1-1 call, State's Exhibit 2;
18 State's Exhibit 10 was the school bus video I was telling
19 you about.

20 In this case, Your Honor, there was other evidence
21 that we would show concerning his actions after the case,
22 Your Honor, that's described in the incident report, which
23 I'm going to enter as State's Exhibit 65 as well as other
24 evidence that was shown here. He actually called a
25 Mr. Wilson afterwards, asked to do some things about money

1 and so forth. We would be bringing that up, but since he
2 is pleading guilty, we're going to leave that alone for
3 now.

4 I'd like to move all this evidence in as part of the
5 exhibits in the case and make it part of the evidence and
6 facts of the case, Your Honor.

7 And this all occurred in Spartanburg County.

8 THE COURT: And does he have any prior criminal
9 history?

10 MR. BARNETTE: Your Honor, the only record we could
11 find, I was going through his rap sheet with Mr. Brannon,
12 was a DUI when he was 22 years old.

13 THE COURT: All right. Mr. O'Shields, did you
14 understand everything that Mr. Barnette just told me?

15 DEFENDANT O'SHIELDS: Yes, Your Honor.

16 THE COURT: The material facts, which I am recalling,
17 made note of, that relates to these charges against you is
18 that he says that the victim, Ms. O'Shields, was living at
19 the Safe home; is that true?

20 DEFENDANT O'SHIELDS: Yes, Your Honor.

21 THE COURT: She had left your home and her home, she
22 had gone to Safe Homes, and you were still living in Lyman?

23 DEFENDANT O'SHIELDS: Yes, Your Honor.

24 THE COURT: And she and the child were living at Safe
25 Home?

1 DEFENDANT O'SHIELDS: Yes, Your Honor.

2 THE COURT: There was an order of protection that was
3 entered on April the 8th ---

4 DEFENDANT O'SHIELDS: Yes, Your Honor.

5 THE COURT: --- that you and she both agreed with?

6 DEFENDANT O'SHIELDS: Yes, Your Honor.

7 THE COURT: And Mr. Barnette says that she was taking
8 the child to school. She dropped the child off.

9 MR. BARNETTE: She had walked the child to the bus
10 stop.

11 THE COURT: Walked the child to the bus stop, the bus
12 left, and that's when you pulled up and shot her.

13 DEFENDANT O'SHIELDS: Yes, Your Honor.

14 THE COURT: And then she dies as a proximate result of
15 those gunshot wounds.

16 DEFENDANT O'SHIELDS: Yes, Your Honor.

17 THE COURT: She didn't attack you or threaten you in
18 any way, did she?

19 DEFENDANT O'SHIELDS: No, Your Honor.

20 THE COURT: Okay. So you admit and agree with the
21 facts that the solicitor has just stated?

22 DEFENDANT O'SHIELDS: Yes, Your Honor.

23 THE COURT: No reason, no legal justification for
24 having shot Ms. O'Shields?

25 DEFENDANT O'SHIELDS: No, Your Honor.

1 THE COURT: All right. Have you ever been treated for
2 any type of mental illness or emotional disturbance?

3 DEFENDANT O'SHIELDS: I was supposed to in the past,
4 but I got a back injury and I had back surgery. I was
5 supposed to be seeing a psychiatrist, but the insurance
6 company never would approve it. That was through
7 Mr. Hodge.

8 MR. BRANNON: Your Honor, Mr. Hodge would like to
9 speak to that issue at the appropriate time.

10 THE COURT: Okay. All right. And have you ever been
11 treated for any type of substance abuse or addiction?

12 DEFENDANT O'SHIELDS: Years ago for alcohol, sir.

13 THE COURT: All right. Is there anything about any
14 mental condition or any substance abuse issue that
15 prevents you from fully understanding what you're doing
16 right now?

17 DEFENDANT O'SHIELDS: No, Your Honor.

18 THE COURT: And is it correct for me to say that on
19 the date in question that this occurred, that you did
20 understand legal and moral right from legal and moral
21 wrong?

22 DEFENDANT O'SHIELDS: Yes, Your Honor.

23 THE COURT: But according to the doctor who evaluated
24 you, you could not conform your conduct to the requirements
25 of the law ---

1 DEFENDANT O'SHIELDS: Yes, Your Honor.

2 THE COURT: --- based upon a mental condition or
3 disorder?

4 DEFENDANT O'SHIELDS: Yes, Your Honor.

5 THE COURT: All right. I'll accept your plea of
6 guilty but mentally ill. I'll be glad to hear from you and
7 your lawyers and anybody else.

8 MR. HODGE: Your Honor, Robert O'Shields was married
9 nearly 30 years, two children. The love of his life is
10 that little girl.

11 He had worked as a floor installer, hard work, and
12 literally it wore his back out. But he came back to
13 Spartanburg, and I think it was moving transmissions, hurt
14 his back moving transmissions, and it was really the straw
15 that broke the camel's back.

16 And he's absolutely correct that because he had gone
17 from such an active, fulfilling work lifestyle relegated to
18 one of total dependence, he had depression associated with
19 it, he was required to consume pain medications just to
20 manage his situation. It's no excuse, and I think to his
21 credit, he's never offered any excuses. He's always
22 accepted responsibility for the act.

23 But by the time this terrible event happened, he had
24 not had adequate nutrition for almost a week, had been
25 consuming his pain meds, his daughter had been taken away

1 from him. At the very least, he was delusional, and there
2 was certain evidence that would factor into. He had a very
3 real belief of some highly inappropriate activity going on.
4 All this manifested itself in this terrible event.

5 And, you know, I think the system failed him, and I
6 feel to a certain degree that I failed him in the comp case
7 when we didn't get him the psychiatric help that he needed.
8 It was a long, drawn-out matter, and we finally resolved
9 the case. But I will never be able to forget the fact that
10 we didn't get him that treatment, and perhaps that tragedy
11 would have been avoided.

12 MR. BRANNON: Your Honor, my client is 54 years of
13 age. As Mr. Hodge said, he's the father of two children,
14 one adult male child and Caitlyn, a young girl. Your
15 Honor, as Mr. Barnette indicated, he's got a DUI from more
16 than 30 years ago.

17 He would have told you, Your Honor, that he did not go
18 to this site the morning of this tragedy to take his wife's
19 life. He went there to see his daughter. That's what he
20 would have told you, Your Honor.

21 He's accompanied in court today by his mother and his
22 sister. Your Honor, what his mother's testimony would have
23 been had she taken the witness stand was she was already in
24 the car from her home in New England coming to South
25 Carolina because she had received a phone call from her son

1 that day. It was a good-bye telephone call, Your Honor.
2 He was going to take his own life.

3 Your Honor, my client was mentally ill at the time he
4 took his wife's life. I ask you to accept the plea, Your
5 Honor. I ask you to impose a minimum sentence.

6 Thank you.

7 THE COURT: All right. Mr. O'Shields, is there
8 anything you'd like to add to what your lawyers have told
9 me?

10 DEFENDANT O'SHIELDS: No, Your Honor. I'd just like
11 to apologize.

12 (Pause in proceedings.)

13 THE COURT: I was just reviewing the doctor's report.

14 MR. BRANNON: Your Honor, just for the record, he's
15 been incarcerated since April 30, 2014.

16 THE COURT: All right.

17 On Indictment 2014-2281, Count 1 of the indictment
18 charging you with murder, sentence of the Court is you,
19 Robert Lee O'Shields, be confined to the South Carolina
20 Department of Corrections for a period of 30 years;
21 Count 2 of the indictment, possession of a firearm, 5
22 years. Indictment 2014-2280, violation of a court order of
23 protection, 30 days.

24 All sentences are concurrent. Give him credit for any
25 time he's entitled to pursuant to 24-13-40.

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MR. BRANNON: Thank you, Your Honor.

MR. HODGE: Thank you, Your Honor.

*****END OF TRANSCRIPT OF RECORD*****

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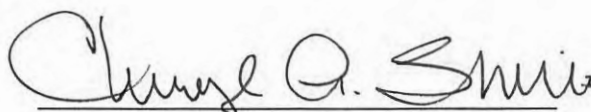
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 8th day of September, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 26, 2015



Cheryl A. Smith, CVR-M
Court Reporter

E. SELMAN WATSON, Ph.D.

Clinical and Forensic Psychology
 1720 Main St.
 Suite 101
 Columbia, South Carolina 29201
 Phone: (803) 256-6863

PSYCHOLOGICAL EVALUATION**IDENTIFYING DATA:**

NAME: Robert O'Shields
AGE: 53
DOB: [REDACTED]
REFERRAL: Mr. Doug Brannon, Esquire
DATE OF REPORT: March 13, 2015
EXAMINER: E. Selman Watson, Ph.D.
ISSUE INVESTIGATED: MOS (Mental State at Time of Offense)

CRIMINALLY RESPONSIBLE: YES

CAPACITY TO CONFORM BEHAVIOR: NO

INTRODUCTION:

Robert O'Shields is a 53 year old white male who is currently incarcerated at the Spartanburg County Detention Center in response to a charge of murder. The victim in this case happened to be his wife who had exited a women's shelter when she was suddenly confronted by her husband. Following the shooting, Mr. O'Shields made his way to a relative's home and was subsequently transported to a hospital in Spartanburg to address his emotional condition. Mr. Doug Brannon as his attorney with this information in mind requested that he undergo an assessment to determine his mental state at the time of the offense (i.e. MOS) as well as any internal or external stressors that may have been in operation. Other issues of concern were whether alcohol or drugs had played a role in contributing to any impairment on the day of the offense.

Lastly, it was considered important to develop a timeline of events since any psychological disturbance typically follows an insidious course rather than being abrupt in its onset. The collection of third-party information was also considered to be essential including some collateral contacts with his extended family knowledgeable about his background and observations they made of his behavior.



STATEMENT OF CONFIDENTIALITY:

Mr. O'Shields acknowledged an understanding of the purpose of the evaluation and that its content, findings, and recommendations would be forwarded to his attorney. He was also apprised that confidentiality did not apply in his case and that any material shared with the examiner might find its way into the report. As such, he was further advised that our time together involved an evaluation and not treatment although some recommendations might be proffered in this regard.

DATES OF CONTACT:

06-20-14 5.00 hours Clinical Interview and MMPI-2/PAI/SASSI-3/
ADS/RISB Testing, Robert O'Shields
Behavioral Observations of Robert O'Shields

06-25-14 3.50 hours Clinical Interview, Robert O'Shields
Behavioral Observations of Robert O'Shields

10-02-14 2.50 hours Clinical Interview, Robert O'Shields
Behavioral Observations of Robert O'Shields

SOURCES OF INFORMATION:

Clinical Interviews (3) of Robert O'Shields
Behavioral Observations of Robert O'Shields
MMPI-2/PAI/SASSI-3/ADS/RISB/SIMS Testing of Mr. O'Shields
Review of Records from Spartanburg Medical Center
Review of Records from Spartanburg County Coroner (Autopsy Report)
Review of SLED Documents

BACKGROUND INFORMATION:**Defendant's Account of Events:**

Robert O'Shields, prior to his back surgery in August of 2012, labored as a carpet installer but was unable to return to this trade. As a result, he was rated disabled for this line of work which he had practiced for much of his adult life (i.e. 29 years). One year before in July 2011, it was said that he had a friend who hung himself from a banister in his home. This respondent explained that he was the one who found him since they happened to be coworkers and expressed the belief that the loss of his marriage was what prompted his friend to take his life. Feeling like "half of a man" himself being unable to work, he spoke of becoming depressed

but never got any treatment because worker's comp never set him up for an appointment. A lot of sleep disturbance in the form of early-morning awakenings then became more frequent to the point "I thought I was going crazy" being unable to get any rest. As for his wife Mariann, he disclosed their marriage encompassed 30 years and from this relationship had produced two children, a son named Bobby who is 29 and an 8 year daughter named Caitlin. Mr. O'Shields would go on to add that both Bobby and Caitlin over the Summer of 2013 were residing in their home which at the time served as a camper he had placed on some property he owned. Although Caitlin had never presented them with a problem, Bobby was said to be a different story since he got involved with drugs as a 17 year old when they lived in Pennsylvania and continued following their move to New York. His practice of using drugs in fact was reported to include both ecstasy and cocaine, but more troubling was his explosive temper and tendency to swear at his mother that was not an infrequent event. It was said that Mariann's reaction was either to overlook it or provide him an excuse which did little to change this behavior as their son grew older.

The respondent against this backdrop would recall the date as July of last year (i.e. 2013) when he noticed that Bobby and his wife Mariann seemed to be more affectionate with one another. He made the remark, for example, that his son had a "lusting look" for her as his suspicion further deepened upon the realization he had not dated anyone, much less could claim having a girlfriend over the past 6 years. To test his concern, Mr. O'Shields stated that one day he exited the trailer to have a cigarette as Bobby was using the front bathroom. He then made sure Bobby heard him return before again going back outside. It was at this point he snuck around the back of the trailer to peer in the window to catch them in the act certain his suspicions were correct. Although Bobby was said to motion to his mother to join him, Mariann who was sitting at a table reportedly refused. This didn't prevent Mr. O'Shields, however, from confronting her the next day which she addressed by replying "that's crazy, he's my son". This respondent noted that he also made other observations of the two like Bobby showing up late to help him work on the property and seeing Mariann make sure Bobby was the first to get lunch. He also complained that Bobby had a habit of walking his mother back to her car which would be parked down the driveway allowing them some time to be out of sight. It was reported that another incident then took place in September (i.e. 2013) when he left in his truck to get some wood but then doubled back on foot in order to avoid making a lot of noise. Entering the camper, he explained that he found them sitting face-to-face in two swivel recliners which caused both of them to jump up as if surprised by his appearance. Some mention was also made of Bobby once "flipping out", who in going to dump some trash, wanted his mother to ride with

him. Another clue it was said he found meaningful was a curtain in the camper someone had moved or pulled back as if peering outside. In confronting his son, Bobby admitted being responsible but simply "wanted to see who was here" according to his father.

Mr. O'Shields, convinced that his son and wife were involved sexually, stated that he told Bobby in October (i.e. 2013) he had to leave, but gone two months was then invited to return. With no permanent place to stay in Pennsylvania, he had initially moved in with a friend followed by a stay with a niece before ending up with his paternal grandmother. He noticed on his son coming back, however, that he continued to "lust or look at his Mom" which set in motion a plan for this respondent to try and record their interactions or exchanges. In hanging a sweatshirt with a recorder hidden on a chair, it was said Bobby could be heard saying "I want to make love when I come back" in addition to other exchanges like "oh, my God" and sounds of Bobby breathing hard as well as the recorder "moving or shaking". He even made the remark on hearing Mariann say the word "nasty" that she was holding a paper towel which she threw in the garbage can after Bobby climaxed from the oral sex. What ensued when he heard the tape was a confrontation that ended up outside with Mariann acting dumbfounded and innocent and wondering whether he was crazy. Bobby it was reported for his part went to live with a cousin in Pacolet, South Carolina but a few days later was roughed up by his father after eliciting from Mariann the remark "I guess that is what I did" which he took as a confession. Bobby, however, was said to hold fast to his claim "I didn't do nothing" before fleeing back to Pennsylvania now scared of his father. Mr. O'Shields indicated that his next move was to have Mariann take a polygraph test which she happened to pass but he downplayed after finding some Xanax missing from a pill bottle. It was his report on initially hearing the tape that he went without sleep for 4 days, feeling angry and disgusted that he had "bettered himself and sacrificed for the marriage" only to now feel "like a failure". His condition was such that two days after the recording he told Mariann he didn't want to live anymore and stepped outside the camper and fired a shot into the air to demonstrate his unhappiness. In addition to having no energy, he complained of being unable to sleep to the point of "begging God" to let him rest rather than deal with his mind "constantly working" and negative thoughts racing through his head. It was also reported by this respondent that he felt exceptionally weak and tired (i.e. energy loss), and when Mariann left the camper for a safe house on March 17, 2014, proceeded to lose 20 lbs. At night, he also recalled driving around being unable to sleep and on occasion would get lost and have trouble finding his way back home.

It was losing contact with his daughter Caitlin though that served as a defining moment when "my life went upside down". Although Caitlin was reunited with her mother, he filed for custody but at a court hearing on April 3, 2014, Mariann was said to "come in with a bunch of lies" alleging he had sexually abused her oldest daughter Amy by another marriage. As a result, he was left with supervised visitation for 8 hours every other weekend at a cousin's house while he entertained thoughts Bobby might do something to his daughter or work with his mother to remove him completely from the picture. Mr. O'Shields, along this line, commented "I knew they wanted to get me out of the picture – they wanted to continue their relationship and raise my daughter. I know that was their intentions".

Lastly, this respondent disclosed on the day of the shooting he had only slept two hours the night before but headed out at 5:30 a.m. to go watch Caitlin catch the bus. According to his report, he had also done this once in the past, but on this occasion got there too late to get a glimpse of her. He would go on to add, however, that he did see Mariann walking down the side of the road and stopped, wanting to talk to her about getting back together. On exiting the car, he spoke of standing in "brightness" and likened it to a dream though he couldn't see her face because of the strong glare. He nevertheless knew it was Mariann by some of the clothing she had on and was in touch with a lot of anger over the deception with Bobby and the allegations that had been made. On looking back, this respondent stated "I wouldn't be here if it was not for my daughter" and "I loved my wife", "I don't know why I did this" and "I ruined everything".

Additional Information:

Mr. O'Shields stated that his legal history prior to this incident included (1) charge for resisting arrest as well as a charge for aiding and abetting as a juvenile. Remanded to serve 8 months in a detention center, he successfully completed this stay. He otherwise has no record of violence in his background but did accumulate some DUI infractions before the age of 22.

As for his psychiatric history, this respondent has never interacted with the mental health delivery system even though he was ordered to receive some treatment at a disability hearing held for his back. On further inquiry, he recalled that he was supposed to see Dr. Towly but an appointment was never set up or arranged. The only medication he was taking at the time were pain pills to help him cope with a rod that had been surgically implanted near his spine. Mr. O'Shields denied in particular any prior episodes of anxiety or depression and has never been adjudicated mentally ill. From his report, no history of mental illness was said to

exist in his family of origin making this his first experience with depression and the symptoms that accompany this disorder. Two weeks prior to the incident, this respondent telephoned his sister Debbie "to say goodbye". She was reported to respond to this "farewell" by calling the police who in checking on his welfare resulted in the sheriff visiting his property.

Although Mr. O'Shields had struggled with alcohol as a young adult, he was able to abstain from drinking around the age of 24 and enjoyed a long period of sobriety. This was apparently interrupted when these problems surfaced in his marriage but in the process only made his condition worse despite his attempt to try and feel better. It was his report, for example, that the night before the encounter, he drank 6-10 beers and smoked (2) joints of marijuana in addition to doubling or tripling the amount of Lortab (i.e. a painkiller) he was supposed to take. With this in his system, he could still manage only (2) hours of sleep as thoughts of Bobby and Mariann mistreating Caitlin (i.e. yelling at her) ran constantly through his mind.

Finally, this respondent denied that his anger was a problem during their marriage noting that over the 30 years they were together each had slapped the other only one time. Mr. O'Shields also made it clear that even in the end he loved Mariann (i.e. "I loved my wife") and had never assaulted her like his stepfather beat him and his mother if she was to intervene. So aversive was this early learning experience that he had promised himself to not be that way or ever harm a woman.

BEHAVIORAL OBSERVATIONS:

Robert O'Shields is a 53 year old white male who has black hair, specks of which are turning gray as he advances in age. With his hair combed straight back from his forehead, he offers a neat, clean appearance despite having to wear an orange jumpsuit as a detainee in the Spartanburg County lock-up. The large tattoos on his forearms also served to give him more of a blue-collar than white-collar look, and though somewhat small in stature, he was not frail but instead muscular in his build.

This respondent, on meeting with the examiner, was quite cooperative during each and every session as he recounted his history and events leading up to his incarceration. Although in taking some tests early on he was able to maintain his composure, this projection changed over the course of the last two sessions which saw him become overwrought emotionally when talking about his daughter or his wife. It was this examiner's opinion that such a display from Mr. O'Shields was nothing short of genuine and a good indication of the psychic pain or distress that

typically accompanies a severe disorder. Not only did Mr. O'Shields accurately disclose symptoms of depression, but his mistrust and suspiciousness regarding his son and wife seemed to involve a delusional belief. Rather than acknowledge he might be mistaken about the relationship, his response was to interpret any remark or behavior as consistent with his thinking. This respondent, on the other hand, denied hearing voices, and in doing so, gained some credibility by not embracing an expected symptom when given the verbal opportunity. What else stood out about this defendant was that he never showed himself to be manipulative, deceptive, or antisocial in his behavior but deeply remorseful over the loss and confused as to how it had come to pass.

