

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable R. Keith Kelly, Circuit Court Judge

DAN DEMETRI FORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001579

APPENDIX

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Appellate Defender

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON
2013-GS-32-853

State of South Carolina

vs.

Dan Ford

Lexington, South Carolina

March 13, 2014

Before the Honorable Brian M. Gibbons

APPEARANCES

For the State: Angela Garrick

For the Defendant: Bradley Kirkland

Reported by: Michael C. Watkins

Official Court Reporter

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NO EXHIBITS

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1 MS. GARRICK: 2013-GS-32-853, State versus Dan Ford,
2 indicted for burglary first degree, he is pleading under
3 Alford to the same. 2013-GS-32-857, State versus Dan Ford,
4 indicted for armed robbery while armed with a deadly weapon,
5 he is pleading under Alford to the same. Both indictments
6 are true billed, he is represented by Mr. Kirkland.

7 THE COURT: All right. Mr. Kirkland, you represent Mr.
8 Ford?

9 MR. KIRKLAND: I do, Your Honor.

10 THE COURT: Have you had a full opportunity to discuss
11 these matters with your client?

12 MR. KIRKLAND: I have, Your Honor.

13 THE COURT: And what does he indicate to you he wishes
14 to do?

15 MR. KIRKLAND: He wishes to plead guilty pursuant to
16 North Carolina versus Alford.

17 THE COURT: And based upon your investigation and
18 consultation with him in these matters, do you agree with
19 that decision?

20 MR. KIRKLAND: I do, Your Honor. I do want to talk
21 about that a little bit if you don't mind, put a few things
22 on the record.

23 THE COURT: Yes, sir.

24 MR. KIRKLAND: I got appointed I think it was around
25 October of last year. There was a conflict with the public

1 defender's office. Apparently there was numerous other
2 reasons that they were concerned about it, but one of the
3 reasons was that the victim -- the family of the victim
4 showed up at a social event that the public defender's
5 office was attending so they decided to be safe rather than
6 sorry and they conflicted the case out. When I met Mr.
7 Ford, Mr. Ford was adamant that he was not guilty of this
8 offense, he was equally adamant that he did not want to go
9 to trial. He has persisted in claiming that he is innocent,
10 so immediately I began to prepare for trial. I hired an
11 investigator, Dave MacDougall, a very experienced
12 investigator. Mr. MacDougall met with Mr. Ford. Mr. Ford
13 raised the possibility of an alibi defense, we actually
14 located that witness. However once that witness found out
15 that she would -- we would need her to actually testify in
16 court she broke off contact with my investigator. Shortly
17 after that, Your Honor, I received a letter from Mr. Ford
18 instructing me to cease all further investigation and to
19 attempt to negotiate a deal in this case, so from
20 approximately December until today we have been negotiating
21 a resolution to this case. Mr. Ford does not like this
22 resolution, what he's pleading to today, so I want to make
23 it clear he is not happy with the resolution. I will let
24 you talk to him if he's happy with my services, but
25 unfortunately the solicitor's office would not bend. Now,

1 you'll notice on the plea sheet - I want to put this on the
2 record as well so if it's addressed in the future -- you
3 will notice on the plea sheet there is a scratched out
4 section where it looks like a sentence was written and then
5 scratched out and then written again, what that was is that
6 he had indicated to me yesterday that he wanted to plead
7 guilty pursuant to North Carolina versus Alford. When we
8 got here this morning the solicitor said if he would plead
9 straight-up without pleading pursuant to North Carolina
10 versus Alford, she would reduce the negotiations down from
11 17 years to 16 and a half years. I asked my client if he
12 wanted a few minutes to think about it, after a few minutes
13 he told me he wanted the 16 and a half and he wanted to
14 plead straight-up. Subsequent to that he changed his mind
15 and decided he wanted to plead to the 17 and that's why it
16 was scratched out, so I don't want there to be any question
17 as to what was going on with that. I asked Mr. Ford
18 yesterday if there was anything else that I could possibly
19 do for him, he did raise the possibility of another
20 potential alibi defense, however he could give me no
21 information whatsoever as to how to locate this person, what
22 this person's real name was, where this person lives. He
23 only indicated to me that this person hangs out at the
24 Columbia Mall, and I told him I would send an investigator
25 down to that mall and have him sit there the entire day and

1 talk to every black male that came through there to
2 determine if this is the person that he knows by a
3 particular street name. He told me that he did not want to
4 me to do that, but I have the money and I could have done
5 that yesterday and he told me not to do that. The reason I
6 am putting this on the record is he is about to catch a
7 substantial sentence and I want to make sure that you
8 question him thoroughly as to his decision to plead guilty,
9 because he doesn't want the deal, but he does -- he tells
10 me -- he's told me from the start he wants to plead guilty,
11 he just wants a better deal and he called off all
12 investigations that I attempted on his behalf. And that's
13 all I have.

14 THE COURT: All right. Thank you, Mr. Kirkland. Mr.
15 Ford, did you hear everything your lawyer just told me?

16 THE DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: Do you understand everything that he just
18 told me?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Is what he told me the truth as to what
21 happened in his discussions with you about what you're
22 coming here today for?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. Now, how old are you, sir?

25 THE DEFENDANT: Twenty-one.

1 THE COURT: And how far did you go in school?

2 THE DEFENDANT: To the 11th grade, I completed the
3 10th.

4 THE COURT: And you understand what you're doing in
5 court today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you understand the two things which you
8 are charged with.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand that the burglary in the
11 first degree charge carries a minimum of 15 years all of the
12 way up to life in prison?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that the armed robbery
15 charge carries a minimum of ten years up to 30 years in
16 prison?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Understanding the charges
19 against you and the potential penalties you could receive,
20 are you pleading under Alford to these crimes?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand what an Alford plea is?

23 THE DEFENDANT: Not fully.

24 THE COURT: All right. Tell me what you think it is.

25 THE DEFENDANT: Well, like no-contest.

1 THE COURT: Okay. What do you mean by that?

2 THE DEFENDANT: You're taking the offer but you are not
3 pleading guilty for it.

4 THE COURT: You are denying you're guilty -- this is
5 what it means -- you're denying your guilt but you
6 understand and comprehend that if this case were to go to
7 trial there is a very good and distinct possibility you would
8 be convicted. And so to not have to go through that and
9 face the possibility of life in prison or 30 years in jail,
10 you're pleading under Alford to get it over with so to
11 speak, do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Counsel, is that a good
14 description of Alford or would you rather put me -- would
15 you rather put on the record how you described it to him?

16 MR. KIRKLAND: I will tell you how I described it to
17 him. I told him that under North Carolina versus Alford it
18 would be treated -- as far as a rap sheet it would be
19 treated by the department of corrections, it would be
20 treated as a guilty plea. He would gain no legal advantage
21 by pleading under North Carolina versus Alford. The only
22 difference would be that rather than having to admit his
23 guilt he would have to admit that there was a reasonable or
24 substantial probability that he would be convicted if his
25 case were to go to trial, that's how I explained it to him.

1 I believe that there is a substantial likelihood he would be
2 convicted, but you can ask him if he understands it the way
3 I explained it to him.

4 THE COURT: Did you hear what Mr. Kirkland just said?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Is that the way you understand what an
7 Alford plea is?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: So to avoid going to a trial and to have
10 this matter go any further you're willing to plead under
11 Alford?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is that what you want to do?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, has anybody forced, pressured, coerced
16 or made you come here today against your will to plead under
17 North Carolina versus Alford?

18 THE DEFENDANT: No, sir.

19 THE COURT: Has anybody offered you anything or any
20 promise or hope of reward other than the 17 year negotiated
21 sentence to get you to plead under Alford?

22 THE DEFENDANT: No, sir.

23 THE COURT: So do you understand that the best you can
24 do today is for me to sign off on this negotiated sentence
25 and give you 17 years in jail?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, you understand this is classified as a
3 violent offense and --

4 MR. KIRKLAND: And no parole.

5 THE COURT: -- and most serious and so there's certain
6 collateral consequences of this plea. Have you been over
7 those with your lawyer?

8 THE DEFENDANT: Not the collateral consequence.

9 THE COURT: Well, let's talk about those.

10 MR. KIRKLAND: We haven't used those words, Your Honor,
11 but I have explained to him today -- and he will know what
12 I'm talking about when I say this -- today would amount to a
13 strike, so he's going to get a strike under the most serious
14 offenses. So if he commits another most serious offense he
15 will face mandatory life in prison. I have also told him
16 that this is a no-parole offense, which means that he would
17 not receive good time or earn work credits, that he would do
18 85 percent of his sentence prior to even being eligible for
19 parole and then he would be on supervised release for up to
20 two years after he gets out, so that's what I told him
21 concerning the collateral consequences.

22 THE COURT: Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And when I said collateral consequences
25 that's what I meant about the plea, do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. All right. Understanding those
3 things, do you still wish to plead under North Carolina
4 versus Alford?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Are you under the influence of any alcohol,
7 drugs or any other mind alternating substance?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Do you understand you have many valuable
10 constitutional rights, some which are and the most
11 importantly of which your right to a trial by a jury where a
12 unanimous jury of 12 has to find you guilty beyond a
13 reasonable doubt. In addition you have the right to
14 confront people accusing you of something. You or your
15 lawyer can cross examine those witnesses and try to make
16 them look bad and keep certain things they say out of
17 evidence because they may have violated certain other
18 constitutional rights you may have had. In addition you
19 have a constitutional right to remain silent, you don't have
20 to prove anything. The State has to prove you guilty beyond
21 a reasonable doubt. Do you understand those constitutional
22 rights?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you understand that you give them up
25 when you do an Alford plea?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Is that what you want to do?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. Now, are you satisfied with the
5 services of your attorney?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has he answered all of your questions?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And have you told him everything about what
10 happened?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You heard your lawyer go over in detail at
13 the very beginning of me starting to talk to you about what
14 he has done on your behalf up to this point or tried to do
15 for you. Did you hear all of that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Is what he has told me the truth about the
18 way y'all have gotten along?

19 THE DEFENDANT: Yes, sir.

20 MR. KIRKLAND: Let me add one thing to that, Your
21 Honor. I also want to put on the record -- talk about the
22 discovery a little bit that we received. We received, of
23 course, an incident report, a various supplemental report as
24 well, a bloodhound tracking report which I have never seen
25 before. We also received several videotapes of interviews.

1 One of the videotapes was my client's interview, one of the
2 videotapes was a co-defendant's interview. We also received
3 an audio interview of another codefendant. He has had an
4 opportunity to review all of those. I told him I would sit
5 there all night with him if that's what he wanted to do to
6 continue to go through them, he tells me that his review of
7 the discovery was sufficient. We did discover yesterday
8 that I had not given him either nine or 11 pages of
9 discovery, he actually has a physical copy of the written
10 discovery. Once I determined that I had not given him or
11 even reviewed with him those nine or ten pages, I reviewed
12 them with him and gave him a copy of those pages. Those
13 pages were simply the bloodhound report as well as another
14 report concerning them trying to track him, it wasn't the
15 bloodhound report but it was another narrative by another
16 officer. So I have showed him absolutely everything that
17 they have given me and so I want to make sure that there is
18 nothing else that he thinks -- in addition to any other
19 investigation, there's nothing else that he wishes to review
20 prior to pleading guilty.

21 THE COURT: All right. And Mr. Ford, did you hear what
22 your lawyer just said?

23 MR. KIRKLAND: Yes, sir.

24 THE COURT: Do you feel like you need anything else or
25 any other information prior to going forward with this plea?

1 THE DEFENDANT: No, sir.

2 THE COURT: I want you to listen carefully to what the
3 State says happened, then I will come back to you with
4 another question or two. Okay?

5 MS. GARRICK: Thank you, Your Honor. May it please the
6 Court? Your Honor, this happened on January 3rd of last
7 year. It was out in the Irmo area of the county in
8 Valleywood Court, it was after lunch, it was during the
9 weekday. This defendant and a codefendant, who has already
10 pled, Mr. Woodlin, and a female codefendant, who is
11 hopefully going to resolve her case later, Precious Gadson,
12 the three of them were in a vehicle. They went -- they were
13 on Valleywood Court. Mr. Woodlin is the stepfather of the
14 female codefendant, Precious Gadson. The victim is a 13
15 year old boy named R.H. [REDACTED], he was home from school
16 sick that day. He heard some knocking on one of the doors,
17 he knew -- didn't think anybody should be knocking at the
18 door. He kind of peaked out and he saw a black female
19 knocking at the door. He did not know her. He texted his
20 mother, who was not home during this time, and told her
21 that, hey, somebody is at the door. She ended up calling
22 him right back and said, "Well, did you look out? Was it
23 the mailman" or whatever and the dogs were barking. And he
24 indicated to her, yes, it was a black female, "I don't know
25 her." And his mother said, "Well, don't worry about it,

1 just go back to bed." His bedroom was upstairs. A few
2 minutes later R.H. hears what sounds like glass breaking
3 and somebody coming in. He is on the phone with his mother,
4 he's telling his mother, "I think someone is breaking in."
5 She's telling him, "What are you talking about?" Then a
6 couple of minutes later the mother, who's sitting here at
7 the table with us today, she says that she hears male voices
8 and she hears talking and there shouldn't be anybody talking
9 and then the phone goes dead, so certainly it was terribly
10 frightening for her, she calls 911 and then she makes tracks
11 to get home. Your Honor, we've had that 911 where she's
12 telling law enforcement everything that she has just heard.
13 Law enforcement is trying to get R.H. on the phone and
14 there's no answer so certainly it was a high stressful
15 situation. Irmo Police Department, the sheriff's department
16 are all responding out to Valleywood Court. What happens --
17 and we get this from R.H. obviously later in the day -- but
18 R.H. says that he did hear those noises, he hears someone
19 in the house. The next thing he knows there's two black men
20 that are rushing into his bedroom, he sees two guns, they're
21 both armed. The first one into the bedroom sees that he's
22 on the phone, they grab the phone and close it up and take
23 the phone away, and they tell him, "Do you want to die
24 today?" And he's like, "No." And they're like, "Put a
25 pillow over your head." And so R.H. puts a pillow over his

1 head. They don't leave, they go downstairs, they're
2 rummaging around, they're taking stuff. But obviously they
3 know whoever **R.H.** is talking to has probably called law
4 enforcement, so they make a haul of stuff, they load up some
5 stuff in his car, but then they hear sirens. All three of
6 them obviously heard law enforcement responding very
7 quickly. When law enforcement gets there the first Irmo
8 police officer, he sees this vehicle backing out of the
9 driveway and pulling out and there's a black female driving.
10 The back of the vehicle is open and some stuff that had been
11 stolen from the home, electronics and jewelry and stuff like
12 that, is falling out. She takes off. This first responder
13 gets behind her, she gets out and runs, they get her at
14 gunpoint and get her and take her into custody. The two
15 other people are not there at the car. Law enforcement
16 doesn't know if they're still in the home but they know
17 **R.H.** is in there. The first responder goes in and tries to
18 get **R.H.** and find out where he is and he's there upstairs
19 saying, "I'm 13, I'm home alone, help me." They get him out
20 of the house and then they just secure the house. Judge, it
21 was a big deal. SLED comes. The special team that has to
22 clear the house because Irmo is a small agency, they come
23 and look in the house because they're not sure if these two
24 armed men are still there, they were not there. So they
25 bring in the K-9's from Lexington County Sheriff's

1 Department and they begin a search. Ms. Precious Gadson,
2 who is the 17 year old who was the driver of the car, tells
3 law enforcement who they're looking for, one of them is her
4 stepfather, Mr. Woodland and the other one is someone that
5 she knows only by Demon, she had met him that day, it was a
6 friend of her step-dad's. And she indicates that this man,
7 Demon, definitely had a gun and that her stepfather usually
8 had a gun, but obviously the victim himself knew that both
9 had weapons. Within an hour and 20 minutes or so two black
10 males are found within walking distance of the house, they
11 are not armed. One of them is this man here, the defendant
12 before you, and the other one is the codefendant,
13 Mr. Woodlin. Mr. Woodlin -- they're both taken into custody
14 and Mr. Woodlin, the codefendant, gives a statement. He
15 tries to lie at first but then he does give a statement
16 against himself and against Mr. Ford as doing this armed
17 robbery and doing this burglary. The items that were in the
18 car were obviously returned to the victim. Law enforcement
19 also interviews this defendant who gives a very unbelievable
20 story about why he's there on that road and that he doesn't
21 know someone named Slim, which is the codefendant Woodlin's
22 nickname. And Mr. Ford has a cellphone on him and there are
23 texts from someone named Slim in his phone saying -- texts
24 from Mr. Ford to someone named Slim saying, "Are you going
25 to pick me up today," and things of that nature. So

1 obviously he's lying about knowing the codefendant and he's
2 lying about the contact. Your Honor, there are six
3 indictments that go along with this case, the others are
4 just extra charges such as kidnapping, possession of a
5 firearm during the commission of a violent crime, a grand
6 larceny and assault and battery first, they are being nolle
7 prossed. We have negotiated the sentence and I would like
8 to tell you why. It is a very strong State's case from our
9 viewpoint. We would have the two co-defendants that would
10 testify against him and we obviously have him in the area
11 within minutes, and we have his cellphone linking him to the
12 codefendant, so it's a very strong State's case but it's
13 never a perfect case. The only reason we have negotiated
14 the sentence is because of the 13 year old boy. He was not
15 excited about coming to court and having to testify against
16 this man here, but he would have, he was willing to do it
17 and we were in a trial mode situation, this was scheduled
18 for March 31st, that week. But out of abundance -- well,
19 out of deference to the fact that the victim didn't
20 necessarily want to come in and his mom is in agreement with
21 this negotiated 17 year sentence we have done this. Mr.
22 Ford does not have a prior record of violent crime. He has
23 a breach of peace from 2011 in magistrate's court and he has
24 a resisting arrest and a malicious injury to personal
25 property from magistrate's court, so this is his first time

1 in jail, these are his first general sessions convictions.
2 And also through plea negotiations with appointed counsel,
3 Mr. Kirkland, we've had numerous meetings with him and with
4 law enforcement and we just think this it's the best thing
5 to do. The codefendant, who actually picked this house and
6 who set this thing up, had a prior burglary felony
7 conviction. He pled in front of another circuit court judge
8 and he got a 22 year sentence, so that would have been the
9 starting place anyway. Because this guy -- this defendant,
10 Mr. Ford, did not have the prior record we have negotiated a
11 range of 15 to 20 and then Mr. Kirkland and I negotiated a
12 17 year sentence and we would ask that you accept it.

13 THE COURT: Thank you. All right. Mr. Ford, did you
14 just hear the facts that the State just told me as to what
15 happened?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you still wish to plead under Alford?

