

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from York County
J. Michael Baxley, Circuit Court Judge

S.C. Supreme Court

RICHARD KEITH POE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000737

APPENDIX

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State of South Carolina.,)

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County of York.

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In the General Sessions
Court of York

Case No.: 2012-GS-46-03771

State of South Carolina.,)

)

Plaintiff.,)

)

-vs-)

)

Transcript of Record

Richard Keith Poe.,)

)

Defendant.)

)

June 4, 2013
York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, judge.

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

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The Honorable John C. Hayes, III

I N D E X
E X A M I N A T I O N

WITNESSBY:PAGE NO.

Detective Ralph Gurganus

Solicitor Shelton

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Mr. Cronin

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E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
St.1	Photo - Air Compressor	P.4	
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	(5.1.13) Marla Domino Ph.D		
	presiding; Dawn Whetstone, LMSW		P.27
Reporter's Note: All Court Exhibits were filed with the			
York County Clerk of Court's Office.			
State's Exhibits One through Ten signed for by, and			
returned to, the Sixteenth Circuit Solicitor's Office.			

1 (COURT IN SESSION IN THE MATTER OF STATE OF SOUTH
2 CAROLINA RICHARD KEITH POE TUESDAY, JUNE 4, 2013 AT 09:58
3 A.M..)

4 THE COURT: Thank you. Take your seats.

5 (WHEREUPON: STATE'S EXHIBITS ONE THROUGH TEN
6 PREMARKED FOR IDENTIFICATION.)

7 (DEFENDANT, RICHARD POE, WHITE MALE, ENTERING
8 COURTROOM.)

9 THE COURT: Madame Solicitor.

10 THE COURT: Your Honor, the State at this time is
11 calling the trial of State versus Richard Poe on the
12 following charges. He's charged with burglary in the first
13 degree Indictment No. 2012-GS-46-0-3-7-7-1. He is charged
14 with an enhanced petty larceny Indictment No. 2012-GS-46-
15 0-3-7-6-9. He is charged with breaking into a motor
16 vehicle in Indictment No. 2012-GS-46-0-3-7-7-4. He is
17 charged with criminal conspiracy Indictment No. 2012-GS-46-
18 0-3-7-7-2.

19 THE COURT: Mr. Cronin, you present Mr. Poe?

20 MR. CRONIN: Yes, Your Honor.

21 THE COURT: All right. Any matters before we get the
22 jury up? And for the record --

23 This is Mr. Poe?

24 MR. POE: Yes, sir, Your Honor.

25 THE COURT: He is present in court with counsel.

DETECTIVE RALPH GURGANUS: BY SOLICITOR SHELTON IN-CAMERA

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1 All right, Ms. Shelton.

2 SOLICITOR SHELTON: Your Honor, there are just a few
3 issues that I would like to cover pretrial. Mr. Poe did
4 give a statement to law enforcement once in custody. He
5 also called in, before in custody, and made a statement to
6 law enforcement; that statement was recorded. I don't
7 think we need to do a Jackson versus Denno on that
8 statement but I did want to just mention it pretrial. I
9 also to cover the record go over the plea negotiations in
10 this case, they have been extensive. And then as we
11 discussed in chambers a motion to preclude Mr. Poe from
12 making any mitigating testimony if he chooses to testify.

13 THE COURT: All right. Well why don't we go ahead and
14 do Jackson versus Denno on the statement.

15 SOLICITOR SHELTON: Yes, sir, Your Honor.

16 Your Honor, the State would call Detective Ralph
17 Gurganus.

18 MADAME CLERK: Raise your right hand, place your left
19 hand on the Bible.

20 (WHEREUPON: RALPH GURGANUS,
21 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 DIRECT EXAMINATION - IN CAMERA

23 DETECTIVE RALPH GURGANUS BY SOLICITOR SHELTON:

24 Q. State your name for the record please.

25 A. Ralph Gurganus.

1 Q. Mr. Gurganus, what - Detective Gurganus, what - where
2 do you work?

3 A. I work for the York County Sheriff's Office in the CID
4 Department.

5 Q. What's the CID Department?

6 A. Criminal Investigation Division.

7 Q. And what specifically types of crimes do you
8 investigate?

9 A. Property crimes.

10 Q. How long have you - How long have you worked for the
11 sheriff's department?

12 A. Since August of 2001.

13 Q. How long have you been investigating property crimes?

14 A. Since November, 2004.

15 Q. And prior to that did you have any law enforcement
16 experience?

17 A. I spent twenty years in the Air Force and was a
18 air force police officer for thirteen years.

19 Q. And so you were working as a detective in the property
20 crimes division in June, around June 18th of 2012?

21 A. That's correct.

22 Q. And at that point did you have an encounter with
23 Richard Poe?

24 A. I did.

25 Q. And how did that begin? What was your first contact

DETECTIVE RALPH GURGANUS: BY SOLICITOR SHELTON IN-CAMERA

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1 with him at that time?

2 A. After the shift the deputies on shift went out and
3 took the incident report from the victim.

4 Q. Now just from June, during June. Not through the
5 whole case but in June when you had contact with him then.
6 What initiated that contact?

7 A. June?

8 Q. Yes.

9 A. I believe that's when I received the letter from Poe.

10 Q. From what you believed to be from Mr. Poe?

11 A. That's right.

12 Q. And what did that letter say?

13 A. More or less went into the details of the
14 investigation about his part and also with the person that
15 he was with.

16 Q. And his part of what?

17 A. Of taking part of a burglary at the victim's house.

18 Q. And did he at - And who is the victim in this case?

19 A. Mr. Stiles, Kenneth Stiles.

20 Q. And where did that burglary occur?

21 A. In Clover.

22 Q. And did he as part of that letter request to speak
23 with you about the case?

24 A. He gave details. I received notification from
25 detention. There was an officer that sent an email to our

1 captain and it got filtered down that he was wanting to
2 speak with a detective ASAP about the case.

3 Q. I'm gonna show you the letter that you received.

4 And in glancing at it, is that - Can you testify that
5 that is the letter that you received from Mr. Poe detailing
6 the ---

7 A. It is.

8 Q. --- the break in at the Stiles residence?

9 A. Uh-huh.

10 Q. And what did you do with that letter?

11 A. I made a couple of copies and I submitted the actual
12 letter into evidence.

13 Q. And when did you next see it, that particular copy of
14 the letter?

15 A. This copy was today.

16 SOLICITOR SHELTON: Your Honor, at this time I'd like
17 to make this a Court's Exhibit.

18 THE COURT: Let Mr. Cronin look at it.

19 MR. CRONIN: No objection, Your Honor.

20 THE COURT: Court's Exhibit without objection.

21 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE IDENTIFIED AND
22 MARKED, RECEIVED INTO THE RECORD.)

23 BY SOLICITOR SHELTON:

24 Q. And you said that you received that letter detailing
25 the break in at the Stiles residence. And that you also

DETECTIVE RALPH GURGANUS: BY SOLICITOR SHELTON IN-CAMERA

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1 received notification from the detention center that Mr.
2 Poe wanted to speak to a detective as soon as possible.

3 A. That's correct.

4 Q. And what did you do when you got that notification?

5 A. I gave your office a call making sure it was okay for
6 me to speak with him. And after I received permission
7 Detective Strickland and I went down to detention, with a
8 copy of the letter, and requested to see Mr. Poe based on
9 his request.

10 Q. And did he - That's when you went to see him. Did he
11 want to speak with you?

12 A. Absolutely.

13 Q. Did he at any time ask for an attorney?

14 A. No, ma'am.

15 Q. Did you advise him of his *Miranda* rights and his right
16 to an attorney?

17 A. I did.

18 Q. Did you use anything to assist you in advising him of
19 his rights?

20 A. Yes, ma'am. I used the standard York County Sheriff's
21 Office Waiver Form which is read to him and explained to
22 him.

23 Q. And did he sign anything indicating that he understood
24 his rights?

25 A. Yes, ma'am.

1 Q. And that he was waiving those rights?

2 A. Yes, ma'am.

3 Q. Would you identify that please?

4 A. This is a copy of the *Miranda* form and also the Waiver
5 of Rights, a paragraph which he also signed off on.

6 Q. And looking at that form, could you read to the Court
7 exactly what rights you advised Mr. Poe of?

8 A. I advised him of his *Miranda* rights stating that he
9 had the right to remain silent. Do you want me to read
10 the whole *Miranda*?

11 Q. The whole, the entirety of *Miranda*.

12 A. Here's what it says on the form: "Your rights: Before
13 I ask you any questions I want to advise you of your
14 rights. You have the right to remain silent, anything you
15 say can and will be used against you in a court of law.
16 You have the right to talk to an attorney and have him, her
17 present with you while you are being questioned. If you
18 cannot afford to hire an attorney one will be appointed to
19 represent you before any questioning if you wish. You can
20 decide at any time to exercise these rights and not answer
21 any questions or make any statements. Do you understand
22 each of these rights I have explained to you?"

23 And there is two blocks next to that that says "yes or
24 no" and he checked yes, signed, dated it; below that is
25 waiver of rights. It states "I am willing to talk to

DETECTIVE RALPH GURGANUS: BY SOLICITOR SHELTON IN-CAMERA

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1 police and answer questions. I do not want an attorney at
2 this time. I understand and know what I am doing. No
3 promises or threats have been made to me and no pressure of
4 any kind has been placed upon me."

5 And there are signature blocks below which he signed
6 and dated. I witnessed it and also dated it. Below that
7 is the information about Mr. Poe, his name, date of birth,
8 age, educational level and whether or not he can read and
9 write which he answered yes. It states the place of the
10 interview, the time and the date, and I printed my name and
11 Detective Strickland's name on the bottom of the form.

12 Q. And that is the form that you used in advising Mr. Poe
13 of his rights?

14 A. That's correct.

15 SOLICITOR SHELTON: Your Honor, at this time I would
16 like to move this in as a Court's Exhibit.

17 MR. CRONIN: No objection, Your Honor.

18 THE COURT: In as a Court's Exhibit without objection.

19 (WHEREUPON: COURT'S EXHIBIT NUMBER TWO IDENTIFIED AND
20 MARKED, RECEIVED INTO EVIDENCE.)

21 BY SOLICITOR SHELTON:

22 Q. And you mentioned Detective Strickland. So there was
23 someone else with you at the time that you advised him of
24 his rights and took the statement from him?

25 A. That's correct.

1 Q. But you were the lead detective?

2 A. That's correct.

3 Q. And you kind of covered this, but from your experience
4 did Mr. Poe appear to understand everything that was read
5 to him and his rights?

6 A. Yes, ma'am. Anytime someone request me to see them in
7 detention I go over *Miranda* really in detail making sure
8 they understand that I am there upon their request and it's
9 them that's wanting to speak with me. And I went over that
10 with Mr. Poe with Detective Strickland.

11 Q. And he was in detention but did he appear to be under
12 the influence of any alcohol or drugs at the time?

13 A. No, ma'am.

14 Q. Could you smell any alcohol on him or anything like
15 that?

16 A. No, ma'am.

17 Q. Did you or Detective Strickland say anything or do
18 anything toward Mr. Poe to influence him into giving you
19 this statement?

20 A. No, ma'am.

21 Q. To threaten him or coerce him?

22 A. No, ma'am.

23 Q. Did you promise him that his charges would be
24 dismissed?

25 A. No, ma'am.

DETECTIVE RALPH GURGANUS: BY SOLICITOR SHELTON IN-CAMERA

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1 Q. Did you promise him that he wouldn't be charged?

2 A. No, ma'am.

3 Q. Did he at any time ask for an attorney?

4 A. No, ma'am.

5 Q. And did he make any statements in your presence?

6 A. He gave a verbal statement.

7 Q. A detailed statement?

8 A. Yes, ma'am.

9 Q. And exactly at the detention center where were you
10 when the statement was taken?

11 A. There when you enter the booking room just to the
12 right of the booking room when you walk in there is the
13 data master rooms for which people are brought in to take
14 or DUI cases and there is a separate room for interviewing
15 and that is the room that was used.

16 Q. Is it a small room?

17 A. Yes, ma'am.

18 Q. So pretty close contact?

19 A. There's a table and few chairs.

20 Q. Was this a very lengthy interview? When I say lengthy
21 over an hour, over two hours?

22 A. I would believe it would be about an hour.

23 Q. Did he at any time ask to have water or food or
24 anything like that?

25 A. No, ma'am.

DETECTIVE RALPH GURGANUS: BY SOLICITOR SHELTON IN-CAMERA

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1 Q. Were you wearing a weapon?

2 A. No, ma'am.

3 Q. Was Detective Strickland wearing a weapon?

4 A. No, ma'am.

5 Q. Do you - Do they take your weapons when you go into
6 the detention center when you're --

7 A. Once you're into the sally port you have to - there
8 are little locked boxes outside, you have to leave your
9 weapon, knives, and cell phones.

10 Q. Did you have on a uniform?

11 A. I had on the uniform that we wear in CID.

12 Q. Does it have a badge on it of some sorts, kind of
13 identifying information on it?

14 A. Yes, ma'am. It's five by eleven pants and a polo
15 shirt with the star.

16 Q. Did you identify yourself to Mr. Poe as law
17 enforcement?

18 A. I did.

19 Q. And you already said he made a statement. What was
20 the substance of that statement? What did he tell you?

21 A. During the interview?

22 Q. Yes.

23 A. He - Well I brought the letter that I received and
24 he was eagerly wanting to tell me about the history of
25 everything. About what he had been going through in his

DETECTIVE RALPH GURGANUS: BY SOLICITOR SHELTON IN-CAMERA

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1 life; about the relationship with Ms. McDonald, about the
2 situation at the Stiles house.

3 Q. Did he make specific statements about the burglary
4 at the Stiles house?

5 A. He did.

6 Q. And what did he tell you about that?

7 A. That Ms. McDonald needed to get some type of pain
8 medications and that they didn't have any money and they
9 started talking about how they could obtain money and they
10 went outside. According to him they went outside and
11 forcible entered the victim's storage, locked storage
12 building, with a cat call. And I had Mr. Poe explain to me
13 what a cat call was because I am not a carpenter so he went
14 into details about a cat call; about entering the building,
15 taking some tools that belonged to Mr. Stiles. Also going
16 into the truck and removing a chain saw.

17 And he went through the details of going to Piedmont
18 with Ms. McDonald, obtaining a prescription and going to a
19 pawn shop the following morning and selling the items that
20 were taken from Mr. Stiles building.

21 He also mentioned about stopping by a Mr. Fred
22 Jackson's residence after they went back to the pawn shop
23 and took the items back out of pawn that they had sold
24 earlier in the morning. So they took those items out of
25 the pawn shop and went to Mr. Jackson's place and received

DETECTIVE RALPH GURGANUS: BY SOLICITOR SHELTON IN-CAMERA

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1 a hundred dollars for those items. And they returned back
2 to the incident location of Mr. Stiles.

3 Q. And did he write a statement? Other than the letter,
4 I know he wrote the letter, but in your interview did
5 you have him visit the rights statement?

6 A. No, ma'am. I took notes. He had so much information
7 he wanted to share to me so I took notes of exactly what he
8 was telling me. I went over the notes with him and I did a
9 summary of those notes and I did a followup report.

10 Q. And so you did a typed, typed report of the interview
11 but you did not write a statement for him for him to sign?

12 A. That's correct.

13 Q. Would you identify that please?

14 A. This is the Incident Review Report that I typed up
15 after the interview.

16 Q. And so that is your notes from the verbal confession
17 that he gave you that you typed up after the interview?

18 A. That's correct.

19 Q. And that is what you made part of your case folder?

20 A. That's correct.

21 Q. Any changes or additions been made to that since you
22 filled it out that day?

23 A No, ma'am.

24 Q. And is it an accurate summary of the details that Mr.
25 Poe provided you of the burglary and the larceny at Mr.

DETECTIVE RALPH GURGANUS: BY MR. CRONIN - IN CAMERA

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1 Stiles' residence?

2 A. Yes, ma'am, this is exactly what he said.

3 SOLICITOR SHELTON: Your Honor, I'd ask to make this
4 a Court's Exhibit as well.

5 (WHEREUPON: COURT'S EXHIBIT NUMBER THREE IDENTIFIED
6 AND MARKED, RECEIVED INTO EVIDENCE.)

7 SOLICITOR SHELTON: Detective Gurganus, please answer
8 any questions that Mr. Cronin has for you.

9 DETECTIVE GURGANUS: Yes, ma'am.

10 MR. CRONIN: May it please the Court.

11 THE COURT: Yes, sir. Mr. Cronin, I've got the
12 exhibits I'm gonna set them up here. In case you want to
13 use any, just come up and get them.

14 MR. CRONIN: Yes, Your Honor.

15 CROSS EXAMINATION - IN CAMERA

16 DETECTIVE RALPH GURGANUS BY MR. CRONIN:

17 Q. Detective, that visit was on June 18th, 2012?

18 A. In detention?

19 Q. Yes, sir.

20 A. Yes, sir.

21 Q. And you said at the time you went in he was not
22 represented by counsel?

23 A. I - When I got the request I contacted the solicitor's
24 office and advised them of the request that he had made and
25 was advised that I could speak to him since he was the one

DETECTIVE RALPH GURGANUS: BY MR. CRONIN - IN CAMERA

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1 requesting my presence. That's what I understood.

2 Q. Okay. So at the time when you got there he didn't say
3 I have a lawyer or anything like that?

4 A. No.

5 Q. Okay. Did he ask you to stop interrogating him at
6 any time?

7 A. No, sir.

8 Q. And you're saying you just spoke to him and he gave
9 you all that information you typed up this report here. I
10 believe it's the last exhibit.

11 A. Yes, sir. He was very eager to speak with me so he
12 was telling me so much information I just decided to let
13 him speak.

14 Q. Did you record this conversation?

15 A. No, sir.

16 Q. Was there recording equipment available?

17 A. No, sir.

18 Q. Was there anyone using the data master room next to
19 your room, the video room?

20 A. I was not aware if there were.

21 Q. Okay. And the data master is set up with video
22 taping equipment and audio taping equipment; is that
23 correct?

24 A. Yes, sir.

25 Q. Okay. And did you see any particular reason why you

DETECTIVE RALPH GURGANUS: BY MR. CRONIN - IN CAMERA

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1 wouldn't use that to video tape this --

2 A. It's not a practice that we do in the sheriff's
3 office.

4 Q. Okay. How long did you say you spent with him?

5 A. I'd say at least an hour.

6 MR. CRONIN: May I approach, Your Honor?

7 THE COURT: You may.

8 BY MR. CRONIN:

9 Q. I'm showing you Exhibit Number Two which is the
10 Waiver of Rights.

11 A. Okay.

12 Q. On that form did Mr. Poe - what particularly did he
13 write and what did you write on that form?

14 A. Okay. When I read it to him before I proceed to the
15 next one, he checked it. After he checked it he signed it
16 and he dated it. Then I read him his Waiver of Rights, all
17 this. After I read that to him he signed it and dated it.
18 I signed it and dated it. Then I filled in the bottom. I
19 ask him each question on here and I filled in the bottom.

20 Q. Okay. And so you're saying he made that check mark
21 where it says yes where it says "do you understand these
22 rights as I explained to you"?

23 A. Yes, sir, he did.

24 Q. Okay. Thank you.

25 A. Yes, sir.

DETECTIVE RALPH GURGANUS: BY MR. CRONIN - IN CAMERA

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1 Q. Before you went to see him, what did you know about
2 the defendant?

3 A. I - I talked to the Stiles about him and how they
4 knew him and I read his criminal history; and also, before
5 meeting him and interviewing him I also had a chance to
6 interview Ms. McDonald and, of course, she provided me
7 information about the years and years of their relationship
8 and the problems they had between them. And, of course,
9 you know I said I read his criminal history so I knew that
10 he's had a lot of trouble in his life, a lot of struggles
11 and he's had a hard life.

12 And when I got downstairs just by the way he was
13 telling me things I could understand that he had been
14 through a lot in his life and that's the reason I just sat
15 back and just let him tell me his struggles. So it seemed
16 like everything I had read in the past, some of the
17 information from Ms. McDonald, everything was coming
18 together about what he was facing in his life.

19 Q. Did you have any information regarding his educational
20 background?

21 A. The only thing I had was when I ask him about his
22 education level and I believe the form states that he
23 completed his highest education was the eleventh on the
24 bottom of the form because I ask him if he could read or
25 write and I ask him his educational level and I believe it

DETECTIVE RALPH GURGANUS: BY MR. CRONIN - IN CAMERA

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1 states the eleventh grade.

2 Q. Did he say he could read and write?

3 A. Yes, sir.

4 Q. How long was he incarcerated before you went to see
5 him?

6 A. I believe he was transferred from a different county
7 to the York County Sheriff's Office. And - If you don't
8 mind I could refer to the Incident Report?

9 (PAUSE AT 10:20 A. M..)

10 A. It states in the Supplemental Report on 6/11/12 Poe
11 was arrested and served the following warrants at York
12 County Detention Center. So it was June the 11th.

13 Q. He was arrested at York County Detention Center?

14 A. That's where they served the warrants were at the York
15 County Detention Center on the 11th.

16 Q. So he was already in jail. You don't know when his
17 incarceration began?

18 A. That's all I know as far as being in York County ---

19 Q. Okay.

20 A. -- at the detention center. It just states that Poe
21 was arrested and served the following warrants at York
22 County Detention Center. So it must have been on the 11th
23 when the warrants were read to him.

24 Q. But your understanding was that he was incarcerated
25 someplace else and then transported to York County; is that

1 correct?

2 A. Yes, sir.

3 Q. Okay. You don't know how long that was?

4 A. No, sir.

5 Q. Okay. During your interrogation of the defendant,
6 what was his demeanor? You said he was very forthcoming
7 and he went and went and went and you had to sit back and
8 listen to him. What did you notice about his demeanor?

9 A. I'd say he seemed like he was excited to share his
10 struggles to get it off - out of him, you know, because we
11 talked and it seems like he has been through a lot in his
12 life and a lot of struggles. And I just sat back and
13 listened.

14 Q. Now when you completed that, did you offer any kind of
15 sympathy; did you offer any kind of assurances to him?

16 A. I assured him that a lot of people in life go through
17 different struggles and people deal with their struggles in
18 different ways whether it's through religion, counseling,
19 and people also turn to drugs and alcohol to cope with
20 their struggles.

21 Q. Would you say he had a difficult time focusing on what
22 you were saying or did he seem to get it?

23 A. He - I don't think he had difficulty in telling me
24 about his struggles at all. I felt like it was a relief
25 from him actually getting this off his chest so I just

DETECTIVE RALPH GURGANUS: BY MR. CRONIN - IN CAMERA

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1 listened.

2 Q. And you didn't promise him anything?

3 A. No, sir.

4 Q. Did you give him any kind of opinion as to what he
5 would be facing.

6 A. No, sir. I don't have anything to do with what he
7 faces in the future.

8 MR. CRONIN: I beg the Court's indulgence just a
9 moment.

10 (PAUSE.)

11 MR. CRONIN: I have nothing further, Your Honor.

12 SOLICITOR SHELTON: No redirect, Your Honor.

13 THE COURT: You can step down.

14 DETECTIVE GURGANUS: Thank you, sir.....

15 (WITNESS LEAVING WITNESS STAND.)

16 SOLICITOR SHELTON: Your Honor, we have no other
17 witnesses. We just ask that the Court make a ruling
18 allowing that the statement would be allowed in as part of
19 the evidence in the case.

20 THE COURT: Mr. Cronin, do you have any witnesses on
21 the Jackson versus Denno issue?

22 MR. CRONIN: Your Honor, we call the defendant
23 regarding that.

24 THE COURT: Okay.

25 Before we move into that, I think we better - I

1 understand that Mr. Poe was sent for a mental evaluation.