An informal mental status exam conducted during the evaluation did not describe Mr. O'Shields as disoriented with respect to time, place, person, or circumstance. While he was able to recall some recent as well as remote events, he had some trouble with details surrounding the confrontation with his wife. By way of his report, he also endorsed all the vegetative signs of depression and his affect remained confined to a narrow range. It is also the opinion of this examiner that some delusional ideation marked his thinking, the content of which was congruent with his poor mood. Some concern also existed as to his potential for suicide given the palpable level of distress that was apparent.

TEST RESULTS:

Psychological test findings presented below act to generate hypotheses about an individual's behavior and should not be considered in isolation from other information in this report. The interpretive statements that follow represent actuarial predictions based on research associated with the resulting codetype. Although these impressions are presented in an affirmative manner, they are probabilistic in nature and should not be used to predict any specific behavior. It is also worth noting that these personality characteristics are similar to those of persons who produce the same pattern of scores, and as such, reflect group data limiting the weight of any one specific statement.

That being said, Mr. O'Shields' response to the MMPI-2 yielded a somewhat defensive but nevertheless valid profile which describes a man who is in a lot of psychic pain and distress. With his F scale score at the upper limit, this is essentially a respondent whose symptoms are so emotionally disturbing that his profile represents a "cry for help". It should also be noted that the F scale increases as the severity of the disorder ramps up and brings on more and more

suffering. Items that comprise the F scale are also a measure of psychoticism as one indication of the degree of decompensation that has occurred.

Mr. O'Shields' 2-3 codetype otherwise is a depression profile whose characteristics include a poor mood, helplessness, apathy, and fatigue. Strong appetite and sleep disturbance also tends to haunt these subjects who present as bottled up because they have difficulty expressing any anger or sadness in an adaptive way. Feelings in particular that might lead to conflict often go unrecognized or denied in favor of the person appearing hurt or being unappreciated for what they do. With their energy level low, similar individuals often report feeling weak or exhausted and for many of them their depression has typically been in place for a long time. As in the case of Mr. O'Shields, it is not uncommon for a physical illness to be a precipitating factor in their emotional decline. These are essentially men whose self-worth in the past has been predicated on achievement to cover up feelings of insecurity, self-doubt, and dissatisfaction. In their relationships with women, they often develop a dependency on their partner and function in a manner so as to avoid any possibility of abandonment or loss. Further indicators of Mr. O'Shields' poor emotional condition are also reflected in his Psy-5 cluster wherein statistically significant elevations marked measures of psychoticism (i.e. delusional ideation), negative emotionality (i.e. neediness; indecisiveness; fear of abandonment), and introversion (i.e. social withdrawal). He otherwise is not described by this cluster as impulsive or overly aggressive in his personality which is consistent with his report of his history absent the presence of an illness.

The PAI or Personality Assessment Inventory is a 344 item test that can identify pathology across a broad array of scales. With (4) validity indices in place, it also has the ability to determine a subject's response style if the goal is to try and overreport or underreport symptoms in an effort to manage an impression. With this in mind, Mr. O'Shields produced statistically significant elevations on scales as measures of anxiety and depression. He also elevated 2 of 3 somatic subscales as well as the primary scale which reflects strong concern about his physical functioning and the impairment arising from these symptoms. In general, this respondent does not believe that his health is as good as his peers and consequently sees himself as handicapped. For many similar men, it is not uncommon for them to become unhappy and pessimistic about their future life since their self-image has been based on work and their ability to financially take care of the family.

The RISE or Rotters Incomplete Sentences Blank is a 40 item projective task that requires a subject to complete a sentence based on a sentence stem used to guide their response. As for Mr. O'Shields, his reply to a number of these items is listed below:

- 2) The happiest time is with family.
- 3) I want to know where my life with my daughter stands.
- 4) Back home with my daughter.
- 5) I regret what happened.
- 6) At bedtime I don't sleep good.
- 7) Men are to work and take care of their family.
- 8) The best time is going back with family.
- 10) People I like people.
- 11) A mother has a lot of love.
- 12) I feel sick inside for what has happened.
- 15) I can't wait for this to be behind me.
- 17) When I was a child my stepfather was very mean.
- 18) My nerves are a mess over what has happened.
- 19) Other people pray for me a lot.
- 20) I suffer for my daughter.
- 21) I failed at life.
- 23) My mind hasn't been right for a while.
- 24) The future not sure.
- 25) I need someone to talk to.
- 26) Marriage I love my wife.
- 27) I am best when I'm with my family.
- 29) What pains me my life.
- 30) I hate that DSS won't give my daughter to my mother.
- 31) This place makes you think a lot.
- 33) The only trouble is not knowing what will happen to me.
- 34) I wish my son and wife didn't betray me.
- 35) My father I miss my real father (died in 1981).
- 40) Most women are true but some aren't.

The SASSI-3 or Substance Abuse Subtle Screening Inventory is a 67 item test used to identify substance dependence in persons having a history of drinking or drug use. With (9) decision rules in place, the test is composed of (9) scales as measures of symptoms, subtle attributes, defensiveness, or other characteristics of addiction. Mr. O'Shields, in a review of his data, did

trigger several of the applicable rules which is consistent with his report of having a problem with alcohol in the past.

On the ADS or Anger Disorders Scale, this respondent generated a valid profile that describes him as overly ruminative with a tendency to brood about any injustice or mistreatment. Being quick to arouse, his anger also tends to linger since he has trouble expressing it adaptively and being able to put it aside. It is also noteworthy that scores on scales measuring physical and relational aggression fell within normal limits as an indication any strong acting-out is not endemic to his character or descriptive of his problem-solving style. Mr. O'Shields' Total score, however, does describe this emotional state as problematic falling in the mild to moderate range of pathology with a T score of 87.

Finally, the SIMS or Structured Inventory of Malingered Symptomatology requires the claimant to respond to a 75 item test that assesses feigning across five (5) dimensions including: neurological involvement, psychosis, depression, low intelligence, and amnesia. With cut scores established for each scale, there is also a cut-off for the Total score which is the single best predictor of malingering. It should also be noted that the items comprising each scale are odd and unusual by design in order to differentiate simulators from genuine patients who do not overendorse them as a group. In looking at Mr. O'Shields' data, he exceeded the cut off on each measure by overreporting symptoms and complaints. Despite these findings, feigning is not suspected in this case given the degree of impairment evident in his clinical presentation.

COLLATERAL CONTACTS:

Joe O'Shields - Mr. O'Shields reported that Robert was not the same man after he suffered the injury to his back. Following the altercation with his wife, his hand was shaking so bad that they transported him to Spartanburg Regional Hospital for treatment where he was arrested by the authorities. Mr. O'Shields also described him as obsessed Bobby and Mariann were sexually involved to the point of taking an audiotape to the police so they could listen to what was recorded. He also said that he was sure Robert could not sleep and disclosed that he had no history of violence in South Carolina.

Roberta O'Shields - Contact attempted.

Marlene O'Shields - Contact attempted.

CLINICAL FORMULATION:

Robert O'Shields is a 53 year old white male who was clinically depressed and suffering from a mood-congruent persecutory delusion at the time of the shooting incident involving his wife. In this examiner's opinion, what served to exacerbate this situation was a Family Court hearing wherein allegations were made that this respondent interpreted as a move to separate him from his daughter Caitlin. His use of marijuana and alcohol, ostensibly in a bid to feel better, only served, however, to make his condition worse. While this examiner does not believe any sexual trysts were taking place between his wife and son, Mr. O'Shields' illness had him interpreting any event to fit this particular belief. Not only is this a testament to the severity of his illness, but also speaks to the close relationship he enjoyed for 30 years with his wife Mariann. Persons who are delusional in other words typically become suspicious of those whom they feel closest to which is often a member of their family. Without medication or treatment, such an illness can linger for years and even grow worse over time. While auditory hallucinations are often the psychotic feature that accompanies a severe depression, this respondent was unable to report ever hearing voices. The fact that he did not embrace this symptom as further evidence of his illness partially ruled out any impression management as a goal.

Moreover, clinical depression tends to follow a slow insidious course with vegetative signs such as energy loss or sleep disturbance emerging over time. This mood disorder which is accompanied by anxiety can be quite distressing, and for some persons culminate in suicide to bring the psychic pain from their symptoms to an end. For Mr. O'Shields, his disorder appears to have begun after his back surgery when he could no longer work or earn a living to support his family. This is a man in other words whose self-esteem rests on this ability rather than being supported by other positive traits or characteristics. In any event, none of the test data describes him as antisocial or calloused-over in his functioning, and prior to this event he owned no legal record of violence. He also made it quite clear to this examiner how much he loved his wife and daughter before acting on his anger and without the benefit of clear, rational thinking.

Lastly, Amy in a review of some records reported that some domestic violence marked her mother's marriage to Robert O'Shields at the time she was living with them in the home. What was not mentioned, however, was any sexual victimization of herself by her stepfather which Mr. O'Shields claimed was brought up in a Family Court hearing.

DIAGNOSTIC IMPRESSIONS:

Alcohol Use Disorder: 305.90

Major Depressive Disorder, Single Episode, with Mood-Congruent Psychotic

Features: 296.24

Respectfully Submitted,

E. Selman Watson, Ph.D.

Licensed Clinical Psychologist

Sworn to and subscribed before me
This ____ day of _____, 2015
_____ Notary Public of South Carolina
My Commission Expires: _____

WITNESSES

Spartanburg County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

2014A4210101748

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **2014-GS-42-2280**
AMENDED

The State of South Carolina
County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

July 6, 2015 TERM

THE STATE
v.

ROBERT LEE O'SHIELDS, SR.

Indictment for

**VIOLATION OF ORDER OF
PROTECTION**

SC Code: 16-25-0020(D)
CDR Code: 3056
Class MIS/UNC

*Admitted to Practice
2014-07-06*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

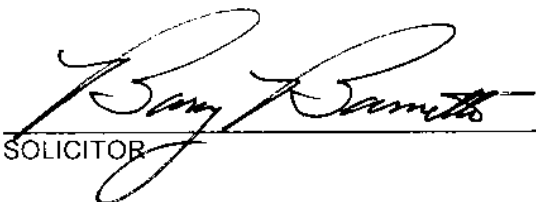
INDICTMENT

At a Court of General Sessions, convened on June 25, 2015, the Grand Jurors of Spartanburg County present upon their oath:

VIOLATION OF ORDER OF PROTECTION

That the Defendant, Robert Lee O'Shields, Sr., did in Spartanburg County between the dates of April 14, 2014 and April 30, 2014, wilfully and unlawfully violate the terms and conditions of an Order of Protection issued under the protection from Domestic Violence Abuse Act by Family Court Order (14-DR-42-1037) in violation of §16-25-0020(D), *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



 SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

Kevin Roberts

ARREST WARRANT NUMBER

2014A4210101748

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

JUN 17 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO

14-GS-42 2280

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 16 2014

TERM

THE STATE
v.

ROBERT LEE O'SHIELDS, SR.

Indictment for

VIOLATION OF ORDER OF
PROTECTION

SC Code: 16-25-0020(D)
CDR Code: 3056
Class MIS/UNC

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2014 JUN 17 AM 9:59

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT


JUN 12 2014

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

VIOLATION OF ORDER OF PROTECTION

That the Defendant, Robert Lee O'Shields, Sr., did in Spartanburg County between the dates of April 14, 2014 and April 27, 2014, wilfully and unlawfully violate the terms and conditions of an Order of Protection issued under the protection from Domestic Violence Abuse Act by Family Court Order (14-DR-42-1037) in violation of §16-25-0020(D), *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

[Handwritten signature]

ARREST WARRANT NUMBER

2014A4210101749

2014A4210101774

ACTION OF GRAND JURY

Joseph Baynes
Foreperson of Grand Jury
Date: JUN 12 2014

VERDICT

Foreperson of Petit Jury
Date:

INDICTMENT NO. **14-GS-42-2281**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 16 2014 TERM

THE STATE

v.

ROBERT LEE O'SHIELDS, SR.

Indictment for
MURDER (Count 1)
SC Code 16-03-0010, 0020
CDR Code 116
Class FEL-EXM

**POSSESSION OF FIREARM
DURING COMMISSION OF A VIOLENT
CRIME (Count 2)**
SC Code: 16-23-490
CDR Code: 549
Class FEL/F

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JUN 17 AM 9:59
M. HOPE BLACKLEY

[Handwritten mark]

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 12 2014

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

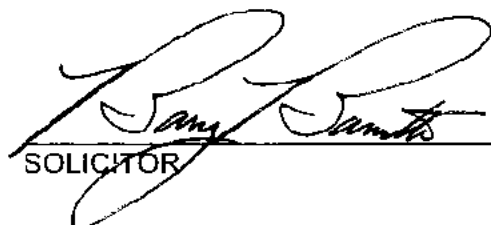
COUNT ONE - MURDER

That the Defendant, Robert Lee O'Shields, Sr., did in Spartanburg County on or about April 30, 2014, feloniously, willfully, and with malice aforethought, kill one [REDACTED] by shooting her with a firearm, and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

COUNT TWO - POSSESSION OF FIREARM DURING COMMISSION OF A VIOLENT CRIME

That the Defendant, Robert Lee O'Shields, Sr., did in Spartanburg County on or about April 30, 2014, visibly display a firearm during the commission or attempted commission of a violent crime, to-wit: Murder, in violation of Code §16-23-490, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

COUNTY OF SPARTANBURG
STATE VS.
Robert Lee Oshields
AKA:
Race: WHITE Sex: M Age: 54
DOB: SS#:
Address:
City, State, Zip: Lyman, SC 29365-9441
DL#: SID#:

INDICTMENT/CASE#: 2014GS4202280
A/W#: 2014A4210101748
Date of Offense: 4/14/2014
S.C. Code § : 16-25-0020(D)
CDR Code #: 3056

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Domestic / Violation of court order of protection

CONVICTED OF or PLEADS GUILTY BUT MENTALLY ILL

in violation of § 16-25-0020(D) of the S.C. Code of Laws, bearing CDR Code # 3056
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: BARNETTE, BARRY SC Bar# 13039 Defendant
SC Bar# 68798 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$590, TOTAL \$13390.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge
Judge Code:
Sentence Date: September 8, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS. Robert Lee Oshields

INDICTMENT/CASE#: 2014GS4202281
A/W#: 2014A4210101749
Date of Offense: 4/30/2014
S.C. Code § : 16-03-0010; 16-03-0020
CDR Code #: 0116

AKA:
Race: WHITE Sex: M Age: 54
DOB: SS#:
Address:
City, State, Zip: Lyman, SC 29365-9441
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Murder / Murder- Count One (1)

CONVICED OF or PLEADS GUILTY
MENTALLY ILL

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: BARNETTE, BARRY SC Bar# 13039 Defendant
Attorney for Defendant SC Bar# 68798

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (DUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$390, TOTAL \$13390.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter: Cheryl Smith
SCCA/217 (03/2011)

Presiding Judge
Judge Code:
Sentence Date: September 8, 2015

COUNTY OF SPARTANBURG
STATE VS.
Robert Lee Oshields
AKA:
Race: WHITE Sex: M Age: 54
DOB: SS#:
Address:
City, State, Zip: Lyman, SC 29365-9441
DL#: SID#:

INDICTMENT/CASE#: 2014GS4202281A
A/W#: 2014A4210101774
Date of Offense: 4/30/2014
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death- Count Two (2)

Guilty BUT MENTALLY ILL

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: BARNETTE, BARRY SC Bar# 2793 Defendant
Robert Lee Oshields Attorney for Defendant SC Bar# 68798

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge
Judge Code:
Sentence Date: September 8, 2015

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Robert Lee O'Shields,)
 SCDC # 00365365)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2016-CP-42-3358

**APPLICATION FOR
POST-CONVICTION RELIEF**

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions for the Seventh Judicial Circuit, Spartanburg County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014GS4202280 Violation of Order of Protection
 - (b) 2014GS4202281 Murder
 - (c) 2014GS4202281A Possession of Weapon During Violent Crime
5. The date upon which sentence was imposed and the terms of the sentence:

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- (a) September 8, 2015 - 30 days
 - (b) September 8, 2015 - 30 years
 - (c) September 8, 2015 - 5 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Missed deadline while seeking legal advice
 - (b) Missed deadline while seeking legal advice
 - (c) Missed deadline while seeking legal advice

2016 SEP -8 PM 4:38
 M. JEFFREY...

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Ineffective Assistance of Counsel
- (c) Ineffective Assistance of Counsel

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Failure to communicate with client; Failure to advise on trial strategy; Failure to investigate; Failure to obtain requested records; Failure to make timely motions; Failure to contact witnesses; Erroneous legal advice; Failure to inform of potential defenses; and Failure to fully investigate insanity defense and other mental health issues.

- (b) Same as 11(a)
- (c) Same as 11(a)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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FILED IN COURT

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

FILED
CLERK OF COURT
SEP 8 11 43 AM '03

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not

previously been presented:

- (a) Post Conviction Relief Application is the proper forum to raise these issues.
- (b) Post Conviction Relief Application is the proper forum to raise these issues.
- (c) Post Conviction Relief Application is the proper forum to raise these issues.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. N. Douglas Brannon, Kennedy & Brannon, P.A., PO Box 3254, Spartanburg, SC 29304.
 - ii. Charles J. Hodge, Hodge & Langley Law Firm, PC, PO Box 2765, Spartanburg, SC 29304
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea and Sentencing
 - ii. Plea and Sentencing
 - iii. _____

19. State clearly the relief you seek in filing this application:

Opportunity for a New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

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 P114388

STATE OF SOUTH CAROLINA)
)
County of Spartanburg)

VERIFICATION

I, Candice K. Lapham, Attorney for Robert Lee O'Shields, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof, that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Candice K. Lapham

SWORN to and subscribed before me this 8th
day of September, 2016.

Jinda S. Tschoppat (L.S.)
Notary Public

My Commission Expires: 9-12-16

2016 SEP -8 PM 4:38
HARRIS COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Robert Lee O'Shields, #365365,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-42-3358

RETURN

RECEIVED
CLERK OF COURT
SEVENTH JUDICIAL CIRCUIT
SPARTANBURG, SC
SEP 10 2016

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on September 8, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the June and July 2016 term of the Grand Jury for Spartanburg County for violation of order of protection (2014-GS-42- 2280), murder and possession of a weapon during a violent crime (2014-GS-42-2281, counts 1 & 2). N. Douglas Brannon, Esquire, and Charles J. Hodge, Esquire, represented Applicant. On September 8, 2015, Applicant pleaded guilty but mentally ill as indicted before the Honorable J. Derham Cole. Judge Cole sentenced Applicant to 30 days' imprisonment for violation of order of protection, 30 years' imprisonment for murder, and 5 years' imprisonment for possession of a firearm to be served concurrently. Applicant did not appeal his guilty plea or sentence.

II.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

- I. Ineffective Assistance of Counsel
 - a. Failure to communicate with client
 - b. Failure to advise on trial strategy
 - c. Failure to investigate
 - d. Failure to obtain requested records
 - e. Failure to make timely motions
 - f. Failure to contact witnesses
 - g. Erroneous legal advice
 - h. Failure to inform of potential defenses
 - i. Failure to fully investigate insanity defense and other mental health issues.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the

inmate, is the only one authorized to file amendments. SCRCR Rule 11. Filings by inmates will not be considered at the PCR hearing.

V.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

RECEIVED
OFFICE OF THE ATTORNEY GENERAL
MAY 19 2017

By: Valerie Garcia Giovanoli
ATTORNEYS FOR RESPONDENT

May 19, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
Robert Lee O'Shields,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT
 Case No. 2016-CP-42-3358
 AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF

As required by Rule 71.1(b), SCRPC, this application is in conformity with Form 5 of the SCRPC Appendix of Forms.

1. **Place of Detention:** Applicant is detained in the South Carolina Department of Corrections at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899.
2. **Name and location of Court which imposed sentence:** Spartanburg County Court of General Sessions, 180 Magnolia St., 2nd Floor, Ste. 500, Spartanburg, SC 29306.
3. **Name(s) of co-defendant(s) (if any):** None.
4. **The indictment number(s) upon which and the offenses for which sentence was imposed:**
 - (a) 2014-GS-42-02280 (Violation of Order of Protection).
 - (b) 2014-GS-42-02281 (Murder).
 - (c) 2014-GS-42-02281 (Poss. of a Weapon During the Commission of Violent Crime).
5. **The date upon which the sentence was imposed and the terms of the sentence:**
 - (a) September 8, 2015 – 30 days (VPO).
 - (b) September 8, 2015 – Thirty (30) years (Murder, Guilty But Mentally Ill).
 - (c) September 8, 2015 – Five (5) years (PWDCVC; Guilty But Mentally Ill).