18 THE DEFENDANT: Yes, sir.

19 MR. KIRKLAND: And I will make a couple of comments.
20 There is -- the real problem that we had in this case, Your
21 Honor, was that both co-defendants physically identified
22 him. There were some legal issues I believe with the way
23 they handled or conducted the -- it was a show-up
24 essentially. They brought my client -- or they brought the
25 co-defendants into the room with my client sitting there in

1 cuffs and says, "Is this the guy you were with?" And they
2 said yes. Circumstantially he was found, according to the
3 officers, walking with Slim who is the codefendant a few
4 hours after the robbery. And in addition to that they also
5 had a cellphone that had a text message to somebody named
6 Slim that said, "Are you going to pick me up earlier today?"
7 So with the identifications and the circumstantial evidence
8 that's the reason why I believe that there was a substantial
9 likelihood of his conviction. However, I explained to him
10 that we could challenge these identifications. I also
11 explained to him that there was a piece of evidence that
12 either no longer exists or has gone missing. The 13 year
13 old victim was shown two lineups, he picked out who I
14 believe to be Slim, the codefendant, in one of the lineups
15 and did not pick out my client in the other lineup, that's
16 my belief based on any interpretation of the video. Those
17 lineups no longer exist. So I explained to my client
18 exactly what our potential defenses would be, what our cross
19 examination would be and he agreed ultimately that there
20 would be a substantial likelihood nonetheless of him being
21 convicted. So I guess what we need to do now is you need to
22 ask him if he agrees if the State were to successfully
23 present those facts to a jury would it result in a
24 substantial likelihood that he would be convicted.

25 THE COURT: All right, sir. Having heard what the

1 solicitor said as far as what the State says they can prove,
2 and having your defense lawyer tell me what he thinks the
3 issues y'all are facing, do you still wish to plead under
4 Alford?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The Court accepts your plea. I sentence
7 you to 17 years on both cases, run them concurrent. Good
8 luck to you.

9 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case
6 relative to appeal, in the Court of General Sessions for
7 Lexington County, South Carolina, on the 13th day of March,
8 2014.

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


11

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February 26, 2015

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14


Michael C. Watkins
Court Reporter

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ORIGINAL

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF)

2014 CP 3204618

Dan Demetri Ford #359232
Full name and prison number (if any) of Applicant.

v.

APPLICATION FOR

State of South Carolina)

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 Lieber Correctional Institution
2. Name and location of Court which imposed sentence Lexington County
3. Name(s) of co-defendant(s) (if any) Antoine Lavar Woodlin, Precious Simone Gradsen
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2013463200853

(b) 2013463200857

(c) _____

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

(a) 3/13/14 - 17 yrs.

(b) 3/13/14 - 17 yrs.

A TRUE COPY

2014 DEC 18 F.
BETH A. CARR
CLERK OF COURT
LEXINGTON COUNTY
Revised 3/2003

2014 CP 3204618

- (c) _____
- 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) The first time on (PCR).
 - (b) _____
 - (c) _____

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

BETH A. CAMPBELL
 CLERK OF COURT
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2014 CP 3204618

2014 DEC 18 P 12:48

BETH A. CARRIG
CLERK OF COURT
LEXINGTON

The applicant set forth this cause of action pursuant to the Jurisdiction that are set forth in Chapter 17-27-26(1)(b) Collateral attack upon his Conviction of any grounds of alleged error heretofore available under this uniform post conviction relief Act. that are being Submitted or Amended.

The applicant asserts (2) grounds for relief at this time (1) Ineffective assistance of council/(2) violation of fourteenth Amendment of due process also asserts that due to his lack of understanding of law, Applicant request that Counsel be appointed pursuant to 71.1(d) SCRC iv.p., and S.C. Code of laws 17-27-90.

Applicant asserts that there are no further grounds at this time, to be raised due to the lack of records and the assistance of counsel. It would be Chronologically impossible for the applicant to carry such a burden to show his entitlement for relief by a preponderance of the evidence, and for the appointment of counsel to insure that all available grounds for relief are included in the application.

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Lex. Co. C.C.C.P., G.S. & F.C.

Therefore, Applicant request that this court appoints counsel in the above mentioned application, Applicant moves this Honorable Court to grant leave to amend this application in this Cause of action due to the lack of Counsel and applicant is a lay person at law.

Applicant seeks this Court approval of this application so that applicant right to a PCR won't be deem abandon due to the fact that applicant has only one year to file this application from the date of a final judgement or the remittiture to the lower court which ever comes first.

Respectfully,
Dana Ford #359292

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Lux. Co. D.C.C.P., C.S. & H.C.

- (a) ineffective assistance of counsel
- (b) Violation of fourteenth amendment of due process
- (c) _____

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

- (a) (See attached sheet.)
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

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CLERK OF COURT
LYNN, SC

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[Signature]

Lex. Co. C.C.C.P., G.S. & F.C.

2014 CP 3204618

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. _____

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:

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[Signature]
Co. C.C.C.P., G.S. & F.C.

BETH A. CARRISON
CLERK OF COURT
HYUNDAI

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- (a) your arraignment and plea? **2014 CP 3204618**
- (b) your trial, if any? _____
- (c) your sentencing?
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
- i. Matthew Buchanan
 - ii. Dwayne Phillips
 - iii. Bradley Kirkland
- (b) the proceedings at which each such attorney represented you:
- i. Before I took my plea.
 - ii. Before I took my plea.
 - iii. When I took my plea and got sentenced.

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

re-sentencing and/or reduction of time.

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

No

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, VA

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[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

2014CP3204618

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, _____, 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.

Don Ford #354232

SWORN to and subscribed before me this 12th
day of December, 2014.

Ludrea Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

BETH A. CARRISON
CLERK OF COURT
JULY 1, 2014

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Don Ford
Tax. Co. G.O.C.R., G.S. & E.C.

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

I, _____, 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.

Dan Ford #359232
Applicant

SWORN or affirmed to and subscribed before me this
12th day of December, 2014.

Ludeman Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED
2014 DEC 18 P 12:49
BETH A. CARRICO
CLERK OF COURT
LIBERTY COUNTY

A TRUE COPY

LEX. CO. C.C. 32, D.A. 9. 2014

A TRUE COPY

Dan Demetri Ford #959238
Lieber Correctional Inst/WA 220
P.O. Box 205
Ridgeville, S.C. 29472

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Clerk of Court
Lexington County Judicial Center
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Lexington, S.C. 29072

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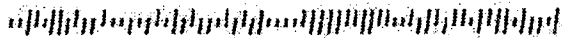


BETH A. CARRIGE
CLERK OF COURT
LEXINGTON, SC

2014 DEC 18 P 2:33

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	FOR THE ELEVENTH JUDICIAL CIRCUIT
)	
)	
Dan Demetri Ford)	C.A. No. 2014-CP-32-4618
S.C.D.C. No. 359232,)	
)	
Applicant,)	RETURN¹
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief (PCR) application filed on December 18, 2014, the Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the April 2013 term of the Lexington County Grand Jury for burglary – first degree (2013-GS-32-0853) and armed robbery (2013-GS-32-0857). On March 13, 2014, Applicant appeared before the Honorable Brian M. Gibbons and pled guilty as indicted. Applicant was represented by Bradley Kirkland, Esq. Judge Gibbons sentenced Applicant to a term of imprisonment for seventeen (17) years for burglary – first degree; and to a term of imprisonment for seventeen (17) years for armed robbery. Applicant did not appeal his plea or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject guilty pleas, Applicant's records from the South Carolina

¹ By Order dated January 21, 2015, Aimee Zmroczek Esq. has been appointed as Counsel.

Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
2. "Violation of the fourteenth Amendment of due process"²

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent submits counsel rendered effective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their 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, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

² Although Applicant directs Respondent to an attached sheet purporting to further explain his allegations, the sheet makes no further explanation of said allegations.

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that 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.

To the extent Applicant alleges independent claims of due process violations, he fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which

would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (“It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief.” (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))).

Since Applicant has failed to make even a *prima facie* showing, Respondent would submit this allegation should be dismissed pursuant to Rule 12(b)(6), SCRCPP, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. In the alternative, Respondent would submit Applicant should be required to provide a more definite statement pursuant to Rule 12(e), SCRCPP, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

V.

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

(SIGNATURE BLOCK ON NEXT PAGE)

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Sept. 21st, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
)
 DAN DEMETRI FORD, #359232,)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

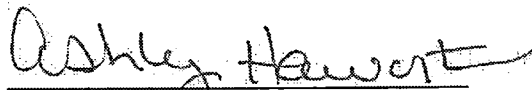
2014-CP-32-4618

AFFIDAVIT OF SERVICE BY MAIL

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. Aimee Zmroczek, Esquire
A.J.Z. Law Firm, LLC.
PO Box 11961
Columbia, SC 29211

DATED this 22nd day of September, 2015.



Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
)
 DAN FORD)
 SCDC # 359232,)
 Applicant,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 2014-CP-32-4618

FILED

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BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

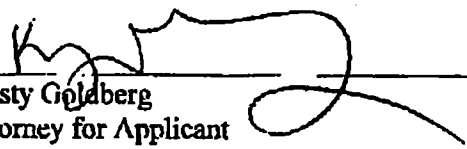
AMENDED APPLICATION
 FOR POST CONVICTION RELIEF

ORIGINAL

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- (a) Ineffective assistance of trial counsel – counsel failed to adequately investigate and prepare a defense for trial.
- (b) Ineffective assistance of trial counsel – counsel failed to adequately prepare Applicant for trial.
- (c) Ineffective assistance of trial counsel – Applicant was pressured and improperly induced into entering an involuntary guilty plea based on statements made by counsel.
- (d) Ineffective assistance of trial counsel pursuant to White v. State – failure to properly initiate client’s direct Appeal.



 Kristy Goldberg
 Attorney for Applicant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 301
 Columbia, SC 29201
 803-252-2299

803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 12th day of October, 2016

FILED
2016 OCT 14 AM 11:20
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
2014-CP-32-4618

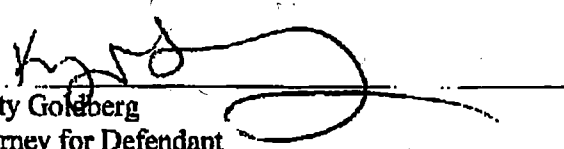
DAN FORD)
SCDC # 359232,)
Applicant,)

vs.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
Defendant.)

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.



Kristy Goldberg
Attorney for Defendant

ORIGINAL

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
803-667-6633
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 12th day of October, 2016

BETINA C. GIBSON
CLERK OF COURT
LEXINGTON, SC

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State of South Carolina)	Court of Common Pleas
County of Lexington)	Eleventh Judicial Circuit
)	
Dan Demetri Ford,)	Transcript of Record
)	
Applicant,)	
vs.)	2014-CP-32-04618
)	
State of South Carolina,)	
)	
Defendant.)	

November 8, 2016
Lexington, South Carolina

B E F O R E:

The Honorable R. Keith Kelly, Judge

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

Kristy G. Goldberg, Esquire
On behalf of the Applicant

Johanna C. Valenzuela, Esquire
On behalf of the State of South Carolina

Stacy S. Johnson
Circuit Court Reporter

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E X H I B I T S

<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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Defendant's 2 (MacDougall Report)	77	77
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1 (Whereupon, the following proceedings were held
2 November 8, 2016, beginning at 11:16 AM.)

3 **MS. VALENZUELA:** May it please the Court?

4 **THE COURT:** Yes, ma'am.

5 **MS. VALENZUELA:** Your Honor, this is the case of
6 Dan Ford versus the State of South Carolina. It's a
7 county of Lexington case. Case Number 2014-CP-32-4618.
8 The Applicant is currently incarcerated, Your Honor, and
9 he did file a PCR application in December of 2014.

10 Now this stems from the fact that he was indicted by
11 the Lexington County grand jury for burglary, first degree,
12 and armed robbery in April of 2013. In March of 2014, he
13 appeared before Judge Gibbons and he entered a plea of
14 guilty as indicted. He was represented at the time by
15 Mr. Brad Kirkland and Judge Gibbons ended up sentencing
16 the Applicant to a term of imprisonment of seventeen years
17 for the burg first and seventeen years for the armed
18 robbery. Those were concurrent. And then he did not end
19 up appealing his plea or his sentence, Your Honor.

20 The Applicant is represented by Ms. Kristy Goldberg.
21 Both the Applicant and Ms. Goldberg are present in the
22 courtroom and Ms. Goldberg filed timely amended --
23 amendments to the application and those allegations are
24 four different allegations, Your Honor. One, that counsel
25 failed to adequately investigate and prepare -- wait a

1 minute. I'm sorry. I want to make sure. Yes, that
2 counsel failed to adequately investigate and prepare a
3 defense for trial; that counsel failed to adequately
4 prepare Applicant for trial; that there was ineffective
5 assistance of counsel by Applicant was pressured and
6 improperly induced into entering an involuntary guilty
7 plea based on statements made by counsel; and then that
8 there was ineffective assistance pursuant to White for
9 failure to properly initiate client's direct appeal.

10 **THE COURT:** Okay.

11 **MS. GOLDBERG:** Your Honor, those are the allegations
12 we're going forward on today. At this time the Applicant
13 would call Dan Ford.

14 **THE COURT:** Sir, come up and be sworn.

15 (Whereupon, Dan Demetri Ford was duly sworn by the
16 Clerk of Court.)

17 **THE COURT:** Sir, tell us your full name and spell your
18 last name, please.

19 **THE WITNESS:** Dan Ford. Dan Demetri Ford. Last name,
20 F-O-R-D.

21 **THE COURT:** Thank you, sir. Yes, ma'am.

22 **MS. GOLDBERG:** Thank you, Your Honor. May it please
23 the Court?

24 DAN DEMETRI FORD,
25 having been duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MS. GOLDBERG:

Q. Mr. Ford, where are you currently housed?

A. Lieber Correctional Institution.

Q. And what sentence are you serving?

A. Seventeen years.

THE COURT: Sir, I'm gonna ask you to speak a little louder. My court reporter is sitting right there. She has to be able to record, okay?

THE WITNESS: All right.

THE COURT: Thank you.

BY MS. GOLDBERG:

Q. The seventeen years was for what charges?

A. Burglary first and armed robbery.

Q. Did you plead guilty or did you have a trial?

A. I pled guilty.

Q. And let me rephrase that actually. Did you plead -- you entered a plea, correct?

A. Yeah.

Q. Was it a guilty plea or was it a plea under North Carolina versus Alford?

A. North Carolina versus Alford.

Q. Do you remember when your plea was?

MS. VALENZUELA: We'll stipulate to March 13th of 2014.

1 **THE WITNESS:** That's what I was gonna say.

2 BY MS. GOLDBERG:

3 Q. All right. Before March 13th -- well, do you remember
4 about what date you were arrested?

5 A. January 3, 2013.

6 Q. January 3, 2013. So for that year and two months,
7 were you on bond or were you in jail?

8 A. Jail.

9 Q. Was Mr. Kirkland your lawyer the entire time you were
10 in jail?

11 A. No, ma'am.

12 Q. Who was your first lawyer?

13 A. David Buchanan.

14 Q. And what happened with his representation?

15 A. To my knowledge, they informed me that he was -- he
16 had went to his own firm, he wasn't in the public
17 defender's office no more.

18 Q. He left the public defender's office?

19 A. (Nods head.)

20 Q. And then who was your next attorney?

21 A. Dayne Phillips.

22 Q. And what happened with his representation?

23 A. They informed me that he was a conflict of interest,
24 so they removed him from me.

25 Q. So a new attorney was appointed?

1 A. Yes, ma'am.

2 Q. And who was that?

3 A. Brad Kirkland.

4 Q. Do you know about when Mr. Kirkland started
5 representing you in your case?

6 A. I want to say roughly around September 2013.

7 Q. Okay. During the time he represented you, you said
8 that you were in jail the whole time?

9 A. Yes, ma'am.

10 Q. Did he come to the jail to meet with you?

11 A. I -- he came -- when he first met me, it was like
12 December and I didn't see him again until March or like
13 the end -- or the end of February.

14 Q. And when you first met him in December, was that at
15 the jail or was that at the courthouse for some reason?

16 A. At the jail.

17 Q. At the jail. And then in late February, was that at
18 the jail?

19 A. Yes.

20 Q. Did he come and meet with you other times?

21 A. Just that -- he really was coming -- the only time he
22 really was coming was the week -- like a week or two right
23 before I was either gonna take my plea or go to trial.

24 Q. Okay. So he came to see you in late February and then
25 he came to see you a couple of more times before you went

1 to court?

2 A. Yes, ma'am. Toward the end of -- I mean, in the
3 middle of March when I was supposed to go up for my plea
4 hearing or trial.

5 Q. Okay. When he came to meet with you at the jail, did
6 he review your discovery documents with you?

7 A. Yes.

8 Q. Did you understand what the charges were and what the
9 evidence was against you?

10 A. Not fully.

11 Q. What didn't you understand?

12 A. I didn't -- I didn't understand what really was -- was
13 going on because he was -- when we started going over there
14 it was like such short notice that I couldn't -- I couldn't
15 get everything that he was saying, you know, because it was
16 just -- it was just so compact-like, the hearing. It was
17 either I was pleading or going to trial and he was bringing
18 everything up and we never really talked about that.

19 Q. Are you talking about in late February?

20 A. Yeah.

21 Q. Okay. So when he came to meet with you in December,
22 the first time you met him --

23 A. Just to meet.

24 Q. That was just to meet?

25 A. (Nods head.)

1 Q. That wasn't to talk about the case?

2 A. No.

3 Q. Okay. So the first time he ever talked to you really
4 about your case was in late February?

5 A. Yeah.

6 Q. And that was when he started going over all the
7 evidence with you?

8 A. Yeah, and telling me that I had a plea coming up -- it
9 was either that I had a plea hearing coming up soon and if
10 not the plea hearing I would have to go to trial.

11 Q. Did you want to plea or did you want a trial?

12 A. Honestly, I wanted a trial, but being that the
13 evidence that they said they had against me I felt like
14 that I was gonna get, you know, a bad hearing if I went to
15 trial, so that's why I took a plea and that's why I took it
16 under North Carolina versus Alford.

17 Q. And you said given the evidence they had against you,
18 you thought what would happen?

19 A. That I would be convicted either for the max or
20 something else. I assume some great period of time.

21 Q. So you thought it was in your best interest to plea?

22 A. Yes.

23 Q. And that was your decision based on your conversations
24 with Mr. Kirkland?

25 A. Yes, ma'am.

1 Q. What else contributed to your decision to plea?

2 A. I don't understand.

3 Q. You said that based on the evidence the State had
4 against you, you thought you would be convicted at trial?

5 A. Yes, ma'am.

6 Q. Did you ever think that there was anything --

7 **MS. VALENZUELA:** Objection to leading.

8 **THE COURT:** All right. Rephrase it.