2 SOLICITOR SHELTON: Yes, sir.

3 THE COURT: And before - I think before we move
4 forward we need to do a Blair hearing.

5 All right. Mr. Cronin, I've been handed a competency
6 to Stand Trial Evaluation under the name of Poe, Richard,
7 evaluated by Marla Domino and Dawn Whetstone. It appears
8 to be dated - the evaluation - May 1st of this year. It's
9 eleven pages signed by Doctor Domino, Ph.D., 5/3/13.

10 Have you reviewed that, Mr. Cronin?

11 MR. CRONIN: Yes, Your Honor.

12 THE COURT: Do you consent to the State making - I
13 mean to the Court making it a Court's Exhibit for purposes
14 of a Blair Hearing?

15 MR. CRONIN: Yes, Your Honor.

16 THE COURT: All right. It will take me a moment to go
17 through this. The document - Competence to Stand Trial
18 Evaluation - contains several subsections about social
19 information and personal history and medical history and
20 employment history, substance abuse history, criminal
21 history, psychiatric history per Mr. Poe's report. And
22 then psychiatric history per collateral seriousness.

23 Then it goes into on Page 6 Mr. Poe's current mental
24 status as of that day and the diagnosis impressions.

25 The diagnostic impressions are of quote depressive

1 order comma not otherwise specified comma and antisocial
2 personality disorder end quotes. The evaluation then goes
3 further to explain how that diagnoses was reached.

4 The next Subsection's called Information Relevant to
5 Competence to Stand Trial. It's several pages long. And
6 then on Page 10 the doctor, Doctor Domino, reaches her
7 opinion regarding competency to stand trial. She finds
8 that even with the diagnoses that I had mentioned Mr. Poe
9 does not currently lack the capacity to understand - She
10 finds that Mr. Poe does not currently lack the capacity to
11 understand the proceedings against him or to assist in his
12 own defense as a result of the lack of mental capacity.

13 She elaborates on that and then summarizes that it's
14 her clinical opinion that Mr. Poe does not currently lack
15 the capacity to understand the proceedings against him or
16 to assist in his own defense as a result of lack of mental
17 capacity.

18 I find that based on this report that Mr. Poe is
19 competent to proceed to be tried for the offenses which has
20 been announced by the solicitor; that he does currently
21 have the capacity to understand the proceedings against
22 him. When I say currently I know this report is a month
23 old but there is nothing to indicate that there's been any
24 changes. I'm basing this on the May 3rd report. But I
25 find there is no evidence that Mr. Poe currently lacks the

1 capacity to understand the proceedings against him nor any
2 evidence that he is unable to assist in his own defense as
3 a result of the lack of mental capacity.

4 Although, again, he does have two, at least two
5 psychiatric diagnoses of depressive disorder and otherwise
6 specified an anti-social personality disorder. So I do
7 find that Mr. Poe is competent to stand trial and we can
8 proceed.

9 Mr. Poe, can you hear me?

10 MR. POE: Yes, sir.

11 THE COURT: Your attorney has indicated that he - of
12 course he's your attorney and the ultimate decision is up
13 to you - but he's indicated that he intends to call you as
14 a witness regarding this statement that Officer Gurganus
15 has just gone over. Do you understand that you have the
16 right to remain silent? You don't have to testify or give
17 any statements about this matter at this time or at any
18 time during the trial. Do you understand that?

19 MR. POE: Yes, sir.

20 THE COURT: And do you understand that this court
21 reporter Ms. Nelson is taking down everything I say and
22 everything anybody else says in this courtroom while the
23 proceedings are going on including anything you say?

24 Do you understand that?

25 MR. POE: Yes, sir.

1 THE COURT: And if you do take the stand you will be
2 under oath and you will be testifying under oath. Do you
3 understand that?

4 MR. POE: Yes, sir.

5 THE COURT: All right.

6 SOLICITOR SHELTON: Your Honor, before he testifies,
7 can we make the report a Court's Exhibit?

8 THE COURT: Yes. This report should be a Court's
9 Exhibit. Again it's eleven pages.

10 (WHEREUPON: COURT'S EXHIBIT NUMBER FOUR IDENTIFIED
11 AND MARKED, RECEIVED INTO EVIDENCE.)

12 SOLICITOR SHELTON: Thank you, Your Honor.

13 THE COURT: All right, Mr. Cronin.

14 MR. CRONIN: I beg the Court's indulgence.

15 THE COURT: Okay.

16 (PAUSE AT 10:35 A.M..)

17 MR. CRONIN: Your Honor, the defendant has decided not
18 to testify for the Denno hearing.

19 THE COURT: Okay. All right, while I have found him
20 competent, now as to the Denno matter, I find by a
21 preponderance of the evidence that Mr. Poe freely
22 voluntarily knowingly and intelligently waived his rights
23 under the *Fifth and Sixth Amendments* to the *Constitution of*
24 ~~the United States~~ and the applicable *South Carolina*
25 *Constitution* provisions which to the most part mirrors the

1 codes of the *United States Constitution*.

2 I find that by a preponderance of the evidence that
3 prior to giving any statement Mr. Poe was advised of his
4 rights as required by *Miranda*. He was advised that he had
5 the right to remain silent that anything he said could and
6 would be used against him in a court of law. That he had
7 the right to talk to an attorney and have that attorney
8 present with him while he was being questioned. That if he
9 could not afford an attorney one would be appointed to
10 represent him before any questioning. And that if he
11 decided to exercise those rights, or could decide to
12 exercise those rights, at any time and not answer any
13 questions or make any statements.

14 He has checked where it says quote Do you understand
15 these rights I have explained to you question mark end
16 quote, he has marked yes. The signature, I can't really
17 read it, but it's stated by the witness Detective Gurganus
18 that he was deposed dated 6/18/12.

19 Under there there is a Waiver of Right, again the same
20 signature, the same date, witnessed by possibly Gurganus.
21 It says I am - the waiver says "I am willing to talk to
22 police and answer questions. I do not want an attorney at
23 this time. I understand and know that I am - what I am
24 doing. No promises or threats have been made to me and no
25 pressure of any kind has been placed upon me." Again with

1 that waiver. Again signed by Mr. Poe.

2 I find that there is no evidence that Mr. Poe lacked
3 the ability, the mental capacity or the intellectual
4 capacity, to understand his rights and waive those in June
5 of 2012. I find that there is no evidence that he was
6 under the influence of any intoxicants of any type. That
7 there is no evidence that he was threatened or forced in
8 any way. He was not promised anything including not
9 specifically being promised a dismissal of charges or not
10 being charged. I find that Mr. Poe before giving his
11 statement did not ask for an attorney, made a verbal
12 detailed statement, and therefore I find the statement to
13 be admissible.

14 It would be of course up to the jury to determine
15 whether or not - determine whether in their opinion by the
16 preponderance of the evidence Mr. Poe made the statement,
17 that he made it freely voluntarily and intelligently and
18 knowingly and to give it what degree of weight, if any,
19 they determine, so the statement is admissible.

20 All right, now, what else do we have before we get the
21 jury up?

22 SOLICITOR SHELTON: Your Honor, just to cover the
23 record. One, the State has complied with Rule 5 and
24 discovery. I believe I've given everything to Mr. Cronin
25 that I had in my possession. I included letters from the

1 defendant. It included a mitigating statement from the
2 codefendant that was procured by Mr. Poe's sister.

3 It also included a statement from the victim Kenneth
4 Stiles saying that he wished to have the charges dismissed.
5 Upon further investigation of that statement Sharon Stiles
6 told me that Mr. Stiles had Alzheimer's - the sheriff's
7 office - Mr. Stiles' wife that he has Alzheimer's and that
8 Mr. Poe's sister wrote that statement for him and that he
9 did sign it. But I did provide all that information to the
10 defense.

11 I also provided a taped telephone conversation between
12 Detective Gurganus and Mr. Poe. The criminal history of
13 both of the lay witnesses that may testify I believe I have
14 complied. I ask for any reciprocal discovery; I have
15 received none. And just want to inquire as to if there is
16 a witness list.

17 THE COURT: All right. Do you have any witnesses, Mr.
18 Cronin?

19 MR. CRONIN: I have none, Your Honor.

20 THE COURT: Do you have any other discovery material
21 that should be turned over to the State?

22 MR. CRONIN: None, Your Honor.

23 THE COURT: Okay.

24 MR. CRONIN: I do have some motions in limine.

25 THE COURT: Okay. Let's finish with the State.

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1 Anything else from the State?

2 SOLICITOR SHELTON: Just to put on the record the plea
3 negotiations. We've handled some of it on the record in
4 the past but just to cover it for the future. Mr. Poe was
5 offered a offer of burglary second violent for twelve years
6 early on in the negotiations.

7 After I talked with Mr. Stiles and realized that he
8 was ill and really did not wish to come to court I reduced
9 the offer to five years. That was the plea offer I believe
10 about a month ago. He rejected that offer. He was noticed
11 for trial. Once he was noticed for trial Mr. Cronin came
12 to me and ask me if the State would reopen an offer. At
13 that time I reopened the offer for twelve years for a
14 second violent or for fifteen years with a consecutive six
15 month sentence for burg second non-violent. Those have all
16 been rejected by Mr. Poe.

17 I told Mr. Cronin that the State would continue to
18 entertain the possibility of pleading the case to a burg
19 second violent but through the start of the trial so up
20 until the jury is sworn we would entertain the idea of
21 pleading the case for a burg second violent.

22 Mr. Poe in one of his many letters to me inquired
23 about drug court. Mr. Cronin never, never ask, but had he
24 ask, the answer would have been no. Mr. Poe has some
25 violent convictions in his criminal history. He has an

1 intimidation of a witness, some charges for assault on a
2 female, he has burglary first charges that were reduced to
3 burglary second non violent. Based on the intimidation of
4 a witness and the assault on the female charge he would not
5 have been an appropriate candidate for drug court based on
6 their current standards for application so that's why drug
7 court was never entertained.

8 And just for the record I would ask for Mr. Cronin to
9 agree that all those options have been given to his client
10 and they all have been rejected by his client.

11 THE COURT: Do you agree with the State's recitation
12 of the negotiations?

13 MR. CRONIN: In principle yes, Your Honor, we've had
14 those. As far as the timing and my client he's had some
15 problems recollecting some of those discussions, Your
16 Honor, but --

17 THE COURT: But they have been discussed?

18 MR. CRONIN: They have been discussed, Your Honor.

19 THE COURT: Okay. Anything else?

20 SOLICITOR SHELTON: And I don't know how if you want
21 to entertain the motion to request that the defendant not
22 mention any mitigating factors, medical history, mental
23 health history, childhood history, possible sentencing
24 ranges of his charges while he's testifying.

25 THE COURT: Well we mentioned that in pretrial status

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1 conference, or in-chambers conference, and my indication at
2 that time to the State was that I'm sure I couldn't make
3 such a ruling without knowing what was being offered or
4 tendered as far as testimony so we'll have to deal with
5 that as we progress through the trial.

6 SOLICITOR SHELTON: On just the sentencing issue, Your
7 Honor, could we agree that that is off limits as far as he
8 should not tell the jury he's facing life?

9 THE COURT: Well neither counsel of course would not
10 do that nor Mr. Poe should pose to the jury the possible
11 sentence that is associated with the charges as they stand.
12 The reason I say as they stand as they are enhanced it
13 appears that, at least some of them, sentencing is a matter
14 for the court and not for the jury so it is not relevant.
15 That is, sentencing is not relevant evidence to be
16 presented to the jury.

17 All right, is that all?

18 SOLICITOR SHELTON: Yes, sir, Your Honor.

19 THE COURT: All right, Mr. Cronin, do you have some
20 motions?

21 MR. CRONIN: Yes, Your Honor. As far as the statement
22 we understand the State for the enhancement statute intends
23 to present prior convictions of my client. I'd just like
24 to limit it for those purposes only. And I'd like an
25 instruction to the jury and ask them not to consider that

1 and based on his, you know, not consider that when their
2 considering his guilt or innocence in this particular
3 matter.

4 THE COURT: Well let us visit that. I'm not sure
5 those come into the record other than for sentencing.

6 SOLICITOR SHELTON: Your Honor, its included in the
7 indictment as a way to enhance this from a burglary second
8 to a burglary first. He has two prior convictions so I
9 think under the current case law we would have to produce
10 that information to the jury through certified convictions.
11 I have Ms. Scoggins from the Clerk of Court's office may
12 need to come in here and publish those convictions on the
13 record.

14 THE COURT: Well, Mr. Cronin, I'll instruct the jury
15 that those are not to be considered as any evidence and
16 we'll make sure when we do our charge that - I'll tell them
17 when it comes in but I also tell them in the charge that
18 that is not any evidence on which they could base their
19 conviction of Mr. Poe.

20 MR. CRONIN: Thank you, Your Honor.

21 THE COURT: Anything else?

22 MR. CRONIN: That's all we have, Your Honor.

23 THE COURT: All right. We ready for the jury?

24 SOLICITOR SHELTON: Yes, sir, Your Honor.

25 THE COURT: No witness list. Any voir dire, Mr.

1 Cronin?

2 MR. CRONIN: Sorry, Your Honor?

3 THE COURT: Any voir dire?

4 MR. CRONIN: None for the jury, Your Honor.

5 THE COURT: Okay. All right. We'll get the jury up

6 and as soon as the jury's assembled we'll draw a jury.

7 Strikes?

8 SOLICITOR SHELTON: Ten and five, Your Honor.

9 THE COURT: Strikes, State has five and defense has
10 ten. We'll draw two alternates. On that the State's the
11 strikes will be one each and the defense two each.

12 All right, anything else?

13 All right, we'll take a break until the jury comes up.

14 SOLICITOR SHELTON: Thank you, Your Honor.

15 (COURT IN RECESS AT 10:48 A.M..)

16 (JURY POOL ENTERS COURTROOM AT 10:53 A. M..)

17 (JURY INSTRUCTED TO LEAVE THE COURTROOM AT 11:20

18 A.M..)

19 (COURT BACK IN SESSION AT 11:23 A. M..)

20 THE COURT: Mr. Cronin, you all kind of move over.

21 MADAME CLERK: Sir, could you sign here, here and
22 here?

23 (DEFENDANT COMPLIED.)

24 SOLICITOR SHELTON: May it please the Court, Your

25 Honor.

1 This is the State - as we called the case this is
2 State versus Richard Poe. He is pleading to three of his
3 five charges. He's pleading to a burglary second violent
4 that's reduced from a burglary first. He's pleading to one
5 count of an enhanced petty larceny. And he is pleading to
6 one count of criminal conspiracy. The recommendation from
7 the State is for a range of twelve to fifteen years. And I
8 would like to be heard as to sentencing, Your Honor.

9 THE COURT: Mr. Poe, now old are you?

10 MR. POE: Forty-four.

11 THE COURT: Are you represented by Mr. Cronin?

12 MR. POE: Yes, sir.

13 THE COURT: Are you satisfied with his services?

14 MR. POE: Yes.

15 THE COURT: I have in front of me or getting ready to
16 be handed indictments for three charges. The petty larceny
17 is what's called an enhanced property crime so it would
18 carry up to ten years in jail and be a felony. This is a
19 property crime but since this is your third or subsequent
20 you've reached the top of that tier of property penalties.

21 You're charged with criminal conspiracy. It's also a
22 felony and carries up to five years in jail. And you are
23 tendering a plea to burglary second violent; it carries up
24 to fifteen years in jail, it is a felony. It is a serious
25 offense; a serious offense is the type of offense which if

1 in your life time you receive a combination of three
2 serious or most serious offenses you would be subject to
3 being incarcerated for life without parole.

4 It is a violent offense which means during the time of
5 incarceration you would be ineligible for certain programs
6 available to non-violent offenders. It also as a violent
7 offense carries with it the eligibility for parole being
8 one third. Do you understand all those penalties that's
9 attached to these charges?

10 MR. POE: To the best I can yes, sir.

11 THE COURT: You are charged with the larcenies. It's
12 alleged that on January 10th, 2012, you took from Kenneth
13 Roy Stiles with the intent to deprive him of certain goods
14 and that you at that time had two or more property crimes
15 as I've earlier mentioned.

16 The burglary is alleged to have occurred on January
17 10th, 2010, when you entered a locked storage building in
18 the curtilage and pertinent to Mr. Stiles and Sharon Stiles
19 residence on Filbert Highway in Clover. You did it without
20 consent and with intent to commit a crime therein and that
21 you did it during the night time and that you had two prior
22 burglary convictions. Do you understand that charge? The
23 charge is burglary first and you're pleading to the lesser
24 burglary second.

25 MR. POE: Yes, sir.

1 THE COURT: But you understand what they say you did?

2 MR. POE: Yes.

3 THE COURT: The last charge of criminal conspiracy it
4 alleges that on January 10th, 2012, when - that you
5 committed the crime of burglary and larceny and breaking
6 and entering an automobile at 3339 Filbert Highway in
7 Clover along with other individuals - one or more other
8 individuals. Do you understand that charge?

9 MR. POE: Yes, sir.

10 THE COURT: How do you plead to petty larceny?

11 MR. POE: Guilty.

12 THE COURT: How do you plead to burglary second
13 degree?

14 MR. POE: Guilty.

15 THE COURT: And how do you plead to criminal
16 conspiracy?

17 MR. POE: Guilty.

18 THE COURT: Other than the recommendation of a
19 sentence range from twelve to fifteen years has anyone made
20 any other promise or threats to cause you today to enter
21 your pleas of guilt to these charges?

22 MR. POE: No, sir.

23 THE COURT: Are you today, Mr. Poe, under the
24 influence of anything that would cause you to be
25 intoxicated?

1 MR. POE: No, sir.

2 THE COURT: Are you today, Mr. Poe, entering your plea
3 freely and voluntarily?

4 MR. POE: Yes.

5 THE COURT: Mr. Poe, you have a right to a trial by a
6 jury on this charge and we actually have a jury waiting in
7 the hallway, we had started into the trial. You're
8 presumed innocent of the charges until such time as the
9 State is able to prove to a charge - as to the charge your
10 guilt beyond a reasonable doubt. As to these charges you
11 have the right to remain silent. You have the right to
12 confront, you and your attorney, see, hear, question and
13 cross examine any witnesses' the State would call to
14 testify against you. And you have the right to have your
15 witnesses' made to come to court to testify on your behalf.
16 Do you understand you have these rights?

17 MR. POE: Yes.

18 THE COURT: Do you have any questions about them?

19 MR. POE: No, sir.

20 THE COURT: And I know that you have some mental
21 issues and I've got or looked at that psychiatric report so
22 I'm aware of the psychiatric history. I have found that
23 you are competent to go forward today but I want to be sure
24 you understand and are aware of that.

25 By entering pleas of guilt to these three charges you

1 give up all those rights that I went over just a minute ago
2 with the trial, about the trial, about the presumption of
3 innocence, the right to confront the witnesses, the right
4 to remain silent and the right to have your witnesses in
5 court. You give all those rights up and you also give up
6 any possible defense you have to the charge when you enter
7 a plea of guilt to the charge. Do you understand that?

8 MR. POE: Yes.

9 THE COURT: I'll ask again then, how do you plead to
10 burglary second degree?

11 MR. POE: Guilty.

12 THE COURT: How do you plead to petty larceny?

13 MR. POE: Guilty.

14 THE COURT: And criminal conspiracy?

15 MR. POE: Guilty.

16 THE COURT: All right. I'm going to ask you to listen
17 while I'm given the facts.

18 SOLICITOR SHELTON: Your Honor, these offenses
19 occurred sometime in the nighttime hours between January
20 9th of 2012 and January 10th of 2012. Mr. Poe was a friend
21 to the victims, Kenneth and Sharon Stiles, was staying with
22 them; he had been there a couple of days. He did not have
23 a key to the residence but was allowed to stay there over
24 night and he was not paying rent.

25 At some time in the night after the Stiles went to bed

1 Mr. Poe, along with the co-defendant Lisa Ann McDonald,
2 broke into a storage building that's about fifty feet
3 outside the backdoor of the Stiles residence using - Mr.
4 Poe described it as a cat call tool to pry open that door.
5 They stole various things from inside the storage building.
6 They stole an air compressor, a battery charger, a tool box
7 that was loaded with tools.

8 And then from the vehicle that was parked there in the
9 car port, a truck, they took a chain saw. There was some
10 discrepancy whether that chain saw was in the bed of the
11 truck or actually in the truck. The State is dismissing
12 that charge.

13 After they took the things he and Ms. McDonald went to
14 a pawn shop. Ms. McDonald pawned the items, some of the
15 items she did not pawn, the tool box. Mr. Poe did not have
16 an ID. They then went to the hospital got a prescription
17 for some pain medication. At some point they had that
18 prescription filled. They came back to the Stiles'
19 residence and the Stiles at that point noticed that their
20 building had been broken into. That crime was reported.

21 Mr. Poe and Ms. McDonald became nervous that they were
22 about to be in trouble because she had pawned the items and
23 they went and took the items out of pawn, sold them to Fred
24 Jackson. They sold the tool box to some other individual.
25 They came back to the Stiles' residence and continued to

1 live with them for a couple of days before getting really
2 nervous and leaving. And that was on January 15th.

3 They were at large for about another six months. Ms.
4 McDonald was arrested in North Carolina I believe in June
5 maybe earlier than that. And then Mr. Poe as you heard was
6 arrested, was in some other state and some other county and
7 then transported here June 11th of 2012. At that point he
8 did meet with Detective Gurganus, gave him a full statement
9 confessing to these charges.

10 Ms. McDonald also gave a statement to Detective
11 Gurganus. She did not agree that she was present during
12 the break in; that she did put Mr. Poe in possession of the
13 items and then did say that he admitted to her that he -
14 she knew that he broke in based on comments that he had
15 made.

16 He has an extensive prior record, Your Honor. His
17 most recent being from North Carolina. Do you want to ask
18 him --

19 THE COURT: Yeah, first.

20 Do you agree with those facts? Is that what happened,
21 Mr. Poe?

22 MR. CRONIN: We have some differences, Your Honor.

23 THE COURT: Do you agree ---

24 MR. CRONIN: Generally.

25 THE COURT: --- that you and Ms. McDonald entered the

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1 shed or an outbuilding and took certain things belonging to
2 Mr. Stiles?

3 MR. POE: Yes, sir.

4 THE COURT: Okay. Now go over the record.

5 SOLICITOR SHELTON: His criminal record, Your Honor,
6 the most recent being from North Carolina. He has an
7 injury to real property from 2003. Intimidation of a
8 witness from 2003. Illegal use or possession of food
9 stamps from 2009 and resisting public arrest from 2011.
10 He had multiple other charges in North Carolina that had no
11 convictions for.

12 His South Carolina record dates back to 1989 which was
13 his first petty larceny. An open container in 1990. A DUS
14 in 1990. A burglary second non-violent and grand larceny
15 from '93. A trespassing from '97; a burglary second non-
16 violent from 1998 that was reduced down from a burglary
17 first. A trespassing in 1999; a criminal domestic violence
18 in 2001. A public disorderly conduct in 2001 and a driving
19 under suspension in 2001.

20 THE COURT: Mr. Poe, I accept your plea. I find it is
21 freely voluntarily knowingly and intelligently entered.
22 Entered with the advice of competent counsel with whom you
23 are satisfied. I find the facts support your pleas and you
24 signed a plea of guilt.

25 How long have you been in jail? How many days did you

1 spend in jail?

2 MR. POE: Fourteen months.

3 SOLICITOR SHELTON: Your Honor, he was not served the
4 warrants here until June 11.

5 MR. CRONIN: He was picked up in April in North
6 Carolina and transported here, Your Honor.

7 SOLICITOR SHELTON: I do not know when he was picked
8 up in North Carolina. I know these warrants were served
9 here in June.

10 MR. CRONIN: He stated he's been incarcerated since
11 April 29th, Your Honor. I don't know what portion of that
12 was in North Carolina.

13 THE COURT: Of last year?

14 MR. CRONIN: I don't know what date he was
15 transported, Your Honor.

16 THE COURT: Somebody want to figure out how many days
17 he's been. I know it's three hundred and sixty five till
18 April 29th of this year. Then thirty one in May. Is that
19 four hundred days?

20 SOLICITOR SHELTON: Yes, sir.

21 THE COURT: Now I'll be glad to hear from Mr. Cronin
22 and then Mr. Poe.

23 First, do the victims, does anybody on behalf of the
24 victims wish to speak?

25 SOLICITOR SHELTON: They do not. I have met with

1 them, Your Honor, and I would like to be heard on
2 sentencing at the appropriate --

3 THE COURT: Okay.

4 SOLICITOR SHELTON: But they are not here. Sharon
5 Stiles was scheduled to be here at two. Mr. Stiles was in
6 poor health and she is his full time care giver so we had
7 to get her a very, very narrow window to be here. I did
8 talk to her about plea negotiations in the past. She had
9 no objection to plea negotiations so I don't have a victim
10 to speak but I would like to speak.

11 THE COURT: All right. Why don't you go ahead and do
12 that before I hear from Mr. Cronin and Mr. Poe.

13 SOLICITOR SHELTON: Your Honor, just for the record,
14 allowing Mr. Poe to plead to the burglary second violent is
15 not any kind of reflection of what I believe the strengths
16 of the case or the job that law enforcement did or any
17 credibility of any witness. I do believe that the State
18 would have gone forward and been successful on the burglary
19 first charge and based on Mr. Poe's record I think he would
20 have gotten a substantially larger sentence than fifteen
21 years.

22 In talking with Ms. Miller, Betty Miller, of the
23 office what - should we allow him to plead to a burglary
24 second violent she did not want me to. We talked about.
25 that from the State's perspective, and we discussed this

1 with law enforcement, he's being - this was offered because
2 it's probably the right thing to do as far as for what he
3 did and taking into consideration his mental health
4 history; his personal history, and everything involved with
5 the case.

6 Having said that even though the range is twelve to
7 fifteen years I think that fifteen is appropriate because
8 we are reducing it from the burglary first which was a
9 strong case. And Mr. Poe has fought this from the
10 beginning to the point of coercing and intimidating
11 witnesses; sending letters to witnesses, having his sister
12 contact witnesses, having his sister write statements for
13 witnesses.

14 His sister called the witness last night and told her
15 that we did not get enough people to have a jury and that
16 there would be no trial today and she didn't need to come.
17 I don't know that he had her do that but there has been
18 continual contact with the witness even though he was
19 ordered months ago to have no contact with her.

20 Based on that and based on his continued conduct to
21 jeopardize the case we just feel that fifteen was
22 appropriate.

23 THE COURT: Mr. Cronin.

24 MR. CRONIN: May it please the Court.

25 Your Honor, I think if we were to investigate the

-47-

1 detention center, his account, he doesn't have any money to
2 make any phone calls. He hasn't contacted anybody outside
3 the detention center other than me when I went to visit him
4 and over a week now. And any action that any family
5 members would have taken would have been purely on their
6 own, Your Honor.

7 Mr. Poe admits his wrong doing. He was staying with
8 the Stiles. His companion Ms. McDonald had a problem, she
9 wanted to get drugs, they took her to the hospital. She
10 went to Piedmont Medical Center and she was in there from
11 midnight and discharged sometimes shortly after that and
12 given a prescription for pain pills. At that point Mr. Poe
13 didn't have any money to fill the prescription. He admits
14 that they went into the shed and they took the items. It
15 was just an outbuilding, a shed out there and there is no
16 lock on the property. They just pried the door open and
17 they took the items and they went and pawned them.

18 After they pawned them they got the drugs and they
19 went back to the pawn shop with the money they had and they
20 got the items back. When they returned back to the Stiles'
21 residence York County Sheriff's office was there
22 investigating. At that point they knew that they couldn't
23 bring the items back. He panicked. He went down the
24 street to a Mr. Fred Jackson and ask him if he would take
25 the items and hold them there. He got money from Mr.

1 Jackson.

2 His intent was to at some point go back and try and
3 make things right. Again you can see things went wrong.
4 He left. He did make sure that immediately he called York
5 County Sheriff's office. I think he made a phone call in
6 January of 2012, to try and come clean about this. When he
7 was picked up he was picked up on the 11th and he was
8 incarcerated on the 11th. He filed out an application for
9 an attorney on the 11th and on the 12th that's when
10 Detective Gurganus came to see him. And as you heard
11 during the Denno hearing he just spilled his guts and he
12 told everything. He's very sorry for what he did.

13 And he's had a long medical history. He's had
14 substance abuse issues in the past. He is - you know
15 growing up he never made it past the grade her claims. He
16 said that during that time he was in special education for
17 reading and writing and he's just had a difficult life.
18 He's trying to get by going as he can.

19 But he tried to make this right, Your Honor. He - As
20 soon as he was picked up he called. He proactively made
21 sure that he was in touch with the York County Sheriff's
22 office and he made an immediate confession. And he did
23 everything he could to make sure the victims got their
24 property back. He just ask that you accept the plea and
25 you take all these things into consideration during

1 sentencing and ask that you please be as lenient as you
2 possibly may, Your Honor.

3 SOLICITOR SHELTON: Your Honor, I'm sorry. I don't
4 mean to nick pick or take any more time than necessary, but
5 just in the time line of Mr. Poe's willingness to make this
6 right and cooperation, he did not contact Detective
7 Gurganus until after Detective Gurganus had developed he
8 and Lisa Ann McDonald as suspects.

9 And Detective Gurganus reached out to Ms. McDonald who
10 was still with Mr. Poe at the time. He had tracked her
11 down through the pawn shop tickets and so it was a I just
12 out of the goodness of my heart contacted to law
13 enforcement. It was in response to Detective Gurganus
14 calling them.

15 THE COURT: Mr. Poe, anything you want to say?

16 MR. POE: Yes, sir, Your Honor.

17 To tell you the truth I'm right now a saint on what
18 happened. I've been knowing Ken and Sharon for a long
19 time. They was like family to me for years. And it was an
20 irrational decision that was made and I know that. I don't
21 even want to bring up the drugs and alcohol that I was
22 under because right is right and wrong is wrong. And after
23 becoming - I guess you could say my coming down off the
24 highs and the drugs and the pills and the alcohol I did get
25 nervous and I told Lisa I said we got to go back and get

1 Ken's stuff and that's what we done. I think it was five
2 hours later we went back to David's Pawn Shop and we got
3 the property back with the intention of taking it back to
4 Ken.

5 To tell the court the truth, I didn't know how to go
6 about this but I know that I wanted him to have his stuff
7 back. I'm not gonna stand here and say that there wasn't a
8 crime committed because it was.

9 THE COURT: All right. The sentence, all of these are
10 to run concurrent, I'll give him credit for four hundred
11 days. They are for five years on the conspiracy. Ten
12 years on the enhanced petty larceny and thirteen years on
13 the burglary second.

14 SOLICITOR SHELTON: Thank you, Your Honor.

15 MR. CRONIN: Thank you, Your Honor.

16 THE COURT: Basically a thirteen year sentence.

17 (END OF TRANSCRIPT OF RECORD.)
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 4th day of June, 2013.

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

Wanda Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 9-3-2013

FORM 5

STATE OF SOUTH CAROLINA

County of

York 16th Circuit

Richard Keith Poe

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013CP46-2033

APPLICATION FOR

POST-CONVICTION RELIEF

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2013 JUL -3 AM 11:26

FILED-RECEIVED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland RFE Center 4344
Broad River Rd Columbia SC, 29210.
2. Name and location of Court which imposed sentence York County 16th Cir
Maxwell Facility York SC 29745
3. Name(s) of co-defendant(s) (if any) 1910 Hardin Street Rd
Lisa Ann McDonald Chester SC 29706
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) J158013-13
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 4th of 2012
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty Corrected during Pretrial Motions
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Requested Attorney to, but he refused
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NA
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. NA
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel Scott F. Cronin Refused to
- (b) File appeal

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Prosecution by 12th Circuit Solicitor also
- (c) by Judge Hayes and Judge Alford
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment
- (b) Facts and grounds not mentioned
- (c) of laws
12. 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 petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. 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. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

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

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NA

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Sentence Term of 8013
 (b) Attorney Sean F. Crowin Refused To file
 (c) Appeal

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

- (a) your arraignment and plea? _____
 (b) your trial, if any? Sean F. Crowin
 (c) your sentencing? Sean F. Crowin
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Refused To file appeal
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Crowin did nothing but Coerce Me

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

- (a) the name and address of each attorney who represented you:
 i. Sean F. Crowin PO Box
1025 Rock Hill SC 29731
 ii. 803-342-8888
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Pretrial Motions before Jury Trial
and Coercion To plea Sentence
 ii. 13 years Violent
 iii. _____

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

* For Trial on insufficient charges
appoint Attorney to represent me
and give the facts of Matter

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

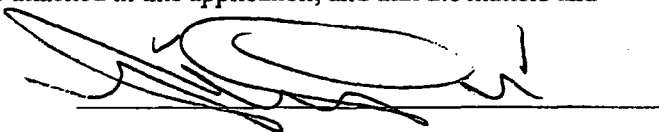
NA

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Richard Keith Poe, 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.



SWORN to and subscribed before me this 26th
 day of June, 2013.

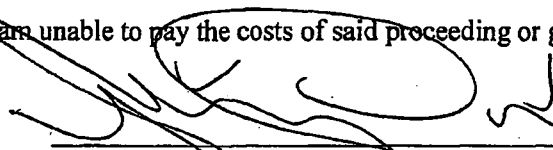
Quondra Rhea-Togus (L.S.)
 Notary Public

My Commission Expires: April 12, 2023

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

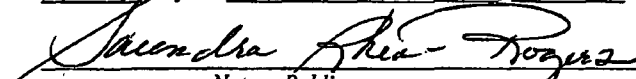
I, Richard Hill Roe, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

26th day of June,


Notary Public

My Commission Expires: April 12, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
2012 JUN 26 AM 8:39

AFFIDAVIT OF CONFLICT

Richard Keith Poe

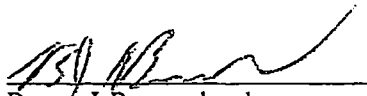
DEFENDANT.

CERTIFIED TRUE COPY
2012 JUN 26 PM 4:27
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

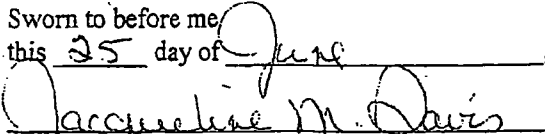
The undersigned Affiant, having been duly sworn, does hereby swear and affirm as follows:

- 1.) That he is the Deputy Public Defender of York County.
- 2.) That the Public Defender Office was appointed by the Clerk of Court of York County to represent Richard Keith Poe on 11 June 2012 on the following charge(s): Burglary 1st degree (Arrest Warrant No. J-158013), two counts of Petit Larceny (Arrest Warrant Nos. J-158014, J-158016), Breaking and Entering an Automobile (Arrest Warrant No. J-158015), Criminal Conspiracy (Arrest Warrant No. J-158017), and Obtaining Money by False Pretenses (Arrest Warrant No. J-158018).
- 3.) That the Public Defender Office represents a co-defendant, Lisa Ann McDonald, who is charged with Burglary 1st degree (Arrest Warrant No. J-158005), two counts of Petit Larceny (Arrest Warrant Nos. J-158006, J-158009), Breaking and Entering an Automobile (Arrest Warrant No. J-158007), Criminal Conspiracy (Arrest Warrant No. J-158011) and Obtaining Money by False Pretenses (Arrest Warrant No. J-158012).
- 4.) The Affiant is informed and believes that it would constitute a conflict of interest for the Public Defender Office to represent the Defendant, Richard Keith Poe.
- 5.) Wherefore, Affiant prays that the Public Defender Office be relieved as counsel for the Defendant, Richard Keith Poe.

FURTHER AFFIANT SAYETH NOT.


Bryson J. Barrowclough
Deputy Public Defender
Affiant

Sworn to before me
this 25 day of June, 2012.


Notary Public for South Carolina
My commission expires: 12/31/17

SEAN CRONIN
PO BOX 1025
ROCK HILL, SC 29731
328-8822

Statement of Facts

Ineffective Assistance of Counsel, Pro Bono
 Sean P. Crowin P.O. Box 1025 Rock Hill SC, 29731

Attorney refused to produce evidence to the
 defendant that the State Solicitor had given
 him over 400 hundred has fact nor would the
 counsel go over "any discovery" with Joe.

Sean P. Crowin failed to investigate facts through
 an investigator as he said he was gonna do he
 also failed to prepare any type of defense. I
 never spoke to an investigator from Michael
 Brown law office.

Sean P. Crowin failed to subpoena or interview
 Kenneth Ray Stiles Neighbor Ms. Downa witness that
 would have testified that shed door was not open
 around 6:30am while she was walking her dog
 right next to Stiles fence and shed on date of
 alleged crime. Ms. Downa spoke to myself and later
 standing under Stiles car port.

Sean P. Crowin refused to send investigator out to
 Kenneth Stiles home to take pictures of vehicle
 and tools as well as any clothing gear that was
 alleged to have been stolen from property.

61 a
Searlt. Crowin refused To subpoena or Submit
Statement of W. Twiss Roddey Gordon who in
fact would have testified That alleged Victim
Kenneth Ray Stiles made report for insurance
purposes by adding hand Tools and fishing gear.

Searlt. Crowin failed To notify or subpoena W. Twiss
Wanda Kimbrell and Travis Borrell who in fact
would have testified To Kenneth Ray Stiles alleged
condition at Time of his signing of Statement

Searlt. Crowin Refused To question Detective Specifically
regarding claims filed from The Stile home in
past pertaining To stolen property. failed To
question detective pertaining To allegations he
said Doc. said To him no statements

Searlt. Crowin failed To object To Solicitors
allegations with no evidence proof. failed To
object To letter being admissible. failed To question
contents of letter. failed To object To letter being
written outside of Miranda and out of State of SC

Searlt. Crowin failed To Submit Statements
during Pre Trial hearing and object To Solicitors
claims No evidence To support allegations

Crowin failed To question Detective Gorgawus
pertaining To a Cat-paw defendant has no
knowledge of case

62
Sean F. Crowin refused to Challenge Solicitor's
allegations pertaining to Statement She Made
Regarding Kenneth Roy Stiles Memory loss with
no medical documentation supporting such
diagnosis. (Alzheimer's disease)

Sean F. Crowin had about Stiles evidence all
together and what Miss. Stiles had and who
was given testimony at Jury.

Judge L. Alfred Brubaker Richard Keith Poe on date
of April 1st of 2013 refused to address Motions
Filed Requesting dismissal of Attorney Sean F. Crowin
See transcript of hearing.

Judge John Hayes Brubaker Poe on June 4th of 2013
allowing another witness under severe depression
and w/ problems, and of of not knowing what
Poe was in fact doing by w/ing her.

Attorney Does Measure Third from home. Attorney
failed to question that fact. Solicitor merely
made a statement of 50 feet. Produce w/
actual measurement.

63 7.

Searc. Crowin refused to file an Appeal on
behalf of Richard Keith Poe. June 4th of 2013

Richard Keith Poe was blatantly denied access to
any Case laws, Statutes to help prepare my
defense for a trial.

Searc. Crowin came and seen Poe the Thursday
before the week of June 4th of 2013. With a
Plea of 12 years Vol. or 15 years Non-Vol. I told
him I wanted a Jury. Friday he return and
said we were gonna trial on Tuesday 4th
and he would see me on Monday the 3rd but
Crowin never showed. Tuesday morning I was
taken to Court in front of Hayes where
they began for Jury same day.

Searc. Crowin Coerced defendant into Plea June
4th of 2013 instead of going forward in Jury
trial.

Defendant Richard Keith Poe suffers from Mental
Illness, In 1960 Blackberr v. Alabama. The
Court said Coercion can be mental as well
as physical.

Phone Conversation obtained illegally is
inadmissible "Detective Gorganos"

Sean F. Crowin refused to removed to request
from Court and Order dismissing himself off
Poe's Case after being fired.

Verified Complaints filed with South Carolina
Bar pertaining to Sean F. Crowin, "Obtain"
Poe phone P. # 124521 for York County phone system
obtain record, listen to conversations Poe
and Crowin arguing Poe firing Sean F. Crowin
also written letter dismissing Crowin.

Sean F. Crowin refused to bring us before a
16th Circuit Judge again AFTER APRIL 15th of
2013 for dismissal.

Crowin continued to say to Poe time is on
your side, Poe sits in County for over an
year while he does nothing for defendant.

Signature,



The mere fact that Richard Keith Poe and
 Lisa Ann McDonald was in fact living at #3339
 Filbert Highway Clover SC, 29710 at time of alleged
 crime.

Poe has never denied the fact that there was an
 incident, but that he doesn't meet elements
 for an First degree or Second degree Burglary.

According to South Carolina Section 16-11-313
 Richard Keith Poe meets elements and the
 requirements.

Searle Crowin said I did not deserve to be
 charged with 3rd degree burglary and refused
 to reserve the right for a lesser charge of
 burglary of 3rd degree

Signature,



Sworn and Subscribed
 This day of June 4th of 2012

Sheriff Crowin refused to file for an Preliminary hearing in June of 2012, I ask several times in way of letter addressed to Attorney, Therefore Richard Keith Poe was not afforded a preliminary on inadequate insufficient charges.

Moreover, Sheriff Crowin never conveyed to Poe any offer of 5 years nor did he send any type of letter to Richard Keith Poe

There was only (2) offers conveyed in 100 days 12 years Violent or 15 years Non-Violent

Sheriff Crowin and Solicitor Miss Skelton

For their Prejudice Richard Keith Poe on counts of big lawsuit pending against Sheriff Bryant and all administration in YCDE, and Poe has won every order including Summary Judgement, 912-3142-CMC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Richard Keith Poe, #29873A,

Plaintiff,

v.

Sheriff Bryant,
Richard L. Martin,
James Jewell, M.D.,
Tammy Dover, R.N.,
Tom Caldwell,
Sgt. Fields,
Major Robert Hudgins,
Chief James Arwood
and Lt. Cheryl H. Guzman.

Defendants.

Civil Action Number:
9:12-cv-03142-CMC-BM

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants Bryant, Martin, Dover, and Caldwell, does hereby certify that service of the **Supplemental Responses to "Discovery Request By Plaintiff" on Behalf of Defendants** in the above-captioned action was made upon all parties of record by the means listed below, at the below listed address clearly indicated on said envelope this the 26th day of April, 2013, addressed as follows:

By U.S. Mail

Richard Keith Poe, #29873-A
York County Detention Center
1675-3A York Highway
York, South Carolina 29745

By Electronic Mail

H. Spencer King, Esquire
The Ward Law Firm, P.A.
sking@wardfirm.com

Shelley E Stafford

York Co. SC.

3-27-13

I Lisa McDonald in sound mind request that all charges be dropped against Richard Keith Poe in York Co. NO disarcept against York Co. I was just released from the hospital in West Va. was given powerful pain meds through I.V.'s and prescribed pain meds to take home with me. At the time of arrest ^(Am) ~~once~~ in custody they refused to me my bipolar meds and others as well and at the time of making my statement to Det. R.J. Gurganus in Cleveland Co. I was scared and withdrawing from being on all the drugs. I sincerely ask that the State of South Carolina please take all of this under concideration and my mental and phical Disabiltaty. I will testify for the state but I did not see Richard take anything from the building at Mr. Styler's home and nor did I my self take anything from the building ^{Am} ~~at~~ Mr. Mr. Styler home in closer SC. and I never seen any one go into Mr. Styler Vehicle. This is the truth and nothing but the truth. I do hereby request any and all charges be dropped immediately. I clearly was under drugs and withdrawls at the time of 1st Statement. And was scared because of being told I could be charged and convicted of these charges. And was told I could be

given 15 to 20 yrs. I have no criminal
Back Ground Record up until I was served
with these Six Warrants were given to me. I
was under severe distress from all of this.
I request not to receive any more phone calls
regarding this matter until subpoenaed to
court to testify under oath from the court. And
I will not answer any more questions regarding
my past relationship with Richard Keith Poe.
For the record I am now in treatment for
my mental disorders.

Signed Lisa Ann McDonald

Sworn to before me this 27 day of March, 2013

Debbie Foster

Notary Public for South Carolina

Commission Expires 11/1/2021

I have known Kenneth and Sharon Stiles for several years and in the Month of November of 2012 I was at Ken's home in Clover cutting firewood for him when he told me that Richard and Lisa was staying in the front Bedroom whereas still property stored of theirs. and I've seen this property when I was cutting firewood. I seen hand tools scattered throughout the Building and in the Back of the truck. also In the Building in the attics there is a Bunch of fishing gear. Ken also said to me that he really felt that this would have happened if it had not been for Richard trying to help get Lisa's Mom.

Sworn and Subscribed

Tr's Date of 11-15-12

Sign x Biddley Gordon

3-26-13

I Kenneth Stiles am writing The Court, to let them know that I will not be testifying in the matter of Richard K Poe. I would like to see the charges dropped. Mr Poe has been in jail long enough. It would be a blessing if Mr. Poe was released and get proper medical care. I asked the Court to let Mr Poe free. He deserves to be released and start his life over and medical care

 Kenneth K Stiles


Witness Sharon Stiles 3-26-13

Witness Travis B 3-26-13

Witness Wanda Kimbell 3-26-13

Memorandum of Law

Ake v. Oklahoma The Supreme Court said when a State brings its Judicial powers to bear on an Indigent Defendant in a Criminal Proceeding it must take steps to assure that the defendant has a fair opportunity to present his defense. Justice cannot be equal where simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a Judicial proceeding in which his liberty is at stake.

Hopt v. Utah Supreme Court ruled that a Confession is not admissible if it is obtained by operating on the hopes or fears of the accused, and in doing so would deprive him or her of the freedom of will or self-control necessary to make a voluntary statement.

Escobedo v. United States said that a statement must be free and voluntary not extracted by any sort of threats or violence or promises.

Blackburn v. Alabama The Court said Coercions can be Merely.

Defendant must prove "Intent" as one of the ⁷³ elements of Crime, and a person or persons under excessive amounts of alcohol and pain pills over a three day period, would not be able to form the intent to commit any crime of Burglary.

Properly detained back from Pawn Shop Shows intent with intentions of returning property back to location of #3339, Fiber Hwy Clover SC, 29710.

Pursuant to SC Section 16-11-311 Burglary First Specifically defines Enters a dwelling. Here we not meet any elements nor requirements for Burglary First, No justification to plea to Burglary 2nd Violent.

Pursuant to SC Section 16-17-410 Con. Never Schemed or plotted with McDonald for a purpose of accomplishing an unlawful act, No evidence to support such a finding of Conspiracy.

According to SC Section 16-13-30 Simple Larceny not justified for enhancement (3) Larcenies from the same location of alleged crime.

ARREST WARRANT

J-158013

STATE OF SOUTH CAROLINA

County/ ☐ Municipality of

York

THE STATE 2012-1050

against

Richard Keith Poe

Address:

Phone:

Sex: M

Race: W

Height: 5

Weight: 145

SSN: [REDACTED]

DL #: [REDACTED]

DOB: [REDACTED]

Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: R J Gurganus - G0626

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

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

Richard Keith Poe

6-11-12

Signature of Court Clerk/Law Enforcement Officer

C. J. Gurganus

RETURN WARRANT TO:

York County General Sessions

1675 York Hwy

York, SC 29745

STATE OF SOUTH CAROLINA

County/ ☐ Municipality of

York

Personally appeared before me the affiant R J Gurganus

being duly sworn deposes and says that defendant Richard Keith Poe

did within this county and state on or about 01/10/2012

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

violate the criminal laws of the

York

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

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:

The defendant did willfully and unlawfully violate the laws of this state by entering a locked storage building at 3339 Filbert Highway, Clover, York County, South Carolina, with the intent to commit the crime of Larceny. The storage building was located directly behind victim's house. While inside the building the defendant stole the victim's air compressor, battery charger, numerous hand tools, and fishing gear. The crime was committed during the nighttime hours. This being against the peace and dignity of this state and all such laws made and provided for.