CLERK OF COURT
 SPARTANBURG COUNTY
 JAMES W. COX

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6. A finding of guilty was made after:
- (a) A guilty plea before the Honorable J. Derham Cole.
7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
- (a) No.
8. If you answered "yes" to number (7), list:
- (a) The name of each Court to which you appealed:
- i. Not applicable.
- (b) The result in each Court to which you appealed:
- i. Not applicable.
- (c) The date of each result:
- i. Not applicable.
- (d) If known, citations of any written opinions or ordered entered pursuant to such result:
- i. Not applicable.
- ii. Not applicable.
9. If you answered "no" to number (7), state your reasons for not appealing:
- (a) Applicant did not knowingly, intelligently, and voluntarily plead guilty or waive his right to direct appellate review.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance fell

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competency to stand trial are all relevant in determining whether a defendant is entitled to a hearing on his competency to stand trial); S.C. Code §§ 44-23-410 and 430; *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); *State v. Burgess*, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Cl. App. 2003) ("The question of whether to order a competency examination falls within the discretion of the trial [court] whose decision will not be overturned on appeal absent a clear showing of an abuse of that discretion."); see also S.C. Code Ann. § 17-24-20(A) (2014) ("A defendant is guilty but mentally ill if, at the time of . . . the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong . . . , but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law,").

- iii. Plea Counsel failed to have Applicant evaluated by an independent qualified medical professional to conduct a forensic psychological competency to stand trial evaluation prior to the plea hearing based on Applicant's mental health history when it was reasonable and necessary to do so in Applicant's defense. See *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Cl. App. 2015).
- iv. Plea Counsel failed to move for a *Blair* hearing prior to the plea hearing for the Plea Court to determine Applicant's competency to stand trial based on Applicant's mental health history and records. See *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536

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- v. Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661, S.E.2d 354, 360 (2008); *Von Dahlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct App. 2015).
- vi. Plea Counsel failed to review all potential defenses prior to Applicant's guilty plea. See *Rolen v. State*, 384 S.C. 409, 683 S.E.2d 471 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52, 57-59 (1985) and finding "[a] defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial."); See *Roy v. State*, 303 S.C. 374, 401 S.E.2d 151 (1991) (finding defendant's guilty plea was not intelligently and voluntarily made in light of the erroneous advice given by plea counsel).

12. Prior to this application, have you filed with respect to this conviction:

(a) Any petition in a State Court under South Carolina Law? Not applicable.

(b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-

Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court.

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South Carolina
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(c) Any petition in the Supreme Court of the United States for certiorari other than

petitions, if any, already specified in number (8)? No.

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- (d) Any other petitions motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of number (12), list with respect to each petition, motion, or application:
- (a) The specific nature thereof: Not applicable.
- (b) The name and location of the Court in which each was filed: Not applicable.
- (c) The disposition thereof: Not applicable.
- (d) The date of each such disposition: Not applicable.
14. Has any ground set forth in number (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.
15. If you answered "yes" to number (14), identify:
- (a) The grounds which have been presented:
- i. Not applicable.
- (b) The proceedings in which each ground was raised:
- i. Not applicable.
16. If any ground set forth in number (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or were not appropriate to raise on Direct Appeal.
17. Were you represented by an attorney at any time during the course of:
- (a) Your plea hearing? Yes.
- (b) Your trial? Not applicable.
- (c) Your sentencing? Yes.

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 SPARTANBURG COUNTY
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(d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence?

Not applicable.

(e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of number (17), list:

(a) The name and address of each attorney who represented you:

- (i) Doug Brannon, Esq., PO Box 3254, Spartanburg, SC 29304.
- (ii) Charles J. Hodge, Esq., PO Box 2765, Spartanburg, SC 29304.
- (iii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

- (i) Doug Brannon represented Applicant at the plea hearing.
- (ii) Charles Hodge represented Applicant at the plea hearing.
- (iii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.

19. State clearly the relief you seek in filing this application:

- (i) Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of Plea Counsel.

20. Are you now under sentence from any other court that you have not challenged?

No. Applicant is not under sentence from any other court.

June 23, 2020

[Verification Page to Follow]

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 CLERK OF COURT
 SPARTANBURG COUNTY
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2014A4210101749

STATE OF SOUTH CAROLINA
County of Spartanburg

STATE OF SOUTH CAROLINA
County of Spartanburg

1313 AFFIDAVIT

Personally appeared before me the affiant J. Guffey being duly sworn deposes and says that defendant Robert Lee Oshields did within this county and state on or about 4/30/2014 violate the criminal laws of the State of South Carolina for offenses of County of Spartanburg in the following particulars.

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on April 30, 2014 in the county of Spartanburg, one Robert Lee Oshields did, with malice and aforethought, cause the death of a victim by shooting her three times.

WARRANT BASED ON POLICE INVESTIGATION, TCM

Robert Lee Oshields
Address: 277 Henderson Meadow Way
Lyman, SC 29365-9441
Phone: [redacted] SSN: [redacted]
Sex: M Race: W Height: 5'7" Weight: 180
Dr. State: SC Cr. #. [redacted]
DOB: [redacted] Agency ORI #: SC0420000
Prosecuting Agency: Spartanburg County Sheriff
Prosecuting Officer: J. Guffey - 0692
Offense: Murder / Murder

Offense Code: 0116
Class/Offense Code: 16-DJ-0010

This warrant is CERTIFIED FOR SERVICE in the County of Spartanburg. The accused is to be arrested and brought before me to be dealt with according to the law.

Signature of Affiant

STATE OF SOUTH CAROLINA
County of Spartanburg

Signature of Affiant
Affiant's Address: 8045 Howard Street
Spartanburg 29303
Affiant's Telephone: (864)503-4500
2014 MAY - 1 AM 11:14

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/30/2014 defendant Robert Lee Oshields did violate the criminal laws of the State of South Carolina for offenses of County of Spartanburg as set forth below.

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 4/30/2014
Signature of Issuing Judge: James Buckingham Pasley
Judge Code: 5483

Judge's Address: Spartanburg County Judicial Center
Spartanburg, SC 29306-2335
Judge's Telephone: (864)596-2564
CLERK OF COURT
ISSUING COURT: [X] Magistrate [] Municipal
SPARTANBURG COUNTY
BY: [Signature]
DATED: 5/1/14

RETURN
A copy of this arrest warrant was delivered to defendant Robert Lee Oshields on 4/30/2014
Signature of Constable/Commissioner/Other

RETURN WARRANT TO:
General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

6-1-14 ARREST WARRANT
2014A4210101774

STATE OF SOUTH CAROLINA
 County Municipality of
Spartanburg

BJB AFFIDAVIT

ORIGINAL
Form Approved by
U.S. Army, GPO
April 27, 2005
5010-108

STATE OF SOUTH CAROLINA
 County Municipality of
Spartanburg

THE STATE 14541867
against

Robert Lee Oshields
Address: 277 Henderson Meadow Way
Lyman, SC 29365-9441

Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: W Height: 5 7 Weight: 180
DL State: SC DL #: [REDACTED]
DOB: [REDACTED] Spangly Code: SC0420000

Prosecuting Agency: Spartanburg County Sheriff
Prosecuting Officer: J Guffey - 0692

Offense: Weapons / Possession of weapon during violent
crime, if not also sentenced to life without parole

Offense Code: 0549
Code/Ordinance Sec: 16-23-0490

The warrant is CERTIFIED FOR SERVICE in the
 County Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law

(2-3)
Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Robert Lee Oshields
on 4/30/2014

N. Beckner
Signature of Constable or Enforcement Officer

RETURN WARRANT TO:
General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

Personally appeared before me the affiant J Guffey
being duly sworn deposes and says that defendant Robert Lee Oshields
did within this county and state on or about 4/30/2014 violate the criminal laws of the
State of South Carolina (or ordinance of County Municipality of Spartanburg)
in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or
death

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on April 30, 2014 in the county of Spartanburg, one Robert Lee Oshields did knowingly and willfully possess and display
what appeared to be a firearm during the commission of a violent crime.

WARRANT BASED ON POLICE INVESTIGATION. TCM

Signature of Affiant
STATE OF SOUTH CAROLINA
 County Municipality of
Spartanburg

Affiant's Address: 8045 Howard Street
Spartanburg 29303
Affiant's Telephone: (864)503-4500
2014 MAY 1 11:48
MAGNOLIA STREET

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 4/30/2014 defendant Robert Lee Oshields
did violate the criminal laws of the State of South Carolina (or ordinance of
 County Municipality of Spartanburg) as set forth below

DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or
death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 4/30/2014

Signature of Issuing Judge
Roberto Mark Inizan
Judge Code: 7240

Judge's Address: 180 Magnolia Street
Spartanburg, SC 29303
Judge's Telephone: [REDACTED]
Issuing Court: Magistrate Municipal Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL
CLERK OF COURT
SPARTANBURG COUNTY
BY: [REDACTED]

WITNESSES

Spartanburg County Sheriff's Office

[Handwritten Signature]

ARREST WARRANT NUMBER

2014A4210101748

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date.

VERDICT

Foreperson of Petit Jury
Date.

DOCKET NO. 2014-GS-42-2280
AMENDED

The State of South Carolina
County of Spartanburg
Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

July 6, 2015 TERM

THE STATE
v.

ROBERT LEE O'SHIELDS, SR.

Indictment for
VIOLATION OF ORDER OF
PROTECTION

SC Code: 16-25-4020(D)
CDR Code: 3056
Class MISJNC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on June 25, 2015, the Grand Jurors of Spartanburg County present upon their oath:

VIOLATION OF ORDER OF PROTECTION

That the Defendant, Robert Lee O'Shields, Sr., did in Spartanburg County between the dates of April 14, 2014 and April 30, 2014, wilfully and unlawfully violate the terms and conditions of an Order of Protection issued under the protection from Domestic Violence Abuse Act by Family Court Order (14-DR-42-1037) in violation of §18-25-0020(D), CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

[Handwritten signature]

ARREST WARRANT NUMBER

2014A4210101749

2014A4210101774

ACTION OF GRAND JURY

[Handwritten signature]
Foreperson of Grand Jury
Date: JUN 12 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **14-GS-42-2281**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 16 2014 TERM

THE STATE

v.

ROBERT LEE O'SHIELDS, SR.

Indictment for
MURDER (Count 1)

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

**POSSESSION OF FIREARM
DURING COMMISSION OF A VIOLENT**

CRIME (Count 2)

SC Code: 16-23-490

CDR Code: 549

Class FEL/F

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

[Handwritten mark]

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUN 12 2014

At a Court of General Sessions, convened on _____, the
 Grand Jurors of Spartanburg County present upon their oath:

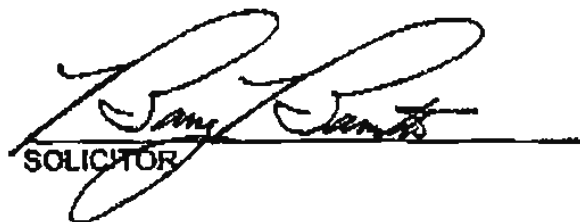
COUNT ONE - MURDER

That the Defendant, Robert Lee O'Shields, Sr., did in Spartanburg County on or about April 30, 2014, feloniously, willfully, and with malice aforethought, kill one [REDACTED] by shooting her with a firearm, and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

**COUNT TWO - POSSESSION OF FIREARM DURING COMMISSION
 OF A VIOLENT CRIME**

That the Defendant, Robert Lee O'Shields, Sr., did in Spartanburg County on or about April 30, 2014, visibly display a firearm during the commission or attempted commission of a violent crime, to-wit: Murder, in violation of Code §16-23-490, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

COUNTY OF SPARTANBURG
STATE VS. Robert Lee Oshields

INDICTMENT/CASE#: 2014GS4202281
A/W#: 2014A4210101749
Date of Offense: 4/30/2014
S.C. Code §: 16-03-0010; 16-03-0020
CDR Code #: 0116

AKA:
Race: WHITE Sex: M Age: 54
DOB: SS#:
Address: 277 Henderson Meadow Way
City, State, Zip: Lyman, SC 29365-9441
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder- Count One (1)

CONVICTED OF or PLEADS GUILTY
MENTALLY ILL

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury, (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: BARNETTE, BARRY SC Clerk / 13039 / Defendant
Robbie Oshields Attorney for Defendant
48798 SC Clerk

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation* for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Del. Waive Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
day/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
parts of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (HUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/vea, Proviso 90.5 (SCCA Surcharge) \$5, 3% to County (if paid in installments) \$390, TOTAL \$15390.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Cheryl Smith
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge:
Judge Code:
Sentence Date: September 8, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Chelsey Marto, Esq.
 South Carolina Attorney General's Office
 1000 Assembly Street, Room 519
 Columbia, SC 29201

The Honorable Amy W. Cox
 Spartanburg County Clerk of Court
 P.O. Box 3483
 Spartanburg, SC 29304-3483

By: Courtney Powers
Courtney Powers
Paralegal for Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
 Columbia, SC 29201
 C: (803) 216-5561
 F: (803) 380-8035
 courtney@pricebenowitz.com

June 23, 2020

2020 JUN 29 AM 10:36
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

FILED

COUNTY OF SPARTANBURG

Robert Lee O'Shields,

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP-42-3358

AMENDED APPLICATION FOR POST-CONVICTION RELIEF

Submitted By: Dayne C. Phillips, Esq.
Address: 7614 Taylor Street, Ste. D,
Columbia, SC 29201

SC Bar #: 77712
Telephone #: (803) 807-0234
Fax #: (803) 260-8035
Others: 803-272-4503
E-mail: dayne@prischbenowitz.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

* If Action is Judgment/Sentence is not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check one box below)

- | | | | |
|--|---|---|---|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Contractual (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Und. Deal. (150) <input type="checkbox"/> Failure to Honor Warranty (160) <input type="checkbox"/> Employment (Dismiss) (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (190) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Mental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Latent Claim? <u>20</u> <u>NI</u> <input type="checkbox"/> Nursing Home Negl. (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Stolen (380) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim of Ownership (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Consumer Protection</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> PCR (500) <input type="checkbox"/> Medicare (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Rule of</p> <ul style="list-style-type: none"> <input type="checkbox"/> Retention Dr. License (600) <input type="checkbox"/> Judicial Review (610) <input type="checkbox"/> RULIF (620) <input type="checkbox"/> Permanent Injunction (630) <input type="checkbox"/> Parol Evidence (640) <input type="checkbox"/> Fairness - Contract Order (650) <input type="checkbox"/> Other (699) | <p>Judgments/Sentences</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Sentence (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Minister's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Temporary Judgment (740) <input type="checkbox"/> Life Sentence (750) <input type="checkbox"/> Transfer of Sentence <input type="checkbox"/> Settlement Payment Rights Application (760) <input type="checkbox"/> Condition of Judgment (770) <input type="checkbox"/> Pardon for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (800) <input type="checkbox"/> Magisterial Court (810) <input type="checkbox"/> Magistrate-Criminal (820) <input type="checkbox"/> Municipal (830) <input type="checkbox"/> Probate Court (840) <input type="checkbox"/> SCDC (850) <input type="checkbox"/> Worker's Comp (860) <input type="checkbox"/> zoning Board (870) <input type="checkbox"/> Public Service Comm. (880) <input type="checkbox"/> Employee Security Comm. (890) <input type="checkbox"/> Other (899) |
| <p>Special/Complex Action</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (900) <input type="checkbox"/> Administrative Act. (910) <input type="checkbox"/> Medical (920) <input type="checkbox"/> Other (999) <input type="checkbox"/> Forum Preceptor (930) <input type="checkbox"/> Protective Receivings Order (940) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceutical (950) <input type="checkbox"/> Unfair Trade Practices (960) <input type="checkbox"/> Out-of-State Jurisdiction (970) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (980) <input type="checkbox"/> Pre-Suit Discovery (990) | | |

Submitting Party Signature: Dayne Phillips

Date: June 23, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

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ADMITTED DC & MD

KUSH ARORA
ADMITTED MD & DC

JOHN YANNONE
ADMITTED MD & DC

DAWN SUELMAR
ADMITTED DC

TAMMY SEGUN
ADMITTED MD

TONY MUNTER
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ANDREW LINDSEY
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*OF COURSE

110 NORTH WASHINGTON STREET, SUITE 303
ROCKVILLE MD 20850

10505 JUDICIAL DRIVE, SUITE 101
FAIRFAX VA 22030

June 23, 2020

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304-3483

Re: Robert Lee O'Shields v. State of South Carolina
AMENDED APPLICATION FOR POST-CONVICTION RELIEF
Case No.: 2016CP4203358

Dear Ms. Cox:

I have enclosed an original and one copy of the Applicant's Amended Application for Post-Conviction Relief, along with a Certificate of Service for filing.

I would greatly appreciate you filing the enclosed application and returning the docketed-in copy to me. Thank you for your assistance with filing this document.

[Signature Page to Follow]

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2020 JUN 29 AM 0:25

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

~~Robert Lee O'Shields v. State of South Carolina~~
AMENDED APPLICATION FOR POST-CONVICTION RELIEF
Case No.: 2016CP4203358
June 23, 2020
Page 2 of 2

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

Sincerely,


Dayne G. 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

ATTORNEY FOR APPLICANT

Enclosures (noted)

cc: Robert O'Shields (#365365)
Chelsey Marto, Esq.

20 JUN 29 AM 0:36
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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Psychiatric Evaluation
Robert O Shields
Date of Birth: 7/23/61
Date of Evaluation:
Date of Report: 10/5/20

Identifying Information: Mr. O'Shields is a 59-year-old inmate at McCormick Correctional Institution evaluated pursuant to a request from his attorney Dayne Phillips. He pleaded Guilty But Mentally Ill to the Murder of his wife and was sentenced to 30 years and sentenced to 5 years for Possession of a Weapon in Spartanburg County in April 2014 by the Honorable J. Derham Cole.

Reason for Evaluation: He is in the process of Post Conviction Relief filed against Doug Brannon.

Statement of Nonconfidentiality: Mr. O'Shields was informed the undersigned is an agent of his attorney and that all information would be shared with Mr. Phillips and potentially be used in his upcoming legal proceedings.

Sources of Information:

Psychological Evaluation E. Selman Watson Ph.D. 3/13/15
Rehab Associates records
Carolina Center IME records
Carolina Neurology Records
Transcript of Family Court proceedings 4/4/14
Transcript guilty plea 9/8/15
Order of Protection Transcript 4/8/14
Discovery related to Offense
Letter to Mr. Brannon from Dr. Watson

Pertinent History:

Mr. O'Shields has made a good adjustment to incarceration. He works from 7am to 1pm daily hanging sheetrock. Prior to Covid restrictions, his 79-year-old mother would visit him from New Jersey approximately twice a month.

He reports fair health other than lower back pain. His present medications are: Temazepam for sleep, Sertraline for depression, a "blood pressure pill, a blood thinner and a cholesterol pill."

Records from 2012 indicate he had prior treatment for low back pain after falling from the back of a truck. He had L4-L5decompression surgery. He was referred for mental health treatment in 2013 after surgery and numerous medical interventions did not improve his pain.

He was seen by a psychologist, David Tollison, Ph.D. at Carolinas Center for Pain Management on 3/1/13. He was noted to have preexisting anxiety which he channeled into a strong work ethic. His injury was noted to have worsened his pre-existing anxiety and to have caused a depression. He was placed on the antidepressant Duloxetine which did not help. He was then prescribed Bupropion which he did not take. He was diagnosed with Panic Disorder and Adjustment Disorder. He was noted to have an 8th grade education. He quit school after his stepfather died from a heart attack, and his mother took over the carpeting business. He repeated second grade. *wrong didn't die*

He continues to report delusional beliefs regarding his crime and victim. Mr. O'Shields reported after the flooding in Boiling Springs, he found a pentagram on the floor when he was changing the carpeting in his cousin's house. He stated the house was haunted. He reported he "sanded the pentagram out and put the carpet back down." He reported he told everyone in the house. He stated he heard names being called. He stated he could not see or hear for two steps and said the Lord's prayer. He stated something stopped him from going into the room. He reported he had a "sick feeling" in his stomach and went home. He stated he was 50 years old at the time.

He stated three months after the pentagram, a black ball rose from the floor of his home while he was watching television. He stated it was the size of a basketball and had flames coming out of it. He stated: "It came at me and I felt nothing. It got into my wife and I started to notice things."

