

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

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S.C. SUPREME COURT

ANTOINE L. SHIELDS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000711

APPENDIX

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1 STATE OF SOUTH CAROLINA)
)
 2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS
) No. 2014 GS 42 4298; 4299;
 3) 4300; 2015 GS 42 628; 629
) (As to Def. Shields)
 4 STATE OF SOUTH CAROLINA) No. 2014 GS 42 4290; 4291;
) 4292; 4294; 2014 GS 42 418
) (As to Df. Rogers)
 5)
)
 6 versus) TRANSCRIPT OF RECORD
)
 7)
)
 8 ANTOINE SHIELDS and)
) TOBIAS ROGERS)
 9 Defendants)

1 (The within matter came before the Court for hear-
2 ing on February 11, 2015)

3 SOLICITOR: May it please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 SOLICITOR: This is Antoine Shields, Your Honor.

6 He is pleading guilty to these charges, Your Honor:

7 2014 GS 42 4298, Your Honor, a two count indictment,
8 Your Honor. The first count is armed robbery and the
9 second count is a possession of a weapon during a vio-
10 lent crime.

11 Your Honor, 2014 GS 42 4299. In this case he's
12 pleading guilty to armed robbery on this, count one, Your
13 Honor; count two is possession of a weapon, Your Honor,
14 during a violent crime.

15 Your Honor, 2014 GS 42 4300, is also, count one,
16 for armed robbery, and count two, possession of a wea-
17 pon during a violent crime, Your Honor.

18 Your Honor, on this one he's pleading guilty on
19 that. The first two, he's pleading under Alford. So
20 2014 GS 42 4298 and 2014 GS 42 4299 he's pleading un-
21 der Alford. Then on 2014 GS 42 4300, he's pleading
22 guilty; guilty to that charge, Your Honor.

23 Your Honor, the first two have been true billed by
24 the Grand Jury. Your Honor, the next two he is waiving
25 presentment to the Grand Jury.

1 Those are 2015 GS 42 629, Your Honor, financial
2 transaction card fraud. The next case is 2015 GS 42 628
3 which is assault and battery, first degree, Your Honor.

4 Mr. Morin represents him on all these cases, Your
5 Honor. The ones he is pleading straight up to, Your
6 Honor, those are straight up pleas. The two under Alford
7 there is a recommendation of concurrent sentences.

8 (Colloquy off the record between counsel and the
9 Court)

10 SOLICITOR: The armed robbery is straight up, 14
11 GS 42 4300, and also is possession of a weapon, and an
12 assault and battery in the first degree and financial
13 transaction card fraud. That is the leading case and it's
14 straight up.

15 The two other armed robberies and possession of a
16 weapon during a violent crime, Your Honor, 4299 and 4298,
17 they are to run concurrent.

18 (Brief pause in the proceeding)

19 MR. MORIN: The 4300 is straight up and everything
20 else is concurrent. That was my understanding.

21 THE COURT: Okay.

22 SOLICITOR: Then the next one is Tobias Rogers,
23 Your Honor. There are nine charges on him.

24 The first one is 14 GS 42 4290, Your Honor, armed
25 robbery in count one; possession of a weapon during a

1 violent crime is count two. He is pleading under Alford
2 to that charge, Your Honor.

3 Then 2014 GS 42 418, Your Honor, financial trans-
4 action card fraud, Your Honor. That is a straight up
5 plea, Your Honor.

6 2014 GS 42 4091, Your Honor, count one is armed
7 robbery, count two is possession of a weapon in a vio-
8 lent crime, Your Honor.

9 He's pleading under Alford to that, Your Honor.
10 2014 GS 42 4292, Your Honor, financial transaction card
11 fraud, and that has been true billed; and 42 GS 14 4293,
12 Your Honor, is assault an battery in the first degree,
13 Your Honor. That one has been true billed.

14 And 42 GS 42 4294, Your Honor, is a straight up
15 plea on armed robbery, count one; possession of a weapon
16 is count two during a violent crime.

17 Those charges are to run concurrent with the armed
18 robbery, Your Honor.

19 THE COURT: What is the number of that one?

20 SOLICITOR: 2014 GS 42 4294, Your Honor.

21 I will at the appropriate time go into these crimes,
22 and I do have one of the victims present, as well as my
23 investigating officer, Officer Johnson.

24 THE COURT: All right.

25 (Colloquy between counsel and the Court off the

1 record)

2 THE COURT: All right.

3 MR. MORIN: Your Honor, if I could have one second?

4 THE COURT: All right. I've changed it.

5 MR. MORIN: I just want to make sure he understands.

6 (Brief pause)

7 MR. MORIN: That is actually a separate case, Your
8 Honor.

9 THE COURT: I will talk to you individually. All
10 right? Mr. Shields, you are here today to plead on In-
11 dictment 2014 GS 42 4300 to armed robbery and having a
12 weapon during a violent crime, and that is a most serious
13 offense and a violent offense. It carries up to thirty
14 years, the first offense, and the possession of a wea-
15 pon during commission of a violent crime carries up to
16 five years.

17 All right, this indictment alleges that you did on
18 or about July 20, 2014, while armed with a deadly wea-
19 pon rob Lindsey Heaton while armed or with a represent-
20 ation that you had an object which a person present dur-
21 ing the robbery could reasonably believe was a deadly
22 weapon, and that you did take property from the person
23 or in the presence of the person, including but not lim-
24 ited to a bookbag containing a wallet and various items,
25 through force or intimidation, all of that in violation

1 of the Code of Laws of South Carolina.

2 Is that your understanding, that you are pleading
3 guilty to that charge?

4 (Brief pause in proceeding)

5 THE COURT: You are also entering what is called
6 an Alford plea to the next two charges that are armed
7 robbery and possession of a weapon charges. Okay?

8 MR. SHIELDS: Yes, maam.

9 THE COURT: The first armed robbery that you are
10 entering an Alford plea to alleges that you did on or
11 about July 16, while armed with a deadly weapon or
12 through a representation of a deadly weapon, take prop-
13 erty from the person or presence of Jennifer Bramlet,
14 including but not limited to (inaudible).

15 It is my understanding you want to enter what is
16 called an Alford plea. An Alford plea means that you
17 are saying that the State likely has evidence to convict
18 you at trial but you are not necessarily admitting your
19 guilt.

20 Is that your understanding?

21 MR. SHIELDS: Yes.

22 THE COURT: All right, and you understand that I
23 will sentence you just as if you had pled guilty, and it
24 will appear on your rap sheet just as if you had pled
25 guilty? You understand that?

1 MR. SHIELDS: Yes.

2 THE COURT: And that carries -- again, armed rob-
3 bery carries up to thirty years and is a violent and a
4 most serious offense. That the weapons charge carries
5 up to five.

6 On the second armed robbery on which you are enter-
7 ing an Alford plea, that indictment is 2014 GS 42 4298,
8 and it alleges that you did while armed with a deadly
9 weapon or with the representation of a deadly weapon
10 take property and/or currency from the person or pres-
11 ence of John Fernandez, including but not limited to a
12 black cell phone by means of force or intimidation, with
13 the intent to deprive the victim of such property, and
14 the weapons charge that is indicted with it carries up
15 to five years.

16 I understand you are entering an Alford plea to that
17 one as well, which means that you are saying that the
18 State could likely convict you while you are not neces-
19 sarily admitting your guilt. Is that correct?

20 MR. SHIELDS: Yes, maam.

21 THE COURT: All right, and then assault and battery,
22 first degree, carries up to ten years, and financial
23 transaction card fraud carries up to one. Is that your
24 understanding?

25 MR. SHIELDS: Yes, maam.

1 THE COURT: The assault and battery and the finan-
2 cial transaction card fraud have not been indicted by
3 the Spartanburg County Grand Jury. Do you want to give
4 up that right to have these charges indicted and enter
5 a guilty plea today?

6 MR. SHIELDS: Yes, maam.

7 THE COURT: All right, Mr. Rogers, I will go
8 through some matters with you. You are here today to
9 enter a plea to an armed robbery and possession of a
10 weapon during the commission of a violent crime.

11 The armed robbery is 2014 GS 42 4294, and it car-
12 ries ten years up to thirty years, is a violent offense
13 and a most serious offense. The weapons charge carries
14 up to five years.

15 That indictment alleges that you did in Spartanburg
16 County on or about July 20, 2014, while armed with a
17 deadly weapon or a representation of a deadly weapon,
18 feloniously take from the person or presence property
19 and/or goods of Patrick Collins, including but not lim-
20 ited to a bookbag containing a wallet and various items,
21 including a debit card or other valuable items, by means
22 of force, violence or intimidation, with the intent to
23 deprive the owner of that property.

24 Then it also has the weapons charge as well on this
25 indictment.

1 You are here today to enter a guilty plea to that in-
2 dictment, is that right?

3 MR. ROGERS: Yes, maam.

4 THE COURT: The two indictments you are here to
5 enter an Alford plea on as you heard me describe to your
6 CoDefendant just now. An Alford plea means that you're
7 saying that the State likely has evidence to convict you
8 at trial but you are not necessarily admitting your
9 guilt. Is that your understanding?

10 MR. ROGERS: Yes, maam.

11 THE COURT: And you also understand that I will
12 sentence you as to those just as if you had entered a
13 plea of guilty? You understand all of that?

14 MR. ROGERS: Yes, maam.

15 THE COURT: The count of armed robbery you are en-
16 tering an Alford plea on carries ten to thirty years,
17 and it is a violent and most serious offense, and the
18 weapons charge carries five years as well.

19 That indictment alleges that you did on or about
20 July 15, 2014, while armed with a deadly weapon or the
21 representation of a deadly weapon, feloniously take prop-
22 erty from the person or presence of Jennifer Bramlet,
23 including but not limited to (inaudible) through force,
24 violence or intimidation, with intent to deprive the
25 owner of that property.

1 Also in that indictment is the possession of the
2 weapon, and you wish to enter an Alford plea as to that
3 charge. Is that right?

4 MR. ROGERS: Yes, maam.

5 THE COURT: Just for the record that is 2014 GS 42
6 4292, also an armed robbery, and it carries ten to thirty
7 years. It is a violent offense, most serious offense,
8 and it is my understanding you want to enter an Alford
9 plea as to that. The weapons charge carries five
10 years.

11 This indictment alleges that you did on July 16,
12 2014, in Spartanburg County while armed with a deadly
13 weapon or the representation of a deadly weapon, felon-
14 iously take property and/or currency from the person
15 or presence of John Fernandez, including but not lim-
16 ited to a black Samsung cell phone, by means of force,
17 violence or intimidation, with intent to deprive the
18 owner of such property, and also with possession of a weapon
19 during the commission of a violent crime.

20 You wish to enter an Alford plea as to that, is
21 that right?

22 MR. ROGERS: Yes, maam.

23 THE COURT: Next is the financial transaction card
24 fraud, and that carries up to one year, and you are
25 pleading guilty to that, is that right?

1 MR. ROGERS: Yes, maam.

2 THE COURT: And assault and battery, first degree,
3 carries up to ten years, and you are pleading guilty on
4 that as well?

5 MR. ROGERS: Yes, maam.

6 THE COURT: Have you discussed these charges with
7 your lawyer?

8 MR. ROGERS: Yes, maam. MR. SHIELDS: Yes, maam.

9 THE COURT: Mr. Rogers, are you happy with what your
10 lawyer has done for you?

11 MR. ROGERS: Yes, maam.

12 THE COURT: Mr. Shields?

13 MR. SHIELDS: Yes, maam.

14 THE COURT: Mr. Rogers, do you have any complaints
15 to make against law enforcement, the Solicitor's Office
16 or your attorney as a result of these charges whatso-
17 ever?

18 MR. ROGERS: No.

19 THE COURT: Mr. Shields?

20 MR. SHIELDS: No, maam.

21 THE COURT: Mr. Rogers, are you under the influence
22 of drugs or alcohol here today?

23 MR. ROGERS: No, maam.

24 THE COURT: Mr. Shields?

25 MR. SHIELDS: No, maam.

1 THE COURT: Mr. Rogers, has anyone forced you to
2 plead guilty?

3 MR. ROGERS: No, maam.

4 THE COURT: Mr. Shields?

5 MR. SHIELDS: No, maam.

6 THE COURT: Has anybody promised you anything to
7 get you to plead guilty, Mr. Shields?

8 MR. SHIELDS: No, maam.

9 THE COURT: Mr. Rogers?

10 MR. ROGERS: No, maam.

11 THE COURT: Mr. Shields and Mr. Rogers, when you
12 plead guilty, you give up certain constitutional rights,
13 including your right to remain silent about these charges.
14 Do you know that?

15 MR. SHIELDS: Yes, maam.

16 THE COURT: Mr. Rogers?

17 MR. ROGERS: Yes, maam.

18 THE COURT: You also give up your right to a jury
19 trial, and at that trial your attorney could call wit-
20 nesses in your behalf and to confront and cross-examine
21 witnesses against you; you would not have to testify
22 against yourself, and the State would have to prove your
23 guilt beyond a reasonable doubt.

24 But when you plead guilty, you give up your rights
25 to a jury trial.

1 Do you understand that, Mr. Shields?
2 MR. SHIELDS: Yes, maam.
3 THE COURT: Mr. Rogers?
4 MR. ROGERS: Yes, maam.
5 THE COURT: Mr. Shields, I apologize, but I did not
6 ask you -- Mr. Shields, this sheet says you are twenty-
7 three years old, is that right?
8 MR. SHIELDS: Yes, maam.
9 THE COURT: How far did you go in school?
10 MR. SHIELDS: Twelfth grade.
11 THE COURT: Did you graduate?
12 MR. SHIELDS: Yes, maam.
13 THE COURT: What kind of work have you done since
14 you graduated?
15 MR. SHIELDS: (Inaudible)
16 THE COURT: All right, have you ever been treated
17 for mental illness?
18 MR. SHIELDS: No, maam.
19 THE COURT: Have you ever been treated for substance
20 abuse problems?
21 MR. SHIELDS: No, maam.
22 THE COURT: Do you feel like you understand what
23 is going on here today?
24 MR. SHIELDS: Yes, maam.
25 THE COURT: Mr. Rogers, I'll ask you the same

1 questions. This says you are twenty-four years old,
2 is that right?

3 MR. ROGERS: Yes, maam.

4 THE CUORT: How far did you go in school?

5 MR. ROGERS: Ninth grade and I have my GED.

6 THE COURT: Okay. Why did you drop out in the tenth
7 grade?

8 MR. ROGERS: Because I had trouble in school.

9 THE COURT: But you got your GED?

10 MR. ROGERS: Yes, maam.

11 THE COURT: What kind of work did you do since then?

12 MR. ROGERS: Warehouse (portion inaudible)

13 THE COURT: Have you ever been treated for a men-
14 tal illness?

15 MR. ROGERS: No, maam.

16 THE COURT: Have you ever been treated for substance
17 abuse problems?

18 MR. ROGERS: No, maam.

19 THE COURT: Do you feel like you understand what's
20 going on here today?

21 MR. ROGERS: Yes, maam.

22 THE COURT: Mr. Cheek, Mr. Rogers says he went
23 through the eighth grade, and I understand he did get
24 his GED.

25 Do you have any concerns about his ability to

1 understand what's going on here today?

2 MR. CHEEK: None whatsoever, Your Honor. I be-
3 lieve he has complete understanding of what he's doing.

4 THE COURT: I just wanted to be absolutely sure.
5 Let me ask each of the attorneys if they've had enough
6 time to discuss the charges with your client.

7 MR. MORIN: Yes, Your Honor.

8 MR. CHEEK: Yes, Your Honor.

9 THE COURT: And they have each pled under Alford
10 and pled guilty, and you believe they understand what
11 they are doing?