Probable cause is based on: Police Investigation, Defendant's Verbal Statement, Witness Statement, and Recovery of Evidence.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ ☐ Municipality of

York

Affiant's Address

Moss Justice Center

York, SC 00000-000

Affiant's Telephone (803)628-3059

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 1/10/2012

defendant

Richard Keith Poe

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

☒ County/ ☐ Municipality of

York

) as set forth below.

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

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 01/18/2012

Judge's Address Moss Justice Center

York, SC 29745-7423

Judge's Telephone (803)628-3029

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Judge Code: 5806

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 316DEFENDANT
COPY

AFFIDAVIT

who

10,000

74



SECTION 16-11-311. Burglary; first degree.

(A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:

(1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:

(a) is armed with a deadly weapon or explosive; or

(b) causes physical injury to a person who is not a participant in the crime; or

(c) uses or threatens the use of a dangerous instrument; or

(d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or

(2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or

(3) the entering or remaining occurs in the nighttime.

(B) Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, "life" means until death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen years.

SECTION 16-11-110. Arson.

(C) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a dwelling house, building, structure, or any property, whether the property of himself or another, which results, either directly or indirectly, in bodily injury to a person or damage to the property is guilty of the felony of arson in the third degree and, upon conviction, must be imprisoned not more than fifteen years.

SECTION 16-23-480. Manufacture or possession of article designed to cause damage by fire or other means.

It is unlawful for a person to manufacture, cause to be manufactured, or possess any object or article which is designed to cause damage by fire or any other means to person or property either by ignition, detonation, or other means. It is unlawful for a person to possess any object or article solely for the purpose of causing damage by fire or other means to person or property either by ignition, detonation, or other means.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.



SECTION 16-17-410. Conspiracy.

The common law crime known as "conspiracy" is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means.

A person who commits the crime of conspiracy is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

A person who is convicted of the crime of conspiracy must not be given a greater fine or sentence than he would receive if he carried out the unlawful act contemplated by the conspiracy and had been convicted of the unlawful act contemplated by the conspiracy or had

SECTION 16-11-520. Malicious injury to tree, house, outside fence, or fixture; trespass upon real property. he been convicted of the unlawful acts by which the conspiracy was to be carried out or effected.

(B) A person who violates the provisions of this section is guilty of a:

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;

SECTION 16-11-312. Burglary; second degree

(A) A person is guilty of burglary in the second degree if the person enters a dwelling without consent and with intent to commit a crime therein.

(B) A person is guilty of burglary in the second degree if the person enters a building without consent and with intent to commit a crime therein, and either:

(1) When, in effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:

(a) Is armed with a deadly weapon or explosive; or

(b) Causes physical injury to any person who is not a participant in the crime; or

(c) Uses or threatens the use of a dangerous instrument; or

(d) Displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or

(2) The burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or

(3) The entering or remaining occurs in the nighttime.

(C)(1) Burglary in the second degree pursuant to subsection (A) is a felony punishable by imprisonment for not more than ten years.

(2) Burglary in the second degree pursuant to subsection (B) is a felony punishable by imprisonment for not more than fifteen years, provided, that no person convicted of burglary in the second degree pursuant to subsection (B) shall be eligible for parole except upon service of not less than one-third of the term of the sentence.

SECTION 16-11-510. Malicious injury to animals and other personal property.

A) It is unlawful for a person to wilfully and maliciously cut, shoot, maim, wound, or otherwise injure or destroy any horse, mule, cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property, or the goods and chattels of another.

(B) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the injury to the property or the property loss is worth ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the injury to the property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned, not more than thirty days, or both.

(A) A person is guilty of burglary in the second degree if the person enters a dwelling without consent and with intent to commit a crime therein.

(B) A person is guilty of burglary in the second degree if the person enters a building without consent and with intent to commit a crime therein, and either:

(1) When, in effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:

(a) Is armed with a deadly weapon or explosive; or

(b) Causes physical injury to any person who is not a participant in the crime; or

(c) Uses or threatens the use of a dangerous instrument; or

(d) Displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or

(2) The burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or

(3) The entering or remaining occurs in the nighttime.

(C)(1) Burglary in the second degree pursuant to subsection (A) is a felony punishable by imprisonment for not more than ten years.

(2) Burglary in the second degree pursuant to subsection (B) is a felony punishable by imprisonment for not more than fifteen years, provided, that no person convicted of burglary in the second degree pursuant to subsection (B) shall be eligible for parole except upon service of not less than one-third of the term of the sentence.

HISTORY: 1985 Act No. 159, Section 2; 2010 Act No. 273, Section 11, eff June 2, 2010.



SECTION 16-11-313. Burglary; third degree.

(A) A person is guilty of burglary in the third degree if the person enters a building without consent and with intent to commit a crime therein.

(B) Burglary in the third degree is a felony punishable by imprisonment for not more than five years for conviction on a first offense and for not more than ten years for conviction of a second offense according to the discretion of the Court.

HISTORY: 1985 Act No. 159, Section 2.

SECTION 16-11-325. Common law robbery classified as felony; penalty.

The common law offense of robbery is a felony. Upon conviction, a person must be imprisoned not more than fifteen years.

HISTORY: 1993 Act No. 184, Section 9, eff January 1, 1994.

SECTION 16-11-330. Robbery and attempted robbery while armed with deadly weapon.

(A) A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a

The magistrate or municipal judge should also inform the defendant of the possible penalty which faces him should he be convicted of the crime with which has been charged.

For example, if the defendant has been charged with a simple assault and battery, the magistrate or municipal judge should inform the defendant as follows:

Do you understand that if you plead guilty or are found guilty, I may either 1) order you to pay a fine of up to \$500 or 2) order you imprisoned for up to 30 days? Do you also understand that I may not give you the choice of a fine or imprisonment, but may simply order your imprisonment for up to 30 days?

These explanations should be continued until the magistrate or municipal judge is convinced that the defendant understands both the charge(s) and the possible penalty(s).

5. Right to Counsel

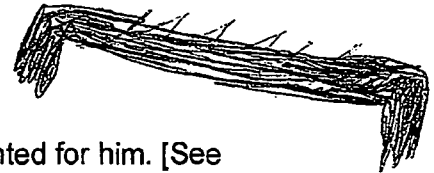
§ 17-3-10 provides, in part,

Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto. (See *Defense of Indigents*, supra.)

* The U.S. Supreme Court in *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), *Argersinger v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), and *Alabama v. Shelton*, 535 U.S. 654, 122 S.Ct. 1764 (2002) held that, absent a knowing and intelligent waiver, no person may be imprisoned for any offense, regardless of whether it is classified as petty, misdemeanor, or felony, unless he was represented by counsel at trial. *

* The right to counsel has been held to extend to every "critical stage" in the criminal process, including for example, the preliminary examination. *Coleman v. Alabama*, 399 U.S. 1, 90 S. Ct. 1999, 26 L.Ed.2d 387 (1970); *State v. Taylor*, 255 S.C. 268, 178 S.E.2d 244 (1970). The magistrate or municipal judge, as a judicial officer, must insure that a defendant has proper counsel at a criminal proceeding. In order to carry out this responsibility, the magistrate or municipal judge must inform the accused person of his two possible alternatives for representation: *

1) The defendant may be represented by an attorney. If the defendant cannot afford



an attorney but wishes to retain one, counsel may be appointed for him. [See Defense of Indigents Rule 602 South Carolina Appellate Court Rules (SCACR), § 17-3-10 et. seq.].

2) The defendant may represent himself. § 40-5-80.

In all cases, the defendant has the right to introduce evidence, examine and cross-examine witnesses, make closing arguments, and otherwise present a defense to the charges.

If the counsel has been retained by the defendant, but the attorney is not present when the time for trial arrives, the magistrate or municipal court judge should use his own judgment in each case as to how to handle the situation. The magistrate or municipal court judge should be responsible to the defendant in the matter; the defendant should not be rebuked or made to suffer because of the tardiness or ineptness of his attorney.

If the defendant does not have counsel, the defendant himself must be given ample opportunity to be fully heard. This is, of course, one of the fundamental safeguards in a criminal trial and is deeply rooted in Anglo-American tradition as well as in Article I, Section 14, of the S.C. Constitution. He should be permitted to confront and examine witnesses (including law enforcement officers), to introduce evidence on his own behalf, and to make whatever other reasonable presentations that he considers necessary to his defense.

Where it appears in the process of the trial that the defendant is unable to handle his defense in an expeditious manner, it is only fair and proper that the magistrate or municipal judge guide him by at least telling him what he might do on his behalf. For example, after a law enforcement officer has completed testimony on behalf of the State, the magistrate or municipal judge might suggest to an unrepresented defendant that he may cross-examine the officer on matters concerning the alleged offense to which the officer has testified. And, after the State has rested its case, the magistrate or municipal judge might inform the defendant that he has the right to call his own witnesses (and to have compulsory process for obtaining material witnesses under S.C. Constitution, Art. I, Section 14) and to introduce whatever evidence he desires. At the conclusion of all the evidence, the magistrate or municipal judge might explain to the defendant that he may make whatever closing arguments he desires on his behalf. While the defendant is making such an argument, the magistrate or municipal judge should be reasonably patient while the defendant attempts to explain himself, and should stop the defendant only when the monologue wanders into the realm of irrelevance or repetition. Ledbetter on Magistrates.

6. Self-Incrimination/Right of Confrontation

The Fifth Amendment of the U.S. Constitution states that no person "shall be compelled in a

* criminal case to be a witness against himself". This right is also insured by Article 1, Section 12 in the S.C. Constitution. A judge's responsibility is to protect this right for the defendant. He may do this in two ways:

1) Question the accused to make sure that he understands his right not to say anything that might incriminate him.

* (a) "Do you understand that under the Constitution of the United States and the Constitution and statutes of South Carolina, you do not have to say anything to me that might tend to incriminate you regarding this charge?"

* (b) "Do you understand that the phrase 'might tend to incriminate you' means that anything you say or write may be used in a trial to prove you are guilty?"

* (c) "Do you understand that you do not have to say anything to any law enforcement officer that might tend to incriminate you?"

* (d) "Do you understand that you do not have to say anything to any judge in court that might tend to incriminate you?"

* (e) "Do you understand that you do not have to sign or write anything concerning this alleged crime that might tend to incriminate you?"

* (f) "Do you understand that if you do say, write or sign anything, a law enforcement officer or prosecuting attorney may introduce that statement or writing into evidence at trial in order to convict you?"

* 2) Review the evidence presented by the state at each stage of the trial and determine if the evidence may be properly submitted without violating the self-incrimination law. South Carolina courts have held that compelling a defendant to stand for purposes of identification, State v. O'Neal, 210 S.C. 305, 42 S.E.2d 523 (1974), and requiring the defendant to show his physical characteristics, State v. Hart, 304 S.C. 99, 403 S.E.2d 144 (1991), do not violate the self-incrimination clause. On the other hand, Miranda requirements which state that identification of rights must be given to accused persons at the time of their arrest or interrogation, put restrictions upon the admissibility of confessions by the defendant. To accept a confession, the judge must carefully determine that the accused both knowingly and voluntarily confessed his guilt to the alleged crime.

Under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed.2d 694 (1966), the accused

must be aware of his basic rights before he may knowingly waive such rights and offer a confession. Miranda requires that the accused be informed:

- 1) in clear and unequivocal terms that he has the right to remain silent;
- 2) that anything said can and will be used against him in court;
- 3) that he has the right to consult with a lawyer and to have the lawyer with him during any interrogation;
- 4) that if he is indigent, a lawyer will be appointed to represent him;
- 5) that if he "indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease";
- 6) that if he "states that he wants an attorney, the interrogation must cease until an attorney is present."

* If a statement (either confession or merely admission) is obtained in violation of these rules, Miranda prohibits admitting such a statement into evidence. Finally, Miranda prohibits the prosecution from using at trial, the fact that the accused remained silent or exercised any of his rights in the face of accusation.

* With regards to self-incrimination, it should be noted that at trial, the prosecution commenting on or making any reference to the fact that the accused failed to testify at trial is constitutionally impermissible. State v. Hawkins, 292 S.C. 418, 357 S.E.2d 10 (1987).

* A second right of the accused, guaranteed by the Sixth Amendment of the U.S. Constitution and Art. 1, Section 14 of the S.C. Constitution and S.C. Code Ann. §17-23-60 is the right "to be confronted with the witnesses against him." The constitutional right to confront and cross examine witnesses is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. State v. Martin, 292 S.C.437, 357 S.E.2d 21 (1987). *

An accused has the right to be present at every stage of his trial. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). This right, however, may be waived. Ellis v. State, 267 S.C. 257, 227 S.E. 2d 304 (1976). A defendant may properly be excluded when his conduct is disruptive or is interfering with the progress of the trial. In re: Dwayne M., 287 S.C. 413, 339 S.E.2d 130 (1986). Although the right to be present is a substantial one, no presumption of

Global Subject Activity Report

Detail



Print Date/Time: 06/11/2012 18:36

Login ID: magnw

York County Sheriff's Office

ORI Number: SC0460000

Scars, Marks, Tattoos

Type	Location	Scar, Mark or Tattoo Detail	Description
Tattoo	Arm Right		ENTIRE RIGHT ARM SLEEVED
Tattoo			HEART AND ROSE
Tattoo	Arm Left		ANGEL
Tattoo	Back		PRAYING HANDS
Tattoo	Arm Left		SLEEVE ON ENTIRE LEFT ARM
Tattoo	Arm Left		ANGEL
Tattoo	Arm Right		ENTIRE RIGHT ARM SLEEVED
Tattoo			HEART AND ROSE
Tattoo	Arm Left		SLEEVE ON ENTIRE LEFT ARM
Tattoo	Back		PRAYING HANDS

Handicap Information

Handicap

Current Address Information

Address Type	Address	City	State	Zip
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Prior Address Information

Address Type	Address	City	State	Zip	From Date	To Date
		Clover	SC - South Carolina	29710		
Home		ASHVILLE	NC - North Carolina	28800	12/13/2009	12/13/2009
Home		HICKORY GROVE	SC - South Carolina	29717		
Home					02/14/1994	01/10/2002
Home					02/14/1994	05/05/2009
Home					11/19/1998	01/10/2002
Home					11/19/1998	05/05/2009
Home					03/07/2002	03/07/2002
Home					03/07/2002	05/05/2009
		CLOVER	SC - South Carolina	29710		
Home					07/01/1996	01/10/2002
Home					07/01/1996	05/05/2009
Home					12/31/1997	01/10/2002
Home					12/31/1997	05/05/2009
Home					02/10/2010	02/10/2010
Home					10/31/2005	10/31/2005
Home					10/31/2005	05/05/2009
Home		CLOVER	SC - South Carolina	29710		
Home					01/06/1993	01/10/2002
Home					01/06/1993	05/05/2009
Home		ROCK HILL	SC - South Carolina	29730	02/09/2010	02/09/2010
Home		CLOVER	SC - South Carolina	29710	07/24/1994	01/10/2002
Home		CLOVER	SC - South Carolina	29710	07/24/1994	05/05/2009
Home		CLOVER	SC - South Carolina	29710	12/02/1994	01/10/2002
Home		CLOVER	SC - South Carolina	29710	12/02/1994	05/05/2009

Contact Information

Date	Type	Phone	Extension
09/07/2011 10:35	Home		
02/14/2005 13:29	Home		



ALAN WILSON
ATTORNEY GENERAL

SG
FILED-RECEIVED
2013 SEP 13 PM 3:27
DAVID HAMILTON
C.C.C.P.&G.S.
YORK COUNTY, SC

September 10, 2013

The Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York SC 29745

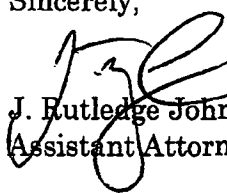
Re: Richard K. Poe v. State of South Carolina
2013-CP-46-2033

Dear Mr. Hamilton:

Enclosed please find the original Return of the Respondent, in the above-captioned case, Richard K. Poe v. State, for filing in your office. We are also sending you copies of the following documents to accompany our Return:

- 1) PCR application
- 2) Clerk Records (York)
- 3) Guilty plea transcript

Sincerely,


J. Rutledge Johnson
Assistant Attorney General

JRJ:cey
Enclosures

cc: W. Michael Hemlepp, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Richard K. Poe #259297

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

FILED-RECEIVED

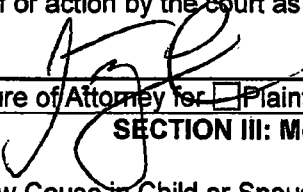
2013 SEP 13 PM 3:27

CASE NO.

2013-CP-46-2033

DAVID HAMILTON
C.C.C.P.&G.S.
YORK COUNTY, SC

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: W. Michael Hemlepp, Bar No. Address: 2506 W. Cranbrook Ln #3 Charlotte, NC 28207 phone: fax: e-mail: other:	Defendant's Attorney: J. Rutledge Johnson, Bar No. 78871 Address: PO Box 11549 Columbia, SC 29211-1549 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 _____ Signature of Attorney for ☐ Plaintiff / ☒ Defendant	September 10, 2013 _____ Date submitted
SECTION III: Motion Fee	
☐ PAID – AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	
Date Filed: _____	

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Richard Keith Poe, #259297,

2013-CP-46-2033

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

FILED-RECEIVED
2013 SEP 13 PM 3:27
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

In response to the post-conviction relief application filed on July 3, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted at the November 2012 term of the York County Grand Jury for Burglary, 1st degree (2012-GS-46-3771), Petit Larceny (2012-CP-46-3769) and Criminal Conspiracy (2012-CP-46-3772). The Applicant was represented by Sean Crowin, Esquire. On June 4, 2013, the Applicant pled guilty to Burglary, 2nd degree as a lesser included offense, and Petit Larceny and Criminal Conspiracy as indicted. The Honorable John C. Hayes, III sentenced the Applicant, pursuant to recommendations from the State, to confinement for thirteen (13) years for Burglary, 2nd degree, ten (10) years, concurrent, for Petit Larceny and five (5) years, concurrent, for Criminal Conspiracy. The Applicant did not appeal his conviction or sentence.

II.

In his application for post conviction relief the Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Prejudice by 16th Circuit Solicitor also by Judge Hayes and Judge Alford"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of plea counsel is without merit. The Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C.

at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

IV.

The Applicant claims there was prejudice from the solicitor and by Judge Hayes and Judge Alford. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at his plea or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss these allegations.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's plea counsel was ineffective and whether the Applicant was

advised of his right to an appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

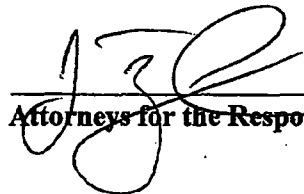
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

Columbia, South Carolina
September 9 2013

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2013-CP-46-2033

RICHARD K. POE, 259297)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

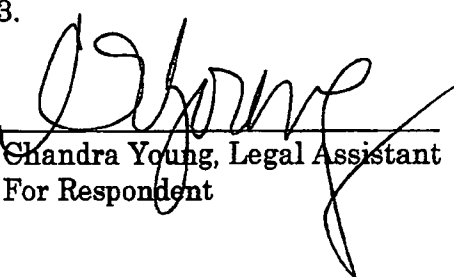
STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

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:

W. Michael Hemlepp, Esquire
 2506 W. Cranbrook Lane #3
 Charlotte, SC 28207

DATED this 9th day of September, 2013.


 Chandra Young, Legal Assistant
 For Respondent

FILED-RECEIVED
 2013 SEP 13 PM 3:27
 DAVID HAMILTON
 C.C.P. & G.S.
 YORK COUNTY, SC

90
Clerk of Court of
York County.

2013-CP-46-2033

FILED-RECEIVED

2013 OCT -7 AM 10:38

DAVID H. HILL
CLERK OF COURT
YORK COUNTY

Mr. Hamilton:

Please find enclosed one PCR
Amend Petition with Exhibits to be filed.
Forward me any information pertaining
to attorney assigned to represent me.



Sept 29-13

Return to:

Richard Keith Poe #
Evans Correctional
610 Hwy 9 West
Bennettsville SC, 29512

State of South Carolina
County of York,
Versus,

Richard Keith Poe
Defendant

FILED-RECEIVED
2013 OCT -7 AM 10:38

DAVID HAMILTON
CLERK
YORK COUNTY

Reference Number:
2013-CP-46-2033
"PCR, Amended
Petitions."

"Statement of Facts"

Defendant Poe never seen any documents filed prior to trial by the prosecution that indicated the crime or crimes it believed that the defendant has committed.

This document provides the accused with "notice of the essential elements of the offense(s) charged, and the basic facts that the prosecutor intends to prove, at trial to support her allegations that the defendant committed the crimes."

In turn, the defendant is required to provide advance notice to the prosecutor of defense he intends to assert at trial. Attorney Sean B. Crowin produced "Nothing" No type of defense.

Computewey was not the claim of defense on behalf of Poe, nor was it supposed to have been.

At Trial, the parties are expected to introduce evidence supporting their pre-trial claims. The rule establishing the burden of production identifies the party on whom the initial obligation is placed to introduce evidence at trial to support the particular legal claim in question.

Prosecutor could not prove elements of charges alleged against Poe, but yet Attorney Crowin refused to establish any type of affirmative defense nor did he produce any evidence supporting defense Poe wished to raise.

Here, the law has taken on "a certain Alice-in-Wonderland quality" by requiring prosecutors to prove the mens rea required in definition of crimes, but then preventing defendant from introducing evidence of intoxication that might rebut its presence. *Montana v. Egelhoff*, 518 U.S. 379 (1996). See also: *Prosecutor v. Maszewski* (1976) 2 All E.R. 142, 146.

Voluntary intoxication: Mens Rea, the most common voluntary intoxication "defense" raised is not an excuse defense at all, but rather is a failure-of-proof claim, namely that, as a result of defendant's intoxication, he lacked the mental state required

in The Definition of The offense,

Alcoholism, Drug Addiction, and Voluntary Intoxication
 Attorney Sean B. Crowin refused to raise Intoxication
 Claims as defense: When a defendant is intoxicated
 at The Time of The alleged Criminal Conduct, a
 lawyer must Consider at least Three questions.

First how did The defendant become intoxicated, and
 intoxication law is divisible into two general
 categories: rules pertaining to Conduct that was
 The result of Voluntary.

Second what way does The defendant claim that his
 intoxication affected his Culpability. Poe claims
 that he was not able to form the requisite State
 of Mind to be convicted of The offense.

Third of What Type of offense is The defendant
 charged - general Intent or Specific Intent.

Intoxication defense is recognized when an defendant
 becomes "Temporarily" insane as The results of The
 introduction of drugs, Alcohol or other foreign
 substances into The body.

Defendant Poe, had been under excessive amounts of Alcohol and Drugs, pain pills for a period of Steady Three days and Nights.

A person is not guilty of an offense if, as the result of his intoxication at the time of the Crime he was incapable of forming or did not in fact form.

Under the Common law, Poe was entitled to introduce evidence regarding his intoxication in order to prove that, because of his condition, he lacked the specific intent to Burglarize shed because he was too intoxicated to know what he was doing, E.g. State v. Dwyer 757 A.2d at 604; State v. Erickstad, 620 N.W.2d at 143-44; United States v. Zink, 612 F.2d 511, 515 (10th Cir 1980) Commonwealth v. Hewson, 476 N.E.2d 947, 953 (Mass 1985).

