

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Richland County

Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

v.

SHYKIEM UNIVERSAL SMITH,

**ORIGINAL**  
**RECEIVED**  
JUL 12 2019  
RESPONDENT,  
SC Court of Appeals

APPELLANT

APPELLATE CASE NO. 2018-001219

\_\_\_\_\_  
RECORD ON APPEAL  
\_\_\_\_\_

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State of South Carolina  
County of Richland

Court of General Sessions

State )  
)  
)  
v. )  
)  
Shykiem Smith )  
)  
Defendant. )

Transcript of Record  
2015-GS-40-5674; 5675

December 11, 2017  
Lexington, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge.

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

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Attorney for the State

Bea Hightower, Esquire  
Attorney for the Defendant

Bethanie K. Creppon  
Circuit Court Reporter

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P R O C E E D I N G S

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THE CLERK: Indictment 2015-GS-40-5674, The State vs. Shykiem Smith, indicted for murder, pleading to voluntary manslaughter under Alford vs. North Carolina.

Indictment 2015-GS-40-05675, The State vs. Shykiem Smith, indicted for attempted armed robbery. He is pleading as charged under Alford vs. North Carolina. He has also signed a waiver of jurisdiction and venue. It is all signed and attested to.

Raise your right hand, sir.

SHYKIEM SMITH

being first duly sworn, testified as follows:

THE DEFENDANT: Yes, ma'am.

THE COURT: Ms. Hightower, you represent Shykiem Universal Smith?

MS. HIGHTOWER: I do, sir.

THE COURT: Have you explained to him the charges and the possible punishments and his rights, including his rights to a jury trial?

MS. HIGHTOWER: Yes, sir, I have.

THE COURT: In your opinion, does he understand those things?

1 MS. HIGHTOWER: Your Honor, he does understand  
2 those things, in my opinion. But I do want to make  
3 the Court aware that we have gone through the  
4 evaluation process under M'Naghten, and I can speak  
5 to those results that came back that he fully  
6 understood his rights, he understood he was  
7 competent to stand trial.

8 There were some additional concerns raised by  
9 my client's family as well and some history that  
10 I'll be happy to get into at the appropriate time.  
11 We did follow up with an independent evaluation,  
12 Your Honor. I think you actually signed the  
13 authorization for funds with that, Your Honor. I  
14 appreciate that.

15 Dr. Thomas Martin evaluated my client, spent  
16 time with him, reviewed the records, and also  
17 concurred that he understands what he's doing and  
18 that he's competent to stand trial. And we're ready  
19 to go forward, sir.

20 THE COURT: Is that also your opinion?

21 MS. HIGHTOWER: Yes.

22 THE COURT: Not being a medical or  
23 psychological expert, but based on your training and  
24 experience, would that be your opinion also?

25 MS. HIGHTOWER: Your Honor, it is, it is. I

1 think -- and from my very first conversation with my  
2 client when I was first appointed to represent him  
3 in 2015 coming forward, I have felt like Mr. Smith  
4 has been thoughtful about the process, he has  
5 understood what I've said to him, he has -- we've  
6 discussed different options about how, obviously,  
7 this has been a very difficult time for not only the  
8 victim, but certainly my client and his family.

9 And I do -- in my opinion, Your Honor, to  
10 answer your question directly, I do believe he  
11 understands and has understood and certainly has  
12 been effective and helpful with me in my  
13 representation of him.

14 THE COURT: May I see the mental examination  
15 that has been done, the report?

16 MS. WALKER: Yes, Your Honor.

17 THE COURT: You have it, Solicitor? Thank you.

18 The solicitor has handed up to me,  
19 Ms. Hightower, a report dated March 31st, 2016 from  
20 the South Carolina Department of Mental Health. It  
21 looks like it was directed to you with a copy to the  
22 solicitor, an evaluation done by Dr. Friersen and  
23 Dr. Negarity, the exact date, March 28th of '16.

24 MS. HIGHTOWER: Yes, sir. I have a copy.

25 THE COURT: And your expert concurs with the

1 findings of both Dr. Friersen and Dr. Negarity?

2 MS. HIGHTOWER: Yes, sir. And I apologize to  
3 the Court. I attempted to get an opinion or a  
4 written opinion from Dr. Thomas Martin last week  
5 when we finally solidified our negotiations and were  
6 trying to get over here in front of you, sir. Just  
7 hadn't had a chance to get that. But, yes,  
8 Dr. Martin concurred.

9 He was given a copy of this, he was given all  
10 of the treatment records that I could find and,  
11 again, a history I'll go into with Your Honor for  
12 Mr. Smith. But he did concur, under the private  
13 evaluation, that he was -- understood what he was  
14 doing, he was taking responsibility for his part in  
15 the actions, and was ready to go forward.

16 THE COURT: All right. And, Solicitor, do you  
17 have anything inconsistent with the findings of  
18 competency and criminal responsibility?

19 MS. WALKER: Meghan Walker for the State, Your  
20 Honor. No, sir.

21 THE COURT: All right. I would adopt these  
22 findings and these conclusions and have this marked  
23 as a Court's exhibit and find that he is competent  
24 to stand trial and competent under M'Naghten, as far  
25 as criminal responsibility is concerned.

1 (Court's Exhibit No. 1 marked for  
2 identification.)

3 MS. HIGHTOWER: Thank you, Your Honor.

4 THE COURT: Do you, Ms. Hightower, and you,  
5 Solicitor, conclude that that will be a meaningful  
6 hearing under State vs. Blair that I have just  
7 conducted?

8 MS. HIGHTOWER: Yes, Your Honor.

9 MS. WALKER: Yes, Your Honor.

10 THE COURT: All right. Thank you.

11 As to the charges of attempted armed robbery  
12 and voluntary manslaughter, Ms. Hightower, how does  
13 the defendant intend to plead, to those charges,  
14 guilty, guilty under North Carolina vs. Alford, or  
15 not guilty?

16 MS. HIGHTOWER: If it pleases the Court, my  
17 client is entering a plea of guilty under North  
18 Carolina vs. Alford to both indictments.

19 THE COURT: Thank you.

20 Are you Shykiem Universal Smith?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did I pronounce your name right,  
23 sir?

24 THE DEFENDANT: Shykiem.

25 THE COURT: Okay. Before I can accept pleas of

1 guilty, it's necessary for me to make sure that your  
2 pleas of guilty under North Carolina vs. Alford are  
3 made freely and voluntarily, therefore, I need to  
4 ask you some questions. If you do not understand my  
5 questions, please let me know, I'll try to explain  
6 them to you. If at any time you wish to talk with  
7 your attorney, please let me know, I'll allow you to  
8 do so. Do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: How old are you, Mr. Smith?

11 THE DEFENDANT: Twenty.

12 THE COURT: How much education do you have?

13 THE DEFENDANT: Right now I'm in GED class, but  
14 I got a few more tests to pass.

15 THE COURT: Prior to being incarcerated, what  
16 type of work did you do?

17 THE DEFENDANT: I ain't never had a job, sir.

18 THE COURT: Were you in school?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Where were you in school at?

21 THE DEFENDANT: Adult education.

22 THE COURT: Today, are you under the influence  
23 of any medication, drugs, or alcohol?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you aware of any physical,

1 emotional, or nervous problem that keeps you from  
2 understanding what you're doing today?

3 THE DEFENDANT: No, sir.

4 THE COURT: You heard your attorney tell me  
5 that she has explained to you the charges against  
6 you, the possible punishments, and your  
7 constitutional rights, including your right to a  
8 jury trial.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I've been handed up two  
13 indictments; first one, 2015-GS-40-5675, and  
14 2015-GS-40-5674. Now, Mr. Smith, both of these  
15 indictments are Richland County indictments. You  
16 have the absolute right to have your case resolved  
17 in Richland County. Today, you are in Lexington  
18 County.

19 Do you waive or give up your right to be in  
20 Richland County where the offenses allegedly  
21 occurred and have your waiver and pleas conducted  
22 here in Lexington County?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And I note that I have been handed  
25 up a waiver of jurisdiction and venue signed by the

1 defendant and signed by the -- by Ms. Hightower as  
2 his attorney.

3 I'm going to review both of these indictments  
4 with you, Mr. Smith: 2015-GS-40-05674 alleges that  
5 you did, in Richland County, on or about July 7th,  
6 2015, kill the victim, Rickey Baker, with malice  
7 aforethought, either expressed or implied, by means  
8 of gunshot wound and victim did die as a proximate  
9 result thereof, all in violation of 16-3-10 of the  
10 South Carolina Code of Laws, 1976 as amended. That  
11 is an indictment for murder.

12 It appears that you're going to enter a plea of  
13 guilty under North Carolina vs. Alford to voluntary  
14 manslaughter, for which you could receive a sentence  
15 of up to 30 years. Do you understand?

16 MS. WALKER: Your Honor, there's a  
17 recommendation in this case --

18 THE COURT: I know there's a negotiated  
19 sentence. Correct?

20 MS. WALKER: There's a recommended cap, Your  
21 Honor, of 12 years.

22 THE COURT: All right. Well, these -- both  
23 sentencing sheets indicate a negotiated sentence,  
24 that's the only reason I said that. And when I  
25 qualify a plea, I always qualify the max. And if

1 I'm going to give them more -- I'm either going to  
2 follow or not the recommendation. I'm not -- I  
3 don't know if this is the right word, but it may  
4 fit: I'm not going to entice a defendant into  
5 pleading guilty in front of me and y'all have a plea  
6 agreement and violate y'all's plea agreement. I'll  
7 allow them to withdraw their plea.

8 MS. HIGHTOWER: Thank you.

9 MS. WALKER: Thank you, Your Honor.

10 THE COURT: But I use the maximum potential  
11 sentence as far as qualifying the plea, if that  
12 makes sense. If it doesn't, I only have to do it  
13 for seven more months --

14 MS. WALKER: No, sir. I just wanted to make  
15 sure I made the Court aware of that before we went  
16 further.

17 THE COURT: All right.

18 MS. HIGHTOWER: And thank you, Your Honor. And  
19 I did advise my client that you're going to talk  
20 about the entire thing that he's facing, but  
21 that's -- certainly when the appropriate time comes,  
22 if the solicitor will put on the record what our  
23 negotiations are.