He soon became disabled and had back surgery with rod placement. He stated he had to learn "to walk all over again." He stated he remained active and can do more today. He stated he injured his back when a transmission fell on him. *wrong*

He stated after his surgery he went upstairs because his wife of thirty years was in their son's room. "I wanted to see what she was doing. She met me in the hallway." He stated his wife was having an affair with their 36-year-old son. He stated they sold their home and bought a 33-foot camper and 16 acres of land. He stated on one occasion he looked through the blinds, and the bathroom door was opened while their son showered. "The door was open so she could come in." He named other examples. He reported he had an 18-minute tape which confirmed they were having an affair. He stated the noise on the tape was proof they were having oral sex. He stated he played it for his cousin, and cousin's wife who signed affidavits. He stated he kicked their son out and was devastated. "I couldn't think straight. She left me on St. Patrick's Day." He stated when he talked to her, her face "distorted in front of me...She was possessed." He stated she was "doing something to me. I heard that sound. The same sound I heard in that place." He stated after his daughter left, he didn't eat. He took Lortabs, and Xanax. "I couldn't think straight." He reported six weeks before the crime, he could not sleep. He stated he would take medications but his mind kept racing. "The demon was making my head sick." He reported he shot and killed his wife. "I did not see her face. It was bright. I don't recall leaving." He denied that he was going to see his wife at the shelter. "I went to see my daughter. I would check on her from time to time. I knew she was doing something to my daughter if she was doing it with

our son. I got there, but I must have missed her. I was frustrated. I saw a bright light." He stated although he drank a few beers per day, he had not drunk. He states it was 6:30 am. He had eaten and had coffee the evening before. He stated he could not sleep in the camper, but he tried to sleep for a few hours."

He reported: "It took me two years of Bible study here to get my mind right." He stated his mind is not right presently. "I would like to die." He began crying and discussing how he lost his daughter. He stated he remembered "yelling about demons" in the courtroom. He stated he "passed out cold" and then was brought in front of the jury. He stated he should not have pleaded guilty that day.

Wrong witness that was not what happen I found out 15 years later before I was brought in to court that happen

Transcript from his family court proceedings on 4/4/14 document that Mr. O'Shields did not want his 30-year-old son to be around his daughter. An affidavit was submitted to the court alleging his wife and their son were having an affair. The attorney for his wife called his behavior "delusional."

A detailed history was obtained regarding his neurocognitive functioning. He had a number of scars on his head. He stated he was pushed from a trailer at the age of five. He stated he "got an infection in my head." He also stated he "ran so hard into a utility pole' while playing. "It knocked my equilibrium out." He described left sided headaches. He reported he was involved in a motor vehicle accident at age 19 and "woke up in the hospital" in Chilton, New Jersey.

I WAS PUSH OFF THE BACK OF A TRUCK AND GOT A BAD HEAD IN

He denied prior psychiatric history. He stated he was prescribed Xanax from Doctors Care after his wife left him. he had an evaluation as part of his work related injury. He was diagnosed with panic Disorder without Agoraphobia, Adjustment Disorder and rule out Reading Disorder.

He was unable to complete a Trails test correctly indicating executive dysfunction. He was unable to copy a complex figure (cube) but could copy a simpler figure. He was able to draw a clock correctly. He scored perfectly on a test for naming. He was able to register five items and recall four correctly after five minutes. He did well on tests of attention. His language functions were intact. His ability to abstract was intact. He performed below average on a test of verbal fluency and exhibited perseveration.

Prior Evaluations:

He had a psychological evaluation by Selman Watson, Ph.D. Dr. Watson performed testing and diagnosed him with Major Depression with psychotic features and Alcohol Use Disorder. He did not have any of the prior medical, psychological or neurological evaluations. Dr. Watson opined he was unable to conform his conduct to the requirements of the law.

Review of Transcript:

Review of his guilty plea indicated he answered all questions during his plea. There is no evidence that he was not competent. He answered all questions in a coherent manner.

I ~~just~~ ^{guess} my attorney told me what to say. I don't remember answered the question or being ask the questions, my mother got the transcript for me.

Opinions:

1. Mr. O'Shields was psychotic at the time of the offense.
2. I agree with Dr. Watson that he lacked the capacity to conform his conduct to the requirements of the law.
3. Mr. O'Shields was delusional about his wife and son. He had concerns they could possibly harm his daughter since they had engaged in what he believed was inappropriate sexual behavior. Although this belief was delusional, such a belief did not prevent him from knowing moral and legal right from wrong or from recognizing he wrongfulness of his actions.
4. He has a mild neurocognitive impairment that was not presented to the court.
5. He was competent at the time he entered his plea.

(wrong)

Donna S. Maddox, MD
Consulting Forensic Psychiatrist

Part ①

When I was evaluated by Donna Maddox she told me I'll let you know if I can help you or not at the end of our meeting. She told me she could help me and that she would have another doctor meet with me and she wanted my mother phone number so she could talk ~~to~~ to her. I don't know who change her mind, but she didn't do what she say she would.

Part ②

TT. Candice Lapham say I should've been in court that day because she found out before they brought me in the courtroom I fell out yelling about demon's and pass out cold. I know they can't make a person that is incompetent Plea, but that what they did.

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COMMON PLEAS COURT
7th JUDICIAL CIRCUIT

ROBERT O'SHIELDS,

Applicant,

vs.

CASE NO. 2016-CP-42-3358

STATE OF SOUTH CAROLINA,

Respondent.

HEARING BEFORE: HONORABLE FRANK R. ADDY, JR.

DATE: June 19, 2023

TIME: 10:00 AM

LOCATION: Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

REPORTED BY: LORA L. McDANIEL,
Registered Professional Reporter

APPEARANCES:

ATTORNEYS FOR THE APPLICANT
SUSAN C. ROSS, ESQ.

ATTORNEYS FOR THE RESPONDENT
ANDREW COLE, ESQ.

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I N D E X

DIRECT CROSS REDIRECT RECROSS

WITNESS/EXAMINATION

ROBERT O'SHIELDS

BY MS. ROSS 10 -- -- --

BY MR. COLE -- 22 -- --

DEBBIE GILLILAND

BY MS. ROSS 31 -- -- --

BY MR. COLE -- 34,36 -- --

DOUG BRANNON

BY MR. COLE 37 -- -- --

BY MS. ROSS -- 51 -- --

CERTIFICATE OF REPORTER Page 59

E X H I B I T S

(No Exhibits Proffered)

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 THE COURT: If we could, we will go on the record.
2 I think the first case up is O'Shields versus State. It's
3 16-CP-42-3358. Mr. O'Shields, my name is Frank Addy. I'm a
4 judge from Greenwood. How are you, sir?

5 MR. O'SHIELDS: How do you do, sir?

6 THE COURT: Doing great. Everyone ready to
7 proceed?

8 MS. ROSS: On behalf of the Applicant, I would
9 again move to continue this case. I know we had a Zoom hearing
10 on the matter. He was not present and pointed that out to me.

11 He has requested witnesses of Charlie Hodges, who
12 was an attorney who spoke during his guilty plea.

13 Candace Laughton, who was retained to represent him
14 in this PCR but has since left the practice of law. I
15 attempted to locate her and could not. I tracked down all the
16 phone numbers I had, and I used to know her years ago, but I
17 have not seen her in quite some time.

18 And he also wanted to subpoena Selman Watson, who
19 did the evaluation that was presented during the guilty plea.
20 I did not subpoena him either because I felt his evaluation for
21 my client was eight years ago so it speaks for itself.

22 He also wanted me to get his medical records from
23 Kirkland. I sent a release to him. He did not receive it in
24 time for me to get those records.

25 On his behalf, I request a continuance.

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 THE COURT: What's the Attorney General's position?

2 MR. COLE: Your Honor, he plead in 2015, which I
3 think is around nine years ago, if I did my math correct,
4 little less. Eight or nine years ago. This case has been
5 continued multiple times either because the Applicant had a
6 request for a new attorney or other delays because of health
7 and other things like that.

8 And then we actually had this case come up in April
9 for the PCR.

10 THE COURT: This is my law clerk.

11 (A pause transpired).

12 THE COURT: Sorry about that. Counselor, you were
13 saying.

14 MR. COLE: This case came up for this hearing in
15 April last time where there was another oral motion from that
16 one. I raised my objection at that time. The Court was going
17 to allow the Applicant to try to find somebody to come in and
18 evaluate him again. He's had two months to do that.

19 The position from the State is that he has had
20 ample time to get together whatever he needs. And that I'm not
21 sure what the witnesses are going to say. I think that most of
22 the information we have is already in the record. This was a
23 plea that he entered in 2015.

24 Generally, the State's position, it's time to have
25 this resolved. Our position is that he cannot meet the

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 standard of proof that he needs to overturn his plea for this
2 particular case when he pled back in 2015.

3 MR. O'SHIELDS: Your Honor, can I speak?

4 THE COURT: Yes, sir.

5 MR. O'SHIELDS: Your Honor, since this happened to
6 me, as far as my plea, I've been trying to get my lawyers and
7 such to, you know -- that I was incompetent at the time of the
8 plea. There's certain episodes that happened that I was
9 incompetent at the time of the plea, but they continued with
10 the plea. They did not have me evaluated, not as far as the
11 crime or whatever. This is the plea to see if I was competent.

12 I have a history of mental illness. And the only
13 thing I recall about the plea is what I've read when my mom got
14 the transcript after everything was said and done.

15 As far as bringing the witness in, which something
16 happened to me before the plea and everything, that they knew
17 that I was incompetent, but they proceeded to have me plea.

18 THE COURT: All right.

19 MR. O'SHIELDS: They never had an evaluation of me
20 to see if I was competent to plea, which mental illness
21 surround me.

22 And the other thing, I would like to make a motion
23 to relieve Counsel because everything I've asked her to do, she
24 hasn't done as far as getting things done for me as far as the
25 people that I needed to bring into court to prove my point.

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 Every attorney that I've had, Candace Laughton, my mom paid
2 Candace. That's my first PCR attorney. She walked away from
3 the case. My mom paid her money. She walked away. We haven't
4 heard nothing. I filed a motion against her.

5 My second attorney, Dayne Phillips, he would not --
6 he would not bring the witnesses I need. He said he wasn't
7 going to bother them. I said: What are you talking about?
8 That has to do with my money.

9 My sister gave him like \$15,000. I said: Listen,
10 you keep \$2,500. You amended my PCR for me.

11 But he wouldn't bring my witnesses in. He wind up,
12 kept 7,500 and sent 7,500 back to my sister. That's why right
13 now, I ask as far as having attorney represent me, 'cause I'm
14 ignorant of the law.

15 Like I said, at the time of the plea, they knew I
16 was not competent at the time. But they all proceeded.
17 According to the transcript, when you read it and the judge
18 asked me, if I should do a competency hearing, they both denied
19 me a competency hearing.

20 You know, as far as like I said, the only thing I
21 know about the hearing is what I read when my mom got me the
22 transcript. I've been telling these lawyers right along. They
23 keep going, well, they're talking about the crime at the time.
24 We're not talking about that. We're talking about the plea.

25 THE COURT: Mr. O'Shields, I'm hearing -- Ms. Ross.

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 You wanted to speak?

2 MR. COLE: I'll just say, I know Mr. O'Shields
3 wasn't there when we had the virtual hearing when I let
4 Ms. Ross bring up the continuance request, I guess two weeks
5 ago. And one of the things Your Honor, I'll just remind you,
6 said that we can still take testimony today. And I would like
7 to still go forward at least on that part.

8 If Your Honor then at that point believes that
9 there is additional information that needs to be put into the
10 record, maybe we can discuss that or you can rule on that.

11 We have Mr. Brannon here who was the attorney that
12 was Mr. O'Shields' attorney during the plea. And I will -- I
13 had conversations with Mr. Brannon. And I expect his testimony
14 will be that, at the time the plea was entered, Mr. O'Shields
15 met at least the minimum requirements for being competent to be
16 able to enter the plea.

17 THE COURT: Mr. O'Shields, when we did status this
18 a few weeks ago, based on the age of this case, where we sort
19 of left it was I wanted to go ahead and move forward today, get
20 as much information. If it became apparent that additional
21 information was necessary or needed, then I could perhaps
22 reconvene or we could reconvene at a later point in time. That
23 was kind of where I left it a few weeks ago. You understand,
24 Mr. O'Shields?

25 MR. O'SHIELDS: Yes, I do, sir. Another thing I'd

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 like to add to you, the number that Susan got here for my
2 sister to talk to, a psychiatrist, was disconnected. My sister
3 tried like ten other people to try to get, that I could speak
4 to somebody, you know.

5 My biggest thing is, you know, I like to better
6 articulate my claim that I wasn't competent at the time. I
7 don't see what these questions that they want to ask me now are
8 going to do, you know. Like I said, I should've been -- I
9 believe I have the right to have a competent hearing at the
10 time. They knew I was not competent at the time.

11 THE COURT: We may explore that further. I may
12 need additional information on that.

13 We've already got you present. We have your
14 attorney present. And, again, this case has got some age on
15 it. My intention is to move forward. If I feel like I need
16 additional information, I can ask Ms. Ross or the Attorney
17 General to provide that to me or we could otherwise reconvene;
18 okay, sir? That's how we are going to proceed.

19 MR. O'SHIELDS: May I have one more thing?

20 THE COURT: By all means.

21 MR. O'SHIELDS: At the time I had Mr. Watson,
22 psychologist, evaluate me. At the time, Doug was supposed to
23 also get a psychiatrist to evaluate me with my sister paid him
24 \$10,000 to have a psychiatrist come and evaluate me. He never
25 got that evaluation and kept the money, you know what I mean.

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 I just want you to know that he was not looking out for my best
2 interest.

3 THE COURT: I understand your position. You'll
4 have an opportunity to testify here shortly. Okay, sir?

5 MR. O'SHIELDS: Okay, thank you. Thank you, sir.

6 THE COURT: Attorney General. Well, anything else
7 before we go forward?

8 MR. COLE: No, not on that, Your Honor.

9 THE COURT: Ms. Ross?

10 MS. ROSS: May it please The Court. Your Honor,
11 just to briefly review his allegations, there's an allegation
12 of failure to communicate, failure to advise trial strategy,
13 get mental health records, contact his subpoena witnesses,
14 inform potential defenses, investigate insanity and mental
15 health issues, failed to have a Blair hearing prior to the
16 plea, and engage in reasonable investigation, and review
17 potential sentences. I believe those are in two applications,
18 Blair hearings and Dayne Phillips' application.

19 THE COURT: I reviewed this last night. You're
20 referring to -- this file is stamped upside down. The primary
21 petition you're proceeding on, it looks like -- I can't tell
22 the file stamp date on it. Here we are. Maybe June 29, 2020.

23 MS. ROSS: June 23rd.

24 THE COURT: June 23, 2020.

25 MR. COLE: Your Honor, that's the date of it. It

ROBERT O'SHIELDS dir by MS. ROSS

1 might've been stamped later.

2 THE COURT: Ms. Ross.

3 MS. ROSS: At this point we call Robert O'Shields
4 to the stand.

5 THE COURT: Mr. O'Shields, raise your right hand as
6 best you can.

7 ROBERT L. O'SHIELDS
8 being first duly sworn, testified as follows:

9 THE COURT: Have a seat, please.

10 DIRECT EXAMINATION

11 BY MS. ROSS:

12 Q. We've gone over this, Mr. O'Shields. You know that
13 the only relief you can get, relief with post-conviction relief
14 is to be put back in the position you were in before this plea.
15 Still facing murder. Is that your understanding?

16 A. Yes.

17 Q. I've gone over some of the allegations that were
18 made in your application. If you could just expand on those.
19 There was one allegation of failure to communicate. Where do
20 you feel like your trial counsel failed to communicate in your
21 case?

22 A. Well, it was a lot of, you know, you know, back and
23 forth. I asked him to look into some things and, you know, my
24 rights -- what rights we have. It's like he didn't want to,
25 here we go again.

ROBERT O'SHIELDS dir by MS. ROSS

1 As far as witnesses, like people that I had that
2 could speak on my behalf, oh, they wouldn't make a good
3 witness.

4 And Doug was telling my mom that they wouldn't make
5 a good witness, this and that. He wasn't going to call nobody
6 as far as being a witness on my behalf.

7 Q. Can you tell The Court why they would be an
8 important witness or what witnesses were not subpoenaed and how
9 they would help your case.

10 A. Well, what was going on in my household -- you're
11 talking about as far as what happened at the time?

12 Q. Well, you were alleging that your lawyer wasn't
13 subpoenaing or contacting witnesses you asked him to. We need
14 to know what those witnesses would've said and the effect that
15 would've had on the outcome of your case.

16 A. I really can't answer that question. The most
17 important thing that he didn't do was get the psychiatrist like
18 he told me that he was going to get, to have me evaluated by a
19 psychiatrist. He had me evaluated by Dr. Watson but not the
20 psychiatrist, you know what I mean.

21 Q. Why did you think a further evaluation was
22 necessary?

23 A. Because same thing. I have a history of mental
24 illness, you know what I mean. I need somebody. I really
25 can't speak on the mental illness, neither can anybody in this

ROBERT O'SHIELDS dir by MS. ROSS

1 courtroom. That's why I said I would like to have Dr. Watson
2 here or a psychiatrist that can, you know, speak on mental
3 illness. I'm not qualified and neither is anybody in the
4 courtroom here qualified to speak on it.

5 Q. Dr. Watson's psychological evaluation was made a
6 court exhibit during your plea.

7 A. Right.

8 Q. Have you seen a copy of that?

9 A. Yes. Well, I don't know if I've seen this one. I
10 didn't see, like, his report. I don't recall his report.

11 MS. ROSS: Judge, is that part of the package that
12 you received or can I make it Applicant's exhibit?

13 THE COURT: I haven't got a packet. I got the
14 pleadings, and I've reviewed the stuff that's in the clerk's
15 file. My clerk -- in the clerk of court's file. My clerk and
16 I have not got a packet on this one.

17 MR. COLE: I think I got -- you should've got a
18 follow-up from Kiteworks at some point that has that in it
19 because of the cyber attack that happened in Spartanburg. I
20 have respectfully discussed this with our IT department. They
21 need to figure out how to fix it. That's a different topic.

22 The report that she's talking about was an exhibit
23 at the original plea hearing. It was also put in as an exhibit
24 during the last hearing when it was continued, I think, or
25 referred to. I have a copy here.

ROBERT O'SHIELDS dir by MS. ROSS

1 MS. ROSS: I'll just make it Applicant's exhibit.

2 MR. COLE: We have no problem with it being an
3 exhibit. I have an extra copy.

4 THE COURT: That's fine. I do typically often,
5 assuming that we don't have to take additional testimony at a
6 later point in time, my intention is usually to take these
7 matters under advisement so I can give a closer look at the
8 transcript and things of that nature.

9 Attorney General, if y'all can provide that to me
10 later today or e-mail it or try again, whatever, I'm good.

11 MR. COLE: If it will help, I did print this one
12 out. If you want the transcript from the plea hearing.

13 THE COURT: That will help.

14 MS. ROSS: You now have a copy of the psychological
15 evaluation. I won't put it in as an exhibit.

16 MR. COLE: No objection, Your Honor.

17 BY MS. ROSS:

18 Q. Mr. Watson, it says he's a licensed clinical
19 psychologist; correct?

20 A. Right.

21 Q. You are saying you should've been examined by a
22 psychiatrist as well?

23 A. Yes. Actually Dr. Watson also, when I went to the
24 Gilli Center, he's also the one that asked me what happened
25 with the plea and stuff. He said that -- he told me I should

ROBERT O'SHIELDS dir by MS. ROSS

1 file a PCR because he said you should've never got -- you got
2 over-sentenced. You should've got no more than ten to 12 years
3 because of your mind frame at the time. So file a PCR. This
4 is straight from Dr. Watson. That's why I know a lot of things
5 was done wrong in my case. And arguing my plea because --

6 Q. When did you have an opportunity to talk to
7 Dr. Watson after your plea?

8 A. They sent me to the Gilli Center. I was in there
9 for almost four months. He works at the Gilli Center. He
10 works for the State.

11 Q. As far as affecting the outcome of a case, what
12 would a psychiatrist's evaluation -- how would that have
13 affected the outcome of a case you believe?

14 A. As far as what? The plea?

15 Q. Do you feel like, that you were insane at the time
16 and you should've been found not guilty by reason of insanity,
17 or do you feel that you were incompetent during the plea? What
18 would be the changed outcome of a psychiatric evaluation?

19 A. I was definitely -- I wasn't -- I was definitely
20 sick at the time. No doubt about it. I mean, they said I was
21 psychotic. I was delusional. I couldn't conform myself to the
22 requirements of law. I had a mild neuro-cognitive which covers
23 a lot of area. I'm not qualified to really speak on that
24 behalf. I know, you know, what I know as far as I was not me
25 at the time of all of this. So many things I don't recall.

ROBERT O'SHIELDS dir by MS. ROSS

1 Q. Now, just going to that, during the trial
2 transcript, you've said you seen the trial transcript. Your
3 sister gave you a copy?

