

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

Honorable Perry H. Gravely, Circuit Court Judge  
—————

ALFRED BERNARD BLUFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000481  
—————

PETITION FOR WRIT OF CERTIORARI  
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LAURA R. BAER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

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### **ISSUE PRESENTED**

Whether the PCR court erred in denying PCR counsel's request that the record be left open to submit the personnel records of the alleged victim to show that he had been instructed by BI-LO not to make arrests for misdemeanor offenses, where the records were necessary to support Petitioner's allegation that trial counsel was ineffective in failing to procure the records and utilize them in his defense at trial?

## STATEMENT OF THE CASE

On March 15, 2011, the Greenville County Grand Jury returned indictments against Petitioner Alfred Bluford for assault and battery in the first degree, armed robbery, and possession of a weapon during the commission of a violent crime. App. 266 – 269.

On July 10, 2012, Bluford appeared for trial before the Honorable Letitia H. Verdin and a jury. App. 1. Bluford was represented by Jake Erwin, and the State was represented by assistant solicitor Mark Moyer. App. 1.

At the outset of the trial, the State dismissed the weapons charge. App. 5, ll. 17-20. The jury returned verdicts of guilty as to both assault and battery in the first degree and armed robbery. App. 133. Judge Verdin sentenced Bluford to concurrent terms of twelve years for armed robbery and ten years for assault and battery in the first degree. App. 137.

Deputy Chief appellate defender Wanda Carter represented Bluford on direct appeal. App. 140. On December 11, 2013, the Court of Appeals issued an unpublished opinion dismissing the appeal pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). App. 151. The remittitur was filed on December 30, 2013. App. 153.

On May 7, 2014, Bluford filed his application for post-conviction relief (“PCR”). App. 154. The State filed its return on October 21, 2014. App. 170. Bluford was represented by Caroline Horlbeck and the State was represented by assistant attorney general Karen Ratigan. App. 176. On October 22, 2015, the parties appeared before the Honorable Perry H. Gravely, where counsel made a request for a continuance and Bluford made a motion to relieve PCR counsel. App. 176. The continuance was granted but Judge Gravely denied the motion to relieve counsel. App. 193, ll. 3-13; App. 195, ll. 9-13.

An evidentiary hearing was held before Judge Gravely on December 15, 2015. App. 199. A motion for continuance was made at the outset of the hearing, in part based upon Bi-Lo's failure to respond to a subpoena for personnel records of the alleged victim, Steven Barr. The Court denied the continuance request and the latter motion to hold the record open to order production of the personnel records. App. 202, l. 20 – 210, l. 3; App. 244, l. 12 – 249, l. 15. Following testimony from Bluford and trial counsel, Jake Erwin, the Court ruled that Bluford had not met his burden of proving that trial counsel was ineffective. App. 249, l. 15 – 246, l. 4.

On February 2, 2016, Judge Gravely filed an Order of Dismissal denying Bluford's application for post-conviction relief. App. 256.

This appeal follows.

## ARGUMENT

**The PCR court erred in denying PCR counsel's request that the record be left open to submit the personnel records of the alleged victim to show that he had been instructed by BI-LO not to make arrests for misdemeanor offenses, where the records were necessary to support Petitioner's allegation that trial counsel was ineffective in failing to procure the records and utilize them in his defense at trial.**

### *Relevant Facts*

Bluford was suspected of shoplifting two cases of beer from a Bi-Lo grocery store located in Greenville County. The store manager, Steve Barr, was watching the store's closed circuit video surveillance and purportedly witnessed Bluford pay for two other items – a box of cereal and carton of milk – and then pick up the beer, which he had left closer to the exit, and attempt to leave. Barr confronted Bluford inside of the store, blocking Bluford from the exit doors. App. 47, l. 14 – 51, l. 10. At the PCR hearing, Bluford described that Barr knocked him down, choked him, and dragged him naked through the store. App. 218, ll. 16-18; App. 224, ll. 20-22. Trial counsel confirmed such, stating:

From my view of the video, this guy who is much larger than Mr. Bluford and much angrier than Mr. Bluford came up to him and assaulted him. He threw him down on the ground. He's talking about being drug [through] the store naked. That happened. His pants came off and he dragged the guy around the store and he was beating on him. And, you know, Mr. Bluford jumped up and defended himself and ran out of the store. I don't think there was anything criminal about anything that Mr. Bluford did in that situation.