9 BY MS. GOLDBERG:

10 Q. Did you think you had another option?

11 A. Yeah.

12 Q. What was that?

13 A. Trial.

14 Q. And did you believe you had anything to present at
15 trial?

16 A. Yes.

17 Q. What?

18 A. My alibi witness.

19 Q. Okay. Tell me about that.

20 A. I mean, she -- she basically stated -- you know, she
21 let you know that --

22 **MS. VALENZUELA:** Objection to hearsay if he's about to
23 go into hearsay, Your Honor.

24 BY MS. GOLDBERG:

25 Q. Factually tell me -- well, let's back up a little bit.

1 You said that you were arrested January 3, 2013?

2 A. (Nods head.)

3 Q. Is that the day that this crime allegedly occurred?

4 A. I believe so.

5 Q. Okay. From your understanding --

6 A. Uh-huh.

7 Q. -- that's the day that this burglary happened?

8 A. Yes, ma'am.

9 Q. Okay. Do you recall what time of day they told you
10 this burglary occurred?

11 A. Yes.

12 Q. What was that?

13 A. I think they said somewhere between 1:00 or 1:30,
14 something like that.

15 Q. Okay. And that was based on the incident reports and
16 the discovery and things like that?

17 A. (Nods head.)

18 Q. All right. And you believe you had an alibi during
19 that time?

20 A. Yes.

21 Q. What was your alibi?

22 A. That I was not in this area. I was -- I was somewhere
23 else.

24 Q. Where were you?

25 A. I was at my girlfriend's house.

1 **MS. VALENZUELA:** Your Honor, I'm sorry to interrupt.
2 Is there a way that we could just move the microphone
3 closer to him? I'm having such a hard time hearing him.

4 **THE COURT:** Yeah. Officer, can you help us with that?

5 **MS. VALENZUELA:** Thank you.

6 BY MS. GOLDBERG:

7 Q. All right. You believe you were at your girlfriend's
8 house when this crime allegedly took place?

9 A. Uh-huh.

10 Q. All right. Did you ever tell Mr. Kirkland that?

11 A. Yes.

12 Q. When did you tell him that approximately?

13 A. When he come and start -- when he had start meeting
14 me, you know, in late February.

15 Q. And did you ask him to look into this?

16 A. Yes.

17 Q. And what was your understanding of what Mr. Kirkland
18 was able to uncover?

19 A. He -- he got his private investigator to go, you know,
20 search for people to I guess, you know, get them involved
21 or whatever.

22 Q. And what did he tell you?

23 A. That he was -- he had got a private investigator. He
24 got the private investigator on it and he had contacted,
25 you know, my girlfriend. If they had court, you know, or

1 whatever she was willing to come up there.

2 Q. She what?

3 A. She was willing to come up there and give an alibi.

4 Q. She was willing to come to court and present alibi
5 testimony?

6 A. Yes, ma'am.

7 Q. Okay. And then what happened?

8 A. My private investigator died. He passed away.

9 Q. Okay. And how did that affect your case?

10 A. We had everything put together and by him passing away
11 it kind of, you know, like distanced things a little bit
12 because it was being like he wasn't my private investigator
13 no more, so -- and then Brad Kirkland informed me that --
14 we sat down when he came to visit me and I remember when he
15 said that he -- the State gave him \$250 so he could buy
16 another private investigator. Now what he -- what he did,
17 I don't know because I never talked to no other private
18 investigator.

19 Q. You're saying the State allowed Mr. Kirkland to have
20 funding to hire a new private investigator?

21 A. Yes.

22 Q. And what happened with that?

23 A. Nothing. I never even -- there was no other private
24 investigator.

25 Q. Did he -- did you ask him -- did you tell him that you

1 still wanted to present an alibi witness at trial?

2 A. Yes, once he -- once he told me that he -- he could
3 hire another private investigator, I told him -- I said
4 okay, you know.

5 Q. You told him to hire the new private investigator?

6 A. Yes.

7 Q. At what point did you decide -- did you ever follow up
8 with Mr. Kirkland and ask him why no private investigator
9 was hired?

10 A. No, ma'am. It --

11 Q. Go ahead.

12 A. It was too short of notice. Like when -- I want to
13 say Mr. MacDougall, I think he passed in like January of --
14 or somewhere around that time, the end of 2013 or the
15 beginning 2014, he passed around sometime there, but he
16 ain't never -- like there was no -- he never hired nobody
17 like to even go -- go get my alibi witness, you know. It
18 wasn't -- it wasn't nothing, you know. He was just so
19 focussed on getting me to get this plea, you know what I'm
20 saying? That's the best way I can --

21 Q. So at what point did you decide to let that go and
22 plead guilty or plea, I'm sorry, instead?

23 A. I don't understand.

24 Q. At what point did you -- at some -- let me back up. I
25 apologize. You originally told Mr. Kirkland yes, hire this

1 second investigator. That's what your testimony is?

2 A. (Nods head.)

3 Q. Okay. So then when you saw him again, you didn't ask
4 have you hired the new investigator?

5 A. No, I didn't because it was so much -- it was so much
6 going on. I mean, I'm -- I'm thinking, you know, that's
7 his -- that's his job. I told him I wanted a private
8 investigator, you know. He wasn't informing me or nothing,
9 you know, so I didn't know what was going on, but all he
10 was telling me is like oh, you know, we got to get ready
11 for this trial, we got to -- either you want to go to this
12 trial or do this plea hearing.

13 Q. So did that affect your decision on what to do in
14 court?

15 A. Yes.

16 Q. And how did that affect your decision?

17 A. Because I -- I was like -- I was stuck with my back
18 against the wall. Like I didn't know what to do. Like I
19 got my alibi witness, my -- my private investigator died,
20 you know what I'm saying, and now you ain't -- you're not
21 producing no other private investigator and now you coming
22 to me and saying that either we go -- my trial date was
23 coming up or you can plead to this. You know, it was so
24 much like it kind of like just told me like -- something
25 told me be like man, take -- take the seventeen because

1 it's looking bad, you know, like everything's just falling
2 apart, especially after last week.

3 Q. Did your lawyer say anything specific to induce you to
4 plea --

5 A. Ma'am?

6 Q. -- or coerce you to plea? Did your lawyer say
7 anything that you thought coerced you to plea or was it
8 your decision?

9 A. You're gonna lose in trial.

10 Q. Did you think that was inappropriate?

11 A. Yes, I feel like it was inappropriate because if you
12 tell -- I feel like if you tell a person that that would
13 automatically give them the leeway to be like oh, well, I
14 don't want to get convicted for -- especially the max on --
15 on the charges I had, so he -- he made it seem like to me
16 that seventeen years was a good decision.

17 Q. All right. Anything else he said that you thought was
18 inappropriate?

19 A. Not to my knowledge.

20 Q. Okay. Other than the alibi witness -- trying to
21 locate and find this alibi witness, is there anything else
22 your lawyer -- you think your lawyer could have done better
23 to prepare you for court?

24 A. Yes.

25 Q. And what is that?

1 A. He could have came -- came and saw me at least more
2 frequently instead of coming -- coming to meet me and let
3 me know I'm your lawyer and then when it gets time close to
4 I need to plea or going to trial, now you want to come up
5 and be here frequently because the whole -- I'm not gonna
6 -- I'm not gonna lie. Like the whole week before I was
7 supposed to go to my plea hearing he was coming to see me
8 like every day, you know. I'm like you coming now? Now
9 you're cramming all this in one, you know. I ain't -- I
10 don't really know what to do. Like we really ain't got no
11 defense. Like I ain't really talked to you, you know.

12 Q. Is there any information that he could have given you
13 that would have made you more prepared for court?

14 A. Yeah.

15 Q. What was that?

16 A. I feel like -- I feel like if he would have put the
17 issue like to the fact that well, look, I know the private
18 investigator passed away, but I'm gonna get you another
19 private investigator because your alibi witness, you know
20 what I'm saying, is real concrete, you know, and he wasn't
21 -- he wasn't -- all he was press -- all he was pressuring
22 me about was this plea.

23 Q. Did you ever talk with your lawyer about the right to
24 appeal?

25 A. Yeah.

1 Q. What conversations did you have?

2 A. Once I had -- we had discussed about the seventeen
3 years plea agreement with the North Carolina versus Alford,
4 I told him that I wanted to -- I wanted him to file for my
5 direct appeal and I -- being that I ain't never been in no
6 -- no serious trouble with the law, I don't -- I didn't
7 know they had a deadline for a direct appeal, but I knew it
8 was a direct -- I still had my direct appeal by me pleading
9 under this -- under North Carolina versus Alford, so that's
10 why I told him and I -- I left it up to him because I
11 didn't know and he was my lawyer, he's supposed to know --
12 I feel like he's supposed to know how to do his job.

13 Q. You told him that before the plea was even entered?

14 A. No, I told him that in court.

15 Q. In court?

16 A. Yeah, because I didn't sign my plea until I was in the
17 plea hearing, so I was in the same courtroom.

18 Q. Okay. You told him that day to file the notice of
19 appeal?

20 A. Yes.

21 Q. Did he ever file it?

22 A. No.

23 Q. Why did you want to file an appeal?

24 A. Because I felt like -- I feel like it was wrong.

25 Like, I mean, I took the guilty plea, but I didn't -- I

1 didn't want to take it.

2 Q. What was wrong?

3 A. Can you rephrase that question?

4 Q. Well, you just said -- I think you said -- I asked you
5 why you wanted to file an appeal and you said because it
6 was wrong.

7 A. How everything happened, you know. I -- I -- they're
8 showing all their evidence that they got against me and I
9 have my own evidence, my own witness to tell you that I
10 wasn't at this place, I couldn't have been at this place
11 at the time of this crime, I couldn't have been, you know,
12 and it -- they were wrong because if I tell him that and he
13 knows it and his private investigator that we had got the
14 recording and all that I feel like you're supposed to push
15 that issue instead of being like oh, well, look, you know,
16 seventeen's good, this and that, you know what I'm saying?
17 You're supposed to -- he wasn't -- I feel like he wasn't
18 backing me. I put in -- I put in for a motion -- a motion
19 to relieve counsel, but that was -- I didn't know that I --
20 he was so ineffective until that week he was coming and
21 pressuring me for this -- for this plea, you know, so I put
22 it in and Lexington County should have it because I put it
23 in before the -- before the plea hearing.

24 Q. Okay. So at the time that you went to court, he was
25 not prepared to present your alibi witness?

1 A. No.

2 Q. Is that your understanding?

3 A. Yes, from my understanding.

4 Q. And so is that -- and that's why you pled?

5 A. Uh-huh.

6 **MS. GOLDBERG:** No further questions.

7 **THE COURT:** Yes, ma'am.

8 **MS. VALENZUELA:** Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. VALENZUELA:

11 Q. Okay. Mr. Ford, you talked a little bit about your
12 attorney coming to see you. I want to talk about the
13 private investigator that you referenced. How many times
14 did he come to see you?

15 A. Roughly around -- I want to say three to five times.

16 Q. And the private investigator we're talking about is
17 Dave MacDougall?

18 A. (Nods head.)

19 Q. Okay. Yes? That was a yes?

20 A. Yes.

21 Q. And obviously he came to see you before he died, so
22 before the January 2014 timeframe?

23 A. Yes, ma'am.

24 Q. Yes?

25 A. (Nods head.)

1 Q. And he talked to you about your alibi witnesses,
2 right?

3 A. Yes.

4 Q. And now Mr. MacDougall was hired by your attorney,
5 Mr. Ford?

6 A. Yeah, to my knowledge.

7 Q. Okay. And you gave Mr. MacDougall information on your
8 girlfriend?

9 A. Yes, ma'am.

10 Q. And told him that you were with her?

11 A. Yes.

12 Q. And then -- so let focus on your girlfriend. Do you
13 remember Mr. MacDougall coming to meet with you about how
14 he had made contact with your girlfriend?

15 A. Yes.

16 Q. Okay. And how he had tried to follow up with her so
17 that he could get a sworn statement from her?

18 A. Yeah.

19 Q. I'm sorry, yes?

20 A. Yes.

21 Q. Okay. And then do you remember how he told you that
22 she would not give him her address -- her new address, but
23 she gave him a telephone number?

24 A. I'm not sure about that part.

25 Q. Okay. And do you remember him telling you that he

1 had tried to call her numerous times to get her to come
2 and do a sworn statement?

3 A. He told me he contacted her. Now I don't know about
4 try to. I know she was contacted.

5 Q. She was contacted, but then to get her to come and do
6 the sworn statement that he had tried to contact her, let's
7 see, at least eight times either by calling and leaving
8 voicemail messages or by texting that telephone number?

9 A. I want -- I'm not -- you know, that was kind of --
10 that was a little time ago, but I don't -- I don't know.
11 I'm not sure.

12 Q. Okay. And do you remember Investigator MacDougall
13 telling you that he was not able to get back in touch with
14 your girlfriend to give a sworn statement?

15 A. I remember him saying that at one point, but I ain't
16 -- I don't know if they had ever, you know, got back in
17 contact her.

18 Q. So you did -- you were told that there was trouble
19 contacting her in order to get that sworn statement?

20 A. I wouldn't call it trouble.

21 Q. Okay. But that they were unable to get in touch with
22 her to get a sworn statement?

23 A. Yeah, probably one -- one day or something.

24 Q. Yes. And do you remember Investigator MacDougall
25 explaining the process of how once he got a sworn statement

1 from her the police officers would go and talk to her about
2 what she was -- what she was claiming happened that day?

3 A. Yeah.

4 Q. Yes?

5 A. (Nods head.)

6 Q. And do you also remember Investigator MacDougall
7 telling you that probably what law enforcement would do
8 based on his experience is that they would get all of the
9 jail phone call recordings between you and your girlfriend?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes.

13 Q. And that if you were seen or heard to be coaching your
14 girlfriend at the time on what the alibi was y'all could
15 get in additional trouble?

16 A. Yes.

17 Q. Yes, you do remember him telling you that?

18 A. Uh-huh.

19 Q. And you remember him coming to see you before January
20 of 2014 to talk to you about that?

21 A. (Nods head.)

22 Q. Yes?

23 A. Yes.

24 Q. And I'm sorry. I don't know I keep asking you "yes",
25 but you're nodding sometimes and we're talking over each

1 other, so I'm just doing that for the record.

2 A. All right.

3 **MS. VALENZUELA:** Your Honor, may I approach the
4 witness?

5 **THE COURT:** Yes, ma'am.

6 BY MS. VALENZUELA:

7 Q. Mr. Ford, I'm handing you a document. Do you mind
8 reading over that to yourself, please.

9 A. I remember that.

10 Q. Okay. And so before we go forward with that, do you
11 recognize that letter that I just gave you?

12 A. Yes.

13 Q. And is that your handwriting?

14 A. Yes, it is.

15 Q. It is?

16 A. (Nods head.)

17 **MS. VALENZUELA:** Okay. And then, Your Honor, at this
18 point I would move to make this Defense Exhibit 1.

19 **MS. GOLDBERG:** No objection.

20 **THE COURT:** It's been admitted without objection.

21 (Defendant's Exhibit Number 1, 12/19/13 letter, was
22 marked and admitted into evidence.)

23 **MS. VALENZUELA:** And, Ms. Goldberg, do you mind if I
24 read it with your client out loud or would you rather I
25 read it with you looking over my shoulder?

1 **MS. GOLDBERG:** I don't think it makes a difference.

2 BY MS. VALENZUELA:

3 Q. And so, Mr. Ford, just going through this, you -- you
4 started off -- this is dated December of 2013 and you sent
5 this to your attorney --

6 A. Right.

7 Q. -- right, Mr. Kirkland, and in here you tell
8 Mr. Kirkland that you want him to cease all further
9 investigation in your case?

10 A. Yes.

11 Q. And this is the December timeframe when you're talking
12 to Investigator MacDougall?

13 A. Uh-huh.

14 Q. Correct?

15 A. Right.

16 Q. Okay. And so after -- I'm gonna withdraw the start
17 of that question. Let's talk a little bit about the
18 case that was made against you by the State. Now the
19 allegations are that you and two other co-defendants drive
20 over to a house in the middle of the day, correct? In the
21 afternoon timeframe, right?

22 A. That's what the report said.

23 Q. The allegations. And the allegations are that y'all
24 break in -- you and the two other people break into this
25 house and that there is a child who is home sick in the

1 house alone, correct?

2 A. Yeah.

3 Q. And that you -- the allegations are that you and the
4 other male co-defendant hold that child victim up at
5 gunpoint and rob the house, correct?

6 A. Yes.

7 Q. All right. And then that your -- the female
8 co-defendant is captured backing out of the driveway?

9 A. Allegedly.

10 Q. Right. With the items in the car with her, correct?

11 A. Yes.

12 Q. Yes. And then that you and your co-defendant are
13 captured a half a mile from the victim's home later that
14 day, correct?

15 A. Yes.

16 Q. And y'all are together?

17 A. No.

18 Q. You and the co-defendant were -- were standing close
19 to each other when police pulled up and arrested you?

20 A. How close are we talking about?

21 Q. You tell me. You were there that day.

22 A. It wasn't close like you were saying.

23 Q. How close was it?

24 A. About thirty feet away.

25 Q. Okay. So you and the other male co-defendant are

1 within thirty feet from each other when police find you
2 two?

3 A. Right.

4 Q. And then you were asked if you know the other
5 co-defendant?

6 A. Right.

7 Q. You indicate you don't know him, right?

8 A. No.

9 Q. And you don't know him by his nickname "Slim",
10 correct?

11 A. Right.

12 Q. But then your cell phone does have text messages from
13 your cell phone to the co-defendant that are titled "Slim"?

14 A. That's wrong.

15 Q. That's wrong?

16 A. Yes.

17 Q. So it wasn't an allegation of the State that your cell
18 phone had text messages to your co-defendant?

19 A. That was -- that was lies.

20 Q. But it wasn't an allegation --

21 A. It wasn't -- what wasn't a lie is I had someone's name
22 in my phone as "Slim", but what you just said, that I -- I
23 -- they said that I had -- was sending my co-defendant a
24 text message or whatever.

25 Q. Okay. And so that -- that part was not?

1 A. Yeah, it was not.

2 Q. So it was just that your phone had -- happened to have
3 a name that was the exact street nickname?

4 A. It had -- in that phone that they were talking about
5 there were two "Slim" names in them.

6 Q. Okay. And then your co-defendant -- the male
7 co-defendant had already pled before your plea came up,
8 correct?

9 A. I don't know.

10 Q. Okay. And your co-defendant was going to testify
11 against you?

12 A. To my knowledge, yes.

13 Q. Both of them were gonna testify against you?

14 A. To my -- that's what I was told.

15 Q. Both the male and the female co-defendant?

16 A. That's what I was told.

17 Q. That's what you were told. That was your
18 understanding going into trial -- or going into the
19 decision of whether you were gonna go to trial or accept
20 the plea?