4 A. My mom. Yes.

5 Q. You responded to questions --

6 A. Right.

7 Q. -- accurately in there? How do you explain that if
8 you were not competent at the time?

9 A. Well, apparently, you know, Doug was telling me,
10 told me what to do, I guess. I have no idea. Like I said, I
11 don't recall until I got the transcript and read them.

12 Q. There was no Blair hearing immediately before the
13 plea or anything?

14 A. Well, there should've been a competent hearing
15 before the plea because they knew that -- they said before I
16 came into court I was -- before they brought me into court I
17 was yelling about demons, passed out cold over in the other
18 room over here. And they brought me, brought me to, and
19 brought me in front of the judge to plea.

20 Now to me, if you're an attorney, you know there's
21 a problem. Pushed me through the motions to get a conviction.
22 And that was it.

23 Any attorney that's supposed to look out for your
24 interest, I don't believe they would do that. That's where
25 they know I should've had a competent hearing because I found

ROBERT O'SHIELDS dir by MS. ROSS

1 out -- well, my family found out, my sister actually, Debbie,
2 Candace told her it could've been like 15 months later that,
3 oh, well, he should've never been in court that day because
4 what I just told you. They said I was yelling about demons,
5 passed out cold. And they brought me in front of the judge to
6 plea. Now that don't sound like somebody competent to me.

7 I mean, for two years, I wasn't right for like two
8 years. And, you know, now that I look back, I see things that,
9 you know, they didn't do to help me. And Doug knows this.

10 Q. What things should they have done, just to be
11 clear?

12 A. They should've gave me competent. You know, they
13 just want to give me 30 years or whatever they want to do. At
14 the same time, why would I plea? Now that I'm in my right
15 mind, why would I plea to a life sentence because he knows the
16 mortality tables. Being a prisoner, you got time to talk to
17 other inmates. You got your tablet, look up laws, this and
18 that.

19 The mortality table, my life expectancy is 79
20 years. I came in at 52 years old. Well, 30 years is three
21 months before my 83 birthday. Why would I plea to a life
22 sentence? In reality, it is a life sentence even though they
23 say that's the minimum for murder.

24 I believe, in my case, maybe it shouldn't have been
25 murder, maybe it should've been manslaughter or involuntary

ROBERT O'SHIELDS dir by MS. ROSS

1 manslaughter because I was sick at the time. That's my
2 argument. And every time I try to fight my case where I was
3 incompetent at the time and plea, it's like they don't hear
4 what I'm saying to them.

5 I mean, just like when I told you to get these
6 people here as witnesses, that they speak on behalf of the
7 mental illness and stuff because there's nobody here qualified
8 to speak on mental illness. You're asking me these questions
9 that I don't really know the answers to.

10 Q. Now, just going back, you kept saying why would I
11 plea? If I was facing life, why would I plea? You did. Can
12 you tell The Court why you did plea?

13 A. I don't know why. I told you I don't recall.

14 Q. You don't recall at all?

15 A. Yes, ma'am, I don't recall. I mean, Your Honor, at
16 the same time, you know, I've asked you, I would like to remove
17 her as Counsel. I feel she's not in my best interest to start
18 with. I mean, I need to amend my PCR and to articulate matters
19 where they understand what I'm saying.

20 I mean, you know, I was entitled to an evaluation
21 at the time of the plea. They knew what they done to me. And,
22 you know, and being -- I went to the Gilli Center. They sent
23 me to McCormick, one of the worst prisons to be in because I'm
24 sick. I was sick. I seen people murdered and all kind of
25 things that go on down there. This is the kind of environment

ROBERT O'SHIELDS dir by MS. ROSS

1 the justice puts you in? I could not believe this.

2 THE COURT: Mr. O'Shields.

3 MR. O'SHIELDS: I know I'm getting off track. I'm
4 just saying, you know. My thing is that I was incompetent at
5 the time. That's my plea. I need to amend my PCR and --

6 BY MS. ROSS:

7 Q. I believe that was part of one of the allegations;
8 there was no Blair hearing prior to your plea to make a
9 specific determination of your competency?

10 A. Wasn't I entitled to that?

11 THE COURT: It's entirely possible you were.
12 That's my decision to make, sir.

13 MR. O'SHIELDS: Sorry, sir.

14 THE COURT: That's why Ms. Ross is pursuing this
15 line of questioning. You said a few moments ago you're not an
16 attorney. You've been with several attorneys. I think it's
17 best Ms. Ross continue her work.

18 MR. O'SHIELDS: Okay, that's all I need to hear you
19 say. I asked you before.

20 THE COURT: I think it's for the best. Ms. Ross.

21 MS. ROSS: Thank you, Judge.

22 BY MS. ROSS:

23 Q. Let's just talk about your trial strategy. What
24 did your attorney -- your trial attorney prior to your plea,
25 prior to all this, discuss with you about trial strategy for

ROBERT O'SHIELDS dir by MS. ROSS

1 your case?

2 A. He didn't.

3 Q. You said that -- did he get any records that you
4 needed? There's an allegation that you didn't get records.
5 What records?

6 A. I don't recall.

7 Q. Had you had some history of a disability claim? My
8 understanding Charlie Hodges was your disability attorney.

9 A. Yes.

10 Q. He came in and testified during your plea -- or not
11 testify. He spoke during your guilty plea. What records did
12 he have or what could've been brought out through him that
13 would've helped your case?

14 A. Charlie Hodges claimed that the system failed me.
15 Perhaps he failed me to a certain degree because he did not
16 give me the psychiatric help that may have helped me, that may
17 have avoided -- this tragedy may have been avoided. It's all
18 in the transcript.

19 Q. As far as any motions, do you know if Doug Brannon
20 made like pretrial motions or motions on your behalf? That was
21 one of the allegations.

22 A. Well, ma'am, Your Honor, I don't have no paperwork
23 from Doug Brannon. I got no discovery. I got nothing. I
24 wrote him a letter. I have it in my folder there stating that
25 I would like a copy of certain things.

ROBERT O'SHIELDS dir by MS. ROSS

1 He said, well, I told your attorney that they can
2 help you, this or that. If I need copies, me personally, that
3 he's going to have to charge me for the copies. I got no
4 discovery. I got nothing about my case. Nothing. I got
5 nothing.

6 Q. Did you review any of the discovery prior to your
7 guilty plea?

8 A. No.

9 Q. Doug Brannon never reviewed the discovery in the
10 case with you?

11 A. No.

12 Q. We already went over -- and you're saying he failed
13 to contact witnesses or make a reasonable investigation in the
14 case?

15 A. I don't know exactly. I just -- I don't know. I
16 just don't. That's when I had Candace. I don't recall exactly
17 what me and Candace spoke about. And that's, like I said, I
18 didn't want you to use her PCR, okay. The only thing on there
19 for me is failure to investigate mental illness, which you
20 didn't do. I wanted you to use the argument for mental illness
21 cases on Dayne Phillips. He amended the PCR. I don't
22 remember --

23 Q. I contacted them as well.

24 A. I don't remember. Candace came to see me one time.
25 And I just can't recall.

ROBERT O'SHIELDS dir by MS. ROSS

1 Q. All right. How about, there's an allegation of
2 just erroneous legal advice. Do you feel like Doug Brannon
3 gave you erroneous legal advice about your decision whether to
4 plea or go to trial?

5 A. I don't recall, ma'am. The way I see it now, they
6 just wanted me to plea and get it over with. That's all I see.
7 As of today that's what I see. It's a lot of things I'm not
8 clear on back then. I wasn't -- I remember certain things.
9 Certain things that were said. And a lot of things I don't
10 recall was said.

11 Q. Do you remember meeting with Doug Brannon? Your
12 plea attorney.

13 A. Yeah, I remember. Yeah. He handled also with my
14 daughter. He handled -- he wanted to handle everything.
15 That's why I do not have my daughter 'cause he handled it. I
16 mean, I just -- he didn't, as far as I know, he didn't look out
17 for my interest, period.

18 Q. What did y'all discuss?

19 A. Really, I really don't recall. I don't really
20 recall.

21 Q. Was your case appealed? Your plea. Did Doug
22 Brannon file an appeal on your behalf?

23 A. I don't believe he did. I mean, I don't know. I
24 don't believe he did. And why would he?

25 Q. You didn't ask for one, or do you know whether you

ROBERT O'SHIELDS cross by MR. COLE

1 did?

2 A. I may have asked for one, I don't know. I mean,
3 the only thing I know when I read the transcript my mom got me.
4 That's it.

5 MS. ROSS: I have no further questions. Please
6 answer any questions from the Attorney General.

7 MR. COLE: Assistant. I'm not the Attorney
8 General. Thank you for the promotion.

9 CROSS-EXAMINATION

10 BY MR. COLE:

11 Q. Mr. O'Shields, I just have a couple questions to go
12 through with you on this.

13 You have or you seen the report from Dr. Watson;
14 correct?

15 A. Well, some of it. You know, I remember back when
16 supposedly I seen that report, was a thick report. I don't
17 recall. I don't recall.

18 The only thing I know about Dr. Watson's report is
19 that he states in the transcript that I could not conform my
20 conduct to the requirements of the law at the time but --
21 that's all. That's all I really remember what he said.

22 Q. And that report was entered as an exhibit at the
23 plea hearing on behalf of your counsel at the time. And that
24 exhibit was used for the judge to make the determination that
25 you're mentally ill when you murdered your wife; correct?

ROBERT O'SHIELDS cross by MR. COLE

1 A. I guess, sir. I mean, you know. But see that's
2 why I question this today. When he seen all that, he should've
3 known I should've had the evaluation as far as my plea.

4 Q. Those are two different questions. One is I don't
5 think the State has any question that Dr. Watson's report was
6 used for the determination you're mentally ill when you shot
7 your wife; okay.

8 Now, the question is today, did you have the mental
9 capacity at the time you entered the plea, which was -- your
10 wife's murder was in April 2014. And the plea was over a year
11 later, September 8, 2015.

12 A. Right.

13 Q. You've been in prison for a while before you
14 entered the plea; correct?

15 A. Right.

16 Q. And you said --

17 A. I was in the county jail.

18 Q. You were incarcerated?

19 A. Right.

20 Q. And you said you have read through the transcript;
21 correct?

22 A. Yeah. I don't recall even when I really got the
23 transcript. Yes, I read it.

24 Q. In that transcript, you'll agree with me that, when
25 you are asked the questions of you, you understand what you are

ROBERT O'SHIELDS cross by MR. COLE

1 pleading to because you plead to three different things; to the
2 murder, to the violation of the order protecting your wife, and
3 then also for the use of a firearm. You plead to all three of
4 those; correct?

5 A. Whatever is in there. Like I said, I don't recall
6 that day. I don't recall anything about the plea until I got
7 the transcript and this is what they said that I did. Even as
8 far as the charge, what they said I did as far as -- at one
9 time, what people were telling me what happened. I don't
10 recall what happened. You know, as far as the time of the
11 incident and all that stuff. I don't recall what happened.

12 Q. And the report from Dr. Watson, he does not say in
13 that report that you were not competent to go to trial or to
14 enter a plea; correct?

15 A. Right. He didn't, right. I noticed that, too. He
16 said I could not conform. He didn't say that you knew morally
17 right from morally wrong. He didn't say that neither. The
18 Court asked morally right or morally wrong. I don't really
19 understand morally right from morally wrong or malice or any of
20 that other stuff.

21 Q. You had a PCR counsel prior to Ms. Ross; correct?

22 A. Yes.

23 Q. And that PCR counsel actually hired Dr. Maddox to
24 do an evaluation of you; correct?

25 A. Yes. My -- my -- my sister had that done.

ROBERT O'SHIELDS cross by MR. COLE

1 Q. Dr. Maddox's evaluated, released a report October
2 5, 2020; correct?

3 A. Right.

4 Q. In that report, doesn't Dr. Maddox say that you are
5 competent for going to trial?

6 A. Well, if you really read the report, she's wrong on
7 her statements that she made -- she said that I made to her at
8 the time. Yes, she did. She said I was psychotic at the time
9 of the crime. I was delusional. She agreed I couldn't
10 conform, whatever.

11 She said I was delusional what was going on in my
12 household, okay. Sexual activity, whatever with my son and my
13 wife.

14 Well, there's where my witnesses come in that, you
15 know. They heard the same tape. I put a tape that I recorded
16 over my phone of something that they heard. But yet I erased
17 that tape. They signed a sworn affidavit when Mr. Wood --
18 before this all happened, I was going to court with my wife.
19 They signed a sworn affidavit what they heard on the tape. I
20 was delusional.

21 I wasn't delusional what was going on in my home.
22 I knew my daughter was in danger at the time also.

23 Q. What you're telling us is that you had support to
24 show that you had mental issues when you committed the crime of
25 murdering your wife?

ROBERT O'SHIELDS cross by MR. COLE

1 A. Yes, yes.

2 Q. And then we had a psychiatrist, Dr. Watson,
3 evaluated you in 2015?

4 A. Right.

5 Q. He did not find that you were incompetent to stand
6 trial; correct?

7 A. I don't know. Why did he write that down? He
8 didn't say that?

9 Q. If he thought you were incompetent --

10 A. All he said I couldn't conform myself to the
11 requirements of the law. Why would he turn around to say when
12 I was at the Gilli Center for me to file a PCR?

13 Q. I don't know.

14 A. I don't know either. As you say that's hearsay.

15 Q. You're right. That is hearsay.

16 A. Right. So I don't know what his thoughts were at
17 the time, you know what I'm saying?

18 Q. Dr. Maddox, who evaluated you five years afterwards
19 said that you were -- she agreed with the determination of
20 Dr. Watson. She also added in her report whether you enjoyed
21 or agreed with the statements in there. She said you're
22 competent to stand trial; correct?

23 A. I was competent to plea. That's what she said.

24 But if you read those statements, those statements are
25 incorrect. That's why I told her, I told Susan Ross that, as

ROBERT O'SHIELDS cross by MR. COLE

1 far as using that, I said, her remarks inside are incorrect.

2 You know what I'm saying?

3 That to me voids whatever she says. That's why I
4 didn't say nothing about it. I gave her the copy to show her
5 what she was saying. I'm not trying to hide something but she
6 also told me, when we did the virtual video when I was in
7 McCormick, she said either I'm here to help you or I can't help
8 you. She said, I'll let you know at the end. At the end she
9 says: I can help you.

10 She also said: Did you ever have a head injury?
11 Yes, I had a serious head injury when I was a kid.

12 She said, okay. I'm going to have another doctor
13 come see you. See you. What is your mother's phone number,
14 'cause I want to talk to her. She voided that right out. She
15 never did that. Within 30 days she sent that report to Dayne
16 Phillips.

17 Q. Dayne was one of your previous PCR counsel?

18 A. Yes, that I call my witness.

19 Q. From that time after Dr. Maddox's report until
20 today, you have not had another evaluation?

21 A. No, sir.

22 Q. And you said that recently, since you knew this
23 case was coming up again after it was continued from April,
24 that some of your family members tried to find somebody but
25 they have not been able to find anybody?

ROBERT O'SHIELDS cross by MR. COLE

1 A. Right. Okay. And I understand what you're getting
2 at, okay, because, okay, I wanted -- really it wasn't so much
3 for me to get evaluated, okay, because I already have, you
4 know. We have the information that I suffer from mental
5 illness, okay.

6 My thing -- I wanted to get an honest psychiatrist
7 that would come in and testify what is neuro-cognitive; you
8 know, covers a lot of area. I wanted a professional in here to
9 explain mental illness because we're not qualified to explain
10 mental illness. You know what I mean?

11 And that's why -- okay, they want to evaluate me.
12 That's fine. I just want them to go over what Maddox had and
13 what Watson had and determine -- determine something out of
14 that to bring forward to The Court so we would understand what
15 illness means, you know.

16 Q. One last question. Do you believe that you have
17 the mental capacity today to provide your testimony in this PCR
18 hearing?

19 A. You know, I feel fine and stuff like that. I mean,
20 you know, I'm jittery. As far as my mind being clear from
21 where it was to what it is now, yeah, I'm a lot better.

22 MR. COLE: Thank you.

23 THE COURT: Redirect.

24 MS. ROSS: No redirect, Your Honor.

25 THE COURT: Mr. O'Shields, is there anything else

ROBERT O'SHIELDS cross by MR. COLE

1 that you want to tell me while you're on the stand, sir?

2 THE WITNESS: Yes, sir. Yes, Your Honor. What I
3 understand is, you know, the process of going through some of
4 this, I'm not no lawyer or nothing. Okay. If you don't agree
5 or whatever, you know, that my plea should be overturned or
6 not, then my next step would be, you know, a habeas corpus,
7 whatever they call that. I understand within a year's time,
8 you only have a year's time to handle all your stuff as far as
9 if your PCR is turned down, your next plea.

10 Candace Laughton supposedly, according to my mom --
11 I never got -- I never got any paperwork from Candace Laughton.
12 She filed my PCR 20 minutes before the one year was up. This
13 might be not important what I'm saying to you --

14 THE COURT: You're asking kind of a procedural
15 question. Procedurally, I haven't made any decision one way or
16 the other on your case, Mr. O'Shields. If I were to deny your
17 PCR, your next -- the next thing to happen would be for an
18 appeal to be filed, notice of intent to appeal to be filed.
19 Your attorney can take care of it for you. I'm certain that
20 she would file that.

21 If I were to grant your PCR, the Attorney General
22 is going to appeal. Regardless of how this winds up, somebody
23 is going to be filing an appeal.

24 MR. O'SHIELDS: I have time to file that, sir, not
25 to interrupt you, even though --

ROBERT O'SHIELDS cross by MR. COLE

1 THE COURT: I'm sorry?

2 MR. O'SHIELDS: Say it does go against me. I would
3 have time to file the PCR, being she filed 20 minutes before my
4 deadline, my one year was up. I thought there was extension
5 you had to have. She can maybe take care of that or answer
6 that?

7 THE COURT: It was timely filed. I don't think
8 anybody's contesting that the allegations weren't timely filed.
9 I know that Ms. Ross and other lawyers have amended that
10 application and added some things, such as that.

11 MR. O'SHIELDS: Okay.

12 THE COURT: I got the impression you were asking me
13 about procedurally what happens after this. What happens after
14 this, if I grant your PCR, like I said, the State will appeal
15 that decision. If I deny your PCR, then your attorney will
16 appeal that decision. Then it will go up to the Supreme Court
17 of appeals or Supreme Court.

18 Once that's over and done with, whether it's
19 affirmed or reversed, then you can perhaps pursue a federal
20 post conviction relief, if you have some federal grounds to
21 pursue.

22 MR. O'SHIELDS: Okay.

23 THE COURT: That's kind of, honestly, that's
24 somewhat of a long shot and pretty rare.

25 MR. O'SHIELDS: Okay.

DEBBIE GILLILAND dir by MS. ROSS

1 THE COURT: That's where we are.

2 MR. O'SHIELDS: Okay. I just wanted to understand.
3 I don't understand the law, sir.

4 THE COURT: Your lawyer will take care of that --

5 MR. O'SHIELDS: Okay.

6 THE COURT: -- in due course.

7 MR. O'SHIELDS: Okay.

8 THE COURT: You can step down.

9 MR. O'SHIELDS: Thank you.

10 (The witness exited the stand).

11 THE COURT: Ms. Ross.

12 MS. ROSS: Call Debbie Gilliland.

13 DEBBIE GILLILAND

14 being first duly sworn, testified as follows:

15 THE COURT: If you could, give your full name and
16 spell your last name for us, please.

17 MS. GILLILAND: My name is Debbie Gilliland,

18 G-I-L-L-I-L-A-N-D.

19 THE COURT: G-I-L-L-I-L-A-N-D?

20 MS. GILLIAND: Yes.

21 THE COURT: Thank you, ma'am.

22 Ms. Ross.

23 DIRECT EXAMINATION

24 BY MS. ROSS:

25 Q. You're Robert's sister; is that correct?

DEBBIE GILLILAND dir by MS. ROSS

1 A. Yes, I am.

2 Q. You and your mother were heavily involved in his
3 defense in the case from the beginning?

4 A. Yes.

5 Q. One of his allegations, just to talk specifically
6 to that, was that he was not competent to plea at the time of
7 the guilty plea?

8 A. Yes.

9 Q. Were you there during that guilty plea?

10 A. Yes, I was.

11 Q. What did you observe?

12 A. I observed that my brother was not in his right
13 frame of mind. And like, we had said something had happened to
14 him right before they had brought him in. Because we were in
15 the courtroom like this, me and my mom. And we were all
16 waiting for them to bring him in.

17 Apparently, from what we understand, he had blacked
18 out and everything because Doug Brannon knows because himself,
19 Charlie Hodges, everybody went running out. And they were out
20 with him for like 15, 20 minutes before the case had even
21 started.

