

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**  
**Jul 17 2020**  
SC Court of Appeals

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Appeal from Cherokee County  
Honorable J. Derham Cole, Circuit Court Judge  
Appellate Case Tracking No. 2019-001778

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The State,

Respondent,

vs.

Shaun Rogers, Jr.,

Appellant.

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**REPLY TO APPELLANT'S RETURN AND  
STATE'S RETURN TO APPELLANT'S  
MOTION TO AMEND NOTICE OF APPEAL**

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Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

Appellant proceeded to trial on charges of murder, attempted murder, burglary, attempted armed robbery, possession of a firearm and discharging a firearm. After trial, he was convicted of burglary and attempted armed robbery. The jury deadlocked on the remaining charges and a mistrial was declared. (See attached portion of the transcript, **Exhibit A**). Upon review of the transcript, the State notes that Appellant initially indicated a desire to plead guilty but did not go forward with his guilty plea on the remaining charges. Instead, after a lengthy colloquy with the court, he decided **not** to plead guilty pursuant to Alford and the court then went forward to sentencing on the burglary and attempted armed robbery charges. (See attached portion of the transcript, **Exhibit B**). As such, he does not have any convictions or sentences from which he

may appeal related to the murder, attempted murder, possession of a firearm, or discharging a firearm charges—or any lesser included offenses related to them (collectively to be known as “the other charges”). Therefore, amending the appeal to include the other charges would be improper. See e.g., State v. Isaac, 405 S.C. 177, 183, 747 S.E.2d 677, 680 (2013) (“a criminal defendant may not appeal until sentence is imposed”). Additionally, because a mistrial was granted related to the other charges, it is as if no trial occurred and there is nothing for this Court to consider. See Floyd v. Page, 124 S.C. 400, 117 S.E. 409 (1923) (“The effect of the mistrial was to leave the parties litigant in *statu quo ante*, with the cause still pending for trial in the circuit court. The rulings of the trial judge in the court below having eventuated in no binding adjudication of the rights of the parties, the appeal is prematurely brought, and jurisdiction thereof may not be entertained.”). As a result, this Court cannot provide any relief as it relates to the other charges for which a mistrial was granted and no conviction or sentence exists.

## II.

Based on the above, the State asks this Court to deny the Motion to Amend Notice of Appeal and grant the State’s Motion to Strike portions of Appellant’s Initial Brief of Appellant. Appellant should be solely allowed to address the convictions and sentences resulting from the jury trial which he appealed in his Notice of Appeal served October 14, 2019—burglary in the first degree and attempted armed robbery. The Amendment of the Notice of Appeal would be improper because Appellant does not have convictions or sentences related to the other charges for which he may appeal. Therefore, this Court should require an Amended Initial Brief of Appellant with no references to the guilty pleas which occurred subsequent to Appellant’s trial.

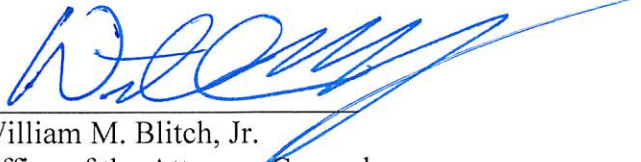
WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, strike Appellant’s Initial Brief of Appellant; require Appellant to serve and file

an Amended Initial Brief of Appellant eliminating any reference to Appellant's attempted guilty plea; deny the Motion to Amend the Notice of Appeal; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General

BY:   
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ATTORNEYS FOR RESPONDENT

July 17, 2020

# **EXHIBIT A**

Verdict

1 THE COURT: Do either of you have you any reason to  
2 give me as to why a mistrial should not be declared as to  
3 Indictments 19-00690, 00692 and 00693 -- murder, attempted  
4 murder and discharging a firearm into a dwelling?

5 MR. BARNETTE: I see no reason at this time. They  
6 could not reach a verdict, Your Honor. We'll be able to  
7 retry it at a later date.

8 MR. SCHULTZ: I see no reason, Your Honor.

9 THE COURT: Okay. Mistrial is declared in those three  
10 indictments.

11 MR. SCHULTZ: Thank you, Your Honor.

12 THE COURT: We'll take ten minutes while y'all prepare  
13 the sentencing documents.

14 (DVD marked Court's Exhibit No. 6; DVD marked Court's  
15 Exhibit No. 7; summary by Investigator Brandon Gardner  
16 marked Court's Exhibit No. 8.)

17 (Whereupon, a recess was taken.)

18 MR. BARNETTE: May it please the Court, Your Honor.

19 This is the case of State vs. Shaun Rogers, Jr. Your  
20 Honor, he was found guilty just shortly -- well, this  
21 afternoon. And there's been a period of time between  
22 these.

23 Your Honor, he was found guilty of burglary first on  
24 19-GS-11-694, Your Honor, and also found guilty by the jury  
25 on 19-GS-11-691, Your Honor.

# **EXHIBIT B**

Guilty plea and sentence

1 impose a sentence. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Well, do you still wish to go forward and  
4 plead guilty to voluntary manslaughter and possession of a  
5 weapon during the commission of that violent crime pursuant  
6 to North Carolina vs. Alford?

7 (Pause to confer with counsel.)

8 THE DEFENDANT: No, sir.

9 THE COURT: Okay.

10 MR. BARNETTE: We would like to go forward on the  
11 other two, Your Honor.

12 THE COURT: Yeah. We'll proceed with sentencing on  
13 the other two.

14 MR. BARNETTE: Yes, sir.

15 THE COURT: All right. I have before me Indictment  
16 2019-00694. That's an indictment for burglary in the first  
17 degree wherein you have been convicted by the jury of that  
18 offense.

19 And I also have before me Indictment 2019-00691, an  
20 indictment for attempted armed robbery, wherein you have  
21 been found guilty by a jury of having committed that  
22 offense.

23 Does the state have any additional information you'd  
24 like to provide me with respect to those charges?

25 MR. BARNETTE: Your Honor, I know Mr. Good wants to --

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The State,

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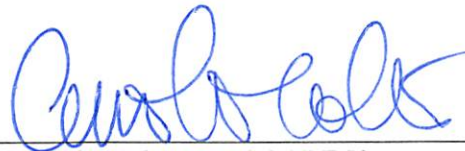
Appellant.

**PROOF OF SERVICE**

I, Caroline Collins, certify that I have served the Reply to Appellant's Return and State's Return on Appellant by email to Tommy A. Thomas, Esquire, at the email address provided by AIS.

I further certify that all parties required by Rule to be served have been served.

This 17<sup>th</sup> day of July, 2020.



CAROLINE COLLINS  
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## Caroline Collins

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**From:** Caroline Collins  
**Sent:** Friday, July 17, 2020 9:22 AM  
**To:** 'thomaslaw@me.com'  
**Cc:** 'Jackie Miller'; William Blitch  
**Subject:** The State v. Shaun Rogers, Jr. (2019-001778)  
**Attachments:** ROGERS Shaun - Reply to Appellant's Return and Return to Appellant's Motion to Amend Notice of Appeal - 2019-001778 (02328696xD2C78).PDF

Good Morning Mr. Thomas,

Attached please find a copy of the Reply to Appellant's Return and State's Return to Appellant's Motion to Amend Notice of Appeal in The State v. Shaun Rogers, Jr. (2019-001778). This document will be submitted to the Court of Appeals through the AIS One Drive system.

If you will, please reply to confirm receipt of this email.

Thank you!

*Caroline Collins*

Administrative Coordinator  
South Carolina Attorney General's Office  
P: (803) 734-3723

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