Fixed Insanity. Here insanity resulting from long-term use of drugs or Alcohol the unsoundness of mind, although produced by long-term alcohol and drug abuse, has become "fixed or settled" The general but not universal rule is that the defendant may assert a traditional insanity defense. The insanity defense applies even if the defendant was intoxicated at the time of the Crime. People v. Chapman, 418 N.W.2d 658, 659 (Mich. Ct App. 1987).

95

The law recognizes the fact that at some point a persons earlier Voluntary decisions become morally remote, one should not be blamed for every harmful act that can be linked to a much earlier Transgression. See: Parker v. State, 254 A2d. 381, 388 (Md. Ct Spec. App 1969)

Combined with the fact that POE suffers from Psychological problems as well.

Attorney Jacob B. Crown said intoxication claims was gonna be together with Psychological Examination Crown failed to obtain relevant Medical Records supporting claim of long-term Alcoholism and drug usage, See Exhib. 15 A.

Respectfully Submitted

Sept 29th of 2013

ST. JOSEPH'S HOSPITAL

A Member of Mission & St. Joseph's Health System

2/18

NAME: POE, RICHARD K

MEDICAL RECORD [REDACTED]

DICTATOR: Cornell K. Yager, M.D.

PHYSICIAN: Cornell K. Yager, M.D.

ROOM #: ERSJ

030653422-2049

VISIT DATE: 02/18/2002

ADMISSION DATE: 02/18/2002

CHIEF COMPLAINT

Substance abuse.

HISTORY OF PRESENT ILLNESS

This is a 36-year-old white male with a history of hepatitis C, suicidal gesture, longstanding alcohol abuse, as well as cocaine, who comes to the emergency department today with his significant other requesting help for his substance abuse. He states that he has considered suicide, but he has not made a plan. His last alcoholic ingestion was approximately 3 hours ago. His last cocaine use was said to be Friday. The patient has no medical issues. He essentially is here to seek help with his abuse. He states the reason he has considered suicide is because of the distraught nature over his abuse. He has had no fevers or chills. He has noted no chest pain. There has been no coughing, no abdominal pain, no vomiting or diarrhea. Review of systems is otherwise negative.

ALLERGIES

No known allergies.

CURRENT MEDICATIONS

The patient has been utilizing Ativan, Xanax, and Soma.

PAST MEDICAL HISTORY

As stated.

SOCIAL HISTORY

Positive for smoking, alcohol, cocaine, Ativan, Xanax, and Soma use.

PHYSICAL EXAMINATION

VITAL SIGNS: Temperature 98.2°, pulse 95, respiratory rate 20, blood pressure 133/70.

GENERAL: The patient is alert and in no acute distress.

HEENT: Within normal limits.

NECK: Supple.

LUNGS: Clear.

HEART: S1, S2 without audible murmurs, rubs, or gallops.

ABDOMEN: Soft without tenderness. Bowel sounds are active.

EXTREMITIES: Within normal limits.

NEUROLOGIC: Cranial nerves II-XII are intact. Sensation and strength are normal. DTRs are normal.

SJH Emergency Dept

Page 1 of 2

MRN: 00-00-87-15-29

Facility: MSJ

MODE OF ARRIVAL W POV EMS		ACCOMPANIED BY friend	ED MD TO TREAT OY ON	PMD TO TREAT OY ON	PMD/SPECIALISTS 2	RM# (S/H) 13	RM# (M/MH)
DATE 2-18-02	CHIEF COMPLAINT substance abuse		TRIAGE PRIORITY O I EMERGENT URGENT NON URGENT		PRE-HOSPITAL O IMMOBILIZED O SPUNT O O ₂		
ARRIVAL TIME 1715	TEMP 98.2	PULSE 95	RR 20	BLOOD PRESSURE 133/70	WEIGHT 138	Gauge SITE	
Nsg Assessment: Source of Information: O PL O Caregiver O Other					ALLERGIES: NKA		
Onset 18 yrs. ETOH abuse - 6pk-18pk/d 18 yrs. hq cocaine abuse - 200g/month also citren, Xanax, soma					MEDS: Fentanyl		
Suicidal ideation - a plan - ETOH abuse - a victim today					IMMUNIZATIONS O TTD O TETANUS O > 5 yr.		
DV SUSPECTED OY ON SMOKER OY ON WORKMENT COMP OY ON					MED/SURG HISTORY Hep C / Hx suicide gesture Long hq ETOH - daily		
CLOTHING/VALUABLES O WITH PT. O TO SECURITY					CO. NAME		
TRIAGE INTERVENTION O ICEBAG O C-COLLAR O SPLINT O CBG O OTHER					TRIAGE RN SIGNATURE J. Savelle RN		
TIME IN ROOM	TIME IN MD RACK		MD TIME 18:00	H & P TIME 18:07			
PHYSICIAN ASSESSMENT: 36 @					*lost check ~ 3 Hrs * cocaine test FBI DAY		
PHYSICIAN ORDERS: O Code Trauma/Trauma Alert Order Sheet					CONSULTANT		
1. 18:00-18:30 ETOH level					TIME CALLED		
2. 18:30-19:00 cocaine eval.					RETURN CALL		
3. 19:00-19:30					ARRIVED		
4. 19:30-20:00							
5. 20:00-20:30							
6. 20:30-21:00							
7. 21:00-21:30							
8. 21:30-22:00							
9. 22:00-22:30							
10. 22:30-23:00							
11. 23:00-23:30							
12. 23:30-24:00							
PROVISIONAL DIAGNOSIS: Substance abuse					CONTINUATION SHEET		
CONDITION ON O IMPROVED O STABLE O FAIR O CRITICAL					ED MD SIGNATURE C. K. H. Yang MD		
DISCHARGE/TRANSFER O UNCHANGED O GOOD O SERIOUS					PMD SIGNATURE		
DISPOSITION: Commit to Birmingham					REPORT CALLED TIME		
ADMIT TO ROOM: 36					TO WHOM:		
TIME ADMITTING CALLED:					TIME TO ROOM/DC: 2330		
TO ROOM WITH: O PCT O TRANSPORT O RN O MONITOR/DESB O O ₂ O EMERGENCY KIT					NURSING CARE LEVEL: 1 2 3 4 5 6 7		
O Memorial Mission Campus 509 Edmore Ave., Asheville, NC 28801 O St. Joseph's Campus 428 Edmore Ave., Asheville, NC 28801					DO NOT WRITE 2330 Poe, Richard 36		

MSJ-02256-108-0599



02256-108

Mission St. Joseph's
 Memorial Mission Hospital
 Asheville, NC 28801

Emergency
 Department Record
 MEDICAL RECORDS

[illegible]

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IN MARGIN



Memorial Mission Hospital
Asheville, NC 28801

**Emergency Department
Continuation Flowsheet**

MSJ-02256-111-1199



92258-111

Poe, Richard



MRN: 00-00-87-15-29

Facility: NSJ

PRINTED
02/19/02
5:36NSJ HEALTH SYSTEM LABORATORY
ASHEVILLE, NC 28801

MED REC#: 871529

NAME: POE, RICHARD KEITH
ACCOUNT: 306534222049 MR NUMBER: 871529
DATE OF BIRTH: 1/10/1969 AGE: 33 SEX: MADMITTED: 2/18/02
DISCHARGED: 2/18/02
PHYSICIAN: HORINE, STACY MD
LOCATION: DISCHARGED SJ ER PATIENT

ACCESSION NUMBER:	2049-GL8765	2049-GL8767	
COLLECTION DATE/TIME:	2/18/02 18:30	2/18/02 18:55	
SODIUM	142		mmol/L 136-145
POTASSIUM	3.5		mmol/L 3.5-5.1
CHLORIDE	104		mmol/L 98-109
CO2 TOTAL	27		mEq/L 18-28
ANION GAP	11		mmol/L 5-15
GLUCOSE	73		mg/dL 70-105
BUN	10		mg/dL 6-20
CREATININE	1.0		mg/dL 0.7-1.3
CALCIUM	9.1		mg/dL 8.4-10.3
CALCIUM CORRECTED	8.8		mg/dL 8.4-10.5
PROTEIN, TOTAL	7.5		g/dL 6.4-7.8
ALBUMIN	4.3		g/dL 3.5-5.0
BILIRUBIN, TOTAL	0.5		mg/dL 0.2-1.2
ALKALINE PHOSPHATASE	63		units/L 53-128
ALT	38		units/L 8-51
AST	24		units/L 11-41
AMYLASE	39		units/L 32-92
AMPHETAMINES, URINE		NEGATIVE	NEG
BARBITURATE, URINE		NEGATIVE	NEG
BENZODIAZEPINE, URN		POSITIVE A	NEG
COCAINE, URINE		POSITIVE A	NEG
CANNABINOID, URINE		NEGATIVE (1)	NEG
OPiates, URINE		NEGATIVE	NEG
PERICYCLIDINE, URINE		NEGATIVE	NEG
ETHANOL	0.04		0

(1) THC sensitivity has been increased. Cutoff was changed from 100 to 20 ng/mL

POE, RICHARD KEITH

LABORATORY DISCHARGE SUMMARY
CONTINUED ON NEXT PAGE

PAGE: CHEN 1-1

FIN: 306534222049

Page Number: 11
74

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91

MRN: 00-00-07-15-29

Facility: MSJ

DO NOT WRITE IN MARGIN

DO NOT WRITE IN MARGIN

Time	2330				Time	2330					
INT/AV	Gauge Site	IV Fluids/Rate	NG size	color	amt	INT/AV	Gauge Site	IV Fluids/Rate	Foley size	color	amt
TIME	MEDICATION	DOSE	ROUTE/SITE	Initials	Time	RESPONSE TO MEDICATION	Initials				
0005	baby aspirin	X 4/81mg	PO	XC							
0011	Mitro (H)	0.3mg X 1	SL	XC	0011	pain level "6"					
0016	Mitro (H)	0.3mg X 1	SL	XC	0016	pt states just hurt me under					
0021	Mitro (H)	0.3mg X 1	SL	XC	0021	pt states pain better "5"					
TIME	BP	P	R	PULSE O2	NURSES' NOTES/REASSESSMENT						
2315					pt to am. & give WC pt placed on Telle. EKG called pt & c/o of CP in middle of chest pt states "hurts a bit" ~~discontinue~~ EKG in & pt to eval & ~~discontinue~~						
2325					(R) #2 FA X one attempt labs drawn - bring to lab ~~discontinue~~						
2330					order given as charted above & ~~discontinue~~						
0005											
0008	78	16	98%	21/NC	pt given (H) mitro pt states pain level is a 6 on scale 1-10 (10 being worst) pt states pain level has not changed & ~~discontinue~~						
0016	86	14	97%	21/NC	pt given (H) mitro pt states "my c/p just hurts when I take a deep breath" & ~~discontinue~~						
0021	78	18	98%	21/NC	pt given (H) mitro pt states pain level is getting better "5" ~~discontinue~~						
0022					1 c/p pain gone & ~~discontinue~~						
0045	73	18	100%	21/NC	pt states I can not urinate. I was told not to wait then give until pt voids then assess pt reassess with ~~discontinue~~						
0048					lab add on sent to lab ~~discontinue~~						
Time					Time						
IV intake					Total IV intake	Urine Output					
PO intake					Total PO intake	Other Output					
					Total						

DO NOT WRITE

IN MARGIN

MSJ-02256-111-1199



02256-111

Memorial Mission Hospital
Asheville, NC 28801Emergency Department
Continuation Flowsheet
MEDICAL RECORDS030653422 1121
POE, RICHARD KEITH
321 NWS 3-1524
05/01/01 CHEN523 253 0234
NNH DOB 01/10/1959

[illegible]

DO NOT WRITE IN MARGIN



02258-111

IN MARCH
at Mission
St. Joseph's
Memorial Mission Hospital
Asheville, NC 28801

**Emergency Department
Continuation Flowsheet
MEDICAL RECORDS**

030653422 1121
 POT. RICHARD KELTH
 321 AWS 071529
 05/01/01 CREW
 628 793 0296
 MAY 338 01/10/1969

1 STATE OF SOUTH CAROLINA

2 -----x

3 RICHARD KEITH POE,

4 Applicant,

5 Case No.

6 -against-

2013-CP-46-2033

7 STATE OF SOUTH CAROLINA

8 Respondent.

9 -----x

10 January 22, 2014

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE J. MICHAEL BAXLEY

15

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

17 W. MICHAEL HEMLEPP, Esquire

18 Attorney for the Applicant

19

20 J. RUTLEDGE JOHNSON, Esquire

21 Attorney for the State

22

23

24 Aileen Butler

25 Official Court Reporter

		<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Richard Poe				
4	Mr. Hemlepp	7		38, 58	
5	Mr. Johnson		29		
6	Shawn Cronin				
7	Mr. Johnson	40		61	
8	Mr. Hemlepp		48		
9					
10					
11					
12					
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25					

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
P-1	Letter		19
P-2	Warrant	21	22
P-3	Indictment		29
S-1	Letter		62

1 MR. HEMLEPP: Your Honor may it please the court.

2 THE COURT: Yes, sir.

3 MR. HEMLEPP: Thank you, Your Honor. We are here
4 before you on case of Richard Keith Poe, an, applicant
5 from the Department of Corrections versus the State of
6 South Carolina, applying for post conviction relief in
7 2013-CP-46-02033.

8 For the record my name is Micheal Hemlepp,
9 appointed counsel for PCR purposes. My client is
10 prepared to go forward and I had an opportunity to talk
11 to him.

12 THE COURT: Very good. Let me first speak to Mr.
13 Poe. Mr. Pop please stand if you will and follow our
14 clerk's instruction. We will place you under oath.

15 RICHARD KEITH POE, called as a witness, having
16 been duly sworn by the clerk, was examined and testified
17 as follows:

18 THE COURT: Mr. Poe, how are you today, sir?

19 THE WITNESS: I am fine, and you?

20 THE COURT: Good. Good. My name is Judge Baxley
21 and the reason you are here as you know is because you
22 filed a PCR claim for which you the applicant bears the
23 burden of proof and we are here for the hearing today
24 and what we are going to do is we are going to let the
25 State give us the procedural history of this case. That

1 is how we came to be where we are today and then we will
2 determine whether or not you agree to that procedural
3 history and we will ask your lawyer if he agrees to that
4 history and then we will be ready to proceed.

5 The applicant goes first. That is your case is put
6 up first because you have the burden of proof. Let me
7 ask you today sir, what type of medications are you
8 taking now?

9 MR. POE: None, Your Honor.

10 THE COURT: Okay. Are you on the mental health
11 case load at the Department of Corrections?

12 MR. POE: No, sir.

13 THE COURT: All right. What I will do is I will
14 let you be seated and we will hear from Mr. Johnson as
15 to what the history is here and then we will be ready to
16 proceed.

17 MR. JOHNSON: May it please the Court, Your Honor
18 like Mr. Ham this is case of 2013-CP-46-2033, Poe,
19 versus State. Mr. Poe was indicted at the November 2012
20 term of York County Grand Jury for Burglary First
21 Degree, Petit Larceny and Criminal Conspiracy. On June
22 the 4th, 2013 he plead guilty to Burglary Second Degree
23 as the lesser included offense after he began a trial.
24 There was a Jackson v. Denno Hearing at which time after
25 the judge allowed the statement as voluntarily made to

1 come in I believe it was applicant's decision to then
2 take the plea offer from the State. He plead to
3 Burglary Second Degree, Petit Larceny and Criminal
4 Conspiracy before the Honorable John C, Hayes III.
5 Pursuant to a recommendation from the State there was a
6 13-year sentence for the Burglary Second Degree, ten
7 years for Petit Larceny and five years for Criminal
8 Conspiracy. All charges to run concurrent. There
9 wasn't an appeal filed, I believe, but he did file a
10 timely PCR application on July the 3rd, 2013. State
11 filed its return on September 10, 2013 and he is
12 represented here today by Mr. Mike Hemlepp.

13 THE COURT: And Mr. Hemlepp, that procedural
14 history is that correct, sir?

15 MR. HEMLEPP: It sounds correct, yes.

16 THE COURT: Very good. Then you are ready to
17 proceed. Please call your first witness.

18 MR. HEMLEPP: Thank you, Your Honor. I would call
19 the applicant, Mr. Poe to the stand please.

20 THE COURT: Very good. You are already under
21 oath. Please come around.

22 MR. HEMLEPP: Thank you, Your Honor, may it please
23 the Court.

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

Richard Poe - Direct by Mr. Hemlepp

7

1 BY MR. HEMLEPP:

2 Q Mr. Poe, would you please give use your full name and
3 would you spell your last name for the court reporter?

4 A Richard Keith Poe, P-o-e.

5 Q Okay. Mr. Poe you are currently in the Department of
6 Corrections, is that correct?

7 A Yes, sir.

8 Q Why are you in the Department of Corrections?

9 A I am incarcerated on a second degree burglary and
10 property crime and criminal conspiracy.

11 Q And do you recall the proceeding where you were
12 sentenced for those crimes?

13 A Yes, I do.

14 Q And where was that?

15 A That was here at this facility, before Judge Hayes.

16 Q Judge Hayes?

17 A Yes, sir.

18 Q And when was that?

19 A June the 4, 2013 if I remember correctly.

20 Q Were you represented by an attorney at the time?

21 A Yes, I was.

22 Q And who was that attorney?

23 A Shawn Francis Cronin.

24 Q How did you come to be represented by Mr. Cronin?

25 A He was appointed to me to represent me after the

1 investigator from the public defender's office came and
2 interviewed me at the jail here for B.J. Barrowclough then it
3 came about that he was already appointed to represent my
4 co-defendant Lisa M. McDonald and then I got a court order
5 saying that this gentlemen right here was appointed to represent
6 me.

7 Q So was Mr. Barrowclough originally your lawyer?

8 A Yes.

9 Q Did he ever discuss this case with you?

10 A I did not. I talked to an investigator from the public
11 defender's office and then they caught the glitch in it. A
12 conflict of interest basically is what was on the form and then
13 they appointed Shawn to represent me.

14 Q Okay. And did you at the time that all this was going
15 on, had you been before Court to get a bond?

16 A No, sir.

17 Q Okay. You were in jail?

18 A I was incarcerated, yes.

19 Q How long were you in jail?

20 A I was here. He give me 400 days.

21 Q Okay. Do you remember when you were arrested on this
22 charge?

23 A I do believe it was in April around the 29th of 2012.

24 Q Okay. And did you remain in the detention center until
25 your hearing with Judge Hayes?

Richard Poe - Direct by Mr. Hemlepp

9

1 A Yes.

2 Q During that time did you have opportunity to talk to
3 Mr. Cronin about your case?

4 A Yes, he came and seen me the first time I had come and
5 seen me when was downstairs in jail. He had an offer of 12
6 years violent and I declined that.

7 Q Okay. Why did you decline that?

8 A I did not feel that it was sufficient a time for the
9 crime.

10 Q Now normally when people say not sufficient that would
11 mean that it was to little. Is that what you mean? Did you
12 believe that was too little or too much?

13 A It was too much time and I was really questioning the
14 charge of first degree burglary at that time.

15 Q Did you have any understanding what first degree
16 burglary was at the time? At the time that you first met with
17 Mr. Cronin?

18 A I had looked up the definition, yes.

19 Q And did you know what the sentence was for burglary in
20 the first degree?

21 A I think it was 15 years or more. Something so to
22 speak, yes.

23 Q Okay. Now, you had been served prior to that with a
24 warrant?

25 A Yes.

1 Q That alleged burglary first degree?

2 A Yes.

3 Q Did you have a copy of that warrant with you in the
4 jail?

5 A Yes, I got it now.

6 Q When you first met with Mr. Cronin and he brought you
7 an offer, a plea offer from the solicitor's office, what did you
8 say it was 12 years?

9 A 12 years violent, yes.

10 Q Okay. And what -- how long was the conversation that
11 you had with Mr. Cronin about this?

12 A It was fairly short. He said he would be back. I
13 didn't see Mr. Cronin. We -- I believe during this whole
14 course we only actually seen -- had conversation over the phone
15 four time within over a year. Other than speaking on the
16 phone.

17 Q You are talking about the year that you were in jail
18 prior to going before Judge Hayes?

19 A Yes.

20 Q And you said other than speaking on the phone -- I just
21 want to make sure I am clear for the record. You said that you
22 spoke to him four times. You met with him four times at the
23 jail?

24 A Yes, that is including up to my trial that we talked
25 four times that I can remember.

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1 Q Okay. Now, did you and Mr. Cronin talk about pleading
2 guilty versus going to a jury trial?

3 A Yes.

4 Q Okay. And did you have -- were you familiar with the
5 difference between those two in talking with Mr. Cronin?

6 A Not really. I am not familiar with the law at all. I
7 was really wanting some understanding. I knew that this first
8 degree burglary warrant consisted of a dwelling and on my
9 warrant it said storage building, so I had a real great concern
10 with that is why if filed a motion for a fast and speedy trial
11 to go forward to a jury.

12 Q Now, did you consult with your lawyer prior to filing
13 that motion?

14 A I asked Shawn, I asked Shawn numerous questions. He
15 told me time was on my side and I said what do you mean by tha
16 and that's what he told me.

17 Q You in June of 2013, was your case called for trial?

18 A June 4th..

19 Q June 4th.

20 A Is when they brought me to Honorable Judge Hayes's
21 courtroom which was on a Tuesday if I am not mistaken, Shawn
22 came to see me on that Thursday before that and we talked. He
23 said well we are going to go trial if you are not going to take
24 this and there was another plea offer 15 years non-violent or 12
25 years violent and the words that Mr. Cronin used was the kicker,

1 was the six months running consecutive with a criminal
2 conspiracy, which would have made me max out on either one of
3 the sentences that I took and I said, Shawn, my goodness, I
4 don't understand.

5 He said that he would go home and work on my case all
6 weekend and he would be back Monday. I never seen Shawn. I was
7 the only individual brought upstairs Tuesday morning not nothing
8 exactly what was going to happen and was taken into Mr. Hayes's
9 courtroom and they prepared for trial.

10 Q Did you talk to Mr. Cronin about -- well, let me back
11 up. Did you want to go to a jury trial?

12 A I did.

13 Q Why?

14 A I wanted to because I did not feel that I committed a
15 first degree burglary.

16 Q Do you feel like you could have been convicted of a
17 burglary?

18 A Not a first degree burglary, no sir.

19 Q What about any other burglary?

20 A A third degree burglary.

21 Q What is the difference between a first degree burglary
22 and third degree burglary in your understanding?

23 A From my understanding its not a house. It is not a
24 dwelling. It was a building, a storage building.

25 Q Was it connected to a house?

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1 A No, sir, it's not. It actually sits inside of a
2 chain-link fence that surrounds the parameter of Ken's home and
3 the dogs is inside that fence and that's where the building is
4 also located.

5 Q Okay. And you don't deny that you could have been
6 convicted of burglary third?

7 A No, sir.

8 Q And did you talk to your lawyer about that?

9 A Yes, I did.

10 Q Did you give him the names of any witnesses?

11 A Yes, I did.

12 Q Who were the witnesses that you talked to him about?

13 A I had mentioned Miss Donna. When I told Shawn that
14 Miss Donna was Ken's neighbor. I also new Miss Donna for several
15 years as well as a Mr. Stiles. (Phonetics)

16 Q I want to interrupt you for a minute. You said Ken's
17 neighbor. Who is Ken?

18 A That is the victim.

19 Q What is his full name?

20 A Kenneth Royal Stiles.

21 Q In your time in the detention center did you have any
22 conversation with Mr. Stiles?

23 A No, sir, I did not.

24 Q Now please continue where you left off?

25 A I truly because Miss Donna had came out of the house on

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1 the day of this incident and spoke to me and Lisa. We were
2 standing beside the car in the driveway.

