

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Richland County

S.C. Supreme Court

J. Ernest Kinard, Jr., Circuit Court Judge

ROBERT D. SCHILLING,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-211628

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2008-GS-40-11891, 11892

The State of South Carolina,)
vs.) TRANSCRIPT OF RECORD
Robert David Schilling,)
Defendant.)

March 11, 2008
Columbia, South Carolina

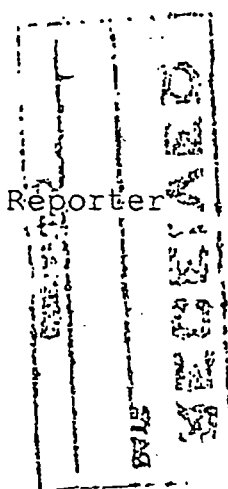
B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:
EDEN HENDRICK, ESQUIRE
Attorney for the State

JENNIFER C. DAVIS, ESQUIRE
Attorney for the Defendant

Crystal Holmes
Official Court Reporter



E X H I B I T S

1
2 NO. DESCRIPTION I.D. EVD.

3 (REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE
4 HEARING.)
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13

I N D E X

14
15 WITNESS DIRECT CROSS REDIRECT RECROSS

16 (REPORTER'S NOTE: NO WITNESSES TESTIFIED AT THE
17 HEARING.)
18
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25

1 (The Defendant, Robert David Schilling, was
2 first duly sworn.)

3 MS. HENDRICK: May it please the Court, Your
4 Honor.

5 THE COURT: Yes, ma'am.

6 MS. HENDRICK: Standing before you is Mr.
7 Robert Schilling with his attorney Ms. Jennifer Davis
8 of the Public Defender's Office. He is pleading
9 guilty to burglary second non-violent and grand
10 larceny over a thousand dollars under \$5,000.

11 Your Honor, standing with me is Investigator
12 Brian Gwyn, again of the Sheriff's Department.

13 THE COURT: Is this your day to be in Court?

14 INVESTIGATOR GWYN: It is, Your Honor.

15 MS. HENDRICK: We tried to accommodate him,
16 do everything we can at the same time.

17 THE COURT: That's fine.

18 MS. HENDRICK: Also standing with me is my
19 victim advocate, Ms. Ana Romero (phonetic) and the
20 victim in this case Mr. ---

21 THE COURT: Have I seen you somewhere before?

22 MS. ROMERO: Yes.

23 THE COURT: Not you.

24 MS. HENDRICK: Mr. Johnny James, the victim

25 ---

1 THE COURT: I don't know you, do I? You look
2 kind of familiar.

3 MR. JAMES: I don't know unless we've
4 serviced your home or something with my company.

5 THE COURT: What sort of company is it?

6 MR. JAMES: Air duct cleaning and chimney
7 sweep service ---

8 THE COURT: Oh, no, no, no. My house hasn't
9 been cleaned for 22 years. I just -- when people look
10 familiar, out of an abundance of caution I try to make
11 sure.

12 MR. JAMES: I've been -- there's five
13 Defendants, maybe I've been in front of you with one
14 of the other ones.

15 THE COURT: No, that's good.

16 MS. HENDRICK: He's been in the courthouse a
17 lot.

18 THE COURT: Okay. I'm sorry, I interrupted
19 you. You've got everybody here and go ahead and
20 finish.

21 MS. HENDRICK: Your Honor, like I said, he's
22 pleading guilty to burglary second non-violent, grand
23 larceny over a thousand but under five thousand and in
24 exchange for the plea, the Solicitor's Office is
25 dismissing an intimidation of a witness charge which

1 actually involves the same people that are here.

2 Just wanted to put that on the record.

3 THE COURT: All right.

4 All right, Ms. Davis, you represent Robert
5 Schilling?

6 MS. DAVIS: Yes, Your Honor.

7 THE COURT: Have you explained to Mr.
8 Schilling the charges contained in these two
9 indictments, the possible punishment and his rights,
10 including his constitutional right to a jury trial?

11 MS. DAVIS: Yes, Your Honor.

12 THE COURT: In your opinion, does
13 Mr. Schilling understand the charges, the punishments
14 and his rights?

15 MS. DAVIS: He does, Your Honor.

16 THE COURT: How does he indicate to you he
17 wishes to plead, guilty or not guilty?

18 MS. DAVIS: Guilty.

19 THE COURT: Do you agree with his decision to
20 plead guilty?

21 MS. DAVIS: Yes, Your Honor.

22 THE COURT: All right. From your
23 investigation of the facts and circumstances
24 surrounding these cases, do you feel that the State
25 could produce sufficient evidence to convince a jury

1 here in Richland County of Mr. Schilling's guilt
2 beyond a reasonable doubt, and if he were to stand
3 trial on these charges, his convictions would be
4 probable?

5 MS. DAVIS: Yes, Your Honor.

6 THE COURT: Has Mr. Schilling been ordered to
7 submit to a mental examination to determine his
8 competency to stand trial?

9 MS. DAVIS: No, Your Honor.

10 THE COURT: Any question in your mind that
11 Mr. Schilling is in fact competent to enter this
12 guilty plea?

13 MS. DAVIS: No, Your Honor.

14 THE COURT: You're Robert Schilling, is that
15 correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Schilling, you just heard
18 your lawyer, Ms. Davis, tell me that she has explained
19 to you the charges contained in these two indictments,
20 the possible punishments and your rights, including
21 your right to a jury trial, and that you understand
22 these things, is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Mr. Schilling, you're
25 first before me on indictment number 2008-11892, The

1 State versus Robert Schilling. This is an indictment
2 for burglary in the second degree non-violent.

3 Do you understand this charge, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: This indictment, Mr. Schilling,
6 alleges that you did here in Richland County on or
7 about October the 13th of 2007, willfully and
8 unlawfully enter the dwelling located at [REDACTED]
9 [REDACTED] without consent and with the intent to
10 commit a crime therein.

11 I thought they had been invited there?

12 MS. HENDRICK: They were -- one person was
13 allowed ---

14 THE COURT: He wasn't the one -- okay.

15 MS. HENDRICK: He was not -- and there -- no
16 one had permission to go into the actual house.

17 THE COURT: Oh, okay. You understand this
18 allegation, do you not, Mr. Schilling?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You want to plead guilty to
21 burglary in the second degree non-violent, is that
22 correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You realize that by doing so,
25 sir, you can go to jail for 15 years?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Knowing then, Mr. Schilling, that
3 you can go to prison for 15 years by pleading guilty
4 to burglary in the second degree, do you still wish to
5 plead guilty to it?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Next, Mr. Schilling, I have
8 before me indictment 2008-11891, The State versus
9 Robert Schilling, once again. This is an indictment
10 for grand larceny between one and five thousand
11 dollars.

12 Do you understand this charge, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: This indictment, Mr. Schilling,
15 alleges that you did here in Richland County on or
16 about October the 13th of 2007, feloniously take or
17 attempt to take and carry away the personal goods of
18 the victim, the value more than \$1,000, less than
19 \$5,000, with the intent to deprive the owner
20 permanently of such property, electronic equipment
21 including computers, gaming systems, camcorders, games
22 and DVD's.

23 You understand these allegations -- or this
24 allegation?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: This is what you want to plead
2 guilty to?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You realize that by pleading
5 guilty to grand larceny between one and five thousand
6 dollars, Mr. Schilling, that you can go to jail for
7 five years?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Knowing then that you can go to
10 prison for five years by pleading guilty to grand
11 larceny, do you still wish to plead guilty to it?

12 THE DEFENDANT: Yes, sir

13 THE COURT: Mr. Schilling, are you currently
14 on probation or parole for any prior convictions?

15 THE DEFENDANT: No, sir.

16 THE COURT: Mr. Schilling, I can run these
17 sentences on these two charges or indictments
18 consecutively, that is put one after the other, add
19 one to the other, sir. If I did so, you're looking at
20 20 years in the penitentiary.

21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Knowing then, Mr. Schilling, that
24 you can go to prison for 20 years by pleading guilty
25 to these two indictments, do you still wish to plead

1 guilty to them?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Mr. Schilling, when you plead
4 guilty you have to give up certain basic rights.

5 First of all, your Fifth Amendment right to remain
6 silent, which is your right against self-
7 incrimination, which is your right to say nothing at
8 all.

9 Do you understand this right, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You want to waive or give this
12 right up, is that correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Also, Mr. Schilling, when you
15 plead guilty you have to give up your constitutional
16 right to a jury trial. Now do you know and understand
17 what a jury trial is?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Do you want a jury trial?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you sure about that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Schilling, these indictments,
24 2008-11892, the burglary in the second degree, and
25 11891, the grand larceny, these indictments, Mr.

1 Schilling, have not been presented to or considered by
2 the Richland County Grand Jury. After hearing
3 evidence, 12 of the 18 members of the Grand Jury would
4 have to agree that you're probably guilty of breaking
5 into this man's house and stealing -- stealing these
6 personal items, the electronic equipment, before true
7 bills of indictments could be returned indicating that
8 these cases would be ready for trial. It's possible,
9 Mr. Schilling, that the Grand Jury could no bill these
10 two indictments which would mean that the cases
11 against you could be dismissed.

12 Now, do you want the Grand Jury to consider
13 these two indictments, Mr. Schilling, or do you want
14 to waive presentment and continue with your guilty
15 plea here and now?

16 THE DEFENDANT: I would like to continue.

17 THE COURT: You're sure about that?

18 THE DEFENDANT: Yes, sir

19 THE COURT: Now, Mr. Schilling, has anyone
20 promised you anything or has anyone threatened you in
21 any way in order to get you to plead guilty?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have there been any plea
24 negotiations?

25 MS. HENDRICK: No, Your Honor. This is a

1 straight up plea. However, the State is inclined to
2 ask for a substantial amount of jail time for this
3 and we will get into that later.

4 THE COURT: I thought you were dropping a
5 tampering with witness ---

6 MS. HENDRICK: We are dropping intimidation
7 ---

8 THE COURT: All right, that's good. Anything
9 additional, Ms. Davis, that needs to be added to the
10 record in connection with any plea negotiations or any
11 recommendations?

12 MS. DAVIS: No, Your Honor.

13 THE COURT: Do you still wish to continue to
14 plead guilty, Mr. Schilling?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, sir, are you fully satisfied
17 with the manner in which your lawyer here, Ms. Davis,
18 has advised and represented you on these charges?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you talked with her as long
21 or for as often as you feel it necessary for her to
22 properly represent you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you need any more time to talk
25 to her?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you understood your talks
3 with her?

4 THE DEFENDANT: Yes, I have.

5 THE COURT: Mr. Schilling, has Mr. Davis done
6 everything for you you feel she should do or could do
7 on your behalf in advising and representing you on
8 these charges?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has she done anything you feel
11 she should not have done?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you completely satisfied with
14 her services?

15 THE DEFENDANT: Yes, I am, sir.

16 THE COURT: Do you have any complaints, Mr.
17 Schilling, against anyone -- was this Richland County?

18 MS. HENDRICK: Yes, Your Honor, the Richland
19 County Sheriff's Department.

20 THE COURT: Any complaints, Mr. Schilling,
21 against anyone at the Richland County Sheriff's
22 Department?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you have any complaints
25 against anyone working here in the Solicitor's Office?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you right now, Mr. Schilling,
3 under the influence of any intoxicating liquors or
4 drugs?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you pleading guilty of your
7 own free will and accord?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you pleading guilty once
10 again to indictments number 2008-11892, burglary in
11 the second degree, 11891, grand larceny, sir, because
12 you did in fact here in Richland County on or about
13 October the 13th, 2007, you broke into the victim's
14 home located [REDACTED] and stole
15 electronic equipment, gaming system, camcorders, DVD's
16 and so forth?

17 You broke into the house and you stole these
18 things, is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That's why you're pleading
21 guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I think there's other Co-
24 Defendants involved but, I mean, but you along with
25 others, is that correct?

1 THE DEFENDANT: Yes, sir

2 THE COURT: All right. Very well, Solicitor,
3 I'll be happy to hear about it.

4 MS. HENDRICK: Your Honor, may it please the
5 Court. As I indicated before, this was a series of
6 events that happened over the weekend of October 12th
7 through October 14th, 2007, at the home of Mr. John
8 James at [REDACTED].

9 Your Honor, Mr. James owns a business,
10 DuctMaster that he runs out of the guesthouse and his
11 office that is located on the property but does have a
12 separate address. One of the Co-Defendants in this
13 case was given permission to stay in this guesthouse
14 and not go into the main property, not go into his
15 home. He was given permission to stay there over the
16 weekend because he needed a place to stay.

17 While he was at this guesthouse, he invited
18 several friends over on a Friday night ---

19 THE COURT: Who did? He did or some other
20 ---

21 MS. HENDRICK: No, the other Co-Defendant --
22 another Co-Defendant. This was one of the individuals
23 he invited over and came over.

24 During this Friday night, they went to
25 another employee of Mr. James's and got the company

1 credit card basically and started using that -- he did
2 not physically use it but he was aware that it was
3 being used and that they did not have permission to
4 use it. They used it several times actually in
5 Lexington County to get out money and buy -- buy crack
6 cocaine with it.

7 That night this group of five people spent --
8 spent the night smoking crack cocaine and he actually
9 stayed in a hotel that night, did not stay in the
10 guesthouse.

11 The next morning, Saturday morning the 13th,
12 they all came back to this guesthouse and one of the
13 Co-Defendants got the idea that he was going to steal
14 Mr. James's identity. So he was going through his
15 papers, going through his computer system and all of
16 that. That then progressed into this one Co-Defendant
17 deciding to go ransack this other -- the inside of the
18 house ---

19 THE COURT: Was it this -- was it this
20 gentleman?

21 MS. HENDRICK: No, this ---

22 THE COURT: Somebody else.

23 MS. HENDRICK: I'm going to get to his role
24 in a second, sorry. There's kind of a long story but
25 there are five people involved ---

1 THE COURT: All right.

2 MS. HENDRICK: --- not separate. So this one
3 Co-Defendant goes into the house and starts getting
4 papers and starts ransacking the house while they're
5 out smoking crack. This Co-Defendant comes back with
6 the other four Co-Defendants and sees what this one
7 guy has done. He's ransacked the house, destroyed the
8 house, so they decide to participate in it and decide
9 to go along with -- go along with the plan to make it
10 look like a burglary so they wouldn't know that these
11 people were involved since Mr. James knows one person.

12 So they completely destroyed the house and
13 this Co-Defendant ends up taking a Wii game system, a
14 camcorder, several computers, DVD's, several things.

15 Your Honor, if I may approach, I do believe I
16 showed this to Defense counsel. These are some
17 pictures of the destruction that was done to Mr.
18 James' house.

19 May I approach?

20 THE COURT: Yes, ma'am.

21 MS. HENDRICK: Your Honor, I do believe that
22 even after they did this destruction to the house,
23 they went back over to the guest house and spent the
24 night there.

25 THE COURT: Which side is up and which side

1 is down, I can't tell?

2 (Pause.)