22 And when they did bring him in, you could see he
23 wasn't in his right frame of mind. Every time he did go -- the
24 judge did ask him a question, he looked at them like, it
25 wasn't --

DEBBIE GILLILAND dir by MS. ROSS

1 Q. Them meaning his attorneys?

2 A. His attorneys, yes, yes. He looked at them. It
3 was like every question that he was asked by the judge he would
4 look at them. Because, honestly, we really thought that my
5 brother was going to go to trial. Because me and my mom were
6 sitting across the street in Doug Brannon's and Charlie Hodges'
7 office. They said they would be over to get us in half an
8 hour.

9 Me and my mom sat over there for four-and-a-half
10 hours, waiting for them to come and get us. When we came, they
11 had already talked to my brother and apparently made him, you
12 know, accept the deal that was offered to him.

13 Q. Also, just to address briefly about the
14 neuro-cognitive doctor you attempted to contact for an
15 evaluation.

16 A. Yes.

17 Q. I had given you a name; is that correct?

18 A. Yes.

19 Q. And what did I tell you where did I get that name?

20 A. You got that name from Dr. Maddox, I believe. I
21 did eventually call her and that number was disconnected. I
22 had called personally myself. I had gone down the list for
23 South Carolina, North Carolina. And I've called many doctors.

24 But when you're looking for a psychiatrist, it's
25 usually the patient that's calling the psychiatrist to make an

DEBBIE GILLILAND cross by MR. COLE

1 appointment. I couldn't get anyone who would call the prison
2 and want to do a video with him. I called many. I worked on
3 that for a few weeks trying to get someone to speak to him.

4 MS. ROSS: Thank you. I have no further questions.

5 CROSS-EXAMINATION

6 BY MR. COLE:

7 Q. Ma'am, we met briefly when we were waiting for
8 court to start. Andrew Cole on behalf of the State here.

9 You understand my job is to represent part of the
10 State; correct?

11 A. Yes.

12 Q. When did you start trying to call these other
13 neuros or psychologists?

14 A. Like not too long after we were here for, what was
15 it? Like a month ago or whatever we were here.

16 Q. In April?

17 A. Yes. I started. I started calling. I was sick
18 for a little bit. I had COVID. So I was sick. Right after
19 that I did start calling.

20 And Ms. Ross had also given me the phone number of,
21 I think it was Rebecca Wagner. At first she had given me the
22 wrong number. Then I looked her up and everything. By the
23 time I did call her as my last resort -- because I wanted
24 someone else -- her phone number was disconnected.

25 Q. You did not try to call prior to April?

DEBBIE GILLILAND cross by MR. COLE

1 A. I really can't tell you exactly when I started
2 calling. I don't even remember the date that we were here in
3 April.

4 Q. Just for clarification, when the plea was entered
5 in 2015, were you in the courtroom when the plea was entered?

6 A. Yes, I was.

7 Q. When you were sitting across with -- I forgot your
8 other relative?

9 A. My mom.

10 Q. Across the street, that was when negotiations were
11 done. When the actual plea was done, you were in the
12 courtroom?

13 A. Yes.

14 MR. COLE: Thank you.

15 THE WITNESS: Can I just add one thing?

16 THE COURT: Sure.

17 THE WITNESS: As far as my brother, like I know
18 Doug had Dr. Watson evaluate him, okay. Doug Watson -- I'm
19 sorry -- Doug Brannon. I'm very nervous, I'm sorry.

20 Doug Brannon had said that he would like -- I know
21 that Dr. Watson was a psychologist. Doug Brannon said he
22 wanted my brother evaluated by a psychiatrist. Okay. If he
23 didn't feel that was necessary, which he ended up not doing
24 anyway, why did he make us pay him \$10,000?

25 My sister sent him a check, and I don't have a copy

DEBBIE GILLILAND cross by MR. COLE

1 with me. But we have the bank statement saying that we sent
2 him \$10,000 and that was for him to get a psychiatrist to come
3 in to evaluate my brother. If he thought Watson's report was
4 good enough, why did he want a psychiatrist then if he didn't
5 think that it was going to actually help my brother?

6 THE COURT: I understand your position. Anything
7 else?

8 MS. GILLILAND: No.

9 THE COURT: Any follow-up on that?

10 MS. ROSS: No redirect, Your Honor.

11 MR. COLE: I have one question.

12 CROSS-EXAMINATION CONTINUED

13 BY MR. COLE:

14 Q. Dr. Maddox was hired by PCR counsel -- not by Mr --

15 A. Dr. Maddox?

16 Q. Right.

17 A. I hired her.

18 Q. That was when the PCR was already filed originally;
19 correct?

20 A. Yes, this is when it first happened, when the
21 murder first happened. This is when it first happened and Doug
22 Brannon was representing my brother. That he wanted a
23 psychiatrist to come in. He was supposed to be bringing in a
24 specialist from what we understood from Washington, D.C.

25 Q. And he brought in Dr. Watson; correct?

DOUG BRANNON dir by MR. COLE

1 A. Yes.

2 Q. Thank you.

3 A. Thank you.

4 THE COURT: You can step down. Thank you, ma'am.

5 (The witness exited the stand.)

6 THE COURT: Ms. Ross.

7 MS. ROSS: That's the Applicant's case.

8 THE COURT: Mr. Cole.

9 MR. COLE: You want us to call the case or do
10 motions? We'll just call our case.

11 THE COURT: Go ahead and call your case.

12 MR. COLE: I'll call Doug Brannon.

13 DOUG BRANNON

14 being first duly sworn, testified as follows:

15 THE COURT: Have a seat.

16 DIRECT EXAMINATION

17 BY MR. COLE:

18 Q. Are you ready?

19 A. For ten years now, yes, sir.

20 Q. Doug, you know Mr. O'Shields; correct?

21 A. I do.

22 Q. Did you represent him before?

23 A. I did.

24 Q. When did you represent him?

25 A. I believe it was in 2014. You can correct me if

DOUG BRANNON dir by MR. COLE

1 that's wrong.

2 Q. And how long have you been a practicing attorney?

3 A. Today it's just short of 25 years.

4 Q. And how much of your practice is involved with
5 criminal law, probably criminal defense?

6 A. At least half. Some years it's significantly more
7 than half. Some years it's 50 percent.

8 Q. This was not your first murder case, was it?

9 A. Not at all.

10 Q. Can you just give me a little bit of background
11 about, when you first got this case, what was the case about?

12 A. Thank you for that question. So I was sitting in
13 my office and a gentleman and Mr. O'Shields' mother walked in
14 my office. They didn't have an appointment. I didn't know
15 that a murder had taken place the day before or two days
16 before. I don't read the news much.

17 And so I met Robert's mother and brother, and they
18 told me the facts of the case. And based on those facts, there
19 was a belief that this would be a death penalty murder case.

20 What happened is Mr. O'Shields began to believe
21 that his wife and his then adult son were in an intimate
22 relationship. That was part of his psychosis at the time. His
23 wife got an order of protection against him. She and their
24 young daughter were residing in a safe home here in Spartanburg
25 County.

DOUG BRANNON dir by MR. COLE

1 Mr. O'Shields tailed her in some manner and found
2 out where she was. On the day of this murder, he was sitting
3 outside of the safe home in his vehicle, watched his wife walk
4 their daughter to a school bus. She got on that school bus,
5 and as the bus drove away, he shot his wife.

6 There were multiple aggravating factors which
7 could've led the State to seek the death penalty. I was told
8 by his mother and his brother money is no option. Keep him off
9 of death row. I quoted a sizeable fee, and they said: No
10 problem, we'll pay it. I was retained.

11 There was a payment made. Unfortunately, that
12 payment, which was approximately \$70,000, that was Robert
13 O'Shields' money. It wasn't their money. His wife's estate
14 hired an attorney, and I was required to refund all of that
15 money. It was poured into a trust account of the wife's
16 attorney.

17 Mr. O'Shields, again, believed that his son and his
18 wife were in an intimate relationship. There was a point
19 where -- there was a lot of things going on in his life at the
20 time. They had recently moved to South Carolina. They were
21 living in a fifth-wheel camper. The money that I was paid and
22 then refunded was a down payment on the construction of a new
23 house.

24 When he began to have these delusional beliefs,
25 they separated. He got the money back from the builder.

DOUG BRANNON dir by MR. COLE

1 You heard him mention this. He had breakfast with
2 his son and wife this particular morning. He stepped out of
3 the camper and he was trying to get evidence of this
4 relationship. He left his cell phone in a shirt pocket that
5 was hanging on a chair in the camper. And that phone was on
6 record mode. And he believed that he caught his wife and son
7 having intimate relations on that recording.

8 I never heard that recording because, again, he
9 erased it. There was apparently a reconciliation between wife
10 and he. And during that reconciliation, he erased that
11 recording.

12 But the recording had gotten transferred from his
13 phone or recording device, whatever it was, to something the
14 wife owned. So I actually got that recording from the wife's
15 estate's attorney. It was just a muffled recording. Again, it
16 was initially recorded through a shirt pocket but then it was
17 transferred to another, so what I got was third-hand.

18 The two witnesses that he alleges that I refused to
19 call were Nickie Cantrell, who was with the Sheriff's
20 Department, and Allen Wood, both with the Sheriff's Department.
21 Nickie, she now works for SLED. At the time she was the lead
22 investigator for sex crimes in Spartanburg County.

23 Robert took that recording to Nickie and played it
24 for her. I believe Nickie played it for Allen Wood. And there
25 was an affidavit written by Nickie -- I never saw one from

DOUG BRANNON dir by MR. COLE

1 Allen. There was an affidavit written by Nickie that said, I
2 heard the tape recording. I hear something, but I don't hear
3 sexual relations. That's why I didn't call Nickie Cantrell.
4 She wouldn't have helped him.

5 I did talk to -- I don't remember speaking
6 specifically to Ms. Gilliland. I did talk to the mother and
7 the brother about, very early on, there's a gentleman who is a
8 lawyer and a medical doctor. His name is Mark Finley. He is
9 in Washington, D.C. Psychiatrist. I talked to them about
10 hiring him but I also talked at length about Sel Watson.

11 The problem that we had is Mark Finley is not
12 well-known in South Carolina. I needed somebody to go in that
13 could get into the Spartanburg County Detention Center. They
14 know Sel Watson. He's in there regularly. They let him in.
15 It would've been very difficult to get Finley into the
16 detention center.

17 When we got Sel's report, it said -- I think
18 Mr. O'Shields and his family want me to prove that he was more
19 crazy than he was or that he was crazy at the time of the plea.
20 And I couldn't get him there.

21 Q. Let me stop you. When you said you couldn't get
22 him there, who is him in that sense?

23 A. Sel Watson primarily. Also Mr. O'Shields. I got
24 the report. I sent it immediately to Barry Barnette. Barry
25 makes an offer of guilty but mentally ill, minimum sentence.

DOUG BRANNON dir by MR. COLE

1 Q. At that point the family had asked you to keep him
2 off death row?

3 A. That's correct.

4 Q. You were given an offer to keep him off death row?

5 A. Absolutely. That wasn't -- that was what they
6 asked. That wasn't the job that I took on.

7 Robert and I talked at length about voluntary and
8 involuntary. In South Carolina, to get voluntary, we would
9 attempt to prove heat of passion. And I explained that his
10 heat of passion could easily believe -- easily be his belief
11 that his son and wife were intimate.

12 To get to his lesser included, like he mentioned in
13 his direct testimony, we would've had to have gone to trial.
14 Barry Barnette was not going to make an offer of less than
15 murder. I explained that to Robert fully.

16 I had a lengthy conversation with Sel Watson about
17 his competence at the time. Sel was adamant that he was aware
18 of his situation, that he was fully competent at the time of
19 his evaluation. He was delusional at the time of the incident.
20 At the evaluation, he was competent.

21 And Sel wasn't -- I mean he did testing. And
22 that's what his testing indicated. And he wasn't going to
23 fudge his tests. I can testify he was incompetent at the time
24 of the crime. He's competent today.

25 Q. Was he competent when he entered the plea?

DOUG BRANNON dir by MR. COLE

1 A. I fully believe he was.

2 Q. Do you know how many plea deals you have dealt with
3 as a criminal defense attorney?

4 A. It's easily hundreds. It could be 1,000. I don't
5 know.

6 Q. I don't need an exact number. You have been
7 through that process before?

8 A. Right.

9 Q. And in this process, was it Judge Cole, wasn't he
10 the -- Derham Cole. For the record, no relation, just in case.

11 A. Judge Cole. He plead off of the trial docket. So
12 it was Judge Cole was the -- and the sister said that they
13 waited. Judge Cole demanded that day that he qualify the jury
14 before he started taking pleas. So part of their wait was the
15 general qualification of the jury pool. That's what happened
16 that morning.

17 Q. Let me back up. You met with Mr. O'Shields during
18 the preparation for the trial for the ultimate plea; correct?

19 A. Absolutely.

20 Q. Do you know how many times you met with him?

21 A. Well, I probably met with him 20 times. They
22 weren't all about this case. As his sister said, I did for a
23 brief period of time represent Robert's mother in an attempt to
24 get custody of his daughter.

25 There were times when we weren't talking about

DOUG BRANNON dir by MR. COLE

1 this. We were talking about something else.

2 Q. And those times you met with him, they were more
3 than just like a five-minute meet and greet; they were longer
4 times?

5 A. Some of them were hours.

6 Q. When you met with him leading up to preparing for
7 trial, first, were you ready to go to trial if the trial was
8 going to be had?

9 A. I was ready to go to trial. I will tell you
10 straight up and I told him, if you go to trial in front of
11 Derham Cole, and if they don't find that you were incompetent,
12 you will be sentenced to life without parole. That's what's
13 going to happen in this case.

14 This trial would've been about five minutes long.
15 When Mr. O'Shields shot his wife, she didn't die immediately.
16 She had her cell phone in her hand and then she dialed 911.

17 They played that tape recording in the family
18 court, and they would've played it in their -- immediately
19 after their opening statement. In the call, his wife said to
20 the 911 operator: I've just been shot by my husband, Robert
21 O'Shields. Please send an ambulance. Tell them they don't
22 need to hurry. I'll be dead before they get here.

23 This case wasn't good for trial. It wasn't good
24 for trial because our own expert was going to say he's
25 competent today. It wasn't good for trial.

DOUG BRANNON dir by MR. COLE

1 Q. When the plea was taken, you put forward and we put
2 as an exhibit today, Dr. Watson's report. And you handed that
3 up to Judge Cole. Was there any debate about that being
4 entered as an exhibit?

5 A. None whatsoever. In fact, I think it was entered
6 as a joint exhibit because, again, I provided it to Barry
7 Barnette as soon as I got it. I mean, there was no objection,
8 argument, or anything. It was on Judge Cole's desk when he
9 walked in.

10 Q. Judge Cole basically accepted both the State's and
11 your position that, at the time of the crime, that was where he
12 had the mental capacity?

13 A. That is correct.

14 Q. The examination that Judge Cole went through, this
15 was not his first guilty plea; correct?

16 A. No. And Judge Cole is very thorough in his plea
17 colloquy.

18 Q. When he went through it, and we have the record.
19 He went through and he asked Mr. O'Shields: Are you entering
20 this voluntarily; correct?

21 A. Correct.

22 Q. Actually plead to three different crimes. One was
23 murder, the other was violation of the order of protection, and
24 the third was use of firearm; correct?

25 A. Correct.

DOUG BRANNON dir by MR. COLE

1 Q. The ultimate decision was 30 years in prison;
2 correct?

3 A. Correct.

4 Q. Which again was better than capital punishment?

5 A. Correct.

6 Q. Did Judge Cole go through all of the elements that
7 you need to, to make sure this was a voluntary and
8 knowledgeable plea?

9 A. I'm certain that he did.

10 Q. There was some testimony earlier about the fact
11 that you did not have a secondary competency hearing; that both
12 the State and you said there is not a need for that; correct?

13 A. That is correct.

14 Q. Why did you not believe that there was a need for
15 that?

16 A. Because of my conversation with Mr. O'Shields and
17 because of my conversation with Selman Watson the day before.
18 Selman Watson would've been a witness in that trial. We talked
19 for 30 minutes the day before he entered his plea.

20 Q. If Dr. Watson thought at the time the plea was
21 being entered that Mr. O'Shields was not competent at that
22 time, he would've told you?

23 A. He would've told me that and -- he would've told me
24 that. And I would've relied on what he told me, and I would've
25 expressed that to Mr. O'Shields. I told him plainly, if we go

DOUG BRANNON dir by MR. COLE

1 to trial, Selman Watson is going to testify that you're
2 competent as you sit here today.

3 Q. I asked him if he was competent today. He said
4 yes. Do you have any reason to doubt that he's competent
5 today?

6 A. No. I mean, I would take him at his word. I would
7 submit to you this. Mr. O'Shields was always very cooperative
8 with me. I didn't get I don't recall or I don't remember from
9 him during my conversations. He was clearly able to
10 communicate to me his positions and his views throughout all of
11 my conversations with him.

12 Now, I will tell you he was still adamant that his
13 wife and son were involved in that intimate relationship. That
14 belief never went away. He could always answer my questions
15 without saying I don't remember or I don't recall.

16 Q. In your more than 20 years of experience doing
17 this, you thought that he was able to respond to you
18 appropriately when you were making those inquiries?

19 A. Yes.

20 Q. The State was prepared to go forward with their
21 case if the plea wasn't entered; correct?

22 A. Absolutely.

23 Q. You heard some of the testimony from Mr. O'Shields
24 and from his sister about his passing out or whatever it was
25 prior to him entering the plea?

DOUG BRANNON dir by MR. COLE

1 A. I heard that, yes.

2 Q. Do you know anything about that?

3 A. Nothing.

4 Q. Do you have any recollection of him having any
5 problems prior to entering the plea?

6 A. I won't tell you that he didn't pass out. What I
7 will tell you, he didn't pass out when I was present. I don't
8 recall myself or Mr. Hodges running out of the courtroom.

9 Q. First, we addressed that you did communicate with
10 him in preparation. In your understanding, do you think that
11 Mr. O'Shields understood when you were talking to him about his
12 case?

13 A. Yes. I think -- because he asked very pertinent
14 questions regarding lesser included offenses like voluntary and
15 involuntary. I remember an in-depth conversation saying:
16 Robert, even if they buy heat of passion, they're not going to
17 go to involuntary. You went, you tracked her down. You got a
18 gun. You waited for your daughter to get on the bus. And then
19 you pulled the trigger. This is not involuntary. I mean, we
20 had that conversation.

21 Q. Among other witnesses, the State was ready to call
22 the daughter and the son and other witnesses as well that
23 would've corroborated what happened?

24 A. They were both in the courthouse.

25 Q. Did you discuss trial strategy?

DOUG BRANNON dir by MR. COLE

1 A. I want to say yes but -- but once the offer was
2 made, it was clear to me, as a practicing defense attorney,
3 given the facts to this case, I mean, I remember saying, if you
4 want to go to trial, we'll go to trial. I have Dr. Watson on
5 the line. We'll go to trial. With all due respect, sir, the
6 case against you is very strong, and you will get life without
7 parole.

8 Q. So that -- I'll go on.

9 Did you file pretrial motions that might've been
10 necessary?

11 A. I filed a Rule 5 and got discovery. I filed for
12 the motion for the evaluation, but I don't remember any other
13 pretrial motions.

14 Q. Do you believe that you completed a sufficient
15 investigation into other witnesses and other issues that
16 might've developed during the trial?

17 A. I talked to every person that he gave me the name
18 of. I want to be clear. There were some people that I didn't
19 speak to, but my private investigator, Pete Heiss, spoke to
20 those people. I would've had notes from those conversations.

21 Q. You were, again, if you were going to trial, you
22 were prepared with the witnesses you thought would be competent
23 and would support your defense of the case? They were ready to
24 go?

25 A. The only witness that I believed was going to be

DOUG BRANNON dir by MR. COLE

1 beneficial was Selman Watson. Nickie Cantrell was going to say
2 she didn't hear what he thought he heard.

3 Q. Lastly, we heard from the sister about an extra
4 \$10,000 to hire a psychiatrist or someone like that. Can you
5 explain that?

6 A. Let's keep in mind the fee I quoted was \$100,000.
7 I got a check for, I testified that it was nearly 70. I
8 believe the actual check was \$67,000. I refunded that entire
9 check because Judge Kelly Pope-Black in the family court
10 required me to do that.

11 That \$10,000 was to hire an expert. Selman
12 Watson's bill was nearly \$6,000. I did talk about Mark Finley.
13 But because of the difficulty getting him into the detention
14 center and Sel's report, he wasn't necessary.

