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A PROFESSIONAL ASSOCIATION

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June 6, 2019

RECEIVED

JUL 17 2020

S.C. SUPREME COURT

Kelly Bruton, SCDC# 227598
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

RE: Kelly Bruton vs. The State

Dear Mr. Bruton:

This letter is in response to your letter dated May 28, 2019. You have requested witnesses to say that you did not enter the house. Please be advised that all the evidence clearly states that you were not in the house. The evidence shows that your fingerprints were clearly on the outside of the house. This is not an issue in your case.

The issue that you presented is whether you should have been charge with attempted burglary first degree. You rely on the following statute:

SECTION 16-13-170. Entering house or vessel without breaking with intent to steal; attempt to enter.

It is unlawful for a person to:

(1) enter, without breaking, or attempt to enter a house or vessel, with intent to steal or commit any other crime; or

(2) conceal himself in a house or vessel, with intent to commit a crime.

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

Under the above statute you would not be subject to a life without parole sentence. This is clear under this statute.

However, the State charged you under the following statute:

SECTION 16-1-80. Offense of attempt punished as principal offense.

A person who commits the common law offense of attempt, upon conviction, must be punished as for the principal offense.

HISTORY: 1993 Act No. 184, Section 9.

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

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

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

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

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

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

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

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

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

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

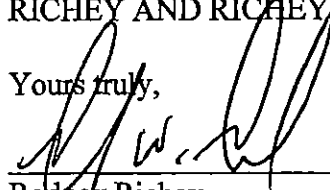
The State charged you under the attempt statute above. Under these statute you would be subject to a life without parole sentence. It is my understanding that your position is that the lawyer should have moved to have you sentence under the previous statute that you referred to. This issue will be decided by the PCR judge based on the testimony of your lawyer and you.

Clearly, there is no issue about you being in the house. The transcript even reflects that you were not in the house. Moreover, the State did not charge you with being in the house. Please let me know what evidence points to you being in the home.

If you should have any questions please feel free to write me..

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/

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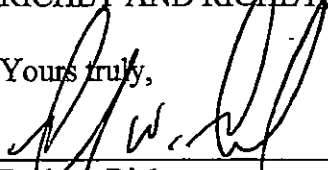
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RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/

Exhibit
B

GREER POLICE DEPARTMENT

Date 2/25/2017

Page No.

STATEMENT OF:

Tabitha Lunsford

Around midnight I awoke from sleep to knocking on one of my doors, either front door or back door, or side door. When the knocking continued I called 911. I was told an officer was coming. I waited in my room. I then heard someone (attempting) to open the bathroom window which is connected to my bedroom. I panicked and ran across the hall into my sons room. I called 911 again to tell them what I heard. I was told by the operator that the officer was already here. I met the officer at the door. The officer came through the house to the backdoor to the backyard. I waited while he searched. I then went in the backyard and saw the bathroom screen to the window was half ripped off. the officer heard ~~it~~ something and told me to get back inside.

Exhibit
C

Exhibit
C

Narrative

I Deputy Davis did respond to this location to assist Greer PD with an attempted burglary call. Upon my arrival, I did meet with Greer PD Officers. I was advised that they responded to an attempted burglary call and did locate a Kelly Burton in the back yard at this residence. I was advised that they did locate a window with a screen that had been cut. I was advised that they also located an item (item had already been returned) on the ground that had been removed from the victim's vehicle. Greer Officers requested that I process the window where the cut screen was located and also the victim's vehicle. The victim's vehicle was a Chevy SUV (SC [REDACTED]). Digital photographs were taken and entered into Spillman. I did process the window and the vehicle for prints. I did collect a lift from the window and one from the driver's side of the vehicle. The lift cards were turned into AFIS to be checked.

Responsible LEO:

Approved by:

Date

Exhibit C

CLERK OF COURT
SPARTANBURG COUNTY
2019 JAN 14 AM 10:29

Kelly Bruton F2-227598
990 Wisacky Hwy
Bishopville S.C. 29010
Lee Corr. Ints

IMS



U.S. POSTAGE PITNEY BOWES



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JUL 17 2020

S.C. SUPREME COURT

SCDC

AUG 4 2 2020

MAIL ROOM

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

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