3 THE COURT: Oh, sideways.

4 MS. HENDRICK: Yes, sir.

5 THE COURT: All right.

6 MS. HENDRICK: Anyway ---

7 THE COURT: All right.

8 MS. HENDRICK: So they woke up because they
9 stayed in the guesthouse that night. They went back
10 over to the house and took some more things. They
11 eventually traded all these items for crack cocaine
12 and they gave some of them to their family members.

13 Your Honor, this Co -- this Defendant
14 actually did come in and give a statement. However,
15 he was not cooperative with the police afterwards.
16 You'll hear from Investigator Gwyn actually how the
17 Defendant was finally arrested.

18 At the appropriate time I do believe my
19 victim would like to address the Court and I also, if
20 I may approach again, have a letter he's written to
21 the Judge. This has been shown to Defense counsel. I
22 know he wants to speak to you personally ---

23 THE COURT: Okay.

24 MS. HENDRICK: He wants you to see this. And
25 I will go over his record when you'd like.

1 THE COURT: How about right now?

2 MS. HENDRICK: Okay. In 1985 he has
3 receiving stolen goods, malicious injury to personal
4 property; 1987 a disorderly conduct; 1993 two counts
5 of disorderly conduct; 1996 disorderly conduct and a
6 violation of a drug law. 1998 he has driving with no
7 driver's license and an open container. In 1999 he
8 has a grand larceny and possession of cocaine first
9 and financial transaction card fraud and one count of
10 forgery. In 2001 he has possession of crack first.
11 In 2002 he has four counts of forgery, possession of
12 cocaine first. In 2003 he has another count of
13 forgery, bank fraud and a probation revocation.

14 Your Honor, he also has a federal record. In
15 2005 he has one count of conspiracy. He also had a
16 probation violation in 2005 and in 2006 he had a
17 federal counterfeiting.

18 THE COURT: Why was this part blanked out?

19 MS. HENDRICK: Your Honor, that was -- we
20 agreed to black that out. That involves the
21 intimidation of a witness charge and since he's not
22 pleading guilty to that, we agreed not -- for you to
23 read that part.

24 THE COURT: Anything else y'all agreed to
25 keep from me?

1 MS. HENDRICK: Your Honor, if you would like
2 to see the whole version ---

3 THE COURT: No, I'm just lucky -- you gave me
4 something to read and it's got a blank spot, I'm going
5 to ask why. I mean, that's fine.

6 MS. HENDRICK: Your Honor, that's because it
7 involves the ---

8 THE COURT: Okay. That's fine.

9 MS. HENDRICK: --- charge we are dismissing,
10 that's ---

11 THE COURT: Just for information.

12 Now, Mr. Schilling, you heard what the
13 Solicitor told me in terms of how this matter unfolded
14 as well as your prior record. Is that substantially
15 accurate and correct?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you agree, Ms. Davis?

18 MS. DAVIS: Yes, sir.

19 THE COURT: Very well, sir. I find that
20 there is a substantial factual basis for your plea. I
21 further find your decision to plead guilty to be
22 freely and voluntarily, knowingly and intelligently
23 made. That you've had the advice of competent counsel
24 whom you indicated to me you're completely satisfied
25 with.

1 Therefore, I will accept this plea and I will
2 be happy to hear whatever additionally you want me to
3 consider from the State.

4 MS. HENDRICK: Your Honor, if you'd first
5 hear from Investigator Gwyn. He can explain to you
6 how this Defendant was finally arrested.

7 INVESTIGATOR GWYN: Your Honor, during the
8 investigation I made contact with Mr. Schilling. He
9 voluntarily came in and gave me a statement admitting
10 to his part in the burglary. We worked out something
11 that he would try and find out information for us in
12 reference to some other crimes.

13 At that point, he decided he was going to
14 flee. He made contact with his fiancé or girlfriend
15 who is also a Co-Defendant. They had made plans to I
16 believe flee to Alabama. His ---

17 THE COURT: The stars fell on Alabama last
18 night. Go ahead.

19 INVESTIGATOR GWYN: Another Co-Defendant, Mr.
20 Barrett, was arrested on a separate incident, turned
21 himself in to me as well and at that point had given
22 us Mr. Schilling's location. Prior to that, we had
23 placed him in the Midland's Most Wanted and he had
24 actually -- when he was arrested, had cut out the
25 picture of himself in the paper ---

1 THE COURT: The Metro section?

2 INVESTIGATOR GWYN: Yes, sir.

3 THE COURT: All right.

4 INVESTIGATOR GWYN: At that point, we sent
5 the fugitive team to a motel in Lexington where he was
6 taken into custody and had apparently -- had just
7 gotten high and was very agitated and also admitted to
8 me later that while he was on the run, continuously
9 was getting high and committing other crimes.

10 THE COURT: All right.

11 MS. HENDRICK: Your Honor, in this case, like
12 I stated earlier, the State is asking for a
13 substantial amount of jail time, Your Honor, based on
14 his prior record and the serious nature of this crime,
15 we are asking for jail time.

16 THE COURT: Okay.

17 MS. HENDRICK: And I also would like for you
18 to hear from the victim ---

19 THE COURT: I will be happy to hear from you,
20 sir. Tell me your name for the record.

21 MR. JAMES: My name is Johnny James.

22 THE COURT: Johnny James.

23 MR. JAMES: Yes, sir.

24 THE COURT: All right.

25 MR. JAMES: I'm a lifelong resident of

1 Richland County. I'm a business owner here in
2 Richland County. We had gone to a family reunion in
3 Mississippi on the weekend when they -- all this
4 happened.

5 THE COURT: What part of Mississippi?

6 MR. JAMES: Biloxi, Mississippi is where my
7 mother resides.

8 THE COURT: All right.

9 MR. JAMES: Upon returning home, our house
10 was completely destroyed and I really don't even think
11 the pictures even do it justice. We were out of the
12 house for ten weeks while all the repairs were being
13 made. It's close to \$60,000 worth of just damage that
14 they did to the home, you know, in addition to there's
15 still like another \$10,000 worth of property that's
16 still missing.

17 I mean, it's not just the -- you know,
18 furniture and stuff can be replaced, you know, but
19 losing my children's first teeth, you know, that were
20 in dresser drawers are gone. Or my dead grandparents'
21 notes and cards or fire chief's badge, you know, all
22 gone. Mementos from my dead daughter that they broke
23 picture frames and stole and are gone. My youngest
24 child still cries at night because the kids -- the
25 things that were recovered were probably mostly my

1 property, power tools, you know, and some firearms.
2 You know, essentially nothing of my children's was
3 returned. You know, from what I understand he gave it
4 to some of his kids, you know, and we got a little
5 smadgen (phonetic) of it back. You know, my child
6 still cries when he walks in his room, even to this
7 day. My wife is petrified even to live in the home.

8 We're doing everything we can to try to get
9 the house together. Probably the only way we'll ever
10 have a peace of mind is to actually sell the home and
11 move.

12 You know, my -- our position -- you know, my
13 wife was too upset to even come here today. I mean,
14 she was trembling and shaking she's so scared of these
15 individuals. We literally have to escort my child up
16 to the bus stop for fear of retribution from theses
17 five individuals, you know, to this day and probably
18 always will be.

19 You know, it's our position, you know, that,
20 you know, we -- I understand, you know, some of the
21 charges are dismissed and, you know, I understand
22 that, you know, he was one of five, you know. We beg
23 and pray to the Court, you know, that he receive
24 whatever the maximum penalty that is allowed under the
25 law. I understand that it is your position, you know,

1 to hand out as you so ---

2 THE COURT: It's a balancing act for me.

3 MR. JAMES: Right. But we ask for it to be
4 maximum.

5 THE COURT: I understand, I don't blame you.
6 I would ask for -- now, I'm not going to give you what
7 you ask for but you should ask for it. And I don't
8 know what I'm going to do yet but, I mean, I
9 understand.

10 MR. JAMES: Sure, absolutely.

11 THE COURT: I understand, trust me. I've had
12 my house broken into also, so.

13 MR. JAMES: Right. Well, I mean, you know,
14 and if they had been 20 or 15 years old, I'd probably
15 be a little more understanding but not in your 40's
16 and 50's. You don't break into people's homes and
17 just destroy it. I mean, they didn't just break in
18 it, they destroyed the house. You know, we literally
19 didn't have anywhere to put up a Christmas tree for
20 the holidays, you know, staying in one room. You
21 know, it's -- it's been very traumatic and especially
22 traumatic for my family. Me, it just makes me mad.
23 Them, they're scared to death. You know, the child --
24 the child is still scared to death.

25 You know, he won't even go out and play in

1 the yard for fear of, you know, of them and their
2 friends. You know, my wife, you know, literally has
3 to escort him up to the bus stop and back, you know,
4 five days a week. It has altered our entire life
5 permanently, you know, and I hope that his is altered
6 permanently as well.

7 THE COURT: All right. Thank you, sir.

8 MR. JAMES: Thank you.

9 THE COURT: Ms. Davis, I'll be happy to hear
10 from you.

11 MS. DAVIS: Thank you, Your Honor. May it
12 please the Court.

13 Your Honor, just to touch on some of the
14 things I've heard for the first time. I've actually
15 not had information in terms of damage to the home.

16 THE COURT: What now?

17 MS. DAVIS: In terms of damage to the home,
18 the \$60,000, that's something that's new to me that I
19 have not ever heard before.

20 THE COURT: Well, I thought you had read this
21 letter before. It's all contained in here.

22 MS. DAVIS: I read that this morning, Your
23 Honor, in terms of the incident report and what
24 information was filed with the police. That was
25 certainly not something that was addressed.

1 THE COURT: Does your client dispute this?

2 MS. DAVIS: Your Honor, he does not dispute
3 being part of this burglary and taking ---

4 THE COURT: But does he dispute the amount of
5 damages? Does he dispute the pictures, they way they
6 look?

7 MS. DAVIS: No, sir, Your Honor.

8 THE COURT: All right, go ahead.

9 MS. DAVIS: Your Honor, he has been in jail
10 since November, a little over four months. In terms
11 of his record and this incident, drugs have definitely
12 played a role in his entire life, in terms of his
13 criminal record, absolutely. As the Solicitor
14 mentioned herself, that this was an incident where
15 everyone was together, they were all using drugs,
16 again, and led to this incident.

17 Your Honor, my client definitely jumped on
18 the bandwagon in this situation. He was over at the
19 house at the invitation of someone that did have
20 permission in one part of the house. Another person
21 went in the house, started burglarizing it. He went
22 along with it absolutely. He took gaming systems, he
23 admits taking them, some DVD's and a Wii game station,
24 Your Honor, and selling those to go and get crack. I
25 think they also rented a room and used drugs.

1 He has told me repeatedly that he is
2 apologetic and has apologized to the victim, to his
3 family. He understands the damage that has been done,
4 not only to the house but to the family life.

5 The property, as I understand it, 75 percent
6 of the property has been recovered. He was
7 cooperative in the beginning, did give a full
8 confession involving himself and letting the
9 Investigator know about the persons involved and what
10 they had done.

11 Your Honor, my client has had a drug problem
12 that he says is from 1996. He has maintained that he
13 has never received any drug treatment for that. He
14 would respectfully ask the Court to consider a
15 probationary sentence.

16 THE COURT: I'm not giving him probation,
17 okay.

18 MS. DAVIS: In the alternative, Your Honor,
19 we would ask for ---

20 THE COURT: Anything -- I'm sorry. Anything
21 you want to tell me, Mr. Schilling?

22 THE DEFENDANT: Your Honor, I'd like to
23 apologize to the James family first of all. As far as
24 the damage and stuff to the house, that was done prior
25 to when I stepped in on this and I took a few items at

1 the end. I have a Co-Defendant that did this and to
2 be honest with you, I was scared at the time and
3 that's -- I shouldn't have even involved myself in it
4 but I have -- and I'm not downplaying it at all. I'm
5 sorry that it happened. I had a minimum role in it at
6 the end and I am responsible and I apologize.

7 THE COURT: All right. And what's the status
8 of the other four Co-Defendant's, Solicitor?

9 MS. HENDRICK: The other Co-Defendant's all
10 have pending charges, this is the first one. I don't
11 even believe -- he hasn't even had his second
12 appearance so this is kind of an early plea in the
13 track system. He was willing and ready to get this
14 plea over with. The others haven't even come up for a
15 second appearance yet, Your Honor. So we're still in
16 negotiations. They are all probably going to ---

17 THE COURT: Plead.

18 MS. HENDRICK: To similar charges.

19 THE COURT: All right. This is somewhat
20 problematic for me because I don't know where he fits
21 on the scale of one to five. But what I'm going to do
22 is this. I'm going to take the plea. I'm going to
23 defer sentencing until I see what happens to the other
24 Co-Defendants and I can sort it out in my own mind
25 what would be a fair sentence for him. I don't want

1 to nail him and the others get off light, and that
2 sort of thing.

3 MS. HENDRICK: I can let you know that one
4 Co-Defendant is actually charged with a burglary first
5 degree and financial identity fraud. He is the one I
6 described who first went into the house and first did
7 all those things ---

8 THE COURT: Well, this is what I am going to
9 do. I'm going to accept the plea, defer sentencing
10 until I see how it all shakes out. Whatever happens,
11 they should be fed out of the same bowl with the same
12 spoon. And it's sort of hard to try to do this but I
13 mean it's fair to him, it's fair to him and everybody
14 else involved. That's what I'm going to try to do.

15 MS. HENDRICK: Yes, Your Honor.

16 THE COURT: So, I might see you again. I may
17 not be the Judge that hears this but I want to see
18 what happens to the other four before I impose the
19 sentence on him. Sort of get an idea so everybody can
20 be treated fairly. It's not always easy to do but
21 that's what I'm going to try to do. And I think you
22 understand why.

23 And once again, I -- unless you've had your
24 home broken into, people really don't know how bad it
25 is and I understand what it's like. It takes you a

1 while to get over it and one day I hope that you will
2 get over it.

3 And so I don't want to sentence him under the
4 circumstances where -- not a mob atmosphere but, I
5 mean, emotions and all that. Let's calm down and see
6 what happens to the other Co-Defendants and what his
7 role was compared to the other four and that way I can
8 better -- be fair to him as well.

9 That's what I'm going to do. Thank you all
10 so very much for your presentations. I don't
11 necessarily want to keep it but I think, after hearing
12 all this, it's the fair thing to do.

13 MS. HENDRICK: Thank you, Your Honor.

14 THE COURT: Thank you all.

15 ---- END OF TRANSCRIPT OF RECORD ----

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Crystal Holmes, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and Complete Transcript of Record of the proceedings had and evidence introduced in the guilty plea of the captioned case, relative to appeal, in the Court of General Session for Richland County, South Carolina, on the 11th day of March, 2008.

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

December 27, 2010


Crystal Holmes, Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2008-GS-40-11891, 11892
2009-GS-40-1566, 1552

State of South Carolina,)
) Plaintiff,)
) vs.) TRANSCRIPT OF RECORD
) Robert Schilling,)
) Defendant.)
_____)

April 29, 2009
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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

L. EDEN HENDRICK, ASSISTANT SOLICITOR
Attorney for The State

JENNIFER C. DAVIS, ESQUIRE
Attorney for the Defendant

CRYSTAL HOLMES
Official Court Reporter

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E X H I B I T S

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NO. DESCRIPTIONI.D. EVD.