App. 243, ll. 10-22; *see also* State's Trial Exs. 3 – 5 (on file with this Court). According to Barr, though he originally thought that Bluford had keys in his hand, he later determined that Bluford was holding a knife. It was only after his co-worker saw blood on his shirt that Barr discovered that he had a small cut on his finger, not serious enough to warrant any medical attention. Barr

did not recall when it was that he was purportedly cut. App. 53, l. 19 – 56, l. 16; App. 63, ll. 4-22; App. 67, l. 17 – 68, l. 10; App. 73, ll. 14-22.

Bluford was originally represented by Dan Farnsworth. After Farnsworth suffered a stroke, his case was reassigned to Jake Erwin approximately one month prior to trial. App. 211, ll. 8-17; App. 234, ll. 1-17. During the time that Farnsworth represented Bluford, he was extended two plea offers if he pled to common law robbery; one was for two years and the other was for time-served followed by two years of probation. App. 212, ll. 20-25; App. 238 l. 8 – 239, l. 6. Farnsworth advised Bluford to reject the offers because he was innocent. App. 213, ll. 2-13. Bluford said that the store manager lied when he said that Bluford cut him. App. 214, ll. 14-16; App. 221, l. 21 – 222, l. 18. He also noted that there was another man present during the incident, who intervened when the manager was assaulting Bluford. The man was unable to be identified and located to testify at the PCR hearing, a task which may have been easier had it been done at the time of trial. App. 218, l. 4 – 220, l. 12.

Deanna Tyler, an assistant manager at another Bi-Lo who was familiar with Barr, told Bluford:

He [Steven Barr] had a history of outrage around potential shoplifting situations. And he had been reprimanded for his violent outbursts. On one occasion it was said that he followed a man for six blocks over some Tylenol. And that Bi-Lo had reprimanded him that he was not to make arrests in terms of misdemeanors which was State versus James McAtee. And so he had been warned and it's supposed to be in his record . . . .

App. 223, l. 7 – 224, l. 3. Bluford asked Erwin to subpoena Barr's personnel records to substantiate what Deanna Tyler told him, but he was not aware whether Erwin ever did so. App. 224, ll. 4-13. Erwin confirmed that Bluford provided him with the name of Deanna Tyler but Erwin was unsuccessful in his attempts to contact her. App. 235, l. 19 – 236, l. 3. Erwin had no notes indicating that he ever subpoenaed any records related to Barr. App. 239, ll. 7-18. Erwin

contended that the entire incident was on video, such that “it didn’t seem like witnesses, in addition to that video, would have anything to add to or take away from [the case].” App. 239, l. 22 – 240, l. 4.

Following the presentation of the witnesses, PCR counsel asked that the record be held open to provide Barr’s personnel records, that had not been provided by Bi-Lo. App. 244, l. 12 – 249, l. 15. Judge Gravely responded:

Well, you know, the problem I have with that is one, I mean, you’re looking at a video here. The personnel records aren’t going to change what the video in reviewing the transcript he comes across like Mr. Erwin says. Because in the transcript it talked -- you know, in the direct examination of Mr. Barr, Mr. Moyer’s asking him to explain what’s going on. And even in his version of what’s going on makes it sound like that he just threw Mr. Bluford down. I mean, that’s what it sounds like. So I don’t know how the personnel records would have changed that. You know, I think there may be an issue of whether those could be even admissible or not.

App. 244, l. 25 – 245, l. 15. In the Order of Dismissal, the PCR judge ruled:

This Court finds the Applicant failed to meet his burden of proving trial counsel should have obtained the victim's personnel records. Trial counsel testified he did not believe these records would have aided the defense case because of the clear video evidence. This Court agrees. The Applicant has failed to demonstrate the victim's personnel records would have had an impact upon the defense case. See Jackson, 329 S.C. at 349-50, 495 S.E.2d at 770.(finding applicant failed to prove prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses when he failed to substantiate at the PCR hearing that the victims and witnesses had criminal records). While the Applicant alleged the victim was the aggressor in the incident, whether or not the victim had prior incidents in his personnel file would not have changed the clear video evidence in this case.