24 THE COURT: Right. And that will be part of  
25 the plea itself.

1 MS. HIGHTOWER: Thank you, Your Honor.

2 THE COURT: For voluntary manslaughter,  
3 voluntary manslaughter carries a sentence of up to  
4 30 years. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: As to the other indictment,  
7 2015-GS-40-5675, it alleges on that same date, July  
8 7th of 2015, you did, along with other  
9 co-defendants, in Richland County, while armed with  
10 a deadly weapon, attempt to take, carry away the  
11 personal property from or in the immediate  
12 possession of Rickey Baker with the intent to  
13 deprive him of possession by use of force, threats,  
14 intimidations, in violation of 16-11-330(b). That  
15 is an offense of attempted armed robbery and that  
16 carries a sentence of up to --

17 MS. WALKER: Twenty years, Your Honor.

18 THE COURT: -- 20 years. And I understand  
19 you're going to enter a plea of guilty under North  
20 Carolina vs. Alford. Is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, under North Carolina vs.  
23 Alford, as under a guilty plea, you give up certain  
24 very important constitutional rights and my  
25 sentences would be as if you had entered a plea of

1 guilty. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And when you enter that plea, first  
4 you give up your right to remain silent; that is  
5 your right against self-incrimination, your right to  
6 say nothing at all. You cannot be compelled or made  
7 to testify or provide evidence against yourself.

8 Second, you give up your right to have a jury  
9 trial. That is your right to have a jury decide  
10 whether or not you are guilty beyond a reasonable  
11 doubt. And third, you give up your right to  
12 confront and be confronted by the witnesses against  
13 you. That is the right to see, hear, and  
14 cross-examine any witnesses that may be called  
15 against you during the trial and the right to  
16 subpoena and call witnesses on your own behalf.

17 Mr. Smith, do you understand these  
18 constitutional rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that when you  
21 plead guilty or guilty under North Carolina vs.  
22 Alford, you give up these very important  
23 constitutional rights?

24 THE DEFENDANT: Yes, sir.

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

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand that you will not  
3 get a jury trial if you plead to either of these  
4 charges if you plead guilty under North Carolina vs.  
5 Alford or guilty to these charges? Do you  
6 understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Understanding, then, the nature of  
9 the charge of voluntary manslaughter and attempted  
10 armed robbery, for which you could receive a  
11 sentence on the voluntary manslaughter up to 30  
12 years and the attempted armed robbery up to 20  
13 years, how do you plead to these charges, guilty  
14 under North Carolina vs. Alford or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: Guilty under North Carolina vs.  
17 Alford?

18 THE DEFENDANT: Yes, sir.

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

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Plea negotiations, Solicitor?

22 MS. WALKER: Your Honor, we've negotiated a cap  
23 of 12 years in this case for both charges to run  
24 concurrent to one another.

25 THE COURT: Is that the full and complete plea

1 negotiations, Ms. Hightower?

2 MS. HIGHTOWER: Yes, Your Honor. To state it  
3 more fully, it's actually two to 12 years that we've  
4 agreed upon because, I believe, one of the sentences  
5 has to cover the two years. But that is  
6 certainly --

7 THE COURT: Is that your understanding,  
8 Mr. Smith?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you still wish to plead guilty  
11 under North Carolina vs. Alford?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand that the plea  
14 negotiations are not binding on me; however, I will  
15 allow you to withdraw your plea if I do not accept  
16 the plea negotiations? You understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has anyone promised you anything or  
19 held out any hope of reward to get you to plead  
20 guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone threatened you or used  
23 force to get you to plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anyone used any pressure or

1 intimidation to cause you to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: And when I use the term guilty, I'm  
4 referring to the North Carolina vs. Alford plea that  
5 you're offering.

6 Are you pleading guilty under North Carolina  
7 vs. Alford of your own free will and accord?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you satisfied with the manner  
10 in which your lawyer has advised you and  
11 represented you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you talked with your lawyer as  
14 often and for as long as you feel necessary for her  
15 to properly represent you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you need any more time to talk  
18 with your lawyer?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you understood your talks with  
21 your lawyer?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has your lawyer done everything for  
24 you you feel like she could have done or should have  
25 done?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has your lawyer done anything in  
3 your case that you feel like she should not have  
4 done?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you totally and completely  
7 satisfied with your lawyer's services?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any complaints you want  
10 to make about your lawyer, the solicitors, or any  
11 officers involved in your case?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you understood my questions?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Is there anything you'd like to ask  
16 me about what we've just been over?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you understand that you have a  
19 right to appeal your guilty plea under North  
20 Carolina vs. Alford and the sentences of the Court  
21 and that you or your lawyer must do so within ten  
22 days?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Solicitor, the facts,  
25 please.

1 MS. WALKER: Thank you, Your Honor. This  
2 defendant does have a co-defendant, his name is  
3 Maurice Miller. Mr. Miller was tried before you in  
4 Richland County last year and entered a guilty plea  
5 during the middle of that trial and received a  
6 40-year sentence in Richland County.

7 Your Honor, Rickey Baker is the victim in this  
8 case, and his parents are in the courtroom and would  
9 like to address the Court at the appropriate time.

10 THE COURT: All right. Yes, ma'am.

11 MS. WALKER: Your Honor, Rickey was 25 years  
12 old and he lived off of Longcreek Drive which is off  
13 of Broad River Road here in Richland County -- or  
14 over in Richland County, rather, Your Honor.

15 THE COURT: Was this at the bus?

16 MS. WALKER: Yes, Your Honor.

17 THE COURT: All right.

18 MS. WALKER: Mr. Baker was walking up Longcreek  
19 Drive in order to catch a bus to take him across  
20 town where he worked at Dick Smith. On the way  
21 there, he was approached by this defendant and his  
22 co-defendant, Maurice Miller, who exited a stolen  
23 car, a gold Chevy Trailblazer, Your Honor.

24 At that point, there is also another individual  
25 who was driving to go fishing that morning, and that

1 individual said he saw two young black males, which  
2 would be Mr. Miller and Mr. Smith, walking down  
3 Longcreek Drive, and he saw Mr. Baker walking up  
4 Longcreek Drive. He looked in the rearview mirror  
5 and he saw the two young black males approach  
6 Mr. Baker. At that point in time, Your Honor,  
7 according to his statement, he said that this  
8 defendant grabbed Mr. Baker and that Maurice Miller  
9 then shot him.

10 At that -- or, he didn't see the shooting, but  
11 he heard a gunshot as he was driving away. At that  
12 point, Your Honor, he did say he felt weird about  
13 that, turned around and went back. And he did  
14 eventually make contact with law enforcement that  
15 day.

16 Your Honor, one of the things that I felt stood  
17 out about this case, and Your Honor heard it during  
18 the trial, was the phone call that Rickey Baker made  
19 to 911 as he was dying that day where he asked God  
20 to forgive him for everything that he had done  
21 because he knew he was about to die.

22 Your Honor, Richland County Sheriff's  
23 Department responded, and at that point in time they  
24 began canvassing the area and talking to kind of the  
25 usual suspects of Longcreek Drive, none of whom had

1 anything to do with this case. The gang task force,  
2 Your Honor, got a tip that this defendant and  
3 Mr. Miller were involved. I think it came through  
4 the gang task force because this defendant is an  
5 admitted member of a gang called Real Reckless  
6 Goons.

7 Your Honor, at that point in time, they started  
8 making contact with this defendant and his  
9 co-defendant. They -- there were a series of  
10 contacts that were made because they weren't  
11 consistently at their home addresses. They  
12 eventually made contact with this defendant who did  
13 give a statement stating that he was in the car,  
14 that he was present, denying having grabbed the  
15 victim in this case, and he also implicated  
16 Mr. Miller as the shooter.

17 One of the reasons for the reduction in charge  
18 in this case, Your Honor, is because had trial gone  
19 through to the end, he was willing, at that point in  
20 time, to testify against Mr. Miller.

21 There were two ladies who were in the car who  
22 were -- also gave statements and would have  
23 testified at the trial, had we gone through to that  
24 point, about what happened this morning. It was  
25 fairly consistent with the statements that I've

1 given -- or the rendition that I've already given  
2 you about the stolen car and kind of traveling  
3 around.

4 Your Honor, from the investigation of the case,  
5 it looks like these two young men just never went  
6 home that night; they were just out wandering the  
7 streets all night. The armed robbery of the City of  
8 Columbia water meter reader that led these two young  
9 men to have the gold SUV was a few days before that,  
10 and it looks like this was just spiraling.

11 MS. HIGHTOWER: Your Honor --

12 MS. WALKER: This defendant was not --

13 MS. HIGHTOWER: -- I apologize for  
14 interrupting. But I -- I have to make it perfectly  
15 clear, my client was never implicated in the prior  
16 case where the highjacking occurred. This all  
17 involved, I believe, a gold Jeep vehicle. My client  
18 wasn't involved in that case, he wasn't present for  
19 that.

20 My understanding, from reading those facts and  
21 reading those allegations made in that case, that  
22 happened a couple of days prior, and it was only one  
23 person. And the one person that was identified was  
24 Reese -- Maurice Miller, the person who has already  
25 been charged and was the shooter in this case.

1           So, again, my apologies for interrupting, but I  
2           just felt strongly that this Court needed to know  
3           that my client was in no way involved in that -- in  
4           that type of carjacking, nor has he ever been  
5           charged.

6           THE COURT: Thank you. Thank you,  
7           Ms. Hightower.

8           MS. WALKER: Your Honor, that's what I was  
9           trying to say. Mr. Miller was the one who was  
10          picked out in that case. There were two individuals  
11          in that case; the other person was never identified  
12          by the victim and never arrested.

13          At that point is kind of when this crime --  
14          this few days of Mr. Miller not going home, him  
15          getting with Mr. Smith. They get together, they're  
16          out all night in the Longcreek Drive area at a pool,  
17          kind of traveling around the different apartment  
18          complexes that are down Longcreek, if you're  
19          familiar with that. There are just a number of  
20          apartment complexes that are up and down Longcreek  
21          Drive. And it ends with them seeing a man going to  
22          work who they then go to rob for an iPhone and end  
23          up taking something much more valuable than that.  
24          They took his life.

25          Your Honor, the victim's parents would like to

1 speak. His mother would like to speak.

2 THE COURT: I'll hear from anyone you'd like me  
3 to hear from, Solicitor, but -- I'll hear from them  
4 now. Yes. I'll be glad to hear from anyone you'd  
5 like me to hear from.

6 Yes, ma'am. Tell me your name, please.

7 MS. FISHER: It's Joyce Fisher.

8 THE COURT: Yes, ma'am. I'll be glad to hear  
9 from you.

10 MS. FISHER: Yes, sir. Earlier in the  
11 courtroom, and that had nothing to do with this  
12 case, I heard you talk about your son and how he'd  
13 always be your little boy, no matter what, no matter  
14 how old he got. Well, Rickey Daniel Baker was my  
15 little boy, even though he was a young man. He, I  
16 thought, would always be here with me. I thought  
17 I'd see him marry, see him have children. And I'm  
18 sure you've heard these words before in other cases.

19 But he was my baby boy. He was my son. And  
20 because of a decision that this man here made, along  
21 with another man, I will never see my son on this  
22 earth again because of a decision that he made. He  
23 knew what he was doing, he knew why he was there, he  
24 knew he was there to rob my son. He knew Maurice  
25 Miller had a gun, he knew what could have went

1 wrong, he knew a life could get taken, possibly.