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

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(REPORTER'S NOTE: NO WITNESSES TESTIFIED AT THE
HEARING.)

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3 WEDNESDAY, APRIL 29, 2009:

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THE CLERK: Raise your right hand.

5

(The Defendant was first duly sworn.)

6

MS. HENDRICK: May it please the Court.

7

THE COURT: Sure.

8

MS. HENDRICK: Your Honor, standing before you is Mr. Robert Schilling. He's represented by Ms. Jen Davis of the Public Defender's Office.

11

Your Honor, he was before Your Honor back on March 11th of 2008 when he entered a straight up guilty plea to the count of burglary second degree and grand larceny.

15

Your Honor, you deferred sentencing because you wanted to see what some of the other co-defendants, the sentence they received and what happened with that. However, in the meantime, he was inadvertently released from the jail. We had a hearing to try to get him to come back in and turn himself back in. We sent notice to the appropriate places and to his lawyer. He did not come and turn himself in so a bench warrant was issued for him.

24

Your Honor, subsequently when he was out on basically bench warrant status or when he was

25

1 mistakenly released from the jail, he was rearrested
2 on two separate charges. He is also here for that
3 guilty plea. One of those charges is possession of a
4 controlled substance and identity fraud. He gave a
5 different name to the jail when he was on bench
6 warrant status so the bench warrant was never served
7 on him because the jail did not realize it was
8 actually him.

9 He was then again released back into the
10 community and he was subsequently rearrested I think
11 ---

12 THE COURT: You know, for a small town and a
13 very simple person, you make it complicated -- but go
14 ahead.

15 MS. HENDRICK: He was arrested again in
16 December in Lexington County for some other charges
17 and at that point the bench warrant was served on him.

18 So, Your Honor, we're here today for the
19 sentencing of the plea that was taken on March 11th
20 last year ---

21 THE COURT: All right.

22 MS. HENDRICK: --- and then the new plea for
23 the charges that occurred ---

24 THE COURT: Time out. So I'm here to
25 sentence him on the pleas that I accepted back when

1 you said I did on grand larceny between a thousand ---

2 MS. HENDRICK: 1,000 and 5,000, yes, Your
3 Honor.

4 THE COURT: And a burglary second?

5 MS. HENDRICK: Yes, Your Honor.

6 THE COURT: All right. And the new charges
7 are identity fraud which carries 10 years and
8 possession of a controlled substance which carries
9 ---what was the substance?

10 MS. HENDRICK: It carries 30 days. It was
11 residue of crack cocaine.

12 THE COURT: Okay, all right.

13 MS. HENDRICK: We've -- it was charged --
14 we've reduced it to that because of the amount.

15 THE COURT: So we've got identity fraud,
16 that's 10 years, 30 days on the new charge, is that
17 correct?

18 MS. HENDRICK: Yes, Your Honor.

19 THE COURT: Are we all on the same page now?

20 MS. DAVIS: Yes, sir.

21 THE COURT: All right. Did you swear him?

22 THE CLERK: Yes, sir.

23 THE COURT: All right. Ms. Davis you
24 represent obviously Robert Schilling?

25 MS. DAVIS: Yes, Your Honor.

1 THE COURT: Have you explained to Mr.
2 Schilling the charges contained in these two
3 indictments and the possible punishments and his
4 rights, including his constitutional right to a jury
5 trial?

6 MS. DAVIS: Yes, Your Honor.

7 THE COURT: In your opinion, does Mr.
8 Schilling understand the charges, the punishments and
9 his rights?

10 MS. DAVIS: He does, Your Honor.

11 THE COURT: How does he indicate to you he
12 wishes to plead, guilty or not guilty?

13 MS. DAVIS: Guilty.

14 THE COURT: Do you agree with his decision to
15 plead guilty?

16 MS. DAVIS: Yes, Your Honor.

17 THE COURT: From your investigation of the
18 facts and circumstances surrounding these case, do you
19 feel that the State could produce sufficient evidence
20 to convince a jury here in Richland County of Mr.
21 Schilling's guilt beyond a reasonable doubt, and if he
22 were to stand trial on these charges his conviction
23 would be probable?

24 MS. DAVIS: Yes, Your Honor.

25 THE COURT: Now, has Mr. Schilling been

1 ordered to submit to a mental examination to determine
2 his competency to stand trial?

3 MS. DAVIS: No, sir, Your Honor.

4 THE COURT: Any question in your mind at this
5 stage that Mr. Schilling is in fact competent to enter
6 this plea?

7 MS. DAVIS: No, Your Honor.

8 THE COURT: All right. You're Robert
9 Schilling, is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Schilling, before I can
12 accept your plea of guilty, it's necessary for me to
13 make sure that you're making this plea freely and
14 voluntarily. To do that, sir, I need to ask you a
15 series of questions. At any point during my
16 questioning of you, if you do not understand anything
17 that I say or any words that I use, please stop me. I
18 will be more than happy to repeat or explain anything
19 I say.

20 Mr. Schilling, additionally, I will be more
21 than happy to stop this plea and allow you as much
22 time as you feel you may need to consult with your
23 lawyer Ms. Davis, do you understand, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How old are you Mr. Schilling?

1 THE DEFENDANT: 43.

2 THE COURT: How far did you go in school?

3 THE DEFENDANT: I got a GED.

4 THE COURT: All right. What kind of work do
5 you do?

6 THE DEFENDANT: Machinest.

7 THE COURT: All right. Mr. Schilling, have
8 you ever been treated for the abuse of alcohol or
9 drugs or for mental illness?

10 THE DEFENDANT: No, sir, I have not, sir.

11 THE COURT: All right. Have you taken any
12 medications, drugs or alcohol in the past 24 hours?

13 THE DEFENDANT: No, sir.

14 THE COURT: Are you today aware of any
15 physical, nervous or emotional problem that might keep
16 you from understanding what you're doing?

17 THE DEFENDANT: No, sir.

18 THE COURT: You know what you're doing, Mr.
19 Schilling, is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, you agree, Ms. Davis,
22 Mr. Schilling knows, understands and appreciates what
23 he's doing this afternoon?

24 MS. DAVIS: Yes, Your Honor.

25 THE COURT: Now, Mr. Schilling, you heard

1 your lawyer Ms. Davis tell me that she has explained
2 to you the charges contained in these two indictments,
3 the possible punishments and your rights, including
4 your right to a jury trial and that you understand
5 these things, is that correct?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: Mr. Schilling, you're before me
8 on indictment number 2009-1566, The State versus
9 Robert Schilling. This is an indictment for identity
10 fraud.

11 Do you understand these charges, sir?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Excuse me. This indictment, Mr.
14 Schilling, alleges that you did here in Richland
15 County on or about July the 2nd of 2008, without
16 authorization or permission, used the victim's
17 personal identity information with the intent to avoid
18 identification by a law enforcement officer, criminal
19 justice agency or another government agency, including
20 but not limited to law enforcement, detentions and
21 correctional agencies or facilities.

22 Do you understand this allegation?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: You want to plead guilty to
25 identity fraud, is that correct?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Now, who's name did he take?

3 MS. HENDRICK: He took Larry Burkhalter's
4 (phonetic) name.

5 THE COURT: I'm not trying to be funny, it's
6 not in the indictment. That's why I was confused.

7 MS. HENDRICK: I'm sorry, Your Honor. You
8 want me to add his name?

9 THE COURT: Well, it probably would be a good
10 idea.

11 (Pause.)

12 THE COURT: And so the State has moved to
13 amend to reflect the victim's name. There's no
14 objection from the Defense, is that correct, Ms.
15 Davis?

16 MS. DAVIS: No objection, Your Honor.

17 THE COURT: So let me back up, Mr. Schilling.
18 It should read that you did here in Richland County on
19 or about July 2nd of 2008, without permission, use the
20 victim's personal identity, that's Larry...

21 MS. HENDRICK: Burkhalter. You want me to
22 spell it?

23 THE COURT: No, no, no. I just can't --
24 Larry Burkhalter, with the intent to avoid
25 identification by law enforcement officers, criminal

1 justice agency -- I just wanted to make sure Larry
2 Burkhalter's name was in there.

3 You understand this allegation, do you not,
4 Mr. Schilling?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You realize that by doing so,
7 sir, you can go to jail for 10 years?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Knowing this, sir, that you can
10 go to prison for 10 years by pleading guilty to these
11 charges, do you still wish to plead guilty?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. Next, Mr. Shilling, I
14 have before me indictment number 2009-1552, The State
15 versus Robert Schilling. This is an indictment for
16 possession of a controlled substance. It alleges that
17 you did here in Richland County on or about July 2nd
18 of 2008, possess or attempt to possess a quantity of
19 crack cocaine, residue is what it says. They're
20 letting you plead to a 30 day offense.

21 Do you understand this?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Knowing then, sir, that you could
24 go to jail for 30 days by pleading to this drug
25 charge, do you still wish to plead guilty?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Now, are you currently on
3 probation or parole for any prior offenses?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: All right. Now several things.
6 First of all, the sentences I deferred are indictment
7 numbers 2008-11891, that was grand larceny between 1
8 and \$5,000, that carries 5 years. And indictment
9 number 2008-11892, burglary second, that carries 15
10 years.

11 So you're facing 20 years on these two
12 indictments that I'm here to sentence you on. When
13 you add that 20 to 10 and 30 days, you're looking at
14 30 years and 30 days in the penitentiary on all four
15 of these indictments.

16 Do you understand that, sir?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Knowing then, sir, that you could
19 go to prison for 30 years and 10 days -- I think --
20 it's 30 days (sic) and 10 days -- 30 years and 30
21 days. Excuse me.

22 (Pause.)

23 THE COURT: So, you know you're looking at 30
24 years and 30 days. Knowing that, you still want to
25 plead guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you know I'm sending you to
3 jail, I'm sure?

4 THE DEFENDANT: Yes, sir. Yes, sir.

5 THE COURT: It's a matter of how long I'm
6 sentencing you.

7 Now, Mr. Schilling, when you plead guilty you
8 have to give up certain basic rights. First of all,
9 your Fifth Amendment right to remain silent. Now this
10 is your right against self-incrimination, Mr.
11 Schilling, this is your right to say nothing at all.
12 No one can compel you to come into court to provide
13 evidence or to testify against yourself.

14 Do you understand this, sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Secondly, Mr. Schilling, when you
17 plead guilty, you have to give up your constitutional
18 right to a jury trial. Now, do you know and
19 understand what a jury trial is?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you want a jury trial?

22 THE DEFENDANT: No.

23 THE COURT: That's where 12 people from here
24 in Richland County were to meet, the Solicitor would
25 present evidence, you and Ms. Davis can present a

1 defense if you want to. All 12 would have to agree
2 that you were guilty on these two indictments and if
3 all 12 don't agree then we have a mistrial.

4 You understand all this?

5 THE DEFENDANT: Yes ---

6 THE COURT: Do you want a trial?

7 THE DEFENDANT: No, sir.

8 THE COURT: Thirdly, Mr. Schilling -- I'm
9 sorry. When you plead guilty, you give up your right
10 to confront and to be confronted by the witnesses
11 against you, that is your right to see, hear and
12 cross-examine any witnesses the State may call to
13 testify against you during the trial.

14 And in addition, Mr. Schilling, by pleading
15 guilty you give up your right to subpoena and call
16 witnesses on your own behalf, that is someone may
17 testify for you.

18 Do you understand this?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Fourthly, Mr. Schilling, and
21 these indictments 2009-1566, identity fraud, and 1552,
22 that's possession of a controlled substance, the 30
23 day offense, and since -- and I might as well cover
24 them all again since I'm here. Let's go back through
25 them for the sake of clarity.

1 The original indictments, I'm sure I had you
2 waive them but I'll do it again. 2008-11892, that's
3 the burglary first that I'm going to sentence you on.
4 2008-11891, the grand larceny I'm going to sentence
5 you on. I'm sure you waived presentment -- all four
6 of these indictments could go to the Grand Jury where
7 12 out of the 18 members of the Grand Jury would have
8 to agree that you were probably guilty of all four of
9 these charges before a true bill of indictment could
10 be returned indicating that these cases would be ready
11 for trial. Now it's possible, Mr. Schilling, that the
12 grand jury could no bill these indictments which would
13 mean that the case against you could be dismissed.

14 Do you want the grand jury to consider these
15 indictments, the two you're pleading before me here
16 today, and the other two you've already waived on
17 them, or do you want to waive presentment to all of
18 them and continue with your guilty plea here and now?

19 THE DEFENDANT: I'd like to continue.

20 THE COURT: Are you sure about that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, have you understood these
23 rights I've just mentioned to you, Mr. Schilling?

24 THE DEFENDANT: Yes, I have, Your Honor.

25 THE COURT: Do you understand that when you

1 plead guilty you have to give up these constitutional
2 rights?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And is that what you want to do?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: You want to give up your
7 constitutional rights?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Now you realize you will not
10 receive a jury trial on any of these four indictments
11 you're pleading guilty to?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And once again, Mr. Schilling,
14 you're pleading guilty to identity fraud which carries
15 10 years and the possession of a substance, 30 days.
16 The burglary second carries 15 years, the grand
17 larceny carries 5 years. And I've indicated to you
18 already that's 30 years in jail -- 30 years and 30
19 days in jail.

20 Now, you're giving up all your constitutional
21 rights, Mr. Schilling. Considering what I just said
22 to you about the time you're facing and everything,
23 and giving up all your constitutional rights, I'll ask
24 you once again. How do you wish to plead to these
25 charges, guilty or not guilty?

1 THE DEFENDANT: Plead guilty.

2 THE COURT: Realizing, Mr. Schilling, of
3 course, when you plead guilty you admit the truth of
4 the allegations contained in these four indictments
5 against you.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: I tell that you because you may
9 have some defenses to these charges. Of course, I
10 have no way of knowing that but you need to realize
11 that by pleading guilty here today, you're giving up
12 any defenses you might have.

13 Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Additionally I tell you that
16 because when you were arrested by the -- was it the
17 Sheriff's Department?

18 OFFICER: Yes, sir.

19 THE COURT: Richland -- I wish I was -- I
20 think the cough drop is making it worse, excuse me.

21 (Pause.)

22 THE COURT: I tell you that, Mr. Schilling,
23 because when you were arrested by the Sheriff's
24 Department, you may have given some type of
25 incriminating statement, that is basically an

1 admission or confession about your guilt. You need to
2 realize that by pleading guilty here today you waive
3 your right to later on challenge or contest that you
4 gave any statements or whether or not they were taken
5 or obtained from you freely and voluntarily in
6 accordance with your constitutional right.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: So, Mr. Schilling, I ask you once
10 again, did you commit these offenses?

11 THE DEFENDANT: Yes, I did.

12 THE COURT: So once again you're telling me
13 you're pleading guilty to indictment 2009-1566,
14 identity fraud, because you stole Larry Burkhalter ---

15 MS. HENDRICK: Burkhalter.

16 THE COURT: Burkhalter's identity on or about
17 July 2nd of 2008. I think you used it at the jail or
18 somewhere?

19 MS. HENDRICK: Yes, Your Honor, when he was
20 booked into the jail he gave Mr. Burkhalter's
21 identifying information.