21 A. Right.

22 Q. Okay. So then you indicate to your attorney that you
23 want to enter a plea of guilty, right? You told your
24 attorney I want to plead guilty.

25 A. No, he told me what was on the table and then I asked

1 him -- like that's -- I'm not -- I told him -- he told me
2 they was trying to give me the same thing they gave my
3 co-defendant and I told him I'm not no -- I'm not doing it
4 and then he negotiated -- we negotiated it or whatever and
5 got it down to seventeen.

6 Q. Okay. So after he comes to you and says I got it down
7 to seventeen, what did you tell your attorney you wanted to
8 do?

9 A. I tell him I don't know. I tell him I -- it was a
10 hard decision for me. I tell him I'll come up with a
11 decision in court and that's when I signed my papers at the
12 plea hearing.

13 Q. Okay. So y'all get to the courtroom and do you
14 indicate by filling out the sentencing sheet and by telling
15 your attorney that you wanted to plead guilty?

16 A. Say that --

17 Q. Did you tell your attorney then that you wanted to
18 plead guilty?

19 A. Yeah.

20 Q. Yes?

21 A. Yes.

22 Q. Okay. And then do you remember going in front of the
23 judge about this?

24 A. Yeah.

25 Q. Okay. And let's just talk a little bit about the deal

1 that you got here. You're allowed to plead under Alford,
2 right? And that's what you end up doing, right? And I
3 know I've been saying plead guilty, but we all know that
4 you pled under North Carolina v. Alford.

5 A. Uh-huh.

6 Q. And you pled to -- I'm sorry. I want to make sure I
7 say it -- a negotiation of seventeen years, right?

8 A. Yes. ↑

9 Q. So you knew that it was gonna be seventeen years when
10 you went in there to plead?

11 A. Yeah.

12 Q. Yes?

13 A. (Nods head.)

14 Q. And you ended up pleading to just the burg first and
15 the armed robbery, correct?

16 A. Yes.

17 Q. But the State as part of their negotiations ended up
18 dismissing a kidnapping charge?

19 A. Yes.

20 Q. They ended up dismissing a possession of a firearm
21 during the commission of a violent crime?

22 A. Yes.

23 Q. And they ended up dismissing a grand larceny?

24 A. Yes.

25 Q. And they ended up dismissing an assault and battery

1 first degree?

2 A. Yes.

3 Q. And all of this was part of your plea negotiations
4 going into it?

5 A. Yes. They didn't explain it how you're explaining it
6 though, but, yeah, that's what happened.

7 Q. Okay. But at the -- at the trial you were advised by
8 the -- you were asked by the Court if you had -- if there
9 had been any promises or threats made to you, correct?

10 A. Right.

11 Q. And you indicated that there had not been?

12 A. Right.

13 Q. Correct?

14 A. Correct.

15 Q. Okay. And today you're saying that there were no
16 promises or threats that induced you to plead?

17 A. I feel like it was a threat.

18 Q. Okay. So today you're changing your sworn testimony?

19 A. No, I ain't -- I'm not changing nothing. I'm letting
20 you know how I felt at the time. I felt like it was a
21 threat. Either you take the seventeen or you're gonna get
22 life. That's a threat to me.

23 Q. Okay. So did you -- did you tell the Court that there
24 had been no threats made against you?

25 A. That's what I told him.

1 Q. No threats?

2 A. Yes.

3 Q. I'm just trying to clarify what you're saying you told
4 the Court.

5 A. In the courtroom, yeah.

6 Q. You said no threats?

7 A. Yes.

8 Q. Okay. And you indicated to the Court that you were
9 pleading freely and voluntarily?

10 A. Yes.

11 Q. And that you were not under the influence of anything
12 at the time that you were taking the plea, right?

13 A. Right.

14 Q. And then your attorney -- or, excuse me, the Court
15 went over your constitutional rights with you and told you
16 that you had a constitutional right to go to trial?

17 A. Yes.

18 Q. And that if you pled that date you were waiving that
19 right?

20 A. Right.

21 Q. And you still told the judge after hearing that that
22 you understood you were waiving that constitutional right
23 and that you were choosing to do so?

24 A. Right.

25 Q. And you were also told that you had a right to

1 subpoena witnesses and confront the State's witnesses and
2 that the State had the burden of proof and could prove
3 beyond a reasonable doubt that you were guilty of every
4 single one of those crimes and that you were waiving all of
5 those constitutional rights?

6 A. Yes.

7 Q. Yes. And you still -- and after being advised of
8 that, you still told the Court that you wanted to plead
9 guilty?

10 A. Yes.

11 Q. Yes. You were asked specifically about your
12 satisfaction with your attorney, correct?

13 A. Correct.

14 Q. And when you were asked -- do you remember your
15 attorney laying out every single piece of discovery that
16 he had covered with you? Do you remember --

17 A. I don't know because I don't know if that's all -- if
18 all the evidence I have is all the evidence they have. I
19 don't know.

20 Q. Okay. But do you remember indicating to the Court
21 that you did not need anything else from your attorney that
22 day?

23 A. I don't understand.

24 **MS. VALENZUELA:** Okay. And, Your Honor, may I
25 approach?

1 **THE COURT:** Yes, ma'am.

2 BY MS. VALENZUELA:

3 Q. Mr. Ford, do you see that this is a transcript of your
4 guilty plea?

5 A. Yes.

6 Q. Okay. And I'm looking at Page 12 here and then you
7 remember -- here it says -- now the Court says are you
8 satisfied with the services of your attorney and you say
9 yes, correct?

10 A. Yeah.

11 Q. And then he asked you if you -- if he had answered all
12 of your questions and you said yes?

13 A. Yes.

14 Q. And then have you told your attorney everything about
15 what happened and you said yes?

16 A. Yes.

17 Q. And then it says you heard your attorney go over in
18 detail, talk about how -- what he's done on your behalf up
19 to this point or try to do for you, did you hear all that,
20 and you say yes?

21 A. Yes.

22 Q. And is what he told me the truth about what y'all have
23 gotten along and you say -- has told me the truth about the
24 way y'all have gotten along and you said yes?

25 A. Yes, that's what that paper say.

1 Q. And then --

2 **MS. VALENZUELA:** And then, Your Honor, just for
3 speed, as we know that this is part of the Court's record,
4 it goes on to Page 12 and 13 as well, and we'll allow the
5 transcript to stand for itself there.

6 **THE COURT:** I have a transcript. I'm looking at it
7 now.

8 **MS. VALENZUELA:** Thank you, Your Honor.

9 BY MS. VALENZUELA:

10 Q. Do you remember hearing the State lay out the facts
11 that they alleged as to the -- how this happened and what
12 satisfied you being found guilty on those charges?

13 A. I don't understand.

14 Q. Do you remember the prosecutor telling the Court --
15 explaining to the Court what happened, how two people broke
16 in?

17 A. Yeah.

18 Q. You remember all that?

19 A. (Nods head.)

20 Q. And do you remember the Court asking you if you agreed
21 with those facts?

22 A. No, I don't remember that.

23 Q. Okay.

24 **MS. VALENZUELA:** And, Your Honor, that would -- we'd
25 just direct the Court's attention to Page 19, Lines 13

1 through 16, Your Honor.

2 BY MS. VALENZUELA:

3 Q. But you were specifically asked by the Court if by
4 pleading under North Carolina v. Alford that you agreed
5 that the -- that you thought that the State could prove
6 the case against you if you went to trial?

7 A. Right.

8 Q. Right. Now talk to me --

9 **MS. VALENZUELA:** And actually is your witness in
10 here? Can you sequester for her for this part of it?

11 **MS. GOLDBERG:** You can ask the judge.

12 **MS. VALENZUELA:** May I -- may I have her --

13 **THE COURT:** Any objection?

14 **MS. GOLDBERG:** Your Honor, the testimony has already
15 started. I just don't know if it's an appropriate request
16 at this time, but I'll leave it to the Court's discretion.

17 **THE COURT:** Well, I usually do it if anybody asks for
18 it. Yes, ma'am, ask her to leave.

19 **MS. GOLDBERG:** I'll come and get you when we're ready.
20 Could you step outside?

21 (Whereupon, Lenae Stevenson, a witness, steps outside
22 of the courtroom.)

23 BY MS. VALENZUELA:

24 Q. Okay. So talk to me a little bit about your
25 relationship with your girlfriend at the time. What was

1 her name -- or what is her name?

2 A. Lenae.

3 Q. Lenae. And how long had y'all been dating?

4 A. You're asking -- you've got to be more specific. What

5 do you mean how long?

6 Q. How long have you and Ms. Lenae been dating?

7 A. Before this incident happened?

8 Q. Yes, at the time of the --

9 A. How long had we been dating before the -- up to the

10 incident?

11 Q. Before up to the guilty plea.

12 A. To the guilty plea?

13 Q. Uh-huh.

14 A. I don't know. Probably about like a year and some.

15 Yeah, about.

16 Q. Okay. How old is Lenae?

17 A. No, about nine months.

18 Q. And then at the time of the incident, so in January of

19 2013, how old was Lenae?

20 A. Say again.

21 Q. How old was your girlfriend at the time that you were

22 arrested?

23 A. Twenty-two. Twenty-two or twenty-three.

24 Q. Okay. And what was her employment? What did she do

25 as a job?

1 A. She was a housekeeper.

2 Q. A housekeeper. And what were her hours?

3 A. I'm not familiar.

4 Q. You're not familiar with it?

5 A. Unh-unh. That was a long time ago.

6 Q. Okay. And how many times had you spent the night at
7 her house as part of your romantic relationship?

8 A. Numerous. Countless times.

9 Q. And what did her mother have to say about that?

10 A. Nothing really.

11 Q. Okay. And what did you and Ms. Lenae -- what were
12 y'all doing the day you got arrested?

13 A. The day I got arrested? I mean, I woke up there. I
14 had spent the night and I had woke up.

15 Q. Well, let's start with the night before. So what time
16 did you get there the night before?

17 A. About 12, 12:30.

18 Q. Okay. And so you get there after -- between midnight
19 and 12:30?

20 A. Uh-huh.

21 Q. And then what happened? What did y'all do then?

22 A. I mean, we stayed up probably till about 2:00 or 3:00
23 in the morning.

24 Q. Okay. And then?

25 A. We went to sleep.

- 1 Q. Okay. What time did you wake up?
- 2 A. I woke up probably like about -- like 12, 12:30.
- 3 Q. Okay. And then what?
- 4 A. I mean, I woke up, washed my -- you know, the normal
- 5 things you do, wash up. I mean, wash my face, brush my
- 6 teeth, take a shower, got dressed.
- 7 Q. Okay.
- 8 A. After that I tell her I'm about to go to the mall.
- 9 Q. Okay.
- 10 A. I wanted to go buy me a hat from the Columbiana Mall.
- 11 Q. Okay.
- 12 A. And that was -- and then I left.
- 13 Q. Okay. And what time did you leave?
- 14 A. Around -- it had to be around 1, 1:30.
- 15 Q. Around 1:00 or 1:30?
- 16 A. (Nods head.)
- 17 Q. And that's as specific as you can tell me?
- 18 A. Yeah.
- 19 Q. Yes?
- 20 A. (Nods head.)
- 21 Q. And then did you leave by foot or did you leave by
- 22 car?
- 23 A. Foot.
- 24 Q. And then where did you go from there?
- 25 A. To the mall.

1 Q. And did you stay at the mall the rest of the day?

2 A. The majority of the day.

3 Q. Until you were --

4 A. Yeah.

5 Q. -- apprehended by the police with your co-defendant?

6 A. Yeah.

7 Q. And Ms. Lenae has filled out a written statement -- a
8 sworn statement for you today?

9 A. I don't know if she had it written.

10 Q. So have you seen a written statement from Lenae?

11 A. No.

12 Q. Have you talked to Lenae about her testimony today?

13 A. No.

14 Q. When's the last time you spoke to her?

15 A. It's been many -- like in the middle of -- like the
16 end of like 2014.

17 Q. Did you talk to her while you were in jail on this
18 charge?

19 A. While I was in the county jail?

20 Q. Uh-huh.

21 A. Yes.

22 Q. How many times?

23 A. I used to talk to her -- not that often, but pretty
24 often though.

25 Q. Are y'all still together?

1 A. Yeah.

2 Q. I'm sorry?

3 A. Yes.

4 Q. Yes. So yes, you are still together, but you have not
5 talked to her since the end of 2014?

6 A. I got a -- I got a letter. I mean, not to my
7 understanding. You know, I'm in prison, so I can only go
8 off -- based off the last time I talked to her.

9 Q. Yeah, that's what I want to know. I want to know --
10 so you're saying the last time you spoke to your current
11 girlfriend was the end of 2014?

12 A. Yeah.

13 Q. Okay. Have you exchanged written correspondence?

14 A. What you mean?

15 Q. Letters.

16 A. No.

17 Q. No, you haven't exchanged letters with your
18 girlfriend?

19 A. No.

20 Q. Ever?

21 A. No.

22 Q. Has she sent you letters?

23 A. To my -- you've got to be more specific when you're
24 talking, ma'am.

25 Q. Sure. I'll get more specific. Has your -- has the

1 woman we're speaking about --

2 A. I don't mean be specific about the woman. I talking
3 about specific about what you're -- what you're trying to
4 ask.

5 Q. Okay. Has she sent you letters?

6 A. When?

7 Q. Ever. Has she ever sent you a letter?

8 A. Yeah.

9 Q. Yes?

10 A. Well, you mean county time and all?

11 Q. Yes.

12 A. Yeah.

13 Q. Okay. And has she sent you a letter in the last six
14 months?

15 A. No.

16 Q. Has she sent you a letter since the end of 2014?

17 A. I believe so. I believe so.

18 Q. Okay. And in that letter did she reference what
19 happened that day in January of 2013?

20 A. No.

21 Q. Has she ever told you what she was going to say about
22 her alibi for you?

23 A. No.

24 **MS. VALENZUELA:** Your Honor, if I could just have one
25 brief moment.

1 **THE COURT:** Yes, ma'am.

2 BY MS. VALENZUELA:

3 Q. How long did it take you to walk from her house to the

4 mall?

5 A. It takes about -- at least fifteen minutes.

6 Q. Okay. It took you fifteen minutes walking and how --

7 can you give me her address that you were -- that you claim

8 that you were at that morning?

9 A. I believe it was [REDACTED] Foxfire Drive.

10 Q. How very specific. That's a good recollection.

11 A. Because she was at that -- she stayed there for a

12 substantial amount of time. I mean, when I was in the

13 county, that's when I was writing her, so that's why I

14 remember that good.

15 Q. So you did write her letters?

16 A. Yeah. Well, actually I would --

17 Q. I thought you told me that you had not written her

18 letters.

19 A. You said have I wrote any letters at all. I asked you

20 specifically where you talking about the county -- when I

21 was doing county time and you said yes and I said yes, she

22 has been writing me letters since I was in the county.

23 Q. Did you write her letters?

24 A. Yes.

25 Q. Okay. When's the last time you wrote her a letter?

1 A. 2014.

2 Q. Did you write her a letter about the alibi that you
3 needed her to give you?

4 A. No.

5 Q. Have you talked to her on the phone that about the
6 alibi that you needed her to give you?

7 A. No.

8 **MS. VALENZUELA:** Nothing further, Your Honor.

9 **THE COURT:** All right. Anything?

10 **MS. GOLDBERG:** Yes, Your Honor. Thank you. May it
11 please the Court?

12 REDIRECT EXAMINATION

13 BY MS. GOLDBERG:

14 Q. Mr. Ford, it was mentioned that Dave MacDougall --
15 he's the investigator that came to talk with you, right?

16 A. Yes, ma'am.

17 Q. Okay. In his conversations with you, one of the
18 things he mentioned was if the State has any jail phone
19 calls between you and Lenae they could use those against
20 you, right? That's what he said?

21 A. Yes, ma'am.

22 Q. And did that bother you?

23 A. No, ma'am.

24 Q. Was there any reason to worry about that?

25 A. No, ma'am. In fact, after he stated that he still

1 got back in contact with her, so it was -- it was no
2 problem.

3 Q. You told him that wouldn't be a problem?

4 A. Yeah.

5 Q. Did you ever ask her to lie?

6 A. No, ma'am.

7 Q. I met with you in October for the first time to
8 prepare for this case; is that right?

9 A. Yes.

10 Q. At that time you told me about Lenae's existence?

11 A. Yeah.

12 Q. Did you have a current phone number for her?

13 A. No, ma'am.

14 Q. Did you have a current address for her?

15 A. No.

16 Q. Have you talked to her since that time?

17 A. No.

18 Q. Were you -- before you walked in this courtroom today,
19 were you aware that she was even gonna be here today?

20 A. No.

21 Q. Have you seen a written statement from her recently?

22 A. No.

23 Q. The letter that the State showed you that you had
24 written to your lawyer asking him to stop the investigation
25 so that you could enter a plea, why did you write that

1 letter?

2 A. Because -- why I did write that letter? At that
3 time I wrote him that letter because they were saying they
4 couldn't get in touch with nobody, you know, but toward --
5 toward -- toward the time I wrote that letter they had --
6 they had not let me know they had got in touch with her,
7 but I was feeling like I didn't want, you know what I'm
8 saying, to get her involved, you know, like because it's a
9 real -- it's a real serious situation, you know. I felt
10 like I didn't want to get her involved, but I wanted to
11 inform him that after I wrote that letter and they received
12 that letter I talked to Brad Kirkland and I told him I did
13 want to. That's how we got into the conversation about --
14 he asked me about the private investigator. If I didn't
15 want to him to get -- if I didn't want him to refer to me
16 to do it -- I know I wrote the letter, but --

17 Q. Go ahead. Keep talking.

18 A. But later on, like -- like a couple of weeks passed,
19 I did, you know, because he brought up the private
20 investigator and we had to go to trial and all that, so I
21 did want him -- I did want him to get in contact with my
22 alibi witness because if I was to choose to go to trial, I
23 would want -- I'd need that, you know, on my side. I knew
24 that.

25 Q. So you had an oral conversation with Mr. Kirkland

1 after you sent that letter --

2 A. Yeah.

3 Q. -- that said that you had changed your mind?

4 **MS. GOLDBERG:** No further questions.

5 **THE COURT:** Anything else?

6 **MS. VALENZUELA:** No, Your Honor.

7 **THE COURT:** Sir, you may step down. Please be very
8 careful.

9 (Witness excused.)

10 **MS. GOLDBERG:** Your Honor, at this time the Applicant
11 would call Lенаe Stevenson. I'll step out and get her.

12 **THE COURT:** Ma'am, come up and be sworn.

13 (Whereupon, Lенаe Stevenson was duly sworn by the
14 Clerk of Court.)

15 **THE CLERK:** Have a seat and state your full name for
16 the record.

