

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE SUPREME COURT  
OF SOUTH CAROLINA

BOBBY E. PYKE, )  
PETITIONER, PRO SE )  
VS. )

Civil Action No: 2009-CP-40-07237

STATE OF SOUTH CAROLINA )  
RESPONDENT )

MOTION TO OBJECT

Petitioner, Bobby E. Pyke, Objects to Appellate Attorneys  
Petition to be relieved as Counsel based on Petitioners Pro  
se Johnson Brief Submitted to THE SUPREME COURT.

Respectfully Submitted,

Bobby E. Pyke  
Bobby E. Pyke, Petitioner Pro se

**RECEIVED**

OCT 25 2013

S.C. SUPREME COURT

Bobby E. Pyke, #143101 Petitioner Pro se  
Lieber Correctional Institution  
P.O. Box 205  
Ridgeville, SC 29472

October 21, 2013

Dear Mr. Shearouse,

Please find enclosed the following documents to be submitted to THE SUPREME COURT OF SOUTH CAROLINA:

- (1) Copy of Johnson Pro se Brief
- (1) Copy of Motion to Object
- (1) Copy of Proof of Service

Please stamp date copies and return to Petitioner at your earliest convenience.

Thank you and I appreciate your time and assistance.

Sincerely, Bobby E. Pyke  
Bobby E. Pyke, #143101  
Petitioner Pro se

**RECEIVED**

OCT 25 2013

S.C. SUPREME COURT

State of South Carolina	)	In the Supreme Court
County of Richland	)	of South Carolina
	)	Civil Action NO:
Bobby E. Pyke, #143101	)	2009-CP-40-07237
Petitioner Pro Se	)	
vs.	)	<u>Johnson Pro Se Brief</u>
	)	
State of South Carolina	)	
Respondent	)	
	)	

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Statement of Issue

The issue is whether Richland County Investigator Kevin Isenhoward and the Richland County Sheriff's Department were authorized to effectuate the arrest of Petitioner outside of their jurisdiction in Kershaw County. Petitioner 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

1. According to the record and testimony at the PCR hearing, the current charges 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 was 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 describes 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. 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 Petitioner was in the photographs. Bauknight and Smith reported Petitioner was a relative and lived with them at 128 Shannon Wood Road in Kershaw County. Inv. Isenhoward reported he researched Petitioner and pulled his South Carolina Sex Offender Registration which showed Petitioner's picture and address. After presenting a photo line-up to one of the clerks from the store, Inv. Isenhoward reported he obtained an arrest warrant for armed robbery from Richland County Magistrate G.A. Surles. (Inv. Isenhoward's narrative appears to misconstrue the actual dates of some of the events as Magistrate Surles signed an arrest warrant for Petitioner as related to the store robbery on January 4, 2008, rather than Jan. 5, 2008.) Inv. Isenhoward also entered this arrest warrant into the National Crime Information Center (NCIC) database.

2. That same day, Inv. Isenhoward went to 128 Shannonwood Road in an attempt to locate Petitioner and spoke to Petitioner's mother, Laura Bauknight. Petitioner was not home but later that day Inv.

Isenhoward and another Richland County Officer returned to 128 Shannonwood Road in Kershaw County and found Petitioner sitting in a vehicle on the property. Inv. Isenhoward arrested Petitioner, advised him of his rights, and Petitioner allegedly admitted he had "robbed the store." Petitioner 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.

3. On January 7, 2008, Inv. Isenhoward returned to 128 Shannonwood Road in Kershaw County. Ms. Laura Bauknight consented to a search of the home where police found a silver multi tool belonging to Petitioner. 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 Petitioner citing armed robbery for the 121 Clemson Road robbery.

4. Petitioner was represented by plea counsel throughout the duration of his case. On October 13, 2008 Judge Allison Lee denied plea counsel and Petitioner's separate motions requesting plea counsel be relieved as counsel. Petitioner cited in his motion, "Defendant no longer has any faith in Ms. Davis. She has continued to mislead Defendant and shown a complete lack of interest in representing him if case goes to trial." Petitioner pled guilty to both counts of armed robbery on March 30, 2009, in front of Judge Michelle Childs and was sentenced to twenty (20) years' imprisonment.

5. Petitioner filed his PCR application on October 8, 2009, alleging ineffective assistance of counsel. Petitioner's evidentiary hearing before Judge Casey L. Man-

ning was held on May 22, 2012. At the hearing, Inv. Isenhoward testified that even if he had known Petitioner's residence was located 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.

6. Inv. Isenhoward also testified that S.C. Code Ann. Section 17-13-40 (2003), permitted he and his officers to arrest Petitioner in Kershaw County because they were in "pursuit" of Petitioner. Isenhoward testified that he was in "pursuit" of Petitioner's arrest so he believed the statute applied, regardless of whether they were directly pursuing Petitioner in a chase or effectuating an arrest in the same manner as this case. Inv. Isenhoward also testified that S.C. Code Ann. Section 17-13-40 (2003) permitted he and his officers to arrest Petitioner in Kershaw County because they were in "pursuit" of Petitioner. Isenhoward testified that he was in "pursuit" of Petitioner's arrest so he believed the statute applied, regardless of whether they were directly pursuing Petitioner 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.

### LEGAL STANDARD

1. 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-prong test. Cherry v. State, 300 S.C. 115, 117, 386 S.E. 2d 624, 625 (1989) (Citing Strickland v. Washington, 466 U.S. 668 (1984)). First, the Petitioner 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 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 Petitioner 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 results 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.