22 THE COURT: And you're pleading guilty-once
23 again to indictment number 2009-1552, possession of a
24 controlled substance, looks like residue of crack
25 cocaine because back on July 2nd, 2008 you had some

1 residue on you.

2 THE DEFENDANT: Yes, sir, I did.

3 THE COURT: And you've already plead guilty
4 to these others.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, have there been any plea
7 negotiations?

8 MS. HENDRICK: No, Your Honor, this is a
9 straight up plea.

10 THE COURT: Anything additional, Ms. Davis,
11 that needs to be added to the record in connection
12 with any plea negotiations or recommendations?

13 MS. DAVIS: No, sir, Your Honor.

14 THE COURT: Do you still wish to continue to
15 plead guilty, Mr. Schilling?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Now, sir, has anyone promised you
18 anything or has anyone held out any hope of reward in
19 order to get you to plead guilty?

20 THE DEFENDANT: No, Your Honor.

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

23 THE DEFENDANT: No, sir.

24 THE COURT: Has anyone used any pressure or
25 intimidation to cause you plead guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you had enough time to make
3 up your mind as to whether or not you wanted to plead

4 ---

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Are you pleading guilty of your
7 own free will and accord?

8 THE DEFENDANT: Yes, I am.

9 THE COURT: All right, Mr. Schilling, are you
10 satisfied with the manner in which your lawyer here,
11 Ms. Davis, has advised and represented you on these
12 charges?

13 THE DEFENDANT: Yes, sir.

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

17 THE DEFENDANT: Yes, I have.

18 THE COURT: Do you need more time to talk
19 with her?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you understood your talks
22 with her?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Schilling, has Ms. Davis done
25 everything for you you felt she should do or could do

1 on your behalf in advising and representing you on
2 these charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has she done anything you feel
5 she should not have done?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you completely satisfied with
8 her services?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: Do you have any complaints, Mr.
11 Schilling, against anyone at the Richland County
12 Sheriff's Department?

13 THE DEFENDANT: No, sir.

14 THE COURT: Any complaints against anyone who
15 works here in the Solicitor's office?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you understood my questions,
18 sir?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: Is there anything you want to ask
21 me about what I just went over with you, anything at
22 all?

23 THE DEFENDANT: No, sir.

24 THE COURT: Mr. Schilling, you realize that
25 you have a right to appeal this guilty plea and

1 whatever sentence I may impose upon you but if you're
2 going to appeal you need to file a notice of intent to
3 appeal within 10 days of today's date.

4 Do you understand this, sir?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And once you're at the Department
7 of Corrections, Mr. Schilling, you may find out or
8 feel that Ms. Davis -- that you have some complaints
9 against Ms. Davis, against the Solicitor's office or
10 against the Richland County Sheriff's Department or
11 anyone else involved in your case, you need to make
12 those complaints known by filing a post conviction
13 relief application within one year of today's date.

14 Do you understand that, sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right. I see, Ms. Davis, you
17 don't write your name any better now than you did then.
18 You need to try to improve it so we can read it.

19 MS. DAVIS: I will. I will work on that,
20 Your Honor.

21 THE COURT: You know, I was the one that came
22 up with the idea to make people use bar numbers --
23 because you can't read anybody's signatures. That's
24 the only way to make sure you can identify them.

25 MS. DAVIS: Yes, sir.

1 THE COURT: So I know you were educated in
2 Minnesota?

3 MS. DAVIS: Yes, sir.

4 THE COURT: So try to write your name better
5 (laughter). Thank you.

6 MS. HENDRICK: May it please the Court. Do
7 you want me to go back over the facts of the burglary
8 ---

9 THE COURT: Yeah, you might as well refresh
10 me.

11 MS. HENDRICK: Thank you, Your Honor. May it
12 please the Court. Those events happened ---

13 THE COURT: You're going to give him a chance
14 to do something, right? I don't want him to just
15 stand there.

16 MS. HENDRICK: He can give them if you like
17 but I can give them a well.

18 THE COURT: Well, go ahead, go ahead, go
19 ahead.

20 MS. HENDRICK: Your Honor, this -- he can
21 step in if I miss anything. It happened the weekend
22 of October 13th through 14th of 2007 at [REDACTED]
23 [REDACTED]. Your Honor, his co-defendant, Mr. Robert
24 Barrett (phonetic), was employed by the victim of the
25 burglary. He is Mr. Johnny James. He's present in

1 the courtroom today.

2 He ran a business out of his house and Mr.
3 Robert Barrett was allowed in the guest house office
4 portion of his house. Mr. James went out of town for
5 that weekend and allowed Mr. Barrett to stay in the
6 guest portion of the house, not to go into his
7 actually home.

8 Over the course of the weekend, Mr. Barrett
9 ---

10 THE COURT: Is this Mr. Barrett.

11 MS. DAVIS: No, sir.

12 MS. HENDRICK: No, sir, this is Mr.
13 Schilling.

14 THE COURT: No, no, no, the gentleman back
15 there?

16 MS. HENDRICK: This is -- this is Mr. Johnny
17 James, the victim in the case.

18 THE COURT: All right.

19 MS. HENDRICK: Robert Barrett's the co-
20 defendant.

21 THE COURT: All right. All right, I'm sorry.

22 MS. HENDRICK: Mr. Barrett was allowed in the
23 guest house. He invited several friends over to
24 include Mr. Schilling to his house and they actually
25 eventually left the guest house and went into the

1 actual residence portion of Mr. James's home.

2 THE COURT: This happened over in Olympia
3 (phonetic) somewhere?

4 MS. HENDRICK: No, Your Honor, it happened in
5 Saint Johns Road. Where is ---

6 OFFICER: Which is White Rock, Ballentine
7 area.

8 THE COURT: Okay, I'm sorry.

9 MS. HENDRICK: The first two people to
10 actually enter the home were a co-defendant named Paul
11 Spires (phonetic) and Mr. Barrett. They went into the
12 home and stole several financial identity documents
13 and actually Mr. Paul Spires is now pending financial
14 identity fraud. He actually applied for a loan in Mr.
15 James's name.

16 Once they got all of that equipment and all
17 that information, they decided to actually break into
18 the actual home of Mr. James. And when they went into
19 the home they basically destroyed it. They say in
20 some of their statements they destroyed the home to
21 make it look like a robbery so Mr. James would not
22 know that Mr. Barrett was actually involved. They
23 caused an extensive amount of damage and stole
24 numerous items.

25 At some point, Mr. Schilling came back to the

1 house that day and realized what happened and he
2 decided, you know, instead of telling anyone what
3 happened or stopping it, to actively again participate
4 in a burglary. At that point he went into the home
5 and stole several items including DVD's, a computer,
6 several things like that and took them out of the home
7 and actually eventually traded them for crack cocaine.

8 I do have pictures of the extensive amount of
9 damage that was done to the house. I've showed -- I
10 probably showed these to you at the last plea.

11 THE COURT: I think you did.

12 MS. HENDRICK: I don't know. Yeah, I think
13 you went through them all. I just want to show you
14 the extensive amount of damage ---

15 THE COURT: Yeah, I remember seeing them now.

16 MS. HENDRICK: --- that this individual and
17 the other individuals caused.

18 Your Honor, we deferred ---

19 THE COURT: Was somebody from Charlotte
20 involved in this? Nobody, all right.

21 OFFICER: (The witness shakes head.)

22 THE COURT: I'm confusing some cases, go
23 ahead.

24 MS. HENDRICK: Part of the reason for
25 deferring the sentences was you wanted to know ---

1 THE COURT: What happened to the co-
2 defendants ---

3 MS. HENDRICK: --- co-defendant ---

4 THE COURT: --- treat them about the same.

5 MS. HENDRICK: Yes, Your Honor. Brian Adams
6 (phonetic) who was charged with the same thing, pled
7 guilty in front of Judge Goode. He received three
8 years suspended upon three years probation

9 THE COURT: Well ---

10 MS. HENDRICK: Ms. Tammy ---

11 THE COURT: --- go ahead.

12 MS. HENDRICK: --- Davis pled guilty in front
13 of Judge Childs and received ---

14 THE COURT: Sammy Davis?

15 MS. HENDRICK: Yes.

16 THE COURT: Sammy Davis?

17 MS. HENDRICK: Tammy Davis.

18 THE COURT: All right, Tammy Davis.

19 MS. HENDRICK: Received a four year sentence.

20 And Robert Barrett, who we would submit to the Court
21 is one of the most culpable co-defendants along with
22 this co-defendant received a 10 year sentence.

23 The fifth co-defendant Paul Spires, I'm not
24 the Solicitor on that case so that case is still
25 pending.

1 THE COURT: That's all right, at least just
2 give me a fair -- I know ---

3 MS. HENDRICK: And, Your Honor, I can -- I
4 know Mr. James does want to address the Court at the
5 appropriate time. I can very briefly go over the new
6 cases which are ---

7 THE COURT: Go ahead.

8 MS. HENDRICK: --- self-explanatory, Your
9 Honor. He was stopped for a no tag light. The
10 officer smelled alcohol, performed a search in the
11 car. He was found with crack cocaine residue on him.

12 The other case -- when he was booked into the
13 jail for the crack cocaine charge, he produced Mr.
14 Larry Burkhalter's identifying information. He was
15 booked into the jail under that name.

16 THE COURT: All right.

17 MS. HENDRICK: So those are the basic facts
18 of the new cases. I would like to go over his prior
19 record.

20 THE COURT: Go ahead.

21 MS. HENDRICK: Okay. In 1985 he had a
22 receiving stolen goods, malicious injury to personal
23 property, 1987 disorderly conduct, 1993 dis -- two
24 counts of disorderly conduct, 1996 another count of
25 disorderly conduct and violation of a drug law. In

1 1998 he had a driving without a license and open
2 container. 1999 he had a grand larceny and possession
3 of cocaine first and a financial transaction card
4 fraud and a forgery count.

5 In 2001 he had possession of crack first. In
6 2002 he had four counts of forgery and one count of
7 possession of cocaine first. In 2003 he had a forgery
8 and a bank fraud and a probation revocation.

9 He also has a federal record. In 2005 he had
10 conspiracy and a probation violation. And in 2006 he
11 had a counterfeiting charge.

12 It is my understanding that he now has more
13 pending federal charges. He was arrested in Lexington
14 for several counts of forgery. It is my understanding
15 as of today that Lexington has sent those charges
16 federal.

17 Your Honor, we are here to ask Your Honor
18 that he be treated equal to the co-defendant of Robert
19 Barrett if not more because of the new charges.

20 THE COURT: That's why I delayed sentencing.

21 MS. HENDRICK: Exactly, Your Honor, and I
22 think law enforcement is in agreement with that.-

23 THE COURT: Please, let him say something.

24 MS. HENDRICK: Please say thing.

25 OFFICER: We're just -- we are in the same

1 boat where we want him to get equal or if not more
2 because he was let out and committed more crimes while
3 he was out.

4 THE COURT: All right. That's fair, that's
5 fair.

6 MS. HENDRICK: And, Your Honor, if you would
7 please hear from Mr. James.

8 THE COURT: Let me make sure now. I don't
9 know what I'm going to do yet. I'll decide in a few
10 minutes. But that's your prior record what they've
11 read to me?

12 THE DEFENDANT: That's my record.

13 THE COURT: And that's pretty much how it all
14 happened? Is it close to it? Help me understand.

15 THE DEFENDANT: I'm not equally involved with
16 this. I'm with the other guy, I'm with Brian Adams.
17 I was -- this Paul Spires is the one who did this
18 burglary. I knew about it of course. I knew I was
19 involved and my statement reflects the truth.
20 Everybody's pretty much told the truth.

21 THE COURT: All right.

22 THE DEFENDANT: I made a bad mistake and took
23 something after the fact when I was there. I did not
24 see Mr. Spires steal the two loads of stuff from Mr.
25 James but I was there. I was with Mr. Barrett ---

1 THE COURT: Okay. Hold on. I'm going to
2 give you a chance to explain and ask for mercy but
3 substantially it all went down the way it's been
4 revealed to me today?

5 THE DEFENDANT: It's been revealed but -- to
6 that -- in that order not necessarily. I'm not --
7 this Mr. Barrett, I didn't have anything to do with
8 all that.

9 THE COURT: Okay.

10 THE DEFENDANT: The destroying of the house,
11 I took a couple of items because I knew Mr. Spires
12 pretty much got me a charge by stealing ---

13 THE COURT: Uh-huh.

14 THE DEFENDANT: --- us being there, we're all
15 going to be charged. And I took something.

16 THE COURT: Well, you are guilty of what you
17 pled to guilty to ---

18 THE DEFENDANT: Yes.

19 THE COURT: That's all I care about. I find
20 there's a substantial factual basis for your plea, Mr.
21 Schilling. I further find your decision to plead
22 guilty to be freely, voluntarily, knowingly and
23 intelligently made. That you had the advice of
24 competent counsel with whom you indicated to me you're
25 completely satisfied with.

1 Therefore, I will accept this plea. But I'll
2 give you a chance to try to talk me into a lower
3 sentence but we'll see if Mr. ---

4 MS. HENDRICK: Mr. Johnny James.

5 THE COURT: Yes, Mr. James.

6 MR. JAMES: Your Honor, my name is Johnny
7 James.

8 THE COURT: Yes, Mr. James.

9 MR. JAMES: Yes, sir. Since he has pled
10 guilty, you know, just the final numbers have finally
11 been crunched from the insurance company of all the
12 damage to our house and home. I don't even know if
13 the Solicitor has the final number. The damage to the
14 home itself was \$43,000. The damage to the contents
15 was \$26,000. The loss of contents was over \$20,000.

16 And, you know, he pled guilty back, you know,
17 a year ago. And part of when I was here before is they
18 had dismissed a witness harassment because we had
19 received -- we had had threatening phone calls from
20 the individual. Since he was mistakenly released,
21 basically our home and, you know, has been on a
22 lockdown so to speak. We don't let the child go out
23 to the mailbox by himself or anything else, you know.

24 So we do ask for -- he has actually been
25 worse to us than any of the defendants, this one

1 before you today. You know, the Brian Adams guy, he
2 probably was just a tagalong. This gentleman here,
3 which wasn't mentioned in court today, he's the one
4 who stole every child's toy out of our home and gave
5 it to his kid and they had to go and take -- and I
6 feel sorry for his kid, take all these toys back from
7 his kid and bring them back to mine. You know, it's
8 just deplorable.

9 He is very much guilty and, you know, to hear
10 him up here today to try to defend that as he is a
11 less party guilty is insulting really. He has pled
12 guilty to it. He knows he did it. He knows what he
13 did wrong. You know, my child is scarred for life,
14 you know. It took us 14 months to put our home back
15 together. We were out of our home for four months
16 while they repaired the damage. You know, I don't --
17 you know, I don't really think he understands the
18 depth of how much it affected our lives, you know.

19 And I know, Your Honor, you hear a lot of
20 cases. I just wanted to make sure that, you know, the
21 voice was spoken for me and my children and my wife
22 here today.

23 THE COURT: I understand. Thank you, sir.

24 MR. JAMES: You're more than welcome.

25 THE COURT: Anything further from the State?

1 MS. HENDRICK: I will say this, he was
2 eventually -- initially charged with intimidation of a
3 witness. However that charge was dismissed when he
4 pled guilty to the burglary charges. That was just
5 something I think he alluded to. But that was
6 dismissed when he pled guilty.