App. 262.

### ***Discussion***

This Court has “consistently held a PCR applicant is entitled to one full bite at the apple.” Brannon v. State, 345 S.C. 437, 440 n. 1, 548 S.E.2d 866, 867 n. 1 (2001) (citing Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999)). A motion to hold the record open is similar to

a motion for continuance in that the abuse of discretion standard is applicable and the appellant must show prejudice. See Trotter v. Trane Coil Facility, 393 S.C. 637, 645-50, 714 S.E.2d 289, 293-95 (2011). Here, the PCR court abused its discretion in denying PCR counsel's request to supplement the record with Steven Barr's personnel records. Procurement of the records was part of the basis for the prior motion for continuance in the case, which notably was accompanied by a motion to relieve counsel. At that prior hearing, counsel said that the records were subpoenaed in May 2015 and that she had just received a telephone response the day prior, October 21, 2015, indicating that the records would have to be retrieved from storage. App. 178, l. 22 – 179, l. 18; App. 183, l. 23 – 184, l. 2.

PCR counsel notified the Court at the beginning of the evidentiary hearing in December that those records had still not been provided and requested that the Court order Bi-Lo to produce them. App. 203, l. 22 – 204, l. 1; App. 210, ll. 1-3. She renewed her request again after the presentation of the witnesses. App. 244, ll. 12-24. The reasoning for denial of the request to hold the record open was twofold. The PCR judge found that the video and trial testimony reflected that Barr was aggressive, such that the personnel records would not “add” anything to the case. Further, he found that there may have been some problem with admissibility of the records. App. 244, l. 25 – 246, l. 4.

Evidence is relevant when it logically tends to prove or disprove a material issue in dispute. State v. Galloway, 305 S.C. 258, 407 S.E.2d 662, 666 (Ct.App. 1991). The fact that trial counsel, who never obtained Barr's personnel records, did not understand their relevance does not mean that the records lacked relevance. The PCR court's finding that “whether or not the victim had prior incidents in his personnel file would not have changed the clear video evidence in this case” reflects his misunderstanding of the purpose of the evidence. See App. 262. Here,

the relevance of the personnel records was not to establish that Barr attacked Bluford, as that was apparent from the video and testimony. Rather, the important information expected to be gleaned from the records was corroboration of Deanna Tyler's averment that Bi-Lo had reprimanded Barr "not to make arrests in terms of misdemeanors." App. 223, l. 7 – 224, l. 3.

At the PCR hearing, trial counsel explained that the defense's theory of the case was that it was Bluford who was assaulted in the case. Even if a knife was used, it was in self-defense from the unreasonable aggression of Barr, not in a continued effort to steal the beer. App. 240, ll. 8-18. Essentially, there were two separate events – the shoplifting and the physical assault upon Bluford by Barr. However, in his closing, the prosecutor argued:

Mr. Barr did nothing wrong. Mr. Barr was acting completely within his rights by trying to apprehend the Defendant. Under the law, a citizen, any person, if you see either a felony or a theft taking place, you have every right to arrest that person. It's called citizen's arrest. And if it's at night, as you will hear Her Honor instruct you, you can even hold that person under terms of violence.

Mr. Barr had every right to do what he did. He was attempting to keep this Defendant from leaving. He was attempting . . . to hold this man responsible for what he did on July the 29th of 2010.

App. 107, l. 19 – 108, l. 4. In response, trial counsel replayed the video of the incident to the jury and argued:

Now, let's watch for a second what's about to happen. He's trying to walk away. He's trying to get out of there. Mr. Barr is not letting him. There he goes again. Here's the finger in his face. The finger in his face, two inches from his eyes.

Now, this is about where the Government lawyer wants you to believe that there is a knife that has been pulled. I have yet to see one where, you know, from this angle you should be able to see that if that's what's happening.

Now, look at this. Mr. Bluford is naked in the store. Everything's showing. I would argue, ladies and gentlemen, that goes well above and beyond a citizen's arrest. I mean, he's just mauling this guy.