2 I'll never see my son here on earth again, but  
3 I'll see him again one day in heaven because my son  
4 had become a great man. He was in trouble when he  
5 was younger as well, but he made it right. And I  
6 know that he's with God today. And I'll say like  
7 I've said before, I do not wish any soul to hell,  
8 but I do believe that by man's law -- God will judge  
9 him one day, but by man's law, he needs to pay for  
10 what he did. And I ask that he pay for the fullest.

11 THE COURT: Thank you. I'm sorry for your  
12 loss.

13 MS. FISHER: Thank you, Your Honor.

14 MS. WALKER: Your Honor, as I shared with  
15 Rickey's parents, Ms. Hightower shared with me notes  
16 from her investigator that she said were from  
17 Mr. Bowers, who was the man who was driving to go  
18 fishing that day who saw the two young men approach  
19 Mr. Baker.

20 What he did change in his statement from his  
21 original statement and from his testimony at trial  
22 to today is that he said he did not see him grab  
23 him, but he did see both young men walk towards  
24 Mr. Baker right before the gunshot rang out. So  
25 that's another reason why we've reduced the charge,

1 Your Honor. And I join Rickey's mom in asking for  
2 the 12-year sentence, Judge.

3 THE COURT: Any prior criminal history?

4 MS. WALKER: No, Your Honor.

5 THE COURT: Thank you. Anything further,  
6 Solicitor?

7 MS. WALKER: No, Your Honor.

8 THE COURT: I find there's a substantial  
9 factual basis for these pleas of guilty under North  
10 Carolina vs. Alford to voluntary manslaughter and  
11 attempted armed robbery. I find that the defendant  
12 Mr. Smith's decision to enter these pleas under  
13 North Carolina vs. Alford to those charges is  
14 freely, voluntarily, knowingly, and intelligently  
15 made, and that he has had the advice of a very  
16 competent, very experienced attorney with whom he  
17 says he's totally and completely satisfied. His  
18 pleas of guilty under North Carolina vs. Alford to  
19 those charges are, therefore, accepted.

20 Ms. Hightower?

21 MS. HIGHTOWER: Thank you, Your Honor. If it  
22 pleases the Court, I'm not exactly sure where to  
23 start other than I think we need to absolutely  
24 address, certainly, Mr. Baker's mother and family  
25 and how we're sorry for their loss, absolutely.

1           The solicitor indicated that there were  
2           conflicting -- or there was a statement made by an  
3           eyewitness that morning. And in the statement that  
4           the eyewitness made that morning, and if you read  
5           it, it looks as if my client was grabbing the victim  
6           by the back of a backpack and was actively engaged,  
7           present, aiding and abetting, and then Mr. Maurice  
8           Miller, as you recall from the trial of the case,  
9           Your Honor, shot Mr. Baker and he died.

10           In my work in this case, as we began it, my  
11           client, from the very beginning, from the first time  
12           I met with him, we -- my practice is I get all the  
13           discovery with the solicitor first, then I go sit  
14           down with my client and I say, well, let's go  
15           through everything.

16           I went over that statement with my client and  
17           he told me that is not what happened and that is not  
18           what went down. And also, I'd just like to say, my  
19           client actually did, in fact, the solicitor alluded  
20           to this, fully cooperated from the very beginning.

21           There was a the tip about who was involved in  
22           this shooting that came in from the gang unit.  
23           Well, my understanding is that tip came in about  
24           Maurice Miller. I don't think it came in about my  
25           client. But through their investigation, he did

1           come -- he was interviewed and he came forward and  
2           gave a full statement. He talked about what  
3           happened, he talked about Reese having -- going  
4           across the street -- let me just back up.

5           My client doesn't know Maurice Miller. And his  
6           family is here today. And when I met with them,  
7           they indicated that they didn't know who Maurice  
8           Miller was, that was somebody that my client had met  
9           approximately three months prior to this happening.

10          Who he did know -- who he did know in that car,  
11          they mention it. There were two other co-defendants  
12          who actually weren't charged. There were two women.  
13          One woman was Itiana Smith, is her last name,  
14          correct, not any relation, but they've been going to  
15          school together since middle school. He knew  
16          Itiana.

17          Itiana came over. And Itiana dated Maurice  
18          Miller -- or they had the relationship. They came  
19          over and they were supposed to go swimming that  
20          night. And the solicitor talked about it because I  
21          called up the solicitor and I said, this is what I'm  
22          finding out, that my client is there, they're at the  
23          apartment complexes, he's going swimming with  
24          Itiana, this other guy named Maurice Miller, and  
25          there was a fourth girl that was present as well.

1           My client gave a statement. He told everything  
2           about what he saw, he indicated that they crossed  
3           the street, but that he never touched Mr. Baker and  
4           never did and never grabbed him by the backpack.  
5           But we have this statement from the witness. And,  
6           yeah, I sent my investigator out there to talk to  
7           the eyewitness. And the eyewitness says, no, that  
8           is not what he said; that, no, the bigger guy, who  
9           is my guy, was the slower guy to engage, was having  
10          a hard time keeping up. And the last thing that the  
11          eyewitness saw before the gun went off was that the  
12          smaller male was actively fighting the victim.

13          Now, I certainly have tried cases before. I  
14          certainly understand what it means to be present,  
15          aiding, abetting. And I know we've talked a lot  
16          about this case and what to do and how to go  
17          forward. And I'm appreciative of the Solicitor's  
18          Office and I'm appreciative of the victim's family  
19          and I'm appreciative of you, Your Honor, and  
20          everybody else, that coming forward and going  
21          forward with what we have negotiated, I think it  
22          applies to what happened.

23          But I just -- I told my client that I would  
24          make sure that the Court was aware that we  
25          interviewed the victim -- I mean, we interviewed the

1 witness statement of what happened to the victim and  
2 that I would let the Court know that.

3 I'd also say that, certainly, my client, not  
4 only was he prepared to testify at trial to  
5 everything that he saw and who shot and what  
6 happened, was that he also received death threats at  
7 the Alvin S. Glenn Detention Center. His mother,  
8 his grandmother, his sister, they all called me.  
9 They sat in my office, they met me at the door.

10 Maurice Miller was sending death threats  
11 through the Alvin S. Glenn Detention Center  
12 threatening my client, intimidating my client;  
13 telling him, if you testify, I'm going to meet you  
14 out there in the middle of the yard at Broad River.

15 My client, knowing that -- and Ms. Walker had  
16 us come over. We went over to the courthouse, I  
17 talked to Ms. Walker about it, I let them know that  
18 was going on. Again, my appreciation to the  
19 Solicitor's Office. They made some calls, we made  
20 sure that they were completely separated at the  
21 detention center. But my client still was willing  
22 to go forward, he was still willing to do it.

23 The day of that trial, he was downstairs in the  
24 holding cell. And I believe they even brought him  
25 up. I couldn't be there that day. My husband, Art

1           Aiken, covered the trial for me that day. But,  
2           anyway, I just wanted the Court to know that even in  
3           the face of all, he told what happened at the very  
4           beginning. He's never changed his story with me, he  
5           is sorry that this -- the consequences that happened  
6           with Maurice pulling out a gun, it happened, and he  
7           can't change that. But he was not the shooter. He  
8           cooperated fully. And I think the reason why --  
9           part of the reason why Maurice Miller has got a  
10          40-year sentence right now is because my client told  
11          the truth.

12                 The other thing I'd like Your Honor to consider  
13          is, you know, certainly, Mr. Smith, he's 20 years  
14          old, he's had a disability his entire life, a  
15          learning disability, he's been ADHD. Again, that's  
16          kind of why I'm swinging back all the way to the  
17          beginning of this case, Your Honor, is that that's  
18          why the family wanted to make sure the competency  
19          issues were addressed. They know he's been on  
20          medication in the past. ADHD, he was in resource  
21          schools, he struggled in school, and he did not  
22          finish.

23                 But, you know, his family -- he was doing adult  
24          education because the school system -- he just -- he  
25          didn't finish and he didn't succeed there. But he

1 was doing -- he has been, since being incarcerated.  
2 And I asked my client to -- well, what would you  
3 like to say to you -- what would he like to say to  
4 the Court? And he wrote a statement and he asked me  
5 this afternoon if I would just read it to you, Your  
6 Honor.

7 THE COURT: Yes, ma'am.

8 MS. HIGHTOWER: It says: Judge, my name is  
9 Shykiem Smith, I'm 20 years old, and I've never been  
10 to jail before. And being here has helped me change  
11 my life around -- and here, he's referring to the  
12 Alvin S. Glenn Detention Center -- and become a  
13 better man. I'm in GED classes right now. I passed  
14 one test already and I have three more tests to go  
15 to get my GED.

16 I wish I would have listened to my mama. I  
17 wish I would have stayed home that night. But all  
18 I'm trying to say is I've changed my life and I'm  
19 trying to go home to take -- go home to my family  
20 and spend Christmas with them and get me a job and  
21 take care of my mama and grandmama.

22 Your Honor, here is Ms. Stacey Smith in the  
23 middle. That's his mama. At the end is his  
24 grandmama, Johnnie Mae Hall, and his -- and, I'm  
25 sorry, sir -- and a friend for support. They did

1       come -- one of the times they came to my office,  
2       they said they've been looking for somebody in the  
3       community to hire Shykiem. He -- there's a manager  
4       at a Quick Shop that's within walking distance.

5                Again, this case started because Itiana Smith  
6       came over and said do you want to go swimming with  
7       us and he went and he did that. And these  
8       consequences he's facing for the rest of -- rest of  
9       their life. And to the Bakers, there's no amount  
10      of -- there's no amount of sorry that's ever going  
11      to make it.

12              But those are the circumstances. I just, once  
13      again, indicate that, you know, my client cooperated  
14      with Investigator Lindler. He investigated it. A  
15      mistake was made by the eyewitness, we clarified  
16      that. We're here before you today. There's nothing  
17      that's going to make anything right or -- you know.  
18      But that's the situation, sir.

19              I don't know if my family members would like to  
20      address the Court. Yes? If Your Honor would hear  
21      from the family members.

22              THE COURT: I'll hear from anyone you would  
23      like me to hear from, Ms. Hightower.

24              MS. HIGHTOWER: All right.

25              THE COURT: Speak up for me, please. Just tell

1 me your name and speak up, please.

2 MS. SMITH: Shaylyn Smith.

3 THE COURT: Speak up a little bit more. I'll  
4 be glad to hear from you.

5 MS. SMITH: I just wanted to say that my  
6 brother is not the person that they're painting the  
7 picture of him to be, because he's never been with  
8 any -- he's never been arrested or nothing. He only  
9 knew him for three months. And, honestly, truth be  
10 spoken, I've been with -- I've been with him since  
11 he been a child.

12 I know my brother and I know the different  
13 things that he would do. He only went in the car  
14 because of the girl, that was it. At the same time,  
15 he's a person that -- he likes to fit in. Not to  
16 say that he'll just do anything, but he likes to fit  
17 in. So this is a girl, he's young. He don't have  
18 no girlfriend or nothing like that, so if a girl  
19 come over and ask you to come hang out with her,  
20 that's a girl and a boy, you're going to hang out.  
21 You don't know that -- okay, what the next minute is  
22 going to do. You don't know. That can happen to  
23 me, it can happen to you, anybody.

24 When you get in the car with somebody, that  
25 don't necessarily mean that, you know, they want to

1 go take the next person life. And from the  
2 beginning of this whole case, he been cooperating,  
3 even with going through the threats, because I've  
4 been getting them physically myself about everything  
5 that's been going on. He still was willing to go  
6 forward.

7 And I send my condolences from my family to  
8 theirs. Nobody should lose a child, no nothing.  
9 But my brother did not do this. He was not the man  
10 who actually caused him to lose his life. Yes, he  
11 was there, he was present, but so were the girls.  
12 They were there because they were supposed to go  
13 swimming.

14 Now, the plan changed when he decided to do  
15 that for Maurice Miller to -- when he decided to do  
16 that, yes, that changed everything that took place,  
17 but that wasn't his intentions of leaving that  
18 house. He only left that house because of that  
19 girl. He does not know that man. He only been  
20 physically involved with him for three months,  
21 that's it.

22 Other than that, my brother doesn't leave the  
23 house at all, no more than to school. He never had  
24 a job because he's been disabled all of his life.  
25 Up until he went to jail -- the day he got arrested

1 was the day he was supposed to go to the mental  
2 health to do -- to finish his evaluation to get back  
3 on the rest of his meds. He's not this type of  
4 person.

5 And I would hope that you would look at all of  
6 the facts and him as an individual and hold it in  
7 your heart to not make us suffer behind someone else  
8 as well, because not only are their family hurting,  
9 but our family is hurting too because this is  
10 longest he's ever been away from us. He's never did  
11 nothing. He's never even been in handcuffs.

12 But for him to go through this and almost lose  
13 his complete life behind the actions of someone  
14 else, that's a life for somebody being young. And I  
15 don't want my brother to go through that. Not only  
16 he's going to have to go to prison and because of  
17 the fact that he stepped up and been the bigger  
18 person of the situation and letting them know what  
19 happened, now he has to go through there and fight  
20 for his life for the rest of his life. .

21 MS. HIGHTOWER: Thank you, Ms. Shaylyn.

22 Thank you, Your Honor. We certainly appreciate  
23 it.

24 THE COURT: Thank you, Ms. Hightower. Anything  
25 you'd like to say, Mr. Smith?

1 THE DEFENDANT: Yes, sir. I just want to say I  
2 apologize for the victim family and that I ain't  
3 know what was going on. And I want to apologize to  
4 my mama and let them know I love them.

5 THE COURT: Anything further?

6 THE DEFENDANT: That's it.

7 MS. HIGHTOWER: Your Honor, I think that's it.  
8 Thank you.

9 THE COURT: Thank you, Mr. Smith and  
10 Ms. Hightower.

11 Anything further, Solicitor?

12 MS. WALKER: Your Honor, just to clear up a  
13 couple things, the tip that came in to the Richland  
14 County Sheriff's Department Gang Unit was that  
15 Shykiem Smith, this defendant, and Reese G-Holla,  
16 who turned out to be Maurice Miller, so it wasn't  
17 just one defendant and then this defendant decided  
18 to cooperate.

19 They went to the grandmother's house, she said  
20 that he was next door. They knocked next door and  
21 they found him coming out the back door of that  
22 house. That's when they arrested him, Your Honor.  
23 And he knew at that point in time -- when he gave  
24 the statement to law enforcement, Your Honor, he  
25 stated that he knew that Mr. Miller had a gun when

1 Mr. Miller first came up to him in the Trailblazer.  
2 That's on page 4 of his statement. And I'd be happy  
3 to hand that up to Your Honor at the appropriate  
4 time.

5 Your Honor, he mentioned wanting to go home to  
6 spend Christmas with his family. And I understand  
7 that; we all want to spend Christmas with our  
8 family. We all have people who we can't spend  
9 Christmas with anymore. They can never spend  
10 Christmas with their son again, so it's kind of  
11 trite for him to boil this guilty plea down to him  
12 just wanting to go home to spend Christmas with his  
13 family. Your Honor, we ask for the 12 years.

14 THE COURT: Thank you.

15 And, of course, Ms. Hightower, if you have any  
16 response, I'll be glad to hear from you.

17 MS. HIGHTOWER: Briefly --

18 THE COURT: I'm not inviting a response --

19 MS. HIGHTOWER: No. I just --

20 THE COURT: -- I was just, of course, giving  
21 you the opportunity.

22 MS. HIGHTOWER: I appreciate that, Your Honor.  
23 The Reese G-Holla, they didn't know who that was.  
24 It was my client who told them it was Maurice Miller  
25 and that's how they got the identification.

1 THE COURT: Let me see the statement you're  
2 referring to. And show it to Ms. Hightower first,  
3 Solicitor. And the Crime Stopper tip.

4 MS. WALKER: (Tenders documents to the Court.)

5 THE COURT: Just to refresh my memory, not less  
6 than two, no more than 12 years, concurrent?

7 MS. WALKER: Yes, Your Honor.

8 THE COURT: I have taken into account the  
9 totality of the circumstances and also into account  
10 the statements given by the solicitor and by  
11 Ms. Hightower. I've also taken into account the  
12 mother of Mr. Baker's statement and also the sister  
13 of Mr. Smith. I have taken into account, also,  
14 Mr. Smith's statement read by Ms. Hightower.

15 I have reviewed the South Carolina Department  
16 of Mental Health report dated 3/31/16. I have read  
17 the initial statement of Mr. Bowers, the witness in  
18 the vehicle that was going fishing, and his  
19 statement giving -- well, I hadn't really reviewed  
20 his statement, written sworn statement, but I  
21 reviewed the investigator's report of Mr. -- him  
22 being interviewed by Investigator Gregory Alex  
23 Sharp, 10/10/17, concerning the event of his  
24 observation on the morning of the homicide. I have  
25 also reviewed Major J.S. Smith's case notes,

1       investigative report page 2. I don't see a date on  
2       those in that regard.

3               There is some discrepancies in the  
4       presentations -- differences, perhaps I should say,  
5       in the presentations from the parties. For example,  
6       his sister indicates to me that he was not very  
7       social and just wanted to hang out with a girl,  
8       boy-girl type of friendship, on this night or,  
9       perhaps, other nights. And, of course, nothing  
10      wrong with that.

11              However, when I read the previous report of  
12      DMH, on page 4, Mr. Smith reports that after he left  
13      school, he had been doing nothing; he states that he  
14      stays at home and hangs out with his cousins and  
15      homeboys; he states he passes time playing video  
16      games and using marijuana. He also frequently talks  
17      to females.

18              He reported that at the time of his arrest, he  
19      had been in a six-month relationship with a young  
20      woman. Prior to that, he had a two-year  
21      relationship with a woman who became pregnant and  
22      subsequently had an abortion.

23              He has never held a job, he has no children, he  
24      does not report -- he does report involvement in a  
25      local gang called the RRG or Real Reckless Goons.

1 This is from the report of Dr. Friersen and  
2 Dr. Negarity during their evaluation for his  
3 competency and M'Naghten, so not coming from the  
4 advocacy of the State or the defense.

5 I do see the difference in the statements of  
6 Mr. Bowers; however, in reading this, looking at the  
7 first page, Mr. Bowers stated on 7/2/15, between  
8 6:00 a.m. and 7:00 a.m., he was headed to pick up a  
9 friend to go fishing. While he was headed to his  
10 friend's house at The Park Apartments, he was  
11 driving down Longcreek Drive and observed the victim  
12 walking down the left side of the road.

13 Mr. Bowers also observed two black males  
14 walking on the opposite side of the road. The black  
15 males appeared to be stalking the victim, and that  
16 is pluralized. And that is from the investigative  
17 report of Sharp Investigators. He indicated the  
18 first person to reach the victim was the smaller  
19 dark-skinned male, that would be the co-defendant.  
20 And parenthetically in this report, it says Reese,  
21 but that would be Miller.

22 MS. WALKER: Yes, Your Honor.

23 THE COURT: Reese/Miller -- the, slash, Miller  
24 is not in this report -- grabbed the victim by the  
25 bookbag and a physical altercation begins. The

1 victim kept trying to pull away from Reese and was  
2 actively fighting; says as Bowers was pulling out of  
3 view of the altercation, Bowers heard gunshots. The  
4 last thing Bowers saw before the gunshot was heard  
5 was the smaller male, Reese, actively fighting with  
6 the victim.

7 The bigger guy -- that would be Mr. Smith --  
8 was slow to engage, was having a hard time keeping  
9 up with the victim and Reese. Bowers does not  
10 remember the heavy male, Smith, doing anything but  
11 maybe push the victim in the back one time. The  
12 heavy male -- parenthetically Smith -- appeared to  
13 be trying to help, but didn't really arrive until  
14 when or shortly after the gun went off.

15 Bowers was unclear when the heavysset male --  
16 parenthetically, Smith -- pushed the victim. The  
17 light-skinned male, Reese, appeared to be the one  
18 actively engaged with the victim.

19 So it is different than the statement, given  
20 some -- well, October 17 is this investigative  
21 report and February of '15 was when the initial  
22 statement was given. Also, as far as the carjacking  
23 of the gold SUV, I do not take that into account  
24 what soever. I take into account that Mr. Smith has  
25 no prior criminal history.

1           Mr. Bowers is, obviously, an independent  
2 witness out early in the morning going to pick  
3 someone up. And I take his testimony in the light  
4 most favorable to Mr. Smith. It appears to  
5 Mr. Bowers that two black males crossed over.  
6 Whether he identifies them or not, we now know them  
7 to be Mr. Miller and Mr. Smith and they appear to be  
8 stalking the victim.

9           Also, going back to Detective Smith's report,  
10 it says Ms. -- let me make sure I get it. It's  
11 Ms. Smith, Itiana, came to Richland County Sheriff's  
12 Department and acknowledged that she had been the  
13 driver of the gold SUV. She also indicated that Nay  
14 had been there as well, and that law enforcement  
15 then asked Nay to come.

16           But going back to Smith, after being advised of  
17 her rights, she indicated -- related how the  
18 subjects, referring to Smith and Miller, picked her  
19 up in the gold SUV and how they -- and that's just  
20 the fact. Again, I'm not relating that back to  
21 Mr. Smith having any involvement in the carjacking  
22 of the gold SUV, and how they sent -- were riding  
23 around. They eventually made their way to the Broad  
24 River area and ran into several subjects they knew.  
25 And this was Big and Josh that are irrelevant to

1 this proceeding today, I would think.

2 Itiana said they -- in reading this, I think  
3 her "they" includes Miller and Smith -- saw the  
4 victim walking on Longcreek. She recalled that he  
5 had a bookbag. She said Miller and Smith wanted her  
6 to let them out and she did so.

7 Later on, she said that the pair -- and it's  
8 not parenthetically, but I take that to be Miller  
9 and Smith -- got it, she picks them back up. Well,  
10 actually, she did say they got in the Trailblazer,  
11 Itiana then went back to the area where Shykiem and  
12 Maurice had gotten out. She said that the pair got  
13 in and told her to go. They were excited. They  
14 told her that the man tried to grab the gun and  
15 Maurice shot him.

16 So I take into totality of all of the  
17 circumstances into account. The State has -- has  
18 agreed and Mr. Smith has entered pleas under North  
19 Carolina vs. Alford to voluntary manslaughter and  
20 attempted armed robbery. I see where he was  
21 initially charged with murder and attempted armed  
22 robbery. And, of course, in the taking of a North  
23 Carolina vs. Alford, part of it is the benefit of  
24 the bargain because he believes that the State would  
25 present evidence that a jury could find him guilty

1 based on all the evidence of murder and attempted  
2 armed robbery.

3 Of course, as we all know in this courtroom,  
4 murder carries a minimum mandatory sentence of 30  
5 years day for day or life, and attempted armed  
6 robbery carries a sentence of up to 25 years. So he  
7 goes from those maximums to -- if he were pleading  
8 straight up, to 30 and 25, 25 to a cap of 12 years.

9 Now, I take into account his cooperation, also  
10 his willingness to testify, the fact that he has no  
11 prior criminal record. And someone made the  
12 statement that this sentence, he would lose his  
13 complete life. Quite frankly, the only person that  
14 has lost their complete life is Rickey Baker.  
15 Although sometimes, over the course of my career, I  
16 have, in my mind, felt the presence of those who  
17 have departed due to violence, and I do not --  
18 there's reasons there's plea bargains and reasons  
19 somebody gets 40 years; there's reasons somebody  
20 gets 12 years, ten years, two years, what have you.

21 I don't think these instances like this happen  
22 in a vacuum. Everyone is not held to the same  
23 degree of culpability; however, there is  
24 culpability, and behavior, quite frankly, has  
25 consequences, all behavior. That doesn't mean

1 Mr. Smith is a bad person. I don't judge people, I  
2 judge behavior. And I don't turn a blind eye to  
3 violence.

4 The worst thing I think anyone can do is steal.  
5 Y'all have heard that from me before. I think theft  
6 is the worst crime. You steal somebody's property,  
7 money. But when somebody is killed, you steal their  
8 life, you steal their future, you steal somebody's  
9 father, mother, brother, sister. And I take into  
10 account Mr. Smith is not the triggerman.

11 However, based on the totality of those  
12 circumstances, 2015-GS-40-5675, attempted armed  
13 robbery, and 5674, murder, the defendant is  
14 committed to the state department of corrections for  
15 a determinate term of 12 years. Those are  
16 concurrent. He is to be given credit for all time  
17 served. Thank you. Thank you very much. And thank  
18 you very much, Ms. Hightower. Is this appointed?

19 MS. HIGHTOWER: Yes, sir, it is.

20 THE COURT: Thank you very much for taking that  
21 very important assignment and for the work ethic and  
22 the that job you've done.

23 MS. HIGHTOWER: I appreciate that very much,  
24 Your Honor.

25 THE COURT: Thank you.

1                                   -- END OF TRANSCRIPT OF RECORD --

2

3                                   C E R T I F I C A T E

4

5                   STATE OF SOUTH CAROLINA

6                   COUNTY OF LEXINGTON

7

8                   I, the undersigned, Bethanie K. Creppon, Circuit  
9                   Court Reporter for the Eleventh Judicial Circuit of  
10                  the State of South Carolina, do hereby certify that  
11                  the foregoing is a true, accurate and complete  
12                  transcript of record of all the proceedings had and  
13                  the evidence introduced in the hearing of the  
14                  captioned cause, relative to appeal in the Criminal  
15                  Court for Richland County, South Carolina, on the  
16                  11th of December, 2017.

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

19

20

January 14, 2019

21

22

s/Bethanie K. Creppon

23

24

Bethanie K. Creppon  
Circuit Court Reporter

25

**WITNESSES**

**(S) Christopher Lindler**  
- Richland County Sheriff

**ARREST WARRANT NUMBER**

**2015A4011000074**

**ACTION OF GRAND JURY**

**TRUE BILL**

*Daarvin Gardner*

Foreperson of Grand Jury  
Date:

**NOV 10 2015**

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2015GS4005674**

**The State of South Carolina**

County of

**Richland**

**COURT OF GENERAL SESSIONS**

**NOVEMBER TERM 2015**

**101**

**THE STATE**  
vs.

**Shyklem Universal Smith**

**Indictment for**  
**MURDER / MURDER**

SC Code: 16-03-0010  
CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

Shykem Universal Smith

AKA:

Race: BLACK Sex: M Age: 20

DOB: SS#:

Address: Court

City, State, Zip: Columbia, SC 29204

DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Manslaughter / Voluntary manslaughter

INDICTMENT/CASE#: 2015GS4005674

A/W#: 2015A4011000074

Date of Offense: 7/7/2015

S.C. Code §: 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

Alford v. N.C.

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

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.

ATTORNEYS: M. Walker, Meghan Walker, SC Bar# 78494; Shykem Smith, Defendant; Attorney for Defendant; SC Bar# 12866

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 12 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 (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: \$ days/hours Public Service Employment

Payment Terms: Obtain GED

Set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

\*Fine: Random Drug/Alcohol testing

§ 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 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

TOTAL \$

Clerk of Court/ Deputy Clerk Lisa Comer

Court Reporter: B. Crippen

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2145

Sentence Date: 17 DEC 17

**WITNESSES**

**(S) Christopher Lindler**  
**- Richland County Sheriff**

**ARREST WARRANT NUMBER**

**2015A4011000075**

**ACTION OF GRAND JURY**

**TRUE BILL**

*Deanna Gardner*

Foreperson of Grand Jury

**NOV 10 2015**

Date:

**VERDICT**

Foreperson of Petit Jury

Date:

**DOCKET NO. 2015GS4005675**

**The State of South Carolina**

**County of**

**Richland**

**COURT OF GENERAL SESSIONS**

**NOVEMBER TERM 2015**

**101**

**THE STATE**

**vs.**

**Shykiem Universal Smith**

**Indictment for**  
**ROBBERY / ATTEMPTED ARMED, OR**  
**ALLEGEDLY ARMED, ROBBERY**

SC Code: 16-11-0330(B)

CDR Code: 0026

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATE VS.

INDICTMENT/CASE#: 2015GS4005675  
A/W#: 2015A4011000075  
Date of Offense: 7/7/2015  
S.C. Code §: 16-11-0330(B)  
CDR Code #: 0026

Shykem Universal Smith

AKA: \_\_\_\_\_

Race: BLACK Sex: M Age: 20

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_ Court \_\_\_\_\_

City, State, Zip: Columbia, SC 29204

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Attempted armed, or allegedly armed, robbery

SENTENCE SHEET *Alford v. N.C.*  
 CONVICTED OF or  PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

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: M. Walker Walker, Meghan SC Bar# 78494 Shykem Smith Defendant [Signature] Attorney for Defendant 13866 SC Bar# Hightower

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 12 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 (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: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \_\_\_\_\_ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_ prts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ \$ \_\_\_\_\_ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_ Other: \_\_\_\_\_

Proviso 61.6 (Public Def/Probation) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Lisa Comer

Court Reporter: B. Crupper

SCCA/217 (07/2016)

Presiding Judge [Signature]

Judge Code: 145

Sentence Date: 11/23/17

**AIKEN & HIGHTOWER, PA***Attorneys at Law*

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

*Arthur K. Aiken**A. Bea Hightower*

USPS TRACKING # **9114 9999 5638 5047 7316 39**  
 & CUSTOMER: For Tracking or inquiries go to USPS.com  
 RECEIPT or call 1-800-222-1811.

Forensic Evaluation Service Paralegal  
 S.C. Department of Mental Health  
 CBHS Forensic Center  
 7901 Farrow Road  
 Columbia, SC 29203-3220

Re: State v. Shykiem Smith  
 Case No.: 2015A4011000074 and 2015A4011000075

Dear Sir/Ma'am:

I have been appointed to represent the defendant in the above-mentioned matters. Pursuant to SCCA 221-222 and SCCA 487, I have enclosed the signed, clocked McNaughten Order in the above-mentioned matter. Also, enclosed hereto are the following:

- 1) Previous Forensic Evaluation completed by SCDMH on November 19, 2009;
- 2) Richland County Sheriff's Department Incident Reports;
- 3) Richland County Sheriff's Department Arrest Report;
- 4) Richland County Sheriff's Department Criminal Investigation reports;
- 5) Witness Statements from the following:
  - a) Itionnia A. Smith
  - b) Tanaisha Taylor
  - c) Rudolph Bowers; and
  - d) Prentice Keitt
- 6) Statement provided by Defendant/Shykiem Smith; and
- 7) Richland County Coroner's Report/Death Certificate.

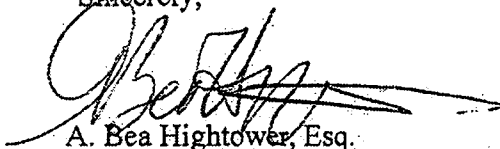
Please send a copy of the final report to our office via email or at the mailing address listed above.

Should you have any questions and/or concerns, feel free to contact our office.

Signature on the following page

— **Exhibit "A"** —

Sincerely,

A handwritten signature in black ink, appearing to read "Bea Hightower", with a long horizontal flourish extending to the right.

A. Bea Hightower, Esq.  
Aiken and Hightower, P.A.  
[bea@aikenandhightower.com](mailto:bea@aikenandhightower.com)

Enclosures: As stated

\*\*\*\*\*

## COVERSHEET FOR DMH AND DDSN EVALUATION ORDERS

1. The Competency to Stand Trial Evaluation orders (SCCA 221 and SCCA 487) and the Criminal Responsibility (McNaughten) Evaluation order (SCCA 222) should not be altered. It is important for purposes of compliance with the statutes as well as timeliness, efficiency and quality control in conducting evaluations that the applicable form order be used exactly as published, without alterations or additions to the terms of the form order.
2. Additional records must be attached to the order for a complete evaluation. It is the duty of counsel requesting the evaluation to obtain these records in advance and have them ready at the time the judge signs the order so that the evaluation will not be delayed. Within five (5) days of its issuance, counsel must file the order with the Clerk and serve the order on the examining agency. A list of the necessary records is available on the last page of the order, and may include:

- Completed DMH/DDSN Outpatient Information Appointment Sheet
- Copy of the indictments(s)
- Copy of the arresting agency's incident report
- Copy of the warrant(s)
- Law enforcement investigative reports
- The defendant or juvenile's statements to law enforcement, written or electronically recorded
- Witness statements to law enforcement
- Autopsy reports
- Defendant's school psychological records
- Defendant's Rule 5(f) notice of insanity records
- Copy of the Juvenile Petition
- Special education records, including psychological evaluations and IEPs
- School records, including disciplinary and attendance records
- Mental health records, including inpatient and outpatient evaluation and/or treatment

3. Only one Competency to Stand Trial evaluation can be ordered. For Defendants with mental illness, the order is addressed to the Department of Mental Health. For Defendants with mental retardation, the order is addressed to the Department of Disabilities and Special Needs. The order may not be addressed to both agencies. In the event there is a dual diagnosis or uncertainty as to the correct diagnosis, the order is first addressed to the Department of Mental Health, and the examiners will determine whether further referral is necessary. All orders for criminal responsibility evaluation, regardless of the diagnosis, are forwarded to the Department of Mental Health.

JENNIFER M. HEDGECOCK  
 C.P. & G.S.

2016 FEB -9 PM 12: 28

RECEIVED  
 FILED

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

The State of South Carolina, )

IN THE COURT OF GENERAL SESSIONS

Indictment No.(s): \_\_\_\_\_

A/Warrant No.(s): 2015A40110000e74 & 2015A40110000e75

ORDER FOR CRIMINAL RESPONSIBILITY  
AND CAPACITY TO CONFORM EVALUATION  
(M'NAUGHTEN)

Select one of the following:

(Controls access to evaluation report as outlined below.)

- Ex parte evaluation requested by defendant prior to assertion of insanity defense.
- Evaluation requested by either party after defendant's assertion of insanity defense.
- Evaluation requested by consent of both parties at any time.

Defendant,

SHYKIEM SMITH

SEARCHED  
SERIALIZED  
INDEXED  
FILED  
2016 FEB -9 PM 12:28  
C.C.P. & S.

This matter is before me for an order requiring defendant Shykiem Smith, charged with Murder and Attempted Armed Robbery, to submit to an evaluation for criminal responsibility and capacity to conform conduct to the requirements of the law on or about July 2, 2015 pursuant to S.C. Code Ann. § 17-24-10 (1976). One of the following circumstances applies to the issuance of this order: (1) defendant has requested an evaluation to determine whether the insanity defense may apply; or (2) prosecution or defendant has requested this evaluation after defendant has affirmatively asserted the insanity defense and given appropriate notice pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure; or (3) both parties by consent request this evaluation regardless of whether defendant has asserted the insanity defense.

**BASIS FOR ORDER.** I have considered the showing made in support of the motion requesting this evaluation and find defendant's mental state at the time of the alleged crime(s) will likely be at issue in this proceeding.

This order is issued for the following reasons:

Attorney for Defendant, A. Bea Hightower, has met with client and client's family and believe that Defendant suffers from a mental health disorder and a forensic evaluation was also completed on

Smith on November 23, 2009, and was deemed not competent to stand trial. Both Parties have consented to this evaluation.

**THEREFORE, IT IS ORDERED:** Because the Department of Mental Health has statutory responsibility for custody and control of individuals determined not guilty by reason of insanity, defendant shall be examined and observed at an appropriate facility of the Department of Mental Health by one or more examiners to determine whether defendant is criminally responsible pursuant to S.C. Code Ann. § 17-24-10(A) (1976) for conduct on or about July 2, 2015.

If defendant is believed to be criminally responsible by the designated examiners, defendant shall be further examined to determine whether, because of mental disease or defect, defendant lacked sufficient capacity to conform conduct to the requirements of the law on or about July 2, 2015 pursuant to S.C. Code Ann. § 17-24-20(A) (1976).

**COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION.** The examining facility shall schedule the ordered examination as soon as possible and no later than sixty (60) days from the receipt of this order by the Department of Mental Health, this time being necessary to gather required records. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the Department of Mental Health to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

**PROCEDURE IF LACK OF COMPETENCY IS INDICATED.** If, during the course of the criminal responsibility and capacity to conform evaluation scheduled pursuant to this Order, the

examiner finds indications that defendant may not be competent to stand trial pursuant to S.C. Code Ann. § 44-23-410 (1976) and State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), the examiner shall terminate the criminal responsibility and capacity to conform evaluation, issue no report thereon, and by written communication recommend to the Court that a competency to stand trial evaluation should be ordered. Further, the examiner should state whether, in the examiner's opinion, such lack of competency is due to a mental illness or, in the alternative, an intellectual disability or a related disability. A copy of this written communication shall be sent to the prosecutor and defense counsel.

**AUTHORIZATION FOR INPATIENT EVALUATION.** In the event examiners from the Department of Mental Health determine defendant requires an inpatient examination, upon written notice to this Court from the director of the Department of Mental Health or his designee, defendant shall be committed to an appropriate facility of the Department of Mental Health for no more than fifteen (15) days for examination and observation related to defendant's criminal responsibility and capacity to conform. If the examination and observation of defendant has not concluded at the end of the initial inpatient fifteen (15) days, defendant may be kept in the continued custody of the Department of Mental Health for an additional period not to exceed fifteen (15) days, provided the director of the examining facility or his designee notifies this Court in writing. The issuance of an additional Court order allowing for the inpatient commitment(s) discussed in this paragraph is not necessary.

**DETENTION BEYOND EVALUATION PERIOD.** If, in the judgment of Department of Mental Health examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the Department of Mental Health in a suitable facility for so long as deemed clinically necessary or until a hearing on the matter may be conducted by this Court. An additional Court order shall be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

**ACCESS TO EXAMINER'S REPORT.** The Department of Mental Health is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. It is the intention of the State of South Carolina to provide defendant an adequate opportunity for mental status investigation when the defendant's mental condition is

seriously in question pursuant to Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 (1985), either before or after defendant formally asserts the insanity defense.

The purpose of the following provisions controlling access to the examiner's report is to strike a balance between defendant's right to explore the possibility of an insanity defense and prosecution's right to respond if such defense is raised. If defendant is requesting evaluation prior to asserting the defense of insanity, the evaluation shall be confidential until such time as defendant elects to assert the insanity defense. If defendant or prosecution is requesting evaluation after defendant's formal assertion of the insanity defense pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure, or both parties are requesting the evaluation by consent, the evaluation shall not be confidential and both defense counsel and the prosecutor shall be provided a copy of the examiner's report. In either case, ownership of the examining agency's files shall be vested with the examining agency.

**(A) Ex parte evaluation requested by defendant prior to assertion of insanity defense.**

If defendant has requested an evaluation to determine whether the insanity defense may be viable, the examiner's report shall not be provided to the prosecution and shall not be admissible as evidence in any Court proceedings. The prosecution may not discover any portion of the evaluation files. Any written report resulting from the evaluation shall be considered confidential and provided only to defense counsel, and shall be provided within ten (10) days of all examinations or the conclusion of the inpatient examination period. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose unless and until defendant asserts the defense of insanity. However, as a condition of accepting the evaluation provided by the State of South Carolina, defendant expressly waives any and all confidentiality privileges associated therewith if defendant subsequently asserts the insanity defense. In such case, the evaluation shall no longer be confidential, and all parties' access to the evaluation report shall be controlled by paragraph (B) below.

**(B) Evaluation requested by either party after assertion of insanity defense.**

Because the assertion of the insanity defense places defendant's mental status at issue, either party may discover any portion of the evaluation files upon presentation of a Court order authorizing such or a release authorization signed by defendant. Both the prosecutor and defense counsel shall

be provided a copy of the examiner's report within ten (10) days of the conclusion of all examinations or the inpatient examination period. The evaluation report may be admissible as evidence in subsequent hearings concerning defendant's criminal responsibility and capacity to conform. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law. Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose other than on the issue of criminal responsibility and capacity to conform. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

**(C) Evaluation Requested by Consent of Both Parties.**

By consent, the parties may request evaluation at any time, regardless of whether the insanity defense has been asserted by the defendant. The procedures and rules for this examination shall be the same as outlined in paragraph (B) above; however, in the event defendant does not assert the insanity defense, the examiner's report shall not be admissible for any reason, nor shall the contents of the evaluation files be used for any purpose.

**MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS.**

Department of Mental Health examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the Department of Mental Health of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health.

**COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS.** Upon written request from the Department of Mental Health, counsel for prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client

CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION  
FORENSIC EVALUATION SERVICE  
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)

DATE OF EVALUATION: March 28, 2016

PRESIDING EXAMINER: Richard L. Frierson, M.D.  
Professor of Clinical Psychiatry  
University of South Carolina School of Medicine

SECOND EXAMINER: Jessica McGarity, M.D.  
Resident in Psychiatry  
University of South Carolina School of Medicine

OTHERS PRESENT: Edmund Higgins, M.D.

PSYCHIATRIC DIAGNOSES: (DSM-5): Cannabis Use Disorder, Mild  
Antisocial Personality Traits

DISPOSITION: At the conclusion of this evaluation, Mr. Smith was returned to the Alvin S. Glenn Detention Center.

IDENTIFYING INFORMATION: Shykiem Smith is an 18-year-old African American male who was seen at the Forensic Evaluation Service pursuant to a court order from the Richland County Court of General Sessions. This court order requested an evaluation of his criminal responsibility and capacity to conform his conduct to the requirements of the law on or about July 2, 2015 pursuant to S.C. Code Ann. §17-24-10 (1976). He is currently charged with Murder and Attempted Armed Robbery. According to the court order, it was issued for the following reasons: "Attorney for the defendant, A. Bea Hightower, has met with client and client's family and believe [sic] that the defendant suffers from a mental disorder and a forensic evaluation was also completed on Smith on November 23, 2009 and was deemed [sic] not competent to stand trial. Both parties have consented to this evaluation."

Prior to participating in the evaluation, Mr. Smith was warned regarding the limitations of confidentiality. He was informed that the evaluators were employed by the South Carolina Department of Mental Health and were not being paid by his attorney or the solicitor in his case. He was informed that after the evaluation was completed, a report would be submitted to his attorney. He was informed that the report could also go to the judge and the solicitor. Finally, he was informed that the evaluators could be called to court to testify at trial. He was able to answer questions regarding this information correctly and he voluntarily agreed to participate in the evaluation.

SMITH, SHYKIEM  
10017713

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH  
FORENSIC EVALUATION

- Exhibit B -

## SOURCES OF INFORMATION:

1. Court Order requesting the evaluation.
2. Arrest Warrant #2015A4011000074 for Murder.
3. Arrest Warrant #2015A4011000075 for Attempted Armed Robbery.
4. Arrest Report.
5. Incident Report related to Murder dated July 2, 2015.
6. Richland County Sheriff's Department Investigative Report.
7. Statement allegedly given by the defendant.
8. Statement of I'Tionnia Smith.
9. Statement of Tanaisha Taylor.
10. Statement of Nicholas Hammond.
11. Statement of Rudolph Bowers.
12. Statement of Prentice Jamir Keitt.
13. Death Certificate of the alleged victim.
14. Incident Report dated April 18, 2015 related to Robbery and Kidnapping.
15. Arrest Warrant dated May 22, 2015 related to Attempted Robbery.
16. Incident Report dated June 23, 2015 related to Robbery.
17. Incident Report dated March 24, 2015 related to Robbery.
18. Incident Report dated June 29, 2015 related to Carjacking and Robbery.
19. Medical records for the defendant from the Alvin S. Glenn Detention Center.
20. Medical records for the defendant from the Columbia Area Mental Health Center.
21. Medical records for the defendant from William S. Hall Psychiatric Institute.
22. Prior Competency to Stand Trial Evaluation conducted on the defendant on November 9, 2009.
23. Richland County School District One Psychoeducational Report dated December 13, 2005.
24. Prior Competency to Stand Trial Evaluation conducted on the defendant on May 1, 2013.
25. A social history obtained from the defendant's mother, Tarawana Smith, by Carol David, LISW-CP.
26. A one hour and twenty minute clinical forensic interview on today's date.

**CLINICAL AND PSYCHIATRIC HISTORY:** Mr. Smith has been incarcerated at the Alvin S. Glenn Detention Center since his arrest in July of 2015. He reports that things are going fairly well for him in the detention center. He states that he has been there for eight months and is currently housed in general population and shares a cell with one other inmate. He was able to describe his daily activities. He reports that he tends to stay by himself and only talks with family members (cousins) who are also incarcerated. He passes time playing cards and watching TV. He is not prescribed medications at the present time. He reports that his sleep has been good and he sleeps approximately ten hours in a twenty-four hour period. He reports his appetite is also good. He did not report symptoms of depression. He describes his mood as "one minute mad, the next minute happy." He has been involved in three altercations since his incarceration. He states that two of them occurred after people tried to steal his canteen items. He states that one fight occurred when another

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inmate got upset over a card game. He denied auditory or visual hallucinations. He also denied suicidal or homicidal thoughts.

Mr. Smith had a history of very early psychiatric treatment. Apparently, he was first seen in the early childhood clinic at William S. Hall Psychiatric Institute around age 4. At a very early age, he was diagnosed with Attention-Deficit/Hyperactivity Disorder and was placed on medications. At the time of his involvement with the early childhood clinic, his father had been incarcerated on drug charges. Mr. Smith reportedly displayed a very violent temper which led his mother to place him in psychiatric treatment.

He was hospitalized at age 7 at William S. Hall Psychiatric Institute in October of 2004. At that time, he had made suicidal and homicidal threats at school. He had become enraged at a school resource officer. He states that he started banging his head against the wall and threatened to hurt himself or kill the school officer. He also had been getting into fights with multiple students in the cafeteria. He threatened to bring a knife to school. There is also evidence from that record that he reportedly was cruel to cats and had set a mattress on fire. He received a discharge diagnosis of Attention-Deficit/Hyperactivity Disorder and Oppositional Defiant Disorder.

Mr. Smith had periodic treatment over the years at Columbia Area Mental Health Center. He was seen there from August of 2004 through February of 2006. He reentered treatment in April of 2007 and remained in treatment until October of 2008. He reentered treatment from May to December of 2013 and again from July to October of 2014. His working diagnosis of Columbia Area Mental Health Center has always been Attention-Deficit/Hyperactivity Disorder and he was prescribed numerous medications for this disorder. He reports that the medication helped "a little bit." He states that it would stop him from being so hyperactive. Mr. Smith has no other history of psychiatric treatment.

**ALCOHOL AND SUBSTANCE USE HISTORY:** Mr. Smith denied the use of alcohol. He states that he smokes cannabis heavily on a daily basis. He states that he uses "as much as I can get." He estimates that he averages smoking ten blunts a day. He has experienced tolerance to the effects of cannabis and has required more to achieve the same desired effect. He has never been arrested for Possession or Distribution of Cannabis. He reports that he did fail a urine drug test once which forced him to go to Lexington-Richland Alcohol Drug Abuse Counsel for an assessment. He denied the use of other illicit substances including cocaine, crack cocaine, methamphetamine, synthetic cannabinoids, prescription medications, ecstasy, or intravenous drugs.

**MEDICAL HISTORY:** He reports that he injured several teeth at a daycare when he was running and fell. He also reports that he has fractured his right clavicle in the course of a physical altercation. He denies any history of surgeries and he denies medical allergies.

**FAMILY HISTORY:** His mother, Tarawana Smith, is 43 years of age and in good health. His father, Ernest Smith, is 42 years of age and is currently incarcerated for drug charges, but is expected to be released in 2018. The defendant has visited his father in prison. His father reportedly has diabetes. He has two half sisters and one half brother as well as one full sister. He reports that there

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is a family history of mental illness on his father's side of the family. This was confirmed by his mother. Apparently, some members of his father's family have been diagnosed with Schizophrenia, Bipolar Disorder and Intellectual Disability.

**SOCIAL HISTORY:** Mr. Smith was born in Columbia and raised by his mother. There were no birth difficulties and he met his developmental milestones at appropriate ages. He has no history of childhood physical or sexual abuse. According to Mr. Smith, the family had adequate food and clothes. He was removed from the home for one week at age 16 due to his truant behavior at school. He reports he did "alright" in school, but had multiple disciplinary problems. He states that he had to repeat the 7th grade because "I got wrote up so much." He states that he first started getting in trouble around the 3rd or 4th grade. He describes that he would engage in frequent fighting and would not get to school. He began skipping school at age 13. He also has a history of cruelty to animals and fire setting. Finally, he also reports a history of stealing a bicycle. He was eventually sent to an alternative school, but was eventually expelled in the 10th grade due to the number of fights he had gotten in at school. They told him to attend Adult Ed which he did briefly, but dropped out.

Mr. Smith reports that after he left school, he has been "doing nothing." He states that he stays at home and hangs out with his "cousins and homeboys." He states he passes time playing videogames and using marijuana. He also frequently talks to females. He reported that at the time of his arrest, he had been in a six month relationship with a young woman. Prior to that, he had had a two year relationship with a woman who became pregnant and subsequently had an abortion. He has never held a job. He has no children. He does report involvement in a local gang called the RRG or Real Reckless Goons.

**MENTAL STATUS EXAM:** On today's date, he was alert and oriented to person, place, month and year. He gave an approximate answer to the exact date, but he knew the day of the week. He was neatly groomed and cooperative with the interview. He made good eye contact. There were no abnormal movements noted. He also had speech which was normal in rate and volume. He was able to register three objects and he had no difficulty recalling all three objects after five minutes. He was able to recall significant past personal information and we found no evidence of clinically significant long or short-term memory impairment. His fund of knowledge was judged to be in the average range. He could name the current President, but not the immediate past President. He was able to name four National Basketball Association teams. He was able to perform a calculation, correctly subtracting \$0.67 from \$100. His performance on a test of concentration was good. He was able to focus throughout the interview and we found no current evidence of Attention-Deficit/Hyperactivity Disorder. He demonstrated a capacity for abstract reasoning as evidenced by his interpretation of a proverb and his ability to place similar objects into abstract categories. His judgment to a hypothetical situation was fair. He rated his mood as a 5 on a scale of 1 to 10 with 1 being severely depressed and 10 being euphoric. He denied current suicidal or homicidal ideas and he denied a current sleep or appetite disturbance. He denied psychotic symptoms including auditory or visual hallucinations, delusions, ideas of reference, or other psychotic symptoms. His thinking was

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logical and goal directed without loosening of associations or flight of ideas. We found no evidence of disturbed thought process or thought content.


Mr. Smith was screened briefly for his competency to stand trial. He was able to state the charges against him and he appreciated their seriousness. He understands the basic concept involved in plea bargaining and he understands why he has been charged with these offenses. He understands the adversarial role of the solicitor and the advocacy role of his attorney. He was also able to discuss his "Motion of Discovery." We had no reason to believe that Mr. Smith would lack the capacity to stand trial although we did not perform a complete evaluation. We note that he was opined to be competent two years ago during his last competency evaluation.

**DIAGNOSTIC FORMULATION:** Given his daily heavy use of cannabis and the fact that he has failed a urine drug screen and his displayed tolerance, we are assigning a diagnosis of Cannabis Use Disorder, Mild. He appears to minimize any negative consequences from his use of cannabis.

Mr. Smith has a history of early behaviors which were grounds for suspension from school. He also engaged in truancy, fire setting, and cruelty to animals. He would have met diagnostic criteria in the past for Conduct Disorder. Given his current charges and his lack of maintenance of a normal adult role responsibilities, it is clear that Mr. Smith has the possibly of developing Antisocial Personality Disorder as an adult. Since he is only 18 at the present time, we are assigning a diagnosis of Antisocial Personality Traits.

**CONCLUSION REGARDING CRIMINAL RESPONSIBILITY:** Mr. Smith was able to provide a detailed account of the events that led to his arrest. His report is somewhat different than what is contained in police reports. He denied touching the alleged victim or trying to take the alleged victim's backpack. He also denied being aware that his codefendant, Maurice Smith, was about to rob the victim. He does not relate symptoms of mental illness to the events for which he is charged. Furthermore, we find no evidence of a mental illness that would rise to the severity to impair his ability to distinguish legal or moral right or legal or moral wrong or to recognize the particular act charge as legally or morally wrong. Therefore, it is our opinion that he would have been criminally responsible pursuant to S.C. Code Ann. §17-24-10 (1976).

**CONCLUSION REGARDING CAPACITY TO CONFORM:** Likewise, we find no evidence of command hallucination, delusion, compulsion or other symptoms of mental illness which would have substantially impaired his ability to perform his conduct to the requirements of the law.



Richard L. Frierson, MD, DFAPA  
Professor of Clinical Psychiatry  
University of South Carolina School of Medicine

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10017713

OUTPATIENT EVALUATION

RLF/cj  
D: 03/28/2016  
RT/EM: 03/29/2016  
F/EM: 03/29/2016 (RLF)

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10017713  
OUTPATIENT EVALUATION

## FORENSIC EVALUATION SERVICE REPORT

DATE OF EVALUATION: November 19, 2009  
DATE OF REPORT: November 23, 2009  
PRESIDING EXAMINER: Alicia V. Hall, PhD  
SECOND EXAMINER: Barbara A. Christensen, LISW-CPS  
DIAGNOSIS: Attention-Deficit/Hyperactivity Disorder (ADHD)  
COMPETENCY TO STAND TRIAL: Not Competent  
DISPOSITION: Return home to await disposition of his charge.

IDENTIFYING DATA: Shykeim U. Smith presented to the SC Department of Mental Health Forensic Evaluation Service Center in Columbia, SC pursuant to a court order from the Richland County Family Court. He is a 12-year-old African-American male who appears his age. The court order requested an evaluation of his competency to stand trial pursuant to the Blair standard. The evaluation was ordered "due to the age of the juvenile and severity of the charges alleged." Mr. Smith is charged with Burglary (Second Degree) and Malicious Injury to Personal Property, stemming from an incident on May 07, 2009.

NOTIFICATION: Mr. Smith was unable to read the information form about the evaluation, thus it was read to him. He was advised of who ordered the evaluation and who would receive the report. He was able to report back to the examiners who ordered the evaluation and the three parties that would receive a report. Mr. Smith was informed that he could talk to his lawyer prior to the evaluation if he wished, and he elected to proceed with the evaluation.

## SOURCES OF INFORMATION:

- 1). 70 minute clinical forensic evaluations on November 12, 2009
- 2). Social history prepared by Barbara A. Christensen, LISW-CPS using the defendant's mother as the primary informant dated November 19, 2009
- 3). Hyatt Park Elementary School Record
- 4). W. A. Perry Middle School Grade Report
- 5). W. A. Perry Middle School Discipline Report
- 6). Records from Columbia Area Mental Health Center dated 2007-2008
- 7). Richland County School District One Psychoeducational Evaluation Report dated December 13, 2005
- 8). Records from William S. Hall Psychiatric Institute (WSHPI) Unit 256 Taylor East October 27, 2004 - November 05, 2004
- 9). Legal and investigative documents related to the alleged offense
- 10). Court order for the evaluation

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SC Department of Mental Health

**Exhibit C**

HISTORY: Mr. Smith resides with his mother, Ms. Stacy Smith, and his siblings in Columbia, SC. Ms. Smith reported the juvenile began having behavioral problems at the age of seven. He was diagnosed with ADHD. His birth and early developmental milestones were unremarkable. In 2001, Mr. Smith's father was incarcerated and remains in prison. The defendant's behavior began to change at that time. According to Ms. Smith, he began hanging out with older kids who easily influence him. Mr. Smith denied a history of physical and/or sexual abuse.

Mr. Smith reported he attends Sanders Middle where he is the 6<sup>th</sup> grade. He reported he moved to a new neighborhood to be in a better environment. He reported he is repeating the 6<sup>th</sup> grade. Mr. Smith reported he was in general education classes. In 2005, Mr. Smith was evaluated to determine if he was eligible for special education. The results of the evaluation determined Mr. Smith's intellectual functioning was in the Low Average range (VCI=79, PSI=84, FSIQ=84). He did not qualify for special education services. He reported he got in to a lot trouble at school, and has been suspended about 10-20 times and expelled once. Currently, Mr. Smith is not having behavioral difficulties in the school setting. The 2008-2009 school discipline records showed he received 1 referral during the school year. He received one suspension for being disrespectful.

Mr. Smith has some psychiatric history. He has one psychiatric hospitalization at the age of seven. He was admitted to WSHPI in 2004 due to an increase in "aggressive behavior and at school and making suicidal and homicidal threats." He had gotten into a physical altercation with multiple students, the school resource officer and threatened to bring a knife to school and kill the officer. Mr. Smith remained in at WSHPI for nine days. He was diagnosed with ADHD and Oppositional Defiant Disorder. He was prescribed Adderall. He was released to his mother with follow-up at CAMHC. MR. Smith was treated off and on at CAMHC in 2005, 2007-2008. Mr. Smith was initially referred to CAMHC in 2005 due to distractibility and behavioral problems at school. He was referred from USC Specialty Clinics. At CAMHC, he was diagnosed with ADHD and Oppositional Defiant Disorder. He was treated with Ritalin but after his hospitalization he was maintained on the Adderall. His chart was closed in 2005 due to Mr. Smith being stable on medication. In 2007 his chart was reopened due to Mr. Smith's disruptive behaviors. Over the course of treatment, he missed a lot of appointments. He was discharged from treatment on October, 2008 as the family dropped out of services. Ms. Smith reported the juvenile receives medication (Adderall) for his ADHD.

MENTAL STATUS EXAM: Mr. Smith was causally dressed for the evaluation. He was alert and oriented to person, place, situation, time, and date. He was cooperative during the evaluation. Mr. Smith demonstrated good attention and concentration throughout the evaluation. Sensory systems appeared intact and no unusual mannerisms were noted. His speech was normal in rate and rhythm with no articulation errors. Short and long term memory appeared intact. He had an adequate fund of general information. For example, he was able to answer several knowledge questions such as the colors in the flag, the number of days in a week and the current President. He possessed adequate verbal abstract reasoning. His detail orientation was good. Mr. Smith reported that he gets adequate sleep at night and that his appetite is "good". Mr. Smith acknowledged his past history of antisocial activities and/or behaviors such as fighting. Mr. Smith denied alcohol and drug use.

He described his current mood as "bad," because, he did not want to be at FES. He reported his usual mood as "okay." His affect (expressed or observed emotional response) was euthymic (pertaining to a normal mood in which the range of emotions is neither depressed nor highly elevated). Mr. Smith's

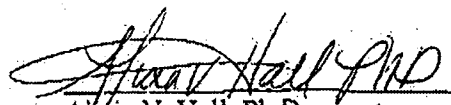
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thought processes were logical and goal oriented. He denied experiencing auditory and visual hallucinations. He denied suicidal or homicidal thoughts, intent or plan.

DIAGNOSTIC IMPRESSION: At this time, it would appear that Mr. Smith meets criteria for ADHD. Although he did not display symptoms of this disorder in the evaluation, he has been treated for ADHD with therapy and medication for the last several years. He also endorsed several symptoms of inattention, distractibility, poor focus, talking a lot, being fidgety and losing things when he is not on his medication.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: When asked for his lawyer's name, Mr. Smith could not recall or recognize her name. He was provided with his lawyer's name, Ms. Gripp. Mr. Smith was able to retain her name throughout the evaluation. He could not recall if he had met with his lawyer. He was unsure if he could trust Ms. Gripp to work on his case, stating he only trusted his mother and one of his siblings. He could not name the formal charges filed against him. Also, he could not define his charges in layman's terms. Mr. Smith was unable to describe the seriousness of his charge in relation to other more and less serious charges. He was unaware of a possible penalty he could receive if convicted of the charges. He was unable to recite penalties at the judge's disposal (probation, and house arrest). Mr. Smith was unfamiliar with the pleas available in court. He was unable to define the pleas in his own words. He was unfamiliar with the roles of the various court officials including the judge, the solicitor, and defense attorney. Mr. Smith was educated multiple times on these subjects. However, he was unable to demonstrate that he understood the adversarial nature of the courtroom situation. For example, he knew that the defense attorney was for him, but he believed the solicitor was in the middle and would try to help him. Mr. Smith believed the judge was sometimes for you and sometime against you. More efforts were made to educate Mr. Smith but to no avail; thus the evaluation was terminated.

Based on Mr. Smith age and immaturity he is unable to understand the proceeding against him and to assist an attorney in his own defense. He does not appreciate the serious nature of his charges. It is our opinion, to a reasonable degree of clinical certainty, that Mr. Smith is not competent to stand trial. Mr. Smith may become competent as he gets older and matures.



Alicia V. Hall, Ph.D.  
Chief Psychologist  
Forensic Evaluation Service  
Licensed Psychologist



Barbara A. Christensen, LISW-CPS  
Coordinator of Forensic Services  
Forensic Evaluation Service

**MARTIN PSYCHIATRIC SERVICES, PC  
THOMAS V. MARTIN, M.D.**

1330 Richland Street  
Columbia, SC 29201  
(803) 771-7521/Fax (803) 771-7525

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November 3, 2016

FAX: 803-799-5206

Bea Hightower, Esq.  
Aiken and Hightower, PA  
2231 Devine Street, Suite 201  
Columbia, SC 29206

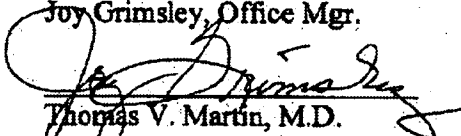
Re: Shykiem Smith

**ESTIMATED STATEMENT OF CHARGES**

|   |           |
|---|-----------|
| REVIEW RECORDS                            |           |
| TRAVEL TO ALVIN S. GLENN DETENTION CENTER |           |
| INTERVIEW AND EVALUATE SHYKIEM SMITH      |           |
| RENDER AN AFFIDAVIT FOR COURT             | \$4000.00 |

EIN 56-2210829

Yours Truly,  
Joy Grimsley, Office Mgr.



Thomas V. Martin, M.D.  
Psychiatrist

Diplomate, Psychiatry, American Board of Psychiatry and Neurology  
Diplomate, Forensic Psychiatry, American Board of Psychiatry and Neurology

RICHLAND COUNTY  
FILED

2015A 40110 00074, 75

STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
COUNTY OF RICHLAND ) FIFTH JUDICIAL CIRCUIT

State,

JEANETTE M. MERIDE  
C.C.P. & G.S.

) Case Nos: 2015-GS-40-05674 and 2015-GS-40-05675

vs.

Shykem Universal Smith

) MOTION TO RECONSIDER SENTENCE

Defendant.

TO: ASSISTANT FIFTH CIRCUIT SOLICITOR MEGHAN WALKER AND R. KNOX MCMAHON, CIRCUIT JUDGE

YOU WILL PLEASE TAKE NOTICE that the Defendant, Shykem Universal Smith (Smith), hereby moves, in accordance with Rule 4 SCRCrP, for reconsideration of the twelve-year sentence imposed on him on December 11, 2017 in the above captioned case. The grounds for this Motion are that with due respect to the Court, the Court did not give sufficient consideration to Smith's cooperation with the State in the prosecution of Maurice Miller.

WHEREFORE, Smith prays that this Court reconsider the twelve-year sentence imposed on him in this case on December 11, 2017. Respectfully Submitted,

*After consideration of all facts & circumstances of Defendant's file; Defendant's Motion to Reconsider is*

December 21, 2017  
Columbia, South Carolina

AIKEN & HIGHTOWER, PA  
By: *[Signature]*  
A. Bea Hightower  
2231 Devine Street, Suite 201  
Columbia, South Carolina 29205  
Phone: 803-799-5205  
Fax: 803-799-5206  
Email: bea@aikenandhightower.com  
ATTORNEYS FOR DEFENDANT

*Denied.*

*[Signature]*  
11 June 2018

RECEIVED

JUN 29 2018

SC Court of Appeals

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 12<sup>th</sup> day of July, 2019.

**RECEIVED**

JUL 12 2019

SC Court of Appeals