7 THE COURT: All right. Ms. Davis.

8 MS. DAVIS: Thank you, Your Honor, may it
9 please the Court. I think some of the confusion or
10 explanation of what Mr. Schilling is trying to explain
11 is, he has taken full responsibility for the burglary
12 and for the grand larceny that he took part in. He
13 gave a statement to that effect of everything he did.
14 I think he's getting a little frustrated today just
15 because he feels like he is -- was not the most
16 culpable of the three because he came in after the
17 fact of the initial burglary and damage and then took
18 the items.

19 He knows that's not ---

20 THE COURT: I think the hand of the one, like
21 the Bible says.

22 MS. DAVIS: Yes, sir, Your Honor. I think
23 part of the other reason he's getting frustrated is
24 just him and Mr. James do know each other and they
25 have done, I guess, drinking and socializing and

1 things like that ---

2 MR. JAMES: (The witness shakes head.)

3 THE COURT: Mr. James is shaking his head
4 saying he ---

5 MR. JAMES: Your Honor, I have ---

6 THE COURT: Stop, relax, calm down, relax.

7 MS. DAVIS: In any event that's ---

8 THE COURT: Just relax, Mr. James.

9 MS. DAVIS: Mr. Schilling just wanted that to
10 be apparent, Your Honor.

11 All of this, his entire record, Your Honor,
12 and this has come from a drug problem. He's been
13 addicted to crack since 1996. He's never gotten any
14 help from that -- or for that and this was just
15 another result of doing that. They had all been
16 drinking and doing drugs that day and clearly people
17 don't make good decisions when they're doing -- are
18 under the influence of those things, Your Honor.

19 He is facing federal charges at this point.
20 Lexington has sent -- or federal -- the feds have
21 picked up the charges from Lexington. I think what
22 his actual charge is going to be is conspiracy to
23 other false securities so he is facing -- or will be
24 facing additional federal time that will run
25 consecutive to whatever happens here today.

1 THE COURT: Well, you know, people of this
2 state never thought very much of the federal
3 government to pay any attention. Go ahead.

4 MS. DAVIS: Your Honor, he -- I know he would
5 like to address the Court.

6 THE COURT: All right.

7 MS. DAVIS: I know with the federal sentence
8 he will get a minimum of one year drug treatment class
9 while he's doing it but he is facing more time than
10 that.

11 There is credit that he -- since from
12 November 29th to March 26th of '08 was his period of
13 incarceration and credit for these charges. And I
14 know he would like to request that Your Honor give him
15 credit from February of '09 as well when the warrants
16 were served on him and the bench warrant was served on
17 him in Lexington.

18 At this time, Your Honor, I think he would
19 like to address the Court.

20 THE COURT: All right, Mr. Schilling, be
21 happy to hear from you, sir.

22 THE DEFENDANT: First I want to apologize to
23 Mr. James. I wish this would have never happened. We
24 was at the house. We've met at the house in the past.
25 Like I said, Mr. Barrett worked for him. I'd be over

1 there at times.

2 This whole thing went bad. I got involved in
3 it at the end. As far as any damage, I did not do one
4 cent of damage to this man's house. I wouldn't have
5 done that. I -- all I know is when we woke up in the
6 guest house, I was told, look what Paul Spires did. I
7 looked and I said, oh, let's get out, we've got to get
8 out of here. I -- Paul was nowhere to be found. Mr.
9 James was on his way home.

10 And I understand he's mad. I can understand
11 that totally. There's no excuse. I pled guilty to
12 the charge. I -- I was there. But I want the Court
13 to know I had nothing to do with the damage to the
14 home. And I did take a couple of items at the end of
15 -- when we left.

16 THE COURT: All right.

17 THE DEFENDANT: And that's -- and I
18 apologize.

19 THE COURT: All right. Anything further?

20 MS. DAVIS: No, sir, Your Honor.

21 THE COURT: On indictments number 2008-11891,
22 this is for grand larceny 1 to \$5,000, 2009-1450 --
23 I'm sorry, 1552, this is possession of -- 2009-1552,
24 possession of controlled substance, 30 days.

25 On indictments number 2008-11891 and 2009-

1 1566, identity fraud, sentence to five years.

2 On indictment number 2008-11892, burglary
3 second degree, sentence to 12 years.

4 These sentences are to run concurrent to one
5 another. He will be given credit for time served.
6 Good luck to you, Mr. Schilling.

7 MS. HENDRICK: May approach, Your Honor, with
8 the bench warrant to vacate?

9 THE COURT: Sure. Thank you all.

10 ----- END OF TRANSCRIPT OF RECORD -----

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CERTIFICATE OF REPORTER

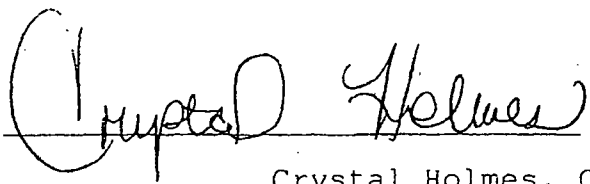
STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Crystal Holmes, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 29th day of April, 2009.

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

August 24, 2009

A handwritten signature in cursive script that reads "Crystal Holmes". The signature is written over a horizontal line.

Crystal Holmes, Court

Reporter

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Robert David Schilling

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

#294085

vs.

The State of South Carolina

Name of Respondent.

County of Richland

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
RICHLAND COUNTY
2009 JUN 24 AM 11:53
JANETTE W. BRIDGE
C. C. P. & G.S.

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 it clear to which question any such continued answer refers.

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

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

1. Place of detention Kirkland Correctional Institution
E-A-1-8 - Not R+E - Cadre inmate
2. Name and location of Court which imposed sentence Richland County Judicial Center - 1701 Main St Columbia SC 29202
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2008-65-40-11892 Burglary 2nd Degree - NON-Violent
 - (b) 2008-65-40-11891 Grand Larceny \$1000.00 - 5000.00
 - (c) 2009-65-40-1566 Identity Fraud
 - 2009-65-40-1582 Poss. Controlled Substance
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 29th 2009 - 12 years concurrent
 - (b) " " " 5 years
 - (c) " " " 5 years
 - (D) " " " 30 days

5. Check whether a finding of guilty was made

- (a) after a plea of guilty ✓
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

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

yes - Dismissing Appeal - June 17th 2009 - not pursuing

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

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

- i. Richland Co. Court Filed and Clocked May 20th 2009
 ii. Sending notice of dismissal with PCR Application
 iii. _____

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

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

(c) the date of each such result:

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

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

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

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

- (a) Decided to Apply For Post Conviction Relief
 (b) _____
 (c) _____

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

- (a) Ineffective Counsel
 (b) Deferred Sentence - per Judge Manning
 (c) Excessive Sentence - too much time
 (D) Detective Brian Gwyn - Allowing false Allegations by Victim

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

- See Back (a) was advised that the judge was aware of my victims - over
 See Back (b) Judge Manning - was mis informed to the original - ON
 See Back (c) Judge Manning - told me that he would sentence - Back
 OF
 page
 (D) Detective Gwyn, Richland Co. Sheriff's Office. Allowing
Victim to state things against me that are knowingly
not true. Also I can prove that Detective has
had a problem with a co-defendant in the past
and there is record of that incident. Also Allow
Victim to state charges to the Judge that I was

- 10(A) Nature and he stated things to the Court that did not occur. I was originally told that I would receive a sentence range between 3-5 years. My lawyer said that prior to pleading, the Solicitor as well as ~~the~~ herself talked to the Judge and made him aware of the Victims' grand standing in this case. Basically in short, the original transcript of my guilty plea March 11, 2008 and my Sentencing date of April 29th 2009 will reflect the lack of representation during these hearings. My lawyer obviously allowed things to be said that she knowingly knew to be false. That resulted in my lengthy sentence. Let these (2) transcript records be evidence in this case.
- 10(B) Facts of the case at the sentencing phase without the correct information. This resulted in my sentence.
- 10(C) me according to my level of involvement based on my co-defendants (4) four pleadings. Different versions of my involvement was said than initially stated at my guilty plea March 11, 2008. Please allow these transcripts to reflect these false allegations.
- 10(D) not charged with. Please allow these (2) two transcripts to support these points.
-

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

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

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

(a) the specific nature thereof:

- i. Motion to reconsider Sentence
 ii. _____
 iii. _____
 iv. _____

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

- i. Richland Co Clerk of Court
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. denied - I received a notice of Appeal dated
 ii. May 20th 2009. This indicated that the Motion
 iii. was filed May 7th 2009 denied May 18th 2009 and the
 iv. Order denying dated May 19th

(d) the date of each such disposition:

- i. MAY 18th 2009 Denied
 ii. _____
 iii. _____
 iv. _____

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

- i. ONLY information I received said that No hearing
 ii. was held but the motion was denied on May 18th 2009
 iii. _____
 iv. _____

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

NO

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) Ineffective Counsel - unable to obtain

(b) NW Counsel these grounds need to be

(c) raised in my PCR case

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

(a) your arraignment and plea? yes

(b) your trial, if any? N/A

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

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

i. Jennifer Davis - Richland Co. Public Defenders Office

P.O. Box 192 - Columbia SC 29202

ii. _____

iii. _____

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

i. Guilty plea - March 11th 2008

ii. Sentencing date - April 29th 2009

iii. _____

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

I would ask that the Court look at this case to include both transcripts and sentence me according to my level of involvement like (2) of my co-defendants 3-5 year range

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

NO

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Robert D. Schilling #294085, 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.

Robert D Schilling

SWORN to and subscribed before me this 17THday of JUNE, 2009

Sylvia Jones
Notary Public

(L.S.)

My Commission Expires: 1/24/2018

RICHLAND COUNTY
FILED
2009 JUN 24 AM 11:53
JEANETTE W. McBRIDE
C.C.P. & G.S.

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

I, Robert D. Schilling #294085, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Robert D Schilling
Applicant

SWORN or affirmed to and subscribed before me this

17TH day of JUNE, 2009

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2009-CP-400-4441
SCHILLING Robert D, # 294085,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed 6/24/2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was (according to the application) represented by Jennifer Davis, Esquire. On 4/29/2009, the Applicant pled guilty before The Honorable L. Casey Manning. The Applicant had been indicted and/or pled guilty to the following: Grand Larceny, Burglary (After 1/20/85) 2nd Degree, Poss. of a Controlled Substance and Identity Fraud - (08-40-11891;92;09-40-1552;). According to the South Carolina Department of Corrections, the Applicant is serving a 12 year sentence for "Burglary-2nd Deg/non-viol."

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

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

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

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

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

IV.

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

V.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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March 19, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2009-CP-400-4441

Robert D. Schilling, 294085

Applicant,

vs

State of South Carolina,

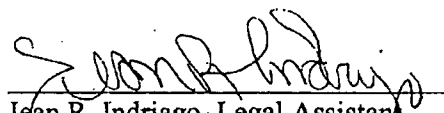
Respondent.

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

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

Tynika Claxton, Esquire
Post Office Box 50
Blythewood, South Carolina 29016

DATED this 30th day of March, 2010.


Jean R. Indriago, Legal Assistant
For Respondent

State of South Carolina

Court of Common Pleas

County of Richland

2009-CP-40-04441

Robert D. Schilling

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

January 10, 2012

Columbia, South Carolina

B E F O R E:

The Honorable J. Ernest Kinard, Jr., Judge.

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

Lee W. Zimmerman, Esquire
Attorney for the Applicant

Brian T. Petrano, Esquire
Attorney for the State

Daphne D. Helms
Circuit Court Reporter

I N D E XWitnessJennifer C. Davis

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Robert D. Schilling

Direct Examination by Mr. Zimmerman.....20

1 **Mr. Petrano:** Next would be Mr. Schilling.

2 **The Court:** Okay.

3 **Mr. Petrano:** Thank you, Your Honor. May it please the
4 Court? This is Mr. Robert D. Schilling. It's a Richland
5 County P.C.R., 2009-CP-40-04441, a P.C.R. application filed
6 June 24th, 2009.

7 He pled guilty in front of Judge Manning. He was
8 represented -- excuse me. That guilty plea was on
9 April 29th, 2009. He had appeared prior to that point and
10 pled guilty. The actual sentencing was on April 29th, which
11 you should have both transcripts in your packet, Your Honor.

12 He was represented by Ms. Jennifer Davis. I just wanted
13 to explain one small thing. In your packet you will see an
14 order from Judge Cooper.

15 **The Court:** I saw that.

16 **Mr. Petrano:** It's a very small Form 4. It speaks for
17 itself. I -- unless you want any further information, I'm
18 not going to---

19 **The Court:** No, I read it.

20 **Mr. Petrano:** Okay. There were four charges. 2008-GS-
21 40-11891 was a grand larceny, 1,000 to 5,000. That was one
22 of the deferred-sentence issues. He received five years for
23 that. 11892 was a second degree burglary. He received
24 12 years. 1552 was a possession of a controlled substance.
25 He got 30 days for that. And 1566 was an identity fraud and

1 he received five years, ultimate aggregate sentence being
2 12 years. Thank you, Judge.

3 **Mr. Zimmerman:** May it please the Court? Your Honor,
4 I'm Lee Zimmerman, appointed counsel for this P.C.R. hearing.
5 Mr. Schilling -- if I could just make it clear, Mr. Schilling
6 is not challenging the plea that he put in on all the
7 charges. He's challenging the sentencing of it. I'd like to
8 call Jennifer Davis to the stand.

9 **The Court:** And just so I'll understand, Mr. Zimmerman,
10 how is he challenging the sentencing? What's his position?

11 **Mr. Zimmerman:** His position is that certain items were
12 either brought forward in sentencing that were not objected
13 to that should have been objected to, and the statements by
14 the sentencing judge should have been inquired into and were
15 not inquired into.

16 **The Court:** Okay. All right.

17 Jennifer C. Davis, after being duly sworn,
18 testified as follows:

19 Direct Examination

20 By Mr. Zimmerman:

21 Q. Good morning, Ms. Davis. How are you?

22 A. Good morning. I'm fine.

23 Q. Can you state your full name, please?

24 A. Jennifer Catherine Davis.

25 Q. And what's your current position?

1 A. I'm the deputy public defender.

2 Q. Okay. And back in 2008 and 2009, were you also in that
3 position?

4 A. Back then I think I was an assistant public defender but
5 the same office.

6 Q. And were you representing Robert Schilling in his plea
7 and sentencing?

8 A. Yes, sir.

9 Q. Now, the first plea hearing was on March 11th, 2008? Is
10 that to the best of your---

11 A. I'm sure that's right.

12 Q. And do you remember what the charges were in that first
13 plea hearing?

14 A. I remember -- I believe it was the burglary second and
15 the grand larceny. I think at that time Judge Manning had
16 deferred sentencing, and then we came back at a later date to
17 finish sentencing and there were two additional charges at
18 that time that he pled to.

19 Q. Was there anything unusual about that plea hearing?

20 A. I wouldn't say unusual. Judge Manning, you know, will
21 defer sentencing from time to time. In that case I think he
22 stated that he wanted to -- Mr. Schilling was one of the
23 several co-defendants, and I believe that Judge Manning had
24 indicated he wanted to see what other co-defendants received
25 in sentencing before giving Mr. Schilling his sentence.