And at a certain point he snaps. And there's, you know, there's no denying that our "deadly weapon" here gets pulled at some point. And, ladies and gentlemen, I would argue that it gets pulled for one purpose and one purpose only, and that is to get Mr. Barr away from him to allow him to leave.

He's not trying to hurt anybody. He's not trying to assault anybody. He's not trying to cut, stab or kill anybody. He was trying to get Mr. Barr off of him. And he does. And as soon as he's able to, he calmly leaves the store.

App. 112, l. 9 – 113, l. 7.

The jury was subsequently charged on the law related to "citizen's arrest" without objection. App. 95, l. 22 – 96, l. 2; App. 124, ll. 11-24; see S.C. Code Ann. § 17-13-20 ("A citizen may arrest a person in the nighttime by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person: (a) has committed a felony; (b) has entered a dwelling house without express or implied permission; (c) has broken or is breaking into an outhouse with a view to plunder; (d) has in his possession stolen property; or (e) being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed."). Notably, shoplifting merchandise that is valued at two thousand dollars or less is only a misdemeanor offense. S.C. Code Ann. § 16-13-110(B)(1). Additionally, Bluford put down the beer he was accused of stealing once confronted by the store manager. App. 39, ll. 1-4; App. 69, l. 15 – 70, l. 7.


Regardless, if Bi-Lo had specifically instructed Barr not to pursue arrests for misdemeanor thefts on their property, like the one purportedly committed by Bluford, their policy may have been controlling over the citizen's arrest statute. At the very least, the personnel records could have been considered by the jury in determining the reasonableness of Barr's actions. Cf. S.C. Code Ann. § 16-13-140; Caldwell v. K-Mart Corp., 306 S.C. 27, 410 S.E.2d 21 (S.C. App. 1991) (holding that trial court properly admitted into evidence the loss prevention manual of a merchant sued for false imprisonment in the detention of a customer

suspected of shoplifting, despite the fact that § 16-13-140 rather than the manual governed the reasonableness of the merchant's conduct, where the manual contained guidelines for employees in making shoplifting arrests and one of the material issues in dispute was the reasonableness of the merchant's actions in investigating the suspected shoplifting). Furthermore, even if not admissible themselves initially, the personnel records could have provided a basis upon which to question Barr about any instructions from his employer regarding the handling of misdemeanor shoplifting offenses. Had Barr denied the reprimand, the records could have been used for impeachment.

Bluford was prejudiced by the denial of the motion to hold the record open because without Barr's personnel records, Bluford was unable to establish that trial counsel was ineffective in failing to procure the records for trial. See Kibler v. State, 267 S.C. 250, 256, 227 S.E.2d 199, 202 (1976) (noting the PCR court will not speculate concerning what might have occurred if counsel had conducted further investigation). It was only with those records in hand that PCR counsel could fully articulate their relevance and admissibility without speculation. While the PCR court was understandably interested in bringing to conclusion a PCR case that had been continued several times, it is notable that the Order of Dismissal was not actually signed until almost a month and a half after the evidentiary hearing. App. 202, ll. 2-16; App. 199; App. 264. Under the facts of this case, the PCR judge abused his discretion in denying PCR counsel's request to supplement the record with Barr's personnel records. This Court should accordingly reverse the judgment of the PCR court and remand this case for a new evidentiary hearing.

**CONCLUSION**

Based on the foregoing, Petitioner Alfred Bluford respectfully requests that this Court grant certiorari and order further briefing on the issue raised herein.

  
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Laura R. Baer  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30<sup>th</sup> day of August, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

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ALFRED BERNARD BLUFORD,

PETITIONER

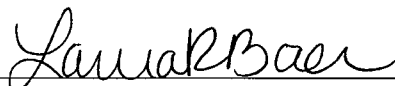
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon DeShawn H. Mitchell, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Alfred Bernard Bluford, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 30th day of August, 2017.

  
\_\_\_\_\_  
Laura R. Baer  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 30th day of August, 2017.

 (L.S)  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: May 12, 2027

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AUG 30 2017

S.C. SUPREME COURT