12 (Both attorneys answering, Yes, Your Honor)

13 THE COURT: Each of you have ten days from today's
14 date to appeal this plea, but you must within ten days
15 advise of that if you decide to do that.

16 Next, I'm going to listen to the facts as the Sol-
17 icitor gives them to me.

18 SOLICITOR: May it please the Court, Your Honor?

19 Let me start with the last one and work backward
20 to the first.

21 That occurred on July 20, 2014, at approximately
22 3:25 A.M., Your Honor. In this case the City Police
23 Department was notified and Officer Thompson had just
24 come back from vacation. He was actually off duty and
25 was getting out of his car in a parking space in the

1 City of Spartanburg, Your Honor. As he's getting out a
2 man approached him, and he was then basically robbed by
3 a man who had a pistol in his hand.

4 He got several items from him, Your Honor, after
5 he put the gun to his head. The man took his ID card,
6 his debit card, social security card, everything he had
7 with him, his wallet. He took all of his money and
8 then hit him with the gun, knocking him down.

9 After he left, Officer Thompson got in his car and
10 called a BOLO out, Your Honor. After the BOLO was
11 called out, the Sheriff's Department also responded,
12 Your Honor, and the BOLO described the robber and what
13 he had on.

14 Based on that information, Your Honor, what was
15 interesting, Your Honor, was that the Sheriff's Depart-
16 ment had been actually out on other robberies that had
17 occurred in the area near an apartment complex, Your
18 Honor. They were very concerned about that.

19 At some point a vehicle that matched the descrip-
20 tion given on the BOLO came into the area. The vehicle
21 was found off of Brandeis Street, Your Honor, and went on
22 Jasmine Street, Spruce Street, and the officers observed
23 the vehicle parking, Your Honor.

24 Actually, Lieutenant Travis Barnett was the first
25 one to get to the scene, Your Honor, and there he basically

1 observed the vehicle and a black male with dreds who was
2 wearing a white tee shirt exit the driver's side door.
3 He walked to him and he identified the individual as
4 Antoine Shields, the man to my immediate left, Your
5 Honor.

6 At that time a black male exited the front passenger
7 seat, Your Honor, and that was Mr. Rogers, who is to my
8 far left, Your Honor. Items of property from the rob-
9 bery were found in Mr. Shields' right front pocket, Your
10 Honor, Your Honor. There was on Mr. Rogers an amount of
11 money and an ATM card.

12 The ATM card displayed the name of Patrick Thompson
13 on the front. Both of the Defendants were taken into
14 custody and they both gave statements, the two men in-
15 volved in these offenses.

16 Your Honor, this was an investigation done by the
17 Sheriff's Department as well as the City Police Depart-
18 ment, together with the investigations on the other armed
19 robberies.

20 Again, they both gave statements concerning their
21 involvement, Your Honor. Your Honor, what I've done is
22 to put together exhibits on all of these.

23 State's Exhibit 1, Your Honor, is actually the in-
24 vestigation by the Sheriff's Department and the City on
25 the case, as well as another case I will talk about in a
few minutes.

1 State's Exhibit Number 2 is actually pictures of
2 items that were taken by the Sheriff's Department, and
3 Exhibit 3, Your Honor, is actually the videotape of the
4 statements taken from the Defendants, and also the
5 Miranda which was done and videotaped at that time, Your
6 Honor.

7 Well, I'll stop there and talk about the investiga-
8 tions of the other armed robbery cases that have been
9 developed from this case.

10 Another armed robbery, Your Honor, occurred on
11 July 16, 2014, at (inaudible) Drive, Your Honor,
12 which is an apartment complex in Spartanburg County.

13 Basically, the Sheriff's Department responded to a
14 robbery there, Your Honor, at approximately one fifty
15 P.M.

16 When they got there they learned that two black
17 men wearing black shirts and blue jeans with white ban-
18 dannas, came around the garage and toward the victims
19 in this case with a gun.

20 They were told to get down, which they did. She
21 said they told them to give them their money and they
22 took a cell phone belonging to her. They basically
23 took that, Your Honor, and ran behind the project and
24 left.

25 After the Defendants were arrested, Your Honor,

1 they found a cell phone in their possession, and they
2 also found that Mr. Rogers had talked to his girlfriend
3 on it in this case, and her name is (inaudible), Your
4 Honor.

5 She said that he called her from a number that she
6 did not know but she had the number on her phone which
7 the number matched with cell phone that had been taken
8 in this case, Your Honor.

9 They were arrested on this armed robbery too, Your
10 Honor, and they have entered pleas under Alford in that
11 case, Your Honor.

12 Your Honor, what I'd like to do is enter this Ex-
13 hibit 10 relating to this case.

14 Your Honor, on July 22nd, 2014, officers were dis-
15 patched and responded to 1001 Pine Street, the Pine-
16 wood Shopping Center here in the City of Spartanburg,
17 and there was actually the ATM card from Officer Thomas
18 that was used and they got the receipt and got pictures
19 that show them taking the money.

20 Your Honor, at this time I would like to hand up
21 State's Exhibit 1 on Mr. Shields which has all of the
22 evidence and the facts that he was involved in.

23 Exhibit 2 is actually the pictures of what was
24 taken and also the search warrant that was done. Exhibit
25 3 is an interview done by the investigations, as well as

1 Exhibit 4 would be the rap sheet of Mr. Shields which
2 I will be glad to go over at the appropriate time, Your
3 Honor. This is -- and I would like to make that a part
4 of the facts and the evidence on the cases I had talked
5 about.

6 THE COURT: Yes, sir.

7 THE COURT: Any objection to doing that?

8 MR. MORIN: Without objection, Your Honor.

9 MR. CHEEK: No, Your Honor.

10 SOLICITOR: This is as to Mr. Rogers, Your Honor.

11 State's Exhibit 1 is the actual incident report involv-
12 ing the two armed robberies we've talked about so far.

13 Just like with Mr. Shields, Exhibit 2 shows evidence
14 of what was taken.

15 State's Exhibit 3 is actually the interviews, and
16 Exhibit 4, Your Honor, is actually the incident report
17 on the financial transaction card fraud with the card
18 taken in one of the robberies, Your Honor.

19 If I could just briefly go into that, Your Honor.
20 This occurred on December 2, 2014, Your Honor, at the
21 (inaudible) Store here in Spartanburg County, Your Honor.

22 Basically the victim in one of these cases -- his
23 wallet was taken and they used the bank card which was
24 later found in the search, Your Honor, and there are
25 also pictures of the card being used.

1 Your Honor, I believe it is appropriate at this time
2 or I will at the appropriate time read the records. May
3 I approach the bench, Your Honor?

4 THE COURT: All right.

5 SOLICITOR: Exhibit 5 is a rap sheet of Mr. Shields.
6 Exhibit 6 is the prior convictions. This is actually a
7 juvenile record, State's Exhibit 7.

8 THE COURT: Why don't you go ahead and give me his
9 prior record.

10 SOLICITOR: Yes, Your Honor. I'll be glad to.

11 Mr. Shields has (inaudible) theft violation in
12 2010, and a motor vehicle violation in 2010.

13 That's his record and I will be glad to pass it up.
14 That is as to Mr. Shields.

15 THE COURT: All right.

16 SOLICITOR: Then, Your Honor, as to Mr. Rogers, his
17 record -- do you want his juvenile record?

18 THE COURT: Yes.

19 SOLICITOR: Your Honor, his record is that on March
20 27, 2005, a carrying a weapon on school property and
21 disturbing school; burglary in the third degree or the
22 second, non-violent in that case, Your Honor.

23 Then January 3, 2005, a probation warrant, Your
24 Honor.

25 A grand larceny Five Thousand or more and receiving

1 stolen goods between One Thousand and Five Thousand,
2 Your Honor.

3 Then injury to personal property, and burglary sec-
4 ond, non-violent, Your Honor. I don't have that date,
5 Your Honor.

6 His adult record is a conviction for burglary, sec-
7 ond, violent, Your Honor, in 2007, eight years; a burg-
8 lary second, Your Honor. Probation was revoked, to
9 serve ten years, Your honor.

10 Then a grand larceny. Ten years for that and five
11 -- ten years suspended to five years. I believe that
12 was in 2008.

13 Then, Your Honor, I believe that there were one,
14 two, three, four, five burglaries and five larcenies
15 during that time.

16 THE COURT: All right.

17 SOLICITOR: Your Honor, we would have the actual
18 record which I will pass up.

19 THE COURT: Thank you.

20 All right, Mr. Shields. First, you've heard
21 the Solicitor state your prior record. Is that in fact
22 your prior record?

23 MR. SHIELDS: Yes, maam.

24 THE COURT: And as to 4298 and 4299, the armed rob-
25 beries and the possession of a weapon during the commission

1 of a violent crime, how do you plead?

2 Are you entering in fact an Alford plea or not to
3 those charges?

4 MR. SHIELDS: Yes, maam.

5 THE COURT: All right, and on the assault and bat-
6 tery, first degree, and the financial transacton card
7 fraud, how do you wish to plead to those, Mr. Shields,
8 guilty or not guilty?

9 MR. SHIELDS: Guilty.

10 THE COURT: And you have heard the recitation given
11 by the Solicitor concerning those offenses?

12 MR. SHIELDS: Yes, maam.

13 THE COURT: And is that what happened, yes or no?

14 (Defendant speaking to his attorney off the re-
15 cord)

16 MR. SHIELDS: Yes, maam.

17 THE COURT: All right. Then I will accept these
18 pleas as freely and voluntarily given by you.

19 You have had the advice of very competent counsel,
20 and you say you are satisfied with the actions that he
21 has taken.

22 All right, Mr. Rogers. You have heard the Soli-
23 citor state your prior record. Is that in fact your
24 prior record?

25 MR. ROGERS: Yes, maam.

1 THE COURT: All right, and you have heard the Soli-
2 citor go over the facts of these cases.

3 MR. ROGERS: Yes, maam.

4 THE COURT: And do you agree that that is what
5 the State could prove if you went to trial in these
6 cases?

7 MR. ROGERS: Yes, maam.

8 THE COURT: All right, and as to 2014 GS 42 4290
9 and 4291, you wish to plead under Alford, and as to
10 possession of a weapon during the commission of a vio-
11 lent crime?

12 MR. ROGERS: Yes, maam.

13 THE COURT: And do you still wish to plead under
14 Alford as to those?

15 MR. ROGERS: Yes, maam.

16 THE COURT: And as to the financial transaction
17 card fraud, 2014 GS 42 418, do you plead guilty or
18 not guilty?

19 MR. ROGERS: Guilty.

20 THE COURT: And as to 2014 GS 42 4292, Mr. Rogers,
21 how do you wish to plead to that? Guilty or not
22 guilty?

23 MR. ROGERS: Guilty.

24 THE COURT: And as to assault and battery in the
25 first degree, 14 4293, how do you wish to plead?

1 MR. ROGERS: Guilty.

2 THE COURT: I will accept your pleas as having been
3 freely and voluntarily made with the advice of very
4 competent counsel, with whom you say you are satisfied.
5 Thank you.

6 Solicitor, anything further?

7 SOLICITOR: Your Honor, this is Mr. Barnett and he
8 wishes to address the Court.

9 THE COURT: Be happy to hear from you.

10 MR. BARNETT: I just want to say I was trained for
11 that kind of situation but it was still scary, someone
12 coming at you like that. It's the worst thing I can re-
13 member happening.

14 I parked my car and got out. I can still feel the
15 way the gun felt on the back of my head.

16 After they left, I got on my car radio and gave
17 a description of the men. (Inaudible portion)

18 I would ask for the maximum penalty for both men.
19 This was not the first time they had done this.

20 THE COURT: Thank you, and I can appreciate how you
21 feel.

22 Mr. Morin, what do you want to tell me?

23 MR. MORIN: Thank you. May it please the Court,
24 Your Honor.

25 I just want to mention a couple of things, Your

1 Honor, that I would like to point out. The officer
2 stated that he was hit and I think he was referring to
3 Mr. Rogers.

4 I talked to him during the plea, Your Honor, and
5 basically an issue he wanted the Court to know is that
6 the vehicle they were driving I believe belonged to
7 Mr. Rogers' girlfriend.

8 We believe if there had been a trial that the evi-
9 dence would have shown that the driver of the car --
10 Mr. Shields was the driver of the vehicle in the photo
11 if that hasn't been shown, and that the same car was used
12 during the time. Things were maybe not clearly brought
13 out.

14 Clearly Mr. Rogers was with him during the whole
15 time, and we have had long discussions about the hand of
16 one, hand of all; whether or not it could be a defense.
17 With his permission I have spoken with his parents and
18 provided them with discovery. I have shown him the
19 video and watched it with him and his parents. We have
20 talked about all of this and it has been difficult be-
21 cause we believe Mr. Shields was the driver and was with
22 him.

23 We have gone over time lines and this is where
24 this happened and where that happened.

25 He is twenty-three years old, Your Honor, and he

1 has three children. He graduated from Spartanburg High
2 School. He has worked at several jobs and was working
3 on and off at Stirling Packaging in Spartanburg.

4 Your Honor, there are several people in the Court-
5 room that are with him to show support.

6 His father would like to speak with you at the ap-
7 priate time, but I would ask the people who are here
8 in support of Mr. Shields to please stand at this time.

9 THE COURT: Thank you.

10 MR. MORIN: We have family members present as well,
11 Your Honor.

12 I would ask that Mr. Shields come forward if you
13 would hear from him at this time. This is his father,
14 and he would like to speak in behalf of his son.

15 THE COURT: Yes, sir.

16 MR. SHIELDS: Thank you. My name is Rodney Shields,
17 and I am here on behalf of my son. We do love him.

18 I am a United States veteran, and I have been
19 working all of my life to take care of my family.

20 My wife and I have worked to see that he went to
21 school and that he worked. He is from a strong house-
22 hold that he has grown up in. His mother has seen to
23 it that he was there.

24 We have other kids, and we love them; we love
25 him as well. We support him and clearly we stand

1 behind him one hundred percent.

2 We know he's done wrong but we know he is young and
3 even being young he knows that we love and support him
4 no matter what.

5 We would just like for him to come home to us as
6 soon as possible.

7 THE COURT: Thank you. Anything else?

8 MR. MORIN: Your Honor, the only other thing I would
9 add is that, as you heard here, I believe this happened
10 at three thirty in the morning.

11 Obviously voluntary intoxication is not a defense,
12 but he obviously was using marijuana at the time. It
13 is unfortunate, and he is facing a lot of time. He
14 knows that.

15 We have spent a lot of time in discussions over
16 the last few days. During the weekend I was out there
17 for a while.

18 Your Honor, we've gone over every angle and we've
19 talked about all kinds of things. We'd ask that you be
20 as lenient as you can, considering his age and his lack
21 of a substantial record.

22 THE COURT: I will, of course, take those things
23 under consideration in my sentencing.

24 Mr. Shields, anything you would like to say?

25 MR. SHIELDS: Yes, Your Honor. I just want to

1 apologize to the victims and to my family as well. I
2 understand what I've done. Thank you. I want to apolo-
3 gize to society for my behavior.

4 THE COURT: Well, I would say for the record that
5 Lieutenant James of the Sheriff's Office has mentioned
6 that Mr. Shields has behaved while he has been in there,
7 and that he has volunteered to do work in areas at the
8 jail while he was in there.

9 All right. Yes, sir.

10 MR. CHEEK: May it please the Court, Your Honor?

11 Mr. Tobias Rogers is currently on probation, and
12 we would ask the Court to take up the probation matter
13 at this time.

14 THE COURT: All right.

15 PROBATION AGENT: Mr. Rogers has been on probation
16 since March of 2013. At that time he received a sen-
17 of ten years suspended on five with probation.

18 Your Honor, he has had several citations for proba-
19 tion violation, and, of course, these pleas are a viola-
20 tion of his probation as well.

21 (Portion not audible)

22 He has failed to comply as well with substance abuse
23 counseling. The Department is seeking revocation.

24 THE COURT: Thank you.

25 MR. CHEEK: Since this is a violation, Your Honor,

1 we wanted to have it all taken care of at one time,
2 and we appreciate that.

3 The Prosecutor has gone into the facts of these
4 matters, and we ask the Court to consider that he recog-
5 nizes that he has made egregious errors in how he has
6 handled himself in his community.

7 (Portion not audible)]

8 He wants to get a second chance at life, and I be-
9 lieve he will change the way he has lived substantially,
10 Your Honor. He lost his job and he gave up hope, and
11 he has been without hope which caused him to do some of
12 the things he's done. He understands that he cannot
13 continue to do those things.

14 He hopes that he will have a chance at some time
15 in his life to do differently. He has one child and he
16 has supported the child, a little boy.

17 He understands that he has to prove that he can do
18 the things he should do, and we ask that the Court show
19 him what mercy it can.

20 THE COURT: Mr. Rogers, anything you would like
21 to say?

22 MR. ROGERS: I am sorry for the things I have done,
23 and I ask forgiveness from the victims. I ask that you
24 give me a sentence that will allow me to come back and
25 prove that I have changed.

1 I have done wrong to other people and I will have
2 to pay for that. (Portion not audible)

3 THE COURT: Anything else from anyone?

4 MR. CHEEK: No, maam.

5 SOLICITOR: Nothing further.

6 (Pause in proceeding)

7 THE COURT: All right, I have taken into consider-
8 ation and into account, Mr. Shields, your lack of prior
9 record.

10 Mr. Rogers, I have taken into account that your re-
11 cord is what it is at your young age.

12 I have also taken into account the fact that have
13 taken responsibility for the things you have done and
14 have entered your pleas to those.

15 I also have to take into account that with a wea-
16 pon pulled on these people you took money and other
17 things from them, and that had to be absolutely terri-
18 fying for them.

19 Mr. Shields, on each of the armed robberies the
20 sentence of the Court is twenty-one years, with credit
21 for the time that you've served, and five years on each
22 of the weapons charges, concurrent.

23 Ten years on the assault and battery with credit
24 for time served of two hundred ninety days, and time
25 served on the financial transaction card fraud.

1 I wish you the best of luck.

2 Mr. Rogers, on yours, I will run yours concurrent
3 with the probation violation, twenty-five years on the
4 armed robberies and five on the weapons charges, to run
5 concurrent.

6 On the assault and battery, ten years concurrent
7 with the probation violation, credit for time served, and
8 time served on the financial transaction card fraud.

9 Good luck to you.

10 -----END OF TRANSCRIPTION REQUESTED-----

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1 CERTIFICATE

2 I, HARRIET P. BENNETT, Court Reporter for South
3 Carolina Court Administration, hereby certify that the
4 foregoing Transcript was prepared to the best of my
5 ability from the records of Pamela Faucette, having
6 been heard in the Court of General Sessions for Spartan-
7 burg County on February 11, 2015.

8 FURTHER, I certify that I am neither of kin nor
9 counsel to any party to this matter, nor do I have any
10 interest in the same.

11
12 August 31, 2015

Harriet P. Bennett

FORM 5

STATE OF SOUTH CAROLINA)

County of Spartanburg)

IN THE COURT OF COMMON PLEAS

Antoine Shields 363038)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

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 Lee Correctional Institution
99D Wisacky Hwy Bishopville SC 29010
2. Name and location of Court which imposed sentence Spartanburg Cnty
Courthouse 180 Magnolia St. Spartanburg SC 29301
3. Name(s) of co-defendant(s) (if any) Tobias Lee Antoine Roberts
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2014GS 4204298-30 Armed Robbery

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CLERK OF COURT
SPARTANBURG COUNTY
JUN 25 AM 9:41
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(b) 2014GS 470429SA-30A Weapon Poss

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Feb. 11 2015 21 yrs Armed Robbery

(b) Feb 11 2015 5 yrs Weapon Poss

(c) Feb 11 2015 10 yrs Assault batt.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(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) Counsel failed to advise about appealing

CLERK OF COURT
SENIOR JUDGE COURT
2015 JUN 25 AM 9:45
M. MOPE BLANCHET

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance Counsel
- (b) Involuntary Guilty Plea
- (c) violation of Fourth Amendment rights
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel was ineffective for not investigating case
- (b) Guilty plea was not voluntary obtained under duress
- (c) Counsel failed to protect right to a Gerstein hearing
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
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. _____

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SPRINGFIELD COUNTY
JUN 25 AM 9:47
M. HOPE BLACKLEY

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. _____

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?

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. _____

CLERK OF COURT
SPRINGFIELD COUNTY
2015 JUN 25 AM 9:47
M. HOPE BLACKLEY

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) _____
 (b) _____
 (c) _____

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? NO
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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. Michael D. Morin 894 West St. John
Street Spartanburg SC 29301
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Arraignment and plea
 ii. _____
 iii. _____

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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

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

If it may please the Court im Seeking a
NEW TRAIL

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

I, ANTOINE SHIELDS 363038, 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.

Antoine Shields

SWORN to and subscribed before me this 16th
day of JUNE, 2015.

Janet E. Driggers (L.S.)
Notary Public

My Commission Expires: 11-05-2019

FILED
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Spartanburg County
2015 JUN 25 AM 9:47
M. HOPE BLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, ANTOINE SHIELDS 363038, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Antoine Shields
Applicant

SWORN or affirmed to and subscribed before me this
16th day of JUNE, 2015.

James E. Drigger
Notary Public

My Commission Expires: 11-05-2019

FILED
CLERK OF COURT
SPRINGFIELD COUNTY
JUN 25 AM 9:43
W. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Antoine L. Shields, #363038,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2015-CP-42-2885

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on June 25, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the September 2014 term of the Spartanburg County Grand Jury for three counts of armed robbery and three counts of possession of a weapon during the commission of a violent crime (2014-GS-42-4298; 2014-GS-42-4299; 2014-GS-42-4300), and waived presentment to the grand jury on assault and battery—1st degree (2015-GS-42-0628). Michael D. Morin, Esquire, represented Applicant. On February 11, 2015, Applicant pleaded guilty¹ as indicted to all charges. The Honorable Letitia H. Verdin sentenced Applicant to concurrent terms of imprisonment for 21 years each for the armed robbery charges and five years each for the weapon charges, and ten years for assault and battery—1st degree. Applicant did not appeal his guilty plea or sentence.

¹ Respondent notes Applicant also waived presentment to the Grand Jury and pleaded guilty to financial transaction card fraud (2015-GS-42-0629), however that charge was not listed in the current action.

386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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.

Respondent further submits Applicant's second allegation that his guilty plea was involuntary is without merit. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. 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 Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRPC. All claims should be made well in advance of the PCR hearing. Because Applicant has been appointed an attorney, the attorney, and not the inmate, is the only individual authorized to file amendments to this application. Rule 11, SCRPC. Filings by inmates will not be considered at the PCR hearing.

VII.

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

VIII.

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

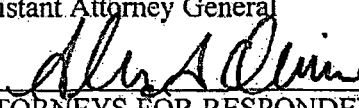
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

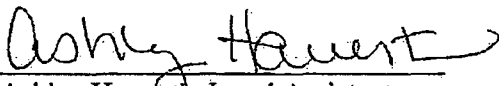
February 16, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
ANTOINE L. SHIELDS, #363038,	)	2015-CP-42-2885
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

DATED this 16th day of February, 2016.

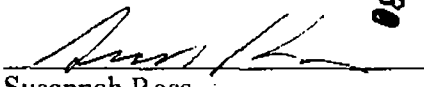

 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
ANTOINE SHIELDS	)	
APPLICANT.	)	
	)	APPLICATION ADDENDUM
VS.	)	
	)	
THE STATE OF SOUTH CAROLINA	)	CASE NO. 2015-CP-42-2885
	)	
RESPONDENT.	)	

This matter comes before the Court by way of application of post conviction relief filed June 25, 2015, alleging ineffective assistance of trial counsel. A Return was made on February 16, 2016, requesting a hearing on the allegation of ineffective assistance of counsel. This application is intended to incorporate the application and add the allegations the allegations of:

- (1) ineffective assistance of counsel in the failure to investigate;
- (2) Due Process violations in that the plea was not knowingly and voluntarily made without proper inducement.

Respectfully submitted,


 Susannah Ross
 Attorney for the Applicant
 330 E. Coffee St.
 Greenville, SC 29601
 (864) 242-0029

Greenville, South Carolina
 This 26 day of October, 2016

2016 NOV -1 AM 9:30
 M. HOPE BLACKLEY

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EXHIBITS

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1 ANTOINE SHIELDS VERSUS THE STATE OF SOUTH CAROLINA

2 THE COURT: The next case is Antoine Shields; is
3 that correct?

4 MS. OLIVE: Yes, Your Honor.

5 THE COURT: I believe we're on the record on
6 15-CP-42-2885 in Antoine L. Shields versus the State.
7 Ms. Ross, can you tell me where we stand?

8 MS. ROSS: We're ready to proceed with the
9 hearing, Your Honor.

10 THE COURT: Attorney General, are you ready?

11 MS. OLIVE: Yes, Your Honor.

12 THE COURT: All right. Call your first witness
13 then.

14 MS. OLIVE: May it please the Court, Your Honor.
15 I'd like to give a brief procedural history of the
16 case --

17 THE COURT: Please.

18 MS. OLIVE: -- if I may. And, Your Honor, for
19 the record we're trying this currently before Your
20 Honor. It's slightly incorrect. I'm just gonna go
21 through his indictments and convictions --

22 THE COURT: All right.

23 MS. OLIVE: -- on the record. Your Honor, Mr.
24 Shields was indicted in September of 2014 for three
25 counts of armed robbery and three counts of possession

1 of a weapon during the commission of a violent crime.
2 He also waived presentment to a grand jury on an assault
3 and battery first-degree charge.

4 Mr. Michael Morin represented him on those
5 charges. On February 11th, 2015, he pleaded guilty as
6 indicted. However, he pleaded pursuant to Alford on two
7 of those armed robbery counts and two of the possession
8 of a weapon during the commission of a violent crime.
9 That plea took place before Judge Letitia Verdin. She
10 sentenced him to 21 years on the armed robbery, on each
11 armed robbery charge, five years on each possession of a
12 weapon charge, and ten years on the assault and battery
13 first-degree charge, all to run concurrently, Your
14 Honor.

15 He filed his application for post-conviction
16 relief on June 25th, 2015, alleging the following. He
17 alleged ineffective assistance of counsel for failure to
18 investigate. Also alleged involuntary guilty plea, that
19 his plea was not voluntarily obtained under Alford. He
20 also raised a violation of the Fourth Amendment rights.

21 Your Honor, the State would move to dismiss the
22 third allegation of violation of Fourth Amendment rights
23 because he, he did plead guilty and waive challenge on
24 the Fourth Amendment. And, Your Honor, his attorney
25 also filed an addendum to the application on November

1 1st, 2016, stating that he alleges ineffective
2 assistance of counsel on the grounds that counsel failed
3 to investigate and due process violations and that the
4 plea was not freely and voluntarily made.

5 Your Honor, Mr. Shields is present today and
6 represented by Susannah Ross. I will turn it over to
7 her at this time.

8 THE COURT: All right.

9 MS. ROSS: Thank you, Your Honor.

10 THE COURT: And I think I called by mistake.
11 That's a force of habit.

12 MS. ROSS: That's okay.

13 THE COURT: I've been doing general sessions the
14 last couple of weeks. So I'm happy to hear from you at
15 this point.

16 MS. ROSS: Well, Ms. Olive is correct. We allege
17 ineffective assistance of counsel and due process
18 violations. I'll hand over the statement of Ms.
19 Pittman, just as to the plea not being knowingly and
20 voluntarily made. If I can approach, Your Honor.

21 THE COURT: Certainly.

22 MS. ROSS: Your Honor, a cross-reading of the
23 transcript will show that there was no inducement for
24 the North Carolina v. Alford plea. There was no mention
25 of a right to challenge evidence against him and no

1 admissions of fact and no true entry of a guilty plea.

2 And on the armed robbery charge ending -- the
3 indictment ending in 4200, that's on Page 23 of the
4 transcript. So under -- I guess the State doesn't have
5 particular rules, but the Federal Rule 11 about what
6 questions need to be asked and answered during a plea,
7 many were not covered. So under 42(b) Alabama Pittman
8 vs. State we'd state that the plea wasn't knowingly and
9 voluntarily made. And I call Mr. Shields at this time.

10 THE COURT: All right. If you'll come forward,
11 Mr. Shields, and have a seat right over there, please.
12 (Complies.)

13 And the record should reflect I did have an
14 opportunity to review the transcript. I think Mr.
15 Shields had a co-defendant, Mr. Rogers, and I did review
16 that last week and that material was forwarded to me.

17 All right. Mr. Shields, if you would, just raise
18 your right hand, please. (Complies.)

19 Do you swear or affirm the testimony you're about
20 to give is the truth?

21 THE WITNESS: Yes, sir.

22 ANTOINE L. SHIELDS,
23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. ROSS:

1 Q. Okay. Mr. Shields, do you understand that if you
2 go forward with this PCR and prevail you'll be back in
3 the position you were in before the plea?

4 A. Yes, ma'am.

5 Q. And it's your wish to go forward?

6 A. Yes, ma'am.

7 Q. Okay. Why do you want -- why are you alleging
8 ineffective assistance of counsel? What is the basis
9 for that?

10 A. I feel I'm innocent.

11 Q. Okay. What did the lawyer not do that he should
12 have done for you?

13 A. Fully investigate.

14 Q. Okay. Did he -- what do you mean by fully
15 investigate?

16 A. He never took the time to interview any of my
17 witnesses.

18 Q. All right. How many times did he meet with you
19 prior to your plea? Do you recall?

20 A. The first time he just got a lot of information
21 about me and he met with me the day before I pled.

22 Q. Did he give you your discovery or review your
23 discovery with you?

24 A. Partial.

25 Q. Did you find out things about your discovery

1 after the plea that you did not know before?

2 A. Yes, ma'am.

3 Q. What were those things?

4 A. In the police officer's initial statement he
5 never stated the fact of being assaulted in his initial
6 statements.

7 Q. Okay. What was strange about your co-defendant,
8 Roger's, story?

9 A. It contradicted the victim's story.

10 Q. All right.

11 A. And placed me on the scene as holding the weapon.
12 And the victim only placed one person.

13 Q. Okay. Did you find anything after the fact about
14 Tobias Roger's story that your lawyer didn't find to
15 show you before the plea?

16 A. It contradicted a whole ---

17 Q. Did his story change?

18 A. Yes, ma'am.

19 Q. Did your lawyer tell you his story had changed
20 beforehand?

21 A. (Witness shakes head back and forth.)

22 Q. Now, your attorney, did he tell you about
23 evidence against you that was found in your pockets?

24 A. He had stated that that was their reason for
25 detaining me, but for -- they stated that their evidence

1 was in my -- the police belongings was in my pockets
2 when they detained, but it was only money and marijuana
3 in my pocket when I was detained.

4 Q. Okay. And when you refer to the police, that's
5 the person who was robbed. He was a police officer,
6 right?

7 A. Yes, ma'am.

8 Q. Now, what did your attorney tell you about
9 pleading guilty with Rogers at the same time?

10 A. He never stated that we was going to plea at the
11 same time. He said our pleas is going to be separate.

12 Q. And why did he tell you he wanted the pleas to be
13 separate?

14 A. Because he had a record and I didn't.

15 Q. Okay. And you had no prior record at that time?

16 A. No, ma'am.

17 Q. Now, did your attorney say that your -- anything
18 about your parent's position on whether to plead or not?

19 A. He was telling me that my parents told me it was
20 in my best interest to plea.

21 Q. Okay. And what have your parents told you since
22 then?

23 A. They didn't talk to him. They didn't talk to
24 Michael Morin about me pleading or it being in my best
25 interest to plead.

1 Q. Okay. And have you had a chance to review the
2 transcript of your guilty plea?

3 A. Yes, ma'am.

4 Q. Now, there's some hesitancy there when you
5 answered yes and you hesitated. What was going on at
6 that time?

7 A. The facts that they read off about the crime, she
8 asked me did that happen and I told her no. And Michael
9 Morin told me the only way the plea could be accepted is
10 if I tell her yes those were the facts.

11 Q. Did you know anything about the law or your
12 rights at that time?

13 A. No, ma'am.

14 Q. How far did you go in school?

15 A. Ninth grade. And he told me to say I went to the
16 12th.

17 Q. All right.

18 A. He told me to say I didn't have a medical
19 history, which I do.

20 Q. What is your medical history?

21 A. I've had a medical history all through my younger
22 years.

23 Q. For mental health issues?

24 A. Yes, ma'am.

25 Q. Did -- have you had a diagnosis? Do you have a

1 diagnosis of some sort? Did they say you were ADD or
2 something like that?

3 A. ADHD.

4 Q. Okay.

5 A. And ADD.

6 Q. Now, if your lawyer had done all the things you
7 wanted and presented it differently, would you have
8 plead guilty?

9 A. No, ma'am.

10 Q. What would you have done instead?

11 A. Went to trial.

12 Q. And what do you think would have been the outcome
13 of that trial?

14 A. I would not have been found guilty.

15 Q. Why do you say that?

16 A. Because no evidence points towards me as
17 committing a crime or have the intentions to commit a
18 crime.

19 Q. All right. And were you guilty of those charges?

20 A. No, ma'am.

21 MS. ROSS: Okay. I've got no further questions.

22 THE COURT: Attorney General.

23 MS. OLIVE: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. OLIVE:

1 Q. Good morning, Mr. Shields.

2 A. Good morning.

3 Q. Do you recall you pleaded guilty under Alford
4 versus North Carolina in two of these charges?

5 A. Yes, ma'am.

6 Q. Okay. But you pleaded guilty to the other armed
7 robbery and possession of a weapon during a commission
8 of violent crime, correct?

9 A. Yes, ma'am.

10 Q. Okay. But now you're saying that -- do you
11 recall that a judge explained to you what an Alford plea
12 was?

13 A. Basically saying the State has enough evidence to
14 convict me.

15 Q. Okay. And so as part of entering your guilty
16 plea under Alford, you're admitting that the State had
17 enough evidence to prove you guilty at trial, correct?

18 A. Yes, ma'am.

19 Q. Is that a yes?

20 A. Yes, ma'am.

21 Q. But now your position is that the State did not
22 have enough evidence to prove you guilty at trial?

23 A. Yes, ma'am.

24 Q. Okay. Do you understand what you're facing -- do
25 you understand if you prevail here today, I know your

1 attorney has already asked you that, but you would face
2 all these charges all over again, all three of the armed
3 robberies and all three of the possession of a weapon
4 during the commission of a violent crime?

5 A. Yes, ma'am.

6 Q. Okay. And the full exposure of those sentences?

7 A. Yes, ma'am.

8 Q. Okay. And your co-defendant got a higher
9 sentence than you, did he not?

10 A. Yes, ma'am.

11 Q. Okay. Do you recall what his was?

12 A. Twenty-five or twenty-seven.

13 Q. And the State did read your facts out at your
14 guilty plea, correct?

15 A. The first facts I never accepted.

16 Q. But you still went forward with the plea?

17 A. Yes, ma'am. Because I had -- he had told me I
18 was on -- I would get no more than 15 years because I
19 had no record.

20 Q. Okay. But the judge explained to you the
21 sentences that you faced on each one of these charges,
22 correct?

23 A. Yes, ma'am.

24 Q. Okay. So you knew that the judge could sentence
25 you to whatever was in that range, correct?

1 A. Yes.

2 Q. Okay. So your attorney was just giving you his
3 best guess of what you might get?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. Yes, ma'am.

7 Q. Did you discuss with your attorney your version
8 of what happened?

9 A. Yes, ma'am.

10 Q. Okay. Did he discuss with you -- he discussed
11 with you the elements of these defenses, correct?

12 A. Yes, ma'am.

13 Q. Okay. So you knew what the State would have to
14 prove if they took you to trial?

15 A. No, ma'am.

16 Q. Okay. You don't know what the State would have
17 to prove if they took you to trial?

18 A. (Witness shakes head back and forth.)

19 Q. But you -- but the judge read these charges to
20 you at your plea, correct?

21 A. Yes, ma'am.

22 Q. Okay. So you understood what the State was
23 alleging that you had done?

24 A. Yes, ma'am.

25 Q. Okay. And you agree that you had not been forced

1 or promised anything to plead guilty?

2 A. Yes, ma'am.

3 Q. Okay. Or plead pursuant to Alford, I should say.
4 And the judge advised you of a right to a jury trial,
5 your right to confront accusers and your right to remain
6 silent?

7 A. Yes, ma'am.

8 Q. Is that a yes?

9 A. (Witness nods head up and down.)

10 Q. And you understood that you were waiving those
11 rights by pleading guilty?

12 A. Yes, ma'am.

13 Q. And you said you had no complaints against your
14 attorney or law enforcement or the solicitor?

15 A. Yes, ma'am.

16 Q. And it was, in fact, your decision to plead
17 guilty, was it not?

18 A. Not really.

19 Q. Did you ever tell the judge that you wanted to
20 withdraw your plea?

21 A. No, I didn't.

22 MS. OLIVE: Beg the Court's indulgence for a
23 moment, Your Honor.

24 THE COURT: Yes, ma'am.

25 BY MS. Olive:

1 Q. Do you recall whether your attorney presented you
2 with a form acknowledging -- on which you acknowledged
3 that you were pleading guilty?

4 A. He told me I wasn't, I was only going forward
5 that day for the armed robbery. He told me I wasn't
6 going for the assault and battery and the FTC. When we
7 got in the courtroom, that's when we was going forward.
8 That's when I found out I was pleading guilty to those
9 charges.

10 Q. Okay. But do you recall him providing you with
11 this form?

12 A. (Witness shakes head back and forth.)

13 Q. Okay. If I showed you that form would it refresh
14 your memory?

15 A. (Witness nods head up and down.)

16 MS. OLIVE: May I approach the witness, Your
17 Honor?

18 THE COURT: Please.

19 BY MS. OLIVE:

20 Q. Does this look familiar?

21 A. Is this the one I signed downstairs?

22 Q. Is that your signature?

23 A. He had me sign it in the courtroom, but he didn't
24 read that out to me.

25 Q. Are you, are you able to read?

1 A. Yes.

2 Q. Okay. I'm sorry, I don't mean to ask that
3 offensively, I'm just -- but so you saw this form?

4 A. I didn't see all that blue writing on it, but I
5 did sign it. He had me sign one before I went in the
6 courtroom and one when I was in the courtroom, but it
7 didn't have all that writing.

8 Q. So none of this writing -- is any of this writing
9 your writing?

10 A. It's not my writing.

11 Q. These aren't your checkmarks here?

12 A. My signature.

13 Q. So you -- okay.

14 A. That's not my handwriting.

15 Q. So you signed this when it was blank?

16 A. Yes. Then he explained, but all that writing
17 wasn't on there.

18 Q. So he explained to you what's written on this
19 sheet?

20 A. Yes.

21 Q. Okay.

22 A. He told me he was not going for the assault and
23 battery and the FTC or the other two armed robberies.

24 Q. Are those written on this sheet?

25 A. Yes.

1 Q. Okay. And what is this document? It's a plea
2 checklist, right?

3 A. Plea checklist.

4 Q. And it has the date of February 11th, 2015, on
5 there?

6 A. Yes, ma'am. I never -- does it say something
7 about that? I never told him about my kids when we was
8 going about do the plea. I told him that when he first
9 came to see me.

10 Q. So your testimony, though, is that none of those
11 checkmarks were on this list when you signed this?

12 A. No.

13 Q. So you weren't aware. Okay. Did you ever at any
14 time tell the judge that you weren't aware that you were
15 pleading guilty to all of those charges that day?

16 A. No.

17 Q. Okay. And you, again, never told the judge that
18 you wished to withdraw your plea?

19 A. Yes, ma'am.

20 Q. Okay. But this form does acknowledge, does it
21 not, that you're agreeing to plead guilty?

22 A. Yes, ma'am.

23 Q. And that you could receive up to 30 years?

24 A. Yes, ma'am.

25 COURT REPORTER: Sir, I need you to speak up.

1 THE WITNESS: Yes, ma'am.

2 BY MS. OLIVE:

3 Q. And, again, the judge also informed you that you
4 could be sentenced up to 30 years, right?

5 A. Yes, ma'am.

6 Q. So, again, was it -- it wasn't your decision to
7 plead guilty?

8 A. Yes, ma'am.

9 Q. It was your decision to plead guilty?

10 A. (Witness nods head up and down.)

11 MS. OLIVE: Thank you. That's all the questions
12 I have.

13 THE COURT: He nodded his head yes in the
14 response to the last question. Redirect?

15 MS. ROSS: Yes, I have a brief redirect.

16 THE COURT: Go ahead.

17 REDIRECT EXAMINATION

18 BY MS. ROSS:

19 Q. Mr. Shields, I'm gonna refer to you to Page 23 of
20 the transcript. Can you read what it says right here
21 before your guilty plea.

22 A. (Reading.) All right. And on assault and
23 battery first degree and the financial transaction card
24 fraud, how do you wish to plead to those, Mr. Shields,
25 guilty or not guilty? (Ends reading.)

1 Q. And you said?

2 A. Guilty.

3 Q. Okay. Now, were you ever asked about the armed
4 robbery?

5 A. No, ma'am.

6 Q. Okay. And as far as you recall in that
7 transcript, did you ever plead guilty to the armed
8 robbery?

9 A. No, ma'am.

10 MS. ROSS: No further questions.

11 THE COURT: Redirect from the State or recross?

12 MS. OLIVE: Briefly, Your Honor.

13 RE CROSS-EXAMINATION

14 BY MS. OLIVE:

15 Q. Mr. Shields, you don't recall the judge asking
16 you if you were there today to plead to armed robbery
17 and having a weapon during a violent crime?

18 A. To which charge?

19 Q. You just said that you didn't know you were
20 pleading guilty to armed robbery, did you not?

21 A. Not from that I don't. I didn't. She asked me
22 assault and battery and FTC.

23 Q. Okay. I apologize. But, again, you were
24 sentenced to -- and the judge -- you don't recall the
25 judge saying: (Reading.) All right. And then assault

1 and battery first degree carries up to ten years and
2 financial transaction card fraud carries up to one. Is
3 that your understanding? (Ends Reading.) And you said
4 yes?

5 A. Yes, ma'am.

6 Q. Okay. So you still didn't understand at that
7 point that you were there for the assault and battery
8 and FTC as well?

9 A. Yes, ma'am.

10 Q. And the judge said: (Reading.) The assault and
11 battery and the financial transaction card fraud have
12 not been indicted by the grand jury. Do you want to
13 give up that right up and have these charges indicted
14 and enter a plea today? (Ends reading.) And you said
15 yes.

16 A. Yes.

17 MS. OLIVE: Okay. And for the record, Your
18 Honor, I'm referring to Page 8 of the plea transcript.

19 BY MS. OLIVE:

20 Q. So then you understood that you were pleading
21 guilty to those charges that day as well?

22 A. Afterwards, yes.

23 Q. But this was before the judge accepted your plea,
24 was it not?

25 A. Before the plea Michael Morin told me I was not

1 pleading to those charges because I had just got those
2 charges the same day.

3 Q. But at your guilty plea you understood that you
4 were pleading to those, correct?

5 A. Yes.

6 Q. And you could have told the judge that you wanted
7 -- that you did not wish to plead to those charges that
8 day, correct?

9 A. But he told me I might as well go ahead and do
10 away with all of them at one time.

11 Q. Because it was probably in your best interest to
12 do that?

13 A. Yes, ma'am.

14 MS. OLIVE: Okay, thank you.

15 MS. ROSS: Nothing further.

16 EXAMINATION

17 BY THE COURT:

18 Q. Just one quick question from the Court,
19 Mr. Shields. You were standing there with your
20 co-defendant, Mr. Rogers, at the same time that he
21 entered his plea, correct?

22 A. Yes, sir.

23 Q. And do you recall that the judge explained to Mr.
24 Rogers the minimum sentence for armed robbery is 10
25 years, the maximum is 30 years? Do you remember her

1 saying that to your co-defendant?

2 A. Yes, sir.

3 THE COURT: Okay. Followup based on my questions
4 from anyone?

5 MS. OLIVE: (Shakes head back and forth.)

6 MS. ROSS: (Shakes head back and forth.)

7 THE COURT: No. Mr. Shields, thank you. You may
8 step down, sir. Any additional witnesses?

9 (Whereupon, witness leaves witness stand.)

10 MS. ROSS: Yes, Tobias Rogers.

11 THE COURT: They are bringing up Mr. Rogers, I
12 assume.

13 MS. ROSS: I've asked for him.

14 MS. OLIVE: Is somebody bringing him up?

15 MS. ROSS: Did somebody call for Mr. Rogers.

16 THE COURT: He's in custody, so he's in prison so
17 he should be here.

18 MS. OLIVE: He's been transported.

19 MS. ROSS: He's back there. Sorry, I saw the
20 bailiff pop up earlier. I thought ---

21 THE COURT: That's all right.

22 MS. ROSS: Well, in the meantime I can briefly
23 call -- do you want to get up, Mr. Smith?

24 MR. SMITH: Sure.

25 MS. ROSS: I'll just call him to kill some time.

1 THE COURT: Go ahead, please.

2 (Whereupon, witness comes forward.)

3 RODNEY SMITH,

4 DIRECT EXAMINATION

5 BY MS. ROSS:

6 Q. Are you Rodney Smith?

7 A. Yes, I am.

8 Q. And how are you related to Mr. Shields?

9 THE COURT: Let me put him under oath real quick.

10 MS. ROSS: Oh, I'm sorry.

11 THE COURT: Raise your right hand, please.

12 (Complies.)

13 Swear or affirm the testimony you're about to
14 give is the truth?

15 THE WITNESS: Yes, sir.

16 THE COURT: Have a seat, Mr. Smith.

17 THE WITNESS: Yes, sir.

18 RODNEY SMITH,

19 having been duly sworn, testified as follows:

20 BY MS. ROSS:

21 Q. What's your name?

22 A. Rodney A. Smith.

23 Q. And what is your relation to Mr. Shields?

24 A. That's my stepson.

25 Q. Now, do you recall when he pled guilty to these

1 charges?

2 A. Yes.

3 Q. Were you involved in this process?

4 A. No. From my understanding, the way it was
5 presented to me and my wife was that it was more like an
6 ultimatum. It wasn't that -- the way it was presented
7 to us was that if he didn't plead he would get more
8 time, but if he did plea he'd get less time.

9 Q. Did your lawyer -- I mean, did his lawyer ever
10 tell you that -- did you ever tell his lawyer that you
11 wanted him to plead guilty?

12 A. No. We did not want him to plead guilty. He
13 just presented to us like it was an ultimatum. Our
14 whole direction -- our son has no record.

15 Q. Okay.

16 A. And there's so many misunderstandings in his
17 history about his involvement, he wasn't involved in it
18 at all. That's why we understand that the way it was
19 presented to us where either he pleads guilty he'd get
20 less time, or either he doesn't plead guilty and the
21 jury gives him a full max of life for no reason.

22 Q. Okay. And just answer my questions. What was
23 your position on whether he'd plead guilty with his
24 co-defendant?

25 A. We did not want that to happen at all.

1 Q. Did you tell his lawyer that?

2 A. Yes, we did.

3 MS. ROSS: Okay. I've got no further questions.

4 THE COURT: Attorney General?

5 MS. OLIVE: Just briefly, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. OLIVE:

8 Q. Were you present for every discussion between
9 your stepson and his attorney?

10 A. 'No, ma'am.

11 Q. Okay. And you said you weren't really involved
12 in this, in all of this?

13 A. I was, I was involved as much as I can be in
14 contact with Mr. Michael Morin, being the fact that I
15 couldn't see my son as often as possible. And as often
16 as I could reach Mr. Morin, he just gave me a small
17 update that he was still waiting on the history and
18 still waiting on other, other information to be gathered
19 for the actual case.

20 Q. And ultimately it was your son's decision about
21 whether to enter into a plea or go to a trial, correct?

22 A. The way it was presented to him without -- the
23 way it was presented to him was that he had no choice.
24 I mean, either -- because the evidence didn't lead up to
25 him at all, so it was presented to me and my wife and to

1 our son that if he didn't plead he would be serving a
2 sentence for no reason.

3 Q. My question is, you can't make the decision for
4 him, can you?

5 A. To plead or not to?

6 Q. You did not make the decision for him to enter
7 the plea or to go to trial.

8 A. No, we did not make the decision.

9 Q. Okay. So that was his decision?

10 A. That was the ultimatum that was given to him. A
11 misunderstanding ultimatum, with all due respect.

12 Q. Okay. But, again, it was his decision not your
13 decision?

14 A. Yes, ma'am.

15 MS. OLIVE: Okay, thank you.

16 THE COURT: Mr. Smith, thank you, sir, you can
17 step down.

18 THE WITNESS: Thank you so much, sir.

19 (Whereupon, witness leaves witness stand.)

20 THE COURT: I think we have Mr. Rogers present
21 now if you want to call him.

22 MS. ROSS: We call Tobias Rogers at this time.

23 (Whereupon, witness comes forward.)

24 THE COURT: Raise your right hand as best you're
25 able Mr. Rogers. (Complies.)

1 Swear or affirm the testimony you're about to
2 give is the truth?

3 THE WITNESS: Yes, sir.

4 THE COURT: Have a seat, please.

5 TOBIAS ROGERS,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ROSS:

9 Q. Okay. Mr. Rogers, you're the co-defendant for
10 these charges, correct?

11 A. Yes, ma'am.

12 Q. And you're Mr. Rogers in the transcript that's
13 pleading with Mr. Shields?

14 A. Yes, ma'am.

15 Q. Now, was a statement -- did they use a statement
16 against Mr. Shields that you made?

17 A. Yes.

18 Q. And was that statement true?

19 A. No.

20 Q. Was it the original statement you gave to law
21 enforcement?

22 A. No.

23 Q. Which -- how long or what were the circumstances
24 where the statement implicating Mr. Shields as being a
25 part of the robbery, do you know?

1 A. The statement and the interrogation took like two
2 hours. And Mr. Kirby kept implementing Mr. Shields in
3 it. And I told him Mr. Shields was asleep the whole
4 time that everything happened.

5 Q. Who's Mr. Kirby?

6 A. The officer.

7 Q. Okay.

8 A. The investigating officer.

9 Q. Now go ahead.

10 A. And like I told him, Mr. Shields was asleep and
11 everything. I told him what took place.

12 Q. All right. I'm gonna show you two statements.
13 Do you recognize these?

14 A. Yes.

15 Q. And can you tell the Court what those are?

16 A. Verified statement that I, Tobias Rogers, wrote.

17 Q. All right. And there are different dates on
18 them. Was one first and one later?

19 A. Uh-huh.

20 Q. Okay.

21 THE COURT: That's a yes.

22 MS. ROSS: And, counsel, you've had a chance to
23 review these?

24 MS. OLIVE: Yes, thank you.

25 MS. ROSS: I'd like these marked as Applicant's

1 Exhibit 1 and 2.

2 (Whereupon, Applicant's Exhibit No. 1, Statement
3 of Tobias Rogers Dated 10/23/14, was marked for
4 identification.)

5 (Whereupon, Applicant's Exhibit No. 2, Statement
6 of Tobias Rogers Dated 08/08/16, was marked for
7 identification.)

8 THE COURT: Applicant's 1 and 2 will be in
9 evidence without objection.

10 (Whereupon, Plaintiff's Exhibits No. 1 and 2 was
11 entered into the record.)

12 BY MS. ROSS:

13 Q. And, essentially, what do these statements say?
14 You don't have to read them. I'm gonna offer them into
15 evidence, but what's the gist?

16 A. As far as basically saying that Mr. Shields had
17 nothing to do with the robbery. He had no knowledge of
18 the crime of the robbery.

19 Q. How did he happen to be in the car with you?

20 A. I went and picked Mr. Shields up. That's how he
21 got in the car with me.

22 Q. Okay. And did you tell him about the robbery?

23 A. No, ma'am.

24 Q. And was he offered anything for -- was he given
25 anything as a result of after the robbery?

1 A. No.

2 MS. ROSS: I'd offer these exhibits at this time.

3 THE COURT: All right. They are in evidence.

4 BY MS. ROSS:

5 Q. Okay. Mr. Shields was found with money in his
6 pocket.

7 A. Uh-huh.

8 Q. Was that money from the robbery?

9 A. I gave him a couple of dollars. I gave him \$200
10 because he actually had me hold it to open up a bank
11 account, so I gave him the money back.

12 Q. Okay. So you'd owed him that money --

13 A. Yeah.

14 Q. -- totally unrelated?

15 A. Yeah.

16 MS. ROSS: Okay. No further questions.

17 THE COURT: Attorney General?

18 MS. OLIVE: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. OLIVE:

21 Q. Good morning, Mr. Tobias.

22 A. Good morning.

23 Q. This statement that you've given today, which
24 victim does that pertain to?

25 A. Patrick Thomas.

1 Q. Okay. So there were three victims altogether?

2 A. Uh-huh.

3 THE COURT: That's a yes.

4 BY MS. OLIVE:

5 Q. Okay. So this is just to one victim.

6 A. And the other two, the other two armed robbery
7 cases?

8 Q. Well, I'm asking the statement that you're
9 providing today just pertains to this incident with
10 Patrick --

11 A. Yes, ma'am.

12 Q. -- Thomas --

13 A. Yes, ma'am.

14 Q. -- the officer for -- Thompson, excuse me.

15 A. Yes, ma'am.

16 Q. So -- and there are three different incidents,
17 correct? There was one on July 14th, there was one on
18 July 16th, and one on July 20th of '14. So we're
19 talking about three different victims, correct?

20 A. No. There wasn't no robbery on the 14th.
21 Wouldn't be no robbery happening.

22 Q. I'm sorry, the 22nd?

23 A. No. I was locked up on the 22nd. I was
24 incarcerated on the 22nd.

25 Q. Okay. I apologize, I misstated. There was a

1 robbery of -- and I apologize the record is a bit
2 unclear whether the gentleman's name was Patrick Collins
3 or Patrick Thompson, but we agree that that was the
4 officer that you had given the statement about today.
5 That was that victim, correct?

6 A. (Witness nods head up and down.)

7 Q. Okay. And then we have a Jennifer Bramlett.
8 That was another victim on a separate date.

9 A. I don't know who that is.

10 Q. Okay. And then a third victim John Hernandez.

11 A. I have no clue who that is either.

12 Q. Okay. Weren't those names read into the record
13 at your plea?

14 A. Yes, but we wasn't -- I mean, I was not accused
15 of robbing those.

16 Q. Okay. But Mr. Shields was.

17 A. He was not accused of robbing those either. He
18 didn't even receive a warrant for them either.

19 Q. And you -- so you're disagreeing with me that
20 this was put in the record at the guilty plea?

21 A. That's what was read at the guilty plea, but
22 neither one of us was charged with robbing either one of
23 those individuals, John Hernandez or a Jennifer Bramlet.

24 Q. So the indictment alleges that you on July 16th
25 while armed with a deadly weapon, felonously take

1 property or currency from the personal presence of John
2 Hernandez and you agreed?

3 A. See I didn't know the names until we had our
4 transcripts.

5 Q. Okay.

6 A. And then I -- the warrants where we were
7 originally charged with is John Hernandez, Jennifer
8 Langlitz and Patrick Thomas. I mean, yeah, Patrick
9 Thomas.

10 Q. Those were the ones you were charged with?

11 A. Yes. We were found guilty with robbing Jennifer
12 Bromlet, Nancy Heaton, John Hernandez and Patrick
13 Collins.

14 Q. Okay. So are you disagreeing with me that the
15 indictments have the names of these individuals?

16 A. As far as which ---

17 Q. Of three different individuals. The indictments
18 have the names of three different individuals.

19 A. Yes.

20 Q. Three different indictments. Okay. And John
21 Hernandez, Jennifer Langlitz and Patrick Thomas. Does
22 that sound right?

23 A. Yes, ma'am.

24 Q. Okay. So today you're just giving a statement
25 regarding the robbery of Mr. Thomas?

1 A. Yes, ma'am.

2 Q. Okay. And why did you not bring that to the
3 judge's attention at your guilty plea?

4 A. Actually I did because she asked me were we
5 guilty of the other two charges. And like I told her I
6 wasn't guilty. And I also said it on the record that
7 Mr. Shields was asleep when the other robbery happened.
8 I also told my lawyer that and I told his lawyer that.

9 Q. Okay. But, again, you all entered Alford pleas,
10 correct?

11 A. Yes, ma'am.

12 Q. The two of you.

13 MS. OLIVE: Beg the Court's indulgence a moment,
14 Your Honor.

15 THE COURT: Yes, ma'am.

16 BY MS. Olive:

17 Q. Mr. Tobias, you have a previous conviction for --
18 felony conviction for grand larceny from 2008; is that
19 right?

20 A. Yes, ma'am.

21 Q. Okay. You also have a previous conviction for
22 burglary second degree also from 2008. Several
23 convictions for burglary second degree; is that right?

24 A. Yes, ma'am. Actually some of them was dropped.
25 Some of them was dismissed.

1 Q. Okay. But you were convicted of five counts,
2 five counts in 2008 of burglary second degree; is that
3 correct?

4 A. Yes, ma'am.

5 Q. And you were again convicted of another grand
6 larceny in 2008; is that correct?

7 A. That was dealing with my probation.

8 Q. Sir?

9 A. That was dealing with my probation. I didn't get
10 a conviction for it.

11 MS. OLIVE: Thank you, Your Honor. No further
12 questions.

13 MS. ROSS: Just brief redirect, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. ROSS:

16 Q. The one Patrick Thomas robbery you pled guilty
17 regularly. The other two you pled under Alford where
18 you didn't admit to those facts; is that correct?

19 A. Yes, ma'am. Right.

20 Q. And what was the evidence in those other two
21 cases?

22 A. The evidence as far as when my lawyer would tell
23 me that they had -- I mean they didn't have any
24 evidence.

25 Q. What did they find in the car that linked you to

1 the other two cases?

2 A. They didn't find anything in the car.

3 Q. How about cellphones?

4 A. No, they didn't get a cellphone for that.

5 Q. Okay. Was there some trace of a cellphone call
6 you made to your girlfriend that was on one of the
7 logged phones in the Alford plea?

8 A. See, the phone that was from the Alford plea, I
9 mean, I had an alibi dealing with that one.

10 Q. Okay.

11 A. And ---

12 Q. But this was your car that everything was found
13 in?

14 A. Yes. But the phone that was found, that case was
15 not in that car.

16 Q. Okay. But it was your car, it wasn't
17 Mr. Shield's car?

18 A. Yes, ma'am.

19 Q. You had picked him up. The phones had nothing to
20 do with Mr. Shields.

21 A. Yes, ma'am.

22 MS. ROSS: All right. No further questions.

23 THE COURT: All right. Sir, thank you. You can
24 step down.

25 (Whereupon, witness leaves witness stand.)

1 MS. ROSS: That's my presentation.

2 THE COURT: All right. He can be returned. He
3 doesn't have -- Mr. Rogers doesn't have anything pending
4 this week, right?

5 MS. OLIVE: Well, he has a hearing tomorrow, Your
6 Honor.

7 THE COURT: Okay. Well, all right. Don't take
8 him back to ACDC. We'll address his hearing tomorrow
9 then. Very good.

10 MS. OLIVE: Thank you.

11 THE COURT: All right. Ms. Olive, call your
12 first witness.

13 MS. OLIVE: Your Honor, I would call Michael
14 Morin.

15 (Whereupon, witness comes forward.)

16 THE COURT: Swear or affirm the testimony you're
17 about to give is the truth?

18 THE WITNESS: I do, Your Honor.

19 THE COURT: Have a seat, please.

20 MICHAEL MORIN,
21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. OLIVE:

24 Q. Good morning, Mr. Morin.

25 A. Good morning.

1 Q. Were you retained or appointed to represent Mr.
2 Shields?

3 A. Appointed.

4 Q. And, Mr. Morin, how much -- how long have you
5 been practicing law?

6 A. Since 1992.

7 Q. And what portion of that practice has been
8 criminal law?

9 A. Almost all of it. 1995 I joined the public
10 defender's office in Spartanburg. I was there until
11 2002. I was in the solicitor's office from 2002 to
12 2012, primarily in Gaffney. And in 2012 I opened my own
13 office which presently carries about 95 percent criminal
14 defense.

15 Q. Have you represented individuals on armed robbery
16 and assault and battery prior to representing
17 Mr. Shields on these charges?

18 A. Yes, ma'am, many times.

19 Q. Do you recall how many times you met with Mr.
20 Shields prior to his plea?

21 A. I would say that we met three or four times.

22 Q. Did you file motions for discovery in this case?

23 A. Yes, ma'am.

24 Q. And did you receive that discovery?

25 A. Yes, ma'am.

1 Q. Did you review all that discovery with
2 Mr. Shields?

3 A. Yes, ma'am.

4 Q. Did you discuss with Mr. Shields the State's
5 evidence against him?

6 A. Yes, ma'am. We, we concentrated on the Thomas
7 case, the police officer, as that was going to be the
8 first trial of the three.

9 Q. Did Mr. Shields give -- discuss with you his
10 version of the facts?

11 A. Yes, ma'am.

12 Q. Did you discuss all the elements of these charges
13 with Mr. Shields?

14 A. Yes, ma'am.

15 Q. Did Mr. Shields provide you with leads or
16 witnesses in this case?

17 A. No, ma'am. He told me his version of what had
18 happened.

19 Q. And what sort of investigation did you do in
20 Mr. Shield's case?

21 A. After I received all the discovery and talked to
22 him about it, I matched up the timeline as it was going
23 on. What I did was I pulled out Google Maps and a map
24 from where the location was to where the ATM was and
25 from the ATM to where he was eventually stopped driving

1 home. I checked those times against the times that were
2 called, being Mr. Thomas called in approximately 3:25,
3 that he'd been robbed.

4 Nine minutes later Mr. Rogers made a withdrawal
5 from the ATM on Pine Street. Seven minutes after that
6 they were arrested on driving a vehicle a short distance
7 away as a BOA had put out. Just coincidentally the Google
8 Maps was indicating that it would take nine minutes to
9 drive from the robbery scene to the ATM.

10 That's exactly the amount of time from the time
11 Mr. Thomas called it in to the time that the first
12 tender withdrawal was made. It was telling me that it
13 should take nine minutes from the ATM to where he was
14 stopped. It actually -- he was actually stopped within
15 seven minutes.

16 He was driving the vehicle at the time it was
17 stopped. He told me that he drove the vehicle from the
18 robbery scene to the ATM. Now, he did say that he was
19 asleep and that Mr. Rogers woke him up and that he moved
20 into the driver's seat and drove to the ATM and then was
21 stopped.

22 Q. And you say the State was going to try that case
23 first?

24 A. Yes. They considered that their strongest case,
25 but he had the other two armed robberies which we

1 discussed, which were not as strong. However, obviously
2 the State was gonna have and will have three chances to
3 convict him of armed robbery and that was a concern.
4 That was the secondary concern to the fact that if he
5 got convicted and on separate occasions for two he'd
6 auto -- he'd be qualified for automatic life without
7 parole. So we discussed that as well.

8 Q. Did you feel Mr. Shields had any viable defenses
9 to the charges in any of these cases?

10 A. What I remember is that -- the cases, the other
11 cases, not talking about the Thomas case, those cases I
12 do remember telling him and talking about the fact that
13 those cases were weaker. The problem we had in this
14 case was within 25 minutes the police officer, the
15 off-duty police officer was robbed and then he was
16 stopped out of the vehicle that was used to get away.
17 And the officer described the vehicle. That's how they
18 stopped them in the first place. And that the stolen
19 property was in the car.

20 And at a trial it would come down to him -- us,
21 the defense, being able to convince a jury that he was
22 asleep during the robbery, didn't know what was
23 happening, but was driving the getaway car. If he could
24 overcome all that, then he would only have to approach
25 the other two armed robbery charges.

1 Q. And you discussed -- did you discuss with Mr.
2 Shields the pros and cons of going to trial versus
3 pleading guilty?

4 A. Yes. The conversation would have been, obviously
5 the armed robbery you can get 10 to 30 on. If -- and
6 the State agreed to run almost all the charges
7 concurrent, so that limited his exposure there; whereas,
8 each -- he was looking at 10 to 30 times three from
9 three separate charges. In addition to the fact that if
10 he was convicted of maybe two of those, again, the life
11 sentence would kick in. He was fairly young and that
12 didn't seem to be something that he would want to do.

13 Q. Did you discuss with Mr. Shields his
14 constitutional rights and what rights he would be
15 waiving by pleading guilty?

16 A. Yes. In these kinds of cases when I anticipate
17 that there's gonna be time involved, I do what's called
18 a plea note sheet. I've been using that -- I started
19 using that in approximately, I want to say, '97 or '98
20 when I was in the public defender's office. I use it to
21 go through, even though I've done it many times, I use
22 it to make sure that I go through all the rights with
23 them and check the boxes as we go.

24 Right above where he signs, I write in do you
25 understand and it says blank so that he understands how

1 much time he could get. And then I have him sign it.
2 And I review that prior to him pleading guilty. I
3 believe in this particular instance that form was filled
4 out downstairs before he was brought up to do the plea.
5 And by downstairs I mean in the jail that's out back.

6 Q. Your Honor, may I approach the witness?

7 THE COURT: Please.

8 BY MS. OLIVE:

9 Q. Mr. Morin, is this the form that you're referring
10 to?

11 A. It is. And underneath his signature, those are
12 my notes that we would have -- at that point after he
13 signed it, we would have went over what he was telling
14 me he had done, how long he was in jail, that he's a
15 kitchen worker. As you can see it says has letter in
16 parenthesis. And I presented that to the judge.

17 It indicates that he told me he was a high school
18 graduate, so that's what we put down. It lists his
19 kids. Those types of things that the judge wants to
20 know about your client that starts the basis of trying
21 to explain who he is.

22 Q. So he told you he was a high school graduate?

23 A. Uh-huh. I would have written it down from --
24 like I say, we would have went through this and then he
25 would have signed and I would say, okay, you're 23 and I

1 would have said that to him and he would have had to
2 confirm that.

3 Q. So this form, the writing on this form, whose
4 writing is that?

5 A. All of the writing is mine except for his
6 signature.

7 Q. Okay. And was this writing done prior to ---

8 A. I would have either done it while I was sitting
9 there talking to him or I would have filled out parts of
10 it prior to him -- prior to talking to him.

11 Q. And what sorts of things does the sheet advise?
12 What sort of things are you advising him of?

13 A. Well, I'm going over his jury -- his right to a
14 jury trial. His right to help pick a jury. His right
15 to help challenge the witnesses against him. His right
16 to remain silent. You can see on here you have the
17 right to testify or not to testify and should he choose
18 not to testify it can't be held against him.

19 I would go over those and check those boxes as we
20 went to assure that I had done it just for my -- because
21 it's important that he make sure he knows those prior to
22 coming before the judge, obviously. And it's also
23 important for him to understand those when he's entering
24 a plea.

25 Q. And are all those boxes checked on this form?

1 A. Yes. I would have -- like I say, I check those
2 as I read them.

3 Q. And did you also -- did you inform him of all the
4 charges he was pleading to on that day?

5 A. Yes. I would have advised him of the charges
6 that I had written on here the defendant is charged
7 with.

8 Q. And did you advise him of his exposure on all of
9 those charges?

10 A. As I said, on the second page based on his having
11 them run concurrent, it says he's pleading guilty and
12 could receive up to 30 years.

13 Q. Mr. Morin, I know that this is -- do you have an
14 additional copy of this form?

15 A. That's the original, but I scan everything into
16 my -- at my office, so I have a copy of it.

17 Q. And may I make this a Court's exhibit?

18 A. That's fine.

19 MS. OLIVE: Your Honor, I would move to have this
20 admitted as a Court's exhibit.

21 THE COURT: All right. It's probably more
22 appropriate as Defendant's 1.

23 MS. OLIVE: Oh, sorry.

24 THE COURT: I will note no objection.
25 Defendant's 1 is in evidence.

1 MS. OLIVE: All right. Thank you.

2 (Whereupon, Defendant's Exhibit No. 1, Plea Note
3 Sheet, was marked for identification.)

4 (Whereupon, Defendant's Exhibit No. 1 was entered
5 into the record.)

6 BY MS. OLIVE:

7 Q. Mr. Morin, do you feel that Mr. Shield's decision
8 to plead guilty was his decision?

9 A. Yes.

10 Q. If he had -- did he ever indicate to you that he
11 wished to proceed to trial?

12 A. Oh, we talked about going to trial several times
13 while I was representing him, while we were discussing
14 the case and talking about the evidence. But in the end
15 it was my understanding from talking to him, and I would
16 have indicated that he needed to understand the risks he
17 was taking, and it was my understanding that he
18 understood that the risk was too great to risk three
19 trials. And, really, it would only take one to get him
20 35 years for the armed robbery and the gun. So he
21 decided it was in his best interest based on the number
22 of charges and evidence in this charge that that was the
23 best. That was my understanding.

24 MS. OLIVE: Thank you.

25 CROSS-EXAMINATION

1 BY MS. ROSS:

2 Q. Hi, Mr. Morin.

3 A. Good morning.

4 Q. Now, I'm gonna refer you. Do you have a copy of
5 the transcript or do you want me to ---

6 A. No, I think I -- I think I've got one.

7 Q. I'm gonna hand this to you.

8 A. I've got one.

9 Q. I'd just refer you to Page 23 of the transcript.

10 A. Uh-huh.

11 Q. Does Mr. Shields apparently -- can you tell
12 whether he pleads guilty to the armed robbery?

13 A. I've looked at that and I can't -- the way the
14 transcripts's written, it doesn't -- he goes -- she goes
15 over -- Judge Verdin, not she. Judge Verdin goes over
16 the facts at some point, but at this point she doesn't
17 say to what she's referring.

18 Q. Okay. And then going on down there's a hesitancy
19 there with Mr. Shields.

20 A. Yes. Is that what happened, yes or no. And then
21 it says defendant is speaking to his attorney off the
22 record.

23 Q. Okay. Do you recall what was said at that time?

24 A. I'm not -- normally I can only say that I would
25 expect to say they usually -- they, defendants,

1 sometimes say how do I respond, to which I usually -- I
2 would say you are either pleading guilty or we're gonna
3 have a trial, which one of those. But to say whether or
4 not I remember the specific time he turned to me I, I
5 couldn't say.

6 Q. All right. And just going to the Patrick Thomas
7 armed robbery, the police officer.

8 A. Yes, ma'am.

9 Q. Isn't it true that if you were -- well, let me
10 show you ---

11 A. I have a copy, if you just call out the page.

12 Q. Okay. It's page one of one, his statement.

13 A. Okay.

14 Q. He describes one person robbing him?

15 A. Yes, sir (sic). Yes, that's correct.

16 Q. And then that person gets into a car and is
17 driven off.

18 A. Correct.

19 Q. Someone else drives off.

20 A. Correct.

21 Q. No description of that second person.

22 A. No.

23 Q. And no attitude as to his demeanor or whether he
24 was asleep or awake or anything?

25 A. No.

1 Q. And Mr. Shields told you he, in fact, was asleep?

2 A. Correct.

3 Q. And Mr. Roger's initial statement was that Mr.
4 Shields was asleep; is that correct?

5 A. I don't -- you'll have to -- the one that, that
6 Mr. Rogers, the one -- the statement that I'm concerned
7 about in speaking with Mr. Shields is the one where
8 we're driving around looking for someone to rob. We saw
9 him. That's when we drove up. That was the part of the
10 statement that concerned me with Mr. Rogers.

11 Q. And that, in fact, was a later statement from Mr.
12 Rogers?

13 A. I, I can't remember which one was first, but
14 obviously if it's a contradictory statement a jury would
15 have to decide which statement they believed.

16 Q. All right. And did you ever have Mr. Shields
17 have a lie detector test or offer him --

18 A. No.

19 Q. -- a lie detector test? And as far as the other
20 two charges, they were -- could you agree that they were
21 weaker than this?

22 A. They were weaker than this one.

23 Q. All right. And, and that, in fact, was the
24 Alford basis, he didn't admit to the facts of those
25 cases?

1 A. Right.

2 Q. And what was the inducement for this Alford?

3 A. The only thing that I can recall as far as the
4 inducement would have been the concurrent
5 recommendation. But I think that's a stretch for
6 Alford, but that's the only thing that I can really ---

7 Q. So there was no reduction in sentence?

8 A. No.

9 Q. Or dismissal of other charges --

10 A. No.

11 Q. -- or anything like that?

12 A. No, there was not.

13 MS. ROSS: All right. I have no further
14 questions.

15 THE COURT: Anything?

16 MS. OLIVE: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. OLIVE:

19 Q. Mr. Morin, is it your understanding that Mr.
20 Shields pleaded guilty to armed robbery?

21 A. Yes.

22 Q. Okay, thank you.

23 EXAMINATION

24 BY THE COURT:

25 Q. One quick question. I don't know if this is in

1 another -- because you all have been talking about
2 statements that I might not be privy to, but the
3 statement, and I'll get somebody to show this to you,
4 that's marked as Defendant's Exhibit 1, I think it's
5 actually Applicant's 1, but it's the one that was
6 introduced by Mr. Shields a few moments ago in his case
7 in chief. It's dated October 23rd, 2014. Let me let
8 you look at that and just tell me if that was something
9 that you were made privy to or was given to you or is
10 something that we've already covered.

11 A. Your Honor, I'm gonna refer to my iPad --

12 Q. Sure.

13 A. -- where I keep my ---

14 Q. Go right ahead, please.

15 A. I don't know that I've seen this.

16 Q. Do you want to take a moment and check?

17 A. Let me flip through what I have. Your Honor,
18 this doesn't appear in the affidavit of discovery to
19 which I had got from the solicitor's office and I don't
20 have a copy of it in my physical file or on my online
21 file that I can see.

22 Q. Okay.

23 A. The testimony that I gave regarding the statement
24 came from a police report on that case.

25 Q. All right, very good. All right. Additional

1 followup based on my question concerning plaintiff's 1?

2 MS. ROSS: Yes, just one.

3 RE CROSS-EXAMINATION

4 BY MS. ROSS:

5 Q. Isn't it true that Mr. Shields attempted to give
6 you a copy or made mention of a copy of this statement?

7 A. Not that I recall. And I have several letters in
8 here from Mr. Shields.

9 Q. All right.

10 THE COURT: Anything, Attorney General?

11 MS. OLIVE: No.

12 THE COURT: All right. Just so that the record
13 is clear, these two statements, one's dated October
14 23rd, 2014, the other August 8, 2016. They're marked as
15 one and two. And I just changed it and said
16 defendant's. I just marked through and wrote
17 plaintiff's, okay? Thank you, you may go.

18 THE WITNESS: May I be excused, Your Honor?

19 THE COURT: Yes, sir.

20 THE WITNESS: Thank you.

21 Any additional witnesses from the State?

22 MS. OLIVE: No, Your Honor.

23 THE COURT: Anything in reply from the applicant
24 or any argument or anything else as it relates on the
25 record at this point?

1 MS. ROSS: Can I just in reply to that statement
2 can I call Mr. Shields again, please?

3 THE COURT: Certainly. Come on up, sir, have a
4 seat. You're still under oath.

5 MS. ROSS: Judge, may I approach and get your
6 copy?

7 THE COURT: Sure.

8 MS. ROSS: Thank you.

9 ANTOINE L. SHIELDS,
10 having remained under oath from previous testimony,
11 testified as follows:

12 REPLY REDIRECT EXAMINATION

13 BY MS. ROSS:

14 Q. Okay. Mr. Shields, I'm showing you a copy of the
15 statement of Tobias Rogers. Do you recognize that?

16 A. Yes, ma'am.

17 Q. Have you seen it before?

18 A. I didn't see the statement, but he -- my lawyer
19 had told me that he wouldn't accept a statement because
20 he had talked to my co-defendant attorney and he told
21 him that my co-defendant told him that I told him to
22 write the statement. That's why he wouldn't accept it.

23 Q. Okay. So you attempted to, to provide your
24 attorney with this statement --

25 A. Yes, ma'am.

1 Q. -- before your plea?

2 A. Yes, ma'am.

3 Q. All right.

4 THE COURT: Anything on cross?

5 REPLY CROSS-EXAMINATION

6 BY MS. OLIVE:

7 Q. So at what point did you see this statement?

8 A. I've never seen it.

9 Q. You you've never seen it?

10 A. (Witness shakes head back and forth.)

11 Q. Okay.

12 A. I just told my attorney that he was willing to
13 recant his statement and he said he was gonna go talk to
14 his attorney. And he came back and said that his
15 attorney told him that Tobias told him that I told him
16 to rewrite the statement. That's why he wouldn't accept
17 it. He never did any investigation over the statement
18 or he never talked to Tobias about the statement.

19 Q. Okay. But you've never seen this statement, so
20 you could never have tried to get it to your attorney,
21 right?

22 A. I told him that he wanted to recant his
23 statement.

24 Q. Okay. And you talked to him.

25 A. I talked to my attorney.

1 Q. Or your attorney talked to his attorney?

2 A. Yes.

3 Q. Okay, thank you. That's all.

4 A. So he states.

5 THE COURT: Okay, thank you, sir. You can step
6 down.

7 (Whereupon, witness leaves witness stand.)

8 All right. Anything further from the applicant?

9 MS. ROSS: No, Your Honor.

10 THE COURT: Any arguments? Any commentary? Go
11 ahead.

12 MS. ROSS: Well, just as I said before, he
13 testified to the ineffective assistance of counsel and
14 the failure to investigate. And I think the record is
15 satisfactory with that. And then we also allege the due
16 process violations. I question the voluntariness of the
17 plea, as shown by the colloquy. Some of the questions
18 aren't asked and answered. It's certainly unclear.

19 On Page 23, Mr. Shields actually does not
20 apparently admit guilt to the indictment dash 4300. The
21 one that is not an Alford plea. Nor does it appear he
22 does anywhere else in the record. He also did not have
23 an inducement for the actual Alford pleas.

24 As you heard, Mr. Shields is somewhat
25 unsophisticated and easily influenced, so we'd question

1 whether this plea was voluntarily made and ask that it
2 be reversed. And he understands he'd be put back in the
3 position he was in looking at life -- a potential life
4 sentence.

5 THE COURT: All right.

6 MS. OLIVE: May it please the Court, Your Honor?

7 THE COURT: Yes, ma'am.

8 MS. OLIVE: The State's position is that Mr.
9 Shields had the advice of a very competent attorney who
10 had been practicing law since 1992. And as you heard
11 him testify, the majority of that has been criminal law.
12 He represented individuals on these charges numerous
13 times before.

14 He discussed that Mr. Shields was facing these
15 three different charges. The State was intending to go
16 forward with the charge related to Patrick Thomas first,
17 and had Mr. Shields been convicted of that charge, not
18 only was he looking at the 30 years exposure on one
19 armed robbery, but he was looking at an additional
20 60 years of exposure if the State decided to try all
21 three separately had he not gone forward with this plea.

22 In order to show ineffective assistance of
23 counsel, he not only has to show that counsel was
24 deficient in some -- that counsel was deficient, but he
25 also has to show that he was prejudiced by that alleged

1 deficiency. Here, again, it's our position he has shown
2 no deficiency of counsel.

3 It's our position from the testimony today that
4 Mr. Morin did not misadvise Mr. Shields. He reviewed
5 all discovery with Mr. Shields. He went through each
6 and every all -- excuse me, each and every element with
7 Mr. Shields.

8 The evidence shows that Mr. Shields was fully
9 aware that he was pleading guilty that day to all three
10 armed robberies, to the assault and battery first as
11 well. Your Honor, we introduced as a State's Exhibit B
12 (sic), the clean checklist that Mr. Morin went over with
13 Mr. Shields. Mr. Morin testified that all of the
14 writing on that sheet, other than Mr. Shields'
15 signature, was Mr. Morin's writing and that he would
16 have either written it before or written it
17 contemporaneously with going over that sheet with Mr.
18 Shields. The sheet does indicate all of the charges to
19 which he was pleading guilty that day, as well as his
20 exposure on those charges, what rights he was giving up
21 by pleading guilty, as well as a few other advisements,
22 Your Honor.

23 It would be our position there's no prejudice
24 because he clearly received a benefit of pleading guilty
25 to these, all of these charges at once, Your Honor. He

1 only got sentenced to 21 years. He was looking at a lot
2 more time. Could have been charged consecutively. And
3 might have even been subject to a life without parole
4 sentence had the State chosen to go forward on these
5 separately. These were separate victims on separate
6 dates, Your Honor.

7 With respect to the allegation of involuntary
8 guilty plea, the voluntariness of the plea can be shown
9 either from the plea transcript itself or through the
10 record, including the testimony of plea counsel, Your
11 Honor. And it's our position that that testimony today
12 reveals or shows that this plea was freely and
13 voluntarily entered, Your Honor, with the advice of
14 competent counsel.

15 There's an allegation that there was not proper
16 inducement for the plea, Your Honor. But it's our
17 position that the inducement for the plea was, was the
18 benefit of being able to plead to all these charges at
19 once rather than to be tried separately when Mr. Morin
20 testified that he believed -- he testified that Mr.
21 Shields was facing much more time had he been tried
22 separately on these charges and could have been facing a
23 life sentence, Your Honor. So that would be our
24 showing. Thank you.

25 THE COURT: All right. I just have a question of

1 you all, and I just want to make sure my mind is right
2 on it. Just give me just a few moments to see if I can
3 locate what I'm trying to find.

4 All right. I'm going to end up taking this case
5 under advisement, but I'll be more than happy to let you
6 all speak to what's causing the Court the most
7 hesitation. The Court is familiar from previous
8 postconviction actions with how Judge Verdin typically
9 takes a guilty plea. And I do agree that nowhere in the
10 record does it reflect that Mr. Shields ever
11 affirmatively stated that he was pleading guilty to the
12 armed robbery, you know, that we're talking about here
13 today.

14 At the same time, the Court is aware that very
15 often the guilty plea is a verbal process, it's also a
16 nonverbal process. And I do not think that Judge Verdin
17 would be inclined to accept a guilty plea if she did not
18 feel like sufficient, a sufficient colloquy had not
19 otherwise taken place. In other words, if she felt like
20 the defendant was up there pleading guilty and she was
21 comfortable doing so, she would accept the plea.

22 Any specific law that the applicant can point to
23 relating to this, because I've never actually had this
24 situation come up in my career where the record is
25 silent on the question of admission of guilt to the

1 underlying charge. And I realize that he has two that
2 he pled Alford under and then it becomes a question of
3 whether or not that was sufficient inducement to, to
4 qualify as an Alford plea.

5 MS. ROSS: Right. And that does complicate it
6 further. It seems like it muddies the record a little
7 bit.

8 THE COURT: It does because obviously she's
9 talking on Page 23 it looks like she's focusing on the
10 Alford stuff. But earlier in the transcript, I think
11 around Page three or four -- sorry, page six, that's
12 where she's talking about, Judge Verdin is talking about
13 the incident on July the 20th of 2014.

14 MR. ROSS: Uh-huh. And I believe those are the
15 Alford ones.

16 THE COURT: Those are the Alford ones, okay.
17 Hold on, there was one ---

18 MS. ROSS: Maybe seven and eight.

19 THE COURT: Maybe it was seven and eight.

20 MS. OLIVE: Your Honor, on page 8 of the
21 transcript she does ask him specifically regarding the
22 Patrick Collins, if he was there to enter a plea to that
23 indictment and he said yes. A guilty plea to that
24 indictment.

25 THE COURT: Okay, hold on. But she switches back

1 and forth.

2 MS. ROSS: That's where Rogers said yes. It's
3 the bottom of eight, then on line three Rogers is the
4 one who said yes.

5 THE COURT: Right.

6 MS. ROSS: So, you know, there's no question it's
7 -- I -- this is unsatisfactory, Your Honor. I did find
8 Benjamin Cooper v State, but it's an unpublished
9 opinion. I can give you -- I just have the one copy or
10 I'd ---

11 THE COURT: If you want to give me the UP site
12 where I can write that down real quick.

13 MS. ROSS: You can just have a copy, that's fine.

14 THE COURT: Okay.

15 MS. ROSS: I don't -- I didn't present it because
16 I didn't think it was perfect and it's unpublished,
17 so... And I, of course, have Alford but I'm sure you're
18 familiar with that.

19 THE COURT: The Cooper opinion is 2104/UP/286,
20 filed July 16th, 2014, just so the record is correct or
21 clear.

22 All right. Allow the Court to take this under
23 advisement and hopefully I'll have a Form 4 out by the
24 end of this week if not sooner.

25 MS. ROSS: All right, thank you.

1 THE COURT: But let me think about it. Thank you
2 all.

3 MS. ROSS: No rush, Your Honor.

4 THE COURT: It's good to meet you. Pleasure to
5 meet your family too.

6 (Whereupon, hearing concluded at 11:37 a.m.)

7

8 --- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings and evidence introduced
8 in the hearing and/or trial of the captioned case,
9 relative to appeal, in the Court of Common Pleas for
10 Spartanburg County, South Carolina, on the 7th day of
11 November, 2015.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17

18 s/ Julie A. Ashbrook
19 Julie A. Ashbrook
20 Circuit Court Reporter
21 Seventh Judicial Circuit
22
23
24
25

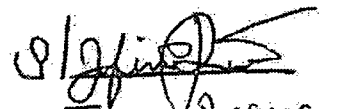
Verified Statement

I, Tobias Rogers, hereby give this written statement on the 23rd. day of October 2014. Without decess....

It is my true statement the Antoine Shields was sleeping when the Armed Robbery involving Patrick Thomas took place. I gave Officer Jeff Kirby a true and correct statement. Stating that "Antoine Shields was sleeping when the crime took place on the 20th. day of July 2014." Officer J. Kirby did not write the statement as I gave him to be true and exact. He took a statement from me while I was not in my right state of mind to entrap Antoine Shields unlawfully. We have never committed any crimes together....

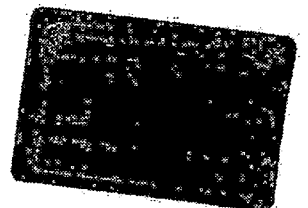
This statement is true and correct to best of my knowledge....

Respectfully Submitted....


Tobias Rogers

Date: October 23rd. 2014

CC:



To All involved Parties,

I, Tobias Rogers gives this written Statement on the 8th day of Aug. 2016 to be true and exact.

On the 20th day of July 2014, I, Tobias Rogers did rob Patrick Thomas. I left from my apartment, 424 Spruce St. Apt. 1 to pick up Antwon Shields from his house to go pick up his girlfriend from her friends house in Brittney East Apartments in East Spartanburg. We left from Mr. Shields house with me in the driver seat.

I drove to Crown Pointe to help a friend because his car had broke down. After we left there we rode around because she still wasn't ready. He asked me to take him to Oakview Apartments to get some weed. After getting the weed we rode around for a couple of hours waiting on Mr. Shields girlfriend. He fell asleep as we were riding. As I was driving in the area I then saw Patrick Thomas getting out of his car. I then pulled into the apartments complex. I woke Mr. Shields up from his sleep and asked

him to park the car while I run to a friends apartment. I got out the car acting like I was going to an apartment and Mr. Shields got in the driver seat to park the car. I then saw Patrick Thomas reaching in his car. I ran up behind him and put a bb gun to his head and demanded his things. He then complied. As I got his things I punched him in the back of the head and ran back to the car. I told Mr. Shields to pull off. He had no knowledge of what I had done. His girlfriend still wasn't ready so I told Mr. Shields to go to an ATM so I could pay him back the money that he let me use to open a bank account. After getting the money we drove to my apartment and was pulled over.

Date: Aug 8, 2016

Signature: 
Tobias Rogers

On 11 day of February, 2015, the Defendant Antoine Shields with a Social Security Number of _____ was advised by Michael D. Morin of the following:

That he stands ready to try the case if that is what the Defendant wants to do.

The Defendant has been charged with:

Armed Robbery x 3; 2 weapons; AGG 1st F

The maximum penalty for this charge(s):

10-30 years; 5 yrs; 2 weapons; 10 yr; 4m

The evidence of these charges is:

14 minutes from robbery to arrest

The Defendant's prior record is:

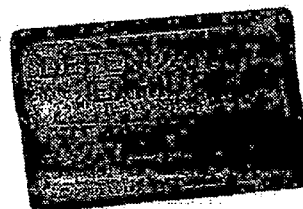
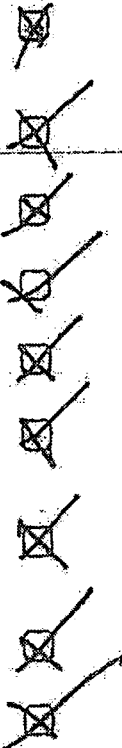
Moped/helmet 14

The Plea negotiations and/or offer by the State consist of:

concurrent

Has the Defendant had the following rights explained to him and does he understand:

- (a) He has the right to have a grand jury hear the case;
He was told what the grand jury is and the effect of his waiver.
- (b) He has the right to a trial by jury.
- (c) He has the right to help pick and challenge potential jurors.
- (d) He has a right to confront witnesses against him.
- (e) He has a right to present evidence or not present evidence.
- (f) The solicitor must present evidence sufficient to convince 12 Jurors of the Defendant's guilt beyond a reasonable doubt.
- (g) He has a right to testify or not testify at a jury trial; and should he chose not to testify that choice cannot be held against him.
- (h) That in order to plead guilty he must waive and give up all these
- (i) That he has the right to appeal any sentence within ten (10) days of being sentenced.



THE DEFENDANT WAS ASKED IF HE WANTED TO PLEAD GUILTY TO WHICH HE SAID:

YES

NO

The Defendant was asked if he had been promised anything, coerced in any way, threatened or forced to enter a GUILTY PLEA, to which he responded:

YES

NO

The Defendant was asked if he needed more time to think about whether or not (s)he wanted to PLEAD GUILTY, to which he responded:

YES

NO

The Defendant was asked if there was anyone else he wanted to confer with about whether or not to PLEAD GUILTY, to which he responded:

YES

NO

The Defendant was asked if there was anything else he wanted me to do or if there was anyone else he wanted me to contact concerning this matter, which he responded:

YES

NO

The Defendant was asked if he had any complaints about his attorney, to which he responded:

YES

NO

☒ Defendant was AGAIN advised I stand ready to try the case if that is what the Defendant wants.

☒ THE DEFENDANT HAS BEEN ADVISED THAT NO ONE CAN MAKE ANY PROMISE OF IF OR WHEN HE WOULD BE IMPRISONED NOR COULD ANYONE PROMISE IF OR WHEN HE MIGHT BE ELIGIBLE FOR RELEASE IF IMPRISONED.

AGAIN, THE DEFENDANT WAS ASKED IF HE WANTED TO PLEAD GUILTY TO WHICH HE RESPONDED:

YES

NO

The Defendant stated he understood by pleading guilty he could receive up to 30 Years.

During signing of the guilty plea on each indictment again went over with the accused the charge and the potential penalty and asked IF HE WANTED TO PLEAD GUILTY, TO WHICH HE RESPONDED:

YES

NO

[Signature]
DEFENDANT

23 yrs

Single

3 kids 3, 4, 5

H.S. Grad Spartan High

sterling Package when arrested
Knights Apparel

70 days

has letter

Mom & Dad

Pled

2-11-15

L. Vardin

21 yrs

10 yrs

6 yrs

Barnett
Prosecuting

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Antoine L. Shields, #363038,)
Applicant,)

Case No.: 2015-CP-42-2885

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

M. HOPE BLACKLEY
2017 MAR 17 AM 10:56
CLERK OF COURT

THIS MATTER COMES BEFORE THE COURT by way of an Application for Post-Conviction Relief filed June 25, 2015, and Addendum filed November 1, 2016. Respondent made a Return on February 17, 2016. The Court convened an evidentiary hearing into the matter on November 7, 2016 at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Susannah Ross, Esquire. Alicia A. Olive, Esquire of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's stepfather, Rodney Smith, Applicant's co-defendant, Tobias Rogers, and Applicant's plea counsel, Michael D. Morin, Esquire also testified. The Court had before it a copy of the plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pleadings, the return and amendments, and the exhibits introduced by Applicant and Respondent. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In September 2014, the Spartanburg County Grand Jury indicted Applicant for three (3) counts of armed robbery and

three (3) counts of possession of a weapon during the commission of a violent crime (2014-GS-42-4298 counts 1 and 2); (2014-GS-42-4299 counts 1 and 2); (2014-GS-42-4300 counts 1 and 2). Applicant waived presentment to the grand jury for the charge of assault and battery—1st degree (2015-GS-42-0628).¹ Michael D. Morin, Esquire, represented Applicant. On February 11, 2015, Applicant pleaded guilty as indicted to all charges. Applicant's plea to counts 1 and 2 in indictments 2014-GS-42-4298 and -4299 were made under North Carolina v. Alford² and with a recommendation of concurrent sentencing. The Honorable Letitia H. Verdin sentenced Applicant to concurrent terms of imprisonment for twenty-one (21) years each for the armed robbery charges, ten (10) years for assault and battery—1st degree, and five (5) years for each weapons charge. Applicant did not appeal his guilty plea or sentence.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. Failure to investigate
2. Involuntary Guilty Plea
 - a. "Guilty plea was not voluntarily obtained under Alford"
3. "Violation of fourth amendment rights
 - a. "Counsel failed to protect right to a Gerstein hearing"
4. "Due Process violations in that the plea was not knowingly and voluntarily made without proper inducement"

2017 MAR 17 AM 10:56
M. HOPE BLACKLEY

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Furthermore, the Court has had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility.