1 Q. Okay. Now, do you remember in that hearing it came up
2 about another charge being dismissed as part of the plea?

3 A. I think at that time there might have been the
4 intimidating a witness charge.

5 Q. Okay. Can you -- do you have any background on that?

6 A. I mean, I vaguely remember. I mean, it stemmed from the
7 victim in the burglary. I believe it was Mr. -- I can't
8 remember the victim's name now, but they had called in and
9 indicated that Mr. Schilling had been harassing or
10 intimidating them in some way and that led to the arrest
11 warrant.

12 Q. But that was dismissed; is that right?

13 A. Right.

14 Q. So do you know what the sentence would be for
15 intimidation of a witness charge?

16 A. I believe it's zero to ten.

17 Q. And would that -- if that had been in the case, do you
18 think that would have had an impact on the sentencing?

19 A. If he had been additionally pleading guilty to that
20 charge?

21 Q. Yes.

22 A. I'm sure the judge would have taken into consideration
23 additional charges, sure.

24 Q. So it may have influenced the judge's decision whether
25 there was this additional charge or not.

1 A. That it was being dismissed during the plea?

2 Q. No, if it had not been dismissed. If---

3 A. Oh, sure.

4 Q. If it had been presented about the intimidation of a
5 witness, do you think that would have influenced the
6 sentencing of Mr. Schilling?

7 A. Sure. I mean, I think if there's additional charges,
8 I'm sure that's something the judge would take into
9 consideration.

10 Q. So it was kind of important that that be dismissed when
11 it came to his ultimate sentencing; is that correct?

12 A. I'm not really sure how to answer it. I don't know
13 exactly what Judge Manning would have done had it stayed, if
14 it would have changed the sentence. I mean, certainly
15 additional charges I think would have -- you know, a judge
16 would have taken that into consideration had he said, "Yes, I
17 was intimidating someone,"---

18 Q. Okay.

19 A. ---as opposed to it being dismissed. Sure.

20 Q. Now, you mentioned about deferred sentencing.

21 A. Uh-huh.

22 Q. Do you know how many co-defendants there were?

23 A. I think there were three other co-defendants. I know
24 there was a Bob Barrett, I think Paul Spires, and the --
25 there's a third I know that I think got the lowest---

1 Q. Mr. Adams?

2 A. Yeah, Brian.

3 Q. And was there also a female co-defendant?

4 A. Yes.

5 Q. So four?

6 A. Four, right, plus Mr. Schilling.

7 Q. Now, they were not all there to plead or anything. It
8 was just Mr. Schilling; is that right?

9 A. Yes, sir. He was the -- he was there alone and he was
10 the first of the group to go before the judge.

11 Q. Okay. Now, the burglary of these five defendants, do
12 you know who it was that actually broke into the victim's
13 house?

14 A. As I remember -- I haven't read through the discovery
15 again, but from my memory, I believe it was Mr. Barrett who
16 had had permission from the victim to stay in one part of the
17 house or a separate house, that they were not supposed to go
18 in the main house, and my understanding was always that Mr.
19 Barrett had gone into that home and started, you know, a
20 burglary, kind of ransacking the place, and at some point the
21 others, you know, joined in at some point and took some items
22 from the house.

23 Q. Okay. Is it your understanding that Mr. Schilling was
24 not one of the people who initially went into the house?

25 A. Mr. Schilling's statement always was -- the police -- I

1 believe his statement was that he had come in after some
2 damage had already been done and took a few items. I can't
3 remember exactly what items but that he came in after it had
4 already started.

5 Q. And isn't that exactly what the solicitor testified or
6 talked about in the plea?

7 A. I believe so. I don't have the transcript,
8 unfortunately.

9 Q. Now, how about at the plea session in March of 2008?
10 The victim testified; is that right?

11 A. Yes.

12 Q. Was that -- is that unusual in a plea situation?

13 A. No, not at all. I mean, it depends on each case.
14 Certain victims will want to address the Court; some don't.
15 But he definitely did.

16 Q. Do you remember what the victim appeared to be most
17 upset about?

18 A. I don't, honestly. I know -- I remember he was very
19 upset and appeared at all the appearances, but I don't
20 remember---

21 Q. Do you remember any testimony about the amount of
22 damages that were done to his house?

23 A. Yes, thousands -- I think he -- thousands and thousands
24 of dollars he said was -- was damaged.

25 Q. Did he appear upset about that?

1 A. He was extremely upset; yes, sir.

2 Q. And was he upset about this intimidation of a witness?

3 A. I don't remember exactly. I don't have the transcript;
4 I apologize. But I remember in general he was very upset and
5 angry.

6 Q. Did his testimony, do you think, have any impact on the
7 judge?

8 A. I would assume. I mean, I can't say for sure, but it
9 was -- he was definitely very angry that day.

10 Q. Now, you said the sentence was deferred?

11 A. Yes, sir.

12 Q. And then there was another plea and sentencing hearing
13 about a year later; is that correct?

14 A. Correct.

15 Q. Okay. And there were some more charges that Mr.
16 Schilling pled to?

17 A. Yes, sir. I think there was a---

18 Q. Do you remember those?

19 A. I think there was an identity fraud case and a
20 controlled substance.

21 Q. Okay. And do you happen to remember what the max
22 punishment was for both of those?

23 A. The controlled substance I believe was zero to six
24 months. I.D. fraud -- identity fraud case, I think it was
25 zero to ten years, I believe.

1 Q. Okay. And do you know what the identity fraud matter
2 consisted of?

3 A. I honestly don't remember right now.

4 Q. Let me just ask you if it had anything to do with when
5 he was arrested appearing at the detention center?

6 A. Yes, sir. Yes, sir.

7 Q. And can you...

8 A. Gave a different---

9 Q. Does that refresh your memory?

10 A. Yes, sir. I mean, I just remember it was when he was
11 down there and I believe he gave someone else's name.

12 Q. Is there -- do you remember any other times when he
13 could have been charged with identity fraud? Let me -- let
14 me rephrase that. As far as you're aware, is that the only
15 identity fraud fact that was being pled to in that case?

16 A. As far as I remember, yes.

17 Q. You don't remember anything about using credit cards or
18 going out and getting loans or anything like that? If you
19 don't remember, that's fine.

20 A. I don't remember, honestly. I apologize.

21 Q. Now, during that second sentencing -- and he pled guilty
22 to those two charges.

23 A. Yes, sir.

24 Q. And was that -- did you discuss that with him?

25 A. Yes, sir. We talked about that.

1 Q. Okay. Now, during that second -- the sentencing -- now,
2 once again, why was the sentencing taking place a year later?

3 A. I mean, I don't know exactly why it was a year later. I
4 remember Judge Manning deferred the sentencing. He wanted to
5 see what other co-defendants were given before he sentenced
6 Mr. Schilling.

7 Q. Okay. And during that second sentencing hearing, did
8 this intimidation of a witness charge -- was that discussed
9 again? Do you remember?

10 A. I don't remember. I would assume so, in terms of it
11 being dismissed, but I don't remember at what -- at what
12 length.

13 Q. Did you ever object to that being brought before the
14 judge since it was dismissed?

15 A. I don't believe I did.

16 Q. And during that sentence, the second sentencing hearing,
17 do you remember whether or not pictures of the damage were
18 presented to the judge?

19 A. I do remember. I think the solicitor handed up some
20 photographs of -- of the damage to the house.

21 Q. Now, you indicated that Judge Manning was deferring
22 sentence until he found out what other co-defendants may have
23 been sentenced to. Is that correct?

24 A. Right. That was my memory is he -- there was multiple
25 co-defendants, and he indicated he wanted to see what they

1 might get before he was sentenced.

2 Q. Do you remember any of the sentences for the other
3 co-defendants?

4 A. I remember I believe Mr. Barrett got ten years. I think
5 Mr. Adams, I think, had the lowest sentence. I think he had
6 probation possibly or three years, something I know
7 definitely lower. I'm not sure what Mr. Spires received.

8 Q. And the female? Ms. Davis?

9 A. I don't remember what she got, but I know it was less
10 than -- I'm sure it was less than Mr. Schilling, from my
11 memory.

12 Q. Could it have been four years?

13 A. That sounds right.

14 Q. And once again, Mr. Barrett, you said, got ten years.

15 A. Yes, sir.

16 Q. And you don't know about Mr. Spires?

17 A. I don't remember him.

18 Q. Do you remember whether or not there was any information
19 about Spires being sentenced?

20 A. At the time of Mr. Schilling's sentencing?

21 Q. At the time of this sentencing.

22 A. I'm not sure honestly.

23 Q. Now, at the sentencing -- at this sentencing hearing,
24 did the victim testify again? Do you remember?

25 A. I don't remember, but I would assume so. He was at --

1 there were multiple court dates, and I believe he was at
2 every one of them, and more often than not he would address
3 the judge, so I would assume so.

4 Q. During the first plea hearing, do you remember Judge
5 Manning making any statements concerning his house having
6 been broken into?

7 A. I don't, off the top of my head, but I -- he must have.

8 Mr. Zimmerman: Your Honor, can I approach the witness?

9 The Court: All right. Now, I've read all the
10 transcripts.

11 Mr. Zimmerman: Okay.

12 The Court: I mean, I'm not quite through with the
13 second one.

14 Mr. Zimmerman: Okay.

15 The Witness: I believe it might have been in response
16 to the victim speaking.

17 By Mr. Zimmerman:

18 Q. If I can show you page 25 of the first transcript.

19 A. Sure.

20 Q. And if you want to start maybe at the top with Mr. James
21 and read through the highlighted portion.

22 A. (The witness reads to herself.)

23 Q. If you could just read that out loud for the record.

24 A. Oh, sure. Mr. Or, I'm sorry, the Court says, "It's a
25 balancing act for me." Mr. James says, "Right, but we ask

1 for it to be the maximum." The Court: "I understand. I
2 don't blame you. I would ask for -- now, I'm going to give
3 you what you asked for, but you should ask -- I'm not going
4 to give you what you asked for, but you should ask for it and
5 I don't know what I'm going to do yet. I mean, I

6 understand." Mr. James: "Sure. Absolutely." The Court:
7 "I understand. Trust me. I've been -- I've had my house
8 broken into also."

9 Q. Okay. So the line, "I understand. Trust me. I've had
10 my house broken into," also by the Court, did that not raise
11 any red flags in your...

12 A. I mean, I didn't object to it. At the time, no,
13 obviously. I mean, I didn't object so...

14 Q. If I could ask you to look at page 30 from that
15 transcript and read the highlighted portion that was also a
16 statement made by Judge Manning.

17 A. "And once again, I -- unless you've had your home broken
18 into, people really don't know how bad it is, and I
19 understand what it's like. It takes you awhile to get over
20 it, and one day I hope that you will or I hope that you will
21 get over it."

22 Q. And you also didn't raise---

23 A. I did not object.

24 Q. ---any issue about that.

25 A. No, sir.

1 Q. I take it you didn't ask Judge Manning to inquire more
2 into that statement and perhaps recuse himself from the
3 sentencing because of his statements about that?

4 A. No, sir, I did not do that.

5 Mr. Zimmerman: I don't have anything else, Your Honor.

6 The Court: All right.

7 Cross-Examination

8 By Mr. Petrano:

9 Q. Ma'am, do you -- can you explain how it works for us?
10 Was he out on bond because he was sentenced -- he pled, but
11 then he was out for a year until he was sentenced?

12 A. I believe what happened: He was sentenced or -- I'm
13 sorry. He was -- pled guilty and sentence was deferred. At
14 that time the intimidating a witness charge was still in
15 place, I think, and that was holding him -- that was what was
16 holding him in jail. He had not posted a bond on that. So
17 when that charge was dismissed, the jail did release him at
18 that time. So he was out on bond when he came back in for
19 the sentencing.

20 Q. Okay. And I guess that's -- as described at the
21 sentencing hearing, that was basically a goof-up by the
22 detention center?

23 A. (Witness nodded head affirmatively.)

24 Q. He wasn't supposed to be released without the proper
25 bond for the proper charge. I'm not being very articulate.

1 A. I mean, my -- I'm not sure exactly what happened. I---

2 **The Court:** She doesn't remember. I read the
3 transcript. He was -- according to the transcript, he was
4 released inadvertently. They had to -- he was supposed to
5 report back in. He refused to report back in. He committed
6 two more crimes, and they issued a bench warrant for him.

7 **Mr. Petrano:** Thank you, Your Honor. That was the
8 background I was trying to set up.

9 **The Court:** Yeah.

10 By Mr. Petrano:

11 Q. When that new charge comes in, how -- does your system
12 downstairs at the P.D.'s office just say, "Oh, look, Ms.
13 Davis is already representing this person; let's add those
14 new charges"?

15 A. If it works correctly, then, yes. It would come back---

16 Q. Okay. And that was---

17 A. It would go back to the attorney that has an open file
18 already on the client; yes, sir.

19 Q. Okay. That's what I was trying to get at.

20 A. Yes.

21 Q. So when the new charges came in, you already knew about
22 everything else.

23 A. Right.

24 Q. He's still your client.

25 A. Right.

1 Q. Always was all along.

2 A. Right.

3 Q. There's just something else that gets stacked.

4 A. Right.

5 Q. Okay. Did you meet with him and discuss the charges,
6 all of them?

7 A. Yes, sir.

8 Q. Okay. I've got a couple of mechanical questions, for
9 the record.

10 A. Sure.

11 Q. Did you go over the discovery materials with him?

12 A. Yes, sir.

13 Q. Okay. And did you discuss the potential penalties with
14 him?

15 A. Yes, sir.

16 Q. Were there any promises or deals?

17 A. In terms -- I don't believe so. I think it was a
18 straight-up, other than the intimidating a witness had been
19 dismissed.

20 Q. And I believe a concurrent time agreement?

21 A. Yes, sir.

22 Q. Okay. But as far as the actual term of years for the --
23 it would have been the second degree burglary. That was zero
24 to 15 or whatever it is.

25 A. Yes, sir.

1 Q. Straight up.

2 A. It was a straight-up.

3 Q. Okay. There has been a couple of questions regarding
4 Judge Manning's comments to the victims talking about his
5 house being broken into. Do you remember that? Did that
6 strike any concern to you or was that basically -- I'm just
7 going to -- I hope I'm phrasing this correctly. Was that
8 just the judge, you know, being a judge and trying to talk to
9 everybody and please everybody?

10 A. At the -- I mean, I didn't object to it. I honestly
11 didn't remember it until it was brought up. I did remember
12 that it was in response to the victim and that he was upset
13 about the burglary happening but at the time...

14 Q. At the time you didn't see any problem with it or you---

15 A. I mean, it didn't rise to the level that I objected to
16 that but -- no, sir.

17 Mr. Petrano: Thank you. Nothing further.

18 Mr. Zimmerman: Nothing further with this witness, Your
19 Honor.

20 The Court: Okay. You can step down.

21 Mr. Zimmerman: Could I have just a minute to talk to my
22 client?

23 The Court: Sure.

24 (Whereupon, an off-the-record discussion takes place
25 between Mr. Zimmerman and Mr. Schilling.)