17 **THE COURT:** Ma'am, tell us your full name and spell
18 your last name, please.

19 **THE WITNESS:** Lенаe Fields Stevenson,
20 S-T-E-V-E-N-S-O-N.

21 **THE COURT:** Yes, ma'am.

22 **MS. GOLDBERG:** Thank you, Your Honor. May it please
23 the Court?

24 LENAЕ FIELDS STEVENSON,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. GOLDBERG:

3 Q. All right, ma'am. And I just want to make sure I've
4 got this correct. Is your last name Stevenson or Fields?

5 A. Fields. Both.

6 Q. It's both?

7 A. Yes, but I go by Stevenson.

8 Q. You go by Stevenson. How old are you?

9 A. Twenty-six.

10 Q. How do you know Dan Ford?

11 A. We went to high school together.

12 Q. Was there a time when you were dating or a romantic
13 couple of -- in any way?

14 A. Yes.

15 Q. Okay. You know why you're here today, correct?

16 A. (Nods head.)

17 Q. All right. You were aware that Mr. Ford was arrested
18 January 2013?

19 A. Yes.

20 Q. How did you find out that he was arrested?

21 A. Watching the news.

22 Q. Were you dating -- or what was your relationship with
23 Mr. Ford at that time?

24 A. We were together, boyfriend and girlfriend.

25 Q. Are you aware that the allegations are that he

1 committed a crime on January 3rd of 2013?

2 A. Yes, I saw it on the news.

3 Q. Okay. Did you see him on the news that same day or
4 was it the next day? You may not remember. Do you
5 remember?

6 A. I didn't see it that same day. I did watch the news
7 like a day later or two and saw it on the news.

8 Q. So very soon in time to the actual January 3rd?

9 A. Yeah.

10 Q. Do you recall if you were with Mr. Ford on
11 January 3rd?

12 A. Yes.

13 Q. Tell me your recollection of that day.

14 A. It was earlier that afternoon. I'd say it started
15 about twelve midnight January 2nd going into January 3rd
16 and he came around midnight and we stayed up until about
17 2:00 or 3:00 in the morning and didn't wake up until --
18 well, I woke up that next morning at about 10 AM and he
19 slept later than me. I woke up earlier than him and I'd
20 say he woke up that afternoon at about 12, 12:30.

21 Q. And what happened after you -- what do you remember
22 happened after that?

23 A. I normally usually check the mail around that time,
24 12, 12:30, and so after that, you know, I cleaned up a
25 little while and then, you know, he got up around about

1 that time and took a shower and everything and he said he
2 was going to the mall to buy a hat, the Columbiana Mall,
3 because it's right down the street from where my mom was
4 staying.

5 Q. Did you see him leave your house?

6 A. Yes.

7 Q. Do you know if he was getting a ride or if he was
8 walking?

9 A. No.

10 Q. You don't know?

11 A. I didn't see all that.

12 Q. You just saw him walk out your door?

13 A. Yeah, it was just like, you know, see you later and
14 walk out the door type thing.

15 Q. What time did he leave your house?

16 A. It was between 1 and 1:30.

17 Q. Did you hear from him? When was the next time you
18 heard from him after that?

19 A. Well, I didn't hear from him for a while after --
20 after that and after that -- I mean, after that day --
21 that day I didn't hear from him at all no more that day.

22 Q. Did -- from when he walked out the door of your house?

23 A. Yeah, I haven't -- I haven't heard from him.

24 Q. You didn't hear from him at all?

25 A. No.

1 Q. And then when do you think you heard from him next?

2 A. The next time I heard he was in -- he was in Lexington
3 County, but I --

4 Q. Okay. Did you communicate with him much or at all
5 while he was at the detention center?

6 A. Yes.

7 Q. Okay. Regularly or just a little bit?

8 A. Yeah, I was going to see him and, you know, letters.

9 Q. Go visit and letters and phone calls?

10 A. (Nods head.)

11 Q. This date, this January 3rd of 2013, was obviously
12 over three years ago now.

13 A. (Nods head.)

14 Q. Why do you remember what happened that particular day?

15 A. It was -- it was New Year's week, the week of New
16 Year's, so, you know, it wasn't hard to remember, you know,
17 and we have a lot of memories that I do remember, so it --
18 I mean, I -- I do remember a lot about that day, so.

19 Q. And specifically January 3rd?

20 A. Yes.

21 Q. And you believe you saw him on the news the next day?

22 A. Yeah, it -- I heard the name and I was just like --
23 you know, I was just shocked about it, but I didn't know
24 what was going on.

25 Q. When Mr. Ford was in jail and the two of you would

1 communicate, did he ever ask you to lie for him?

2 A. No.

3 Q. Did he ever ask you to give him an alibi?

4 A. No.

5 Q. Were you ever contacted by his lawyer?

6 A. Yes. Which one is it, Mr. Phillips?

7 Q. You were contacted by Mr. Phillips?

8 A. I spoke with him before.

9 Q. Okay. And then at some point were you contacted by a
10 private investigator as well?

11 A. Yes.

12 Q. Dave MacDougall?

13 A. (Nods head.)

14 Q. Okay. What -- generally speaking, did you tell
15 Mr. MacDougall the same thing you told this Court here
16 today?

17 A. Yes.

18 Q. Is there anything else that you told him in addition
19 that you can think of?

20 A. No, basically I just told him, you know, that I did
21 see him that day and the timeframe and -- you know, I don't
22 remember too much, but I remember telling him the same
23 thing that I --

24 Q. You don't remember too much about the conversation, is
25 that what you're saying?

1 A. No.

2 Q. Did you speak with Mr. MacDougall on the phone or in
3 person?

4 A. Over the phone. I never met him.

5 Q. He called you?

6 A. Yes. No. Yeah, I think he did. He went to an old
7 address that I used to stay at and left his card, so I gave
8 him a call. I think I got the voicemail and he called me
9 back.

10 Q. Okay. Did you tell him whether or not you'd be
11 willing to come to court to testify about this?

12 A. I do remember saying that I didn't have a problem
13 making a statement or anything.

14 Q. Okay. Did you give him current contact information
15 for you, a current phone number and address?

16 A. I remember giving him a number. Address-wise, he had
17 an address, but, you know, at the time being it was --
18 there was a lot going on, so, I mean -- but he had an
19 address.

20 Q. Did you have a stable address at that time?

21 A. I'm not -- I might have been staying with someone.

22 Q. Okay. But he had your phone number?

23 A. Yeah, he had my number.

24 Q. After he contacted you that day, did you ever hear
25 from him again?

1 A. Yes.

2 Q. And --

3 A. I mean, I haven't -- I don't think I spoke with him
4 over the phone. He might have called and left a message
5 and, you know --

6 Q. How many times do you think you got messages from him?

7 A. Maybe it might have been -- it might have been more
8 than once, but, yeah, the -- the last message I didn't know
9 what was going on with that.

10 Q. What does that mean?

11 A. I don't know what was said.

12 Q. You don't remember what he said?

13 A. I mean, it was just kind of like a -- you can call me
14 back such and such type thing, but I don't know what -- I
15 don't know what happened.

16 Q. Did you call him back?

17 A. A couple of times I did get a voicemail.

18 Q. And left him voicemails?

19 A. Yeah, and then it kind of died down and then the next
20 thing, you know, I was hearing that he passed away and so I
21 didn't --

22 Q. Did Mr. Ford's attorney, Brad Kirkland, ever call you
23 or leave you any messages?

24 A. Okay. I think I spoke with him.

25 Q. Do you --

1 A. I don't remember him leaving any messages, but I think
2 I have spoke with him. It's so many people. I'm sorry.
3 I don't even know.

4 Q. I understand. Do you remember what was said in any
5 conversation?

6 A. No, I don't remember the exact conversation me and
7 Mr. Brad had.

8 Q. Okay. When's the last time you heard from Dan Ford?

9 A. The last time?

10 Q. Uh-huh. Or the most recent time you've heard from
11 him.

12 A. When -- where he's incarcerated now or when?

13 Q. In general. Just the most recent time you've heard
14 from him.

15 A. Well, I don't know. We had a couple of letters. I
16 wrote him a couple of letters and everything, but as far as
17 -- as far as his case and going to court I haven't spoken
18 with him.

19 Q. It's been a long time?

20 A. Yeah.

21 Q. And when were you approached by an investigator to ask
22 you to come to court today?

23 A. The last time?

24 Q. Or when did you meet with the investigator about it?

25 A. Okay. I met with her yesterday.

1 Q. Yesterday?

2 A. Yeah.

3 **MS. GOLDBERG:** I beg the Court's indulgence.

4 **THE COURT:** Yes, ma'am.

5 **MS. GOLDBERG:** No further questions.

6 **THE COURT:** Yes, ma'am.

7 **MS. VALENZUELA:** Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. VALENZUELA:

10 Q. Do you prefer Ms. Fields or Ms. Stevenson?

11 A. It doesn't matter. Stevenson, Fields. Stevenson is
12 fine.

13 Q. Okay. Ms. Stevenson, talk to me a little bit about
14 -- are you still dating the Applicant? Are y'all still
15 together?

16 A. Yes.

17 Q. I'm sorry?

18 A. Yes.

19 Q. Yes, you're still together. And when's the last time
20 that you spoke to him on the phone?

21 A. It's been a while. I haven't talked with him over the
22 phone in -- I'd say about a couple of months.

23 Q. Okay. So two months ago you spoke to him on the
24 phone?

25 A. It might have been longer than that. About three

1 months or so.

2 Q. This is your chance to get it right, so.

3 A. Yeah, about three months.

4 Q. Okay. So three months ago you talked to him on the
5 phone?

6 A. (Nods head.)

7 Q. Yes?

8 A. Over the jail phone, yes.

9 Q. Over the jail phone?

10 A. Uh-huh.

11 Q. And then how many letters has he sent you in the last
12 six months?

13 A. Really I've -- I've sent letters.

14 Q. Okay. So how many has he sent you?

15 A. It might have been -- well, really none.

16 Q. So he's sent you no letters in the last six months?

17 A. One.

18 Q. He sent you one?

19 A. It was one to one.

20 Q. Okay. So he sent you one letter in the last six
21 months?

22 A. Yeah.

23 Q. Okay. And how many letters have you -- have you sent
24 him in the last six months?

25 A. Probably like two, two letters, so -- yeah, about

1 two letters. It wasn't much.

2 Q. Okay. While y'all were -- while he was in jail -- in
3 the county jail before he pled guilty, were y'all speaking
4 on the phone, on the jail phone there?

5 A. Yes.

6 Q. And how often were y'all speaking on the jail phone
7 while he was in county?

8 A. I'd say maybe about once a week or twice a week, you
9 know. It wasn't constantly. And I went down there to
10 visit him a couple of times.

11 Q. Okay. And were these phone calls or these visits
12 going all the way up until he pled guilty?

13 A. No.

14 Q. When did they stop?

15 A. I'm not sure when did they stop. I think he went to
16 court in March, so I'm not sure when they stopped. I don't
17 know an exact date, but it wasn't constantly. I mean, I
18 went to visit him a couple of times, but it wasn't like an
19 every day thing or -- we just -- I would talk to him or go
20 see him and then, you know, see how everything was doing
21 and then, you know, we just -- it would just be like -- I
22 don't know.

23 Q. Okay. What were you doing as a job in January of
24 2013?

25 A. Housekeeping..

1 Q. Okay. And what were your hours?

2 A. I'd say 8:30 to -- it varies. Housekeeping you can
3 get done early. It depends on how many rooms you have.

4 Q. Okay.

5 A. So it might be 3:00, 2:00, 1:00, 4:00.

6 Q. Okay. Was it Monday through Friday?

7 A. It's -- it varies. It could be Monday through Sunday,
8 two days off. It could be every weekend. It's just every
9 -- throughout the Monday through -- I could be working
10 every day and have two days off.

11 Q. Okay.

12 A. So two days off and, you know, five days a week.

13 Q. I want to talk to you about Investigator MacDougall.

14 **MS. VALENZUELA:** Your Honor, may I approach?

15 **THE COURT:** Yes, ma'am.

16 BY MS. VALENZUELA:

17 Q. Can you look through that document, please. You
18 don't have to read the whole thing. Just look at it for
19 familiarity. Does it look familiar?

20 A. Familiar as in?

21 Q. Have you seen that document before?

22 A. I don't recall. I don't remember seeing this.

23 Q. Okay. So flip through the pages. Have you seen any
24 of this? Have you ever seen this document before?

25 A. I don't remember seeing all that.

1 Q. Have you seen portions of it?

2 A. I don't even -- no, I didn't -- I never met with the
3 other investigator.

4 Q. Okay. But have you seen portions of what I'm showing
5 you?

6 A. No, I don't remember that.

7 Q. This document has never been mailed to you?

8 A. I don't recall getting that in the mail.

9 Q. Okay.

10 A. I don't know what address that was sent to because
11 I've never seen it.

12 Q. And let's talk a little bit about the investigator.
13 He did talk to you and was your telephone number at the
14 time in January of 2013 [REDACTED]-7995?

15 A. In 2013?

16 Q. Yes.

17 A. Yeah.

18 Q. Yes?

19 A. (Nods head.)

20 Q. Okay. And do you remember the investigator leaving
21 you approximately six voicemail messages trying to reach
22 you?

23 A. No, I don't recall six, but he left some messages.

24 Q. Okay. And did you ever meet with him so that you
25 could fill out a statement?

1 A. I -- I never met him.

2 Q. Okay. Did he ask for you to meet with him so that you
3 could fill out a --

4 A. I think he asked me before and I told him it may have
5 to be on my day -- one of my days off because I was very
6 busy at the time. I'm a single parent and I have three
7 kids, so, you know, I was kind of busy. So I may have said
8 it will just have to be when I -- I had some free time,
9 but --

10 Q. And did you ever make that free time to fill out the
11 statement?

12 A. No.

13 Q. Okay. I did the Applicant ever talk to you about this
14 alibi that he wanted you to give?

15 A. No.

16 Q. He never spoke to you about it?

17 A. No.

18 Q. So as y'all were talking on the phone while he was in
19 county jail, he never told you that he needed you to come
20 in and give the alibi so he would have a defense at trial?

21 A. No.

22 Q. He never asked you about it?

23 A. (Shakes head.)

24 Q. Okay. How did you find out that the investigator had
25 died?

1 A. I was told.

2 Q. By?

3 A. Me and Dan spoke about it.

4 Q. So the Applicant told that you the investigator had
5 passed away?

6 A. (Nods head.)

7 Q. And what else did y'all talk about in terms of what
8 you had told the investigator?

9 A. We didn't -- we really didn't conversate like that
10 about that. I just -- you know, I just told him he found
11 me and I got in contact with him and that was that, you
12 know.

13 Q. Okay. And then --

14 A. I talked with him. I didn't get into details or
15 anything.

16 Q. Okay. And then when he told you that the investigator
17 was dead, what did he tell you in terms of how to get in
18 touch with his attorney in order to still give that -- that
19 statement?

20 A. Well, really it was a hard time trying to get in touch
21 with his attorney because I called several times and just
22 got the office voicemail, so I never really spoke with him
23 like that.

24 Q. Okay. So --

25 A. So it was hard to get in touch with him even if I

1 tried to get in touch with him about the investigator. I
2 left messages telling -- asking him to call me back or --
3 I haven't spoke with him like that, so.

4 Q. So you and the Applicant did, in fact, talk about how
5 you needed to get in touch with the attorney about your
6 alibi?

7 A. About the -- no.

8 Q. The alibi?

9 A. About the investigator.

10 Q. Okay.

11 A. What -- what else was there left to do but -- you
12 know, it was -- like I said, it was hard getting in contact
13 with him. I haven't spoke with him. I think I only spoke
14 with him one time.

15 Q. Okay. And now you filled out a voluntary statement
16 yesterday, correct?

17 A. Right.

18 Q. And you wrote out what your recollection was as to
19 what happened on the date of January 3, 2013?

20 A. (Nods head.)

21 Q. Right?

22 A. Correct.

23 Q. Okay. And approximately how long does it take you if
24 you were driving a car to get from your house to the mall
25 -- from the house that you were living in at the time in

1 January of 2013?

2 A. From Country Walk?

3 Q. Yes.

4 A. Five -- yeah, it doesn't take long at all. About
5 five minutes. Five.

6 Q. I'm sorry, five minutes?

7 A. Five, yeah. It's walking distance. It's five,
8 ten minutes, I guess.

9 Q. Walking distance from your apartment that you were in
10 that night or that day --

11 A. About ten.

12 Q. -- to the mall is five to ten minutes?

13 A. About ten.

14 Q. Now it's ten?

15 A. Ten. The first time I said five or ten.

16 Q. Okay.

17 A. It's probably about ten.

18 Q. Okay. And then driving?

19 A. It may be five minutes. It's right -- it doesn't take
20 long. It's right up the street.

21 Q. Did you ever while you were dating the Applicant meet
22 someone named Antoine Woodlin?

23 A. No, I never met him.

24 Q. Okay. Did you meet someone who went by the name
25 "Slim"?

1 A. I never met him. I don't know -- I don't know his
2 friends.

3 Q. You don't know your --

4 A. I didn't care to meet anybody. I don't know. I
5 didn't -- I didn't know any of his friends.

6 Q. Okay. Did you ever meet someone named Precious
7 Gadson?

8 A. I never met her. I don't know who she is.

9 Q. Okay. Did your -- did the Applicant have a car at the
10 time that y'all were dating?

11 A. No.

12 Q. Okay. Do you know what the definition of dunking is?

13 A. No, I don't know what -- what is that?

14 Q. Okay. What nicknames did the Applicant go by back in
15 January 2013?

16 A. I didn't know anything but Dan.

17 Q. He never went by Demon?

18 A. I never knew him by that name.

19 Q. You never heard anyone else call him by Demon?

20 A. No.

21 Q. You never heard him pick up the phone and say Demon
22 here?

23 A. No.

24 Q. Did you ever have a discussion with the Applicant
25 about how the -- if you gave a statement to support him, an

1 alibi, how the police might come by to speak to you about
2 that statement?

3 A. Did me and -- can you --

4 Q. You and Mr. Ford, did y'all ever talk on the phone
5 while he was in county about how if you were an alibi
6 witness for him the police would have to come by and ask
7 you about it?

8 A. No, I don't remember.

9 Q. You never talked to him about that?

10 A. No.

11 Q. Did y'all ever talk about the fact that your phone
12 calls were being recorded in the jail?

13 A. Yeah, I knew that.

14 Q. Yeah. And then did he tell you that if you gave an
15 alibi that some of the things that y'all had been talking
16 about on the phone could be used against y'all?

17 A. Yeah, but I -- yeah, I knew the phone calls were
18 recorded, but we never talked about anything that we wasn't
19 supposed to be talking about.