2. 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 error's he would not have plead guilty and would have insisted on going to trial. Id.

3. 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 pleaded 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 pleaded guilty but for Counsel's deficient performance, petitioner 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) 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 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 Section 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, 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

1. Petitioner 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 Petitioner's residence was located in Kershaw County; however, in his ACISS report he stated he looked at Petitioner's South Carolina Sex Offender Registration which clearly states Petitioner's residence as 128 Shannonwood Road, Elgin, South Carolina as being located

in Kershaw County.

2. Further, if this Court were to consider Inv. Isenhoward's definition of pursuit and apply the States 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 arrest or conducting police functions in another County. Inv. Isenhoward's explanation and understanding of 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 Petitioner in Kershaw County.

3. Petitioner 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 of the items they believed to 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 officer's and three CCSD officers arrived on scene and spoke with LCSD officers. LCSD then transported defendant to the LCSD headquarters. The Supreme 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. 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

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 Petitioner'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 Petitioner 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 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. Petitioner 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 Petitioner's arrest unlawful.

5. The State does argue in its brief, that "on information and belief," a "Memorandum of Understanding" or multijurisdictional agreement with bordering counties was in place at the time of Petitioner'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).

6. 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, Petitioner contends the State's argument fails and Richland County Sheriff's Department did not possess the authority to arrest Petitioner in Kershaw County pursuant to any multijurisdictional agreement or "Memorandum of Understanding."

7. Petitioner 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 Petitioner's residence clearly showed Petitioner's as Kershaw County.

8. Additionally, because Inv. Isenhoward and the Richland County Sheriff's Department did not have the authority to arrest Petitioner 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 have applied either.

9. While an unlawful arrest does not equate to Petitioner'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. 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)). Petitioner contends that, upon review of the record and the evidence in this case, including plea Counsel's file, no evidence exists showing plea Counsel attempts to have the Court schedule a hearing date for Petitioner's motion to dismiss for lack of unlawful arrest. Additionally, Petitioner asserts there was uncertainty as to whether this motion would even be heard during pre-trial motions. Petitioner 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, Petitioner was uncertain as to its availability to be heard during pre-trial motions and was forced to plead guilty. Petitioner also argues that the suppression of his statements, his family's statements, and the Multi tool, all which were procured after Petitioner's unlawful arrest by Inv. Isenhoward, would lead to different results at trial or in plea negotiations. Petitioner submits the suppression of the Multi tool would particularly change the circumstances of Petitioner's trial or plea negotiations as there would be no theory that Petitioner possessed a weapon during the alleged robberies he committed and reduce the charges from armed robbery to a lesser offense.

10. Finally, Petitioner 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. 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).

## CONCLUSION

For the foregoing reasons, Petitioner submits plea Counsel provided ineffective assistance in failing to move to dismiss Petitioner's arrest as unlawful and/or failing to move to dismiss Petitioner's statements, Petitioner's family's statements, and the submittal of the Multi tool into evidence as being fruits of Petitioner's unlawful arrest. Petitioner contends had plea Counsel made these motions prior to the day of trial, he would not have pled guilty. Petitioner respectfully request this Court to grant his Brief and remand this Case back to the Richland County Circuit Court while suppressing the fruits of the unlawful arrest.

October 1, 2013

By: Bobby E. Pyke,  
Bobby E. Pyke #143101  
Petitioner, Pro se  
Lieber Correctional Institution  
P.O. Box 205  
Ridgeville, SC 29472

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

CERTIFICATE OF SERVICE

Bobby E. Pyke #143101, Petitioner, Pro se, respectfully submits his Johnson Pro se Brief to the SUPREME COURT OF SOUTH CAROLINA, by mailing from the Mailroom of Lieber Correctional Institution to: Daniel E. Shearouse, Clerk of Court, by mailing same, postage prepaid in the United State mail addressed to the following:

Daniel E. Shearouse, Clerk of Court  
P.O. Box 11330  
Columbia, S.C. 29211

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OCT 25 2013

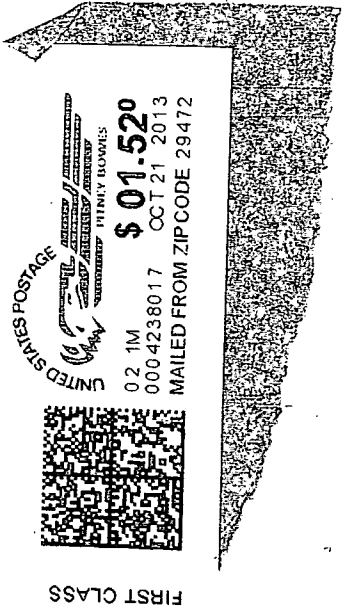
S.C. SUPREME COURT

Bobby E. Pyke  
Bobby E. Pyke #143101, Petitioner  
Pro se  
Lieber Correctional Institution  
P.O. Box 205  
Ridgeville, SC 29472

SWORN TO BEFORE ME  
this \_\_\_ day of October, 2013.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

Bobby E. Ryke #143101  
Lieber Correctional Institution  
P.O. Box 205  
Ridgeville, SC 29472



THE SUPREME COURT OF SOUTH CAROLINA  
Daniel E. Shearouse, Clerk of Court  
P.O. Box 11330  
Columbia, SC 29211

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MAIL ROOM  
LIEBER CJ

FOI