¹ Applicant also waived presentment to the Grand Jury and pleaded guilty to financial transaction card fraud (2015-GS-42-0629); however Applicant did not challenge that conviction in this action.

² 400 U.S. 25 (1970).

The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Testimony

Applicant testified that he is innocent. He testified plea counsel did not investigate or interview any of Applicant's witnesses. Applicant testified plea counsel partially reviewed discovery with him. Tobias Rogers, Applicant's co-defendant, testified on behalf of Applicant and testified Applicant had no knowledge of the robbery. Rogers admitted he had five prior convictions for burglary, second degree.

Plea counsel testified he has been practicing law since 1992 and has practiced predominantly criminal law throughout his career. He testified he met with Applicant three (3) or four (4) times prior to the plea. He stated that in his meetings with Applicant, he focused on the robbery involving the police officer, Patrick Thomas, because that was the strongest case the State had and that was the first case the State would take to trial. He testified he filed a motion for discovery and reviewed the discovery with Applicant. He testified he explained to Applicant the evidence against him. He testified that Applicant was found driving the vehicle used in the armed robbery within twenty-five (25) minutes following the incident. He testified Applicant told him his version of the facts, which was that Applicant was asleep in the car while Rogers was driving. He testified he reviewed the police reports and compared them against Google Maps and drove the route himself. He testified that the robbery was carried out by two people, and that Officer Thomas identified one of the individuals but not the other. He testified that he reviewed possible defenses with Applicant. He testified Applicant did not provide him with any leads or potential defense witnesses. He testified that he discussed Applicant's rights with him and that Applicant signed a waiver-of-rights form prior to entering the guilty plea. Counsel

testified his practice is to review the form line-by-line with his clients, placing a check mark next to each item after going over it. He stated that Applicant then signed the form. (See Respondent's Exhibit 1).

B. Ineffective Assistance of Plea Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's

unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

Failure to Investigate

Applicant's allegation that Counsel was ineffective for failing to investigate is without merit. Plea counsel engaged in a thorough investigation of the allegations and advised Applicant that there was sufficient evidence to convict him at trial. Counsel testified he met with Applicant three (3) or four (4) times prior to the plea, and that in those meetings he reviewed all discovery material with Applicant, explained the charges and the elements thereof, discussed possible defenses, and discussed with Applicant his constitutional rights. Counsel testified that in these meetings he focused on the armed robbery case that involved the police officer because it was the strongest case and because the State would try it first. Counsel testified that they discussed the possibility of going to trial and that Applicant decided to plead guilty. Counsel testified that if Applicant had proceeded to trial instead of pleading guilty, the State would have tried him separately on the three (3) indictments and would have had three (3) opportunities to convict him which could have resulted in a sentence of life without parole if the State succeeded.

The Court finds plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Applicant has failed to point to any information or evidence Counsel failed to uncover. See Stalk v. State, 383 S.C. 554, 563, 681 S.E.2d 592, 594 (2009) (holding an applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it"). Applicant has failed to demonstrate Counsel's performance fell below an objective standard of reasonableness. Therefore, Applicant has failed prove Counsel's conduct was deficient.

Applicant has likewise failed to demonstrate that but for any alleged deficiency of counsel, he would not have pleaded guilty but would have insisted on going to trial. Applicant pleaded guilty to three (3) counts of armed robbery. Regardless of the fact that he pleaded under Alford to two (2) of those charges, Applicant pleaded straight up to indictment 2014-GS-42-4300, which was the indictment for the armed robbery of Patrick Thomas, a police officer; as the State related, this case was the lead indictment for the plea. (Tr. at 3). Of all of Applicant's charges, this case was the strongest. Furthermore, Applicant received a benefit from pleading guilty to all three (3) armed robbery charges at once. Applicant's exposure at trial on a single charge of armed robbery would have been ten (10) to thirty (30) years. In addition, Applicant could have been exposed to a sentence of life without parole if the State had tried him separately and obtained convictions on two (2) or more of the armed robbery indictments. Applicant received a sentence of twenty-one (21) years for pleading to all three (3) charges at once. Plea counsel testified that Applicant provided him with no leads or witnesses for investigative purposes. Though Applicant's co-defendant, Tobias Rogers, testified at the evidentiary hearing, the Court finds Rogers' testimony to be completely lacking in credibility, especially in light of his subsequent testimony at his *own* post-conviction relief hearing, which took place on November 8, 2016. Applicant, therefore, has failed to show that there is a reasonable probability he would not have pleaded guilty but would have proceeded to trial on any of the charges. Accordingly, this allegation is denied and dismissed.

Involuntary Guilty Plea

This Court finds that this allegation is without merit and Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made.

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63). Admissions "made during a guilty plea should be considered conclusive unless [an applicant]

presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Dalton v. State, 376 S.C. 130, 138-39, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Lecke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

Applicant asserts that his Alford pleas to two (2) armed robbery charges were not supported by a sufficient inducement. The Court finds that the concurrent recommendation was sufficient inducement to warrant Judge Verdin's acceptance of the plea. In addition, the record of Applicant's plea and the testimony presented at the evidentiary hearing clearly shows that Applicant's plea was entered freely and voluntarily. Applicant testified at the evidentiary hearing

that it was his decision to plead guilty. This Court finds that Judge Verdin thoroughly reviewed all of the ramifications of the pleas with Applicant. Furthermore, plea counsel also fully explained the ramifications of an Alford plea to Applicant. This Court finds Applicant's statements at the plea were entered freely and voluntarily, and he has made no showing why he should be allowed to depart from the truth of those statements. See Dalton v. State, 376 S.C. at 137-38, 654 S.E.2d at 874. Applicant was thoroughly advised of the waiver of his constitutional rights by both plea counsel and Judge Verdin. (Tr. at 12). The record reflects that Applicant told the Court that he had not been forced by anyone or promised anything to plead guilty. (Tr. at 12). Accordingly, this Court finds that the Applicant had a full understanding of the consequences of his plea and the charges against him. Therefore, Applicant has failed to demonstrate any deficiency of counsel.

Applicant has also failed to demonstrate any prejudice with regard to this allegation. Applicant pleaded guilty to three (3) counts of armed robbery. Applicant entered an Alford plea to only two (2) of the charges. As this Court found above, Applicant received a benefit from pleading guilty to all three armed robbery charges at once. Applicant's exposure at trial on a single charge of armed robbery would have been ten (10) to thirty (30) years, and Applicant received a total sentence of twenty-one (21) years by pleading to all the charges. Therefore, Applicant has failed to show that there is a reasonable probability that he would not have pleaded guilty but would have insisted on going to trial on any of the charges. Accordingly, this allegation is denied and dismissed.

In conclusion, this Court finds plea counsel's representation met professional norms in all respects, and this application for post-conviction relief is denied and dismissed.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

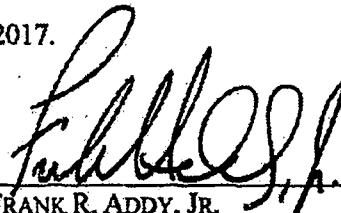
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. 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 South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

2017 MAR 17 AM 10:56
M. HOPE BLACKLEY

IT IS SO ORDERED this 9th day of March, 2017.


FRANK R. ADDY, JR.
Presiding Judge, Seventh Judicial Circuit

Greenwood, South Carolina

2017 MAR 17 AM 10:56
M. HOPE GLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Applicant

CASE # 2015-CP-42-2885

VS
Steele
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the
In this action dated March 9, 2017 on March 17, 2017

Order of Dismissal

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Adrian H. Hester
Olivia Oliver
Suzanne Ross

2017 MAR 17 AM 10:56
M. HOPE BLACKLEY

March 17, 2017
(Date)

Corina Steele
(Signature)

WITNESSES

1. SENTENCE MADE
2. REPORT FILED
Spartanburg County Sheriff's Office
3. CARD PULLED
4. INDEXED
5. CHECKED WARRANTS
6. CHECKED FINES
7. ASSESSMENT
FINE CARD MADE
8. STATE OF SOUTH CAROLINA

ARREST WARRANT NUMBER

Count One - 2014A4210102867
Count Two - D/I

True Bill

SEP 29 2014

ACTION OF GRAND JURY

AKJ
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.
14-GS-42-4298

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 29 2014

TERM

**THE STATE
v.**

ANTOINE LAMAR SHIELDS

Indictment for

**ARMED ROBBERY; POSSESSION OF A
WEAPON DURING COMMISSION OF A
VIOLENT CRIME**

SC Code: 16-11-330 (A); 16-23-490
CDR Code: 139; 549
Class: FEL/A; FEL/F

2014 OCT 1 - 1:51 PM
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 26 2014 the Grand
 Jurors of Spartanburg County present upon their oath:

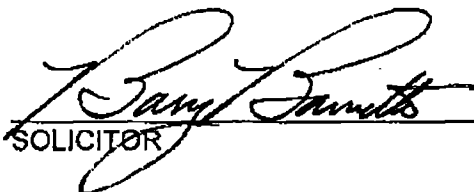
COUNT ONE – ARMED ROBBERY

That the Defendant, Antoine Lamar Shields, did in Spartanburg County on or about July 16, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of John Hernandez, including but not limited to, a black Samsung Concord cell phone, by means of force, violence, and/or intimidation with the intent to deprive her permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO – POSSESSION OF A WEAPON DURING
 COMMISSION OF A VIOLENT CRIME**

That the Defendant, Antoine Lamar Shields, did in Spartanburg County on or about July 16, 2014 possess or visibly display a firearm during the commission of a violent crime, to-wit: ARMED ROBBERY, 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

WITNESSES1. SENTENCE MADE ☒2. REPORT ENDED ☒Spartanburg County Sheriff's Office ☒3. CARD FILLED ☒4. INDEXED ☒5. CHECKED WARRANTS ☒6. CHECKED SIGNATURE ☒7. ASSESSMENT AND
FINE CARD MADE ☒8. TRAFFIC VIOLATION COPY ☒**ARREST WARRANT NUMBER**

Count One - 2014A4210102868

Count Two - D/I

ACTION OF GRAND JURY**True Bill**

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. -

14-GS-42-4299

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor**COURT OF GENERAL SESSIONS**

SEP 29 2014

TERM**THE STATE**

v.

ANTOINE LAMAR SHIELDS**Indictment for****ARMED ROBBERY; POSSESSION OF A
WEAPON DURING COMMISSION OF A
VIOLENT CRIME**

SC Code: 16-11-330 (A); 16-23-490

CDR Code: 139; 549

Class: FEL/A; FEL/F

FILED
CLERK OF COURT
2014 OCT -1 PM 1:53
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

SEP 26 2014

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

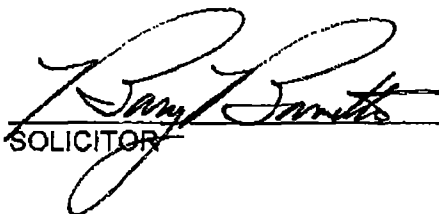
COUNT ONE – ARMED ROBBERY

That the Defendant, Antoine Lamar Shields, did in Spartanburg County on or about July 16, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of Jennifer Langlitz, including but not limited to a black Samsung Galaxy S-IV cell phone, by means of force, violence, and/or intimidation with the intent to deprive her permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO – POSSESSION OF A WEAPON DURING
 COMMISSION OF A VIOLENT CRIME**

That the Defendant, Antoine Lamar Shields, did in Spartanburg County on or about July 16, 2014 possess or visibly display a firearm during the commission of a violent crime, to-wit: ARMED ROBBERY, 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

WITNESSES

1. SENTENCE MADE

2. REPORT ENDED

Spartanburg City Police Department

3. CARD FOLDED

4. INDEXED

5. CHECKED SIGNATURE

6. CHECKED SIGNATURE

7. ASSIGNED AND

FINE CARD MADE

8. TRANSFER ACTION COPY

ARREST WARRANT NUMBER

Count One -- 2014A4210202283

Count Two -- D/I

ACTION OF GRAND JURY

True Bill

SEP 20 2014

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. -

14-GS-42-4300

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 29 2014

TERM

THE STATE

v.

ANTOINE LAMAR SHIELDS

Indictment for

**ARMED ROBBERY; POSSESSION OF A
WEAPON DURING COMMISSION OF A
VIOLENT CRIME**

SC Code: 16-11-330 (A); 16-23-490

CDR Code: 139; 549

Class: FEL/A; FEL/F

2014 OCT - 1 PM 1:53
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 26 2014

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

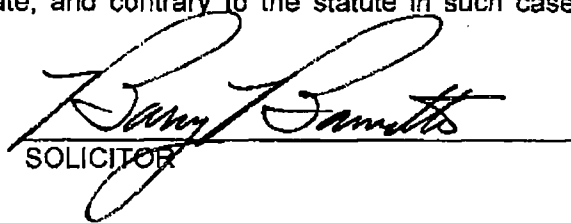
COUNT ONE – ARMED ROBBERY

That the Defendant, Antoine Lamar Shields, did in Spartanburg County on or about July 20, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of Patrick Thomas, including but not limited to, a book bag containing a wallet and various items, including a debit card or other valuable items, by means of force, violence, and/or intimidation with the intent to deprive her permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO – POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME**

That the Defendant, Antoine Lamar Shields, did in Spartanburg County on or about July 20, 2014 possess or visibly display a firearm during the commission of a violent crime, to-wit: ARMED ROBBERY, 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

WITNESSES

1. SENTENCE MADE

2. REPORT TO

3. CARD PULLED

Spartanburg City Police Department

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

PROBATION COPY

ARREST WARRANT NUMBER

DI

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

15-GS-42-0628

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 09 2015

TERM

THE STATE

v.

ANTOINE LAMAR SHIELDS

Indictment for
ASSAULT AND BATTERY
FIRST DEGREE

SC Code: 16-3-600(c)(1)
CDR Code: 3412
Class FEL-E

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

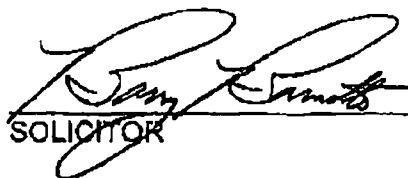
At a Court of General Sessions, convened on JAN 28 2015 the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY FIRST DEGREE

That the Defendant, Antoine Lamar Shields, did in Spartanburg County, on or about July 20, 2014 commit an act causing an unlawful injury to Patrick Thomas, and the act:

- (1) involved nonconsensual touching of the private parts of an adult with lewd and lascivious intent, or
 - (2) occurred during the commission of a robbery, burglary, kidnapping, or theft, or
 - (3) involves an offer or attempt to injure another person with the present ability to do so, and the act is accomplished by means likely to produce death or great bodily injury, or occurred during the commission of a robbery, burglary, kidnapping, or theft,
- all in violation of § 16-3-600, THE 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