15 Q. The \$10,000, that was, in fact, the only payment
16 you received?

17 A. No. I got a total of 30,000. I got a check for 20
18 from somebody. I don't remember who that was. And I got a
19 check for ten.

20 Q. About six of that went to pay for --

21 A. It was more than six, yeah.

22 Q. Rounding numbers, I'm an attorney so I don't know
23 how to do math. Generalities are good.

24 A. Yeah.

25 Q. You never got the full fee --

DOUG BRANNON dir by MR. COLE

1 A. No.

2 Q. -- that you were entitled to from your original
3 quotation?

4 A. That is correct. I didn't do anything or -- I
5 didn't do less because I didn't get the money. Okay.

6 Q. Ultimately, whose decision was it to plea?

7 A. His.

8 Q. Did you try to coerce him in any way?

9 A. I gave him my best advice.

10 Q. And he took that advice and entered a plea?

11 A. He took my advice and, Charlie Hodges' advice, and
12 yes. I don't remember who, but I believe there were family
13 members talking with us as well.

14 Q. That were present?

15 A. That's right. There's a little conference room
16 across the hall outside of Judge Knie's courtroom. That's
17 where we were when we were talking.

18 Q. Since you brought up other family members, we don't
19 know who they were. Did anybody there raise any question about
20 whether or not a plea was a good idea upon the day that it was
21 entered?

22 A. No.

23 Q. In your experience, do you believe that, in this
24 case, the plea was the best result that he could've gotten that
25 day?

DOUG BRANNON cross by MS. ROSS

1 A. 100 percent.

2 MR. COLE: Thank you. Ms. Ross.

3 CROSS-EXAMINATION

4 BY MS. ROSS:

5 Q. I'm just looking through Dr. Watson's psychological
6 evaluation. It's saying he saw him, just for this report, it
7 lists a couple times in June and then finally one other time in
8 October 2014.

9 MR. COLE: I have another copy.

10 MS. ROSS: It doesn't really matter.

11 BY MS. ROSS:

12 Q. The plea wasn't until a year later, September. Had
13 Dr. Watson physically met with Mr. O'Shields the day prior to
14 the plea? Like you said, you spoke to him.

15 A. You'd have to ask him that. I don't recall that.

16 Q. So you can't say whether Dr. Watson would have an
17 opinion on his competency during the guilty plea?

18 A. I can tell you the day before -- the day before we
19 were to start trial or enter the plea, Selman Watson's
20 testimony would've been he was incompetent at the time he
21 committed the crime but he was competent at the time of the
22 evaluation. That's what he would've said.

23 Q. The evaluation was nearly a year prior to his plea?

24 A. That would've been his testimony.

25 Q. You discussed reviewing the case and preparing for

DOUG BRANNON cross by MS. ROSS

1 trial, discussing voluntary manslaughter?

2 A. Uh-huh.

3 Q. Proceeding with that, why did you go ahead and have
4 him plea to murder when you felt that it was a strong
5 voluntary?

6 A. I didn't say there was a strong voluntary
7 manslaughter. Those were his questions. He was studying in
8 jail, and he was asking me those questions. I answered his
9 questions. I never said it was a strong voluntary case.

10 Q. As far as discovery, you received discovery. Do
11 you recall specifically reviewing that discovery with
12 Mr. O'Shields?

13 A. Absolutely.

14 Q. As far as -- I think you've answered most of my
15 questions. As far as this refunded money that you were paid
16 that you had to send back to the attorney --

17 A. Yes.

18 Q. -- did that occur before or after the plea?

19 A. That occurred within 30 days of being retained.
20 Year-and-a-half before the plea.

21 Q. Well early. You continued to represent
22 Mr. O'Shields?

23 A. Continued to represent Mr. O'Shields and his mother
24 for a period of time.

25 Q. Mr. O'Shields asked me a question. I'll ask it

DOUG BRANNON cross by MS. ROSS

1 another way. On page 16 line 20 of the transcript.

2 Judge Cole asked you whether you wanted a Blair
3 hearing; is that correct?

4 A. Yep.

5 Q. And you said no; correct?

6 A. Correct.

7 Q. Having a Blair hearing, that would've just assured
8 The Court and everyone involved that Mr. O'Shields was
9 competent at the time of the plea, wouldn't it?

10 A. I didn't believe at that time that there was need
11 for a Blair hearing. And I would stand by that decision today.

12 MS. ROSS: No further questions.

13 THE COURT: Any redirect?

14 MR. COLE: No, Your Honor.

15 THE COURT: Thank you. You can step down. Take
16 care.

17 MR. COLE: That's the State's case, Your Honor.

18 MR. BRANNON: May I be excused?

19 THE COURT: You're free to go. Thank you very
20 much.

21 Ms. Ross, anything else you wanted to offer in
22 reply?

23 MS. ROSS: No, Your Honor. I guess the question I
24 asked brings up whether I should have subpoenaed Dr. Watson to
25 be here to testify, whether he had seen Mr. O'Shields the day

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 prior to the plea or not. I did not do that. I would stand on
2 the applications and my prehearing statements and have nothing
3 further.

4 THE COURT: Anything else from the State on this?

5 MR. COLE: Not unless you want to hear arguments,
6 Your Honor.

7 THE COURT: I'm going to take it under advisement.
8 I want to look through. I did get your e-mail or I did get the
9 e-mail. I'm having some trouble downloading some of that
10 stuff. I'll play with that later on today, see if I can get
11 that downloaded and accessed.

12 Case will be under advisement. And should I
13 require anything else of y'all, I'll simply notify you-all.
14 Okay?

15 MS. ROSS: Okay.

16 THE COURT: Very good.

17 Mr. O'Shields, I'm not going to make a ruling from
18 the bench. I've not reviewed the entire file. I'm assuming
19 Dr. Maddox's report is also in that file; correct?

20 MR. COLE: Actually, Dr. Maddox's report is not in
21 the file, just to be clear. I asked about it and because it's
22 a confidential document, I talked to prior PCR counsel plus
23 Dr. Maddox, they were not going to be able to provide it to me
24 without consent from Mr. O'Shields. If you want that, we can
25 get that from Mr. O'Shields.

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 THE COURT: Have you had a chance, Ms. Ross, to
2 discuss that? Mr. O'Shields, would you have any problem with
3 me looking at Dr. Maddox's report?

4 MR. O'SHIELDS: No, I don't have a problem with you
5 looking at it, sir. A lot of it is incorrect. I did make some
6 corrections on it. As long as you can read those corrections I
7 made.

8 THE COURT: I'm happy to take possession of his
9 marked-up copy. I can make it a sealed Court's exhibit or make
10 it a Court exhibit at a later point in time. Maybe that would
11 be the way to handle or mail it back to Ms. Ross.

12 MR. COLE: Ms. Ross and I talked about this in
13 April. She was not able to provide that to me before because
14 some of the items that are in there are probably
15 attorney-client privilege from her and Mr. O'Shields and PCR.
16 She didn't want to provide that to me.

17 And I would either ask that I would be given a copy
18 of that which then would invade possibly attorney-client
19 privilege that I'm not sure I want to compel them to do or, if
20 they can provide a redacted copy to Your Honor that doesn't
21 have that in there, that would work. Either of those. I don't
22 want to invade the privilege.

23 THE COURT: And I did not realize that either. If
24 you want to simply redact and, at some point, Ms. Ross, you can
25 scan it and e-mail it to me, that's acceptable. Anything you

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 feel is attorney-client, I don't need to be privy nor does the
2 State.

3 MS. ROSS: Let me ask Mr. O'Shields on it.

4 THE COURT: Sure.

5 (A pause transpired.)

6 MS. ROSS: Mr. O'Shields has consented for me to
7 give you this copy I have. I did not -- Attorney General is
8 perfectly correct. I did not provide him a copy of it because
9 it was marked up. He's reviewing the copy now and go ahead and
10 give that to you.

11 MR. O'SHIELDS: Your Honor, may I say something?

12 THE COURT: Yes, sir.

13 MR. O'SHIELDS: When we ask what happened before
14 they brought me into my plea, Candace Laughton, my first PCR
15 attorney, told my sister what happened to me. So he says he
16 don't recall. Doug doesn't recall that happening. That's what
17 she told my sister.

18 That's how we found out through Candace Laughton,
19 which I really like to have as a witness. So they know not
20 this time. What Doug was saying, there was a problem that day.
21 Sir, that's all.

22 THE COURT: Very good. I'll consider that. If I
23 feel like that information or that witness is essential to your
24 case, I'll let the lawyers know, and we'll reconvene. Okay?

25 MR. O'SHIELDS: Yes, sir.

ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

1 MR. COLE: I skimmed through this, Your Honor. I
2 think what he testified about, a lot of that is consistent with
3 the handwriting that's in this. Do you want me to give this to
4 you? You can keep the original and give a copy to us?

5 THE COURT: Why don't we do this. I'd rather
6 everybody have a copy. I'm going to take five, ten minute
7 break. If you can find a copy machine and burn a couple. We
8 probably got a copy machine in the back. I'll find a judge's
9 secretary. I'll burn some copies for you guys. That might be
10 the easiest way. I guess there's not one sitting in the
11 hallway like in Greenville.

12 We'll be at ease. I'll be in touch.

13 Pleasure to meet you, sir.

14 MR. O'SHIELDS: You too, sir.

15 (The hearing was concluded at 11:21 a.m.)

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ROBERT O'SHIELDS vs. STATE OF SOUTH CAROLINA

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CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 7th day of September, 2023 at Spartanburg, Spartanburg County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-42-03358

Robert O' Shields

State of South Carolina

APPLICANT

DEFENDANT(S)

Submitted by: COURT

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on June 19, 2023 on Applicant's PCR action. Applicant was present with counsel. Having reviewed the pleadings, considered the applicable law, and reflected upon the testimony at trial, the Court denies Applicant's request for post-conviction relief.

At the hearing, this Court heard testimony from Applicant, Applicant's plea counsel, and Applicant's sister, Ms. Debbie Gillian. At the conclusion of the hearing, the Court took the matter under advisement.

In his application, Mr. O'Shields maintains that plea counsel's representation was deficient and denied Applicant his right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 3 and 14 of the South Carolina Constitution. See S.C. Code 17-27-20(A)(1), (4), and (6). Mr. O'Shields argues that plea counsel, Mr. Doug Brannon, prejudiced him by failing to request a competency evaluation, failing to have him evaluated by an independent medical professional, failing to move for a *Blair* hearing prior to Applicant's plea hearing, and failing to conduct a reasonable investigation in preparing Applicant's defense.

Applicant plead guilty but mentally ill to the murder of his wife, Marianne O 'Shields, violating an order of protection, and possession of a weapon during the commission of a violent crime. He was sentenced by Judge Cole to 30 years, 30 days, and 5 years, respectively, on September 8, 2015.

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SOUTH CAROLINA

Applicant was evaluated by Dr. Watson prior to the sentencing hearing and was found competent to stand trial. Although Applicant was psychotic and delusional at the time of the offense, Dr. Watson concluded that Applicant understood right from wrong and was otherwise competent to stand trial and assist counsel. During the current litigation, Mr. O'Shields underwent a second evaluation by Dr. Maddox, and her report dated October 5, 2020 confirmed Dr. Watson's prior findings.

At the hearing, Mr. Brannon testified that he has been practicing criminal law for 25 years. Mr. Brannon testified that when he first received the case, he was aware his client may face the death penalty, and a primary goal was to keep Mr. O'Shields off of death row. Further, Mr. Brannon testified he believed his client competent to enter a plea on the day of sentencing and that after roughly 20 meetings with Mr. O' Shields, Mr. Brannon was fully aware of all aspects of Applicant's case. Mr. Brannon testified that he fully investigated Mr. O'Shields' case and that additional expert testimony or investigation would not have aided Mr. O'Shields. The Court finds Mr. Brannon's testimony very credible, more credible than that of Applicant.

The Court reviewed the sentencing hearing transcript in which Judge Cole thoroughly reviewed the basis for Mr. O'Shields' plea and the rights he was waiving by entering his plea. Mr. Brannon testified at the PCR hearing that he was prepared to go forward with trial if necessary on the day of the plea, and a jury pool reported to court that day in the event a trial was warranted. All evidence before the Court demonstrates that Mr. O'Shields knowingly and intelligently plead guilty on September 8, 2015 and that counsel extensively prepared Mr. O'Shields' case prior to the guilty plea.

In conclusions, the Court finds that trial counsel's strategy was reasonable and provided competent, effective representation of Applicant. The evaluation of Dr. Maddox confirms the findings of Dr. Watson, so an independent evaluation would not have assisted in Mr. O'Shields' defense. Furthermore, both reports indicate that Mr. O'Shields was psychotic, delusional, and unable to conform his conduct to the requirements of the law at the time of the offense. However, his condition did not prevent him from understanding right from wrong or appreciating the illegal nature of his actions, so he did not satisfy the *M'Naghten* standard. Therefore, in light of the uncontested findings in the reports, a *Blair* hearing was unnecessary. Finally, the Court finds that Mr. Brannon conducted a sufficient investigation of these events and that his assistance to Mr. O'Shields helped him avoid the death penalty or a life sentence and obtain the best result possible under the circumstances. Therefore, the Court denies Applicant request relief on the grounds stated in his petition.

Within thirty (30) days, counsel for the State shall prepare a more formal order which memorializes the Court's ruling.

ORDER INFORMATION

This order ends does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
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If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Handwritten Signature]
 Circuit Court Judge

2159

6/23/2023

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 27 day of June 2023 and a copy mailed first class or placed in the appropriate attorney's box on this 27 day of June 2023 to attorneys of record or to parties (when appearing pro se) as follows:

Susannah C. Ross, Esq.

Andrew Cole, Esq., Blake Kennedy, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Handwritten Signature]
 CLERK OF COURT

Court Reporter: Lora McDaniel

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 SPARTANBURG COUNTY
 ANY W. COX

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Robert O'Shields, #365365)

Case No.: 2016-CP-42-03358

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina)

Respondent,)
_____)

THIS MATTER CAME BEFORE THE COURT on June 19, 2023 by way of an application for post-conviction relief ("PCR") filed by Applicant Robert O'Shields (hereafter "Applicant") after initially entering a plea of guilty but mentally ill on September 8, 2015 and sentenced to 30 years imprisonment for the murder of his wife. The original PCR application was filed September 8, 2016 and amended June 23, 2020. Various scheduling delays due to motions by Applicant to dismiss his prior PCR attorneys and numerous motions for continuances caused the case to finally be heard on June 19, 2023. Applicant raised several claims of ineffective assistance of counsel, but the crux of Applicant's argument at the evidentiary hearing was his claim that he did not have the requisite capacity at that time to enter his plea of guilty but mentally ill.

The evidentiary hearing on June 19, 2023 was conducted before this jurist at the Spartanburg County Courthouse. Applicant and his PCR attorney Susannah Ross were present. The State of South Carolina was represented by Assistant Attorneys General Andrew N. Cole and Blake Kennedy. Three witnesses testified at the hearing: Applicant, Debbie Gilliland (Applicant's sister), and N. Douglass Brunnon (Applicant's trial/plea counsel). This Court took the matter under advisement in order to thoroughly review the record and to consider the testimony and arguments

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Spartanburg, SC 29303

protection (2016-GC-42-2280), murder, and possession of a weapon during the commission of a violent crime (2016-GS-42-2281, counts 1 & 2). N. Douglas Brannon, Esquire, represented Applicant. On September 8, 2015, Applicant pled guilty but mentally ill before the Honorable J. Derham Cole. Judge Cole sentenced Applicant to 30 days imprisonment for violation of the order of protection, 30 years imprisonment for murder, and 5 years imprisonment for possession of a firearm, to be served concurrently.

Applicant did not appeal his guilty plea or his sentence. Applicant filed his Post Conviction Relief application on September 8, 2016. Applicant subsequently hired Dayne Phillips, Esquire to assist with his PCR application. Mr. Phillips filed an Amended PCR Application on June 23, 2020. On February 7, 2022, on the eve of the PCR hearing that was going to be conducted virtually, Applicant filed a motion to relieve Mr. Phillips as his attorney. The motion was granted on April 8, 2022. On October 14, 2022, Susannah Ross, Esquire, was appointed as PCR counsel for Applicant. This matter was continued two more times, on October 27, 2022, and on February 7, 2023, before it was scheduled for an in-person hearing on April 18, 2023.

The evidentiary hearing scheduled for April 18, 2023, before the Honorable Perry H. Gravely did not go forward that day. Instead of proceeding with the evidentiary hearing, Ms. Ross made an oral motion for a continuance at the request of her client who requested additional time to schedule a supplemental mental health evaluation. Judge Gravely granted the continuance. This matter was placed on the next PCR roster in Spartanburg County and scheduled to go forward on June 19, 2023 before this jurist. During a virtual hearing with me and counsel on June 2, 2023, an additional request for another continuance was denied.

At the commencement of the evidentiary hearing on June 19, 2023, Applicant once again requested a continuance so that he could obtain a supplemental psychiatric and/or neurological

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evaluation. Applicant also made a motion to relieve his current PCR counsel. This Court denied this latest request for a continuance, and after the Court ruled that the evidentiary hearing would go forward, Applicant withdrew his motion to relieve Ms. Ross.

At the completion of the evidentiary hearing, this Court took the matter under advisement. On June 23, 2023, this Court entered a Form Order denying Applicant's request for relief in his PCR action and directed the State to prepare a more formal order memorializing the Court's ruling. This is this Court's final order denying Applicant's PCR application.

CURRENT APPLICATION

Applicant alleges in his amended PCR application that he is detained unlawfully for the following reasons (excerpts verbatim):

1. Ineffective Assistance of Counsel:
 - a. Applicant did not voluntarily, knowingly, or intelligently plead guilty based on Plea Counsel's erroneous advice and failure to request a competency to stand trial evaluation.
 - b. Plea Counsel failed to request that the Chief Administrative Judge or presiding judge sign an Order for Competency to Stand Trial Evaluation pursuant to State v. Blair based on Applicant's mental health history and records when it was reasonable and necessary to do so in Applicant's defense.
 - c. Plea Counsel failed to have applicant evaluated by an independent qualified medical professional to conduct a forensic psychological competency to stand trial evaluation prior to the plea hearing based on Applicant's mental health history when it was reasonable and necessary to do so in Applicant's defense.
 - d. Plea Counsel failed to move for a Blair hearing prior to the plea hearing for the Plea Court to determine Applicant's competency to stand trial based on Applicant's mental health history and records.
 - e. Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense.
 - f. Plea Counsel failed to review all potential defenses prior to Applicant's guilty plea.

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STATEMENT OF FACTS

Marianne O'Shields, Applicant's wife, and her daughter were living at the Safe Homes shelter in Spartanburg, South Carolina, in April, 2014. On April 8, 2014, at a Spartanburg County Family Court hearing before the Honorable Kelly Pope-Black, (Case No. 2014-DR-42-1037), the Applicant consented to the entry of an Order of Protection that, for twelve months, limited Applicant to only having contact with Mrs. O'Shields via phone or text regarding visitation with their daughter. (Family Court Transcript; Tr. 17) The Spartanburg County Sheriff's report notes that Applicant violated the Order of Protection on at least three occasions prior to April 30, 2014.

On the morning of April 30, 2014, Applicant shot his wife outside the Safe Homes shelter right after Mrs. O'Shields put her daughter on the elementary school bus. (Tr. 17-18) The State had witnesses and video evidence that placed Applicant at the scene. (Tr. 17-18) More significantly, Mrs. O'Shields called 9-1-1 and identified Applicant as the person who shot her. (Tr. 18) Mrs. O'Shields died from her gunshot wounds shortly after being transported to Spartanburg Regional Hospital. (Tr. 18)

The indictments for violation of the Order of Protection (2014-GS-42-2280) and for murder and possession of a firearm during the commission of a violent crime (2014-GS-42-2281) were entered June 12, 2014.¹ Applicant entered a plea of guilty but mentally ill before the Honorable J. Durham Cole on September 8, 2015. Applicant separately acknowledged that he was voluntarily entering a plea on each of the indictments for murder (Tr. 7), possession of a firearm during the commission of a violent crime (Tr. 8), and violation of an order of protection (Tr. 8). Judge Cole further questioned Applicant regarding his voluntary waiver and effect of the waiver of his right to a jury trial. (Tr. 9-15) A report by E. Selman Watson, Ph.D., dated March 13, 2015, was

¹ The indictment for violation of the Order of Protection was amended June 25, 2015, to increase the time period and include the date of the shooting as an additional violation.

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submitted to the Court as Defendant's Exhibit 1. Without objection, Dr. Watson's report was used as the basis for Applicant to plead guilty but mentally ill. (Tr.15-16)

After putting his findings regarding the plea for guilty but mentally ill on the record pursuant to S.C. Code Ann. § 17-24-20(d), Judge Cole asked if any additional hearing regarding Applicant's mental state was requested. (Tr. 16)

THE COURT: All right. I want to ask the – let me ask this. I have a report from Dr. Selman Watson who conducted a psychological evaluation of the defendant, Robert O'Shields. You participated fully in that evaluation?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: And a report has been generated and has been handed up to the Court. Have you and your lawyers discussed this report?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: And based upon this report is why your lawyers have discussed with the prosecutor allowing you to plead guilty but mentally ill to each of these charges: is that true?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: Solicitor, you're in agreement with the guilty but mentally ill plea?

MR. BARNETTE: Yes, sir. I've looked at the report, understand the findings that he made that he knew the difference between right and wrong but he couldn't conform his activity, what happened that day, which is guilty by a mentally ill.

THE COURT: All right. And you – and this goes for the defense, too, but both the defense and the State accept Dr. Watson's report as being a valid, credible and accurate report?

MR. BARNETTE: Yes, sir.

MR. BRANNON: Yes, Your Honor.

MR. HODGE: Yes, Your Honor.


THE COURT: And none of you request to have a hearing on the issue of mental illness pursuant to 17-24-20?

MR. BARNETTE: No, sir.

MR. BRANNON: No, sir. (Tr. 15-16)

Applicant agreed with the background factual recitation by the Solicitor (Tr. 20) and admitted he had no legal justification to shoot his wife. (Tr. 20)

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THE COURT: All right. Mr. O'Shields, did you understand everything that Mr. Barnette just told me?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: The material facts, which I am recalling, made not of, that relates to these charges against you is that he says that the victim, Mrs. O'Shields, was living at the Safe home; is that true?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: She had left your home and her home, she had gone to the Safe Homes, and you were still living in Lyman?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: And she and the child were living at Safe Home?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: There was an order of protection that was entered on April the 8th -
-?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: --- that you and she both agreed with?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: And Mr. Barnette says that she was taking the child to school. She dropped the child off?

MR. BARNETTE: She had walked the child to the bus stop.

THE COURT: Walked the child to the bus stop, the bus left, and that's when you pulled up and shot her.

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: And then she dies as a proximate result of those gunshot wounds.

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: She didn't attack you or threaten you in any way, did she?

DEFENDANT O'SHIELDS: No, Your Honor.

THE COURT: Okay. So you admit and agree with the facts that the solicitor has just stated?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: No reason, no legal justification for having shot Mrs. O'Shields?

DEFENDANT O'SHIELDS: No, Your Honor. (Tr.19-20)

Furthermore, the following colloquy took place regarding Applicant's mental state during the plea hearing:

THE COURT: Okay. All right. And have you ever been treated for any type of substance abuse or addiction?

DEFENDANT O'SHIELDS: Years ago for alcohol, sir.

THE COURT: All right. Is there anything about any mental condition or any substance abuse issue that prevents you from fully understanding what you are doing right now?

DEFENDANT O'SHIELDS: No, Your Honor

THE COURT: And is it correct for me to say that on the date in question that this occurred, that you did understand legal and moral right from legal and moral wrong?

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: But according to the doctor who evaluated you, you could not conform your conduct to the requirements of the law --

DEFENDANT O'SHIELDS: Yes, Your Honor.

THE COURT: -- based upon a mental condition or disorder?

DEFENANT O'SHIELDS: Yes, Your Honor. (Tr. 21-22)

After Applicant's attorneys² spoke briefly to reinforce that Applicant was mentally ill when he shot his wife and to ask the Court for a lenient sentence, Applicant spoke briefly on his behalf.

THE COURT: All right. Mr. O'Shields, is there anything you'd like to add to what your lawyers have told me?

DEFENANT O'SHIELDS: No, Your Honor. I'd just like to apologize. (Tr. 24)

Judge Cole accepted the plea of guilty but mentally ill (Tr. 22) and sentenced Applicant to 30 days imprisonment for violation of the order of protection, 30 years imprisonment for murder, and 5 years imprisonment for possession of a firearm, to be served concurrently. (Tr. 24)

² Applicant's attorneys at the plea hearing were Mr. Brannon (criminal trial defense counsel) and Charles A. Hodge (counsel for Applicant for a former Workmen's Compensation claim). Generally, Mr. Hodge stated that Applicant's Workmen's Compensation claim likely contributed to Applicant's mental state on the day he shot his wife.



TESTIMONY PRESENTED AT THE EVIDENCE HEARING

The evidentiary hearing was conducted before this Court on June 19, 2023. Testifying on behalf of the Applicant were Applicant himself and Debbie Gillian, Applicant's Sister. Testifying on behalf of the State was N. Douglass Brannon, Esquire.

Prior to giving his testimony, Applicant asked the Court for another continuance because he had been unable to secure a supplemental psychological or neurological evaluation. Applicant also moved to have his PCR counsel, Ms. Ross, relieved on the basis that she had not subpoenaed two witnesses to appear at the PCR hearing. The Court denied the continuance. After the Court directly inquired whether Applicant wanted to dismiss his PCR counsel mid-hearing, Applicant withdrew the motion to relieve Ms. Ross.

Applicant testimony may be organized by the following general topics: (1) client communication, (2) trial strategy, (3) pre-trial motions, (4) investigation, (5) legal advice, and (6) appeal. Although Applicant presented a myriad of issues, the common thread was an allegation that Applicant did not have the requisite capacity to have entered his plea of guilty but mentally ill.

Applicant testified that Mr. Brannon did not fully investigate the case and told him that some of Applicant's suggested witnesses were not helpful at trial. Applicant testified that Mr. Brannon suggested hiring a different defense psychologist, but they only ended up hiring Dr. Watson. During this portion of Applicant's testimony, Dr. Watson's report from March 13, 2015 was submitted anew to the Court. Applicant testified that he has had conversations with Dr. Watson subsequent to the plea hearing while Dr. Watson was in the prison counseling other inmates. Applicant suggested that Dr. Watson told him that he should not have been sentenced to the 30-years. Mostly, Applicant testified that Mr. Brannon knew that Applicant was not competent

at the time he entered the plea on September 8, 2015. Applicant claimed that he did not realize that he had pled guilty until after he read the plea hearing transcript which he had received from his sister.

Applicant testified that Mr. Brannon did not discuss trial strategy with him and that Mr. Brannon did not file necessary pre-trial motions. He reiterated that Mr. Brannon did not properly investigate defense-friendly witnesses. Applicant testified that Mr. Brannon gave erroneous legal advice regarding whether he should plead or go to trial; albeit, Applicant said that he did not actually recall any such discussion and accused Mr. Brannon and the State of simply wanting to get the case over with. Finally, Applicant testified that Mr. Brannon did not appeal his case or provide guidance to Applicant regarding any future appeals. After additional inquiry by the Court, it appears that Applicant was more concerned regarding his right to appeal the current PCR matter than he was concerned about appealing the original plea.

During cross examination, it became apparent that Applicant's principal issue raised in the evidentiary hearing was his allegation that he was not competent to have entered his guilty plea. Applicant acknowledged that Dr. Watson's report found him mentally ill when he shot his wife on April 30, 2014 but capable of standing for trial or entering a plea when he was evaluated on March 13, 2015. Applicant testified that prior PCR counsel retained Donna S. Maddox, MD to evaluate Applicant, and that Dr. Maddox issued a report dated October 5, 2020. Applicant acknowledged that Dr. Maddox agreed with Dr. Watson's evaluation and further found that "[Applicant] was competent at the time he entered his plea."³

³ During arguments after the testimony concluded, Applicant consented to the submission of Dr. Maddox's report to the Court as an exhibit. The only available copy Dr. Maddox's report was from Ms. Ross's file, which has handwritten notes and comments made by Applicant on it. These handwritten notes and comments are arguably attorney-client communications between Applicant and Ms. Ross; however, Applicant stated that he waived any attorney-client privilege between himself and his PCR counsel and consented to providing the report to the Court. Therefore, Dr. Maddox's report with the handwritten comments was accepted by the Court as an exhibit to the evidentiary hearing. This Court notes that the handwritten comments appear to convey the same issues that Applicant raised in his

Mrs. Gillian, Applicant's sister, testified that her brother was not competent on the day he entered his plea. She said her brother was not in a good frame of mind and had blacked out prior to the start of the plea hearing. During the hearing itself, Mrs. Gillian said that her brother had to look at his attorney before answering the questions from the judge, suggesting that Mr. Brannon was coaching Applicant's answers. Mrs. Gillian also testified that after the last PCR hearing on April 18, 2023, which was continued, she contacted ten prospective doctors asking them to examine her brother, but none of them accepted. Lastly, Mrs. Gillian testified that while Mr. Brannon was investigating the case he demanded an additional ten thousand dollars to hire a specific expert from out of state who ultimately was not hired. Mrs. Gillian strongly implied that Mr. Brannon charged an excessive fee to defend Applicant and then demanded more money.

Mr. Brannon testified that he was retained shortly after Applicant shot his wife on April 30, 2014 and filed his notice of appearance on May 5, 2014. He testified that when he first received the case, he was aware his client may face the death penalty, and a primary goal was to keep Applicant off death row. Mr. Brannon testified that he, in fact, met with his client at least twenty times and that Applicant was well aware of all aspects of his case by the time this case came up for trial. Mr. Brannon also testified that he fully investigated Applicant's case and that additional expert testimony or investigation would not have aided the defense. Mr. Brannon noted that Applicant's case was difficult because of the overwhelming evidence of Applicant's guilt, including the 9-1-1 telephone call by Mrs. O'Shields where she named Applicant as the person who shot her.

Mr. Brannon explained the issue of his fee and the "additional" ten thousand dollars for an

testimony at the PCR hearing; therefore, the handwritten comments appear merely to be cumulative, regardless of whether Applicant waived any attorney-client privilege, and their inclusion in the exhibit entered at the evidentiary hearing was harmless.

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expert. Mr. Brannon quoted Applicant a sizeable fee to defend Applicant, which fee is not unusual for a potential death penalty case. Mr. Brannon said he was paid an initial retainer of approximately two-thirds of his quoted fee, but these funds came from an account that was owned jointly by Applicant and his late wife. Within thirty days, Mrs. O'Shields' estate demanded the return of these funds, and Mr. Brannon had to remit them to the wife's estate. Mr. Brannon explained that he discussed retaining several possible defense experts, but recommended retaining Dr. Watson because he was in-state and would have better access to evaluate Applicant. The ten thousand dollars was used in substantial part to retain Dr. Watson. Including the ten thousand dollars, Mr. Brannon testified that he ultimately was paid only approximately a third of his quoted fee.

Dr. Watson performed a psychological evaluation of Applicant and issued a written report on March 13, 2015. With relevance to the current PCR petition, Dr. Watson concluded that Applicant was psychotic and delusional when he shot his wife but was otherwise competent to stand trial and assist his counsel at trial. Mr. Brannon testified that Dr. Watson confirmed these conclusions—and specifically confirmed that Applicant was competent to stand trial—the day before the plea was entered on September 8, 2015.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Standard of Review

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

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4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

In order to receive relief from a guilty plea, the Applicant must establish that there is a reasonable probability that, but for the Applicant's attorney(s) at the plea hearing, the Applicant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 US 52 (1985). In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Where allegations of ineffective assistance of counsel are made, the question becomes, whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Id. (internal quotations omitted) (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

South Carolina applies a two-prong test for determining effective assistance of counsel that was originally set forth by the U.S. Supreme Court in Strickland.

First, a defendant must show that counsel's performance was deficient. Under this prong, the proper measure of attorney performance remains simply reasonableness under prevailing professional norms. The second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the

extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The defendant is required to overcome the presumption that counsel was effective in order to receive relief.

Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citations and internal quotations omitted).

The proper measure of counsel's performance remains whether the attorney "provided representation within the range of competence required of attorneys in criminal cases." Butler at 442, 334 S.E.2d at 814 (citations omitted). Stated another way, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." Hill, 474 U.S. at 57. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. Therefore, there is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment. See Strickland, 466 U.S. at 689; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Indeed, "[r]epresentation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Hill, 474 U.S. at 58.

The two-prong test from Strickland applies to challenges to a guilty plea based on ineffective assistance of counsel. Hill, at 58. "A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty." Turner v. State, 335 S.C. 382, 384, 517 S.E.2d 442, 443 (1999). However, if there is overwhelming evidence of guilt, deficient performance may not result in prejudice. Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991).

Alleged Ineffective Assistance of Counsel Generally

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Applicant's testimony regarding client communication, trial strategy, pre-trial motions, investigation, legal advice, and filing a direct appeal generally allege that Mr. Brennan's conduct fell below the acceptable standard for an attorney in this circumstance. This Court need not dwell on these general representation allegations because of the overwhelming evidence that Applicant shot his wife. See Geter, supra. Mrs. O'Shields identified Applicant as the shooter on a 9-1-1 call. It appears that the real issue for trial was Applicant's mental capacity at the time that he shot his wife. As part of the plea, the State accepted Dr. Watson's report as the basis for the Court to accept a plea of guilty but mentally ill; therefore, the question of Applicant's mental capacity at the time that he shot his wife was resolved.

This Court was able to observe and evaluate Applicant, Applicant's sister, and Mr. Brannon at the evidentiary hearing. This Court finds Mr. Brannon's testimony very credible, more credible than that of Applicant. See Simuel v. State, 390 S.C. 267, 270, 710 S.E.2d 738, 739 (2010) (noting that the appellate court "give great deference to a PCR judge's findings where matters of credibility are involved"); Lee v. State, 396 S.C. 314, 319, 721 S.E.2d 442, 445 (Ct.App.2011) (noting that the appellate court gives deference to the PCR court's findings regarding credibility since the appellate court "lacks the opportunity to directly observe the witnesses."); Inabinet v. Inabinet, 236 S.C. 52, 55-56, 113 S.E.2d 66, 67 (1960) (noting that the trial judge who saw and heard the witness's testimony is in a better position than an appellate court to evaluate the credibility of the witness); 75B Am.Jur 2d Trial § 1581 ("when a [bench trial] case is tried to the court, the trial judge is the sole or ultimate arbiter of the credibility of the witnesses and the weight to be given specific testimony).

To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had

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counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1988); Morehead v. State, 329 S.C. 729, 496 S.E.2d 415 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Applicant provided no testimony at the evidentiary hearing regarding what new or exculpatory information could have been discovered prior to his plea or trial.

Applicant did not file a direct appeal of his guilty plea or sentence. Mr. Brannon testified that he advised Applicant of his right to appeal the guilty plea. As discussed above, the Court finds Mr. Brannon's testimony credible. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). However, "absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to direct appeal from a guilty plea." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995), reh'g den. (Aug. 9, 1995) (citations omitted). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 710 (2018) (citations omitted). And as the U.S. Supreme Court recognized, "[a]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Flores-Ortega, 528 U.S. at 480.

Applicant's claims raised at the evidentiary hearing regarding plea counsel's general assistance of counsel in preparation of trial do not rise to the standards set forth in Strickland. Counsel was not ineffective, and Applicant provided no testimony that, had the advice from



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counsel been different, Applicant would not have pled guilty. See Turner, supra. Moreover, the record demonstrates overwhelming evidence of Applicant's guilt so that no prejudice is shown. See Geter, supra. For these reasons, Applicant's general assistance of counsel claims are denied.

Alleged Lack of Capacity at the Plea Hearing

Applicant's primary argument at the evidentiary hearing was that, at the time he entered his plea of guilty but mentally ill on September 8, 2015, he did not possess the requisite capacity to stand trial or enter a plea. "Due process prohibits the conviction of a person who is mentally incompetent." McLaughlin v. State, 352 S.C. 476, 481, 575 S.E.2d 841, 843 (2003) (citing Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992)). "The test of competency to enter a plea is the same as required to stand trial." Jeter, 308 S.C. at 232, 417 S.E.2d at 596 (citation omitted). "The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceeding against him." Lee, 396 S.C. at 320, 721 S.E.2d at 446 (citing Jeter, 308 S.C. at 232, 417 S.E.2d at 596 (citation omitted)). "The defendant bears the burden of proving his incompetence by a preponderance of the evidence." McLaughlin, 352 S.C. at 481, 575 S.E.2d at 843 (citation omitted); Jeter, 308 S.C. at 232, 417 S.E.2d at 596 ("In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea.")

"Before a defendant may plead guilty, it must be established that the defendant is competent and that the defendant's decision to plead guilty is a knowing and voluntary one." Garren, 423 S.C. at 14, 813 S.E.2d at 711 (citation omitted). The test "is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings

against him.” Carnes v. State, 275 S.C. 353, 354-355, 271 S.E.2d 121, 122 (1980) (internal quotation omitted; citation omitted). “The focus of a competency inquiry is the defendant’s mental capacity; the question is whether he has the *ability* to understand the proceedings.” Garren, 423 S.C. at 14, 813 S.E.2d at 711 (emphasis in original; citations omitted). “The purpose of the ‘knowing and voluntary’ inquiry, by contrast, is to determine whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is uncoerced.” Id. (emphasis and internal quotation in original; citations omitted). Stated another way, an appropriate “test of incompetence which seeks to ascertain whether a criminal defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” Drope v. Missouri, 420 U.S. 162, 172 (1975) (citation omitted).

Applicant alleges that he was not competent when he entered his plea. It is clear from the plea hearing transcript that neither the Solicitor, Mr. Bannon, nor the trial judge thought that a competency hearing was necessary. Nothing in the plea hearing transcript indicates any hesitancy, misunderstandings, or other red flags to indicate that Applicant was not competent to enter his plea. “Specifically, when establishing Strickland prejudice in the context of plea counsel’s failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the plea.” Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017) (internal quotations and citations omitted). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Ramirez, 419 S.C. at 22, 795 S.E.2d at 845 (quoting Gallman v. State, 307 S.C. 273, 276, 414 S.E.2d 780, 782 (1992)). This Court finds no “reasonable probability” in the record or based on the testimony at the evidentiary hearing to find that Applicant was incompetent when he entered his plea.

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Again, nothing in the plea hearing transcript indicates that Applicant misunderstood the proceedings or the impact of his plea. In fact, Applicant unequivocally admitted to shooting his wife based on the facts presented by the Solicitor and he testified that he was intending to plead guilty but mentally ill. Applicant now asks for a supplemental evaluation. This is unnecessary. Applicant was already evaluated twice by psychologists who were hired by Applicant's trial/plea attorney and first PCR attorney. Dr. Watson evaluated Applicant in preparation of the trial and his March 13, 2015 report was accepted by the State, and Judge Cole accepted Applicant's plea of guilty but mentally ill. Applicant was evaluated a second time by Dr. Maddox while the current PCR application was pending. Dr. Maddox's October 5, 2020, report was accepted as an exhibit at the evidentiary hearing. Dr. Watson and Dr. Maddox both conclude that, although Applicant was mentally ill at the time that he shot his wife, Applicant had the requisite mental capacity to participate in his trial around September 8, 2015. Applicant provided no testimony or other support that a supplemental mental evaluation conducted prior to a hearing on his PCR would provide different findings concerning Applicant's mental capacity eight years ago when he entered his plea. Certainly, the consistent and closer-in-time determinations by Dr. Maddox and Dr. Watson are better indications that Applicant was competent to enter his plea of guilty but mentally ill on September 8, 2015.

This Court is reminded of the advice by our appellate courts regarding whether an accused is entitled to a competency to stand trial hearing: "evidence of a defendant's irrational behavior, his demeanor at trial and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors, standing alone, may, in some circumstances, be sufficient." State v. Blair, 275 S.C. 529, 533, 273 S.E.2d 536, 538 (1981) (quoting Drope, 420 U.S. at 180). None of these factors favor Applicant in this petition.

Stated another way, Applicant did not meet his burden of proof that he was incompetent, or even that there was a question of his competence, when he entered his guilty plea. To paraphrase the court in Garren, without *any* proof that Applicant suffered from identifiable mental health issues that undermined his competency to plead guilty, any claim of prejudice is purely speculative. See Garren, 423 S.C. at 13, 813 S.E.2d at 711.

Under the facts and circumstances of this case, based on the record and testimony before this Court, and based on the prior determinations by Dr. Watson and Dr. Maddox regarding Applicant's capacity to stand for trial and enter a plea, the Applicant's claims are not of such weight and quality that require, in the interest of justice, for Applicant's plea of guilty but mentally ill to be vacated. Applicant's claim for relief on this point is denied.

CONCLUSION

Based on the evidence presented at the evidentiary hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet his burden of proof and there is no basis to set aside Applicant's plea of guilty but mentally ill. Nothing persuades this Court that, under the facts and circumstances in this case and under the interest of justice, the Applicant's guilty plea should be vacated. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate



