

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

BOBBY PYKE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213654

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS

2008-GS-40-369

2008-GS-40-531

THE STATE OF SOUTH CAROLINA

-VS-

BOBBY E. PIKE

TRANSCRIPT OF RECORD

MARCH 30, 2009
COLUMBIA, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

APPEARANCES:

VANESSA SHIPLEY, ESQUIRE
ATTORNEY FOR THE STATE

JENNIFER DAVIS, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

2. ,
GUILTY PLEA OF BOBBY PIKE

2

1 THE COURT: THANK YOU. PLEASE TAKE YOUR SEATS.

2 BOBBY E. PIKE, AFTER BEING DULY SWORN, TESTIFIED AS
3 FOLLOWS:

4 THE COURT: SIR, YOU ARE MR. BOBBY PIKE?

5 MR. PIKE: YES MA'AM.

6 THE COURT: OKAY. STATE, GO AHEAD AND CALL YOUR CASE.

7 MS. SHIPLEY: THANK YOU, YOUR HONOR. THE DEFENDANT
8 STANDS BEFORE YOU. HIS NAME IS BOBBY EARL PIKE. HE IS
9 REPRESENTED BY JENNIFER DAVIS FROM THE PUBLIC DEFENDER'S
10 OFFICE. YOUR HONOR, HE'S HERE TO PLEAD GUILTY TO TWO COUNTS
11 OF ASSAULT - EXCUSE ME - ARMED ROBBERY. INDICTMENT NUMBERS
12 ARE 2008-GS-40-531 AND 2008-GS-40-369.

13 THIS CASE WAS BEING PREPARED TO BE CALLED FOR TRIAL
14 TODAY BY THE STATE, AND HE WAS SERVED WITH NOTICE TO SEEK
15 LIFE WITHOUT PAROLE BACK ON JANUARY THE 28TH. IN EXCHANGE
16 FOR HIS PLEA, YOUR HONOR, THE STATE AND THE DEFENSE HAVE
17 ENTERED INTO A NEGOTIATED AGREEMENT OF 20 YEARS, AND WE ARE
18 WITHDRAWING THE LIFE-WITHOUT-PAROLE NOTICE.

19 THE COURT: OKAY. THANK YOU. MS. DAVIS, YOU REPRESENT
20 MR. PIKE?

21 MS. DAVIS: YES, YOUR HONOR.

22 THE COURT: AND HAVE YOU EXPLAINED TO HIM THE NATURE OF
23 THESE CHARGES, HIS MAXIMUM POSSIBLE PUNISHMENT AS WELL AS HIS
24 CONSTITUTIONAL RIGHTS?

25 MS. DAVIS: YES, YOUR HONOR.

1 THE COURT: AND DO YOU BELIEVE THAT HE HAS UNDERSTOOD
2 YOUR CONVERSATIONS?

3 MS. DAVIS: YES, YOUR HONOR.

4 THE COURT: AND YOU ARE AWARE THAT THE STATE HAD TRUE-
5 BILLED TWO INDICTMENTS FOR ARMED ROBBERY AND THAT MR. PIKE
6 WAS SERVED WITH LIFE WITHOUT THE POSSIBILITY OF PAROLE?

7 MS. DAVIS: YES, YOUR HONOR.

8 THE COURT: AND THAT WAS BASED ON HIS PRIOR RECORD.

9 MS. DAVIS: YES, MA'AM.

10 THE COURT: AND DO YOU BELIEVE THAT THE STATE WAS
11 JUSTIFIED IN SERVING THAT PARTICULAR NOTICE ON HIM?

12 MS. DAVIS: YES, YOUR HONOR.

13 THE COURT: OKAY. AND YOU WERE HERE AND READY TO GO TO
14 TRIAL THIS MORNING?

15 MS. DAVIS: YES, MA'AM.

16 THE COURT: AND YOU AGREE WITH THE STATE'S NEGOTIATIONS?

17 MS. DAVIS: YES, MA'AM.

18 THE COURT: AND THOSE NEGOTIATIONS HAVE BEEN DISCUSSED
19 WITH YOUR CLIENT.

20 MS. DAVIS: YES, YOUR HONOR.

21 THE COURT: AND ARE YOU AWARE OF ANY MENTAL OR PHYSICAL
22 ISSUES AFFECTING HIS ABILITY TO PROCEED TODAY?

23 MS. DAVIS: NO, YOUR HONOR.

24 THE COURT: AND DO YOU BELIEVE THAT IF WE HAD GONE TO
25 TRIAL THAT A CONVICTION WOULD BE PROBABLE?

1 MS. DAVIS: YES, YOUR HONOR.

2 THE COURT: DO YOU AGREE WITH HIS DECISION TO PLEAD
3 TODAY?

4 MS. DAVIS: YES, YOUR HONOR.

5 THE COURT: AND WHAT IS YOUR UNDERSTANDING AS TO HOW HE
6 WISHES TO PLEAD?

7 MS. DAVIS: GUILTY, YOUR HONOR.

8 THE COURT: AND DO YOU AGREE WITH THAT DECISION AS WELL?

9 MS. DAVIS: YES, MA'AM.

10 THE COURT: I HAVE IN FRONT OF ME THE RICHLAND COUNTY
11 GENERAL SESSIONS ADVISEMENT OF RIGHTS FORM. DID YOU GO OVER
12 THIS WITH YOUR CLIENT?

13 MS. DAVIS: YES, YOUR HONOR.

14 THE COURT: AND DO YOU BELIEVE HE UNDERSTOOD THOSE
15 QUESTIONS?

16 MS. DAVIS: YES, YOUR HONOR.

17 THE COURT: THANK YOU.

18 EXAMINATION BY THE COURT

19 Q. MR. PIKE?

20 A. YES, MA'AM.

21 Q. ARE YOU UNDER THE INFLUENCE OF ANY ALCOHOL, DRUGS OR
22 MEDICATION

23 A. NO, MA'AM.

24 Q. AND HAVE YOU EVER BEEN EVALUATED FOR YOUR MENTAL HEALTH?
25 A. NO, MA'AM, NOT THAT I KNOW OF.

1 Q. OKAY. ANY PSYCHOLOGICAL EVALUATION?

2 A. NO.

3 Q. OKAY. AND YOU DID GO OVER THE RICHLAND COUNTY GENERAL
4 SESSIONS ADVISEMENT OF RIGHTS FORM WITH YOUR ATTORNEY?

5 A. YES, MA'AM.

6 Q. DID YOU UNDERSTAND THOSE QUESTIONS?

7 A. YES, MA'AM.

8 Q. AND ARE THESE YOUR RESPONSES TO THE QUESTIONS?

9 A. YES, MA'AM.

10 Q. AND THIS IS ALSO YOUR SIGNATURE ON THE FORM?

11 A. YES, MA'AM.

12 Q. OKAY. ALL RIGHT. THIS WILL BE MADE A PART OF THE
13 RECORD HERE. THE INDICTMENTS THEMSELVES INDICATE THAT THESE
14 OFFENSES OCCURRED IN RICHLAND COUNTY ON OR ABOUT
15 DECEMBER 26TH, 2007, AND DECEMBER 30TH, 2007, IN WHICH YOU
16 ARE ALLEGED TO HAVE COMMITTED A ROBBERY BY FELONIOUSLY TAKING
17 FROM THE PERSON OR PRESENCE OF VICTORIA CUSHMAN ROSES BY
18 MEANS OF FORCE OR INTIMIDATION CERTAIN GOODS OR MONIES,
19 PARTICULARLY HER POCKETBOOK, WHILE EITHER ARMED WITH A DEADLY
20 WEAPON OR EITHER BY YOUR ACTIONS OR WORDS THAT SUGGEST THAT
21 YOU HAD ONE DURING THE COMMISSION OF THIS CRIME, AND THAT WAS
22 FOR THE OFFENSE AS TO MS. VICTORIA CUSHMAN ROSES ON
23 DECEMBER 26, 2007. HOW DO YOU WISH TO PLEAD TO THAT OFFENSE?

24 A. I PLEAD GUILTY.

25 Q. OKAY. AND THAT THIS SAME OFFENSE OCCURRING IN RICHLAND

GUILTY PLEA OF BOBBY PIKE

1 COUNTY ON OR ABOUT DECEMBER 30, 2007, WITH RESPECT TO A
2 SHANEKA (PHONETIC) HOOK THAT YOU TOOK BY MEANS OF FORCE OR
3 INTIMIDATION CERTAIN MONEY, EITHER BEING ARMED WITH A DEADLY
4 WEAPON OR REPRESENTING YOURSELF AS HAVING SUCH, HOW DO YOU
5 WISH TO PLEAD?

6 A. I PLEAD GUILTY.

7 Q. DO YOU UNDERSTAND THAT BY PLEADING GUILTY YOU'RE GIVING
8 UP YOUR CONSTITUTIONAL RIGHT TO A JURY TRIAL?

9 A. YES, MA'AM.

10 Q. AND THAT AT A JURY TRIAL YOU CAN CHALLENGE THE STATE'S
11 EVIDENCE AND ANY OF THEIR WITNESSES?

12 A. YES, MA'AM.

13 Q. AND ARE YOU AWARE THAT YOU GIVE UP ALL CONSTITUTIONAL
14 RIGHTS, WHETHER I SPECIFICALLY MENTION THEM OR NOT?

15 A. YES, MA'AM.

16 Q. BUT YOUR RIGHT TO REMAIN SILENT AND PARTICULARLY YOUR
17 RIGHT TO A JURY TRIAL?

18 A. YES, MA'AM.

19 Q. DO YOU UNDERSTAND THE STATE HAS THE BURDEN OF PROOF IN
20 THIS CASE BEYOND A REASONABLE DOUBT?

21 A. YES, MA'AM.

22 Q. AND THEY CANNOT REQUIRE YOU TO TESTIFY AGAINST YOURSELF
23 AT A TRIAL. ARE YOU AWARE OF THAT?

24 A. YES, MA'AM.

25 Q. ARE YOU AWARE THAT YOU DON'T EVEN HAVE TO PUT UP ANY

1 DEFENSES, TESTIMONY, OR ANY EVIDENCE BECAUSE THE STATE HAS
2 THE BURDEN OF PROVING THE CASE BEYOND A REASONABLE DOUBT, AND
3 THAT BURDEN OF PROOF REMAINS WITH THEM THROUGHOUT THE TRIAL?
4 ARE YOU AWARE OF THAT?

5 A. YES, MA'AM.

6 Q. BUT IF YOU WANTED TO AT TRIAL YOU COULD PRESENT
7 DEFENSES, TESTIMONY, AND OTHER EVIDENCE AS WELL AS CHALLENGE
8 ANY OF THE STATE'S WITNESSES AND THEIR EVIDENCE. ARE YOU
9 AWARE OF THAT?

10 A. YES, MA'AM.

11 Q. BUT, AGAIN, YOU GIVE UP THAT RIGHT WHEN YOU PLEAD
12 GUILTY. ARE YOU AWARE OF THAT?

13 A. YES, MA'AM.

14 Q. OKAY. ARMED ROBBERY IS A MOST SERIOUS OFFENSE, NOT JUST
15 BY NATURE, BUT IT'S A CATEGORICAL MOST SERIOUS STRIKE AGAINST
16 YOU. ARE YOU AWARE OF THAT?

17 A. YES, MA'AM.

18 Q. AND TO THE EXTENT THAT YOU HAVE ADDITIONAL STRIKES YOU
19 COULD FIND YOURSELF FACING LIFE WITHOUT THE POSSIBILITY OF
20 PAROLE. DO YOU UNDERSTAND THAT?

21 A. YES, MA'AM.

22 Q. AND OBVIOUSLY, BASED ON YOUR PRIOR RECORD, YOU ALREADY
23 ACCUMULATED A STRIKE OR STRIKES. ARE YOU AWARE OF THAT?

24 A. YES, MA'AM.

25 Q. AND THAT'S WHY THE STATE SERVED YOU WITH LIFE WITHOUT

1 THE POSSIBILITY OF PAROLE INITIALLY FOR THIS CASE. ARE YOU
2 AWARE OF THAT?

3 A. YES, MA'AM.

4 Q. BUT THEY HAVE NOW WITHDRAWN THAT FOR PURPOSES OF TRYING
5 TO WORK OUT A PLEA ARRANGEMENT, AND YOU AND YOUR ATTORNEY
6 HAVE NEGOTIATED A SENTENCE OF 20 YEARS. IS THAT CORRECT?

7 A. YES, MA'AM.

8 Q. YOU UNDERSTOOD THOSE NEGOTIATIONS WITH YOUR ATTORNEY.

9 A. YES, MA'AM.

10 Q. THOSE WERE ADEQUATELY EXPLAINED TO YOU?

11 A. YES, MA'AM.

12 Q. AND YOU'RE SATISFIED WITH HER COUNSEL.

13 A. YES, MA'AM.

14 Q. AND YOU FEEL LIKE SHE HAS ADDRESSED ANY QUESTIONS,
15 ISSUES, OR ANY CONCERNS OR QUESTIONS YOU MIGHT HAVE HAD?

16 A. YES, MA'AM.

17 Q. AND SHE'S BEEN RESPONSIVE TO YOUR CONCERNS AS WELL.

18 A. YES, MA'AM.

19 Q. OKAY. DO YOU HAVE ANY FURTHER QUESTIONS OF HER AT THIS
20 TIME?

21 A. NO, MA'AM.

22 Q. OKAY. AND YOU'RE AWARE THAT THIS IS GOING TO BE A
23 FELONY ON YOUR RECORD AS WELL.

24 A. YES, MA'AM.

25 Q. AND THAT YOU'RE GOING TO SERVE 85 PERCENT OF THE TIME AT

1 A MINIMUM.

2 A. YES, MA'AM.

3 Q. OKAY. ALL RIGHT. HAVE YOU UNDERSTOOD ALL THE QUESTIONS
4 THAT THE COURT HAS ASKED YOU?

5 A. YES, MA'AM.

6 Q. OKAY. HAVE YOUR ANSWERS BEEN TRUTHFUL?

7 A. YES, MA'AM.

8 Q. HAVE THEY IN ANY WAY BEEN SUGGESTED BY ANYONE?

9 A. NO, MA'AM.

10 Q. YOU STILL WISH TO PLEAD GUILTY?

11 A. YES, MA'AM.

12 Q. AND IS ANYONE FORCING YOU OR THREATENING YOU TO PLEAD
13 GUILTY?

14 A. NO, MA'AM.

15 Q. ARE YOU DOING SO OF YOUR OWN FREE WILL?

16 A. YES, MA'AM.

17 Q. ~~AND, AGAIN, THIS IS AFTER CONSULTATION WITH YOUR~~
18 ATTORNEY?

19 A. YES, MA'AM.

20 Q. OKAY. ALL RIGHT. LISTEN MORE CAREFULLY AS THE STATE
21 GIVES ME THE FACTS IN SUPPORT OF THE CASE, BUT AT THIS TIME
22 THE COURT WILL ACCEPT YOUR PLEA. I FIND THAT IT'S KNOWING,
23 VOLUNTARY, AND INTELLIGENT, AND YOU WOULD HAVE TEN DAYS TO
24 APPEAL THE GUILTY PLEA AND/OR SENTENCE. ARE YOU AWARE OF
25 THAT?

1 A. YES, MA'AM.

2 THE COURT: OKAY.

3 MS. SHIPLEY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
4 COURT? I'LL START WITH THE FIRST INCIDENT THAT INVOLVES
5 VICTORIA CUSHMAN ROSES, THE VICTIM IN THE CASE. YOUR HONOR,
6 SHE HAD JUST PULLED UP TO THE C.V.S. PARKING LOT LOCATED AT
7 121 CLEMSON ROAD. IT WAS ABOUT 7:45 ON DECEMBER 26TH, 2007.
8 IT HAPPENED TO BE MS. CUSHMAN'S BIRTHDAY THAT DAY. SHE WAS
9 WITH HER 72-YEAR-OLD MOTHER.

10 HER MOTHER HAD TO GO INSIDE TO BUY CANDLES, AND MS.
11 CUSHMAN DECIDED TO WAIT IN THE CAR TO MAKE SOME PHONE CALLS.
12 WHILE SHE WAS PARKED IN THE PARKING LOT, THERE WERE CARS ON
13 EITHER SIDE OF HER AND SHE NOTICED SOMEONE APPROACHING FROM
14 THE REAR. THE NEXT THING SHE KNOWS IS THE PASSENGER DOOR OF
15 HER VEHICLE IS OPENED, AND A WHITE MALE DIRTY-LOOKING WITH A
16 MUSTACHE AND GLASSES SITS DOWN NEXT TO HER WITH A SHARP SHINY
17 METAL OBJECT IN HIS RIGHT OR IN HIS -- ONE OF HIS HANDS AND
18 HE DEMANDS HER POCKETBOOK. HE GETS WITHIN INCHES OF HER
19 FACE.

20 THE CONSOLE IS RELATIVELY SMALL, AND SHE SAID THAT WHILE
21 HE WAS IN THE CAR THE LIGHT WAS ON AND SHE HAD A CLEAR LOOK
22 OF HIS FACE. THE OBJECT THAT WE BELIEVE HE BRANDISHED TO
23 HER, YOUR HONOR, IS A MULTI-TOOL THAT I'LL EXPLAIN HOW WE GOT
24 POSSESSION OF IT, BUT SHE INDICATED IT WAS A SHARP OBJECT
25 LIKE SO. SHE COMPLIED IMMEDIATELY WITH HIS DEMANDS, AND HE

1 DID GRAB HER POCKETBOOK AND TOOK OFF. SHE INDICATED HE WAS
2 WEARING LIGHT BLUE JEANS, A BLUE -- A DARKER BLUE SORT OF
3 DENIM PLAID JACKET AND DIRTY WHITE TENNIS SHOES.

4 YOUR HONOR, SHE ALSO INDICATED IN PREPARATION FOR TRIAL
5 THAT SHE HAD NOTICED HIM A FEW MINUTES -- WHEN SHE PULLED
6 INTO THE PARKING LOT NEXT TO THE DOORWAY OF THE C.V.S. AND
7 THAT SHE DIDN'T REALLY THINK ANYTHING OF IT, BUT WHEN SHE SAW
8 HIM GET IN THE CAR, SHE RECOGNIZED HIM FOR JUST THAT BRIEF
9 MOMENT OF PULLING INTO THE PARKING LOT BY THE FRONT DOOR.

10 YOUR HONOR, AT THAT POINT SHE REPORTED IT TO THE POLICE.
11 SHE RAN INSIDE THE STORE. THE STORE CLERK GAVE HER -- SHE
12 LOST HER CELL PHONE. BASICALLY SHE HAD DROPPED HER PHONE IN
13 THE POCKETBOOK AND HE TOOK IT, SO SHE HAD TO USE THE STORE
14 PHONE. SHE WENT AND TOLD HER MOTHER WHAT HAD HAPPENED. SHE
15 WAS VERY UPSET AND DISTRAUGHT, AND THE STORE CLERK GAVE HER
16 THE PHONE TO CALL 9-1-1.

17 ~~SHE GAVE A VERY ACCURATE DESCRIPTION OF THIS PERPETRATOR~~
18 TO THE 9-1-1 OPERATOR, AND AT THAT POINT, YOUR HONOR, THE
19 POLICE ARRIVED AND THEY WERE UNABLE TO FIND ANY SUSPECTS IN
20 THE AREA. WELL, FOUR DAYS LATER ON DECEMBER 30TH, 2007, AT
21 ABOUT 5 IN THE MORNING -- 5:35 TO BE EXACT IN THE MORNING AT
22 10541 TWO NOTCH ROAD WHICH IS THE POPS EXPRESS PANTRY -- IT'S
23 ABOUT FOUR MILES AWAY FROM THE C.V.S., IN CLOSE PROXIMITY,
24 GENERAL SAME AREA OF DOWNTOWN OR OF NORTHEAST COLUMBIA.

25 AT THAT POINT, YOUR HONOR, THERE WERE TWO WOMEN WORKING

1 AT THE POPS EXPRESS PANTRY. ONE IS A MARIE TUCKER WHO IS
2 PRESENT, AND THE OTHER ONE IS SHANEKA HOOK. ALSO MS. CUSHMAN
3 IS PRESENT. ALL THE VICTIMS DO WANT TO ADDRESS YOU AT THE
4 APPROPRIATE TIME.

5 MS. HOOK AND MS. TUCKER WERE WORKING THAT MORNING, AND
6 IT WAS A RAINY MORNING, YOUR HONOR, ON DECEMBER 30TH. MS.
7 TUCKER INDICATED THAT -- ACTUALLY BOTH LADIES INDICATED THAT
8 A WHITE MALE SUBJECT WEARING FADED BLUE JEANS AND A BLUE
9 SHIRT WALKED INTO THE STORE WITH DIRTY WHITE TENNIS SHOES.
10 HE APPEARED TO BE UNKEMPT, SHAGGY HAIR, MUSTACHE, AND WIRE-
11 RIM GLASSES. WALKED INTO THE STORE, ASKED THE LADIES IF HE
12 COULD USE THE REST ROOM. THEY DIRECTED HIM TO THE REST ROOM.
13 HE WENT INTO THE REST ROOM, AND ACCORDING TO MS. TUCKER, SHE
14 FELT SOMETHING WAS STRANGE BECAUSE HE WAS COMPLETELY DRY EVEN
15 THOUGH IT WAS RAINING OUTSIDE AND SHE DIDN'T SEE A VEHICLE
16 WHERE HE HAD GOTTEN OUT OF SO SHE COULDN'T EXPLAIN HOW HE IS
17 DRY WHEN IT'S POURING DOWN RAIN OUT THERE.

18 HE WAS ACTING NERVOUS, AND AT THAT POINT SHE INDICATED
19 THAT THAT'S WHAT CAUGHT HER ATTENTION AND THEY PAID CLOSE
20 ATTENTION TO HIM. HE WAS IN THE REST ROOM FOR A FEW MINUTES,
21 AND THEN HE LEFT WITHOUT MAKING ANY SORT OF EYE CONTACT,
22 HOLDING HIS HEAD DOWN, AND THEY JUST FELT SOMETHING WAS
23 WEIRD. HE THEN LEFT THE STORE, YOUR HONOR, AND ABOUT FIVE TO
24 TEN MINUTES LATER AS THEY'RE CONTINUING ON WITH THEIR DUTIES
25 AT WORK, HE RETURNS INTO THE STORE, COMES STRAIGHT UP TO THE

GUILTY PLEA OF BOBBY PIKE

13

1 COUNTER, AND THEY NOTICED WHAT APPEARED TO BE A CHROME
2 HANDGUN IN HIS HAND.

3 WELL, IT TURNS OUT, YOUR HONOR - AND WE'LL GET TO IT IN
4 THE DETAILS - THE WAY HE WALKS INTO THE STORE -- AND IT'S ALL
5 ON VIDEOTAPE. HE WALKS UP LIKE SO WITH THE -- BRANDISHING
6 IT, PRESENTING IT BUT NOT POINTING IT AT THEM. AND HE SAYS,
7 "GIVE ME THE MONEY," AND AT THAT POINT MS. TUCKER TELLS
8 SHANEKA, "TURN IT OVER. GIVE HIM THE MONEY," BECAUSE SHE SAW
9 THE GUN AND SO DID MS. TUCKER. SO THEY IMMEDIATELY TURNED
10 THE MONEY OVER. YOU SEE THE DEFENDANT PUTTING THE OBJECT IN
11 A POCKET AND THEN FREEING UP BOTH HANDS TO GRAB THE MONEY OFF
12 OF THE COUNTER.

13 HE THEN FLEES THE STORE, YOUR HONOR, AND THIS TAKES JUST
14 A MATTER OF SECONDS AND IT'S ALL ON VIDEOTAPE. YOU SEE A
15 CLEAR PICTURE OF HIS FACE ON THE CAMERA, AND HE LEAVES THE
16 STORE ON FOOT AND THEY DID NOT SEE HIM GET INTO A CAR OR
17 ANYTHING. THEY IMMEDIATELY LOCK THE DOOR AND CALL 9-1-1, AND
18 THEY GAVE A DESCRIPTION OF THE PERPETRATOR THAT FIT THE
19 DESCRIPTION OF MS. CUSHMAN'S ROBBERY FOUR DAYS EARLIER.
20 ALSO, YOUR HONOR, THEY IMMEDIATELY REPORTED THAT HE HAD A
21 GUN. BOTH WOMEN WERE CONVINCED THAT THE HANDLE OF THIS
22 OBJECT WAS THE HANDLE OF A CHROME-IN-COLOR HANDGUN,
23 AUTOMATIC.

24 YOUR HONOR, AT THAT POINT INVESTIGATOR ISENHOWARD GETS
25 ASSIGNED TO THE CASE, AND HE NOTICES, BECAUSE IT'S HIS

1 REGION, THAT THESE TWO DESCRIPTIONS ARE UNCANNILY SIMILAR.
2 HE BEGINS AN INVESTIGATION. IN THE MEANTIME, THE STORE WAS
3 VERY PROACTIVE. THEY WERE ABLE TO GET STILLS FROM THE
4 SURVEILLANCE CAMERA AND POSTED PHOTOGRAPHS OF THE DEFENDANT
5 ON TO THE STORE WINDOW SO IF ANY CUSTOMERS KNEW HIM THEY
6 WOULD BE ABLE TO PROVIDE SOME INFORMATION TO HELP THE POLICE
7 WITH THE INVESTIGATION.

8 AT THAT POINT, A FEW DAYS LATER -- TO BE EXACT, ON THE
9 4TH OF JANUARY OF 2008 TWO STORE CUS -- REGULAR CUSTOMERS
10 CAME INTO THE STORE AND TOLD MS. SHANEKA HOOK, "I KNOW WHO
11 THAT IS. THAT'S MY RELATIVE. HE LIVES AT 128 SHANNON WOOD
12 ROAD HERE IN ELGIN, SOUTH CAROLINA, IN RICHLAND COUNTY." IT
13 WAS A RELATIVE BY THE NAME OF DONNA BOUKNIGHT AND HER FATHER,
14 MARK SMITH. SHANEKA KNEW DONNA BECAUSE SHE WAS A REGULAR
15 CUSTOMER, AND SHE EVEN INDICATED, YOU KNOW, HE WAS ACTING
16 STRANGE THIS TIME -- THIS PERIOD IN TIME. I THINK HE WAS --
17 ~~MIGHT BE BACK ON DRUGS.~~

18 AND SO AT THAT POINT, YOUR HONOR, MS. HOOK CONTACTED LAW
19 ENFORCEMENT, AND A REPORT WAS TAKEN WHERE BOTH WITNESSES GAVE
20 THEIR FULL NAMES AND ADDRESSES AND CONTACT INFORMATION AS
21 WELL AS ALL THE INFORMATION PERTAINING TO THE DEFENDANT: HIS
22 NAME, HIS ADDRESS, AND SO FORTH. AT THAT POINT, ARMED WITH A
23 NAME, INVESTIGATOR ISENHOWARD DEVELOPED A PHOTOGRAPHIC LINE-
24 UP OF THE DEFENDANT, AND HE PRESENTED IT TO MS. TUCKER WHO
25 IMMEDIATELY IDENTIFIED THIS DEFENDANT AS THE PERPETRATOR OF

GUILTY PLEA OF BOBBY PIKE

15

1 THE ARMED ROBBERY.

2 AT THAT POINT, YOUR HONOR, THE INVESTIGATORS WENT TO THE
3 DEFENDANT'S RESIDENCE, AND HIS FAMILY WAS VERY COOPERATIVE
4 WITH LAW ENFORCEMENT. IN FACT, THEY HAD ALLOWED LAW
5 ENFORCEMENT IN WITHOUT A SEARCH WARRANT. THEY GAVE CONSENT,
6 AND EVENTUALLY, YOUR HONOR, THEY WERE ABLE TO RECOVER THIS
7 ITEM RIGHT HERE WHICH IS A MULTI-TOOL LEATHERMAN TOOL ON THE
8 DEFENDANT'S COUNTER IN HIS ROOM ON I BELIEVE A DRESSER --
9 DRESSER COUNTER. THAT IS TURNED OVER TO LAW ENFORCEMENT, AND
10 THEN AT THAT POINT, YOUR HONOR, ANOTHER PHOTOGRAPHIC LINE-UP
11 IS PRESENTED TO MS. VICTORIA CUSHMAN WITH THE INVESTIGATOR
12 ISENHOWARD, AND MS. CUSHMAN WITHOUT HESITATION PICKS THE
13 DEFENDANT OUT AS THE PERPETRATOR OF HER ARMED ROBBERY.

14 YOUR HONOR, THE DEFENDANT DID GIVE A STATEMENT. HE WAS
15 MIRANDIZED BY INVESTIGATOR ISENHOWARD AND INVESTIGATOR
16 MILLER, AND HE DENIED ANY INVOLVEMENT IN MS. CUSHMAN'S
17 ROBBERY. HOWEVER, HE INDICATED THAT THAT WAS HIM THAT
18 COMMITTED THE ARMED ROBBERY AT THE EXXON, AT THE -- AT THE
19 POPS PANTRY EXPRESS, YOUR HONOR, ON TWO NOTCH ROAD AND THAT
20 HE DENIED HAVING A GUN BUT TOLD THE OFFICERS THAT HE CARRIED
21 A MULTI -- SILVER LEATHERMAN MULTI-TOOL AND HE ALWAYS CARRIED
22 THE TOOL WITH HIM, AND THAT'S WHAT HE HAD IN HIS HAND WHEN HE
23 DEMANDED THE MONEY.

24 SO UNDER THE STATUTE FOR ARMED ROBBERY, THE STATE WOULD,
25 FIRST OF ALL, CONTEND THAT THIS IN AND OF ITSELF IS A DEADLY

1 WEAPON RIGHT HERE, BUT THE WAY HE WAS USING IT, YOUR HONOR,
2 FOR THE CONVENIENCE STORE ROBBERY WAS CLEARLY TO MAKE THE
3 VICTIMS THINK HE WAS ARMED WITH A GUN, I MEAN THE WAY THAT HE
4 HELD IT. AS FOR MS. CUSHMAN'S ROBBERY, HE HAD IT OUT LIKE
5 SO. WE CONTEND -- OUR THEORY IS HE HAD IT OUT LIKE SO, AND
6 SO SHE BELIEVED HE WAS ARMED WITH A KNIFE.

7 YOUR HONOR, HE ALSO ADMITTED TO INVESTIGATORS THAT HE
8 SAW HIS PICTURE ON THE NEWS AND THAT HE SHAVED HIS MUSTACHE
9 TO CONCEAL HIS IDENTITY WHEN HE SAW HIMSELF ON THE NEWS. HE
10 ALSO INDICATED THAT HE -- AFTER GIVING THE STATEMENT, YOUR
11 HONOR, HE INDICATED ALSO THAT HE FLED THE STORE IN A TRUCK
12 AND THAT HE WAS BASICALLY COMMITTING THESE ROBBERIES FOR
13 PURPOSES OF GETTING MONEY FOR CRACK COCAINE, THAT HE HAD
14 FALLEN OFF THE WAGON AND THAT HE WAS ON A CRACK BINGE.

15 SO AT THAT POINT, YOUR HONOR, THE DEFENDANT WAS ARRESTED
16 WITH TWO ARMED ROBBERIES. HE REFUSED TO PUT HIS STATEMENT IN
17 WRITING, BUT, YOUR HONOR, THE INVESTIGATORS DID ARREST HIM
18 FOR THOSE TWO OFFENSES.

19 WHEN HIS CASE GOT SENT TO OUR OFFICE, YOUR HONOR, THE
20 FIRST THING PROSECUTORS DO IS LOOK AT PRIOR CRIMINAL
21 HISTORIES. THIS DEFENDANT HAS AN EXTENSIVE PRIOR CRIMINAL
22 HISTORY. FROM 1985: GRAND LARCENY, BREAKING INTO A MOTOR
23 VEHICLE, GRAND LARCENY OF A MOTOR VEHICLE, BURGLARY IN THE
24 SECOND DEGREE, AND MALICIOUS INJURY TO REAL PROPERTY. THEN
25 IN 1987 HE WAS CONVICTED OF BURGLARY IN THE SECOND DEGREE AND

GUILTY PLEA OF BOBBY PIKE

17

1 POSSESSION OF A STOLEN PISTOL - EXCUSE ME - VEHICLE, NOT
2 PISTOL. YOUR HONOR, HE RECEIVED A 15-YEAR SENTENCE AND THEN
3 THOSE -- THAT SENTENCE WAS RUN CONCURRENT WITH THE FOLLOWING
4 OFFENSES: BURGLARY SECOND DEGREE, ARMED ROBBERY, CRIMINAL
5 SEXUAL CONDUCT IN THE FIRST DEGREE. HE RECEIVED A 30-YEAR
6 SENTENCE FOR THAT, AND I WILL MAKE -- THOSE ARE THE
7 CONVICTIONS THAT WE DO HAVE CERTIFIED COPIES OF AS BEING THE
8 FIRST STRIKE UNDER LIFE-WITHOUT-PAROLE PURPOSES.

9 HE WAS ALSO CONVICTED OF BURGLARY SECOND DEGREE, TWO
10 COUNTS, AND TWO COUNTS OF GRAND LARCENY. HE RECEIVED TEN
11 YEARS FOR THAT, AND ALL SENTENCES WERE TO RUN CONCURRENT. SO
12 WHEN HE GOT THE 30 YEARS, YOUR HONOR, IT WAS THE PRE '96
13 STATUTE, SO HE DID NOT HAVE TO SERVE 85 PERCENT. HE WAS THEN
14 PAROLED, YOUR HONOR, IN 2004 OR SOMETIME BEFORE 2004 BECAUSE
15 IN '04 HE WAS CONVICTED OF BREAKING INTO A COIN-OPERATED
16 MACHINE. THERE WAS ALSO A 2005 BURGLARY SECOND FIVE-YEAR
17 PROBATION OR PAROLE REVOCATION, AND AS SOON AS HE GOT OUT OF
18 THAT -- OUT OF PRISON, YOUR HONOR, OCTOBER 26TH, 2007, SOME
19 TWO MONTHS PRIOR TO MS. CUSHMAN'S ROBBERY, HE WAS ARRESTED IN
20 SUMTER COUNTY FOR BURGLARY IN THE SECOND DEGREE, A NON-
21 VIOLENT. OBVIOUSLY HE WAS ABLE TO POST BOND TO PUT HIM BACK
22 IN RICHLAND COUNTY TO COMMIT TWO MORE ROBBERIES, ARMED
23 ROBBERIES.

24 YOUR HONOR, INVESTIGATOR ISENHOWARD IS HERE AS WELL AS
25 MARIE TUCKER AND MS. CUSHMAN-ROSES, AND I BELIEVE MS. HOOK IS

1 EN ROUTE, BUT AT THE APPROPRIATE TIME THE VICTIMS WOULD LIKE
2 TO ADDRESS YOU, YOUR HONOR.

3 BY THE COURT:

4 Q. OKAY. AND FIRST BEFORE SHE PROCEEDS ON WITH THE
5 VICTIMS, MR. PIKE, YOU HEARD THE SOLICITOR GIVE YOU THEIR
6 RENDITION OF THE FACTS BASED ON THEIR INVESTIGATION. ARE
7 THERE ANY FACTS THAT YOU WISH TO CHALLENGE OR DISPUTE AT THIS
8 TIME?

9 A. I WASN'T PAROLED IN 2004. I MAXED OUT A SENTENCE. NO,
10 I DON'T -- I DON'T CON -- I DON'T WANT TO CONTEND (SIC) IT.

11 Q. OKAY. SO YOU AGREE WITH THOSE FACTS---

12 A. CONTEST IT.

13 Q. ---THAT SHE'S INDICATED TO THE COURT?

14 A. MA'AM?

15 Q. YOU AGREE WITH THOSE FACTS THAT SHE'S INDICATED TO THE
16 COURT?

17 A. SOME I AGREE WITH, BUT MY LAWYER IS GOING TO GO OVER
18 THAT.

19 Q. OKAY. WELL, LET'S DO IT THIS WAY. SHE HAS GIVEN FACTS
20 THAT SUPPORT THE INDICTMENT THAT I READ TO YOU EARLIER, AND
21 ESSENTIALLY I NEED TO MAKE SURE THAT YOU AGREE WITH THE
22 ELEMENTS OF THE CRIME AND THAT PARTICULARLY ON THE DATES THAT
23 I GAVE YOU EARLIER THAT YOU USED MEANS OF FORCE OR
24 INTIMIDATION WITH RESPECT TO SHANEKA HOOKS AS WELL AS
25 VICTORIA CUSHMAN-ROSES. DO YOU AGREE WITH THAT?

GUILTY PLEA OF BOBBY PIKE

19

1 A. YES, MA'AM.

2 Q. THAT YOU APPROACHED THEM BY SOME MEANS OF FORCE OR --
3 AND INTIMIDATION?

4 A. YES, MA'AM.

5 Q. OKAY. AND THAT YOU MADE THEM BELIEVE THAT YOU WERE
6 ARMED WITH SOMETHING DEADLY, WHETHER OR NOT IT WAS ACTUALLY
7 SOMETHING DEADLY.

8 A. YES, MA'AM.

9 Q. OKAY. AND THAT'S THE INSTRUMENT THAT MS. SHIPLEY WAS
10 HOLDING OUT EARLIER. IS THAT CORRECT?

11 A. YES, MA'AM.

12 Q. OKAY. AND THAT THE WAY IN WHICH YOU PRESENTED IT TO
13 BOTH OF THESE PERSONS, WHICHEVER MANNER AND IT MAY HAVE BEEN
14 A DIFFERENT METHOD OR MANNER AS TO EACH TIME, BUT WHICHEVER
15 WAY YOU DID IT, YOU DID IT FOR PURPOSES OF ALARMING THEM OR
16 MAKING THEM BECOME FRIGHTENED. IS THAT CORRECT?

17 A. YES, MA'AM.

18 Q. OKAY. AND THAT YOU ALSO THEN TOOK THINGS FROM THEIR
19 PERSON OR PRESENCE. IS THAT CORRECT?

20 A. YES, MA'AM.

21 Q. OKAY. ALL RIGHT. SO YOU STILL WISH TO PLEAD GUILTY
22 KNOWING THAT THOSE ARE THE FACTS THAT SUPPORT THIS INDICTMENT
23 -- THESE INDICTMENTS?

24 A. YES, MA'AM. YES, MA'AM.

25 THE COURT: OKAY. I'M HAPPY TO HEAR FROM YOUR VICTIMS.

1 MS. SHIPLEY: THANK YOU, YOUR HONOR. MS. CUSHMAN, WOULD
2 YOU LIKE TO ADDRESS THE COURT?

3 MS. CUSHMAN-ROSES: MY NAME IS VICTORIA CUSHMAN-ROSES,
4 AND I WOULD LIKE TO THANK THE COURT AND THE LAW ENFORCEMENT
5 FOR CAPTURING AND BRINGING HIM TO JUSTICE. THANK YOU VERY
6 MUCH.

7 THE COURT: OKAY. THANK YOU, MA'AM.

8 MS. SHIPLEY: THIS IS MARIE TUCKER.

9 THE COURT: OKAY.

10 MS. TUCKER: HELLO. I'M MARIE TUCKER, AND I'M JUST GLAD
11 TO SEE JUSTICE SERVED BECAUSE HE VIOLATED ME AND I WAS
12 HELPLESS. THERE WAS NOTHING THAT I COULD DO, AND IT MADE ME
13 VERY ANGRY AND I HOPE JUSTICE IS JUST SERVED.

14 THE COURT: OKAY. AND, MS. SHIPLEY, JUST TO CLARIFY,
15 I'VE ALSO -- YOU HAVE IN THE INDICTMENT SHANEKA HOOKS.

16 MS. SHIPLEY: YES, MA'AM, AND SHE WAS EN ROUTE, BUT I
17 DIDN'T WANT TO HOLD UP THE COURT SO...

18 THE COURT: OKAY.

19 MS. SHIPLEY: SHE WAS WORKING WITH MS. TUCKER THAT
20 EVENING.

21 THE COURT: OKAY. ALL RIGHT. YOU CAN PROCEED.

22 MS. SHIPLEY: AND, INVESTIGATOR ISENHOWARD, IS THERE
23 ANYTHING?

24 MR. ISENHOWARD: NOTHING.

25 MS. SHIPLEY: THAT'S ALL FROM THE STATE, YOUR HONOR.

GUILTY PLEA OF BOBBY PIKE

21

1 THE COURT: ALL RIGHT. THANK YOU. ALL RIGHT. HAPPY TO
2 HEAR FROM YOU, MS. DAVIS.

3 MS. DAVIS: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
4 COURT? I THINK THE ONLY REASON THERE WAS ANY HESITATION WITH
5 MR. PIKE IS HE WANTED IT TO BE CLEAR THAT HE DID NOT, IN
6 FACT, HAVE A GUN OR A KNIFE. HE UNDERSTANDS WITH THE STATUTE
7 -- HOW IT'S INTERPRETED AND THAT IF THEY WERE IN REASONABLE
8 BELIEF THAT THERE WAS A WEAPON, IF SOMETHING HE DID CAUSED
9 THEM TO BE IN THAT WAY, THAT THAT IS WHY HE IS PLEADING
10 GUILTY.

11 YOUR HONOR, HE'S PROBABLY ONE OF THE MOST INTELLIGENT
12 CLIENTS I'VE EVER WORKED WITH. I KNOW FROM THE RECORD THAT
13 MS. SHIPLEY HAS READ OUT AND THE PAST THAT HE HAS, THAT MAY
14 NOT AND PROBABLY IS NOT THE FIRST THING THAT COMES TO MIND,
15 BUT HE IS EXTREMELY INTELLIGENT, YOUR HONOR.

16 HIS PRIOR RECORD: HE DID DO 16 YEARS. HE'S HAD A CRACK
17 PROBLEM OR COCAINE PROBLEM, DRUG ADDICT ADDICTION PROBLEM
18 SINCE HE WAS ABOUT 16 YEARS OLD, YOUR HONOR, OR 15 YEARS OLD.
19 UNFORTUNATELY, HE WENT THROUGH ALL THAT TIME IN PRISON BUT
20 STILL DID NOT GET ANY TREATMENT AND NEVER DID RECEIVE
21 TREATMENT. SO WHEN HE WAS OUT, HE TELLS ME IMMEDIATELY THAT
22 ADDICTION TOOK OVER AGAIN AND HE WAS RIGHT BACK IN THE SAME
23 SPOT HE WAS BEFORE. AND I'M NOT SAYING THAT AS AN EXCUSE,
24 YOUR HONOR, AND HE DOESN'T MEAN TO IMPLY IT AS SUCH. HE
25 WANTS THE COURT TO KNOW THAT THIS WAS NOT HIM IN THE RIGHT

GUILTY PLEA OF BOBBY PIKE

1 FRAME OF MIND WHEN THESE THINGS OCCURRED.

2 YOUR HONOR, I WOULD ASK YOU TO ACCEPT THE NEGOTIATED
3 PLEA. I KNOW THAT MR. PIKE WOULD LIKE TO ADDRESS THE COURT
4 AT THE APPROPRIATE TIME.

5 THE COURT: OKAY. SIR, I'M HAPPY TO HEAR FROM YOU.

6 MR. PIKE: YEAH. I WANT TO -- I MADE A PREVIOUS
7 STATEMENT. I'D LIKE TO, YOU KNOW, FIRST APOLOGIZE TO THESE
8 WOMEN. I'M SORRY THAT, YOU KNOW, THAT -- THAT WHAT I DID MAY
9 HAVE SCARED THEM. YOU KNOW, I'M SORRY ABOUT THAT.

10 YOU KNOW, I'D LIKE TO SAY THAT, YOU KNOW, HERE I AM, YOU
11 KNOW, AND I'M FACING 20 YEARS FOR NOT PHYSICALLY HURTING
12 ANYBODY, YOU KNOW. YOU KNOW, I -- YOU KNOW, 20 YEARS, I
13 MEAN, I'M GOING TO DO 17 YEARS. I THOUGHT THAT, YOU KNOW,
14 THE APPROPRIATE SENTENCE WOULD BE A NONVIOLENT SENTENCE
15 BECAUSE I THOUGHT THAT WHAT I DID WAS A NONVIOLENT THING, I
16 MEAN, BECAUSE I DIDN'T HURT ANYBODY.

17 YOU KNOW, I KNOW THAT MY RECORD IS UNFAVORABLE, AND I'VE
18 DONE SOME THINGS I'M NOT PROUD OF. YOU KNOW, I WAS 18 YEARS
19 OLD WHEN, YOU KNOW, THESE THINGS HAPPENED IN MY PAST RECORD.
20 YOU KNOW AND -- YOU KNOW, I'M A DRUG ADDICT, YOU KNOW, AND
21 HERE I STAND AGAIN, YOU KNOW, IN FRONT OF A JUDGE, AND THIS
22 IS MY FOURTH TIME, YOU KNOW. AND, YOU KNOW, I'M NOT -- YOU
23 KNOW, MY PAST SENTENCES I'VE NOT -- LIKE MY LAWYER SAID, I
24 HAVEN'T GOT ANY DRUG TREATMENT, YOU KNOW, AND HERE I'M NOT
25 ASKING FOR NONE, YOU KNOW, I MEAN, BECAUSE, YOU KNOW, THIS

GUILTY PLEA OF BOBBY PIKE

1 SENTENCE RIGHT HERE PROBABLY IN ITSELF IS, YOU KNOW, IS
2 PROBABLY ENOUGH TO, YOU KNOW -- I MEAN, ENOUGH TO, YOU KNOW,
3 TO KEEP ME FROM DOING ANY DRUGS MAYBE. I DON'T KNOW.

4 YOU KNOW, I WAS RELEASED TO PROBATION IN 2003. THE DAY
5 I REPORTED I FAILED A DRUG TEST. INSTEAD OF THE STATE
6 SENDING ME TO A DRUG TREATMENT FACILITY, YOU KNOW, THEY SENT
7 ME BACK TO PRISON FOR TWO AND A HALF YEARS THE LAST TIME
8 WHERE I AGAIN RECEIVED NO DRUG TREATMENT. THE STATE ISN'T
9 INTERESTED IN HELPING ME. ALL THEY'RE INTERESTED IN IS
10 PUNISHING ME. YOU KNOW, IF YOU'RE GOING TO PUNISH A MAN, YOU
11 KNOW...

12 JUST LIKE NOW, MY WHOLE CASE INVOLVES DRUG USE. IT
13 SEEMS THAT DRUG TREATMENT IS FOR THE ONES WITH MONEY AND
14 STATUS. YOU KNOW, I DON'T HAVE EITHER ONE. IN SPITE OF WHAT
15 MY RECORD MAY REFLECT, I'M A GOOD PERSON. I HAVE A GOOD
16 HEART. I HAD -- AT THE TIME OF MY ARREST I HAD A GOOD JOB AT

17 THE TIME. IT CONSISTED OF ME DOING ANYTHING INVOLVING HOME
18 REPAIR. THE WEEK I WAS ARRESTED, AS A MATTER OF FACT, I WAS
19 IN SOME OF THE RICHEST PEOPLE IN COLUMBIA'S HOMES.

20 SENATOR HOLLINGS' SON'S HOUSE, I WORKED THERE THAT WEEK.
21 THE GENERAL AT FORT JACKSON, I WAS AT HIS HOUSE. SOME OF THE
22 PEOPLE THAT WORK RIGHT HERE IN THIS COURTHOUSE I WAS PROBABLY
23 IN YOUR NEIGHBORHOODS, TOO: WILDEWOOD, RIDGE POINT, FOREST
24 ACRES. I WAS WELL-LIKED BY MY BOSS AND MY CO-WORKERS.

25 I HAVE A FAMILY WHO LOVES ME. MY MOTHER IS BESIDE

1 HERSELF OVER THIS AND WISHES NOT TO BE HERE TODAY. MY
2 GIRLFRIEND IS HERE. I LOVE HER. HER CHILDREN LOVE ME AS IF
3 I WAS THEIR OWN FATHER.

4 SEE, THERE ARE OTHER VICTIMS, TOO, AND I'M SORRY THAT MY
5 DRUG USE HAS CAUSED THIS HEARTACHE FOR THEM. FOR MONTHS I
6 HAVE HOPED AND PRAYED FOR A MORE FAVORABLE PLEA OFFER, BETTER
7 THAN 20 YEARS. I FEEL I DON'T DESERVE THIS MUCH TIME. I,
8 ALONG WITH MY FAMILY AND GIRLFRIEND, ARE IN DISBELIEF. WE
9 THOUGHT MY CHARGES WOULD BE APPROPRIATELY REDUCED AND I WOULD
10 BE FACING A NONVIOLENT SENTENCE. THE SOLICITOR WOULD NOT
11 HEAR OF IT. SUBSEQUENTLY, I WAS SERVED WITH AN L-WOP NOTICE.

12 THE STATE WAS THREATENING ME WITH A LIFE WITHOUT PAROLE.
13 LAST WEEK MY ATTORNEY SHOWED ME A VIDEO OF THE STORE ROBBERY.
14 IT WAS THE FIRST TIME I SAW IT FROM THE DIFFERENT ANGLE. IT
15 SHOWED AN ANGLE THAT I HADN'T SEEN. MS. DAVIS ADVISED ME
16 THAT IF I WENT TO TRIAL, SOMETHING I STRONGLY WANTED TO DO,
17 THAT IN ALL PROBABILITY I WOULD BE CONVICTED BASED ON THE
18 VIDEO SHOWING SOMETHING IN MY HAND.

19 SHE TOLD ME THAT THE ONLY WAY THAT I COULD EXPLAIN IT --
20 I WANT TO NOT SAY THAT BUT THAT WAS -- I WAS NOT ARMED, BUT
21 ALL I WOULD LIKE -- IT WOULD TAKE THE JURY FOR ME TO BELIEVE
22 I WAS. I THOUGHT THAT MAYBE THAT IF I -- THAT IF I DID GO TO
23 TRIAL THAT THE JURY WOULD BELIEVE THAT I WAS ARMED, AND
24 THAT'S WHY I'M PLEADING GUILTY. AND I DIDN'T -- I DIDN'T
25 WANT TO RISK TAKING A TRIAL AND GETTING A LIFE SENTENCE. AND

GUILTY PLEA OF BOBBY PIKE

25

1 I TALKED TO MY FAMILY, AND MY FAMILY AGREED THAT THE BEST
2 THING I COULD DO IS JUST PLEAD GUILTY BECAUSE I DIDN'T WANT
3 THE POSSIBILITY OF GOING TO PRISON FOR THE REST OF MY LIFE.
4 AND THERE WAS THE POSSIBILITY THAT ME TAKING THIS 20-YEAR
5 DEAL THAT I POSSIBLY, YOU KNOW, COULD GET OUT AND STILL, YOU
6 KNOW, BE A PRODUCTIVE PERSON.

7 LIKE MY LAWYER SAID, I'M NOT A STUPID PERSON. IT'S JUST
8 I DO STUPID THINGS AND, YOU KNOW, AGAIN I'M SORRY TO THE
9 VICTIMS. YOU KNOW, THE LAST THING I WANT TO DO IS JUST CAUSE
10 ANYBODY ANY KIND OF GRIEF, YOU KNOW. I MEAN, YOU KNOW, I'M
11 SORRY. THAT'S ALL I HAVE TO SAY.

12 THE COURT: OKAY. ANYTHING FURTHER?

13 MS. DAVIS: NOTHING FURTHER.

14 BY THE COURT:

15 Q. LET ME JUST RESPOND TO A COUPLE OF THINGS THAT YOU SAID;
16 I WAS TAKING NOTES. WITH RESPECT TO THE 20 YEARS, I NEED YOU
17 TO UNDERSTAND THAT THE OFFENSE OF ARMED ROBBERY ITSELF

18 CARRIES A MINIMUM OF 10 YEARS UP TO 30 YEARS. SO EVEN IF YOU
19 HAD PLED TODAY WITHOUT ANY NEGOTIATION -- BECAUSE THESE
20 ROBBERIES OCCURRED WITHIN A FOUR-DAY PERIOD I BELIEVE?

21 MS. SHIPLEY: YES, MA'AM.

22 BY THE COURT:

23 Q. THE COURT COULD HAVE RUN THIS CONSECUTIVE. SO YOU COULD
24 HAVE GOTTEN A MINIMUM 10 YEARS ON ONE, BUT THEN I COULD HAVE,
25 DEPENDING ON THE PRESENTATION -- AND CERTAINLY THE FACTS AND

1 CIRCUMSTANCES COULD HAVE JUSTIFIED IT HERE. I COULD HAVE RUN
2 THE SECOND ONE CONSECUTIVE WHICH MEANS YOU WOULD HAVE SERVED
3 THE 10 YEARS ON THE FIRST ONE AND THEN SERVED THE 10 YEARS ON
4 THE SECOND ONE. SO YOU WOULD HAVE GOTTEN 20 YEARS
5 REGARDLESS.

6 A. YEAH.

7 Q. YOUR PRIOR RECORD DOES PLAY A LOT INTO THIS BECAUSE OF
8 THE EXTENSIVE NATURE OF IT THAT EVEN LED YOU TO HAVE STRIKES
9 ON YOUR RECORD TO INDICATE THAT THIS -- THEY QUALIFY TO PUT
10 YOU IN THE SITUATION OF LIFE WITHOUT THE POSSIBILITY OF
11 PAROLE ANYWAY, SO THAT'S WHY THAT LIFE-WITHOUT-THE-
12 POSSIBILITY-OF-PAROLE NOTICE WAS SERVED UPON YOU AND THAT IF
13 YOU HAD GOTTEN CONVICTED OR EVEN PLED THAT THAT WOULD HAVE
14 BEEN THE ONLY SENTENCE THAT THE COURT COULD HAVE GIVEN TO
15 YOU.

16 WITH MY DISCUSSIONS WITH COUNSEL LAST WEEK IN
17 PREPARATION FOR THE TRIAL TO SEE WHAT ISSUES MIGHT COME
18 BEFORE US, IT IS AT THAT TIME THAT MS. SHIPLEY WENT TO HER
19 SOLICITOR, BARNEY GIESE, AND WE DISCUSSED THE FACT OF TAKING
20 THAT OFF THE TABLE, SO TO SPEAK, TO GET YOU TO NOT GO THROUGH
21 A TRIAL IN WHICH IT WAS MOST OBVIOUS -- YOU KNOW, EVEN
22 INCLUDING WITH YOUR COUNSEL'S STATEMENT EARLIER, IT'S VERY
23 MOST PROBABLE THAT YOU WOULD HAVE BEEN CONVICTED AND YOU
24 WOULD HAVE BEEN FACING THAT.

25 SO WE'RE AT A RESULT AT THE BEGINNING OF THE WEEK

GUILTY PLEA OF BOBBY PIKE

27

1 KNOWING THAT IF WE WENT TO TRIAL YOU WOULD HAVE GOTTEN L-WOP,
2 SO WHY NOT TRY TO WORK OUT SOMETHING INSTEAD OF SPENDING THE
3 STATE'S TIME AND RESOURCES ON THAT? SO THAT'S WHAT --
4 EVERYBODY'S BEEN INVOLVED IN THAT---

5 A. RIGHT.

6 Q. ---AND YOU CAN THANK THEM FOR DOING THAT. SO IN TERMS
7 OF THEM GIVING YOU A DEAL, SO TO SPEAK, IT'S A DEAL.

8 A. YEAH.

9 Q. LIFE DOWN TO 20 YEARS. OKAY?

10 A. RIGHT. I UNDERSTAND THAT, TOO.

11 Q. AND YOU AT LEAST HAVE A FORESEEABLE FUTURE, AND IT'S
12 GOING TO BE UP TO YOU TO DEAL WITH THAT FUTURE.

13 A. RIGHT.

14 Q. SHE DID NOT FEEL COMFORTABLE AND I DO NOT BLAME HER,
15 BASED ON THE NATURE AND THE CIRCUMSTANCES OF THIS CASE, TO
16 REDUCE IT ANY FURTHER TO A STRONG-ARM ROBBERY---

17 A. YEAH.

18 Q. ---BECAUSE YOU DID HAVE TWO ARMED ROBBERIES WITHIN A
19 COUPLE OF YEARS, AND THEN SHE HAS TO TAKE INTO CONSIDERATION
20 YOUR RECORD. SHE HAS TO TAKE INTO CONSIDERATION THE VICTIMS'
21 INTERESTS AND WHAT OCCURRED TO THEM AND HOW YOU ARE
22 POTENTIALLY A PUBLIC THREAT WITH RESPECT TO YOUR ACTIONS.

23 A. YES, MA'AM.

24 Q. MIND YOU, THERE'S BEEN A DRUG -- BEFORE I GET TO THAT
25 PART, THIS SENTENCE HAS ALSO BEEN NEGOTIATED, SO YOUR LAWYER

1 HAS SPENT A LOT OF TIME WITH YOU TELLING YOU WHAT THE OPTIONS
2 WERE. CORRECT?

3 A. YES, MA'AM.

4 Q. AND THEN, AS YOU INDICATED, YOU SPOKE IT OVER WITH YOUR
5 FAMILY AND THEN YOU ALL CAME TO THE CONCLUSION THAT THIS WAS
6 PROBABLY THE BEST SITUATION IN THIS REGARD.

7 A. YES, MA'AM.

8 Q. BECAUSE IF YOU LEFT IT UP TO ME, I STILL COULD HAVE
9 TAKEN YOU UP TO 30. I COULD HAVE TAKEN YOU TO 60 IF I RAN
10 THEM CONSECUTIVE.

11 A. RIGHT. SHE EXPLAINED THAT TO ME THIS MORNING, TOO.

12 Q. OKAY. OKAY. ALL RIGHT. INsofar AS THE DRUG TREATMENT
13 AND COUNSELING, I KEEP HEARING YOU MENTIONING THE STATE
14 DIDN'T DO THIS AND THE STATE DIDN'T DO THAT. MR. PIKE, WHAT
15 ARE YOU GOING TO DO FOR YOURSELF?

16 A. RIGHT. WELL---

17 Q. I COULD SEND YOU TO DRUG TREATMENT ALL DAY LONG, AND IF
18 YOU DON'T HAVE A PERSONAL COMMITMENT TO DO SOMETHING ABOUT
19 THIS ISSUE SO THAT IT DOESN'T AFFECT YOURSELF, YOUR FAMILY
20 AND OTHER PEOPLE, ALL OF WHOM ARE VICTIMS -- THE STATE IS A
21 VICTIM RIGHT NOW BECAUSE WE'RE HAVING TO PAY FOR THIS ISSUE
22 WITH YOU.

23 A. RIGHT.

24 Q. DO YOU UNDERSTAND THAT?

25 A. YES, MA'AM.

1 Q. SO IT'S ALL ABOUT WHAT YOU'RE GOING TO DO FOR YOURSELF.
2 YOU CAN'T JUST SAY WHAT OTHER PEOPLE HAVEN'T DONE FOR ME.

3 A. WELL, LET ME -- LET ME REPHRASE WHAT I MEANT.

4 Q. SURE. OKAY.

5 A. I MEANT TO SAY THAT I WAS NOT -- NEVER GIVEN AN
6 OPPORTUNITY TO GO TO A DRUG TREATMENT PROGRAM.

7 Q. OKAY.

8 A. THAT'S REALLY WHAT I MEANT TO SAY. I MEAN, I DON'T
9 WANT---

10 Q. OKAY. BUT I ALSO WANT YOU TO KNOW THAT THESE PROGRAMS
11 EXIST OUTSIDE OF THIS FACILITY AND OUTSIDE OF THIS SCENARIO.

12 A. YOU'RE RIGHT. I AGREE WITH THAT.

13 Q. THERE ARE FREE SERVICES AVAILABLE TO PERSONS WHO CANNOT
14 AFFORD THEM. EVEN OLIVER GOSPEL MISSION, A BLOCK DOWN, HAS A
15 MEN'S PROGRAM THAT HAS A SPIRITUAL AND A RECOVERY AND AN
16 ALCOHOLIC PROGRAM COMPONENT TO IT. I KNOW BECAUSE I VISITED
17 ~~THAT FACILITY AND HAVE ALLOWED PEOPLE TO GO THERE AS PART OF~~
18 ANY SENTENCING THAT I WOULD DO, BUT THERE ARE RESOURCES THAT
19 EXIST OUTSIDE OF THE CRIMINAL JUSTICE SYSTEM. SO YOU HAVE TO
20 PARTAKE IN THOSE. OKAY?

21 A. THAT'S RIGHT. I AGREE WITH THAT.

22 Q. I AM GOING TO PUT THE A.T.U. PROGRAM WHICH IS THE
23 ADDICTIONS TREATMENT UNIT PROGRAM AS PART OF YOUR SENTENCING
24 BECAUSE IT'S MORE THAN REFRAINING FROM THE USE OF DRUGS. YOU
25 HAVE TO FIND OUT WHAT'S GOING ON WITHIN YOU AND THAT THAT

1 PROGRAM WOULD BE GOOD FOR YOU TO DEAL WITH THE COUNSELING OR
2 OTHER ISSUES OR DEMONS OR WHATEVER IS AFFECTING YOU THAT
3 CAUSES YOU TO DO SUCH THINGS THAT VICTIMIZE OTHER PEOPLE AND
4 RESOURCES. DO YOU UNDERSTAND THAT?

5 A. YES, MA'AM.

6 Q. OKAY. BUT THE BOTTOM LINE IS: I BELIEVE THAT ALL OF
7 THIS IS APPROPRIATE BASED ON WHAT THE STATE HAS PRESENTED AND
8 THE INVESTIGATORS HAVE DONE IN THIS CASE AS WELL AS YOUR
9 PRIOR RECORD AND SOME ISSUES THAT, YOU KNOW, WE'RE FACING
10 HERE. ANYTHING ELSE TO ADD?

11 A. NO, MA'AM.

12 THE COURT: OKAY. ANYTHING FURTHER, MS. DAVIS?

13 MS. DAVIS: NO, YOUR HONOR.

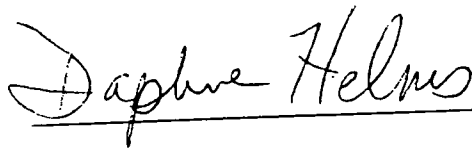
14 THE COURT: THE COURT IS WILLING TO ACCEPT THE
15 NEGOTIATIONS. THANK YOU FOR THE HARD WORK BY EVERYONE.
16 YOU'LL BE SENTENCED TO THE STATE DEPARTMENT OF CORRECTIONS
17 FOR 20 YEARS. I AGAIN REMIND YOU THAT THIS IS A MOST SERIOUS
18 OFFENSE, SO THIS IS ANOTHER STRIKE AGAINST YOU. HOPEFULLY
19 YOU WILL HAVE RECOVERED, YOU WILL HAVE REHABILITATED DURING
20 THAT PERIOD OF TIME BUT REMIND YOU THAT THEY WILL NOT
21 HESITATE TO FACE YOU -- SERVE LIFE WITHOUT THE POSSIBILITY OF
22 PAROLE IF THEY HAVE THE OPPORTUNITY TO DO SO BASED ON YOUR
23 ACTIONS. THANK YOU ALL.

24 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED. THERE WERE
25 NO EXHIBITS INTRODUCED.)

I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 30TH OF MARCH, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DECEMBER 3, 2009

A handwritten signature in cursive script that reads "Daphne Helms". The signature is written in dark ink and is positioned above a horizontal line.

DAPHNE D. HELMS, COURT REPORTER

The State of South Carolina

County of Richland

(S) KEVIN ISENHOWARD - RCSD

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

91

COURT OF GENERAL SESSIONS

JUNE TERM 2008

ARREST WARRANT NUMBER

1936863

Defendant

Witness:

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

BOBBY PYKE

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUN 20 2008

VERDICT

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

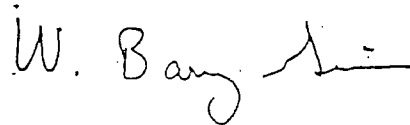
INDICTMENT

At a Court of General Sessions, convened on June 18, 2008, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Bobby Pyke did in Richland County on or about December 30, 2007, commit robbery by feloniously taking from the person or presence of Shenika Hooks by means of force or intimidation goods or monies of Pops Pantry Express, such goods and monies being described as follows: US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WARREN B. GIESE, SOLICITOR

WITNESSES

(S) KEVIN ISENHOWARD - RCSD

The State of South Carolina

County of Richland

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

Defendant

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JUNE TERM 2008

THE STATE
VS.

Defendant

Witness:

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

1936868

ARREST WARRANT NUMBER

BOBBY PYKE

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TRUE BILL

Foreperson of Grand Jury
Date: JUN 20 2008

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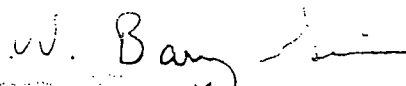
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At a Court of General Sessions, convened on June 18, 2008, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Bobby Pyke did in Richland County on or about December 26, 2007 commit robbery by feloniously taking from the person or presence of Victoria Cushman-Rosas by means of force or intimidation goods or monies of Victoria Cushman-Rosas, such goods and monies being described as follows: a pocketbook, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland

VS.

AKA: Bobby Earl Pyke

Race: _____ Sex: _____ Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Armed Robberyin violation of § 16-11-730(4) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor James C. Stipe SC Bar # 75392
Defendant Bobby Pyke Attorney for Defendant [Signature] SC Bar # _____WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 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: 08-05-40-531
☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)	\$ _____
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ _____
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§56-1-289 (DUI Breath Test)	\$500 \$ _____
§35.13 (Public Def/Prob)	\$25 \$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ _____
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
§90.11 TP (SCCJA Surcharge)	\$5 \$ _____
TOTAL	\$ _____

Jeanette W. McBride (PF)
Clerk of Court/Deputy Clerk
Court Reporter: D. Helms

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008 -GS- 40 - 369A/W#: I 936863Date of Offense: 12/30/07S.C. Code §: 16-11-330(A)CDR Code #: 0139

SENTENCE SHEET

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____
Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

\$25 \$ _____

12 TC program☐ Appointed PD or appointed other counsel, §35.13 TP
☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE Jim ChildsJudge Code: 2146Sentence Date: 3-30-09

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichlandINDICTMENT/CASE#: 2008 -GS- 40 - 531AW#: I 936 868Date of Offense: 12/26/07S.C. Code §: 16-11-330(A)CDR Code #: 0139

Bobby vs. Earl Pyke

AKA:

Race: W Sex: M Age: _____

DOB: _____

Address: _____

City, State, Zip: Elgin, SC

DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Armed Robbery (A)in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Tanner Shipley 30 yrs Defendant Attorney for Defendant 75392

Solicitor SC Bar # _____

Defendant

Attorney for Defendant

SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 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: 08-GS-40-369☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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 _____

Substance Abuse Counseling ☐

*Fine: \$ _____

Random Drug/Alcohol Testing ☐

§14-1-206 (Assessments 107.5%) \$ _____

Fine may be pd. in equal, consecutive weekly/monthly

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$ _____ paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ _____

Other: _____

§56-1-289 (DUI Breath Test) \$500 \$ _____

\$25 \$ _____

§35.13 (Public Def/Prob) \$25 \$ _____

RTU program

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

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

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

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

§90.11 TP (SCCA Surcharge) \$5 \$ _____

TOTAL \$ _____

☐ Appointed PD or appointed other counsel, §35.13 TP☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE J. ChilesCourt Reporter: D. HelmsJudge Code: 2190
Sentence Date: 3-30-09

2009CP4007237

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Bobby E. Pyke, 143101

Full name and prison number (if any) of Applicant.

vs.

State of South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF2009 OCT -8 PM 12:00
JENNIFER W. McGRATH
C.C.P. & G.S.RICHLAND COUNTY
FILEDINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lieber Correctional Institution, Post office Box 205, Ridgerville, SC 29472-0205
2. Name and location of Court which imposed sentence Richland County Court of General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 08-GS-40-369 Armed Robbery
 - (b) 08-GS-40-531 Armed Robbery
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 30, 2009 - 20 years
 - (b) March 30, 2009 - 20 years
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty ☒

(b) after a plea of not guilty

(c) after a plea of nolo contendere

6. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. N/A

ii.

iii.

(b) the result in each such Court to which you appealed:

i. N/A

ii.

iii.

(c) the date of each such result:

i. N/A

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii.

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) Post-Conviction Relief More appropriate avenue for relief

(b)

(c)

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

(a) Ineffective Assistance of Counsel; Involuntary Plea

(b) Failure of Court to Relieve Counsel

(c) Failure of Court to Establish Elements of Offense or Factual Basis

10. State concisely and in the same order the facts which support each of the grounds set out in (9): For Plea

{ (a) SEE Attachment

(b)

(c)

10. (A) Ineffective Assistance of Counsel; Involuntary Plea

- (I.) Plea Counsel had but a single interest: to Convince and Coerce applicant to plead guilty, although applicant preferred a trial by Jury, or at worst, an Alford plea; plea involuntary.
- (II.) Plea Counsel refused to demand that applicant's Charges be dismissed due to unlawful arrest. Richland County officers unlawfully arrested the applicant in Kershaw County, without the assistance of any officer from Kershaw County. Applicant will call to the PCR hearing a high-ranking officer from Kershaw County to testify to the truth of this allegation. Arresting officers from Richland County were not in fresh pursuit at the time of applicant's arrest.
- (III.) Plea Counsel refused to move to suppress the results of an unduly-suggestive photo line-up conducted by Richland County officers. Results used to Coerce plea.
- (IV.) Plea Counsel refused to move to suppress the results of an unlawful search conducted by Richland County officers in Kershaw County. Results used to Coerce plea.
- (V.) Plea Counsel refused to consider applicant's demand for a trial by Jury, or, at worst, for an Alford plea.
- (VI.) Plea Counsel erroneously advised applicant that the plea Judge had no discretion to depart from the Prosecutor's recommendation for a particular sentence.

- (VII.) Plea Counsel erroneously advised applicant that he could not participate in trial strategy, if his case went to trial.
- (B.) At a motion hearing held on Oct. 13, 2008 before Judge Alison R. Lee, the Court erred by declining to relieve Jennifer Davis as his Counsel. Applicant and Davis had irreconcilable conflict which severely prejudiced the applicant (see allegations concerning Davis, immediately above.) This error by Judge Lee was especially egregious considering that Davis herself had filed her own motion to be relieved for reasons similar to applicant's reasons.
- (C.) The Plea Court erred by failing to:
- (I.) Establish the elements of offenses at the plea; and
 - (II.) Establish a factual basis for applicant's plea.

The Court never questioned the applicant concerning his intent to commit the offense of Armed Robbery (a crucial element), nor did the Court ever establish that a weapon, or a representation of a weapon ever existed. This is a crucial element of the offense of Armed Robbery.

In point of fact, there were wholesale contradictions among witnesses, police reports, and the videotape as to whether any Armed Robbery was actually committed.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?
NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Post-Conviction Relief most appropriate avenue for relief
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Jennifer Davis, Esq., Assistant Public Defender
Richland County Office of Public Defender
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Plea, Sentence
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

Set aside Plea and Sentence

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

NO

STATE OF SOUTH CAROLINA

County of Dorchester

VERIFICATION

I, Bobby E. Pyke, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Bobby E. Pyke

SWORN to and subscribed before me this 9day of September, 192009

Dally Bradford (L.S.)
Notary Public

My Commission Expires: 5/1/2018

2009 OCT - 8 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & G.S.
FILED
RICHLAND COUNTY

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

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

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Bobby E. Pyke
Applicant

SWORN or affirmed to and subscribed before me this

9 day of September, 192009

Dally Bradford
Notary Public

My Commission Expires: 5/1/2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PYKE Bobby E, # 143101,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2009-CP-400-7237

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed 10/8/2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was (according to the application) represented by Jennifer Davis, Esquire. On 3/30/2009, the Applicant pled guilty before The Honorable J. Michelle Childs. The Applicant had been indicted and/or pled guilty to the following: Armed Robbery (2 counts) - (2008-GS-40-531;369). According to the South Carolina Department of Corrections, the Applicant is serving a 20 year sentence for Armed Robbery.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to

amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. **Accordingly, the Respondent requests an evidentiary hearing to fully resolve the issue(s).** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Charlie Jay Johnson, Jr., Esquire regarding when the hearing should be set.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 19, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2009-CP-400-7237

Bobby E. Pyke, 143101

Applicant,

vs

State of South Carolina,

Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)

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

Charlie J. Johnson, Jr., Esquire
Post Office Box 11212
Columbia, South Carolina 29211-1212

DATED this 30th day of March, 2010.



Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2009-CP-40-7237

Bobby R. Pyke,)
)
Applicant/Plaintiff,)
)
vs.) TRANSCRIPT OF RECORD
)
The State of South Carolina,)
)
Defendant.)

May 22, 2012
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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

ANDREW W. KUNZ ESQUIRE

Attorney for Applicant/Plaintiff

ROBERT D. CORNEY, ESQUIRE

Attorney for the Defendant

Crystal Holmes
Official Court Reporter

E X H I B I T SNO. DESCRIPTIONI.D. EVD.

(REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE
HEARING.)

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
---------	--------	-------	----------	---------

Bobby E. Pyke

By Mr. Kunz

5

25

By Mr. Corney

19

Kevin Isenhoward

By Mr. Kunz

26

By Mr. Corney

41

Jennifer Davis

By Mr. Kunz

43

By Mr. Corney

51

1 TUESDAY, MAY 22, 2012:

2 THE COURT: We all ready?

3 MR. CORNEY: Yes, sir.

4 THE COURT: This is Pyke, right, Bobby E.
5 Pyke?

6 MR. CORNEY: Yes, sir.

7 THE COURT: Go ahead, Mr. Corney.

8 MR. CORNEY: Thank you very much, Your Honor,
9 may it please the Court. The State would call the PCR
10 case of Bobby Pyke, docket number 2009-CP-40-7237. Mr.
11 Pyke was true billed indicted in the June 2008 term of
12 the Richland County Grand Jury with two counts of armed
13 robbery. He pled guilty March 30th, 2009 before Judge
14 Childs to both counts as indicted. He was sentenced to
15 20 years imprisonment on each count to run concurrently
16 pursuant to a negotiated plea. He had no direct appeal
17 from that -- from those two pleas. He filed a timely
18 PCR application October 8th, 2009.

19 He's represented today by Andy Kunz.

20 THE COURT: All right. Yes, sir.

21 MR. KUNZ: Yes, sir. I would like to call
22 Bobby Pyke to the stand.

23 THE COURT: Come around, Mr. Pyke.

24 (BOBBY E. PYKE, having first been duly sworn,
25 testified as follows:)

BOBBY E. PYKE -- DIRECT BY MR. KUNZ:

5

1 THE COURT: All right, Mr. Pyke, please take a
2 seat. Tell us your full name and spell your last name
3 for the record

4 THE WITNESS: My name is Bobby Earl Pyke, P-y-
5 k-e.

6 THE COURT: All right. Go ahead, Mr. Kunz.

7 DIRECT EXAMINATION

8 BY MR. KUNZ:

9 Q Mr. Pyke, we're here today on your PCR application
10 that you filed for ineffective assistance of
11 counsel. Your counsel at your guilty plea hearing
12 was Ms. Jennifer Davis, is that correct?

13 A Yes, sir.

14 Q And she was representing you for two armed robbery
15 charges, the first being on December 26th, 2007 and
16 the second was December 30th, 2007, correct?

17 A Correct.

18 Q All right. Well, prior to getting into your
19 application, I just want a little bit of
20 background.

21 Where are you currently housed?

22 A I'm housed at Lieber Correctional Institution in
23 Ridgeville, South Carolina.

24 Q Okay. And prior to your arrest on these alleged
25 armed robberies, where were you living?

BOBBY E. PYKE -- DIRECT BY MR. KUNZ:

1 A I was living in Elgin, South Carolina.

2 Q And what county is that in?

3 A That's in Kershaw County.

4 Q And what was the address that you were living at?

5 A It was 128 Shannonwood Road.

6 Q Okay. And were you employed at that time?

7 A Yes, sir.

8 Q And who were you employed with?

9 A I was employed with Alpine Cabinets and Floors on
10 North Main in downtown Columbia.

11 Q Yes, sir. Okay, well getting into these armed
12 robberies, alleged armed robberies, the first
13 alleged armed robbery was December 26th, 2007 and
14 it is alleged that there was an armed robbery at a
15 CVS Pharmacy parking lot on Clemson Road. And the
16 2nd alleged armed robbery was the 30th of December,
17 2007 in a Pop's Pantry Express.

18 You were arrested for both of these charges,
19 do you remember who the arresting officer was?

20 A It was Investigator Isenhoward.

21 Q Okay. And have you had -- did you have contact
22 with Investigator Isenhoward after your arrest?

23 A Yeah.

24 Q Okay. So you -- you were represented by Ms. Davis
25 throughout -- after your arrest but trouble started

1 prior to your guilty plea hearing in March of 2009,
2 is this correct?

3 A Right.

4 Q Okay. Is it true that you had a Motion to Relieve
5 Counsel hearing on October 13th, 2008, in front of
6 Judge Lee?

7 A Yeah. I filed the motion myself.

8 Q Okay. Did Ms. Davis also file a motion?

9 A She filed her own motion too, yeah.

10 Q Okay. And since there's no record of that hearing,
11 why don't you walk me through or tell the Court
12 exactly how that motion ---

13 THE COURT: Was this matter held in chambers
14 or -- why is there -- why come there's no record?

15 MR. KUNZ: Because from my understanding it
16 was held in chambers.

17 THE COURT: Okay, go ahead.

18 A Yeah, it was held in chambers.

19 THE COURT: You weren't in chambers, were you?

20 THE WITNESS: Yeah ---

21 THE COURT: Oh, you were?

22 THE WITNESS: Yeah, but what happened was ---

23 THE COURT: Go ahead.

24 A That I was sitting in the jury box and the hearing
25 was called and it was heard in front of Judge Lee.

BOBBY E. PYKE -- DIRECT BY MR. KUNZ:

8

1 What happened was that the Solicitor, Vanessa
2 Shipley, my two attorneys, Jennifer Davis and Mark
3 Sneed (sic), were called. And so, I sat ---

4 THE COURT: For the record, he means Mark
5 Schnee.

6 THE WITNESS: Schnee.

7 THE COURT: That's all right.

8 A And so, I sat in the jury box while they were
9 called to -- to the chambers. And so, Vanessa
10 Shipley she came out and I was called in. So I
11 went in and Mark Schnee along with my attorney,
12 Jennifer Davis, and myself. And so, Judge Lee, she
13 asked me about what -- you know, what the problem
14 was with my attorney. And so I explained that me
15 and her were having problems with, you know,
16 certain issues. And one of the biggest issues was
17 -- at the time was that I was unhappy that she --
18 you know, she filed a motion to have a bond
19 reduction and I wasn't happy about it.

20 THE COURT: I'm sorry, she filed a motion for
21 what?

22 THE WITNESS: For a bond reduction.

23 THE COURT: Okay.

24 A And so, you know, I wasn't happy about that and I
25 explained that issue. And I was an issue -- I

1 wasn't happy with other issues and one of the
2 issues was that she had not filed certain motions.
3 And so, you know, we -- we went over that and Judge
4 Lee she -- she wouldn't remove her from my case,
5 so.

6 Q Was there a reason given that she wasn't removed?

7 A She ---

8 Q That you can remember?

9 A Not that I can remember.

10 Q Okay. So, we're going to get straight into your
11 application allegations and go through how you feel
12 Ms. Davis was ineffective in providing counsel for
13 you.

14 Now, this is your chance to explain your
15 application and your allegations, so I'm going to
16 let you go ahead and do the same as I did just now
17 with the hearing, is let you explain why and how
18 this affected you.

19 Your first allegation that Ms. Davis was
20 ineffective for failing to file a Motion to Dismiss
21 for wrongful or unlawful arrest. Explain to me how
22 that issue came about and what was discussed
23 between you and Ms. Davis.

24 A I'm a diabetic, I'm having a low blood sugar
25 problem right now. Is there any way we can stop

BOBBY E. PYKE -- DIRECT BY MR. KUNZ:

10

1 right now for me to -- see, I knew this was going
2 to happen when I come up here. And they gave me a
3 piece of cake and I didn't eat it and I'm going to
4 have to stop because I'm starting to get confused
5 and I don't want to go through my hearing and --
6 and mess this hearing up because this is my only
7 chance and -- I'm going to have to...

8 MR. KUNZ: Your Honor, is there a way we can
9 get him juice or cake?

10 THE WITNESS: Let me go forward ---

11 THE COURT: Stop, relax both of you. What do
12 you need, sir?

13 THE WITNESS: Let me stop and ask you, what
14 was it that you asked me because I'm starting to get
15 confused. I'm a diabetic and ---

16 THE COURT: What you need, something to eat or
17 drink or something?

18 THE WITNESS: I need some juice and ---

19 THE COURT: What kind juice?

20 THE WITNESS: Any kind of juice.

21 THE COURT: Relax, we'll help you out. You
22 need some candy or something?

23 THE WITNESS: Something.

24 THE COURT: All right. Just relax, just take
25 a little time and we'll find something for you.

BOBBY E. PYKE -- DIRECT BY MR. KUNZ:

11

1 (The Court was in recess.)

2 THE COURT: We all ready? You may continue.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. KUNZ:

5 MR. KUNZ: All right Mr. Pipe you feeling
6 bedder.

7 Q All right, Mr. Pyke, you feel better.

8 A A little -- little better.

9 Q Okay. We're going to get -- we're going to jump
10 now into your application allegations. And we're
11 going to go step by step with each allegation. I
12 will ask you some questions and you can explain out
13 what you need to but we'll get through them.

14 A Okay.

15 Q Your first allegation was that Ms. Davis was
16 ineffective for failing to file a Motion to Dismiss
17 your arrest for being unlawful. What gave you the
18 impression that your arrest was unlawful?

19 A Well, Richland County detectives, they came into
20 Rich -- Kershaw County, I was a Kershaw County
21 resident. I feel that it was unlawful because, you
22 know, they're Richland County. I lived in Kershaw
23 County. So therefore I feel that it was unlawful
24 for them to come into the county.

25 Q Were there Kershaw deputies with them when you were

BOBBY E. PYKE -- DIRECT BY MR. KUNZ:

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1 arrested?

2 A No.

3 Q Okay. What were you told about this issue when you
4 brought it up to Ms. Davis?

5 A I'm confused again.

6 Q Oh, okay, I'm sorry. When you wanted Ms. Davis to
7 file this Motion to Dismiss the arrest and you
8 spoke with it to Ms. Davis, what did she say to you
9 about it?

10 A She said that when it comes to trial strategy, that
11 I don't have any say.

12 Q Okay. Were you ever told that your arrest warrant
13 was entered into NCIC which is the National Crime
14 Information Center, I believe?

15 A No.

16 Q Were you ever told that your arrest warrant was co-
17 signed by a Kershaw Magistrate?

18 A No.

19 Q Okay. Your second allegation or allegation that
20 kind of piggybacks that allegation is you wanted
21 Ms. Davis to file a motion to suppress evidence.
22 Part of your charges were that you committed these
23 armed robberies with a leatherman (phonetic) tool
24 and that you presented it as a handgun or as a
25 weapon and that is why you were charged with armed

1 robbery. Richland County officers obtained this
2 leatherman by going back to your house in Kershaw
3 County without Kershaw County deputies present,
4 correct?

5 A Yeah.

6 Q And they asked consent to search your home,
7 correct?

8 A Correct.

9 Q Okay. And were they given this leatherman tool at
10 that time?

11 A During the consent, yeah.

12 Q Okay. And did you ask Ms. Davis that -- to file a
13 motion to suppress this evidence?

14 A Yeah.

15 Q And what did she tell you at that time?

16 A She said when it comes to trial strategy that I
17 don't have any say. But she -- yeah, that's what
18 happened.

19 Q Okay.

20 A Yeah.

21 Q Okay. You also have an allegation that Ms. Davis
22 failed to file a motion to suppress the results of
23 the lineup that was presented to victims of the CVS
24 Pharmacy robbery on December 26th, 2007 as well as
25 the clerks at the Pop's Pantry on December 30th,

BOBBY E. PYKE -- DIRECT BY MR. KUNZ:

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1 2007.

2 First, what was your -- what did you think was
3 unfair about that lineup?

4 A Well, I feel that it was suggested -- first, let me
5 say this. The Pop's Pantry Express, there's no
6 doubt -- I mean, there was a video of the robbery.
7 The whole point of that robbery is that -- that I
8 wasn't armed. The second robbery, the lady picks
9 me out of a photo lineup but -- I mean, it was
10 suggested. There was a number sequence at the
11 bottom of the pictures in the photo lineup and it
12 makes it suggestive to where -- I think that the
13 numbers start with three and then it ends with my
14 picture, number six, with a eight, and so anybody
15 that has any understanding of what those numbers
16 mean, those numbers mean that, you know, you're --
17 you're an inmate in the Alvin S. Glenn Detention
18 Center. And so that -- therefore, that's
19 suggestive.

20 Q And when you brought this to Ms. Davis's attention,
21 what were you told?

22 A To be honest with you, I can't even remember. I
23 can't even remember exactly what I was told about
24 that.

25 Q Did Ms. Davis file a motion ---

1 A No.

2 Q Okay. And then you also have an allegation that
3 you were not allowed to participate in trial
4 strategy, as you said earlier.

5 A Right.

6 Q You covered a few things in the trial strategy
7 allegation but first is that you did want to go to
8 trial?

9 A Right.

10 Q Or in the alternative, you wanted to have an Alferd
11 (phonetic) plea available to you?

12 A Well, the Alferd plea came about when over the
13 weekend -- I mean, Monday, that I pled guilty ---

14 THE COURT: It's all right. Some people say
15 Alferd, some people say Alford.

16 THE WITNESS: Yeah, Alford plea.

17 THE COURT: Now, where you from again?

18 MR. KUNZ: Pawley's Island.

19 THE COURT: That explains it, it's Alford. Go
20 ahead.

21 (Laughter.)

22 A But the Alford plea came about when -- because the
23 whole point is is that I'm not guilt -- I'm guilty
24 of robbery. I don't want to say what I'm guilty
25 of.

BOBBY E. PYKE -- DIRECT BY MR. KUNZ:

16

1 Q And I think I jumped ahead. I think I jumped
2 ahead. Let me get back to that.

3 THE COURT: You want to say you robbed them
4 but you didn't have a gun?

5 THE WITNESS: Right.

6 MR. KUNZ: Right.

7 Q With your trial strategy, let's get back to the
8 first alleged robbery on December 26th, 2007, at
9 the CVS parking lot.

10 A Right.

11 Q You maintain that you did not commit that robbery,
12 correct?

13 A Absolutely not.

14 Q And you've been denying that since day one,
15 correct?

16 A Correct.

17 Q Now, you asked Ms. Davis to basically file the
18 motion to sever and separate these two armed
19 robbery charges to be tried separately, correct?

20 A Right.

21 Q And did Ms. Davis file that motion?

22 A She -- she told me that -- that I'm going to be
23 charged -- I'm going to be tried on both -- both
24 armed robberies. Now, my mindset is is that if I'm
25 going to be charged with both armed robberies,

1 that's the problem because, well, I mean, naturally
2 it's a problem because I'm being charged with two
3 armed robberies and one of the robberies I ain't
4 even do and then the other robbery is I didn't
5 commit a armed robbery, a strong armed robbery, I
6 don't feel that it should have been a strong armed
7 robbery but ...

8 Q Did you in fact -- the robbery that you said was
9 not an armed robbery, that you did not present a
10 weapon, did you in fact present the leatherman tool
11 at that robbery?

12 A No.

13 Q Okay. Did you present any weapon at that robbery?

14 A No.

15 Q Okay. And so you feel that you were coerced into
16 pleading guilty because you had no options --
17 explain that us, please.

18 A This is what I felt that if -- if this motion
19 wasn't filed that her -- I'm going to have these
20 people come up and say, well, yeah, he robbed us in
21 this store and the video will show that I wasn't
22 armed in the store. But then I got another victim
23 of a robbery, she's going to get in there and --
24 and this whole trial has got two charges together
25 and she's going to point her finger at me and say I

1 robbed her, well, I felt that if that happened then
2 I was going to found guilty of armed robbery.

3 Q So, before you entered your plea, your discussion
4 with Ms. Davis, what did she tell you about
5 entering your plea, what you needed to do?

6 A She said that -- that -- that I didn't need to be
7 negative about the -- well, while I'm speaking at
8 the guilty plea, she told me not to say certain
9 things during the -- if you look at the transcript,
10 she interrupts me while I'm going to explain about
11 the Alford plea, about how I felt that that was an
12 appropriate plea and -- well, not really -- at the
13 time I thought it was appropriate, but in hindsight
14 I don't believe that that would have been the
15 appropriate plea either. But, yeah, she -- she
16 advised me to, that if I was negative in any kind
17 of way, the Judge wouldn't accept my plea.

18 Q So did you feel -- you felt forced into providing
19 that guilty plea, taking the guilty plea?

20 A No, sir.

21 Q And at any point during that guilty plea did you
22 feel like Ms. Davis coerced you into incorrectly
23 answer any of the Judge's examination of your
24 guilty plea?

25 A Yeah.

1 Q Okay. Now, we've covered the allegations that
2 you've alleged and I've gone step by step through
3 them. Is there any part of those allegations that
4 you believe we've missed today or that you would
5 like to add on to?

6 A I think we've covered it.

7 Q Okay. And finally what remedy are you seeking
8 today?

9 A I'm seeking to have my sentence vacated.

10 Q Okay.

11 A Yeah.

12 MR. KUNZ: I have nothing further, Your Honor.

13 THE COURT: All right, Mr. Corney.

14 MR. CORNEY: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. CORNEY:

17 Q Mr. Pyke, at your plea hearing, the Judge told you
18 that -- advised you that you were giving up your
19 right to a jury trial by pleading guilty on the
20 charges, right?

21 A Yeah.

22 Q Okay. And you said you understood that?

23 A (Affirmative response.)

24 Q Okay. Yes, you have to ---

25 A Yes, sir.

BOBBY E. PYKE -- CROSS BY MR. CORNEY:

20

1 Q --- for the record, thank you. And you understood
2 that by doing so you were giving up your right to
3 challenge the State's evidence against you?

4 A Yes, sir.

5 Q Okay. And you filled out a Richland County
6 Advisement of Rights form as well?

7 A Yes, sir.

8 Q And that's set forth all the same information
9 right?

10 A Yes, sir.

11 Q That you would be giving up your right to challenge
12 these photo identifications and any allegations you
13 had against the -- the State was going to present
14 against you?

15 A Right.

16 Q Okay. You said you were satisfied with your
17 attorney at that plea hearing also, didn't you?

18 A I sure did.

19 Q Okay. Mr. Pyke, you're facing LWOP on these
20 charges, life without parole?

21 A Yes, sir.

22 Q And you had been notified that the State intended
23 to seek life without parole on the charges, right?

24 A Yes, sir.

25 Q And you had two prior armed robberies charges --

1 or, I apologize, criminal sexual conduct in the
2 first degree and armed robbery charges?

3 A Yeah.

4 Q And that's why they were seeking life without parol
5 on you?

6 A Yeah.

7 Q All right. You -- you don't contest that you're
8 guilty of the Pop's Pantry Express, you said
9 there's surveillance video that clearly shown you
10 were there?

11 A Yeah, I contest that it was armed robbery.

12 Q Okay. The witnesses in that case said they saw the
13 silver handle of that leatherman tool and
14 reasonably thought that it was a firearm?

15 A Well, the witness in this -- in this crime, they
16 changed their story three times. They said I
17 walked in to the store and I pointed a gun at them.
18 Then they changed it to I had it tucked in my
19 waistband. Then they came up with a miraculous
20 story about a multi tool.

21 Q Okay. But you were able to see that video for
22 yourself and assess what you thought it showed, is
23 that correct?

24 A Yeah, I saw the video.

25 Q Okay. And at the end of your plea, you

BOBBY E. PYKE -- CROSS BY MR. CORNEY:

1 specifically told the Judge, look, I've seen the
2 video and I know I'm facing life without parole on
3 it, I think it's in my best interest to enter this
4 plea, right?

5 A I don't believe I said that.

6 Q All right.

7 MR. CORNEY: Beg the Court's indulgence one
8 moment.

9 A Whatever the case may be, I -- I'm not guilty of
10 armed robbery. I was forced into a plea because
11 they were hanging a life sentence over my head, it
12 scared me and that's why I pled guilty.

13 Q All right.

14 A Regardless of what I told the Judge.

15 Q If I could approach, Your Honor ---

16 THE COURT: Sure, go ahead.

17 MR. CORNEY: --- with a copy of the record,
18 the transcript.

19 Q Right down there I've got it highlighted, page 24,
20 lines 23 through 25, take a look at that for me.

21 A Yeah, if I did go to trial that the jury would
22 believe that I was armed. Yeah, that's exactly
23 what I said.

24 Q Okay.

25 A I mean, that's what I believe that the jury would

1 believe, that I was armed.

2 Q And you said, I didn't want to risk getting a life
3 sentence, that's the reason you entered these
4 pleas, right?

5 A Exactly.

6 Q Nothing to do with the photo lineup, nothing to do
7 with any of the other stuff, you didn't want to get
8 life without parole and that's why you pled?

9 A I pled guilty because -- because if I would have
10 went to trial, I felt the jury would believe that I
11 was armed which I wasn't. That's exactly what I
12 said, what you highlighted, exactly what I said and
13 what I meant, that the jury would believe that I
14 was armed.

15 Q Okay. And so you didn't want to roll the dice.
16 You wanted to plead guilty because you didn't want
17 to roll the dice on life without parole?

18 A I feel -- that's because -- because if -- if -- if
19 I'm going to go to trial on two armed robberies,
20 then I feel that the jury would have found me
21 guilty. But if my attorney would have filed a
22 motion to sever the cases then I might would have
23 had a chance.

24 A Okay. Either one of those armed robbery charges
25 would have been enough to get you life without

BOBBY E. PYKE -- CROSS BY MR. CORNEY:

24

1 parole ---

2 A Of course.

3 Q So you would have had two different chances for the
4 State to try you to get life without parole if they
5 had been severed, right?

6 A Yeah.

7 Q Okay. And that's what you wanted to do?

8 A I wanted the cases severed where I would have had a
9 chance.

10 Q Okay. And you realize that if you win this PCR
11 today you would be sent back to General Sessions
12 where the State could again pursue life without
13 parole?

14 A Right.

15 Q And that's what you want to do today?

16 A Well, I mean, not really. I mean, I don't want --
17 I don't want to be facing a life sentence but as
18 far as I'm concerned, 20 years is a life sentence.
19 I've got severe health problems. I mean, I don't
20 believe I'm going to survive this 20 years.

21 MR. CORNEY: I believe that's all the questions I
22 have, Your Honor. I would just respectfully request that
23 the Court maybe advise him what the consequences of this
24 PCR are so that we -- he seems a little bit ---

25 THE WITNESS: No, I know.

1 MR. CORNEY: I just wanted to mention that ---

2 THE COURT: Y'all relax, stop, sit down.

3 MR. CORNEY: Thank you.

4 THE COURT: Anything on redirect.

5 MR. KUNZ: Just very quickly.

6 REDIRECT EXAMINATION

7 BY MR. KUNZ:

8 Q Mr. Pyke, you just said briefly with Mr. Corney's
9 examination that you were -- you were a little
10 scared of the life without parole option and that
11 you pled guilty because you were a little nervous
12 about that, correct?

13 A Yeah.

14 Q Isn't it true that if Ms. Davis would have filed
15 the motions that we talked about previously ---

16 A Right.

17 Q --- that would have taken a little bit of your fear
18 away and that is the underlying reason why you
19 ended up pleading guilty, was because you were not
20 able to participate in trial strategy as well as
21 having effective assistance of counsel.

22 A Right, that's exactly right.

23 MR. KUNZY: Okay, that's all. That's all,
24 Your Honor.

25 THE COURT: Okay. Anything on recross?

KEVIN ISENHOWARD -- DIRECT BY MR. KUNZ:

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1 MR. CORNEY: No.

2 THE COURT: Thank you.

3 MR. CORNEY: Thank you.

4 THE COURT: You may step down, Mr. Pyke.

5 (The witness leaves the witness stand.)

6 THE COURT: Any -- call your next witness.

7 MR. KUNZ: Yes, sir. The Applicant calls

8 Investigator Kevin Isenhoward.

9 (KEVIN ISENHOWARD, having first been duly sworn,
10 testified as follows:)

11 THE COURT: Please take a seat. Tell us your
12 full name and spell your last name for the record.

13 THE WITNESS: Kevin Isenhoward, the last name
14 is spelled I-s-e-n-h-o-w-a-r-d.

15 DIRECT EXAMINATION

16 BY MR. KUNZ:

17 Q Investigator Isenhoward, thank you very much for
18 being here today. I appreciate it.

19 A No problem.

20 Q Real quickly, can we get some background
21 information, just your educational history, your
22 employment and if you have any special training?

23 A I'm a supervisor in the major crimes unit at the
24 Richland County Sheriff's Department. I've been at
25 the department 14 years. I have a bachelor's

1 degree in criminal justice. Lifelong -- most of my
2 life I grew up in Pontiac, South Carolina, an Elgin
3 address but in Richland County. I know live in
4 Kershaw County.

5 THE COURT: All right. I wouldn't claim Elgin
6 either.

7 THE WITNESS: That's why I say Pontiac.

8 Q Thank you, Investigator Isenhoward. Do you
9 remember Mr. Pyke and these alleged armed robberies
10 that are the subject of this Post Conviction Relief
11 hearing?

12 A I do remember, yes.

13 Q Okay. Getting into -- we have subpoenaed your file
14 and I know you have the file with you today. I
15 have some questions regarding the file but first,
16 can you give us the protocol when you're
17 investigating an armed robbery such as this,
18 beginning with the arrest warrant?

19 A Obviously it can progress in several different ways
20 but when I believe I have a probable cause for an
21 arrest, I will go to a Richland County Magistrate,
22 submit the probable cause in affidavit form. He
23 will make a decision of whether or not to issue an
24 arrest warrant. Once I have an arrest warrant, if
25 he decides that I do have probably cause, on any

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1. felony, I then take the warrant or a copy of the
2. warrant to the warrant division of the Sheriff's
3. Department who enters it into NCIC which is the
4. National Crime Information computer. It is then
5. available for any officer in the country or Canada
6. to search if they believe they have encountered
7. someone. It's routine for us to run their name and
8. date of birth through NCIC to see if there are any
9. hits. A hit would be a wanted status from some
10. agency somewhere.

11. Q Now NCIC, is that the vehicle that puts other
12. counties on notice that they are allowed to arrest
13. someone that's in the system with an arrest
14. warrant?

15. A Yes.

16. Q But it's not used to allow a county to be on notice
17. of other counties entering in and arresting the
18. suspect, correct?

19. A No, it's just to notify you that this person has
20. the wanted status.

21. Q Now, if the suspect is in a different county, is
22. there a different procedure for how you go about
23. getting an arrest warrant?

24. A No.

25. Q Okay. If -- if you or your division knew that a

1 suspect was in a different county and you wanted to
2 -- you wanted to enforce your arrest warrant and
3 arrest him in a different county, is it typical
4 procedure to have a Magistrate in that county co-
5 sign the arrest warrant?

6 A It is an option and I would describe it as early on
7 in my career, it was more frequent that we would
8 get warrants countersigned. Now we rely on NCIC.
9 If we're aware that an address we're going to is in
10 another county, then we would contact the Sheriff's
11 office of that county and ask them to meet us there
12 and we would -- obviously if we encountered the
13 suspect, we would effect an arrest.

14 Now, that's if I knew it was in another county
15 and if I had an opportunity or if for some reason
16 encountered someone in another county, which I've
17 done several times since I live in one, if I knew
18 was wanted, I could still effect an arrest in that
19 county adjacent to my county.

20 Q Okay. Did you know in this case that Mr. Pyke's
21 address was in a different county?

22 A I do now but in fact, the street sign, the street
23 he lives on, is a Richland County street sign. The
24 sign for the county, Kershaw County, is about 50
25 yards down the road and I have -- when I was

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1 patrolling have been to calls at addresses on that
2 same street. In hindsight now, I realize that his
3 -- his home is just across the line in Kershaw
4 County.

5 Q Now, I guess typical protocol, for lack of a better
6 word, would be to effectuate this or to -- excuse
7 me, to enforce this arrest warrant, would be to
8 call Kershaw County and have deputies present with
9 you for the arrest?

10 A If going into it I knew it was in another county, I
11 would. But like I said, had I encountered him in
12 another county, I could still effect an arrest in
13 Kershaw County.

14 Q Okay. Does -- does that lack of knowledge remedy
15 an arrest in a different county without that
16 county's deputies present?

17 A It doesn't matter.

18 Q Okay.

19 A In my opinion. I guess -- it's protocol to advise
20 another county. Obviously they may have concern
21 about what's going on in their county so if I was
22 going to another county and I knew I was going to
23 another county, I would contact their Sheriff's
24 office.

25 Q Okay. But there is no, in your opinion and in your

1 experience, by effectuating an arrest in Kershaw
2 County while having a Richland County Magistrate
3 sign an arrest warrant and Richland County officers
4 were investigators, that is -- that does not create
5 an unlawful arrest in your opinion?

6 A Not pursuant to 17-13-40 which is jurisdiction of a
7 law enforcement officer.

8 Q In 17-13-40, isn't it correct that that's if you're
9 in pursuit of a suspect?

10 A It is and I was in pursuit of Mr. Pyke when I saw
11 him.

12 Q Okay. So that is not in actual hot pursuit where
13 you are driving after someone over a county line
14 and can keep going? That is if you have an NCIC
15 report on them or an arrest warrant, that you can
16 go ahead and cross the county and arrest them
17 according to 17-13-40?

18 A In my opinion, in that statute it does not
19 specifically say, hot pursuit, which is, you know,
20 typically how a chase, a vehicle chase is
21 described.

22 Q Right. So, if that was -- if that was the case,
23 then why would any county sheriff call another
24 county or need to call another county? If they
25 were in pursuit of an arrest, why would you need to.

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1 call another county and let them know that you were
2 coming into their county to arrest someone?

3 A Courtesy.

4 Q Courtesy?

5 A Yes.

6 Q Okay. So, just -- I'm sorry, just to be clear. I
7 know you said this, there was no Kershaw Magistrate
8 co-signing, there were no Kershaw County deputies
9 present, but his arrest warrant was entered into
10 NCIC?

11 A Yes.

12 Q Okay. Investigator Isenhoward, I have a
13 investigative report here that was in your file.

14 MR. KUNZ: May I approach, Your Honor?

15 THE COURT: Sure.

16 Q Do you recognize this report?

17 A Yes.

18 Q Okay. And this is a report that you, I imagine,
19 started at the beginning of your investigation and
20 it goes through the end of the investigation,
21 correct?

22 A Yes.

23 Q Okay. There is a section here -- excuse me for one
24 second. Right at the top I have, on 12-31, you say
25 that you received the suspect description, actions

1 of the suspect in the December 26th, 2007 armed
2 robbery that were nearly identical to the robbery
3 at Pop's Pantry, is that correct?

4 A Yes.

5 Q Okay. And to your recollection, the -- were the
6 suspects identified very similarly?

7 A Yes, I believe -- I'd have to go back and double
8 check but it was wire framed glasses of some sort
9 and a white male, I think with a silver weapon of
10 some sort. Pop's Pantry Express, they believe it
11 to be a firearm and the victim at the CVS believed
12 it to be a knife. And in my experience, those can
13 get confused at any given time. The proximity and,
14 in all honesty, we don't have that much activity in
15 that general area.

16 Q Okay. I have the ---

17 MR. KUNZ: May I approach again, I'm sorry?

18 THE COURT: Yes, sir.

19 MR. KUNZ: Thank you.

20 Q I have two BOLO reports to officers of Richland
21 County that describe the suspect in each and in the
22 December 26th, 2007 BOLO it says, the suspect is
23 described as a white dirty looking male between the
24 ages of 25 and 35, 6 feet tall, 180 pounds. And
25 then in the top area it says, the suspect frequents

1 McDonald's and appears to be homeless and walks
2 around the area early in the mornings.

3 Is that what you see on that BOLO report?

4 A Yes, this -- this particular BOLO was issued early
5 on in the investigation, I believe, and it was
6 based upon -- it's typical when I'm investigating a
7 case to what we call canvas an area. I spoke with
8 some clerks at a gas station across the street from
9 the CVS.

10 Q Uh-huh.

11 A They indicated there was a guy fitting that
12 description who wandered around. It's not specific
13 to Mr. Pyke.

14 Q Okay. But the size on there says 6 feet tall, 180
15 pounds, between 25 and 35, is how they're -- the
16 suspect is described, correct?

17 A That's how the person was described by the clerks
18 at the gas station across the street.

19 Q Okay.

20 A Not -- not the victims the case.

21 Q Right. But this is -- this is the BOLO that you go
22 -- that's a description that you go on if it's in
23 the BOLO, correct? There's no -- if a Sheriff's
24 officer looked at this BOLO, they wouldn't know to
25 look somewhere else and say, well, that might or

1 might not be right because it was described by the
2 clerks? This is the official BOLO that went out on
3 this robbery, correct?

4 A We issue -- we issue BOLO's to patrol officers, be
5 on the lookout for ---

6 Q Uh-huh.

7 A --- based on crime trends, things going on in the
8 area, and the best information that we have at the
9 time.

10 Q Right.

11 A Like I said, these are not specific -- they would
12 not have made an arrest based on this BOLO.

13 Q Right, they ----

14 A They just simply say, hey, Detective Isenhoward, I
15 -- you know, I ran into this guy, here's his name.
16 He fit the description, you might want to look at
17 him.

18 Q All right. And going to the BOLO for the December
19 30th armed robbery at Pop's Pantry, it says -- it
20 has Bobby Pyke's height and weight on that. And
21 what is his height and weight on the bottom of that
22 page?

23 A This is -- it's from his jail file ---

24 Q Uh-huh.

25 A --- 5-9, 155.

KEVIN ISENHOWARD -- DIRECT BY MR. KUNZ:

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1 Q And then I also have the Richland County Sheriff's
2 Department robbery questionnaire.

3 MR. KUNZ: If I may approach?

4 THE COURT: Sure.

5 Q And that is from the clerk at the Pop's Pantry,
6 Shanika Hooks (phonetic) and can you please read
7 for the Court the height and build and weight of
8 that suspect?

9 A 5-9, 145.

10 Q Okay. And what I'm really getting at, I'm not
11 trying to play hard ball here, is that in your
12 description here I know you say you go on BOLO's
13 and you don't arrest on them, it's just to keep an
14 eye out, but in your description in your
15 Investigative Report on 12-31-07, it says that the
16 suspect's description was nearly identical with the
17 robbery on 12-26-07. And I just wanted to clear
18 that up -- that to me, in my opinion, and I ask
19 you, in your opinion, are those descriptions, those
20 physical descriptions, are not nearly identical,
21 correct?

22 A Well, you're -- with all due respect, you're
23 comparing apples to oranges. You're comparing this
24 BOLO that I issued based upon information I
25 obtained unrelated to the robbery. You see ---

1 Q I do see what you're saying but it's still related
2 to a robbery?

3 A Well, yes, it's related but ---

4 Q And so you -- I'm sorry, I apologize. Go ahead and
5 finish.

6 A I'm just trying to make it clear that this is not
7 specific information that came from the victims of
8 that crime.

9 Q Uh-huh.

10 A This is just somebody who works next door who said,
11 hey, there's somebody suspicious hanging around
12 here in the mornings and I wanted my officers to
13 find out who that person was.

14 Q Right.

15 A So I was describing that person that the neighbor,
16 let's say ---

17 Q Uh-huh.

18 A --- described as being suspicious in the area, not
19 specific to the robbery itself.

20 Q Okay.

21 A Obviously there was the possibility of that but
22 that was for me to decide once we encountered this
23 person.

24 Q So what did you use for your 12-31-07 entry to say
25 that the suspect's description was nearly identical

KEVIN ISENHOWARD -- DIRECT BY MR. KUNZ:

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1 with the robbery on 12-30?

2 A The reports, the incident reports.

3 Q The incident reports from the 12-26 robbery?

4 A Yes.

5 Q Was there a BOLO -- did you combine those reports
6 for this 12-30-07 BOLO?

7 A Again, am I aware that these occurred, yes. Am I
8 -- do I believe at that time these are related,
9 yes. This information for that BOLO was simply
10 because some clerks at a gas station next door
11 thought that somebody who hangs around in the
12 mornings as described in that BOLO may have been a
13 good suspect for the robbery.

14 Q Okay. So you don't rely on this description --

15 THE COURT: Help me out, sir. How is this
16 related to whether or not Mr. Pyke knowingly,
17 intelligently, voluntarily pled guilty on a negotiated
18 deal?

19 MR. KUNZ: Right. My basis is that if he
20 would have gone to Ms. Davis and asked Ms. Davis to
21 sever ---

22 THE COURT: Continue, continue, go ahead,
23 finish your questions.

24 MR. KUNZ: Okay.

25 Q I think we've gotten enough out of the BOLO

1 reports, thank you.

2 A Uh-huh.

3 Q When did you realize that -- that Mr. Pyke's
4 address was in Kershaw County?

5 A That's difficult for me to say. I've been to his
6 address since then ---

7 Q Uh-huh.

8 A --- for other relatives, probably shortly after the
9 -- the arrest, his arrest, when looking back at
10 things I realized that it was in Kershaw County

11 Q Okay. But that was -- was it before or after y'all
12 returned to his home for the consent search?

13 A It -- it would have probably been after but we
14 routinely conduct consensual searches ---

15 Q Right.

16 A --- in other counties and other states.

17 Q Okay. So that -- okay. Finally, I want to ask
18 you, this came from your file as well.

19 MR. KUNZ: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 Q Mr. Pyke said on the stand earlier that he believed
22 that his photo lineup was prejudicial because of
23 the numbers and placement of his picture on this
24 photo lineup. Can you please briefly explain the
25 numbers that are placed on this? Are they numbers

KEVIN ISENHOWARD -- DIRECT BY MR. KUNZ:

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1 for -- inmate numbers are in your computer system
2 where you pull headshots?

3 A Yeah, those numbers are inmate numbers from the
4 Richland County jail.

5 Q Okay.

6 A They are all -- all of those numbers are inmate
7 numbers.

8 Q Okay. And would it -- would it stick out or does
9 it stick out to you that his picture starts with an
10 8 and all the others start with a 3? Is that a
11 typical lineup?

12 A (No reponse.)

13 Q Do you try to match numbers -- I'm sorry?

14 A No, we try and match physical ---

15 Q Just physical ---

16 A Our basis for constructing the lineup is the same
17 physical description, hair length, mustache, that
18 sort of thing.

19 Q And you just -- do you keep the numbers on there
20 just basically to be able to identify the person
21 once they are circled or once they are identified?

22 A The system puts the numbers on there. I don't take
23 them off ---

24 Q Okay.

25 A --- or put them on there.

KEVIN ISENHOWARD -- CROSS BY MR. CORNEY:

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1 MR. KUNZ: Okay. Thank you, Investigator
2 Howard.

3 THE COURT: All right, cross examine.

4 MR. CORNEY: Very briefly, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. CORNEY:

7 Q Investigator Isenhoward, were you the one to show
8 the victims this photo lineup and to have them take
9 a look at it and see if they could identify
10 anybody?

11 A Yes.

12 Q Okay. And at any point in time did you ever
13 suggest to them or insinuate to them that the
14 suspect was in fact one of these people in the
15 lineup?

16 A No.

17 Q Okay. They -- were they ever put under the
18 impression that they had to pick one of these
19 people ---

20 A No.

21 Q --- that they were included in there?

22 A No.

23 MR. CORNEY: Okay. That's all I have, Your
24 Honor.

25 THE COURT: Anything on redirect, Mr. Kunz?

1 MR. KUNZ: No, sir.

2 THE COURT: Anything further of this witness?

3 MR. KUNZ: No, sir.

4 THE COURT: You may step down, sir.

5 (The witness leaves the witness tand.)

6 THE WITNESS: Thank you, sir.

7 THE COURT: You call your next witness.

8 MR. KUNZ: I call Ms. Davis, the Applicant
9 calls Ms. Davis.

10 THE COURT: I guess Investigator Isenhoward
11 wants to go back to work, is that right?

12 MR. ISENHOWARD: They probably would like me
13 to.

14 THE COURT: But do you want to? You want to
15 be excused ---

16 MR. ISENHOWARD: Yes, sir, thank you.

17 THE COURT: Any objection to Mr. -- Officer
18 Isenhoward ---

19 MR. KUNZ: No, sir.

20 MR. CORNEY: No, sir.

21 THE COURT: All right. Good to see you again.

22 (JENNIFER DAVIS, having first been duly sworn,
23 testified as follows:)

24 THE COURT: Please take a seat. Tell us your
25 full name and spell your last name for the record.

1 THE WITNESS: Jennifer Davis, last name D-a-v-i-
2 s.

3 DIRECT EXAMINATION

4 BY MR. KUNZ:

5 Q Thank you for being here, Ms. Davis. Just briefly,
6 can you give us your education and employment
7 history.

8 A I went to law school and William Mitchell School of
9 Law in St. Paul, Minnesota. I graduated in '05 and
10 started working here in the Public Defender's
11 office in 2006 and have been there since.

12 Q Okay. Do you remember Mr. Pyke's case and
13 defending him in the subject of this PCR?

14 A Yes.

15 Q What if anything sticks out to you about this case?
16 I know that's a very broad question but is there --
17 is there anything with -- that was different
18 between yourself and Mr. Pyke than other clients?
19 Was he trying to be more involved, was he asking
20 more things than usual, filing more motions?

21 A No, I wouldn't say there was anything particularly
22 strange or unique or anything. I know in general
23 he was very involved and had a lot of questions and
24 I was very detailed with him as much as I could be.
25 I guess in a grand scheme of things, he was

JENNIFER DAVIS -- DIRECT BY MR. KUNZ:

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1 probably more involved and very detail oriented, I
2 would say, maybe more so than some clients but
3 other than that...

4 Q Besides the surveillance tape, what challenges did
5 you face in his defense?

6 A In terms of the defense on both armed robberies?

7 Q Yes, yes, ma'am.

8 A I believe the one incident at CVS, there was a
9 photo lineup where the victim identified him. We
10 interviewed her in the course of our investigation
11 and she maintained her statement she had made to
12 the police. The other one, yes, there was a video.
13 There was I believe DNA where he could not be
14 excluded, possibly from a door or something to that
15 effect. He also had given a statement in regard to
16 the Pop's Pantry incident. In my opinion, I guess
17 the Pop's Pantry, there was more evidence than the
18 CVS. However the lineup of the CVS was something
19 we'd have to overcome.

20 Q Okay. I'm going to get straight into his
21 allocution now. Just quickly, what is your
22 recollection of Judge Lee's hearing, what was her
23 final decision on not granting the motion? Did she
24 give you a reason for that?

25 A She did. If I can look at my notes, I have them in

1 here.

2 Q Okay.

3 A We did meet in chambers, as he said. We requested
4 an in camera hearing and Judge Lee, she took that
5 literally and we did an in camera hearing in her
6 chambers with me and Mr. Pyke. I believe -- my
7 notes indicate that was held October 13th of '08.
8 She did not feel that there was irrevocable harm or
9 damage and that she wanted us to attempt to
10 reconcile and basically requested that I go meet
11 with him again. If there was still any concerns,
12 that she wanted us to refile the motion in front of
13 her and denied the motion at that point.

14 Q Okay. Do you recall Mr. Pyke ever asking you to
15 challenge the arrest as being unlawful?

16 A Yes, in terms of the jurisdictional issue and those
17 are all issues that we discussed and went through
18 very detailed with him and what all of our pretrial
19 motions would be. That was one of the issues that
20 we would have addressed and had done significant
21 research on that jurisdictional issue actually.

22 Q Okay. So you were prepared to file that motion
23 pre-trial?

24 A Yes.

25 Q Okay.

JENNIFER DAVIS -- DIRECT BY MR. KUNZ:

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1 A The day he pled was the day of his trial. We were
2 prepared on all the pre-trial.

3 Q Okay. And I -- the same question regarding the
4 motion to suppress evidence, the leatherman tool?

5 A The same, that would have been addressed pre-trial.
6 We had talked about that leading up to trial and
7 what -- what all our motions would be and what they
8 would consist of.

9 Q How long before his -- his plea hearing was he
10 aware that he was going to be charged with life
11 without parole?

12 A He was served, I believe -- he pled on March 30th.
13 I think he was served sometime in February but I
14 would have to double check.

15 Q If you -- if that's your recollection, that's fine.

16 A Yeah, I'm just not a hundred percent sure.

17 Q Did you -- my follow-up question is, did you speak
18 with him after he was served the life without
19 parole possibility about that trial strategy and
20 where to go from there?

21 A Yes.

22 Q Okay. And same -- similar question with the lineup
23 suppression results, was that another pre-trial
24 motion you were prepared to file?

25 A Yes.

1 Q Okay. Did you ever tell Mr. Pyke that he could not
2 participate in trial strategy?

3 A No, I think -- well, I mean, maybe to some extent
4 in terms of early on in the case when he wanted
5 perhaps another bond motion reduction motion filed
6 and things to that effect. At one point I believe
7 there was some conversation about that and I
8 explained to him that in general, the rule is that
9 as the attorney I would deal with trial strategy.
10 He would have decisions to make over the course of
11 whether or not to plead or go to trial. That would
12 be his right and whether or not to testify or not.
13 That I would consult him on what our strategies
14 would be but that he did not necessarily get to
15 dictate every avenue in terms of our trial
16 strategy.

17 Q Okay. Did he ever try to participate, in dictating
18 or shifting the trial strategy in a certain area?

19 A I mean, he was very involved in his case. I took
20 very close note of concerns he had and issues he
21 raised in terms of the jurisdictional issue. I
22 think it was actually Mr. Pyke that brought up that
23 he lived in Kershaw County which was what started
24 us researching that entire issue.

25 So he -- everything he said was followed up

JENNIFER DAVIS -- DIRECT BY MR. KUNZ:

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1 on, I took that into consideration when we were
2 going forward.

3 Q And in your opinion now, would that still be a
4 valid issue, that jurisdictional issue, just...

5 A I mean, I disagree with Investigator Isenhoward's
6 account of how it works and I believe we had a
7 basis for making the motion.

8 Q Did you ever -- did Mr. Pyke ever ask you to
9 bifurcate or separate the armed robbery charges
10 into two separate trials?

11 A I don't know that that was his idea versus my idea,
12 I don't know where it came up but that motion was
13 actually filed.

14 Q Okay.

15 A It was scheduled for February 9th, so that motion
16 was set.

17 Q Okay. So it was scheduled for February 9th but it
18 ---

19 A I believe that I had an issue with an investigator
20 so the trial date itself was postponed to
21 March 30th. I believe Ms. Shipley requested that
22 all pre-trials be held in front of the same judge.
23 So that Motion to Sever was not heard at that time
24 but it was already filed and had been set before a
25 judge.

1 Q Okay. And so that would be -- that wouldn't be
2 heard as part of the pretrial motion?

3 A Normally it would. I was trying to get advance
4 notice so that I could prepare sufficiently in
5 terms of opening and closing and things like that.
6 But it had not been heard at this time.

7 Q Okay. Did you ever tell Mr. Pyke that he had to
8 plead guilty or that his options were to answer the
9 Judge's questions -- strike that, excuse me.

10 Did you ever tell Mr. Pyke that he had to
11 plead guilty?

12 A No, sir. We talked about his options at length in
13 terms of whether or not he wanted to plead or to go
14 to trial. That was a decision that he was always
15 aware was solely his decision. And the day of
16 trial, I believe it was the day of trial that he
17 did decide to plead guilty and they would do LWOP.

18 Q So negotiations happened that morning of trial?

19 A I think that we had actually had the offer the week
20 prior, maybe on that Thursday or Friday and had
21 initially tried to schedule the plea for the Friday
22 before trial and for some reason I think the Judge
23 maybe wasn't available or something happened to the
24 fact that I went and told Mr. Pyke that it wouldn't
25 be until Monday.

JENNIFER DAVIS -- DIRECT BY MR. KUNZ:

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1 Q Okay. And so what did Mr. Pyke -- how did Mr. Pyke
2 respond to that?

3 A I can look at my notes. He said that he wanted to
4 go forward on Monday. I believe he wanted to talk
5 to his family over the weekend as well.

6 Q And did he indicate to you what caused his change
7 of heart to accept the plea, guilty plea?

8 A He -- I mean, I know he was concerned about the
9 life without parole. And we had reviewed the video
10 and he was concerned that the jury may find if he
11 was armed, that he would be convicted and it would
12 be an automatic life sentence.

13 Q Okay. And so once he told you he wanted to plead
14 guilty, did you try to talk him out of it or
15 explain anything or did you just say, okay, let's
16 go?

17 A Did I try to talk him out of it?

18 Q Out of pleading guilty and say we can move forward
19 with these pre-trial motions?

20 A I mean, we discussed at length all the pre-trial
21 issues and that it would be up to a judge on each
22 issue. And I even think I gave my opinion in terms
23 of the being on our side versus not on each issue.
24 Ultimately I left the decision of whether to plead
25 or go to trial with him.

1 MR. KUNZ: Okay. I have nothing further, Your
2 Honor.

3 THE COURT: All right, Mr. Corney.

4 CROSS-EXAMINATION

5 BY MR. CORNEY:

6 Q Ms. Davis, with everything that you just testified
7 to, do you think you gave Mr. Pyke sufficient
8 information and advice to make a knowing and
9 voluntary decision on whether to enter his plea?

10 A Yes.

11 MR. CORNEY: That's all the questions I have,
12 Your Honor.

13 THE COURT: Ms. Davis, do you recall Judge
14 Child ever specifically asking Mr. Pyke whether or not
15 he waived the jurisdictional issue during the guilty
16 plea?

17 THE WITNESS: I don't remember that right off
18 the top of my head, Your Honor. I think I have the
19 transcript ---

20 THE COURT: I have it too, I read part of it.
21 Does anybody know for sure? Was the question ever
22 asked by Judge Child's of Mr. Pyke whether he waived
23 jurisdiction from Kershaw to Richland County?

24 MR. CORNEY: I don't believe it's in the
25 transcript.

1 THE COURT: We can find that out later. It's
2 just a question I would like the answer to before I
3 make a decision.

4 MR. KUNZ: I don't believe ---

5 THE COURT: Thank you, Ms. Davis.

6 MR. CORNEY: Yes, sir.

7 (The witness leaves the witness stand.)

8 THE COURT: Anything further?

9 MR. CORNEY: Nothing from the State.

10 MR. KUNZ: No, sir. We just ask that in light
11 of the jurisdictional problem and Mr. Pyke's testimony
12 that we believe we've overcome the burden of Strickland
13 v. Washington and also Johnson v. Catoe for guilty plea
14 hearings, and we ask you to vacate Mr. Pyke's
15 conviction or, in the alternative, vacate and remand
16 for retrial.

17 THE COURT: Thank you, sir.

18 MR. CORNEY: Your Honor, I would just say, you
19 know, based on the transcript record before this Court,
20 particularly the transcript, it's clear Mr. Pyke
21 entered this plea after being advised, as Ms. --
22 through Ms. Davis's testimony, of everything and the
23 fact that she was going to raise all of these pre-trial
24 motions, that at the end of the transcript he says, I'm
25 entering this plea to avoid LWOP.

1 THE COURT: All right.

2 MR. CORNEY: It's obvious that's the reason he
3 did, he took the benefit of the bargain, so.

4 THE COURT: Thank you both for your lively
5 presentation. I will let you know my decision in due
6 course.

7 Ms. Davis, you may leave.

8 Call the next case.

9 MR. KUNZ: Thank you, Your Honor.

10 MR. CORNEY: Thank you, Your Honor.

11 ----- END OF TRANSCRIPT OF RECORD -----

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1 CERTIFICATE OF REPORTER
2

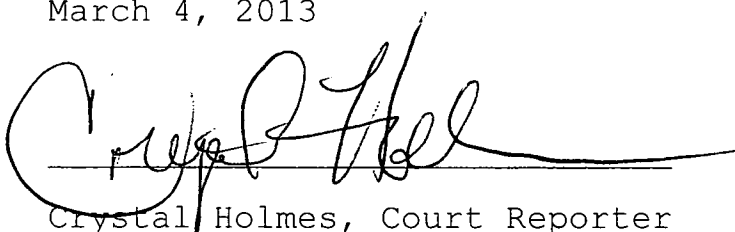
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF RICHLAND)
5

6 I, Crystal Holmes, Official Court Reporter for the
7 Fifth Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true,
9 accurate and Complete Transcript of Record of the
10 proceedings had and evidence introduced in the hearing
11 of the captioned case, relative to appeal, in the Court
12 of Common Pleas for Richland County, South Carolina, on
13 the 22nd day of May, 2012.

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

17 March 4, 2013

18 
19
20 Crystal Holmes, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2009-CP-40-07237
Bobby E. Pyke, 143101,	)	
	)	
Applicant,	)	
	)	
vs.	)	APPLICANT'S SUPPLEMENTAL
	)	JURISDICTION BRIEF
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

STATEMENT OF ISSUE

The issue under review is whether Richland County Investigator Kevin Isenhoward and the Richland County Sheriff's Department were authorized to effectuate the arrest of Applicant outside of their jurisdiction in Kershaw County. Applicant argued at his post-conviction relief ("PCR") hearing that Investigator Isenhoward and his deputies, absent pursuit pursuant to S.C. Code Ann. Section 17-13-40 (2003), did not have the authority to enter Kershaw County and effectuate an arrest.

STATEMENT OF FACTS

According to the record and testimony at the PCR hearing, the current charges against Applicant stem from two separate robberies committed several days apart. The first robbery occurred on December 26, 2007, at a CVS store located at 121 Clemson Road in Richland County. During this incident, a woman reported being robbed of her purse in the store's parking lot. The second robbery occurred on December 30, 2007, at Pops Pantry Express convenience store located at 10541 Two Notch Road in Richland County. Inv. Isenhoward described in the narrative section of his "ACISS Investigative Followup Report" he retrieved the video of the

robbery from evidence and released images to local media outlets. (Attached as "Exhibit A"). The photographs were also placed on display at the store. On January 5, 2008, Inv. Isenhoward received a call from the store that two patrons, Donna Bauknight and Mark Smith, had informed the clerk that Applicant was the suspect in the photographs. Bauknight and Smith reported Applicant was a relative and lived with them at 128 Shannon Wood Road in Kershaw County. Inv. Isenhoward reported he researched Applicant and pulled his South Carolina Sex Offender Registration which showed Applicant's picture and address. (Attached as "Exhibit B"). After presenting a photo line-up to one of the clerks from Pops Pantry store, Inv. Isenhoward reported he then obtained an arrest warrant for armed robbery from Richland County Magistrate G.A. Surles.¹ (Attached as "Exhibit C"). Investigator Isenhoward also entered this arrest warrant into the National Crime Information Center ("NCIC") database. (Attached as "Exhibit D").

That same day, Inv. Isenhoward went to 128 Shannon Wood Road in an attempt to locate Applicant and spoke with Applicant's mother, Laura Bauknight. Applicant was not home but later that day Inv. Isenhoward and another Richland County Sheriff's Department officer returned to 128 Shannon Wood Road in Kershaw County and found Applicant sitting in a vehicle on the property. Inv. Isenhoward arrested Applicant, advised him of his rights, and Applicant allegedly admitted he had robbed "the store." Applicant was taken to Richland County Sheriff's Department Headquarters where he allegedly admitted to the robbery at 10541 Two Notch Road but denied committing the robbery at 121 Clemson Road.

On January 7, 2008, Inv. Isenhoward returned to 128 Shannon Wood Road in Kershaw County. Ms. Laura Bauknight consented to a search of the home where police found a silver

¹ Investigator Isenhoward's narrative appears to misconstrue the actual dates of some events as Magistrate G.A. Surles signed an arrest warrant for Applicant as related to the 10541 Two Notch Road robbery on January 4, 2008, rather than January 5, 2008.

multi tool belonging to Applicant. This multi tool was placed into evidence and was alleged by the State to have been displayed as the handle of a gun during the 10541 Two Notch Road robbery and as a knife during the 121 Clemson Road robbery. Magistrate G.A. Surles then issued another arrest warrant for Applicant citing armed robbery for the 121 Clemson Road incident. (Attached as "Exhibit E").

Applicant was represented by plea counsel throughout the duration of his case. On October 13, 2008, the Honorable Judge Allison Lee denied plea counsel and Applicant's separate motions requesting plea counsel be relieved as counsel. Applicant eventually pled guilty to both counts of armed robbery on March 30, 2009, in front of the Honorable Judge Michelle Childs and was sentenced to twenty (20) years' imprisonment.

Applicant filed his PCR application on October 8, 2009, alleging ineffective assistance of plea counsel. Applicant's evidentiary hearing before the Honorable Judge Casey L. Manning was held on May 22, 2012. At the hearing, Inv. Isenhoward testified that even if he had known Applicant's residence was in Kershaw County, he would not have requested a Kershaw County deputy be present to effectuate the arrest or have had a Kershaw County magistrate judge co-sign Judge Surles arrest warrant. Inv. Isenhoward testified he may have given the Kershaw County Sheriff's Department a "courtesy call," but nothing more. He further testified that when operating in any other county, it is merely a courtesy to inform that county's sheriff's department of his presence in their county. When pressed on the issue, Inv. Isenhoward testified he could effectuate an arrest in any county without the assistance of that county's officers or having a magistrate in that county co-sign an arrest warrant via a warrant's entry into NCIC or pursuit of the arrest of a suspect. He testified NCIC put other counties on notice of an intention to effectuate an arrest.

Inv. Isenhoward also testified that S.C. Code Ann. Section 17-13-40 (2003)² permitted he and his officers to arrest Applicant in Kershaw County because they were in “pursuit” of Applicant. Isenhoward testified that he was in “pursuit” of Applicant’s arrest so he believed the statute applied, regardless of whether they were directly pursuing Applicant in a chase or effectuating an arrest in the same manner as this case. Inv. Isenhoward also testified he believed his seizure of the multi tool was not affected by any jurisdictional issue because officers from differing counties routinely conduct searches out of their own county when valid consent is given by an owner.

Plea counsel testified she completely disagreed with Inv. Isenhoward’s interpretation of Section 17-13-40 and had filed a motion to dismiss the arrest pursuant to lack of jurisdiction. This motion, however, was never scheduled by the court and never heard prior to Applicant’s day of trial.

LEGAL STANDARD

Effective representation of counsel is a requisite of due process and the Sixth Amendment; the allegation of denial of such representation sets forth a prima facie violation of constitutional rights that requires an evidentiary hearing. Rogers v. State, 261 S.C. 288, 199 S.E.2d 761 (1973). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland v. Washington, 466 U.S. 668, 668 (1984)). First, the applicant must demonstrate counsel’s representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687-88. “Under this prong, ‘[t]he proper measure of attorney

² S.C. Code Ann. § 17-13-40 (2003) was the effective version of the statute during Applicant’s arrest. It has since been supplemented and is cited as S.C. Code Ann. § 17-13-40 (Supp. 2011).

performance remains simply reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). Second, the applicant must demonstrate he was prejudiced by counsel’s performance in such a manner that, but for counsel’s error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

A guilty plea defendant is also entitled to the effective assistance of counsel. Hill v. Lockhart, 474 U.S. 52 (1985). In order to receive relief, a guilty plea defendant must establish there is a reasonable probability that, but for counsel’s errors, he would not have pled guilty and would have insisted on going to trial. Id.

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel’s performance was deficient and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty. Johnson v. Catoe, 336 S.C. 354, 520 S.E.2d 617 (1999); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Satterwhite v. State, 325 S.C. 254, 481 S.E.2d 709 (1997). Where there is no evidence contradicting or conflicting with an applicant’s testimony that he would not have pled guilty but for counsel’s deficient performance, applicant is entitled to relief. Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000).

South Carolina Code Section 23-1-215(A) (2007)³ states:

In the event of a crime where multiple jurisdictions, either county or municipal, are involved, law enforcement officers are authorized to exercise jurisdiction within other counties or municipalities for the purpose of criminal investigation **only** if a written agreement

³ S.C. Code Ann. § 23-1-215(A) (2007) was the effective version of the statute during Applicant’s arrest. It has since been supplemented and is cited as S.C. Code Ann. § 23-1-215(A) (Supp. 2011).

between or among the law enforcement agencies involved has been executed. This limitation on law enforcement activity shall not apply to any activity authorized by § 17-13-40.

(Emphasis added).

South Carolina Code Section 17-13-40 (2003) states the following:

(A) When the police authorities of a town or city are in pursuit of an offender for a violation of a municipal ordinance or statute of this State committed within the corporate limits, the authorities may arrest the offender, with or without a warrant, at a place within the corporate limits, at a place within the county in which the town or city is located, or at a place within a radius of three miles of the corporate limits.

(B) When the police authorities of a county are in pursuit of an offender for a violation of a county ordinance or statute of this State committed within the county, the authorities may arrest the offender, with or without a warrant, at a place within the county, or at a place within an adjacent county.

(C) When a law enforcement officer's jurisdiction is expanded pursuant to this section, the authority, rights, privileges, and immunities, including coverage under the workers' compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78, Title 15, that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the expanded areas of jurisdiction granted pursuant to this section.

LEGAL ARGUMENT

Applicant submits he was unlawfully arrested because Inv. Isenhoward and the Richland County Sheriff's Department were outside of their jurisdiction and lacked the authority to effectuate his arrest. Inv. Isenhoward testified at the PCR hearing he did not know Applicant's residence was located in Kershaw County; however, in his ACISS report he stated he looked at Applicant's South Carolina Sex Offender Registration which clearly states Applicant's residence of 128A Shannon Wood Road, Elgin, South Carolina as being located in the county of Kershaw. See Exhibit B.

Further, if this court were to consider Inv. Isenhoward's definition of pursuit and apply the State's argument regarding police authority outside of jurisdictional limits for county law enforcement officers, then, in a practical sense, no boundaries would exist to prevent any county law enforcement officer from effectuating arrests or conducting police functions in another county. Inv. Isenhoward's explanation and understanding of his and his department's jurisdictional authority would, in turn, provide the Richland County Sheriff's Department with as much authority and jurisdictional privileges as South Carolina Law Enforcement Division (SLED) officers. This is completely contradictory to Section 23-1-215 and the function and designation of law enforcement units as county departments, and the State cannot present any legislation or code law that supports Inv. Isenhoward's position or his arrest of Applicant in Kershaw County.

Applicant submits the State also misconstrues Section 17-13-40 known as the pursuit statute. Inv. Isenhoward and the State argue this statute lacks the word "hot" or "fresh" to describe the type of pursuit an officer must be engaged in and, therefore, this statute allows an officer attempting to effectuate the arrest of a suspect that allegedly committed a crime in their county to travel to any jurisdiction to perform the arrest. This interpretation has clearly been rejected by the South Carolina Supreme Court. In State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011), the Lexington County Sheriff's Department ("LCSD"), responding to a robbery in Lexington County, received information that some of the items stolen from the Lexington County residence may have been deposited in an abandoned house located off "a frontage road on I-26 right inside of Calhoun County, right outside of Lexington County." LCSD notified the Calhoun County Sheriff's Department ("CCSD") prior to entering Calhoun County regarding the alleged stolen property. LCSD investigated outside of the house and, after seeing some items

they believed may have belonged to the Lexington County victim, procured a search warrant for the house. LCSD conducted surveillance of the abandoned house, which the department stated it cleared with CCSD, and eventually arrested defendant as he unloaded items at the property. After they arrested defendant, LCSD searched his vehicle and found “burglary tools.” LCSD called CCSD and three CCSD officers arrived on scene and spoke with LCSD officers. LCSD then transported defendant to the LCSD headquarters. The Supreme Court held LCSD’s arrest of defendant was unlawful. The Court found LCSD officers arrested defendant outside of their jurisdiction and were not “in pursuit” of defendant from Lexington County into Calhoun County. The Court specifically held “thus, Section 17-13-40 of the South Carolina Code is not relevant to our determination of the issue.” Boswell, 391 S.C. at 600, 707 S.E.2d at 269.⁴

It is clear from Boswell that, contrary to Inv. Isenhoward’s understanding of the law, neither he nor the Richland County Sheriff’s Department had the authority to effectuate Applicant’s arrest in Kershaw County. The South Carolina Supreme Court’s ruling in Boswell specifically rejects Inv. Isenhoward and the State’s definition of pursuit, thereby dismissing the argument that they had the authority pursuant to Section 17-13-40 to arrest Applicant in Kershaw County. Further, the LCSD in Boswell went to great lengths to try and involve the CCSD in their operation and arrest, including having officers arrive on scene after the arrest, and the Supreme Court *still* held LCSD officers acted without authority outside of their jurisdiction. In this case, Inv. Isenhoward made no attempt to alert or involve Kershaw County Sheriff’s Department officers and further testified any communication would be a mere “courtesy” and not

⁴ In another decision, State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000), the South Carolina Supreme Court analyzed the application of Section 17-13-40(A) to municipal officers’ jurisdiction, giving further insight into the application of the term “pursuit.” The Court held a municipal police officer that was outside his municipality’s city limits when he first observed defendant, whom officer’s suspected of driving under the influence, had no police authority to detain defendant, even though his unit had been alerted to defendant’s possible breach of the law. McAteer, *supra*

required. Moreover, the State also failed to present any South Carolina jurisprudence or statutory law in its brief to prove that an arrest warrant for a suspect establishes pursuit of that individual and grants arrest authority under Section 17-13-40. Applicant contends the arguments presented by the State and Inv. Isenhoward fail and the Richland County Sheriff's Department officers were outside of their jurisdiction when effectuating the arrest, thereby rendering Applicant's arrest unlawful.

The State does argue in its brief, that "[o]n information and belief," a "Memorandum of Understanding" or multijurisdictional agreement with bordering counties was in place at the time of Applicant's arrest in Kershaw County. The Supreme Court in Boswell, supra, also addressed the issue of multijurisdictional agreements entered between counties. The State argued in Boswell that defendant's arrest was lawful because Lexington County and Calhoun County had entered into a multijurisdictional agreement pursuant to the Law Enforcement Assistance and Support Act. Boswell, supra. The Court applied S.C. Code Ann. Section 23-20-50(A) (2003), which requires the governing body of each jurisdiction to approve the agreements, and found the agreement was never ratified by Lexington County because it was "not voted on by the county council" as required by Section 23-20-50(A).

Here, not only has the State failed to show proof that the Richland County council and the Kershaw County council voted on and approved the alleged agreement, but it has also failed to produce any proof that such an agreement actually existed. Therefore, Applicant contends the State's argument fails and Richland County Sheriff's Department did not possess the authority to arrest Applicant in Kershaw County pursuant to any multijurisdictional agreement or "Memorandum of Understanding."

Applicant further asserts any argument by the State regarding the good faith exception

should also fail because the research and documents Inv. Isenhoward reviewed prior to visiting Applicant's residence clearly showed Applicant's county of residence as Kershaw County. See Exhibit B. Additionally, because Inv. Isenhoward and the Richland County Sheriff's Department did not have the authority to arrest Applicant or search his home in Kershaw County, any inevitable discovery exception argument that the statements received and the evidence collected would have been discovered by these officers would not apply either.

While an unlawful arrest does not equate to Applicant's arrest or charges being dismissed, it would allow the suppression of certain evidence, such as statements and hard evidence gathered and seized pursuant to such an unlawful arrest or search warrant.⁵ Applicant contends that, upon review of the record and the evidence in this case, including plea counsel's file, no evidence exists showing plea counsel attempted to have the court schedule a hearing date for Applicant's motion to dismiss for lack unlawful arrest. Additionally, Applicant asserts there was uncertainty as to whether this motion would even be heard during pre-trial motions. Applicant further argues that had this motion been heard, or scheduled to be heard whether pre-trial or otherwise, he would not have plead guilty. Pursuant to plea counsel's ineffective assistance of counsel in pursuing this meritorious motion, Applicant was uncertain as to its availability to be heard during pre-trial motions and was forced to plead guilty. Applicant also argues that the suppression of his statements, his family's statements, and the multi tool, all which were procured after Applicant's unlawful arrest by Inv. Isenhoward, would lead to different results at trial or in plea negotiations. Applicant submits the suppression of the multi tool would particularly change the circumstances of Applicant's trial or plea negotiations as there

⁵ See State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996) ("The 'fruit of the poisonous tree' doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by exploitation of that illegality." (citing Wong Sun v. United States, 371 U.S. 471 (1963))).

would be no theory that applicant possessed a weapon during the alleged robberies he committed and reduce the charges from armed robbery to a lesser offense.

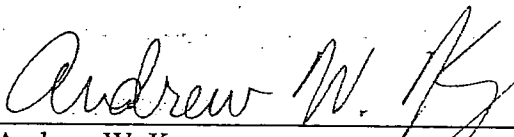
Finally, Applicant argues that, during the plea colloquy, he never waived his right to challenge the jurisdictional authority of Richland County Sheriff's Officers in effectuating his arrest or the subject matter jurisdiction of the Court to accept his plea.⁶

CONCLUSION

For the foregoing reasons, Applicant submits plea counsel provided ineffective assistance in failing to move to dismiss Applicant's arrest as unlawful and/or failing to move to dismiss Applicant's statement, Applicant's family's statements, and the submittal of the multi tool into evidence as being fruits of Applicant's unlawful arrest. Applicant contends had plea counsel made these motions prior to the day of trial, he would not have pled guilty. Applicant respectfully requests this Court grant his application for post-conviction relief and remand this matter for a new trial while suppressing the fruits of the unlawful arrest.

August 22, 2012

By:



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ATTORNEYS FOR APPLICANT

⁶ Further, subject matter jurisdiction may be raised at any time, including for the first time on appeal. State v. Passmore, 363 S.C. 568, 611 S.E.2d 273 (Ct. App. 2005).

CERTIFICATE OF SERVICE

I hereby certify that this 22nd day of August 2012 a copy of **APPLICANT'S SUPPLEMENTAL JURISDICTION BRIEF** has been served upon other counsel of record, by mailing same, postage prepaid in the United States Mail, addressed to the following:

Robert D. Corney, Esquire
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211-1549

ATTORNEYS FOR RESPONDENT

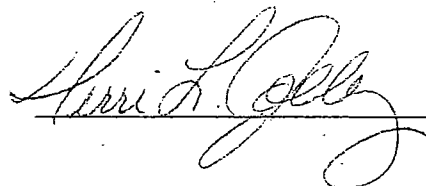


EXHIBIT A

Richland County Sheriff's Department

ACISS Investigative Followup Report

Report Number: 0712272830/3

Report Date: 01/17/2008

Primary Information

Report Number: 0712272830/3
 Report Date: 01/17/2008
 Type Of Report: Investigative Followup
 Description: Isenhoward's Follow Up
 Reporting LEO: Isenhoward, Kevin (898 / Robbery / Richland County Sheriff's Department)
 Approval Status: Approved
 Approved Date: 01/17/2008
 Approved By: Isenhoward, Kevin (898 / Robbery / Richland County Sheriff's Department)

Narrative

Case Number: 07122728-30
 Offense Date: 12/30/07
 Offense Time: 05:35
 Victim's Name: Pops Pantry Express / Winnsboro Oil Co. (contact Steven Byrd 803-718-6088)
 Victim's Address: 10541 Two Notch Rd; Elgin, SC 29045
 Location of Offense: 10541 Two Notch Rd; Elgin, SC 29045
 Type of Offense: Armed Robbery

12/31/07 I/O received the case and immediately noticed that the suspect description and the actions of the suspect were nearly identical with a robbery, which occurred at 121 Clemson Rd on 12/26/07.

01/02/08 I/O released a BOLO to RCSD describing the suspect and both robberies.

01/04/08 I/O went to the incident location to retrieve the video. The I/O was informed that the video was given to Lt. Tyler. I/O spoke with one of the clerks working during the incident, Marie Tucker. She indicated that she would recognize the suspect if she saw him again. She added to the description saying that he was almost pathetic and possibly a drug addict. He was wearing wire-framed glasses. Tucker said that the man came up to the counter and demanded money, lifting his shirt to reveal something silver, which she believed was a gun. The I/O was also advised that the store had placed still images of the suspect on the door of the store. The video of the robbery was removed from evidence and the images were released to the local media outlets.

01/05/08 I/O received a follow up report from Dep. Zajdel. The report indicated that two people, Donna Bauknight and Mark Smith had come to the store and had seen the photo of the suspect. The two informed the clerk that they were sure that the man was Bobby Earl Pyke. They also waited on Dep. Zajdel to arrive. The two reported to Zajdel that Pyke is a relative and they live with him at 128 Shannon Wood Rd, about four miles from the store. They said that they believed that Pyke was on drugs.

The I/O researched Pyke and found that he was a convicted felon and had spent nearly 20 years in prison for Armed Robbery, Kidnapping and CSC 1st. He had been released in 2004. Pyke was also a registered sex offender in Kershaw County and his photo for the registration shows him wearing wire framed glasses matching those worn by the robber. I/O placed Pyke in a photo line up.

The I/O met with Ms. Tucker and showed her the line up. She immediately identified Pyke as the man who robbed the store. The I/O went to magistrate's office, located next door to the store, and obtained an arrest warrant.

The I/O went to 128 Shannon Wood Rd and attempted to locate the suspect. Pyke was not at the location but while the I/O was there his mother, Laura Bauknight arrived home. The I/O and Mrs. Bauknight spoke at length. She admitted that she was watching the news and saw the release. She said that she confronted her son about it and he admitted that he had robbed the store. She also indicated that he shaved his mustache off. She said that she was worried about him because he was battling with drug addiction. She said that she would try to locate Pike and convince

Richland County Sheriff's Department

ACISS Investigative Followup Report

Report Number: 0712272830/3

Report Date: 01/17/2008

Narrative Continued

him to turn himself in.

Later that day the I/O and Sgt. Barnes went back to check the location again. Pyke was at the location sitting in a red vehicle. Pike was arrested and the I/O advised him of his rights. Pike admitted that he robbed the store.

The I/O took Pyke to RCSD HQ and he signed a written waiver of his rights. Pyke said that he was addicted to crack and desperate. He said that he went to the location alone and had a silver leather man multi tool in his hand when he demanded the money. He was adamant that he did not have a pistol. He said that he fled the store in his truck and spent the cash on drugs. He admitted that he saw the news release and shaved his mustache in an attempt to hide. The I/O questioned him about the robbery at 121 Clemson Rd. He denied committing the robbery. The I/O attempted to reduce his statement to writing but he indicated that he did not want to provide a written statement. Pyke was taken to RCDC.

01/07/08 I/O met with Victoria Cushman-Rosas the victim of the robbery at 121 Clemson Rd. The I/O showed her a photo line up which included Pyke's photo. She immediately identified Pyke as the man who robbed her. Ms. Cushman-Rosas had previously indicated that the subject entered her car and lifting his shirt displaying a silver object, which she believed to be a knife.

Pyke was charged with a second count of armed robbery.

I/O went to 128 Shannon Wood Rd and spoke with Mrs. Laura Bauknight. She indicated that she would consent to a search of her home. She signed a waiver and her daughter brought the I/O the silver multi tool, which belongs to Pyke. The tool was placed into evidence.

Record Status Information

Record Origination Operator:	Isenhoward, Kevin (898 / Robbery / Richland County Sheriff's Department)
Record Origination Date:	01/17/2008 16:34
Last Update Operator:	Isenhoward, Kevin (898 / Robbery / Richland County Sheriff's Department)
Last Update Date:	01/17/2008 17:39

Reporting LEO	Date	Supervisor	Date
Isenhoward, Kevin (898 / Robbery / Richland County Sheriff's Department)		Isenhoward, Kevin (898 / Robbery / Richland County Sheriff's Department)	1/17/2008

EXHIBIT B

South Carolina Sex Offenders

SOR Home



Check for electronic monitoring

Offender Information	
Name:	PYKE, BOBBY EARL JR
Sexual Predator:	No
Sex:	Male
Race:	W
DOB:	1969-02-17
Height:	5' 09"
Weight:	170 lbs.
Eye Color:	Brown
Hair Color:	Brown
Skin Tone:	Olive

Addresses	
Address:	128A SHANNONWOOD RD ELGIN, SC 29045
County:	Kershaw
Status:	Residence
Start Date:	2007-10-29
End Date:	

Criminal Charges			
Offense:	Statute:	16-3-652	Date of Conviction:
	Literal:	CRIMINAL SEXUAL CONDUCT - FIRST DEGREE	State of Conviction:
	Age Of Victim:		Sex Of Victim:
	Weapon:		Sentence Release Date:
			Probation Release Date:

Additional Identifiers	
Name(s):	PYKE, BOBBY EARL JR

Registration Information	
Type of Registering Agency:	SO
Date of Pre-Registration:	2004-01-29
Date of Photograph:	2007-10-29
Date of Initial Registration:	2004-01-29

EXHIBIT C

1-936863

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Pontiac

THE STATE

07122728-30

against

Bobby Earl Pyke

Address:

Elgin, SC 29045-

Phone: _____ SSN: _____
Sex: M Race: W Height: 5 9 Weight: 150L State: SC DL #: _____DOB: _____ Agency ORI #: 04000Prosecuting Agency: Richland County Sheriff DepartmentProsecuting Officer: Kevin Isenhoward - 898Offense: Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weaponOffense Code: 0139Code/Ordinance Sec: 16-11-0330(A)This warrant is **CERTIFIED FOR SERVICE** in the☐ County/ ☐ Municipality of

The accused

to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

Defendant Bobby Earl Pyke9/10/2008[Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Pontiac

Personally appeared before me the affiant Kevin Isenhowardbeing duly sworn deposes and says that defendant Bobby Earl Pykedid within this county and state on or about 12/30/2007State of South Carolina (or ordinance of ☒ County/ ☐ Municipality ofRichland / Pontiac)

in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about December 30, 2007 while at 10541 Two North Road in the Pontiac Magisterial District of Richland County, it is believed that the defendant did commit the crime of Armed Robbery, Statute Number 16-11-330, because he did while armed with a pistol, take by force approximately \$80.00 in US Currency from the Pop Panty Express. The defendant presented the weapon and demanded the money from the register. The defendant has been identified by surveillance photos and was picked from a photo lineup by the victim.

Affiant and others are witnesses to prove same.
RCSD Case #07122728-30

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Pontiac

Affiant's Address _____

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/30/2007 defendant Bobby Earl Pyke

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Pontiac) as set forth below:DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 01/04/2008[Signature] (L.S.)
Signature of Issuing Judge

G A Surles

Judge Code: 5039

Judge's Address _____

Judge's Telephone _____

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

AFFIDAVIT

DEFENDANT
COPYForm Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

who

violate the criminal laws of the

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

EXHIBIT D

COVER SHEET FOR NCIC PACKET
(INFORMATION REQUIRED FOR ALL NCIC ENTRIES)

1. ☒ WARRANT(S)
2. ☒ CRIMINAL HISTORY (RAP SHEET, LEGIBLE COPY)
3. ☒ DRIVER LICENSE INFORMATION
4. ☒ PHOTO, 2 COPIES (COLOR IF AVAILABLE)
5. ☒ ENTRY WITH "CAUTION" YES ☒ NO -
Armed Dangerous
6. ☒ VEHICLE DESCRIPTION (PEASE FURNISH ANY AVAILABLE INFORMATION)
7. ☒ FOR STATEWIDE ENTRY
8. ☒ FOR NATIONWIDE ENTRY (EXTRADITION APPROVAL REQUIRED)
9. ☒ EXTRADITION APPROVAL

Sgt. K. Thompson

(INVESTIGATOR)

898

(S #)

01-04-08

(DATE)

Richland County Sheriffs Department
Warrant Division
NCIC Follow-Up

All Victims will be contacted and advised that the Warrant Division will now be in the possession of the warrant. Victims will also be given phone number and the name of a contact person in the warrant division to call with further information. Victims will be advised that the warrant is in NCIC and if the suspect is seen to advise the agency that he or she is within.

Victims Name: Pops Pantry Express (Steven Byrd)

Victims Address: _____

Victims Telephone # Home _____ Work _____ Other _____

Investigator Assigned to Case: Isinkward

Did the Investigator attempt the warrant, and does the warrant have a good address?

Suspect Name: Bobby Earl Pyke

Suspect's Address: _____

Suspect's Work: NONE

Suspect's Phone # Home _____ Work _____ Other _____

Any friends or locations suspect may frequent: Robin Hood Acres

drug locations, Sumter Co.

Warrant Division Officer Assigned to Case: _____

Date and time victim was called: _____

Notes: _____

EXHIBIT E

127

I-936868

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Pontiac

THE STATE

07122413-26

against

Bobby Earl Pyke

Address:

Phone: _____ SSN: _____
Sex: M Race: W Height: 5 9 Weight: 150DL State: SC DL #: _____DOB: _____ Agency ORI #: 04000Prosecuting Agency: Richland County Sheriff DepartmentProsecuting Officer: Kevin Isenhoward - 898Offense: Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weaponOffense Code: 0139Code/Ordinance Sec: 16-11-0330(A)This warrant is **CERTIFIED FOR SERVICE** in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant
on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

☒ County/ ☐ Municipality of

Richland / Pontiac

Personally appeared before me the affiant Kevin Isenhoward who
being duly sworn deposes and says that defendant Bobby Earl Pyke
did within this county and state on or about 01/07/2008 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Pontiac)
in the following particulars:DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on or about December 26, 2007 while at 121 Clemson Road in the Pontiac Magisterial District of Richland County, one Bobby
E. Pyke did commit the crime of Armed Robbery, Statute Number 16-11-0330(A) in that it is believed the defendant did while
armed with a deadly weapon, take by force a pocketbook which belongs to the victim. The defendant armed with a stainless multi
tool, which he represented to be a pistol by displaying to the victim. The victim identified the defendant in a photo line up and the
defendant has also been implicated in a similar robbery, which occurred nearby. Affiant and others are witness to prove the same.
RCSD Case Number 07122413-26

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Pontiac

Affiant's Address _____

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/7/2008 defendant Bobby Earl Pyke

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Pontiac) as set forth below:DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me)

on 01/07/2008)

Signature of Issuing Judge)

G A Surles)

Judge Code: 5039)

Judge's Address _____

Judge's Telephone _____

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Bobby Pyke, #143101,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2009-CP-40-07237

**STATE'S BRIEF FOLLOWING
PCR EVIDENTIARY HEARING**

This matter comes before the Court on a Post-Conviction Relief application filed October 8, 2009. An evidentiary hearing into the matter was convened before this Court at the Richland County Courthouse on Tuesday, May 22, 2012, at which Applicant was present with counsel, Andy Kunz, Esquire. The State was represented by Rob Corney of the South Carolina Attorney General's Office. At the hearing testifying were Applicant; Applicant's plea counsel, Richland County Assistant Public Defender Jennifer Davis, Esquire; and Sergeant Kevin Isenhoward of the Richland County Sheriff's Department who served as the lead investigator on the case and eventually secured Applicant's arrest.

At the conclusion of the hearing, this Court directed the parties to brief the issue of whether Applicant's trial counsel was ineffective in failing to file a motion to have the charges against Applicant dropped based on what Applicant alleges was an unlawful arrest. Specifically, Applicant contends his arrest was unlawful as he was detained at his house in Kershaw County by a Richland County police officer/investigator pursuant to an arrest warrant issued by a Richland County Magistrate.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Richland County. Applicant was true bill indicted at the June 2008 term of the Richland County Grand Jury for two (2) counts of Armed Robbery (2008-GS-40-0369/0531). He was represented by Jennifer Davis, Esquire, of the Richland County Public Defender's Office on the charges. On March 30, 2009, Applicant appeared before the Honorable J. Michelle Childs, where he pled guilty to the charges as indicted pursuant to negotiations with the State. Judge Childs accepted the negotiations and sentenced Applicant to twenty (20) years imprisonment on each count, to run concurrently. Applicant did not file a direct appeal of the plea or sentences.

LEGAL STANDARD

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. The courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry v. State, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, Id. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v.

Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

SUMMARY OF FACTS

According to the testimony at the PCR and a review of the record in the matter, the current charges stem from two separate robberies occurring several days apart. The first was on December 26, 2007, at a CVS store location on Clemson Road in Richland County where a private individual was robbed of her purse in the parking lot outside of the store. The victim provided a detailed description of the perpetrator to police shortly after the incident. The second, occurring several days later on December 30, 2007, was a robbery of a Pops Pantry Express convenience store on Two-Notch Road in Richland County. The victims of this robbery were also able to give a detailed description of the perpetrator, which fits the same details as that given in the earlier CVS incident.

Upon being assigned as the lead investigator on the robberies, Sergeant Kevin Isenhoward links the similar identifications and begins a joint investigation into the two incidents. The Pop's Pantry surveillance videotape of the robbery was viewed by investigators and a still frame picture of the suspect was printed and placed in the window of the convenience store to allow potential identifications of the robber by customers.

On January 4, 2008, two regular customers of the Pop's Pantry viewed the still-frame picture and identified the suspect therein as one of their relatives by the name of Bobby Pyke. With this information, a photo-lineup was developed from which one of the victims of the Pop's robbery quickly identified Applicant. Investigator's subsequently conducted a search of Applicant's house with consent of Applicant's live-in family members produced a silver Leatherman's mutli-tool alleged to have been displayed as the handle of a gun in the robberies.

With this information, Richland County Magistrate George A. Surles issued an arrest warrant for Applicant for the robbery at Pop's Pantry.

At the PCR hearing, Investigator Isenhoward testified that after receiving the arrest warrant, he traveled to Applicant's house on Shannon Wood Road in Elgin, South Carolina, where he was able to locate Applicant and place him under arrest. That arrest occurred January 4, 2008, the same day Judge Surles issued the first arrest warrant. Isenhoward said that before executing the warrant, he looked up Applicant's street name and found it to be listed as a Richland County street; however, since the time of Applicant's arrest, Isenhoward said, he has learned that Applicant's actual house is located just over the county line in Kershaw County. Isenhoward testified that had he known the house was actually in Kershaw County, he would have made a courtesy call to the Kershaw County Sheriff's Department to advise them of the pending arrest, but maintained that his failure to make such a call did not deem Applicant's arrest unlawful.

Isenhoward testified that he believed he was able to make a lawful arrest of Applicant outside of Richland County under S.C. Code § 17-13-40(b) (2003), which allows a county officer "in pursuit" of a suspect to make arrests over county lines. Isenhoward maintained he was "in pursuit" of Applicant at the time of the arrest as he had a valid arrest warrant and knew Applicant's location, specifically noting that the statute does not use the words "hot pursuit" or "fresh pursuit" in allowing out-of-county arrests. Isenhoward also noted he did not believe the county line issue affected his consensual search of Applicant's house in any way as officers from differing counties routinely conduct searches out of their own county when valid consent is given by the owner to do so.

After securing Applicant's arrest, Isenhoward presented a second photo line-up to the victim of the CVS armed robbery who immediately chose Applicant as the perpetrator in that incident as well. On January 7, 2008, Judge Surles issued a second arrest warrant for Applicant for Armed Robbery stemming from the CVS parking lot robbery. Applicant ultimately entered guilty pleas to both counts of armed robbery pursuant to negotiations with the State for a twenty (20) year term of imprisonment.

Applicant has requested this Court grant his application for Post-Conviction Relief on the grounds that plea counsel was ineffective for moving to have the charges dismissed due to his alleged unlawful arrest.

LEGAL ARGUMENT

Respondent submits the current allegation of ineffectiveness based on plea counsel's failure to motion the Court for dismissal of the charges due to Applicant's unlawful arrest is without merit. Further, Applicant has failed to prove resulting prejudice as a result of counsel's alleged "deficiency" as the charges would not have been dismissed had such a motion been filed.

First, Respondent submits Investigator Isenhoward had the jurisdictional authority to make arrests in Kershaw County at the time of Applicant's arrest and, therefore, the allegation is baseless. According to General Counsel for the Richland County Sheriff's Department (Scott Hayes, Esquire), it has been common practice for Richland County to enter into a "Memorandum of Understanding" with bordering counties in an effort to more effectively combat and deter criminal activity. The agreement establishes a joint initiative between the two law enforcement agencies to work together in carrying out their duties. The purpose of the agreement is to diminish the jurisdictional restraints placed on each agency that could hamper their ability to

assist each other.¹ On information and belief, such an agreement was in place at the time of Applicant's arrest in Kershaw County, thereby vesting Investigator Isenhoward with the authority to make a lawful arrest of a defendant in Kershaw County based on an arrest warrant issued by a Richland Magistrate Judge, premised on crimes allegedly carried out in Richland County. Therefore, the allegation is without merit. After numerous attempts, Respondent has been unable to obtain a copy of the 2007 or 2008 agreements from either the Kershaw or Richland County Sheriff's Department, but was told such an agreement was in place.

Further, even without such an agreement between the counties, Isenhoward still acted within his authority in making the arrest based on a plain reading of the statute. Under S.C. Code Ann. § 17-13-40(B) (2003), "[w]hen the police authorities of a county are in pursuit of an offender for a violation of a...statute of this State committed within the county, the authorities may arrest the offender, with or without a warrant, at a place within the county, or...within an adjacent county." Respondent submits Isenhoward was "in pursuit" of Applicant at the time of the arrest and therefore was able to make a lawful arrest of him in an "adjacent county", in this case, Kershaw County.

At the evidentiary hearing, Investigator Isenhoward noted that the statute does not use the words "hot pursuit" or "fresh pursuit" when creating such arrest power and, therefore, his arrest of Applicant was lawful under the statute as he was, in fact, in "pursuit" of Applicant. While Respondent recognizes that this code section is generally used in "hot pursuit" situations, it is interesting to note that the statute in this particular section never uses the words "hot" or "fresh"

¹ The Richland County Sheriff's Department has similar jurisdictional agreements with the City of Columbia Police Department, and Lexington County Sheriff's Department. See e.g., Noelle Phillips, *Columbia Police, Sheriff Sign Historic Cooperation Agreement, The State*, June 15, 2012, available at <http://www.thestate.com/2012/06/15/2315750/columbia-police-sheriff-sign-historic.html>.

pursuit, while such a requirement is explicitly set forth in code sections when granting “non-jurisdictional” arrest powers. *See for example* S.C. Code § 17-13-47(A) (2003)(“A law enforcement officer from Georgia or North Carolina who enters this State in **fresh pursuit** of a person...”)(emphasis added). Based on the plain language of Section 17-13-47(A), it is clear the S.C. Legislature recognizes a “fresh pursuit” standard that is separate from that of mere “pursuit” as found in § 17-13-40(B). Respondent submits the South Carolina Legislature’s deliberate exclusion of any language requiring “fresh” or “hot” pursuit in Section 17-13-40(b) tends to support to Investigator Isenhoward’s contention that the arrest was lawful as he was “in pursuit” of Applicant at the time of the arrest.

More importantly to the PCR analysis to be conducted, Respondent submits Applicant has failed to prove counsel’s performance was deficient or otherwise unreasonable in failing to move for dismissal of the charges. At the PCR evidentiary hearing, plea counsel Jennifer Davis, Esquire (hereafter “counsel”), testified she and Applicant had discussed the alleged unlawful arrest in their pre-trial meetings and she was prepared to present a motion regarding the arrest at trial had Applicant decided to proceed.

She stated she disagreed with Investigator Isenhoward’s reading of the statute regarding “pursuit” of a suspect over county lines, and would have set that argument forth during the pre-trial motion hearing. Counsel went on to say she was also prepared to present motions to suppress the evidence obtained through the consensual search of Applicant’s house and the photo line-ups presented to the victims. Counsel stated she reviewed each pre-trial motion with Applicant during their meetings so he was fully aware that the arrest and other evidence would be challenged at trial. Counsel testified she made it very clear to Applicant that the decision

whether to plead or go to trial was solely his to make, and said she believed she gave him all the advice and information necessary for him to make an intelligent and voluntary decision whether to plea or go to trial.

According to the record before this Court and Applicant's own testimony at the PCR, Applicant ultimately made the informed decision to waive his right to jury trial and plea in an effort to avoid a potential life without parole sentence on the charges. (Plea Tr. p. 24, ll. 23 – 25; Applicant: "That's why I'm pleading guilty...I didn't want to risk taking a trial and getting a life sentence"). Both counsel and the plea judge advised Applicant that by pleading, he was waiving his right to jury trial where he could challenge the State's evidence against him. It was Applicant's own independent and voluntary decision to plead that precluded counsel from presenting the pre-trial motion he now alleges she should have filed. Counsel plainly testified that she was fully prepared to present a motion on the unlawful arrest at trial, and went on to say Applicant was fully aware that she intended to raise that challenge on his behalf if he proceeded. With all of this in mind, Applicant waived his right to challenge the arrest by pleading guilty. Therefore, Applicant has failed to prove how counsel's performance was "unreasonable based on professional norms" in this regard.

Finally, and most importantly, Applicant has failed to prove resulting prejudice based on counsel's alleged failure to file a motion for dismissal of the charges. Applicant, through his PCR application and his testimony at the evidentiary hearing, alleges counsel should have moved for dismissal of the current charges based on the unlawful arrest. He contends that had she done so, the charges would have been dismissed by the trial/plea judge. Respondent submits this conclusion is erroneous and unsupported by the law.

It has been well-established by both the United States Supreme Court and the South Carolina Supreme Court that an unlawful arrest is **not** grounds for dismissal of the charges. In U.S. v. Crews, 445 U.S. 463, 100 S.Ct. 1244 (1980), the Court specifically noted that “[a]n illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction.” *Id.* at 474, 100 S.Ct. 1251. “The exclusionary principle”, the Court went on to say, “delimits what proof the Government may offer against the accused at trial, closing the courtroom door to evidence secured by official lawlessness... Respondent is not himself suppressible ‘fruit’ and the illegality of his detention cannot deprive the Government of the opportunity to prove his guilt through the introduction of evidence wholly untainted by the police misconduct.” *Id.* See also Frisbie v. Collins, 342 U.S. 519, 72 S.Ct. 509 (1952).

Applicant has not set forth in his application or through his testimony at the evidentiary hearing that counsel was ineffective for failing to move to suppress **some evidence obtained** as a result of the alleged unlawful arrest.² Rather, he simply alleges that had counsel moved to have the charges dismissed entirely as a result of the alleged unlawful arrest, the charges would have been thrown out by the plea/trial judge. Applicant’s contention that such relief would have been granted is conclusively refuted through both the U.S. Supreme Court case law as set forth above in Crews and Frisbie, as well as in South Carolina Supreme Court case law. See for example Town of Mount Pleasant v. Jones, 335 S.C. 295, 516 S.E.2d 468 (1999)(“Our Supreme Court has repeatedly held an illegal arrest does not preclude the subsequent prosecution or conviction of the defendant for the offense charged.”); see also State v. Holliday, 255 S.C. 142, 147, 177

² It is important to note that the consensual search of Applicant’s house by Applicant’s live-in relatives was conducted prior to Applicant’s subsequent arrest. Therefore, the validity of the search (and admissibility of the evidence obtained there-from) is wholly separate and distinct from the alleged unlawful arrest. Respondent submits the evidence obtained from the search would not be subject to the exclusionary rule based on the alleged unlawful arrest as the search was performed several days prior to Applicant’s arrest.

S.E.2d 541,543 (1970)(“[t]he illegal arrest of one charged with crime is no bar to his prosecution if all other elements necessary to give a court jurisdiction to try accused are present, a conviction in such a case being unaffected by such unlawful arrest.”); *see also* State v. Biehl, 271 S.C. 201, 204, 246 S.E.2d 859 (1978)(“We held in State v. Holliday, 255 S.C. 142, 177 S.E.2d 541 (1970), that the illegality of an initial arrest did not bar the accused person’s subsequent prosecution and conviction of the offense charges. This is consistent with the views expressed by the United States Supreme Court.”) Therefore, Applicant has failed to prove resulting prejudice stemming from counsel’s failure to move for dismissal of the charges based on the alleged unlawful arrest as such relief would not have been granted had the motion been made.

Accordingly, Respondent requests this application for PCR be denied and dismissed with prejudice as Applicant has failed to carry his burden in proving the two-prong test set forth in Strickland v. Washington, *supra*.

CONCLUSION

WHEREFORE, having submitted the current legal brief detailing the jurisdictional issue raised by Applicant, the State respectfully request this Court deny and dismiss the current application for post-conviction relief with prejudice.

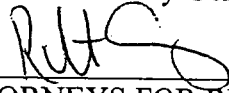
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
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ROBERT D. CORNEY
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July 12, 2012

RECEIVED

DEC 20 2012

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Bobby Pyke, #143101,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2009-CP-40-07237

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2012 NOV 19 PM 3:07
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court on a Post-Conviction Relief application filed October 8, 2009. An evidentiary hearing into the matter was convened before this Court at the Richland County Courthouse on Tuesday, May 22, 2012, at which Applicant was present with counsel, Andy Kunz, Esquire. The State was represented by Rob Corney of the South Carolina Attorney General's Office. At the hearing testifying were Applicant; Applicant's plea counsel, Richland County Assistant Public Defender Jennifer Davis, Esquire (hereafter "counsel"); and Sergeant Kevin Isenhoward of the Richland County Sheriff's Department who served as the lead investigator on the case and eventually secured Applicant's arrest (hereafter "Isenhoward").

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Richland County. Applicant was true bill indicted at the June 2008 term of the Richland County Grand Jury for two (2) counts of Armed Robbery (2008-GS-40-0369/0531). He was represented by Jennifer Davis, Esquire, of the Richland County Public Defender's Office on the charges. On March 30, 2009, Applicant appeared before the Honorable J. Michelle Childs, where he pled guilty to the charges as indicted pursuant to negotiations with the State. Judge Childs accepted the negotiations and sentenced

SCANNED

Applicant to twenty (20) years imprisonment on each count, to run concurrently. Applicant did not file a direct appeal of the plea or sentences.

LEGAL STANDARD

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRCP. The courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry v. State, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, Id. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

SUMMARY OF FACTS

According to the testimony at the PCR and a review of the record in the matter, the current charges stem from two separate robberies occurring several days apart. The first was on December 26, 2007, at a CVS store location on Clemson Road in Richland County where a private individual was robbed of her purse in the parking lot outside of the store. The victim provided a detailed description of the perpetrator to police shortly after the incident. The second, occurring several days later on December 30, 2007, was a robbery of a Pops Pantry Express convenience store on Two-Notch Road in Richland County. The victims of this robbery were

also able to give a detailed description of the perpetrator, which fits the same details as that given in the earlier CVS incident.

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At the PCR hearing, Investigator Isenhoward testified that after receiving the arrest warrant, he traveled to Applicant's house on Shannon Wood Road in Elgin, South Carolina, where he was able to locate Applicant and place him under arrest. That arrest occurred January 4, 2008, the same day Judge Surles issued the first arrest warrant. Isenhoward said that before executing the warrant, he looked up Applicant's street name and found it to be listed as a Richland County street; however, since the time of Applicant's arrest, Isenhoward said, he has learned that Applicant's actual house is located just over the county line in Kershaw County. Isenhoward testified that had he known the house was actually in Kershaw County, he would

have made a courtesy call to the Kershaw County Sheriff's Department to advise them of the pending arrest, but maintained that his failure to make such a call did not deem Applicant's arrest unlawful.

Isenhoward testified that he believed he was able to make a lawful arrest of Applicant outside of Richland County under S.C. Code § 17-13-40(b) (2003), which allows a county officer "in pursuit" of a suspect to make arrests over county lines. Isenhoward maintained he was "in pursuit" of Applicant at the time of the arrest as he had a valid arrest warrant and knew Applicant's location, specifically noting that the statute does not use the words "hot pursuit" or "fresh pursuit" in allowing out-of-county arrests. Isenhoward also noted he did not believe the county line issue affected his consensual search of Applicant's house in any way as officers from differing counties routinely conduct searches out of their own county when valid consent is given by the owner to do so.

After securing Applicant's arrest, Isenhoward presented a second photo line-up to the victim of the CVS armed robbery who immediately chose Applicant as the perpetrator in that incident as well. On January 7, 2008, Judge Surles issued a second arrest warrant for Applicant for Armed Robbery stemming from the CVS parking lot robbery. Applicant ultimately entered guilty pleas to both counts of armed robbery pursuant to negotiations with the State for a twenty (20) year term of imprisonment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Failure to File Motion for Dismissal Based on Unlawful Arrest

Applicant first alleges counsel was ineffective for failing to file a motion to have the charges dismissed due to Investigator Isenhoward's "unlawful arrest" outside of Richland County. This Court finds that allegation to be wholly without merit as Applicant failed to carry

his burden in proving counsel's performance was deficient in this regard, as well as prove his charges would have been dismissed had the motion been filed.

At the PCR hearing, Applicant alleged he was unlawfully arrested by Investigator Isenhoward. Specifically, Applicant said he was placed under arrest by the Richland County Sheriff's Department Investigator at his home in Kershaw County without the assistance of any Kershaw County officers pursuant to an arrest warrant issued by a Kershaw County Magistrate judge. Applicant stated he asked counsel to file a motion on his behalf to raise this issue at trial, but she told him she was in charge of trial strategy and would file whatever motions she deemed appropriate. Applicant alleged that had counsel filed a motion to dismiss the charges based on an unlawful arrest by an officer without jurisdictional authority, it would have been successful in disposing of his charges.

Counsel testified she had reviewed and discussed with Applicant his claim regarding the unlawful arrest by Investigator Isenhoward, and had prepared such a motion to be filed on Applicant's behalf. Counsel stated she was fully prepared to present such a motion in pretrial, but that Applicant made the independent decision to enter a guilty plea instead, thereby precluding her from presenting such a motion. She went on to say she disagreed with Investigator Isenhoward's interpretation of the statute dealing with an officer's "pursuit" of a suspect over the county line, a point which she would have raised in arguing the motion. Counsel said she may have told Applicant to some extent that she was in charge of the trial strategy, but made it clear that he was the sole decision maker on whether to plead or proceed to trial. She also noted that she reviewed each pretrial motion that she planned on presenting at trial with Applicant prior to him deciding whether to plead or proceed to trial.

Based on this testimony and a review of the relevant law, this Court finds this allegation

to be without merit. Applicant failed to prove counsel's performance was deficient or otherwise unreasonable in failing to move for dismissal of the charges. Counsel's credible testimony was that she and Applicant had discussed the alleged unlawful arrest in their pretrial meetings and she was prepared to present a motion regarding the arrest at trial had Applicant decided to proceed.

According to the record before this Court and Applicant's own testimony at the PCR, Applicant ultimately made the informed decision to waive his right to jury trial in order to take the benefit of a negotiated plea deal rather than risk a potential life without parole sentence at trial. (Plea Tr. p. 24, ll. 23 – 25; Applicant: "That's why I'm pleading guilty...I didn't want to risk taking a trial and getting a life sentence"). Both counsel and the plea judge advised Applicant that by pleading, he was waiving his right to jury trial where he could challenge the State's evidence against him. It was Applicant's own independent and voluntary decision to plead guilty that precluded counsel from presenting the pretrial motion he now alleges she should have presented. Counsel plainly testified that she was fully prepared to present a motion on the unlawful arrest at trial, and went on to say Applicant was fully aware that she intended to raise that challenge on his behalf if he proceeded. With all of this in mind, Applicant waived his right to challenge the arrest by pleading guilty. Therefore, Applicant has failed to prove how counsel's performance was "unreasonable based on professional norms" in this regard.

Further, Applicant has failed to prove resulting prejudice based on counsel's alleged failure to file a motion for dismissal of the charges. Applicant, through his PCR application and his testimony at the evidentiary hearing, alleged counsel should have moved for dismissal of the current charges based on the unlawful arrest. He contended that had she done so, the charges would have been dismissed by the trial/plea judge. This conclusion is erroneous and unsupported

by the law.

It has been well-established by both the United States Supreme Court and the South Carolina Supreme Court that an unlawful arrest is not grounds for dismissal of the resulting charges. In U.S. v. Crews, 445 U.S. 463, 100 S.Ct. 1244 (1980), the Court specifically noted that “[a]n illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction.” *Id.* at 474, 100 S.Ct. 1251. “The exclusionary principle”, the Court went on to say, “delimits what proof the Government may offer against the accused at trial, closing the courtroom door to evidence secured by official lawlessness... Respondent is not himself suppressible ‘fruit’ and the illegality of his detention cannot deprive the Government of the opportunity to prove his guilt through the introduction of evidence wholly untainted by the police misconduct.” *Id.* See also Frisbie v. Collins, 342 U.S. 519, 72 S.Ct. 509 (1952).

Applicant did not set forth at any point that counsel was ineffective for failing to move to suppress evidence obtained as a result of the alleged unlawful arrest.¹ Rather, he simply alleged that had counsel moved to have the charges dismissed entirely as a result of the alleged unlawful arrest, the charges would have been thrown out by the plea/trial judge. Applicant’s contention that such relief would have been granted is conclusively refuted through both the U.S. Supreme Court case law as set forth above in Crews and Frisbie, as well as in South Carolina Supreme Court case law. See for example Town of Mount Pleasant v. Jones, 335 S.C. 295, 516 S.E.2d 468 (1999)(“Our Supreme Court has repeatedly held an illegal arrest does not preclude the subsequent prosecution or conviction of the defendant for the offense charged.”); see also State v. Holliday, 255 S.C. 142, 147, 177 S.E.2d 541, 543 (1970)(“[t]he illegal arrest of one charged

¹ It is important to note that the consensual search of Applicant’s house by Applicant’s live-in relatives was conducted prior to Applicant’s subsequent arrest. Therefore, the validity of the search (and admissibility of the evidence obtained there-from) is wholly separate and distinct from the alleged unlawful arrest. It does not appear the evidence obtained from the search would be subject to the exclusionary rule based on the alleged unlawful arrest as the search was performed several days prior to Applicant’s arrest.

with crime is no bar to his prosecution if all other elements necessary to give a court jurisdiction to try accused are present, a conviction in such a case being unaffected by such unlawful arrest.”); *see also State v. Biehl*, 271 S.C. 201, 204, 246 S.E.2d 859 (1978)(“We held in *State v. Holliday*, 255 S.C. 142, 177 S.E.2d 541 (1970), that the illegality of an initial arrest did not bar the accused person’s subsequent prosecution and conviction of the offense charges. This is consistent with the views expressed by the United States Supreme Court.”). Further, the evidence linking Applicant to the crimes was obtained as a result of a valid consensual search authorized by Applicant’s family members who owned the house in which he resided well before Applicant’s “unlawful arrest”. Therefore, the exclusionary rule would not apply to suppress the evidence obtained against Applicant.

Accordingly, Applicant has failed to prove the resulting prejudice he alleges flowing from counsel’s failure to move for dismissal of the charges based on the alleged unlawful arrest as such relief would not have been granted had the motion been made. Therefore, this allegation is denied.

Failure to File Motion to Sever Armed Robbery Charges

Applicant additionally contended counsel was ineffective for failing to file a motion to sever his two separate Armed Robbery charges stemming from different areas at different times. He alleged at the PCR hearing that he did not have the Leatherman tool at the Armed Robbery of the Pop’s Pantry and did not commit the robbery at the CVS parking lot, but with the two incidents being jointly tried, it was likely he would be convicted of both Armed Robberies by the jury. Applicant conceded that he had pled guilty in an effort to avoid a life without parole sentence.

Counsel’s credible testimony was that she had in fact filed a motion to sever the two sets

of charges and was informed by the trial court that the motion would be argued and decided through a pretrial hearing when the case came before the court. Counsel again noted that she had discussed this and all other pretrial motions with the Applicant when discussing his options to plead or go to trial, but stated Applicant made the voluntary decision to forego trial, and the pretrial motions, to avoid a potential life without parole sentence.

This Court finds counsel was not deficient in this regard, nor was Applicant prejudiced by this alleged deficiency. This Court first finds counsel's testimony to be credible on the issue of whether she did in fact file a motion to sever the charges and the fact that she would have argued the motion in pretrial had Applicant decided to proceed to trial. Applicant was fully aware of counsel's ability and preparation to present such a motion at trial, but made a voluntary decision to abandon the motion and plead guilty in an effort to avoid a potential life sentence. Therefore, counsel's performance was not objectively unreasonable in this regard.

Further, this Court finds Applicant has failed to establish a reasonable probability that the trial judge would have granted such a motion had it been presented in pretrial. "A motion for severance is addressed to the sound discretion of the trial court." State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002). "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced." Id. Applicant has failed to present this Court with any basis upon which the trial judge could have relied in granting the motion for severance. Therefore, he has failed to carry his burden in proving prejudice.

Failure to File Motion Challenging Photo Lineups

Applicant alleges counsel was ineffective for failing to file a motion challenging the unduly suggestive photo lineups presented to the victims of the robberies from which Applicant was identified. Applicant contends the lineups contain numbers at the bottom which indicate he is an inmate at the Alvin S. Glenn Detention Center.

Investigator Isenhoward testified he presented the victims of the robberies with the photo lineups to allow them the opportunity to identify the perpetrator in their incident. He plainly noted that he did not suggest in any way which suspect was Applicant, nor did he insinuate in any way that the suspect was included in the lineup at all. Isenhoward stated that the numbers at the bottom of the lineup page are each individual's inmate number from the Richland County jail, but noted that *every* individual pictured in the lineup had a number below them, not just Applicant. Counsel testified she had prepared a motion to suppress the photo lineup at trial and was ready to present and argue that motion on Applicant's behalf in pretrial had he proceeded. Again, counsel noted she had discussed this motion with Applicant and stated he was fully aware that he would be waiving the ability to present it if he pled guilty.

I find counsel's testimony to be credible in this regard as well. Applicant was fully advised of the potential to challenge the photo lineup identifications performed by Investigator Isenhoward and was entirely aware that entering a guilty plea would surrender his ability to challenge such. Applicant made the voluntary and intelligent decision to do so in order to obtain the benefit of a negotiated plea deal under which a life without parole sentence would be out of the picture. Accordingly, I find counsel's performance to be objectively reasonable in this regard.

Further, Applicant has failed to carry his burden in proving that such a motion to suppress the photo lineups would have been successful if presented based on the standards delineated by the United States and South Carolina Supreme Courts. See Neil v. Biggers, 409 U.S. 188, 93

S.Ct. 375 (1972) (Two-prong inquiry to determine admissibility of an out-of-court identification with (1) whether identification process was unduly suggestive and (2) whether out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed); see also State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007) (“The inquiry must focus upon whether, under the totality of the circumstances, there was a substantial likelihood of irreparable misidentification.”). The Court’s evaluate such a claim based on five factors: (1) the witness’s opportunity to view the perpetrator at the time of the crime; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior description of the perpetrator; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. Turner at 127, 644 S.E.2d at 696 – 697.

According to the record and testimony presented at the PCR hearing, the victim of the CVS robbery was able to give a detailed description of the suspect that matched Applicant after having the opportunity to view him in close proximity under sufficient lighting during the robbery. (“[Applicant] gets within inches of her face...[W]hile [Applicant] was in the car the light was on and [Victim] had a clear look at his face.” Plea Tr. p. 10, ll. 18 – 22). Upon being presented with the photo lineup roughly eleven days after the incident, the Victim of the CVS robbery picked Applicant’s picture “without hesitation”. (Plea Tr. p. 15, ll. 10 – 13). The Victim of the Pop’s Pantry incident was also able to give a detailed description of the robbery suspect after interacting with him for several minutes in the store prior to the robbery. Upon being presented with the photographic lineup, she too “immediately identified” Applicant as the perpetrator in that robbery. (Plea Tr. 14, l. 12 – p. 15, l. 1). Based on these facts, this Court finds no reasonable probability that had the motion been presented, it would have been granted by the

trial judge. Therefore, Applicant cannot prove resulting prejudice.

CONCLUSION

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

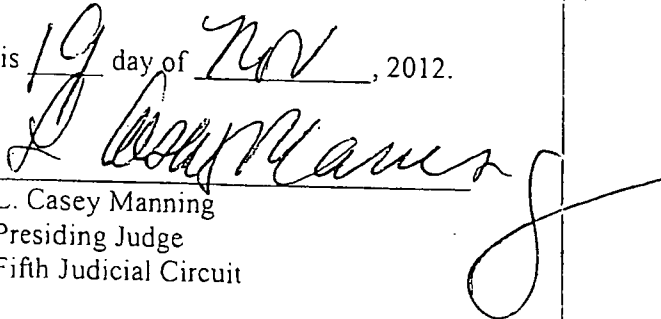
Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address any other issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of Nov, 2012.


L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.