20 Q. Okay. You said you had a lot going on during that
21 time. Do you have any criminal convictions?

22 A. No.

23 Q. No criminal convictions?

24 A. (Shakes head.)

25 Q. And when I ask that, I mean under your -- Lanae Fields

1 or Lanae Stevenson?

2 A. Right. My background is clear.

3 **MS. VALENZUELA:** Nothing further, Your Honor.

4 **THE COURT:** Anything?

5 **MS. GOLDBERG:** Just one question, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. GOLDBERG:

8 Q. Ma'am, you said you know that jail phone calls are
9 recorded. How do you know that?

10 A. I mean, it's -- they tell you. I mean --

11 Q. They tell you?

12 A. I mean, the calls --

13 Q. Is there a recorded message at the beginning of the
14 phone call --

15 A. Yes.

16 Q. -- that says this call is being recorded?

17 A. Pretty much. I mean -- I mean, I think everybody
18 knows that calls are recorded, so.

19 **MS. GOLDBERG:** No further questions.

20 **THE COURT:** Ma'am, you may step down. Please be
21 careful.

22 (Witness excused.)

23 **THE COURT:** Let me see the lawyers real quick.

24 (Proceedings held at the bench; not reported.)

25 **MS. GOLDBERG:** No more witnesses, Your Honor.

1 Q. Okay. And after, you know, reviewing those notes, do
2 you have anything in terms of conversations or information
3 that he gave you as to any potential alibi witnesses?

4 A. Yes, ma'am.

5 Q. Okay. And what is that information?

6 A. I met with him -- I was appointed -- I guess I was
7 technically appointed on 8-29-13. Now when we're
8 appointed, we just receive an e-mail, so we don't -- we
9 can't open the file with what we receive, they just say
10 you've been appointed. I get the actual mail usually
11 about a week later that has the appointment information.
12 So I got that -- I got the e-mail on 8-29-13. I don't
13 know when I received the materials. I visited him on
14 September 19, 2013, and on September 19, 2013, he told me
15 that he was walking in Quail Valley, which was near [REDACTED]
16 Valleywood Drive. I suppose that they had already reviewed
17 some of the discovery with him, the other attorneys, so he
18 knew the names and addresses. And he said --

19 Q. And the address that you just mentioned in relation to
20 Quail Valley is the victim's home?

21 A. That's what my note says. I don't independently
22 recall that, but that's what the note said. [REDACTED] Valleywood
23 Drive is the victim's house. He told me that he was at
24 Michelle's house and Michelle lived on Broad River Road
25 off of Piney Grove and then he got dropped off at the

1 beginning of Quail Valley by somebody that he refers to
2 as Taylor. I asked him who this person Taylor was and he
3 said he has it listed in his phone as Taylor, but he went
4 on to say that Taylor -- he thought he went to Columbia
5 High School and his name was Kerry Taylor maybe in the
6 twelfth grade in 2008 because I'd asked him for information
7 on how to find this Kerry Taylor. So he was dropped off in
8 Quail Valley according to my first meeting with him at 2:30
9 and that he was with his brother at 12:00. Honestly, I
10 don't know what that last part means.

11 Q. Okay. And he was with his brother at --

12 A. At 12:00 is what I put, but I don't know what that
13 means. I don't know -- I didn't make it clear.

14 Q. Was this -- I mean, would you have been discussing
15 times that fit into the day of the crime?

16 A. I would presume that I would only ask questions about
17 this window that we're talking about, the 1:00 to 2:00, so
18 it -- but I don't want to speculate. I don't want to
19 speculate.

20 Q. But what you have there is that he told you that he
21 had been with his brother that day before he was dropped
22 off by a Michelle?

23 A. I honestly don't want to speculate on that because if
24 I don't understand a note, I don't want to put myself or my
25 client in the position of not remembering that correctly,

1 so I don't know.

2 Q. So it may be two different dates, but you have notes
3 that say with his brother at 12:00 PM?

4 A. Yeah. Well, it doesn't say PM, it says 12:00, and it
5 wouldn't have -- it wouldn't have probably been anything
6 else. But according -- the most interesting part about it
7 is that he was at Michelle's house that morning who lived
8 on Broad River Road off of Piney Grove.

9 Q. When you say that morning, what morning are we talking
10 about?

11 A. This is the morning of the incident.

12 Q. Okay.

13 A. So he -- he basically told me that he was walking in
14 Quail Valley and he says it was several hours after the
15 incident was alleged to have occurred because I hadn't
16 received the discovery yet. He told me that it was at
17 [REDACTED] Valleywood Drive, he told me that he was at Michelle's
18 house and that she lived on Broad River Road off Piney
19 Grove and then he got dropped off at the beginning of
20 Quail Valley at 2:30 by a guy named Taylor. Does that
21 make more sense the way I said it that time?

22 Q. Yes. And then in your notes, what, if any,
23 discussions do you have related to -- I forgot her name,
24 the girlfriend?

25 A. Yeah. He did bring up the girlfriend later, but he

1 actually brought it up with Dave MacDougall initially. He
2 did not bring it up with me initially and so --

3 Q. Well, I want to stop there. So on your September 19th
4 meeting when you're talking about that --

5 A. He doesn't mention her.

6 Q. -- you don't have anything in your notes about the
7 girlfriend?

8 A. No. No, nothing.

9 Q. Okay.

10 A. He told me it was some girl named Michelle.

11 Q. But then he eventually ends up telling your
12 investigator and what was your takeaway in terms of what
13 your investigator -- and let's just clarify something for
14 the record. Your investigator, Dave MacDougall, is dead.
15 He did pass away in the January 2014 timeframe?

16 A. That's correct.

17 Q. Okay.

18 A. Well, what I did was I told Dave, as I usually do
19 because I've hired Dave probably a few hundred times over
20 the years, I told Dave go down there, interview him and
21 find out what the alibi is and find the person and get
22 them subpoenaed so that we can go to court if we have to
23 go to court and so Dave attempted to contact this woman.
24 Apparently he had success contacting her. He -- I always
25 tell Dave whenever you talk to an alibi, and Dave and I are

1 on the same page -- or were on the same page with all of
2 this stuff because I've had alibis flake out on me at the
3 last second. Literally the day of the trial I can't get
4 them on the phone, I can't get them to show up or they do
5 show up and say they don't remember. I've had that happen.
6 So I go ahead and try to inoculate them and Dave -- that is
7 his practice as well. And so what Dave does, and I've been
8 with him when he does it, is he tells them you are going to
9 be contacted by law enforcement and not only are you gonna
10 be contacted by law enforcement, but they're probably gonna
11 be pretty aggressive with you. They are gonna threaten you
12 and they are gonna tell you that if you get on the stand
13 and lie that you are going to be subjected to the penalty
14 -- the possible penalty of perjury, which carries up to
15 five years. So that is something that we do to make sure
16 that when they show up at the courthouse or when I give my
17 alibi notice and the police show up at their house they
18 don't freak out and all of a sudden lock themselves into
19 a statement, you know, the opposite of what they told me.
20 So Dave told her that and at that point she broke off
21 communications.

22 Q. And when you say "she", this is Ms. Leneae --
23 Ms. Stevenson broke off communications?

24 A. Yes. Yes, she broke off communications.

25 Q. And did she ever call and leave you a message?

1 A. No, she never spoke to me ever. Not one single time.
2 I never had her on the phone ever.

3 Q. Okay. So she never spoke to you and never left a
4 voicemail message?

5 A. No, she never spoke to me and never left a voicemail
6 message.

7 Q. After the letter that's State's Exhibit -- or Defense
8 Exhibit 1 --

9 A. I have it.

10 Q. -- after that, was -- well, did you receive that?

11 A. Yes, I did receive this.

12 Q. Okay. And then after receiving that letter from your
13 client, what did you understand him to be asking you to do?

14 A. I'll just read exactly what he said. In writing -- it
15 says writting, but am writing you to say I am -- I'm -- I
16 misunderstood the first sentence -- I'm writing you to say
17 in the investigation of the alibi because I really don't
18 want to go to trial. I don't think that will be in my
19 best interest. Let the investigator know to stop the
20 investigation. And then he goes on to say what I'm asking
21 you to do is get me probation.

22 Q. Okay. And then after he sent you that letter, and
23 that letter was sent in December of 2013, right?

24 A. It was sent December 19, 2013. Now that's an
25 interesting date --

1 Q. Okay.

2 A. -- because if you'll notice, that's when Dave
3 MacDougall finished his investigation. My understanding
4 of the events was that Dave had just met with him and
5 explained to him that she had broken off contact and that
6 she had done it after he had told her that he was not --

7 Q. I'm gonna -- I'm gonna stop you real quick.

8 A. Yeah, go ahead.

9 **MR. VALENZUELA:** And, Your Honor, may I approach the
10 witness?

11 **THE COURT:** Yes, ma'am.

12 BY MS. VALENZUELA:

13 Q. And I'm handing you what I will label State's
14 Exhibit 2. Will you look through that?

15 A. Yeah.

16 Q. Do you recognize that?

17 A. Oh, yeah. This is Dave's report.

18 Q. Okay. And is that part of your file?

19 A. Oh, absolutely.

20 Q. And did you keep it as part of your --

21 A. Okay.

22 **MS. VALENZUELA:** And so, Your Honor, we would move to
23 admit this as Defense Exhibit 2.

24 **MS. GOLDBERG:** No objection.

25 **THE COURT:** Defense 2 without objection.

1 (Defendant's Exhibit Number 2, MacDougall report, was
2 marked and admitted into evidence.)

3 BY MS. VALENZUELA:

4 Q. Okay. And so I think we were starting to reference --

5 A. Right.

6 Q. So referencing State's Exhibit 2, tell the Court what
7 it is, please.

8 A. This is the report that Dave does when he believes
9 that he is finished with the case -- working on the case.
10 He'll shoot me over a report by e-mail and I print it out,
11 and then I review it and determine what significance it
12 may have for us.

13 Q. And what is the date of that report?

14 A. It is December 19, 2013.

15 Q. Okay.

16 A. And so that's why I thought the date was -- of the
17 letter was interesting because I assume that Dave had met
18 with him that day or shortly before that and informed him
19 of the trouble that we were having with the witness because
20 he had been trying to contact the witness starting -- he
21 actually met with her on November -- or called her on
22 November 25th and recorded a statement, which I don't have
23 a copy of, but recorded a statement from her and then what
24 Dave would do, and he did this in every case when he
25 contacted a witness, is he would go back, listen to the

1 recording and then type up a statement based on the,
2 recording. And he asks the person's permission can I
3 record you first.

4 Q. Right.

5 A. And then he would type up the statement and then take
6 it out to them, let them review it and sign it if they
7 wanted to. So he informed her of that process and he
8 informed her that they were -- we would be turning this
9 over to the prosecution at some point in time and that she
10 would be contacted by law enforcement and that they would
11 ask her about this statement that she gave us. After that
12 conversation occurred, he tried to contact her eight or
13 nine times over the course of two or three days and was --
14 actually it was almost a week. It was a week that he tried
15 to contact her. From November 30th to December 5th he
16 tried to contact her and she would not return his call.
17 And this is something that's typical, by the way, that
18 witnesses -- this is why you tell them that there's gonna
19 be some danger if they testify because there is. I don't
20 want that witness walking into the courtroom and not being
21 willing to testify after we've gone all in on a trial.
22 So this has happened to me plenty of times. I just assumed
23 that when she realized that she was going to have to
24 testify, what she did not realize when she gave her
25 statement, that she loss interest in it. And, quite

1 frankly, I am very hesitant to call a witness that is
2 hesitant. And I'll be honest with you. After watching
3 her here today, I wouldn't have called her as an alibi
4 witness.

5 Q. And so just focussing on that and breaking it down a
6 little bit, you got in contact with her but then she
7 doesn't follow through. At least he tries to -- the
8 investigator tries to touch base -- and this is
9 Ms. Stevenson we're talking about the whole time -- and
10 then, of course, at the plea, and the Court has this
11 transcript, you go ahead and put all -- a lot of what
12 you've told us today, and I don't think we need to go
13 into what went on at the plea agreement because the Court
14 does have that whole transcript, but you lay out your
15 investigation as related to -- to Ms. Stevenson?

16 A. Right.

17 Q. Now between December and the date of the plea, because
18 the date of the plea March of 2014 --

19 A. Right.

20 Q. -- did your client ever tell you that he did, in fact,
21 want you to do anything with Ms. Stevenson? Did he retract
22 that letter?

23 A. He did -- he did to some degree. He didn't completely
24 retract it. I spoke with him because he did not like the
25 deal. He did not want to go to trial, but he did not want

1 to plead guilty.

2 Q. Okay.

3 A. He made that very clear. He did not want to go to
4 trial and he was not interested in pleading guilty. The
5 day before the plea -- because I had no idea what he was
6 gonna do and I really even didn't want him transported if
7 he wasn't going to plead, so the day before the plea I met
8 with him and the day before the plea he gives me a new
9 alibi. This will be the third alibi because we had the
10 Michelle thing that he told me first and then that woman
11 we were just talking about and then here is the third one
12 according to my notes. Let me find it.

13 The -- the final one that he gave me was that he was
14 with a guy -- and this is the way I wrote it and I'll
15 just -- he was with a guy named Dog that he'd seen at
16 Columbiana -- at Columbiana Mall before and then I wrote
17 -- I scratched that out and went not Dog, Frog. So
18 apparently he said Frog and not Dog. He saw him at the
19 mall between 1:00 and 2:00 PM that day. He was at a
20 female's house, but he did not indicate that this was --
21 Stevenson?

22 Q. Ms. Stevenson.

23 A. He didn't indicate it was Ms. Stevenson. He said
24 that he was at a female's house, he left the house around
25 11 to 12 and then went to the mall, then he met another

1 female at the mall, he doesn't know her name. She's about
2 to leave and she drops him off at the entrance of
3 Columbiana Ridge. He said the best way to find them is
4 go to the mall and just talk to every black male there and
5 I said I will do that. I've got a guy that can do that.

6 Q. And then -- and then as part of this Court transcript
7 from the sentencing you told the plea judge that you had
8 talked to your client about this last minute alibi and you
9 had offered to send an investigator because you had the
10 money to send an investigator to just sit in Columbiana
11 Mall and your client indicated to you that he did not want
12 you to do that?

13 A. Correct. By the -- by the end of our discussion he
14 told me not to do that and that he would inform me the
15 next day whether he was gonna accept the plea or not. Of
16 course, that would be at the time that he was transported.

17 Q. Was it your client's decision to plead guilty here?

18 A. Oh, absolutely.

19 Q. Did you feel that you gave him any sort of undue
20 pressure or coercion to accept the plea?

21 A. No, I would have been more than happy to try this
22 case.

23 Q. Was there a deadline associated?

24 A. No, none.

25 Q. Was the trial on the docket?

1 A. No.

2 Q. Okay.

3 A. We had time to work on it if that's what we needed.

4 Q. Okay.

5 A. Now I will say that they were getting a little
6 impatient, but it was Angela Garrick, who's now Angela
7 Martin, and I have a great working relationship with her.
8 If I would have said Angela, push this thing off, I need
9 forty-five days, she would do it every time.

10 Q. And your client understood that?

11 A. Yeah.

12 Q. There was no undue time pressure on this?

13 A. No.

14 Q. Okay. I want to turn a little towards the allegation
15 of the appeal issue.

16 A. Yes.

17 Q. Did you --

18 **MS. GOLDBERG:** I'm sorry, can I interrupt real quick?
19 Your Honor, during this examination my client's informed
20 me about three times now that he really has to use the
21 restroom.

22 **THE COURT:** Okay. Let's take a break to let everybody
23 have a -- we're gonna stop here in just a minute or two
24 anyway.

25 **MS. GOLDBERG:** Thank you, Your Honor.

1 **THE COURT:** In fact, I'll tell you what. Let's get
2 off the record and let him go restroom and we're gonna
3 talk about our schedule right now.

4 (Recess taken.)

5 **MS. VALENZUELA:** May it please the Court?

6 **THE COURT:** Yes, ma'am.

7 BY MS. VALENZUELA:

8 Q. Okay. Mr. Anderson {sic}, so I think we left off --
9 we were turning towards your -- the appeal issue.

10 A. Right.

11 Q. And did you -- do you remember having a conversation
12 with your client where you advised him as to his appellate
13 rights and described what post-conviction relief is?

14 A. Yes.

15 Q. Okay. Can you tell us about that conversation?

16 A. It came up because he told me that he wanted to plead
17 Alford, he didn't want to plead guilty. And he thought
18 that he wanted to plead under Alford because you got an
19 extra appeal and so I -- we -- that got us into a
20 discussion about what appeals are and he basically told me
21 that he did not want to fight his case in court, he wanted
22 to fight his case on appeal, and at that point in time I
23 stopped everything and I said whoa, that's not how we're
24 gonna do this. I'm not gonna stand up in front of a judge
25 with you thinking that you're going to fight this case on

1 appeal because that's simply not going to happen if you
2 take a negotiated deal because the likelihood of there
3 being an error committed by the Court is very minimal and
4 I explained to him how that works, that there must be an
5 error committed by the Court and it -- and it must affect
6 the outcome of the case and the only thing that he would
7 get was a new trial and there would be no -- and the way
8 that he described the appeal to me, he thought that he
9 was going to fight it the way that he's fighting it here
10 today talking about how he had all of these witnesses and
11 I told him you can't do that on an appeal. The only thing
12 that will be in the record is going to be just the
13 transcript from the appeal because there's not gonna be
14 any other exhibits and you're not gonna be allowed to put
15 any exhibits in and so once I explained all that to him
16 and explained to him at a PCR you'd be allowed to call
17 witness, you'd be allowed to introduce evidence, he --
18 my impression was that he agreed that an appeal was not
19 appropriate, but he was going to PCR me, which is the
20 reason why you see in the transcript I knew that his
21 entire goal the whole time was to get this to a PCR and
22 to fight his case at the PCR. But I thought that we had
23 reached an understanding that he wasn't going to file a
24 direct appeal because that would simply delay what he
25 really wanted to do, which was to call witnesses and to

1 talk about my performance in his case.

2 Q. And when you say delayed, it's because the PCR gets
3 -- it doesn't -- it gets dismissed as being filed too
4 early if there's a pending direct appeal?

5 A. Correct. Right.

6 Q. So he would have to wait until the appeal is
7 concluded?

8 A. Which is gonna be a year, a year and a quarter
9 process usually. Even if there's an Anders brief, which
10 if you read the transcript there's going to be an Anders
11 brief, if he does -- if he get an appeal.

12 Q. And so -- and that kind of -- that doesn't kind of,
13 it leads me to my next question. Well, I'm gonna break it
14 down into two. One, does he indicate to you -- so y'all
15 have this conversation. After you explain everything, you
16 -- your understanding is he doesn't want a direct appeal,
17 it's gonna slow it down, he wants a PCR?