1 **Mr. Zimmerman:** I'd like to call Mr. Schilling to the
2 stand.

3 **The Court:** All right.

4 Robert D. Schilling, after being duly sworn,
5 testified as follows:

6 Direct Examination

7 By Mr. Zimmerman:

8 Q. Mr. Schilling, can you state your full name, please?

9 A. Robert David Schilling.

10 Q. And you're currently incarcerated?

11 A. Yes, sir.

12 Q. And where is that?

13 A. Campbell Pre-release Center.

14 Q. And earlier you heard me say -- tell the judge that you
15 were not challenging the pleas that you put in, that you were
16 challenging the sentencing. Is that correct?

17 A. That's correct. Yes, sir.

18 Q. And, in fact, you pled in this case before any of the
19 other co-defendants; is that correct?

20 A. I was the first one to plead, yes.

21 Q. Okay. Now, do you also understand that if you're
22 successful today that there's a possibility, if you go to
23 another hearing for sentencing, your sentence could be more
24 than it was originally? Do you understand that?

25 A. Yes, I do.

1 Q. You're willing to go with that today?

2 A. Yes, I am.

3 Q. Okay. Now, you pled guilty to four offenses; is that
4 right?

5 A. Correct.

6 Q. Okay. And how many co-defendants or how many other
7 people were involved?

8 A. There was four others than myself.

9 Q. Okay. And can you explain the events leading up to the
10 victim's house being broken into?

11 A. Mr. Barrett worked for the victim, Johnny James, and Mr.
12 Barrett invited us over to the guest house. Mr. James was
13 out of town for the weekend. I believe Mr. Barrett said he
14 had permission for him, you know, to be in the guest house
15 which is also his office for his business. And the four of
16 us went over there with Mr. Barrett, and at one point I had
17 left. We was there, like I said, for the weekend. I had
18 left after the first night, came back the following day, the
19 day Mr. James was to come back into town.

20 And Paul Spires -- this is the main co-defendant in this
21 case as far as the burglary. I think he was charged
22 initially with first degree burglary. Him and Mr. Barrett
23 ransacked Mr. James' home. At that point I panicked. I
24 admitted my role in the crime. I took a few items from the
25 home thinking Paul Spires will get blamed for this. I'm not

1 thinking about me being a burglar. I'm 46 years old. I have
2 never done anything to this magnitude. You know, I know I
3 did the wrong thing. I involved myself, but at that point I
4 believed I was involved. I would be charged.

5 Q. Mr. Schilling, were you -- can you clarify a little bit
6 more about where you were when the actual damage to the house
7 occurred?

8 A. Myself and Tammy Davis and Brian Adams was not at the
9 house the evening the burglary actually happened. The way I
10 understand it, Mr. Spires took Mr. James' van, one of his
11 work vans, and took loads of stuff -- you know, his
12 belongings off. When we returned to the home the next day, I
13 was -- you know, Mr. Barrett says, "Look what Paul has done."
14 So, of course, like I said, at that point that's when I
15 involved myself. I had been at the house. It was known that
16 I was there for the weekend. I knew that I was going to be
17 charged as, you know, all of us were going to be charged, and
18 I involved myself with an actual theft from the home.

19 I pled guilty to second degree burglary. I felt that
20 zero to 15 -- I'd take my chances with that, that, you know,
21 the judge can do whatever, and I was under the understanding
22 that I really wouldn't, you know, get a harsh sentence to the
23 point that I had a minimum role. Judge Manning deferred the
24 sentence until all co-defendants plead, wanting to be fair in
25 my sentencing.

1 As far as me being released from jail, yes, the
2 intimidation of a witness charge had been dismissed in lieu
3 of the plea. That was a \$95,000 bond. I was already on a
4 \$90,000 bond that was still in effect for the burglary. When
5 the intimidation charge was dismissed, the jail, if you want
6 to say inadvertently released me -- they had nothing else to
7 hold me for. There was no charge to hold me, so I was
8 released. The judge did not remand me to custody during the
9 sentencing phase.

10 Yes, I caught another charge when I was out. I lied who
11 I was. I probably could have got a D.U.S. which I ended up
12 getting that ticket anyway after they figured out that I
13 lied. I was driving. I got a -- I lied, said who I was. I
14 went to jail. The transcript says that I lied to the jailers
15 to keep from getting a bench warrant served on me. There was
16 no bench warrant. I was arrested July 2nd for the -- the
17 controlled substance charge. I lied who I was; yeah, I did
18 that. The bench warrant wasn't issued until the 24th of that
19 month, so I really -- I wasn't wanted at that point.

20 Q. Okay. What -- so as far as the identity theft, was that
21 limited to giving wrong information?

22 A. I lied -- yeah, I gave the wrong information who I was.
23 Exactly.

24 Q. You didn't take out any loans---

25 A. No.

1 Q. ---in that person's name or any financial---

2 A. No, nothing like that.

3 Q. Now, what was your relationship to the victim? Is that
4 Mr. James?

5 A. Personally I didn't have a relationship to Mr. James. I
6 knew who he was, of course. He worked -- my friend worked
7 for him. You know, I'd be at the house once in awhile with
8 Mr. Barrett. You know, usually when he's getting off work
9 I'd come over and pick up Mr. Barrett; we'd leave. I may
10 have spoke to Mr. James a few times, but we had no actual
11 relationship, no.

12 Q. Do you have any reason why Mr. James in the sentencing
13 portion of this matter said that he felt you were one of the
14 -- you were the most culpable defendant?

15 A. Again, I don't understand that. It's explained that Mr.
16 Barrett and Mr. Spires was the main two. I was an after-the-
17 fact defendant. A year later Judge Manning asked for the
18 facts, where do I stand, and that was what was basically
19 told. I feel like I was replaced for Mr. Spires, as he to
20 this day has not pled guilty. He has not been sentenced on
21 this charge. It may have been dismissed; I don't know. I
22 understand he was working for law enforcement in other things
23 to get rid of that crime, so I don't know what his status is.

24 Q. Now, what -- what's your understanding of what Mr.
25 Barrett got for the burglary?

1 A. Mr. Barrett was given ten years.

2 Q. Okay. And do you know what the other two...

3 A. Brian Adams was given three years. It says probation,
4 but, no, he did three years and Tammy Davis did four.

5 Q. Okay.

6 A. She had a -- she had a violation of probation, and they
7 ran that all together and gave her four years.

8 Q. Okay. So there's three, four, and ten.

9 A. Correct.

10 Q. And you don't know if Mr. Spires has even been sentenced
11 yet.

12 A. I don't know.

13 Q. And what did you receive from Judge Manning?

14 A. Twelve years. I was -- it was asked that I be compared
15 to Robert Barrett and to give me a couple of additional years
16 since I got in trouble while I was out on bond.

17 Q. Is there anything else you would like to tell the judge?

18 A. As far as the ineffective assistance of counsel, I feel
19 that maybe more of this could have been explained at the
20 sentencing phase. When I was compared to Mr. Barrett, that
21 shouldn't have even been said. I didn't plead under them
22 circumstances. I pled guilty, but Judge Manning wanted to
23 know what my level was. I don't feel he was given that right
24 information.

25 **Mr. Zimmerman:** Nothing further, Your Honor.

1 **Mr. Petrano:** No questions, Judge. Thank you.

2 **The Court:** All right, Mr. Schilling. You can step
3 down.

4 **Mr. Zimmerman:** Your Honor, I don't have any more
5 witnesses. I do have just some portions of the transcript
6 I'd like to point out where I think it indicates that Ms.
7 Davis could have during the sentencing -- during the plea and
8 the sentencing raised some objections that by not doing so
9 left a misimpression with Judge Manning that resulted in him
10 getting 12 years when other co-defendants that he knew about
11 received three, four, and ten years.

12 **The Court:** Okay. But do you have the background of the
13 other defendants?

14 **Mr. Zimmerman:** No, Your Honor.

15 **The Court:** Well, like Mr. Schilling, in '85 receiving
16 stolen goods, malicious injury to personal property, in '87
17 disorderly conduct. '93, distribution. '96, disorderly
18 conduct, drug law. '98, driving without a license, open
19 container. '99, grand larceny and possession of cocaine
20 first and financial transaction card. 2001, possession of
21 crack. 2003, forgery, bank fraud, probation revocation.
22 Federal record: Conspiracy and probation violation. 2006
23 counterfeiting charge and while he was out he committed two
24 more crimes. You don't think that impacts a judge's
25 decision?

1 **Mr. Zimmerman:** Yes, sir, I'm sure it does.

2 **The Court:** We add all those things up. We start
3 everybody equal, and then we take the records into account,
4 but you can address what she shouldn't have -- what you think
5 she should have objected to.

6 **Mr. Zimmerman:** And, Your Honor, I just point out, too,
7 in that transcript for the -- for the first plea when Judge
8 Manning decided to defer sentencing, he indicated that, "I
9 don't want to sentence him under the circumstances where --
10 not a mob atmosphere, but I mean, emotions and all that.
11 Let's calm down and let's see what happens to the other co-
12 defendants and what his role was compared to the other four,
13 and that way I can better be fair to him as well."

14 **The Court:** He did say that. Now, you, of course, have
15 not been in front of me often.

16 **Mr. Zimmerman:** No, Your Honor.

17 **The Court:** And I represent to you, which can be
18 sustained by about anybody, that I'm a speed reader of some
19 renown, plus I have modestly a pretty good recall. So if I
20 have read something today, right now I can recall it. Two
21 days from now I might not. So just point out whatever you
22 want in the record. But the first time the dismissed charge
23 came up, this is just to demonstrate -- and I haven't looked
24 at that since I read it awhile ago. Judge Manning says,
25 "What's this blocked out?" And they said, "We want you to

1 read that." You know, he basically says, "Okay." But go
2 ahead.

3 **Mr. Zimmerman:** I think he also said he was just
4 wondering what it was.

5 **The Court:** That's right. Why wouldn't you? Somebody
6 hands up something to the judge. He looks at it and he says,
7 "Wait a minute. What's been blocked out?"

8 **Mr. Zimmerman:** Your Honor, I---

9 **The Court:** And then they clarify that and he says,
10 "Okay."

11 **Mr. Zimmerman:** Your Honor, I want to be clear. I am
12 not challenging what Judge Manning may or may not have done
13 or what he may or may not have thought while he was doing it.
14 I am challenging or Mr. Schilling is challenging the
15 assistance of counsel.

16 **The Court:** I understand.

17 **Mr. Zimmerman:** That she did not bring that to his
18 attention or did not go into the statement that he made in
19 open court about him being personally a victim of a burglary.

20 **The Court:** All right. And if you want me to recuse,
21 I'll recuse because I've been broken into and I do that about
22 every time when victims are there, and victims, believe it or
23 not, on burglaries get more upset than anything. And part of
24 our function is to placate them, and one way you can placate
25 them and calm them down is to say, "Well, I've also been a

1 victim. You know, life goes on." Just from what he said,
2 it's not much, and actually what he said is true. You don't
3 know -- you can't walk in anybody else's shoes, but if you
4 haven't been broken into, you don't really understand how
5 somebody might feel. Now, if somebody breaks in my house I
6 don't feel anything about it other than a little irritation
7 because I've dealt with it forever, you know. I have a lake
8 house; they break into that all the time. Big deal. It's at
9 the lake, you know.

10 **Mr. Zimmerman:** And, Your Honor---

11 **The Court:** But that -- but when a victim carries on...
12 Now, Mr. Davis here, my clerk, has been with me. I had a
13 victim in I think it was Chester or Lancaster. All the
14 person did was take a magnet and put it in a coin machine and
15 draw out a quarter or two. The victim thought the person
16 should have gotten life, you know. So we can't satisfy
17 victims. We just have to sentence what we think is
18 appropriate under the circumstances, and if Judge Manning had
19 sentenced all these other people, you may have something on
20 that issue, but at that point I'm talking about you can, of
21 course, address what you think the attorney should have
22 objected to in the record.

23 **Mr. Zimmerman:** Once again, Your Honor, I'm not -- not
24 challenging Judge Manning and what he did and what---

25 **The Court:** I understand. I am just talking to you.

1 I'm not being condescending or anything. I'm just -- you may
2 feel that I am, but I'm not. I understand his position. Any
3 time a co-defendant -- one gets more than the other, we
4 usually end up in a P.C.R. saying I should have got the same
5 thing.

6 Now, his situation is a little different. His
7 involvement, from his testimony which I listened to, was
8 minimal, and I read where the victim carried on and on about
9 \$46,000 here, \$20,000 there, devastated and all that. They
10 had pictures that they introduced as to the damage. I mean,
11 I've read all that. If you want to highlight it, that's
12 fine.

13 **Mr. Zimmerman:** Well, Your Honor -- Your Honor, that's
14 correct. I'd like to highlight that---

15 **The Court:** Sure.

16 **Mr. Zimmerman:** ---as during -- in the transcripts that
17 it was clear that neither the solicitor nor anyone else
18 accused Mr. Schilling of actually causing the damage to the
19 house, yet there were -- at both the first hearing and the
20 second hearing there were pictures which are described in the
21 transcript as showing a house totally trashed, \$60,000 worth
22 of damage---

23 **The Court:** Right.

24 **Mr. Zimmerman:** ---\$40,000 worth of materials taken,
25 equipment taken from the house, yet there was no

1 clarification or objection by defense counsel to make sure
2 that -- why those were being introduced against -- it appears
3 against Mr. Schilling when he was not involved in the damage
4 to the house.

5 The other issue that I wanted to bring up was there was
6 a statement during the plea hearing on page 28 -- and, Your
7 Honor, I'm just going by the transcripts the same way that
8 you are.

9 The Court: I understand.

10 Mr. Zimmerman: But on page 28 of the transcript after
11 Ms. Davis was addressing the Court at the end of that and she
12 was talking about -- you know, asking for probation --
13 consider a probationary sentence, the Court says, "I'm not
14 giving him probation. Okay?" Ms. Davis: "In the
15 alternative, Your Honor, we would ask for" dash, dash, dash.
16 The Court: "I'm sorry. Anything you want to tell me, Mr.
17 Schilling?"

18 It appears as though Ms. Davis was going to give an
19 alternative and for some reason was not given the opportunity
20 to give that alternative, and it just raises a question of
21 why. If she had an alternative, she should have been able to
22 present that to the Court and should have presented it to the
23 Court, but it just ends right there.

24 And, of course, the other issue that's always brought up
25 five times during -- two times in the original plea hearing

1 and three times in the sentencing hearing, this intimidation
2 of witness charge was -- was mentioned once again. No
3 comment or objection by Ms. Davis about, "Your Honor, that's
4 been dropped. The Court should not take that into
5 consideration," but it was mentioned and there was nothing by
6 defense counsel. That's all, Your Honor. Thank you.

7 **The Court:** All right. But the victim did it one time,
8 of course. The victim mentioned, you know, about the
9 intimidation and all that.

10 **Mr. Zimmerman:** Right.

11 **The Court:** But the judge is aware that it's been -- you
12 know, he's aware that it's not in front of him. He doesn't
13 have to be reminded of that, believe it or not. He does not
14 have to be reminded. And who knows? I can't put myself in
15 his mind, but 15 years ago I had sentenced 36,000. Lord
16 knows how many by now. Okay. Attorney general?