3 Q Remember that the judge is not hearing the trial of
4 your case, so does not know who Lisa. Who is Lisa?

5 A Lisa was my finance, my co-defendant.

6 Q And she was also charged with this crime?

7 A Yes.

8 Q And continue, thank you.

9 A And she said morning Richard and I spoke to her as well
10 and she is walking the dog. She came out of the front door and
11 she made a right which she walked right directly next to the
12 fence right past the shed. She could have very well testified
13 that the door was not open at 6:30 a.m. on that day.

14 MR. JOHNSON: Objection to hearsay as to what she
15 would testify too.

16 THE COURT: I will sustain that objection, but you
17 may ask why that is important.

18 Q Yes. Why did you believe that that witness was
19 important?

20 A Because it was my understanding that at the time that
21 the solicitor and everyone was saying this was a first degree
22 burglary and that this crime happened at night and it wasn't at
23 night.

24 Q Okay. And you believed at the time that it was
25 important for her to be subpoenaed to help you establish that it

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1 happened during the day time?

2 A Yes, sir.

3 Q Okay. Did you give him the name of any other
4 witnesses?

5 A Yes.

6 Q Who was another witness?

7 A They -- my goodness --

8 Q Let me back up a minute. Miss Donna, do you know her
9 last name?

10 A No, I don't. I thought that the investigator that
11 Shawn said, I think his name is Sam or someone out of there
12 office division was going to come see me. I never seen this
13 gentlemen.

14 Q Did you know where she lives?

15 A Yes, she lived right next to 3339 Filbert Highway.

16 Q So she could have been found and located?

17 A Yes, she was right next door to Mr. Stiles's home.

18 Q Was she subpoenaed to the trial?

19 A No, sir.

20 Q Okay. Now, let's go to the second witness that you
21 asked.

22 A My sister, Wanda Kimbel. She could have -- well, again
23 I don't want to make assumptions as to telling me hearsay, but I
24 do believe that her testimony was important at the trial because
25 she could have testified --

1 MR. JOHNSON: Objection, to speculation and
2 hearsay, Your Honor.

3 MR. HEMLEPP: Your Honor, I would like to be heard
4 on that.

5 THE COURT: Go ahead.

6 MR. HEMLEPP: We certainly are not offering this
7 for the truth of the matter asserted. We are offering
8 this testimony for why Mr. Poe believed it was important
9 to subpoena her for a trial. So I would actually argue
10 that it doesn't qualify as hearsay.

11 THE COURT: Do you want to respond.

12 MR. JOHNSON: Yes, sir, unless they are here to
13 testify here today they are completely irrelevant
14 because he can show no prejudice by counsel's failure to
15 call them and subpoena them.

16 THE COURT: Well, I will agree with you there is
17 an issue on the prejudice prong, but as far as the
18 deficient performance prong not asserted for the truth
19 of the matter I will overrule your objection and permit
20 the testimony to come in.

21 MR. HEMLEPP: Thank you, Your Honor.

22 THE COURT: So you may go ahead and re-ask the
23 question if you wish.

24 Q Why was it important to subpoena her?

25 A I do believe that her testimony would have been

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1 important at my trial because the issue had been raised, Mr.
2 Stiles's medical condition. Her testimony was needed because
3 she in fact went and seen Mr. Stiles and Sharon as well. They
4 have been like family to us for over 20 something years and he
5 signed a statement -- he told her to write the statement. He
6 signed it. His wife, Miss Sharon, wrote it and signed it as
7 well and was witnessed. Also asked for Travis Burrow
8 (phonetics) who also in fact witnessed the statement.

9 MR. HEMLEPP: I will interrupt you real quick.

10 (Petitioner's Exhibit 1, Letter, marked for
11 identification as of this date.)

12 Q I hand you what has been marked for identification as
13 petitioner's one and ask can you identify that?

14 A Yes, sir.

15 Q What is that?

16 A This is the letter that was submitted to my attorney as
17 well as me and it was written Miss Stiles. His signature is on
18 it, his wife Sharon, his information and Wanda Kimbel and the
19 witness Travis Burrow.

20 Q What is the date?

21 A It is 3-26-2013.

22 MR. HEMLEPP: Thank you, Your Honor, I would move
23 to admit it as petitioner's one.

24 MR. JOHNSON: I object, Your Honor. There is no
25 authentication. He has no personnel knowledge of this

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1 letter. Further Mr. Stiles is not here to testify.
2 Sharon Stiles is not here to testified. Travis Burrow
3 is not here to testify and Wanda Kimbel is not here to
4 testify that this is in this fact there document.

5 THE COURT: This document is in the packet, but
6 tell me how do you lay the proper foundation, Mr.
7 Hemlepp?

8 MR. HEMLEPP: Your Honor, the issue for the Court
9 is whether or not the representation of the defendant
10 was ineffective. Whether he was ineffective in
11 representing the client and client believes that he has
12 defenses to the underlying charge. His case was in fact
13 called for trial. Whether or not that statement is
14 accurate or not, whether the defendant -- I am sorry the
15 affiant would show up and testify consistent to that I
16 would argue it is not before the Court. What is before
17 the Court is the conversations between the defendant and
18 his attorney, his trial counsel and his trial strategy
19 as communicated to his trial counsel. I would argue
20 that it is relevant for that purpose and I actually if
21 the Court limits it relevancy to that purpose I think
22 that would be appropriate. We are certainly not trying
23 to get to whether or not -- we are not retrying the
24 case, Your Honor.

25 THE COURT: Well, again for the same reasons

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1 previously, I will permit it in not for the truth of
2 what is asserted in it, but there was communications
3 between Mr. Stiles and either the then defendant or
4 representative on behalf of the defendant. So over
5 objection we will permit this as Applicant's one.

6 MR. HEMLEPP: Yes, sir.

7 THE COURT: Very good.

8 (Applicant's Exhibit One, letter, received in
9 evidence as of this date.)

10 THE APPLICANT: Mr. Hemlepp, can I say something?

11 MR. HEMLEPP: You can only respond to questions. I
12 will give you an opportunity to talk to the judge in a
13 moment. Okay.

14 Q You had a second -- that was your second witness, but
15 there were other witnesses that you wish to be subpoenaed?

16 A Yes.

17 Q Was Miss Wanda, was she in fact subpoenaed?

18 A No, sir.

19 Q Okay. Thank you. Were there any other witnesses that
20 you wanted to have subpoenaed?

21 A I had addressed Shawn, Ronny Gordan which is another
22 individual that is well known to the Stiles's family wrote
23 another statement which was in fact notarized here --

24 Q I am going to stop you because I think we established
25 and the State would have opportunity to object there was another

1 witness that you asked Mr. Cronin to subpoena and his name was
2 what, Rodney?

3 A Rodney Gordan.

4 Q And yes or no, do you believe that he was important to
5 your defense?

6 A Yes, I do.

7 Q Was he in fact subpoenaed for the trial?

8 A No, sir.

9 Q That's the third witness. Was there a forth witness
10 that you wanted subpoenaed?

11 A Give me a minute here. I lost my train of thought
12 here.

13 No, sir, I do believe I will pass on that.

14 Q Okay. Thank you.

15 When you went to the courtroom on June 4th, for your trial,
16 were any witnesses subpoenaed on your behalf?

17 A Excuse me, I am sorry, that was four. That Miss Donna,
18 Wanda Kimbel, Travis Burrow and Rodney Gordan. Those were the
19 four individuals that I wanted subpoenaed for my trial.

20 Q All right. Were any of those four subpoenaed?

21 A No, sir.

22 Q Was anybody subpoenaed for your trial as a witness?

23 A No, sir.

24 MR. HEMLEPP: If I may approach the witness?

25 THE COURT: You may.

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1 Q When you were arrested Mr. Poe, you received a warrant.
2 I believe you already testified to the Court that you got a copy
3 of that warrant and you continue to have a copy of that warrant,
4 is that true?

5 A Yes.

6 Q You also were indicted by the Grand Jury. Is that
7 something that you discussed with your lawyer?

8 A I had asked Shawn about the sufficiency of that charge.

9 Q Well, let's get to that in a minute. You had discussed
10 the fact that there was an indictment?

11 A Yeah.

12 Q Did you ever receive copies of the indictment?

13 A No, sir. I never received anything nor did Mr. Cronin
14 ever go over any type of evidential discovery with me.

15 Q Okay. Have you since seen your indictment?

16 A No, sir.

17 Q So, if I were to show you this you could not identify
18 that?

19 A No, sir.

20 Q How about this?

21 A That I got a copy of that. That warrant.

22 Q And that's the warrant on the burglary first charge?

23 A Yes, that's it.

24 MR. HEMLEPP: May I have this marked.

25 (Petitioner's Exhibit two, warrant, marked for

1 identification as of this date.)

2 Q Your Honor, it is in the court record, but I would move
3 to admit the arrest warrant on the burglary first as petition's
4 two?

5 THE COURT: Is there an objection?

6 MR. JOHNSON: If it is already in the record, no.

7 THE COURT: Applicant's two in evidence without
8 objection.

9 (Petitioner's Exhibit two, warrant, received in
10 evidence as of this date.)

11 Q What was the relationship between you and Mr. Cronin,
12 your trial counsel, at the time that the trial was called in
13 Judge Hayes's courtroom? Did you all get along?

14 A No, sir.

15 Q Why not?

16 A We had problems from the very beginning. There's phone
17 conversations, I don't know if the phone records could be
18 subpoenaed. Me and him, the conversations was not good. Me
19 telling him I wanted him to bring me before the judge. Tell him
20 I want to fire him. Him telling me I was making him look like a
21 "A S S" up here because I wrote Judge Alford. Filed a motion
22 before Judge Alford and so forth.

23 The phone records will also reflect that Mr. Cronin telling
24 me that he in fact did receive that statement from my sister and
25 a statement from my co-defendant as well notarized out of

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1 Chester County courthouse over the phone, as well if we can
2 obtain the phone records from here. So I can say it wasn't
3 good.

4 Q Okay. Okay. Your co-defendant, you testified her name
5 was Lisa?

6 A Yes.

7 Q And her last is McDonald?

8 A Yes, sir.

9 Q Was she charged with burglary in the first degree?

10 A She was charged with the same six charges that I was,
11 yes, sir.

12 Q What happened to her charges?

13 MR. JOHNSON: Objection to relevance.

14 THE COURT: Overruled.

15 A She had recently over the phone from the South Carolina
16 Department of Correction feels real guilty.

17 Q Answer my question specifically?

18 THE COURT: Sustained on hearsay.

19 Q What happened to her charges?

20 A I do believe they was dismissed.

21 Q Mr. Poe, do you recall being evaluated at the
22 Department of Mental Health?

23 A Yes, I do.

24 Q And, do you remember the circumstances of that
25 occurring?

1 A I had received no information pertaining to that
2 outcome of that.

3 Q Okay. Do you remember why you were evaluated?

4 A To see if I was competent to stand trial.

5 Q And did you discuss that with your lawyer?

6 A He told me, yes. He told me to go down there and tell
7 them everything because I had a history with mental health and
8 couple of suicide attempts in the past, so I went down and I
9 answered the ladies's questions.

10 Q And did you object to going to the Department of Mental
11 Health and undergoing this proceeding?

12 A No, sir. I did not.

13 Q Okay. But was it something that you had requested?

14 A I ---

15 Q Let me change that question for you. Is that something
16 that you had asked your lawyer to do?

17 A I had said something to Shawn pertaining to that. I
18 actually had someone had showed me some type of law or something
19 pertaining to this. It will be a violation of your
20 constitutional rights depriving me of something if that question
21 was to arise and my history and my condition was not looked
22 into. So the next thing I know they are sending me down yonder.

23 Q Okay. Now, Mr. Poe what is your understanding, Judge
24 Baxley is hearing your case?

25 A Yes, sir.

Richard Poe - Direct by Mr. Hemlepp

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1 Q In the PCR what is your understanding of what could
2 result from this case? I am talking about the PCR not your
3 underlining charges.

4 A I am not really sure. I think it is my understanding
5 that this whole process could begin over.

6 Q Okay, and by this whole process beginning over what do
7 you mean by that?

8 A I guess going back to trial having a jury trial and
9 going forward.

10 Q So you understand that the Court, if the Court were to
11 agree with you on your petition, that you would come back to
12 York County and be facing burglary first charges?

13 A Yes, I do.

14 Q And you are willing to accept that risk?

15 A Yes, I am because I am not guilty of first degree
16 burglary.

17 Q Okay. And again tell Judge Baxley why?

18 A It was a building, a storage shed not a home, not a
19 house. It was not at attached to the house.

20 Q And did it happen at night time?

21 A No, sir. It happened 6:45 to 6:50 on the day of the
22 incident which was daylight.

23 Q Is there anything else that you believe that Judge
24 Baxley needs to know about your trial and your representation by
25 Mr. Cronin in order to help him make a decision on your request

1 to have your plea set aside?

2 A Mr. Cronin did not explain none of this process to me,
3 the criminal process at all. I sat here for over a year
4 wondering what was going to transpire and take place. My
5 biggest issue and concerns was that he did not prepare a good
6 defense for me. He did not subpoena witnesses. Me personally,
7 I felt that him and Ms. Shelton coerced me in to taking the plea
8 that I would not have accepted.

9 Q Please tell the Court who Ms. Shelton is?

10 A Ms. Shelton is the solicitor.

11 MR. JOHNSON: Objection for the record, Your
12 Honor, he has not alleged involuntary guilty plea.

13 THE COURT: All right. Very good. I am going to
14 note the objection. I will overrule it to extent that I
15 will permit the testimony, again, on the issue of
16 ineffective assistance as opposed to involuntary plea,
17 but go ahead.

18 MR. JOHNSON: Thank you.

19 A He -- Mr. Cronin, again the phone records will reflect
20 -- we can obtain them. I remember very, very, vaguely and we
21 discussed this. He is telling me he says Lisa has thrown you
22 under the bus and I says what are you saying Shawn and he says
23 well, he agreed with me that Ms. Shelton was going to try to
24 convict me through these charges, Your Honor, for a past
25 criminal domestic violence and I said she can not do that and

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1 that's the reason why in Miss McDonald's statement she says I do
2 not want to hear from the state or no more phone calls regarding
3 my past relationship with Richard Keith Poe because she told me
4 herself they kept calling her. What about this. I never
5 threatened to harm her.

6 Q Richard, we are getting a little bit far afield of
7 where we need to be.

8 At the time of the trial you then elected to plead guilty
9 in front of Judge Hayes, is that true?

10 A Yes.

11 Q And Judge Hayes put you under oath and you testified
12 that you had decided to plead guilty and you testified that you
13 were in fact guilty, why did you do that?

14 A I didn't really understand what I was actually going to
15 plead to.

16 Q What did you believe you were going to plead to?

17 A I knew it was 2nd degree, but I didn't know it was a
18 violent crime. I was not informed it was violent.

19 Q What is the difference between violent and non-violent
20 in your understanding now and your understanding then?

21 A Well, when I got down yonder and I am reading there is
22 a 2nd degree burglary violent and there is one non-violent and
23 me personally I take it I guess that you would have to prove
24 that the crime happened at night to be violent.

25 Q And did the crime happen at night?

1 A No, sir, it happened on on 6:45 to 6:50 a.m..

2 Q Is there anything else about this, about your trial or
3 your plea and your relationship with Mr. Cronin that you believe
4 that Judge Baxley might need to know in making his decision?

5 A During the course of the testimony of Detective
6 Gurganus Shawn never challenged him. He never objected because
7 the whole truth was not put forth. There was allegations made
8 with no truth behind it as well as from Ms. Shelton. He never
9 objected to nothing that she said. I have no -- me, personally,
10 I was not involved in no food stamp fraud in North Carolina.
11 Why that was brought up. She brought that up. I don't know
12 what else, but he never objected to anything that she stood up
13 in front up in Judge Hayes and mentioned, which was quite a bit.
14 And I was told if I didn't want to take a plea that I most
15 likely end up with 20 to 25 years on June the 4th and the jury
16 will in fact find my guilty of first degree burglary.

17 MR. HEMLEPP: Your Honor, the burglary first
18 degree charge that was contained in the warrant was
19 indicted by the Grand Jury in York County. Then there
20 was amended indictment before the Grand Jury, both of
21 which appear to be true billed. The first one on May
22 16th -- I am sorry, the first on November 15th of 2012
23 the second on May 16th of 2013. The purposes of this
24 hearing, I would like to have them marked. The witness
25 didn't identify them. I would like to have them

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1 considered to be a Court exhibit. I need to argue from
2 them later on. I just ask the Court's guidance on how
3 to proceed.

4 THE COURT: Is there an objection to?

5 MR. JOHNSON: No, Your Honor.

6 THE COURT: Go ahead and mark it as an applicant's
7 exhibit.

8 MR. HEMLEPP: Thank you.

9 (Applicant's Exhibit 3, Indictment, received in
10 evidence as of this date.)

11 THE COURT: Anything further for direct
12 examination?

13 MR. HEMLEPP: No, sir, thank you. Answer any
14 questions the Attorney General may have.

15 THE COURT: Cross examination.

16 MR. JOHNSON: Yes, sir. May it please the Court,
17 Your Honor.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. JOHNSON:

21 Q Mr. Poe, I guess going back to the beginning one last
22 thing you said that you did not understand what you were
23 pleading to. That counsel did not explain to you this would be
24 a violent offense, isn't that correct?

25 A Yes, I remember saying that, but no.

1 Q You said he didn't explain it was going to be a violent
2 offense?

3 A No, sir.

4 Q Okay, but would you agree with me that the Court
5 explained that to you at your guilty plea?

6 A To be honest I can not remember exactly what transpired
7 on June the 4th. It happened so fast. I was under a lot of
8 stress and duress, as well I was dealing with depression at the
9 time, so, no sir, I can not recollect that.

10 Q But at no time did you stop the proceeding and say
11 Judge Hayes, I don't understand what is going on. I'm under
12 some pressure. You know, I don't really what to do this, did
13 you?

14 A No, sir because when I -- when we -- when Miss Shelton
15 had stepped over for the second time to the table where you and
16 Mr. Hemlepp are at today he and her had talked and the next
17 thing I know both of them got up, went out one of these doors
18 and left me sitting yonder. They dismissed the jury. Came back
19 with these papers and he is saying sign, sign here, sign here
20 and I say, well, what is this? This is the plea agreement sign
21 here. That's what I done.

22 Q But you never told Judge's Hayes about that, did you?

23 A I didn't know. I didn't say anything to him about it.
24 I trusted them to do this plea and it's suppose to be non-
25 violent.

Richard Poe - Cross by Mr. Johnson

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1 Q But the judge on page 37, Your Honor, states it is
2 violent offense which means during the time of incarceration you
3 will be ineligible to certain programs that are available to
4 non-violent offenders. It is also as a violent offense carries
5 with it the eligibility for parole being one third. Do you
6 understand all penalties that is attached to these charges to
7 which you respond, to the best I can, yes, sir. Correct?

8 A Yes.

9 Q You also testified that Mr. Cronin didn't explain the
10 criminal process to you, isn't that correct?

11 A Yes.

12 Q But your quite familiar with the criminal justice
13 system are you not?

14 A From what I can I understand.

15 Q You have a pretty long rap sheet, am I not correct? A
16 lot of prior convictions; yes or no?

17 A I don't have a copy of that sir.

18 Q Well, from your personal knowledge do you not know your
19 own criminal history?

20 A Yes.

21 Q And it is quite lengthy, is it not?

22 A I have been incarcerated.

23 Q As a matter of fact you have two prior burglaries on
24 your record, isn't that correct?

25 A I didn't know that, no, sir.

1 Q You don't have one from 1993?

2 A I did not know that.

3 Q In 1998, you did not know that?

4 A No, sir.

5 Q So, when it was read at the guilty plea that these were
6 your prior convictions you didn't object to that did you?

7 A I actually didn't even to tell you the truth I don't
8 even remember what Miss Shelton had read off. She was going so
9 fast.

10 Q So at your own guilty plea where you are facing I guess
11 you plead to 13 years, you are not paying a bit of attention?

12 A I just had just stood right here and Shawn and me and
13 him was talking. I do not remember Miss Shelton saying that I
14 had this right here.

15 I had asked Mr. Cronin for a copy of the Discovery which I
16 would have been able to review and seen what the State had.
17 That's about all I can say. I can not remember my whole prior
18 record to be honest with you. If they also mention to Mr. Shawn
19 Cronin about this very issue, my memory lapse when I fell off of
20 the two-story home. It is in the medical documentation that I
21 have a problem with that, when I was thrown off a two-story
22 house with working with a Crane Company. So my memory does not
23 go back so far. That was another reason why I asked of Mr.
24 Cronin to please give me the Discovery so I can could see
25 exactly what was going on.

Richard Poe - Cross by Mr. Johnson

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1 Q Mr. Poe, you were indicted for burglary in the first
2 degree, is that correct?

3 A Yes, sir.

4 Q And the first time is based on the crime occurring at
5 night time, that is what the State alleged, isn't that correct?

6 A Yes.

7 Q And then they re-indicted you based on your prior
8 history, that you had two past burglaries?

9 MR. HEMPLEPP: Your Honor, I would object to that
10 question. The witness has already testified he has
11 never seen his indictments.

12 THE COURT: I will overrule. He is on cross. We
13 will give him latitude to pose the questions as he
14 wishes.

15 Q And then the second time they indict you based on your
16 prior record that because you have had two prior burglary
17 convictions they can indict you on the third one for burglary
18 first degree?

19 A If you say so. Mr. Cronin never informed me of that.

20 Q Okay. Now during the plea itself, you actually started
21 a trial did you not?

22 A Yes, sir.

23 Q And then you go through what's called a Jackson v.
24 Denno hearing where they determine, where the judge determines
25 whether or not the statement you gave was given voluntarily,

1 correct?

2 A Yes.

3 Q And the judge ruled that statement was going to come in
4 to evidence, isn't that correct?

5 A And what -- exactly what statement are we talking
6 about?

7 MR. JOHNSON: Beg the Court's indulgence, Your
8 Honor.

9 THE COURT: Sir.

10 A Was it the letter written from North Carolina, I do
11 believe that is.

12 Q Is that the statement came in, that was going to come
13 in? It's a statement wherein you state where they could go
14 recover the stolen property?

15 A I don't remember writing no statement as to that.

16 Q The interview that you gave to Detective Garris -- what
17 is his last name, Gurganus -- anyway, the whole point is that
18 the judge ruled that statement was going to come in to evidence,
19 isn't that correct? During your trial?

20 A Yeah, I guess.

21 Q Okay. And at that point you decide to plead guilty,
22 isn't that right?

23 A I don't know exactly what statement you are talking
24 about because Mr. Cronin was -- the State had said there was
25 some type of phone conversation CD and I asked where was it at.

Richard Poe - Cross by Mr. Johnson

35

1 I never listened to no type of phone conversation so I not
2 really familiar with what type of statement you are talking
3 about here. I don't remember anything like that Your Honor and
4 I surely haven't listened to no type of CD's or media.

5 MR. JOHNSON: Beg the Court's indulgence, Your
6 Honor.

7 THE COURT: All right.

8 MR. JOHNSON: Your Honor, I believe the statement
9 was found on page 15 of the transcript. I do apologize
10 for not having it at my fingertips.

11 THE COURT: All right. Thank you.

12 Q So Mr. Poe, during your plea you stated that you were
13 satisfied with counsel, isn't that correct?

14 A I think that Mr. Hayes had asked me something to that
15 effect and I said yes.

16 Q Which now we know is a lie, isn't that correct?

17 A If that's what you want to call it. I's saying I
18 believed that Mr. Cronin could have done more in this case to
19 represent me. He was not adequate counsel at all and phone
20 conversations that me and this man had I do not believe that it
21 should never transpire to escalate to that level on a
22 professional manner on his part, and this man basically cussed
23 me on the phone.

24 Q So you lied under oath, yes?

25 A I --

1 Q Yes or no?

2 A I guess so.

3 Q But the judge explained all the charges you were facing
4 and that the plea deal was for a lesser included burglary in the
5 2nd degree, is that correct, and you said that you understood
6 that?

7 A I did.

8 Q And that there were no other promisees made accept for
9 the range between 12 and 15 years, isn't that correct?

10 A I do not remember that. I am not saying that it did
11 not transpire, I do not remember that.

12 Q Okay. I didn't even know how much time I had actually
13 received until we stepped back into that little cell and I said
14 Shawn, what happened and he said they gave you 13 years. And I
15 said my God, and I said that's when I asked him, I said there is
16 just no way. And I said how much time would I have to do off of
17 that? I remember that, and he done some figuring he says --

18 MR. JOHNSON: Your Honor, he is not responsive
19 at this point?

20 A What do you want me to say?

21 THE COURT: Go ahead and ask your next question
22 please.

23 Q You told the judge that you were pleading freely and
24 voluntarily, isn't that correct?

25 A Yes.

Richard Poe - Cross by Mr. Johnson

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1 Q And the judge reviewed your constitutional rights to a
2 jury trial including your right it to remaining silent, the
3 right to present witnesses on your behalf, the right to cross
4 examine any of the states witnesses; isn't that correct?

5 A If it is in transcript.

6 Q You said understood those?

7 A Okay.

8 Q And you waive the defenses that you may have in this
9 case, isn't that correct?

10 A I suppose so.

11 Q Is that a yes?

12 A Yes. We went forward yes.

13 Q And that you agreed with the facts as presented by the
14 solicitor in this case; isn't that correct?

15 A I never stated that. I had great concerns with that
16 when I told Shawn why you didn't say anything when she was
17 saying all of that. The only thing he said was that I can
18 remember is that he has no money so he could not make no phone
19 calls, Your Honor. I remember Mr. Cronin saying that to Judge
20 Hayes because she had made it sound like I had put pressure on
21 someone outside of this facility.

22 MR. JOHNSON: May I approach, Your Honor.

23 THE COURT: You may.

24 Q Let the record reflect I am showing applicant a copy of
25 his transcript. At the bottom of page 42 and top of 43.

1 A What do you want me to look at.

2 Q And if you will turn over to page 43 as well. Do you
3 not state that you generally agree with the facts as presented
4 by the solicitor at the plea hearing?

5 A I see a couple places on here where I say yes.

6 Q Thank you. So on page 43, line three it says that you
7 generally agree with the facts as prepared by the solicitor in
8 this case, am I not correct?

9 A Yes.

10 Q And then when asked if you wanted to say anything to
11 the Court you admit your guilt in this case, isn't that right?

12 A Yes.

13 Q That you stole stuff from Mr. Stiles that did not
14 belong to you that were in his shed, correct?

15 A Yes.

16 Q So you are guilty in this case?

17 A I am guilty of a crime, yes.

18 MR. JOHNSON: No further questions.

19 THE COURT: Is there a redirect?

20 MR. JOHNSON:: Just briefly.

21 THE COURT: Go ahead.

22 REDIRECT EXAMINATION

23 BY MR. HEMLEPP:

24 Q Mr. Poe, how old are you?

25 A I am 47.

Richard Poe - Redirect by Mr. Hemlepp

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1 Q And had how far did you go in school?

2 A Eight grade.

3 Q Okay, and can you read and write?

4 A To a certain extent yes, sir.

5 Q Do you have any training in the law?

6 A No, sir.

7 Q Okay. At the time of your guilty plea in front of
8 Judge Hayes on June 4th, were you nervous?

9 A I was, yes.

10 Q Okay. Were you more nervous then you are now?

11 A Yes.

12 THE COURT: Sir, does that conclude your
13 questions?

14 MR. HEMLEPP: If I may have just a moment?

15 THE COURT: Yes, sir.

16 MR. JOHNSON: That does Your Honor. Please watch
17 your step and you may return to your table.

18 Are there further witnesses?

19 MR. HEMLEPP: No, Your Honor, the petition would
20 rest.

21 THE COURT: All right. Applicant rests and now we
22 move to the State's case. Please call your next
23 witness.

24 MR. JOHNSON: I call Shawn Cronin to the stand
25 Your Honor.

Shawn Cronin - Direct by Mr. Johnson

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1 THE COURT: Please come to stand and be sworn.

2 SHAWN CRONIN, called as a witness, having been duly
3 sworn by The Clerk, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q Good morning Mr. Cronin?

8 A Goods morning.

9 Q If you would please tell the Court how you became
10 involved in this case?

11 A I was appointed I believe by the indigent defense
12 counsel.

13 Q And how many years have you been practicing law?

14 A Three and a half.

15 Q At this time or now?

16 A Wait, no, 2014 about four years.

17 Q And how much of that has been criminal practice?

18 A Ten percent of it maybe.

19 Q And was this your first criminal case?

20 A No.

21 Q Have you ever handled burglary cases before?

22 A I had a few. A number of different matters.

23 Q And when you first got this case what actions if any
24 did you take?

25 A First thing I did was I sent in Discovery request, Rule

Shawn Cronin - Direct by Mr. Johnson

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1 5, Brady Motion to the solicitor's office. I went and visited
2 Mr. Poe. I reviewed the file that we got from the solicitor's
3 office, the case file, the case report, the other discovery that
4 they sent us. I reviewed the indictments, looked up the
5 statutory law to determine what the elements of the crime were
6 and what the punishments were, looked for possibly defenses.
7 Reviewed the relevant case law and then I went to visit Mr. Poe
8 to discuss it with him.

9 Q And at that initial meeting what all if anything did
10 you discuss with Mr. Poe?

11 A We talked about what he was charged with. I asked him
12 what defense he had. Had him go through his story about what
13 had happened, possible defense witnesses and who might be called
14 to testify against him and to determine if there were any
15 plausible defenses for him, and I told him -- I think at the
16 time I told him time was on his side. He had mentioned that
17 before. I said that if you do get convicted or if you do plead
18 to something you already been indicted, if you're in here this
19 time will count for you. So we did briefly discuss a bond
20 hearing.

21 Q On these witnesses that he mentioned did he ever give
22 you any information to contact this witnesses?

23 A The only one I got was for his sister in Maryland, I
24 believe I got contact information with her and I was able to
25 talk with her over the phone.

1 Q So you did interview her over the phone?

2 A We spoke over the phone, yes.

3 Q Did you have any intention of subpoenaing her for a
4 trial?

5 A I didn't see that she had any relevant information for
6 the trial so, no.

7 Q Was she there? Was she a material witness to this
8 case?

9 A No.

10 Q What if any theory of the case did you and Mr. Poe come
11 up with?

12 A Well, from the beginning he was determined that he was
13 improperly charged. He thought it was a burglary third,
14 burglary second at the most. It's not burglary first and he
15 went on and on about that. I received a number of letters
16 about that from him. He would call the office and talk about
17 that. I did the research and based on the case law that I
18 found, the building that was broken in to was in the curtilage
19 of the home and it was within the statute definition of burglary
20 first degree. There was some differences between whether or not
21 it is a building or a home, there was some differences there,
22 but in my opinion it fit.

23 Q Did you research Mr. Poe's prior criminal history?

24 A I had his SLED printout.

25 Q And what if anything did you discover in that criminal

Shawn Cronin - Direct by Mr. Johnson

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1 history?

2 A He did have a number of crimes. He was charged with
3 two previous burglaries.

4 Q Charged or convicted?

5 A Off the top of my head I can't say. He also had other
6 property crimes in there as well that would go toward the
7 enhancement statute.

8 Q Did you ever have any discussions with the solicitor in
9 this case?

10 A Had a number of discussions with the solicitor.

11 Q Did you ever discuss his prior history?

12 A Yes.

13 Q And what if anything did you learn from those
14 discussions?

15 A Well, the solicitor was going to pursue -- the
16 solicitor made a few offers and the solicitor was going to
17 pursue making sure that Mr. Poe did some jail time based on his
18 background and that she felt he was a danger to the community
19 and wanted him to do some time and that was during the
20 negotiations, the plea negotiations we had.

21 Q What offers, if any, came about during these
22 discussions?

23 A I believe the first offer was for him to plead to
24 burglary second, violent for 12 years.

25 Q And as he testified he rejected that?

1 A Yes.

2 Q Any other offers?

3 A There was another one as we got closer to trial. I
4 want to say the beginning of 2013 there was a five year offer
5 that I discussed with Mr. Poe and he rejected that as well.

6 Q And so then did you turn your attention to preparing
7 for a trial?

8 A Yes.

9 Q And as a matter of fact you began a trial?

10 A Correct.

11 Q And what, if any, pretrial motions did you file?

12 A Well, we moved to have his statements dismissed as
13 being coerced and involuntarily, so we had a Jackson v. Denno
14 Hearing.

15 Q And what was the the outcome of that?

16 A The statement was going to be allowed in.

17 Q And at that point did you turn the solicitor to ask if
18 there are were any other offers?

19 A Yes.

20 Q And what happened?

21 A She said she would be willing to make a recommendation
22 between 12 and 14 years for him.

23 Q And did you relay that to Mr. Poe?

24 A I did.

25 Q And what was his decision on that?

Shawn Cronin - Direct by Mr. Johnson

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1 A He wanted to take it.

2 Q And how long of a discussion did you have with Mr. Poe?

3 A We were here, so maybe 15 minutes.

4 Q Did you force him to make this decision?

5 A No.

6 Q Did you ever threaten him?

7 A No.

8 Q Whose decision was it?

9 A His.

10 Q Did he ever admit his guilt to you in this case?

11 A He told me what he did. He said he was in fact guilty
12 of a crime. He felt it was burglary third because of the fact
13 it was an outbuilding.

14 Q But just to reiterate, you did explain to him that it
15 could be charged with burglary first degree?

16 A Correct.

17 Q Was there a dispute about the time? He testified that
18 it is 6:45 in the morning and that it's light. Was there a
19 dispute that the solicitor and you and argued over?

20 A Well, we were going to but it turns out he was really
21 indicted for having two prior burglaries so he could be indicted
22 for burglary first.

23 Q And were you aware of that re-indictment?

24 A Yes.

25 Q And did you relay that to Mr. Poe?

1 A Yes. That would have been the Monday or Tuesday when
2 we came up to have our motions.

3 Q And did he seem to understand that?

4 A I had a hard time dealing with Mr. Poe because I don't
5 know if is a physical or mental condition. He was always
6 agitated. He was always distracted. He was very hyperactive.
7 He was nervous. It was obvious that he had issues, so I made
8 sure that through the course of dealing with him that we did
9 have a medical evaluation done to see if he was fit to stand
10 trial.

11 Q During the plea did you ever tell him how to answer
12 Judge Hayes's questions?

13 A I told him to answer honestly.

14 Q Did you ever say, say yes to this say no to that?

15 A I didn't say say yes. I explained to him what the
16 judge was going to tell him. That the judge was going to ask if
17 the plea was freely and voluntarily given. Was he under the
18 effect of any drugs or alcohol. That he is giving up his right
19 to trial. Giving up his right to present witnesses. Giving up
20 his right to present evidence. I went through that whole list
21 and told him, you know, the judge is going to ask you these
22 questions. This is what the the judge is going to ask, just
23 answer them honestly.

24 Q And he seemed to understand that?

25 A He did, but again he was distracted. He obviously was

Shawn Cronin - Direct by Mr. Johnson

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1 very upset.

2 Q Concerning the two indictments, the one where it says
3 night time and then the re-indictment, did you ever -- what if
4 any arguments could you have made to the Court or did you ever
5 decide to make any arguments?

6 A Off the top of my head I don't recall. I don't recall
7 dealing with that.

8 Q When you received the first indictment did you do
9 research that indictment?

10 A Yeah.

11 Q And when you received the second one did you do
12 research on that one?

13 A Yeah.

14 Q And was based on the facts of the case?

15 A Based on the facts that were given to me.

16 Q And based on what Mr. Poe told you?

17 A Correct.

18 Q Did you see any reason to challenge those indictments?

19 A I didn't see anyone that we could win. Again, based on
20 the record and the facts that were given to me.

21 Q Just to recap, you did explain all the Discovery and
22 went over the discovery with Mr. Poe?

23 A Well, I brought the Discovery materials to the jail and
24 I showed him some of the statements that were going to be used
25 again him and we talked about that. Again, he was very

1 | distracted and upset. He was just adamant that, you know, he
2 | was mischarged, he was mischarged, he was mischarged. He went
3 | on and on about that and that he was fixated on that. I would
4 | bring him the offers and he would think about it and then he
5 | would send me a letter saying no, we are going for a jury trial.
6 | I want a jury trial.

7 | MR. JOHNSON: No further questions at this time
8 | Your Honor.

9 | THE COURT: Cross examination.

10 | MR. HEMLEPP: Thank you, Your Honor.

11 | CROSS EXAMINATION

12 | BY MR. HEMLEPP:

13 | Q Mr. Cronin, my name is Mike Hemlepp. I don't think we
14 | have met before, but it is a pleasure to see you.

15 | You testified under direct examination that about ten percent
16 | of your practice is criminal.

17 | A About.

18 | Q Nobody knows for certain, but that's your best
19 | estimate?

20 | A Right.

21 | Q What would be the remainder of your practice?

22 | A Family law, mostly. A little bit of probate.

23 | Q Okay. And you testified that you had a few burglaries.
24 | Prior to this burglary how burglaries had you handled?

25 | A Off the top of my head I don't know. I mean I know

1 there is one.

2 Q Would it be more than five?

3 A Probably not.

4 Q So, you had handled a burglary before, at least one?

5 A Right.

6 Q But not more than five?

7 A Right.

8 Q Okay. You testified to Attorney General Johnson,
9 regarding the preliminary steps that you had taken, that you had
10 gotten the discovery from the prosecutor, and who is the
11 prosecutor?

12 A Miss Shelton.

13 Q And did you have any difficulty getting that Discovery?

14 A Not that I can recall. They usually send it right
15 over.

16 Q Okay.

17 A I might have had a problem opening the first disk that
18 she sent and getting it printed out but eventually we got it
19 all.

20 Q In the Discovery that was sent over was there
21 photographs of the crime scene?

22 A Yes.

23 Q And how many photographs were there?

24 A I don't know off the top. There were quite a few. I
25 don't know about the crime scene specifically, but they sent

1 photographs of the crime scene, the building, the yard, the
2 items that were taken. That kind of thing.

3 Q Okay, and of course you handle a lot of cases and I
4 know you are in court a great deal, both in this case and your
5 other cases, so I am not really try to trick you when I ask you
6 specifics about the case. Just to the best of your recollection
7 how many photographs would you think there were? And a range
8 would be fine.

9 A I really couldn't tell you, maybe a dozen.

10 Q Okay. Okay. So, more than 10, less than 20, would
11 that be fair?

12 A To best of my recollection, yes.

13 Q And of those photos how many of those were of the
14 actual crime scene itself?

15 A I don't know.

16 Q Okay. You were appointed in this case?

17 A Correct.

18 Q Okay. Prior to this case0 had you ever applied to a
19 c0ourt to get funds in an appointed case to hire an
20 investigator?

21 A Yes.

22 Q Did you know how that process worked?

23 A Yes.

24 Q Did you attempt to do that in this case?

25 A No.

Shawn Cronin - Cross by Mr. Hemlepp

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1 Q What was your rational for that?

2 A I didn't see where it would benefit the defense.

3 Q Okay.

4 A Because the things that he wanted me to investigate
5 were collateral matters to this. They had to do with other
6 crimes committed by other witnesses.

7 Q Okay. Okay. Mr. Poe when he testified testified that
8 you always -- the conversations that you had, that your
9 relationship was difficult from the beginning. Would you agree
10 with that?

11 A No. I mean, it was difficult to make sure that he was
12 understanding me. As far as a bad relationship, there was one.
13 He had written a letter to me asking me to apply to be removed
14 from his case. I said we can apply to do that. We will go
15 ahead and do that and he kept calling, calling, calling, and I
16 was going to get him before the judge so I can be releived of
17 counsel and go on and there was one conversation where he was
18 shouting at me and I believe I raised my voice at him and I
19 said, fine, if you want a new lawyer get a new damn lawyer.
20 Something like that. And I admit that was a -- you know, I
21 shouldn't have done that. Then I went to go see him. We
22 patched things up and he agreed to go on with the defense and he
23 wanted to keep me as his lawyer so I agreed.

24 Q And of course in criminal cases feelings run high?

25 A Right.

1 Q And that is not actually before the Court right now.
2 However the procedural matter that he had written to ask that
3 you be relieved, and you just testified that you were going to
4 seek to have a hearing on that. Was a hearing conducted?

5 A No, because we patched pit up and he wanted me to
6 continue as counsel.

7 Q Were there any hearings in front of Judge Alford in
8 this case?

9 A I don't recall.

10 Q Okay. Now, you testified that at your initial
11 discussion with Mr. Poe that he had brought up the issue about
12 being mischarged?

13 A Uh-huh.

14 Q And you had seen --

15 MR. HEMLEPP: May I, Your Honor?

16 THE COURT: You may.

17 Q You had seen in the Discovery the copy of the warrants
18 in this case?

19 MR. JOHNSON: Which warrant is this, Mike?

20 MR. HEMLEPP: Burglary first, the one that was
21 admitted into evidence as Petitioner's one.

22 MR. JOHNSON: All right. Thanks.

23 A What was the question?

24 Q You got that as part of Discovery?

25 A I believe so, yes.

1 Q Did you request a preliminary hearing on any of these
2 charges?

3 A No.

4 Q And would that strategic decision? Was it a timing
5 decision? Why is that?

6 A It may have you been a timing decision.

7 Q Okay.

8 A I don't recall off the top of my head here today.

9 Q You remember that you did not request a preliminary
10 hearing, but you really can't testify why?

11 A Correct.

12 Q Okay. The -- the research that you had done with
13 regards to the elements of the burglary. The warrant says
14 burglary first. There is no language in the body of the warrant
15 that indicates that the building was anything other than a
16 storage building. There is no language about appurtenant or
17 curtilage or connection, did that strike you?

18 A Yes. I researched it and there was I found law that
19 stated that as far as the definition goes it could be a building
20 where goods are stored.

21 Q All right. Okay.

22 A Which seemed to fit the definition to me.

23 Q Okay. Of a building for the purposes of burglary
24 first.

25 Are you familiar with direct indictment?

1 A Yes.

2 Q What is a direct indictment?

3 A It's when they indict him without presenting it to the
4 Grand Jury.

5 Q Okay. Okay. When they present the case to the Grand
6 Jury without an underlying warrant and in a direct indictment
7 some times there is an arraignment?

8 A Correct.

9 Q Had you ever done that prior to this hearing?

10 A No.

11 Q I want to talk to you about the offers in the case.
12 You testified the first offer was 12?

13 A Twelve violent.

14 Q Yes, and is it the practice in the York County
15 Solicitor's Office that usually the Discovery comes with an
16 offer.

17 A Uh-huh.

18 Q It's not negotiated, it's just their initial offer.
19 Had you and Miss Shelton discussed that offer or was that just
20 presented to you?

21 A I am not sure, but if memory serves me it was via an
22 e-mail as part of turning over the Discovery. There were more
23 materials she wanted to get me. The offer is X, Y, Z. That is
24 my recollection.

25 Q Was it a formal document or was it just an e-mail?

Shawn Cronin - Cross by Mr. Hemlepp

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1 A I believe it was an e-mail, that's my recollection.

2 Q Okay. Some times there is is actual document that
3 encapsulates the terms of the plea offer.

4 A There was no plea offers, like these are the terms.

5 Q Okay. He ended up pleading as we discussed on June 4th
6 to a sentence of 13 years. Between those two offers, you
7 testified that there was an offer of five years?

8 A There was an e-mail or contact from Miss Shelton she
9 might be willing to do something in the range of five years and
10 that is again just from my memory.

11 Q Okay. And did you all have a conversation about that
12 either prior to or following that e-mail, you and Miss Shelton,
13 or was that just something that she offered?

14 A I don't remember. I don't remember.

15 Q Okay. Okay. And where did you communicate that offer
16 to your client?

17 A I don't remember.

18 Q Okay.

19 A But I do know I got a letter saying, you know, we are
20 going to trial. I just want to go to trial.

21 Q Okay. Did the letter refer to the offer of five years?

22 A I don't know.

23 Q Okay.

24 A When I went to see him in late May or when they were
25 calling it for trial he was adamant about going to trial..

1 Q And when he communicated that he was adamant about
2 going to trial I believe you already had testified that it had a
3 lot to do with the crime scene being a building, not a
4 residence?

5 A Him wanting to go trial?

6 Q Yes.

7 A He thought he was improperly charged. That's all he
8 kept saying.

9 Q Okay. And really just to -- to the best of your
10 knowledge he was arrested in June of 2012, I believe. He went
11 to court in 2013. And I apologize, tell me again when you were
12 appointed?

13 A Off the top of my head I don't know.

14 Q But it was some time after June?

15 A September maybe.

16 Q So the fall of 2012 would that be a good guess?

17 A Somewhere.

18 Q So the initial offer of 12 years for assistant
19 solicitor Shelton would have been somewhere in the fall of 2012?

20 A I don't know. It came with the Discovery as far as I
21 know.

22 Q Okay. Okay. Would it have been as late as 2013?

23 A I don't know.

24 Q Okay.

25 A I don't want to speculate.

Shawn Cronin - Cross by Mr. Hemlepp

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1 Q The offer of the 13 years that he plead to, that
2 happened the day of trial?

3 A That was after the Jackson v. Denno hearing and I don't
4 whether it was an offer as much as I spoke with Miss Shelton
5 would you still be will to accept a plea then because he decided
6 he didn't want to go to trial after the Denno hearing. So I
7 said would you be willing to accept a plea and I don't recall --
8 we had a conversation of something between 12 to 14 years. I
9 don't know if she was going to make a recommendation for 12 to
10 14 year. I am sure it is in the record, but off the top of my
11 head I don't remember.

12 MR. HEMLEPP: Okay. Thank you, Your Honor. Thank
13 you Mr. Cronin. I have no further questions.

14 THE COURT: Is there any redirect?

15 MR. JOHNSON: No, Your Honor.

16 THE COURT: Sir, you may step down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Any further witnesses for the State?

19 MR. JOHNSON: No, Your Honor. The State rests.

20 THE COURT: Anything further.

21 MR. HEMLEPP: Your Honor, I would like to recall
22 the petitioner for a brief rebuttal on matters raised in
23 the State's case.

24 THE COURT: And what would be the specific issue
25 that would be new for which you could reply.

1 MR. HEMLEPP: Your Honor, the offer of five years.

2 THE COURT: Five year offer with that limitation.

3 MR. HEMLEPP: There is couple of others ones, but
4 they are specific issues that only got raised in the
5 State's case.

6 THE COURT: With that understanding you may call
7 your witness back.

8 Mr. Poe, you remain under oath from your previous
9 testimony.

10 MR. POE: Yes, sir.

11 MR. HEMLEPP: If it please the Court.

12 THE COURT: Yes, sir you may.

13 MR. HEMLEPP: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. HEMLEPP:

16 Q Mr. Poe, you are still under oath having previously
17 testified and for the record you were here in the courtroom
18 hearing the testimony that was just presented by the State in
19 this case?

20 A Yes, sir.

21 Q Did you hear that?

22 A Yes, sir.

23 Q Okay. You heard that your trial attorney testified
24 that there had been an offer of five years that had been
25 communicated to him by the State. When was the first time you

1 heard about that offer of five years?

2 A I heard of that offer when Miss Shelton during my
3 sentencing from Judge Hayes and she says if I can remember that
4 there was even an offer of five years. I was never offered a
5 five-year sentence. Mr. Cronin never mentioned it because
6 considering the circumstances I would have taken it.

7 Q In April of 2013 was there a hearing held in this
8 courthouse with you and Mr. Cronin?

9 A Yes, sir.

10 Q Before you continue, what was the nature of the
11 hearing?

12 A I am not really -- no, I am sorry. I was brought
13 upstairs and placed in holding cell hear. I was brought in to
14 hear. Mr. Anyone was hear before Judge Lee Alford, Miss Shelton
15 was in here. They had pretty much told the judge that think had
16 loss the Court Order several months prior to ordering me to be
17 evaluated and I guess they were re-asking for the Court to
18 re-issue another Order and at that time Judge Alford should have
19 had my motion that I -- or my letter I wrote directly to him
20 concerning Mr. Cronin representing me. And I asked for him to
21 remove him. If I can remember Judge Alford's very words to Mr.
22 Cronin was, Mr. Cronin all this gentlemen is asking of you is
23 when you are here at this facility is go down to the jail and
24 see him.

25 Q Now, I will stop you at this time. There was a

1 hearing?

2 A Yes.

3 Q In front of Judge Alford regarding the competency
4 evaluation?

5 A Yes.

6 Q And at that time Judge Alford also heard your request
7 for having new counsel?

8 A He never addressed that directly because he never
9 addressed my letter I write to him, but he did address Mr.
10 Cronin.

11 Q There was no ruling on your letter?

12 A No, sir. He told them to re-issue and get the
13 paperwork asap to send to Columbia to wherever they need to go
14 and he did look at Shawn and he said Mr. Cronin all this
15 gentlemen is asking of you is when you are here at that facility
16 is to go down to the jail and see him and discuss this case.

17 Q Thank you, Mr. Poe.

18 A And it should be on record.

19 MR. HEMLEPP: Answer any questions that the
20 Attorney General may have.

21 THE COURT: Is there recross?

22 MR. JOHNSON: No.

23 THE COURT: Sir, you may step down.

24

25 MR. HEMLEPP: Petitioner would rest.

Shawn Cronin - Redirect by Mr. Johnson

61

1 MR. JOHNSON: Your Honor, I would like to recall
2 Mr. Cronin on one thing and one thing only.

3 THE COURT: Very good. Call Mr. Cronin. Please
4 remember sir that you too remain under oath.

5 MR. CRONIN: Yes, sir.

6 MR. JOHNSON: I would like to have this marked as
7 State's exhibit one.

8 (State's Exhibit 1, letter, marked for
9 identification as of this date.)

10 REDIRECT EXAMINATION

11 BY MR. JOHNSON:

12 Q Mr. Cronin, do you recognize that document?

13 A I do.

14 Q What is this?

15 A It's a letter from Mr. Poe to me.

16 Q And are you familiar with his handwriting?

17 A Yes.

18 Q And is that his handwriting?

19 A Yes.

20 Q And please explain or tell the Court what the last
21 paragraph of that letter is?

22 A "This bull crap has gone on long enough. Time of 18
23 months to two years or jury. I am not accepting anything more
24 period. Richard K Poe."

25 Q And when was that dated?

1 A May 1, 2013.

2 Your Honor I ask that that be introduced as
3 State's one.

4 THE COURT: Is there an objection?

5 MR. HEMLEPP: Your Honor, this is the first I have
6 seen of this letter. I asked my client and he says that
7 is his signature. I would object.

8 THE COURT: I will overrule your objection. This
9 is what I would call sur-reply to evidence brought up by
10 the applicant so it is relevant and probative. It is in
11 response and thus the fact that it may have not been
12 divulged previously would not prohibit the admission of
13 it.

14 Overrule the objection and that is State's one now
15 in evidence over objection.

16 (State's Exhibit 1, Letter, received in evidence as
17 of this date.)

18 MR. JOHNSON: Yes, Your Honor that is all the
19 State has.

20 THE COURT: All right. Is there cross examination
21 on that?

22 MR. HEMLEPP: No, thank you, Your Honor.

23 THE COURT: Thank you, sir. You may step down.

24 All right, let me ask if I may, Mr. Poe was there
25 some sort of lawsuit that you filed while in jail

1 against the jail authorities?

2 MR. POE: Yes, sir.

3 THE COURT: Is that matter still pending?

4 MR. POE: It is done away with.

5 THE COURT: All right. Very good. There is a
6 reference of that in the letter and I was not certain as
7 to what the reference was.

8 MR. POE: No, we resolved that.

9 THE COURT: Thank you. All right. The Court is
10 prepared to rule in this matter and I am going to ask
11 the Attorney General to prepare the Order in this matter
12 and this is the decision of the Court; Mr. Poe, in
13 order to be in successful at PCR you have to prove two
14 things. Number one, is your lawyer's service,
15 performance, representation was deficient. That it fell
16 below the standard of lawyers representing clients in
17 the Criminal Court in South Carolina. And number two,
18 not or, but and number two that you were prejudiced by
19 that. Our Supreme Court has defined that term prejudice
20 for us in this context to mean but for your lawyer's
21 poor performance the outcome of the trial would have
22 been different and so after review of this evidence I
23 find that you failed to meet either prong of proof
24 required and thus I am going to deny your PCR and these
25 are the reasons; first of all I realize you say there

1 was some communication difficulties. You did not see
2 your lawyer enough. This was your version of it, but I
3 find from the testimony that the lawyer, Mr. Cronin, had
4 sufficient time with you to prepare for the matter.
5 That the time spent with you is not really an issue that
6 the Court feels has been proved by you that it was
7 insufficient. But what is really happened here is you
8 had yourself in a box, Mr. Poe, because you had two
9 prior burglaries. And the statute on burglaries says
10 you can be charged with burglary first if you have two
11 prior burglaries and there is no time limit on when
12 those burglaries must have occurred and you had 1994
13 burglary for which you got three years and eight months,
14 and then you had an 1999 burglary for which you got 15
15 years and now these charges came along and the State
16 re-indicted you.

17 I agree with you that if someone breaks into a
18 shed or breaks into a storage building you are looking
19 at most likely burglary third, but this was potentially
20 within the curtilage of a home so it could have been a
21 burglary first on that point. That is something that
22 the jury would decide factually, but the State could
23 certainly pursue it. But even putting that aside the
24 State could pursue you on first degree burglary no what
25 you had broken into, what type of building because you

1 had two prior burglaries. And so for that reason -- let
2 me just look at one thing and just make sure. Again,
3 with the argument that that building is within the
4 curtilage of the home is just something you would have
5 to face in front of the jury and that is a very big
6 gamble for you because burglary first as you know
7 carries 15 to life and the 15 is a minimum and it is 85
8 percent and that is a tough go. And so in order to
9 avoid that you made the decision under the difficult
10 situation of the moment to enter into a plea and even
11 though you say well, this was not violent. It didn't
12 happen in the night time, it was not a home, all those
13 were issues that were before the Court and were going to
14 be fought out in front of the jury and so you made the
15 decision in your best interest at the time to take a
16 plea and the Court finds no reason now to revisit that
17 and overturn it because again, I don't find your
18 lawyer's performance deficient and I don't find you were
19 prejudiced.

20 So for all those reasons I will deny your PCR.
21 Now, you may appeal this decision, but what I will ask
22 the Attorney General to do within 30 days to prepare an
23 Order that will put in it what I just ruled and I will
24 review it and sign it, send it back to him for filing
25 and he will file it and then serve it on your lawyer and

1 you will have thirty days from the date it is served on
2 your lawyer to appeal this decision. Not from that
3 today, but from from that future date.

4 Do you understand that Mr. Poe?

5 MR. POE: Yes.

6 THE COURT: All right, then good luck to you. That
7 is the decision of the Court and I will return you now
8 to the detention center.

9 MR. HEMLEPP: May I speak with with him?

10 THE COURT: Yes.

11 I just want to go back real quick. I don't want
12 to leave a misimpression. I realize that to be a
13 burglary first the break has to be in a dwelling, but
14 again that was the factual issue in the case and I told
15 him no matter what type of building. I didn't mean to
16 confuse him because if it is within the curtilage of the
17 home then it is a dwelling. With that amendment, just
18 clarification, that is the Court's ruling.

19 MR. HEMLEPP: Thank you, Your Honor.

20 * * *

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh 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 in the captioned case, in the Circuit Court for York County, South Carolina, on the 22nd day of January, 2014.

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

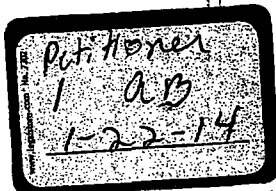
June 19, 2014

Aileen Butler

3-26-13

I Kenneth Stiles am writing The Court to let them know that I will not be testifying in the matter of Richard K Poe. I would like to see the charges dropped. Mr Poe has been in jail long enough. It would be a blessing if Mr. Poe was released and get proper medical care. I asked the Court to let Mr Poe free. He deserves to be released and start his life over and medical care

 Kenneth K Stiles



Witness Sharon Stiles 3-26-13

Witness Travis B 3-26-13

Witness Wanda Kimbrell 3-26-13

ARREST WARRANT

J-158013

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of York

THE STATE

against

Richard Keith Poe

Address

Phone: SSN:

Sex: M Race: W Height: 5 Weight: 145

DL State: DL#:

DOB: Age: 32 ORI #:

Prosecuting Agency: York County Sheriff

Prosecuting Officer: RJ Gurganus - G0626

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

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 Richard Keith Poe on 6-11-12

[Signature]
Signature of Constable or Courtroom Clerk

RETURN WARRANT TO:

York County General Sessions

1675 York Hwy

York, SC 29745

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

County/ ☒ Municipality of York

Personally appeared before me the affiant RJ Gurganus

being duly sworn deposes and says that defendant Richard Keith Poe

did within this county and state on or about 01/10/2012

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York

Sworn to and subscribed before me

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

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:

The defendant did willfully and unlawfully violate the laws of this state by entering a locked storage building at 3339 Filbert Highway, Clover, York County, South Carolina, with the intent to commit the crime of Larceny. The storage building was located directly behind victim's house. While inside the building the defendant stole the victim's air compressor, battery charger, numerous hand tools, and fishing gear. The crime was committed during the nighttime hours. This being against the peace and dignity of this state and all such laws made and provided for.

Probable cause is based on: Police Investigation, Defendant's Verbal Statement, Witness Statement and Recovery of Evidence.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of York

Affiant's Address Moss Justice Center

York, SC 29745-7423

Affiant's Telephone (803) 628-3059

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 1/10/2012 defendant Richard Keith Poe

did violate the criminal laws of the State of South Carolina (or ordinance of York) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

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 01/18/2012

Judge's Address Moss Justice Center

York, SC 29745-7423

Judge's Telephone (803) 628-3029

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AMENDED
DOCKET NO. 2012-GS-46-03771

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

May 16, Term 2013

THE STATE

vs.

RICHARD KEITH POE

Indictment for

BURGLARY IN THE FIRST DEGREE

SC Code: 16-11-312
CDR Code: 079

WITNESSES

VC SO/ Gurganus

ARREST WARRANT NUMBER

J-158013

ACTION OF GRAND JURY

True Billed 11-15-2012

TRUE BILL

/s/ Paul Vehaun

Kathryn Lee True
Foreperson of Grand Jury

Date:

5-16-13

VERDICT.

Foreperson of Petit Jury

Date:

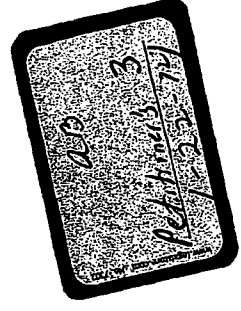
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Richard R. Poe
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness: *Regina Rutledge-A-Spec.*
C.C.C. PLS. AND G.S.



DOCKET NO. 2012-GS-46-03771

WITNESSES

YCSO/Gurganus

The State of South Carolina

County of York

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

COURT OF GENERAL SESSIONS

November 15, Term 2012

VK

ARREST WARRANT NUMBER

J-158013

THE STATE

VS.

Witness:

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

ACTION OF GRAND JURY

TRUE BILL

RICHARD KEITH POE

Pal G. V.

Foreperson of Grand Jury

Date: 11/15/12

VERDICT

Indictment for

BURGLARY 1ST DEGREE

Foreperson of Petit Jury

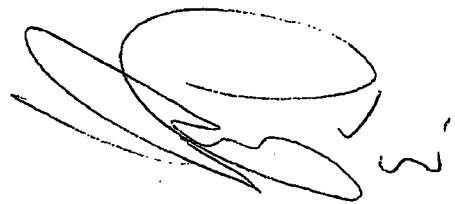
Date:

SC Code: 16-11-311
CDR Code: 079

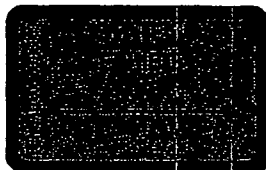
Sean,

how are you, Well I found out
you have not said anything to Sol. c. for
that's what she said to Wanda
anyways. She also mentioned she was
not aware of the Law-Suit, I'm requesting
you come and see me and I'm asking
for a copy of Pleadings that are to
be filed regarding Trial by way of Jury.
This Bull-Crap has gone on long enough
Time of 18 mo. to 2 yrs or Jury I'm
not accepting anything more, period.

Richard R. Poe



5-1-13



STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Richard Keith Poe, #259297,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A NO. 2013-CP-46-2033

**ORDER DENYING
POST-CONVICTION RELIEF**DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2014 MAR 14 PM 4:25

FILED-RECEIVED

This matter came before the Court by way of an Application for Post-Conviction Relief ("PCR"), filed July 3, 2013. Respondent made its Return on September 10, 2013. An evidentiary hearing into the matter was convened on January 22, 2014 at the Moss Justice Center in York, South Carolina. W. Michael Hemlepp, Jr., Esquire, represented the Applicant, and J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, appeared on behalf of the Respondent.

JFB At the hearing, Applicant testified on his own behalf. Applicant's counsel for his guilty plea, Sean F. Cronin, Esquire, also testified at the hearing on Applicant's PCR. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and Applicant's guilty plea transcript.

PROCEDURAL HISTORY

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was indicted at the November 2012 term of the York County Grand Jury for Burglary, First Degree (2012-GS-46-3771), Petit Larceny (2012-GS-46-3769), and Criminal Conspiracy (2012-GS-46-3772). Applicant was represented by Sean F. Cronin, Esquire. On June 4, 2013, Applicant pleaded

guilty to Burglary, Second Degree as a lesser included offense, and Petit Larceny and Criminal Conspiracy as indicted. The Honorable John C. Hayes, III sentenced Applicant, pursuant to recommendations from the State, to confinement for thirteen (13) years for Burglary, Second Degree, ten (10) years, concurrent, for Petit Larceny and five (5) years, concurrent, for Criminal Conspiracy. Applicant did not appeal his conviction or sentence.

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

1. "Ineffective Assistance of Counsel"; and
2. "Prejudice by 16th Circuit Solicitor also by Judge Hayes and Judge Alford[.]"

At the hearing, Applicant proceeded on his claim of ineffective assistance of counsel.

SUMMARY OF TESTIMONY

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Applicant testified that plea counsel was his second attorney, appointed because there was a conflict with the Public Defender's Office due to its representation of his co-defendant. He stated he was arrested on April 29, 2012, received no bond, and was incarcerated for four hundred days. Applicant testified that when he first spoke with counsel, there was an offer from the State for a sentence of twelve years as a violent offense. Applicant rejected this offer because he believed it was too long. He also questioned whether his offense constituted a Burglary, First Degree charge, because the breaking involved a storage shed, not a residence. Further, Applicant testified the crime was not violent, as it occurred in the daytime. Applicant stated he only met with counsel one time very briefly at the jail, then spoke with counsel on the phone four times prior to trial. During these discussions, Applicant and counsel discussed a guilty plea as opposed to a trial. Applicant claimed he was not familiar with the criminal law process and had a history of mental illness that included two suicide attempts.

In June 2013, Applicant's case was called for trial. Prior to this, Applicant testified he received an offer from the State of fifteen years, non-violent or twelve years, violent. Applicant stated he wanted a jury trial because he felt he had not committed the offense of Burglary, First Degree. Applicant felt that his offense constituted a Burglary, Third Degree because the shed he burglarized was not a house. He further testified that the building in question was an out building surrounded by a fence. Applicant then testified he spoke with counsel and gave counsel a list of witnesses he wished to call at trial, including on "Miss Donna" who was a neighbor of the victim, the victim Kenneth Stiles, Applicant's sister Wanda Kimbrell, Travis Burrows, Roddy Gordon, and Lisa McDonald (his co-defendant). Applicant stated none of these witnesses were subpoenaed for trial.

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Applicant testified that counsel did not discuss any of the discovery with him, nor did Applicant receive a copy of his indictment. Applicant claimed he had a rocky relationship with counsel, and that there were phone records to reflect this. He stated his co-defendant was charged with the same charges, but she had her charges dismissed. Applicant testified he was mentally evaluated to determine whether he was competent to stand trial, but did not receive information concerning the evaluation. He stated he discussed this with counsel and did not object to the evaluation.

Lastly, Applicant testified that while he knew what results the PCR process could bring, he was willing to risk the chance of a new trial. He claims he was not guilty of Burglary, First Degree because the structure he burglarized was not a house, nor did the incident occur during the nighttime. Applicant finally claimed that he did not know what he was pleading to and did not know his charges were considered violent charges.

On cross-examination, Applicant admitted that during the plea hearing, the plea judge explained to him that this was considered a violent offense. (Tr. p. 37 lines 4-10). Applicant also admitted that he had two prior burglary convictions which resulted in him being charged with Burglary, First Degree. Applicant admitted he testified that no other promises other than a range of twelve to fifteen years were made to get him to plead guilty. Additionally, Applicant admitted he pled freely and voluntarily and agreed with the facts as read by the Solicitor. Further, Applicant admitted he lied to the plea judge when he stated he was satisfied with counsel's services. Lastly, Applicant admitted his guilt in this case.

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Counsel testified that he was appointed to this case and has been practicing law for four years. This was not counsel's first criminal case. Counsel stated he filed for discovery and visited Applicant in jail. Counsel testified that at this initial meeting, he reviewed the discovery with Applicant, including the indictments, the charges and punishments, and possible defenses. Counsel also stated that Applicant told him Applicant's version of the facts and contact information for Applicant's sister. Counsel testified Applicant thought he was overcharged, and seemed to be fixated on this point throughout the representation; meaning he should not have been charged with Burglary, First Degree. However, counsel stated he researched the law and found that a building in the curtilage of the home can be considered part of the dwelling for purposes of Burglary, First Degree. Counsel further testified that because Applicant had two prior burglary convictions, Applicant could be properly indicted for Burglary, First Degree.

Counsel testified he had a number of discussions with the Solicitor and received offers from the Solicitor. Counsel stated that because of Applicant's prior criminal history, the Solicitor wanted Applicant to serve prison time. Counsel testified that the first offer from the State was for a prison term of twelve years to Burglary, Second Degree, which Applicant

rejected. Counsel testified the second offer from the State was for five years, which Applicant again rejected. Consequently, counsel then prepared for a trial. Counsel also filed pre-trial motions in this case, one of which was a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964), to determine the voluntariness of Applicant's statement that he made to law enforcement. This motion was ultimately denied. Afterwards, the Solicitor offered a plea agreement in which she would allow Applicant to plead to Burglary, Second Degree (violent) and recommend a sentence in the range of twelve to fifteen years. Counsel testified Applicant wanted to accept this offer after the loss of the Denno hearing. Counsel further testified that this was Applicant's decision and he did not force Applicant to accept this offer.

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Additionally, Counsel testified there were two indictments in this case. The first was for Burglary, First Degree as the State was going to argue the shed was a dwelling and this incident occurred at nighttime. The second was a re-indictment because Applicant had two prior burglary convictions. Counsel stated he relayed this information to Applicant and that Applicant had some difficulty understanding why he was being indicted for Burglary, First Degree because Applicant thought the shed should not be considered a dwelling and the incident occurred around 6:45 a.m.

Counsel lastly testified that his advice to Applicant during the plea was to answer questions honestly, and that Applicant understood this. Counsel stated during the plea the indictments were read aloud, as well as the facts and Applicant's side of the story. Counsel also stated, in his opinion, he did not see any "winnable" issues in this case.

On cross-examination, counsel stated he has not handled more than five burglary cases. Counsel testified he received discovery from the Solicitor, including around twelve pictures from the crime scene. Counsel admitted he did not visit the crime scene. Counsel stated that,

although he knows of the process of hiring a private detective, he did not do so in this case. Counsel also stated Applicant wanted him to investigate collateral matters by way of other witnesses. Counsel testified he and Applicant did not have a difficult relationship.

Counsel testified he did not request a preliminary hearing on the arrest warrant. He also reiterated that he researched the law and found cases that held buildings for storage may be considered part of a dwelling for the purposes of Burglary, First Degree. Counsel testified he received offers from the State through emails and discovery materials. He stated the three offers were twelve years, five years, and a range of twelve to fifteen; Applicant rejected the twelve and the five year offers and only accepted the range of twelve to fifteen after an unsuccessful Jackson v. Denno hearing, immediately prior to the start of his trial.

 Applicant was recalled and testified that he only learned of the five year offer at the plea hearing.

Counsel was then recalled in sur-reply and a letter Applicant wrote to counsel was introduced which stated that Applicant would only accept an offer of eighteen months to two years' prison sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has had the opportunity to review the record in its entirety and hear the testimony presented at the PCR hearing. The Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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, 300 S.C. at 117, 385 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 (1985).

This Court finds counsel was competent and diligent in his representation of Applicant in this case. Counsel sufficiently advised Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel satisfactorily investigated this case based on the information supplied by Applicant and the evidence available. Counsel also engaged in plea negotiations that were beneficial to the Applicant, but Applicant's unreasonable position as to whether the case involved a burglary first, as well as the fact that he would only accept a sentence of less than two years, put counsel (and ultimately Applicant himself) in an untenable position. The Court also finds Applicant was well informed by counsel in this case. The Applicant expressed to the plea court that he was satisfied with counsel's representation. Moreover, Applicant admitted his guilt and accepted responsibility for his actions. Applicant pled guilty without any threat or coercion and was not under the influence of any intoxicant at the plea. Applicant also voluntarily waived the constitutional rights afforded to him. Accordingly, the Court finds the Applicant pled guilty knowingly, voluntarily, and of his own free will.

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The Court further finds Applicant's testimony regarding counsel's performance is not credible, while also finding counsel's testimony is credible. Applicant was facing a Burglary, First Degree charge due to his prior burglary convictions. He was also indicted for Burglary, First Degree because, according to the original indictment, the State intended to argue that the building the Applicant burglarized was within the curtilage of the residence and that this incident occurred at night. Whether either of these is the case is ultimately a question for the jury, but the Solicitor would certainly be allowed to argue it to the jury. This Court finds Applicant had a tough decision to make, but the decision to plead guilty was made by Applicant, in his own best interests given the circumstances, without threats or coercion from counsel or any other

individual; thus, Applicant's plea was freely and voluntarily made. The Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. As a result, this allegation of ineffective assistance is denied.

CONCLUSION

Based on the foregoing, the Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his Post-Conviction Relief Application. Therefore, this application must be denied and dismissed, with prejudice.

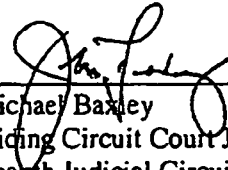
The Court hereby notifies Applicant he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has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

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed, with prejudice; and
2. Applicant must remain in custody of Respondent for completion of his sentence.

IT IS SO ORDERED.

March 6, 2014
Hartsville, SC



J. Michael Baxley
Presiding Circuit Court Judge
Sixteenth Judicial Circuit