18 A. Correct.

19 Q. And then you do your plea. Does your client indicate
20 to you after that plea that he wants you to file a direct
21 appeal?

22 A. No, he says nothing to me after the plea.

23 Q. Okay. So nothing about filing a direct appeal?

24 A. No.

25 Q. And then, of course, you're present at the plea as we

1 see from the transcript?

2 A. Yes.

3 Q. And from your observation of how the plea was
4 conducted and the sentence that the judge gave you, was
5 there any legal error that you thought required you to file
6 an appeal?

7 A. No. There's -- it's gonna be an Anders brief if he
8 gets an appeal no matter who writes it.

9 Q. And it was a negotiated plea of seventeen years and
10 the judge sentenced him to seventeen years, which was the
11 exact negotiation?

12 A. Correct.

13 Q. There was once -- you know, kind of a description of
14 the allegation of why he felt -- why the Applicant wasn't
15 adequately prepared for trial as being that he did not
16 feel like you had covered discovery with him. Is there
17 anything -- and I know that you've reviewed the transcript
18 for the guilty plea sentencing. Is there anything in
19 addition to what is already in the guilty plea transcript
20 that you would add to address the discovery issue?

21 A. No.

22 **MS. VALENZUELA:** Okay. Please answer any questions
23 that opposing counsel has.

24 **THE COURT:** Okay.

25 **MS. GOLDBERG:** Thank you, Your Honor. May it please

1 Court?

2 **THE COURT:** Yes, ma'am.

3 CROSS-EXAMINATION

4 BY MS. GOLDBERG:

5 Q. All right. Mr. Kirkland, I think you said that you
6 first met with Mr. Ford in September of 2013?

7 A. Yes.

8 Q. And then you sent Dave MacDougall to go talk with him?

9 A. Yes.

10 Q. Did you meet with Dan Ford again between then and
11 February of the next year?

12 A. I don't recall that and I don't have any notes.

13 Q. Do you know when you met with him leading up to court?

14 A. I don't. I only take notes whenever we discuss
15 something that I know is gonna be important information.
16 If we're just talking generally about the case, I just
17 don't -- I end up not taking notes or forget to take notes,
18 so there may have been times I visited him. I just don't
19 know.

20 Q. On the day -- how did this date -- court date come to
21 be planned, if that makes sense? Was it -- were you given
22 a date by the State that this needs to be the day for trial
23 or plea --

24 A. No, no, no.

25 Q. -- or was it scheduled another way?

1 A. No, it was just she had made an offer and she said
2 well, he needs to either accept it or reject it, what are
3 we gonna do, and so she set it for a particular date. I
4 have a very good relationship with her. She set it for a
5 particular date and I said, you know, we've been through
6 everything so I think we'll be ready to tell you plea or
7 trial by this date, but there was never a threat of an
8 imminent trial. That simply did not ever occur.

9 Q. If he had backed out that day, you wouldn't have
10 picked a jury that day?

11 A. No. And -- although Angela, I think, as a bit of
12 posturing would have probably taken the -- the offer off
13 the table on the record, she would have given it back to
14 me.

15 Q. Was there a threat that the offer would be --

16 A. No.

17 Q. -- taken off the table?

18 A. No. But if she had, she would give it back to me.

19 Q. Did you ever tell Mr. Ford that he really needs to
20 make the decision by this date or the offer would be taken
21 off the table?

22 A. No, but I did tell him in no uncertain terms that we
23 don't want to get to a point where the offer is taken away
24 because they can -- they can pull a plea offer at any point
25 in time. So I do tell my clients that there is -- every

1 day that goes by with a plea offer on the table there's a
2 chance that the plea offer could be pulled. So I could
3 see how even though he didn't testify to that how somebody
4 might interpret that differently, but I'm just telling him
5 the truth. That's what the law is.

6 Q. Right. And I guess my question is more of how did he
7 know that he really needed to make a decision that day?

8 A. Well, I would guess, and I'm only guessing, that I
9 told him we have gone through all of the evidence, we have
10 done all of our investigation, there is nothing left for
11 me to do, this case could be called for trial at any point
12 in time and I don't have a reason to ask for a continuance
13 if it is called for trial, so we need to keep in mind that
14 this is a great opportunity. And, quite frankly,
15 seventeen years? I've never been more proud of the result
16 of a case. This was an amazing outcome for us. Amazing.

17 Q. When you -- you received the report from Investigator
18 MacDougall and then, I guess, shortly thereafter he passed
19 away?

20 A. Yes.

21 Q. Did you ever make any attempt to call Ms. Stevenson?

22 A. No.

23 Q. You didn't make one phone call to her?

24 A. No, not one.

25 Q. Did you ever ask a second investigator to make one

1 phone call to her?

2 A. No, not any. No efforts were made once I was
3 instructed to stop and that was on whatever the date of
4 that letter is. Once I was instructed to stop, I stopped.
5 I presumed he knew enough about it to tell me whether he
6 wanted me to continue going. And, like I said, he didn't
7 bring up a third alibi until the day before his plea, but
8 as he said we spent a lot of time the week before the plea
9 meeting because we were trying to get it nailed down once
10 and for all what we were gonna do.

11 Q. When Mr. Ford came to court that day, do you believe
12 he had a full understanding of all of the evidence against
13 him?

14 A. Absolutely. There's no question about it. Not only
15 that, but we went through every possible defense that we
16 had and I put it on the record at the plea, so I won't
17 even go into more detail unless you want me to. I covered
18 our defenses. I told him exactly where the weak spots
19 were.

20 Q. And he had a full understanding of his options in
21 court?

22 A. Correct, which I think I put on the record as well.

23 Q. How much time do you think you spent with him the week
24 prior?

25 A. Oh, I can't answer that. He would know much better

1 than I would. I have so many clients.

2 Q. What did you tell Mr. Ford in explaining to him that
3 you thought the plea was in his best interest?

4 A. How did I explain it to him? What I said?

5 Q. (Nods head.)

6 A. Well, what I told him was we've -- we've got an
7 issue, and the issue is we've got two co-defendants that
8 are going to identify him. That's the first issue. The
9 second issue is that we're in Lexington County. That is
10 an issue that has to be taken into consideration. This
11 is a very conservative community and so I did not think
12 that we would draw what I considered to be a favorable
13 jury. This is common. I tell everybody this. And then
14 finally I told him that I was very concerned that a short
15 period of time after the event was alleged to have occurred
16 that he was found walking with -- according to police
17 walking with one of the co-defendants. He denies that,
18 but that's a problem. That's a big problem. So he would
19 be allowed to testify if he wanted to that he was walking
20 far away, but I knew that the police were not going to say
21 that according to the reports and I also knew that his
22 co-defendant was not going to say that according to
23 reports, so he would have to take the stand in his own
24 defense and that was something that he didn't particularly
25 want to do that either, he didn't want to take the stand

1 in his own defense. So I told him without an explanation
2 of why he was there we're gonna be in a lot of trouble and
3 that was really -- that was really the linchpin in my
4 opinion is that him being -- walking down that street and
5 them finding Slim's name in the phone and being a message
6 to Slim saying are you going to pick me up today, which is
7 exactly what Slim -- how he described they got together,
8 that he went and picked him up earlier that day, and
9 without an explanation of why they were walking together
10 because our alibis didn't pan out, that I didn't think I
11 could win the trial. I had to tell him the truth about
12 that. I can't -- because if I don't tell somebody that,
13 they look over at me at the end of the trial and say what
14 just happened and so I warn them of the inherent dangers of
15 going to trial and those were some of the biggest ones.

16 Q. I think that Mr. Ford said on his direct or cross, one
17 or the other, that you had told him that if he didn't plead
18 to seventeen years he was gonna get life. Do you recall
19 saying anything like that?

20 A. I didn't say that, but I would have said --

21 **MS. VALENZUELA:** Your Honor, I would -- I'd just --
22 I'd enter an objection here. I understand that the Court
23 has been hearing the whole thing, but I -- and I think
24 it's unintentional Ms. Goldberg's position of the
25 Applicant's testimony because I remembered it as him

1 saying that he felt threatened because he thought I'm
2 gonna get seventeen years or life, but not that that came
3 from counsel.

4 **THE WITNESS:** Well, I can explain it anyway.

5 BY MS. GOLDBERG:

6 Q. Go ahead.

7 A. I -- I told -- I told him as I tell every client
8 that's facing up to a mandatory life sentence -- or, I
9 mean, not a mandatory, but up to a possible life sentence
10 or up to thirty years on a -- on the kidnapping and the
11 -- and the armed robbery, I tell them that this is the
12 kind of case that could end your life. If we lose, I
13 fully expect from a case like this -- because you have to
14 understand something. This is not a typical case. These
15 are not drug dealers. The allegations are not drug dealers
16 robbing drug dealers. This was drug dealers or somebody
17 robbing citizens, people that they aren't part of this --
18 this criminal culture and these particular victims were
19 very active socially in Lexington County. So it's --
20 really the reason that it got kicked out of the public
21 defender's office is they were at a function, some social
22 function, there were even prosecutors at this social
23 function, and the victim's family showed up at the function
24 and the chief public defender knew this person, so when
25 they realized that this was a victim in an -- in a criminal

1 offense that was pending in Lexington County, they kicked
2 it out to me. But everybody knew this family and I fully
3 expected them to be vocal at a trial if it were to go to
4 trial about what sentence they wanted and I fully expected
5 the judge to give a twenty-five to thirty year sentence.
6 I don't know if I told him that, but I -- I would have
7 told him that. That would be a normal thing that I would
8 tell somebody.

9 Q. And so even if you had mentioned life, you weren't
10 necessarily speaking of a life sentence, you may have been
11 speaking of a greater sentence analogous to the --

12 A. Well, the way I explain it is this is the kind of
13 thing that can pretty much end your life because a thirty
14 year sentence there's very little difference according to
15 what my clients have told me over the years between a
16 thirty year sentence and a life sentence. That if they
17 catch thirty, they consider that a life sentence and I --
18 and so I would have explained to him that yeah, this --
19 this could be a life-ending event. You wouldn't get out
20 until you were a much older man.

21 Q. The day of the plea while you were in the courtroom
22 that day, you testified Mr. Ford did not ask you to file a
23 notice of appeal?

24 A. He did not, no.

25 **MS. GOLDBERG:** I beg the Court's indulgence.

1 (Defendant's Exhibit Number 3, Google Map Directions,
2 was marked and admitted into evidence.)

3 **MS. VALENZUELA:** And nothing further for this witness,
4 Your Honor.

5 **THE COURT:** Thank you, sir. You may step down.
6 Please be careful.

7 (Witness excused.)

8 **THE COURT:** Anything further?

9 **MS. GOLDBERG:** No, Your Honor.

10 **THE COURT:** Anything?

11 **MS. VALENZUELA:** No argument?

12 **THE COURT:** No.

13 **MS. VALENZUELA:** Okay. Your Honor, you have the
14 Jones v. State case from the last case, Your Honor, and so
15 we'd just bring that up one more time.

16 **THE COURT:** Okay. Thank you.

17 (Whereupon, the proceedings were concluded at
18 1:15 PM.)

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C E R T I F I C A T E

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2
3 I, Stacy S. Johnson, Official Court Reporter for
4 the Eleventh Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a true,
6 accurate and complete transcript of record of all the
7 proceedings had and the evidence introduced in the hearing
8 of the captioned case in Circuit Court on the 8th day of
9 November, 2016.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14
15 August 14, 2017

16
17 ISI Stacy S. Johnson
18 STACY S. JOHNSON
19 CIRCUIT COURT REPORTER.
20
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22
23
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25

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
 Dan Demetri Ford, #359232,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2014-CP-32-4618

ORDER OF DISMISSAL

LISA M. CORNER
 CLERK OF COURT
 ELEVENTH CIRCUIT

2017 OCT -6 AM 10:35

FILED

This matter comes before the Court by a *pro se* application for post-conviction relief filed December 18, 2014, by Dan Demetri Ford (Applicant). Respondent, through Assistant Attorney General Walt Whitmire, made a return dated September 21, 2015. Aimee Zmroczek, Esquire, was appointed as counsel. On July 6, 2016, Kristy Goldberg, Esquire, was substituted as counsel. On November 8, 2016, Applicant presented his claims in an evidentiary hearing. Respondent was represented by Senior Assistant Attorney General Johanna C. Valenzuela. Applicant presented testimony from Applicant and witness Lanae Stevenson. Respondent presented testimony from plea counsel Brad Kirkland, Esquire. The Court had before it the Clerk of Court records, the South Carolina Department of Corrections' records, and the plea transcript. This Court has also been provided a transcript of the PCR hearing of November 8, 2016.

Upon review of the trial testimony, the appellate court record, the records of the Clerk of Court, and the evidence presented in this proceeding, this Court is constrained to deny relief.

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THE ALFORD¹ PLEA

Applicant was indicted at the April 2013 term of the Lexington County Grand Jury for burglary – first degree (2013-GS-32-0853) and armed robbery (2013-GS-32-0857). On March 13, 2014, Applicant appeared before the Honorable Brian M. Gibbons and pled guilty as indicted. Applicant was represented by Bradley Kirkland, Esq. Judge Gibbons sentenced Applicant to a term of imprisonment for seventeen years for burglary – first degree; and to a concurrent term of imprisonment for seventeen years for armed robbery. Applicant did not appeal his plea or sentence.

Petitioner elected to plead guilty pursuant to *North Carolina v. Alford*. (GP Trans. p. 3.) At the start of the plea, counsel asked the court to place some information on the record concerning his discussions with Applicant and his investigation of Applicant's case. (GP Trans. p. 3.) Counsel explained that after his appointment, he immediately began preparing for trial and requested his experienced investigator meet with Applicant to investigate any potential alibi witnesses. (GP Trans. p. 4.) The investigator located a potential witness and spoke to her, explaining she would be asked to testify in court. (GP Trans. p. 4.) After that conversation, the potential witness broke off contact with counsel's investigator. Shortly after that, Applicant wrote counsel and explained he wanted counsel to cease the investigation into an alibi and to attempt to negotiate a plea. (GP Trans. p. 4.) Counsel worked for months to negotiate the seventeen year deal with the State, and although Applicant agreed to accept the offer, Applicant was not happy with the plea. (GP Trans. p. 4.) On the day of the plea, the State offered sixteen and a half years in exchange for Applicant's plea of guilty, and Applicant considered the offer.

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970)

Applicant changed his mind, however, and decided to plead pursuant to *Alford* in exchange for seventeen years. (GP Trans. p. 5.)

Counsel told the court he asked Applicant if there was any more he could do to assist in his defense and Applicant mentioned another possible alibi witness whose name he did not know but Applicant knew the man "hung out" at Columbiana Mall. (GP Trans. p. 5) Counsel offered to have an investigator spend an entire day at Columbiana Mall in search of the man, but Applicant declined and directed counsel to continue with the plea negotiations. (GP Trans. p. 6.)

The plea judge asked Applicant if he heard counsel's comments on his representation. Applicant said he did and agreed with counsel's comments. (GP Trans. p. 6.) Applicant told the court he had a tenth grade education, he understood the charges against him, and understood he faced a minimum of fifteen years to a maximum of life in prison on the burglary charge and a minimum of ten years and a maximum of thirty years on the armed robbery charge. (GP Trans. p. 7.) Applicant also understood the nature of an *Alford* plea. (GP Trans. pp. 7-8.) Plea counsel told the court that he explained the ramifications of the *Alford* plea to Applicant, as well, concerning the recidivism consequences and his parole eligibility. (GP Trans. pp. 8, 10.) Applicant acknowledged he was willing to plead under *Alford* to avoid going to trial, no one had forced, pressured, or coerced him into accepting the plea, and understood the sentence he would receive was the negotiated seventeen year term. (GP Trans. pp. 9-10.) Applicant also understood he was waiving the constitutional rights afforded to him at trial. (GP Trans. pp. 11-12.)

Plea counsel explained to the court he reviewed discovery with Applicant, including the incident reports and videotaped statements of Applicant's co-defendants. Applicant told the court he reviewed the discovery with counsel was satisfied with the information he had prior to pleading. (GP Trans. pp. 13-14.)

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The solicitor then recited the details of the crimes: At thirteen year old boy was home from school because he was sick. His mother was at work. Applicant and his two co-defendants knocked on the child's door. The boy looked through the peephole and did not recognize the female co-defendant at the door. The child called his mother, who told him not to open the door and to go to bed. A few minutes later, the child heard glass breaking and people in the house. He called his mother again to tell her he thought someone was breaking in the house. The mother then heard men's voices before the phone disconnected. The child's mother called 911 and raced home. The child later explained that two men rushed into his bedroom with guns, took the phone away from him and asked him if he wanted to die. The men told the child to put a pillow over his head, and then they went downstairs to look for items to steal. As the law enforcement vehicles approached, the men ran from the house and the female co-defendant tried to back out of the driveway, while stolen items were actually falling out of the open trunk. The co-defendant was detained, and the police began a search for the two men. The co-defendant told police who the men were, and the men were found eighty minute later within walking distance of the house. The other male co-defendant identified Applicant as committing the crime. Applicant denied involvement. (GP Trans. pp. 14-18.)

The solicitor explained to the court the strength of the case against Applicant and his decision to dismiss additional charges of kidnapping, possession of a firearm, grand larceny, and assault and battery. (GP Trans. p. 18.) The solicitor told the court he agreed to the plea, in spite of the considerable evidence against Applicant, to spare the child of having to testify at trial. (GP Trans. p. 18.)

Following the recitation of the facts, Applicant agreed he wished to plead under *Alford*. (GP Trans. p. 19.)

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THE PCR PROCEEDINGS

In his *pro se* application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

- (a) Ineffective Assistance of Counsel
- (b) Violation of the Fourteenth Amendment of due process

On October 12, 2016, Applicant, via PCR counsel, amended his application to also allege:

- (a) Ineffective assistance of trial counsel – counsel failed to adequately investigate and prepare a defense for trial.
- (b) Ineffective assistance of trial counsel – counsel failed to adequately prepare Applicant for trial.
- (c) Ineffective assistance of trial counsel Applicant was pressured and improperly induced into entering an involuntary guilty plea based on statements made by counsel.
- (d) Ineffective assistance of trial counsel pursuant to *White v. State* failure to properly initiate client's direct Appeal.

Applicant proceeded under the amended grounds at the PCR evidentiary hearing. (PCR T. pp. 4-5.)

Summary of the Testimony

At the hearing, Applicant testified counsel met him at the jail in December 2013, and then again in February 2014. (PCR T. p. 8.) Applicant said counsel met with him in jail several times in the week before the plea. (PCR T. pp. 8-9.) Applicant reviewed the discovery with counsel, but claimed he did not understand the charges against him because of the "short notice." (PCR T. p. 9.) Applicant believed he either needed to plead or go to trial. (PCR T. pp. 9-10.) Applicant said he wanted to go to trial, but with the evidence against him he thought he would be convicted and sentenced to the maximum amount of time possible. (PCR T. p. 10.) Applicant said he thought it was in his best interest to plead. (PCR T. p. 10.)

Applicant said he had an alibi at the time of the crime because he was at his girlfriend's house. (PCR T. p. 12.) Applicant said he told plea counsel about her, and counsel's investigator located his girlfriend. (PCR T. pp. 13-14.) Applicant claimed his girlfriend was willing to testify for them, but then counsel's investigator passed away. Applicant said he told counsel to pursue his alibi with another investigator. (PCR T. pp. 14-15.) Applicant said he never asked counsel whether the new investigator followed up on his alibi witness. (PCR T. p. 16.) Applicant claims he felt pressured to accept the plea because counsel told him he could either plead guilty or go to trial. (PCR T. p. 16.) Applicant said he realized he should take the offer of seventeen years because the evidence against him looked bad. (PCR T. pp. 16-17.) Applicant claimed counsel coerced him to plead guilty by telling him he would lose at trial and "he made it seem like to me that seventeen years was a good decision." (PCR T. p. 17.) Applicant further complained trial counsel did not visit him early enough, instead visiting him every day the week before the plea. (PCR T. p. 18.) Applicant also claimed he asked counsel to appeal his sentence because he had "never been in [] serious trouble with the law" and because he thought counsel never fully pursued his alibi after the investigator's death. (PCR T. pp. 19-20.)

On cross-examination, Applicant said the investigator met with him between three and five times at the jail. (PCR T. p. 21.) Applicant denied knowing any information about whether his alibi witness terminated contact with the investigator after he asked her to testify, although he did recall the investigator telling him he was unable to reach her and retrieve a sworn statement from her. (PCR T. p. 23.) Applicant also acknowledged the investigator told him the police would likely review his telephone recordings between him and the alibi witness. (PCR T. p. 24.) Applicant also admitted he sent a letter to counsel shortly after meeting with the investigator asking counsel to cease all investigation of his case. (PCR T. pp. 25-26.) Applicant said he did

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not want to involve his girlfriend in such a serious situation. (PCR T. p. 47.) Applicant acknowledged the State's case against him, including messages on his cell phone to a man with the same street name as his co-defendant, as well as the co-defendant's statements implicating him in the crimes. (PCR T. pp. 28-29.) Applicant said the decision to accept the seventeen year offer was hard and he told counsel he would decide in court, "and that's when [Applicant] signed his papers at the plea hearing." (PCR T. p. 30.) Applicant testified he told counsel he wanted to plead guilty, so they proceeded with the plea. (PCR T. p. 30.) Applicant said he knew he would receive seventeen years when he accepted the plea offer and he also understood the State was dismissing additional charges as part of the negotiations. (PCR T. pp. 31-32.)

Applicant testified that at the time was committed, he was at the home of his girlfriend, Lanae Stevenson. Applicant claimed he slept in that day, rose at approximately 12:00 or 12:30 pm, showered, dressed, and then left to buy a hat from Columbiana Mall. (PCR T. pp. 38-40.) Applicant claimed he walked to mall and spent the day there, until he was apprehended on his way home. (PCR T. pp. 40-41.) Applicant claimed he had not spoken with the witness about the alibi testimony and did not know the content of her testimony. (PCR T. p. 43.)

Lanae Stevenson testified she was dating Applicant at the time of the crime. (PCR T. pp. 49-50.) Stevenson recalled Applicant spent the night with her the evening before the crime, slept in until 12:00 or 12:30 pm, and then Applicant showered and said he was going to Columbiana Mall to buy a hat. (PCR T. pp. 50-51.) Stevenson claimed she did not hear from him after seeing him walk out of the door until he contacted her from the county jail. (PCR T. pp. 51-52.) Stevenson said Applicant never asked her to lie and said she told the investigator what she remembered about the day of the crime. (PCR T. pp. 52-53.) Stevenson said she gave the investigator her contact information but at the time she had "a lot going on" and did not have a

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stable address. (PCR T. p. 54.) Stevenson said she received several voicemail messages from the investigator and she tried to call him back but only reached his voicemail. (PCR T. p. 55.) Stevenson also said she told the investigator she would meet with him to sign a statement, but she was busy at the time and never really had free time to sign the statement. (PCR T. p. 62.) Stevenson said after she learned the investigator died, she attempted to contact counsel but only reached his office voicemail. (PCR T. p. 64.)

Brad Kirkland testified he was appointed to represent Applicant in August of 2013, and he met with Applicant at the jail shortly thereafter. Counsel reviewed his notes from his meeting with Applicant and said Applicant initially told counsel he was at the home of a woman named Michelle the morning of the crime, then with his brother at the time of the crime, and then he was later dropped off by a man named Taylor in the neighborhood where he was apprehended. (PCR T. pp. 70-71.) Counsel said Applicant did not initially tell him about Stevenson as an alibi witness, but only later told the investigator about her. (PCR T. p. 73.) Counsel said it was the investigator's practice to warn the witnesses that if they testified, then law enforcement would likely investigate their testimony and threaten penalty of perjury if the witness lied. (PCR T. p. 74.) Counsel said the investigator would interview a witness, inform them the conversation was being recorded, and then would type the statement and ask the witness to sign the statement. The investigator would also tell the witness the statement would be turned over to the prosecution. (PCR T. pp. 77-78.) Counsel said after the investigator warned Stevenson of the consequences of providing false alibi testimony, she broke off contact. (PCR T. p. 74.) Counsel said he never spoke to Stevenson and she never left a voicemail at his office. (PCR T. p. 75.) Counsel also testified he would not have called her as a witness at trial after viewing her testimony at the PCR hearing. (PCR T. p. 79.)

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Counsel said shortly after the investigator completed his investigation, he received a letter from Applicant asking him to discontinue their investigation into his case. (PCR T. pp. 75-76.) Counsel said Applicant made it clear he did not want to go to trial but he also did not want to plead guilty. (PCR T. p. 80.) Counsel said he was not sure what Applicant would decide to do when he transported him to plca. (PCR T. p. 80.) Counsel said on the day before the plea, Applicant informed him of a possible new alibi witness, who counsel could find by going to Columbiana Mall and interviewing every young African American male there. (PCR T. p. 91.) Counsel offered to send an investigator to do that but said Applicant declined his offer by the end of their conversation that day. (PCR T. p. 81.)

Counsel said the solicitor was getting a little impatient with the negotiations, but counsel had a positive working relationship with the solicitor and testified she would have consented to more time to negotiate the plea had counsel requested it. (PCR T. p. 82.) Counsel said Applicant understood he was under no great pressure to accept the deal. (PCR T. p. 82.)

Counsel distinctly recalled his conversation with Applicant concerning his right to appeal his sentence. (PCR T. p. 83.) Counsel said Applicant told him he wanted to plead pursuant to *Alford* because Applicant believed it gave him an advantage in a direct appeal. (PCR T. p. 83.) Counsel said Applicant told him he did not want to fight his case at trial and instead wanted to fight it only on appeal. (PCR T. p. 83.) Counsel said he "stopped everything" and explained to Applicant he could not plea before the judge believing he would fight his case on appeal because Applicant would not be successful, particularly when he accepted a negotiated deal. (PCR T. pp. 83-84.) Counsel said Applicant described how he would appeal his case by arguing he had witnesses who would have testified for him. (PCR T. p. 84.) Counsel said he told Applicant that was not an appropriate venue for a direct appeal because he would not be allowed to add

evidence to the record. (PCR T. p. 84.) Counsel explained Applicant would be allowed to call witnesses only in a post-conviction relief action. (PCR T. p. 84.) Counsel understood at the plea Applicant intended to file a post-conviction relief application and did not want to pursue a direct appeal because it would be a waste of time. (PCR T. pp. 84-85.) Counsel said the Applicant did not ask him to file an appeal after the plea. (PCR T. p. 85.) Counsel believed there was no appealable issue because Appellant received the exact negotiated sentence of seventeen years. (PCR T. p. 86.) Counsel testified Appellant fully understood the consequences of going to trial and the significant evidence the State had against him. (PCR T. pp. 92-93.) Counsel said he warned Applicant he faced a possible life sentence because of the very serious nature of the crime and the prominence of the victim's family. (PCR T. pp. 93-94.) Counsel explained to Applicant if he proceeded to trial, he would not get out of jail until he was a very old man. (PCR T. p. 94.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

This Court is constrained to deny all of Applicant's allegations of ineffective assistance of plea counsel. The Court finds Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Applicant must overcome this presumption in order to receive relief. *Cherry*, 300 S.C. at 625, 386 S.E.2d at 118.

The second, or "prejudice," requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52 (1985)).

After careful review of the entire record, including the testimony and exhibits presented at the evidentiary hearing, and based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. This Court finds plea counsel's testimony to be credible and affords it great weight as to these allegations. Below are this Court's rulings in regards to each of Applicant's specific allegations of ineffective assistance of counsel:

Counsel Adequately Prepared for and Investigated Applicant's Case

Applicant argues plea counsel neglected to adequately investigate and prepare a defense on his behalf. However, plea counsel testified that after reviewing all discovery materials from

the State and his own independent investigator, he was prepared to go to trial if Applicant had requested it. Counsel said his investigator located Applicant's alibi witness and attempted to obtain a sworn statement from the witness, but she discontinued contact with the investigator and counsel. The witness testified she agreed to give a statement but then was too busy to meet with counsel. Following Stevenson's testimony at the PCR hearing, counsel said he would not have called her to the stand at trial. Counsel also claimed he had funding to hire another investigator following the death of the lead investigator for Applicant's case, but he stopped his investigation into the case after Applicant specifically asked him to stop and pursue plea negotiations instead. Counsel further said he informed Applicant he would send an investigator to Columbiana Mall to attempt to locate another alibi witness, but Applicant again told him not to pursue it. Based on Applicant's instructions to pursue the plea, counsel successfully negotiated a seventeen year offer for crimes which carried a maximum of life in prison.

Further, counsel testified, and the plea transcript reflects, the State had overwhelming evidence of Applicant's guilt based on his co-defendant's statements implicating him, his proximity to the crime scene, and incriminating texts on his cell phone. Applicant did not explain what counsel could have done to investigate his case further, nor has Applicant shown that the discovery of the evidence would have led counsel to change his recommendation as to the plea. *See Stalk*, at 562, 681 S.E2d at 594.

The Court finds counsel thoroughly investigated Applicant's case, and only ended investigation when he was specifically asked by Applicant to cease all investigation. Counsel did not pressure Applicant to plead guilty; Applicant chose to do so voluntarily. As such, counsel did not need to prepare Applicant's case for trial any further. This Court finds counsel's performance was not deficient and Applicant was not prejudiced. Therefore, this allegation must

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be denied and dismissed with prejudice.

Counsel Adequately Prepared Applicant for Trial

Applicant alleges counsel failed to prepare him for trial, but did not fully explain his allegation at the PCR hearing. Applicant did testify he felt rushed to make a decision to prepare for trial or accept the plea, but he also testified at the plea hearing and at the PCR hearing he reviewed the discovery with counsel and was satisfied he had seen all relevant information about his case to make the decision to plead. Counsel testified the plea was set for a date certain, but he had a positive relationship with the solicitor and the State would have given Applicant more time had counsel known Applicant needed it. Counsel also testified he explained the consequences of going to trial if Applicant was found guilty, given the age of the victim and the circumstances of the crime.

This Court finds counsel's testimony to be credible and affords it great weight. Furthermore, this Court finds Applicant cannot establish any requisite deficiency or prejudice, particularly in light of the statements made at his guilty plea and the PCR hearing indicating he understood the risks of proceeding to trial, instead opting for the plea. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel Did Not Coerce or Induce Applicant to Plead

Applicant alleges counsel was ineffective for pressuring Applicant and improperly inducing an involuntary guilty plea. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C.16, 546 S.E.2d 417 (2001). To be

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knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969). The record and the credible testimony support the finding Applicant had a full understanding of the charges and consequences of his guilty plea, which he entered voluntarily.

The record reflects Applicant fully understood the nature of the charges against him and the risk he would take if he proceeded to trial. Applicant repeatedly testified counsel told him his options were to plead or go to trial. Applicant testified counsel encouraged him to accept the seventeen year offer because a guilty verdict could result in imprisonment for life. Applicant also testified, however, the decision to accept the seventeen year offer was "hard" and he told counsel he would decide in court whether to accept the plea. Applicant further testified he told counsel he wanted to plead guilty, knowing he would receive seventeen years when he accepted the plea offer.

Applicant's own statements indicate he knew the decision to plead was entirely his to make. Further, the record reflects Applicant understood why counsel encouraged him to accept the plea offer, considering the State's evidence against him and the severity of the charges. The record also shows Applicant considered accepting a reduced sentence in exchange for a straight plea, but Applicant declined, accepting the *Alford* plea instead. Therefore, this Court finds Applicant failed to prove any deficiency of counsel induced him to plea or that he would have insisted on going to trial had counsel not advised him to plead. This Court finds the record clearly reflects Applicant knowingly, intelligently, and voluntarily entered into the *Alford* plea. Accordingly, this allegation is denied and dismissed with prejudice.

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Applicant Did Not Want To Appeal His Sentence

Applicant alleges counsel failed to file a notice of appeal following the imposition of his sentence. Applicant failed to meet his burden to prove that counsel was either deficient or he was prejudiced by counsel's failure to file a notice of appeal on his behalf. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000).

Applicant testified he asked counsel to appeal his plea on the day of the plea. However, counsel testified he discussed the purpose of the direct appeal, the limitations of a direct appeal, and the purpose of post-conviction relief with Applicant. Counsel said once Applicant understood he would not be allowed to call witnesses in his direct appeal, Applicant indicated he would file an application for post-conviction relief instead. Counsel also said Applicant did not want to delay his PCR application by filing for a direct appeal first. Further, Counsel testified that there were no objectionable issues that arose at the plea hearing.

The Court finds counsel thoroughly and properly apprised Applicant of his right to appeal and explained how the direct appeal differs from the PCR process. This Court finds Applicant declined to request an appeal following his plea. This Court finds Applicant has failed to demonstrate any deficiency of counsel or resulting prejudice from counsel's failure to file a notice of appeal. Therefore, this allegation is denied and dismissed with prejudice.

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

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evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, this 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 must be denied and dismissed with prejudice.


This Court notes Applicant must file and serve a notice of appeal within thirty days from 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), SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


IT IS THEREFORE ORDERED:

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.

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AND IT IS SO ORDERED this 29th day of September, 2017.


R. KEITH KELLY
Presiding Judge
11th Judicial Circuit

, South Carolina

WITNESSES

Irmo Police Department

X Hare

Law Enforcement Case #:

JAG

ARREST WARRANT NUMBER

2013A3220400127

ACTION OF GRAND JURY

TURBEN

Rev. Bradenton
Foreperson of Grand Jury
Date: 4-8-13

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS3200853

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE

vs.

Dan Demetri Ford

CDR #: 0079

Indictment for

BURGLARY FIRST DEGREE

§ 16-11-0311

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Ct. C.U.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 BURGLARY FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on APRIL 2013, the Grand Jurors of Lexington County present upon their oath:

That Dan Demetri Ford along with co-defendants in Lexington County, South Carolina on or about January 3, 2013, did knowingly and willfully enter a dwelling, to wit: [REDACTED] Valleywood Court in Lexington County, SC, being the dwelling of R.H. [REDACTED] and others, without consent and with the intent to commit a crime therein and was armed with a deadly weapon and/or used or threatened the use of a dangerous instrument and/or displayed what was or appeared to be handguns, in violation of § 16-11-311 of 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.


 ASSISTANT SOLICITOR

WITNESSES

Irmo Police Department

X Hare

Law Enforcement Case #:

JAG

ARREST WARRANT NUMBER

2013A3220400131

ACTION OF GRAND JURY

TRUE BILL

Ron Brasington

Foreperson of Grand Jury

Date: 4-08-13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS3200857

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE

vs.

Dan Demetri Ford

CDR #: 0139

Indictment for

**ARMED ROBBERY WHILE ARMED WITH
A DEADLY WEAPON**

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

A TRUE COPY

[Signature]
Lex. Co., C.C.P., G.S. & F.O.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
ARMED ROBBERY WHILE ARMED WITH A
DEADLY WEAPON

§ 16-11-0330(A)

At a Court of General Sessions, convened on APRIL 2013, the Grand Jurors of Lexington County present upon their oath:

That Dan Demetri Ford along with co-defendants, did in Lexington County, South Carolina on or about January 3, 2013 knowingly and willfully while armed with a deadly weapon; to wit: a handgun, did feloniously take from the person or presence of R.H. [REDACTED], by means of force, threats or intimidation goods or monies being described as follows: a flat screen television and assorted jewelry with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

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


ASSISTANT SOLICITOR

1 Syn to life

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.
Dan Dumetri Ford

INDICTMENT/CASE#: 2013GS3200853
A/W#: 2013A3220400127
Date of Offense: 1/3/2013
S.C. Code §: 16-11-0311
CDR Code #: 0079

AKA:
Race: Black Sex: M Age: 21
DOB: SS#: [redacted]
Address: [redacted]
City, State, Zip: Columbia, SC 29210-3519
DL#: SID#:

43

17 years
SENTENCE SHEET
NC vs Atford

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or PLEADS

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: [Signature] Solicitor SC Bar# [Signature] Defendant [Signature] Attorney for Defendant SC Bar# 14364

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 17 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prnh)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/cr.	\$
Proviso 90.5 (S.C.J.A Surcharge)	\$5	\$5
3% to County (if paid in installments)		\$
TOTAL		\$130

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

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

Clerk of Court/ Deputy Clerk
Court Reporter: Mike [redacted]
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2108
Sentence Date: 3/13/14

10 years - 30 yrs

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

INDICTMENT/CASE#: 2013GS3200857

Dan Demetri Ford

A/W#: 2013A3220400131

AKA:

Date of Offense: 1/3/2013

Race: Black Sex: Age: 21

S.C. Code §: 16-11-0330(A)

DOB: SS#: [REDACTED]

CDR Code #: 0139

Address:

City, State, Zip: Columbia, SC

DL#: SID#:

SENTENCESHEET 17 years NC vs. Atford

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or P.I.R.A.D.S

In disposition of the said indictment comes now the Defendant who was TO: Armed Robbery

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or 1.ewd Act)

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

ATTEST: Solicitor, SC Bar#, Defendant, Attorney for Defendant, SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 17 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/L beginning
Substance Abuse Counseling
Random Drug/Alcohol testing

*Fine:
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$50 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$
3% to County (if paid in installments) \$
TOTAL \$

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

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

Judge:
Judge Code: 2108
Sentence Date: 3/13/14