17 **Mr. Petrano:** Your Honor, we have covered everything
18 that we wanted to put in the record on -- during the cross
19 and what happened on direct. We have nothing else to offer.
20 I've got some argument if you want to hear it, but I think
21 you've calculated everything.

22 **The Court:** Well, y'all can both prepare orders and send
23 them in. I'll look at them. That's fair.

24 **Mr. Zimmerman:** Thank you, Your Honor.

25 **The Court:** I'll keep the transcript. You might not

1 believe I read it. I tried to demonstrate it to you.

2 (Whereupon, the proceedings were concluded. There were
3 no exhibits introduced.)

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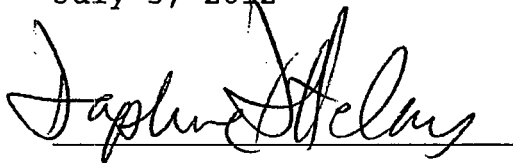
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I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 10th of January, 2012.

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

July 5, 2012

A handwritten signature in cursive script, appearing to read "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2009CP4004441
Schilling, Robert D., 00294085,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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 C.C.P. & G.S.
 ORDER

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 24, 2009. The Respondent made its Return on March 30, 2010. An evidentiary hearing into the matter was convened on January 10, 2012 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tynika Claxton, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

After the hearing in this matter several action items have occurred. First, there is an Order dated April 6, 2011 and filed April 11, 2011 by The Honorable Alison Renee Lee in her capacity as Chief Administrative Judge for the Court of Common Pleas here in the Fifth Circuit. The Order relieves Ms. Claxton as the Applicant's appointed attorney and directs the Richland County Clerk of Court to appoint new counsel. The Clerk of Court appointed attorney Richard L. Whitt. Another attorney has also assisted in the matter, attorney Lee W. Zimmermänn. There was a "Form 4" Order issued by Judge Barber on December 8, 2010 indicating that the Applicant withdrew his PCR. This Order is erroneous, the "Form 4" Order from December 8, 2010 was to

Schilling, Robert - Order of Dismissal (2009CP4004441)

reflect a continuance.¹ This Applicant did not withdraw his PCR. This Court held a hearing on the matter on January 13, 2011.

Following the January 13, 2011 hearing, the Honorable G. Thomas Cooper, Jr. – who presided over the PCR hearing – issued a "Form 4" Order dated October 10, 2011 ordering:

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This PCR matter came before the undersigned in early 2011. After the initial hearing, new counsel was appointed for the Applicant. In the interest of fairness and justice, the Applicant's PCR is to be reheard at the next available date.

Accordingly, the Applicant had another PCR hearing, de novo, with a new attorney appointed, i.e. Lee W. Zimmerman, Esquire.

At the hearing, the Applicant testified on his own behalf. The Applicant's plea counsel, Jennifer Davis from the Public Defender's Office also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections. The Applicant is present serving a twelve (12) year sentence for 2nd Degree Burglary (non-violent). He pled guilty on March 11, 2008 before the Honorable L. Casey Manning. As explained in more detail below, the Applicant was not sentenced until April 29, 2009.

Grand Jury Term	Indictment Number	CDR #	Charge/Offense	Potential Sentence	Offense Description	Sentence Received	Sentence in Prison
2008	2008GS4011891	0478	16-13-30(B)(1) *5*	Grand Larceny \$1000 to \$5000 (deferred sentence)		5 yrs	No
2008	2008GS4011892	0080	16-11-312(A) * 15 *	Burglary, second degree		12 yrs	No
2009	2009GS401552	0179	44-53-370 *	1st/ 5 yrs and/or \$5k; 2nd/ 10 and/or \$10k; 3rd/ 15-30 and/or \$50k *	Possession of Controlled Substance	30 days	No
2009	2009GS401566	2813	16-13-510(C) *	fine, 10 yrs, or both *	Identity Fraud	5 yrs	No
NOTE: All sentences are concurrent						TOTAL	POSSIBLE

¹ Judge Barber later issued a "Form 4" dated December 31, 2011 vacating the erroneous withdraw order.

It appears that the Applicant attempted to appeal from his guilty plea but that attempt was thwarted by Rule 203(d)(1)(B)(iv), SCACR. The South Carolina Court of Appeals rejected the notice of appeal and the case was remanded on July 31, 2009.

In the PCR Application the Applicant made the following allegations:

[Image inserted on following page]

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

(a) Ineffective Counsel

(b) Deferred Sentence - per Judge Manning

(c) Excessive Sentence - too much time

* (d) Detective Brian Gwyn - Allowing false Allegations by victim

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

See Back (a) WAS ADVISED THAT THE JUDGE WAS AWARE OF MY VICTIMS - POWER

See Back (b) Judge Manning - WAS PRO informed to the original - 7 ^{ON} _{Back}

See Back (c) Judge Manning - told me that he would sentence - 7 ^{OF} _{page}

(d) Detective Gwyn, Richland Co. Sheriff's Office Allowing

See Victim to state things against me that are knowingly

Back not true. Also I can prove that Detective has

had a problem with a co-defendant in the past

and there is record of that incident. Also Allow

Victim to state charges to the Judge that I was

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CONTINUED FROM FRONT

- 10(A) Nature And he Stated things to the court that did not occur. I was originally told that I would receive a sentence range between 3-5 years. My lawyer said that prior to pleading, the Solicitor as well as ~~the~~ himself talked to the Judge and made him aware of the victims grand standing in this case. Basically in short, the original transcript of my guilty plea March 11, 2008 and my Sentencing date of April 29th 2009 will reflect the lack of representation during these hearings. My lawyer obviously allowed things to be said that she knowingly knew to be false. That resulted in my lengthy sentence. Let these (2) transcript records be evidence in this case.
- 10(B) Facts of the case at the sentencing phase. Without the correct information, this resulted in my sentence.
- 10(C) me according to my level of involvement based on my co-defendants (4) four pleadings. Different versions of my involvement was said than initially stated at my guilty plea March 11, 2008. Please allow these transcripts to reflect these false allegations.
- 10(D) not charged with. Please allow these (2) two transcripts to support these points.

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

I would ask that the court look at this case to include both transcripts and sentence according to my level of involvement like (2) or my co-defendants 3-5 year range.

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

NO

At the evidentiary hearing, Applicant proceeded on a general claim that plea counsel was ineffective for failing to better handle the sentencing situation. Specifically, the Applicant claims that it is clear from the records that the plea court wanted to defer sentencing to see what the co-

defendants were sentenced to and that the Applicant insists that he belongs in the lower range amongst the less culpable co-defendants. The Applicant alleges that the plea counsel was ineffective at sentencing because the sentencing court was misinformed and that caused him to be sentenced consistent with the worst of the co-defendants. The Applicant claims that but for counsel's deficient performance, he would have received a more favorable sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This 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 (1985).

The Applicant testified he was satisfied with his plea attorney up until sentencing. The Applicant explained that he had a minimal role in the crime(s). The Applicant explained that he elected to plea guilty in an effort to receive a favorable sentence especially considering his minimal role. The Applicant explained that counsel failed to point out issues during sentencing to correct some of the misinformation that caused him to receive a harsher sentence. The Applicant explained that he did not think there was that much damage to the home compared to what the victim articulated.

Plea counsel testified that she recalled her representation of the Applicant. Plea counsel explained that they met several times prior to the plea. Plea counsel explained that the Applicant did not want a trial and that he wanted to plea guilty early on in their meetings. Plea counsel

explained that there were no plea offers from the State. Plea counsel explained that for a period of time there was discussion that the Applicant could work with the State for information as to the co-defendants but that the Applicant was not cooperative in that matter. Plea counsel explained that she was aware of the sentences of the co-defendants. Plea counsel explained that she did not object or make any motions when the plea court explained that he too had been the victim of a housebreaking.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 80 L.Ed.2d 674, 692 (1984); Butler, 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. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going

to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Plea counsel's testimony is credible. Including his review of the undisputed procedural history, this Court finds Applicant's testimony, for the most part, to be credible. The Applicant was sincere in his belief that he played a smaller part in this crime compared to the co-defendants. The Applicant was credible when he said that he did not think that the residence was as damaged as the victim held it out to be during the plea. However, the Applicant's "issues" are not genuine PCR claims that warrant relief. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

The Applicant claims that counsel should have attempted to correct some of the misinformation he claims was before the plea court regarding sentencing. Specifically, the

Applicant claims that the victim was exaggerating the damage done to his house. *See* plea transcript, p. 23. This Court does not agree with the Applicant's claim that plea counsel should have attempted to dispute the victim's subjective claims regarding the damage. First, there was never any claim that the Applicant's conduct did all of the damage. Second, it is obvious from the reading of the victim's words at the plea that the real damage was the violation itself associated with the burglary and the intangible loss associated with the highly personal items with little actual street value. For example, the victim commented, "furniture and stuff can be replaced." (Transcript, p. 23 L. 18). The impact of the victim's statement was not the money damage; it was his explanation of how he lost his children's first teeth, his deceased grandparents' notes and cards, his deceased grandfather's old fireman's badge, of particular significance were mementos from his dead daughter, etc. (Transcript, p. 23). The victim went on to explain that he was violated and his wife and children do not feel safe in the house. The victim explained that it was his understanding that some of his child's toys were actually taken by the Applicant to give to his (the Applicant's) child. (Transcript, p. 24).

It was the victim who articulated the personal damage done to him and his home and it was he who begged the plea court to apply the maximum sentence possible. (Transcript, p. 24). A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972); State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). The Applicant's allegation that his sentence is too harsh lacks merit. While the Applicant may be correct that some of the other co-defendants may have received a lesser sentence, it is not clear if the victim provided similarly powerful impact statements at those pleas. The court has the discretion to

sentence codefendants to different punishment or treatment. State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (1974). The Applicant had an extensive prior record.

The sentencing transcript explains that after the plea was taken, the Applicant was inadvertently released from the detention center. The State explained there was a bench warrant issued. The Applicant later gave a phony name at the jail. *See* sentencing transcript, p. 3 – 4. The Applicant's post plea but pre-sentencing behavior is not irrelevant and the sentencing court surely could take that into account. The defendant's conduct prior to sentencing may give the judge insights into his moral character and suitability for rehabilitation.

A trial judge generally has wide discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come.

State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976).

Finally, as to the Applicant's issue with the plea court's statement that he too had been a victim of housebreaking, this Court does not share the Applicant's concern. Part of the judicial branch's role is to placate, the Court was simply reassuring the victims that life goes on, etc. The Applicant has failed to satisfy his burden of proof and demonstrate that counsel's performance was deficient and that he was prejudiced.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by

counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

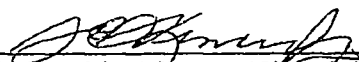
Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that 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 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 the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 23 day of Feb, 2012.


 The Honorable J. Ernest Kinard, Jr.
 Presiding Judge
 Fifth Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

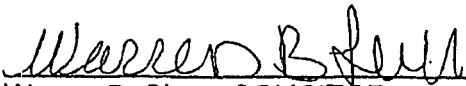
INDICTMENT

At a Court of General Sessions, convened on _____, the Jurors of Richland County present upon their oath:

GRAND LARCENY \$1000.00 TO \$5000.00

That Robert David Schilling did in Richland County on or about October 13, 2007, feloniously take or attempt to take and carry away the personal goods of the victim, of the value of more than one thousand dollars but less than five thousand dollars, with intent to deprive the owner permanently of such property. To wit; electronic equipment including computers, gaming systems, camcorders, games and DVDs. All in violation of S.C. Code of Laws 16-13-30.

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


Warren B. Giese, SOLICITOR

WITNESSES

ARREST WARRANT NUMBER

1907264

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-11891

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

TERM 2008

115

THE STATE
vs.

ROBERT DAVID SCHILLING

Indictment for

GRAND LARCENY \$1000.00 TO \$5000.00

SC Code: 16-13-30(B)(1)

CDR Code: 0478

Class: FEL/F

After being fully advised as to my legal rights, I hereby waive present and future rights to the Grand Jury

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL
FILED IN
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on _____, the Jurors of
Richland County present upon their oath:

BURGLARY/(NON-VIOL)(AFTER 1/20/85) - 2ND DEG

That Robert David Schilling did in Richland County on or about October 13,
2007, willfully and unlawfully enter the dwelling located at _____ without
consent and with intent to commit a crime therein, all in violation of §16-11-312 of the
Code of Laws of South Carolina (1976, as amended).

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

Warren B. Giese

WARREN B. GIESE, SOLICITOR

WITNESSES

ARREST WARRANT NUMBER

1907265

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-11892

The State of South Carolina

County of

RICHLAND

COURT OF GENERAL SESSIONS

TERM 2008

115

THE STATE
vs.

ROBERT DAVID SCHILLING

Indictment for
BURGLARY(AFTER 1/20/85)
2ND DEG

SC Code: 16-11-312(A)
CDR Code: 0080
Class FEL-D

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
IN C.C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

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

DRUGS/POSS OF CONTROLLED SUBSTANCE

That ROBERT SCHILLING did in Richland on or about JULY 2, 2008, possess
or attempt to possess a quantity of a controlled substance, to wit: Crack Cocaine
Residue, under provisions of Section 44-53-370 et. Seq., Code of Laws of South
Carolina (1976, as amended), such possession not having been authorized by law.

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

W. B. Giese

WARREN B. GIESE, SOLICITOR

133

WITNESSES

DOCKET NO. 2009-GS-40-1552

**The State of South Carolina
County of Richland**

COURT OF GENERAL SESSIONS

TERM 2009

115

**THE STATE
vs.**

ROBERT SCHILLING

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

Defendant

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

Defendant

Witness

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

ARREST WARRANT NUMBER

1908032

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

**POSSESSION OF A CONTROLLED
SUBSTANCE**

SC Code: 44-53-370

CDR Code: 0179

Class MIS/UNC

Foreperson of Petit Jury

Date:

NOTIFIED TRIAL COURT
TO ORIGINAL JURY
C.C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA
Robert Schilling

STATE OF SOUTH CAROLINA)

INDICTMENT

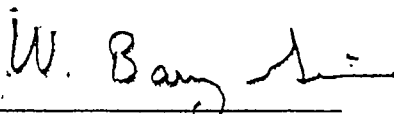
COUNTY OF RICHLAND)

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

IDENTITY FRAUD

That Robert Schilling did in Richland County on or about July 2, 2008, without authorization or permission, use the victim's personal identifying information with the intent to avoid identification by a law enforcement officer, criminal justice agency or another governmental agency including, but not limited to, law enforcement, detention, and correctional agencies or facilities. All in violation of S.C. Code Section 16-13-510.

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


Warren B. Giese, SOLICITOR

WITNESSES

ARREST WARRANT NUMBER

1917937

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-40-1566

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

Term 2009

115

THE STATE

vs.

ROBERT SCHILLING

Indictment for
IDENTITY FRAUD

SC Code: 16-13-510 (C)

CDR Code: 2813

Class FEL/E

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

Defendant

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

Defendant

Witness

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

FILED TRUE COPY
ORIGINAL FILED
C.C.C. P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA