

STATE OF SOUTH DAKOTA IN CIRCUIT COURT
)
COUNTY OF LAWRENCE FOURTH JUDICIAL
CIRCUIT

STATE OF SOUTH DAKOTA,)
)
)
Plaintiff,)
CHANGE OF PLEA)
)
vs.)
Crim. 00-431)
)
BRILEY PIPER,)
)
Defendant.)

BEFORE: THE HONORABLE WARREN G.
JOHNSON
Circuit Court Judge
Deadwood, South Dakota
January 3, 2001, at 2:30 p.m.

APPEARANCES:

For the State:
MR. JOHN FITZGERALD
State's Attorney
90 Sherman Street

Deadwood, SD 57732

For the Defendant:
MR. TIMOTHY J. RENSCH
Attorney at Law
PO Box 8311
Rapid City, SD 57709

and -

MR. PATRICK DUFFY
Attorney at Law
PO Box 8027
Rapid City, SD 57709

(WHEREUPON, the following proceedings were duly had:)

THE COURT: This is a case of State of South Dakota, Plaintiff, versus Briley W. Piper, Defendant; Criminal Action 00-431. I scheduled this hearing yesterday at the request of Mr. Rensch and also, I guess, on my own because we had some motions that needed to be resolved before we begin jury selection on Monday.

Moments ago, Mr. Rensch indicated that Mr. Piper intended to enter a plea of guilty to Counts I1, IIA, III, IV, and V.

Is that correct, Mr. Rensch?

MR. RENSCH: That's correct, Your Honor.

THE COURT: Is that correct, Mr. Piper?

MR. PIPER: Yes, Your Honor.

THE COURT: Mr. Fitzgerald, is there anybody else that is entitled to be present that should have been notified?

MR. FITZGERALD: What are we doing now, taking a change of plea?

THE COURT: At a minimum.

MR. FITZGERALD: I suppose the mother of the victim has a right to know what's taking place. You know, I had no idea, until you just said that, that that's what this hearing was about. And apparently you just learned. So I didn't even bring the file or the Indictment over here.

THE COURT: Okay. Did you intend to proceed with sentencing today, Mr. Rensch?

MR. RENSCH: Your Honor, I don't think we can proceed with sentencing today. I think that the statute requires that the Court conduct a hearing to set forth the various factors. But if the Court wants to proceed with sentencing today - - I don't think you can proceed with sentencing today, no.

THE COURT: Well, let me ask you this, Mr. Fitzgerald: Is the State still seeking the death penalty?

MR. FITZGERALD: Yes

THE COURT: So we would be having a mitigation hearing?

MR. RENSCH: Correct.

THE COURT: Mr. Piper, would you come forward with your Counsel, please.

MR. PIPER: (Complying.)

THE COURT: Mr. Piper, you have previously appeared before me and entered not guilty pleas to the original Indictment, and then there were one or more Amended Indictments. The most recent Amended Indictment is dated September 7, 2000, endorsed a true bill, signed by Mary Ann Oberlander as grand jury foreman. To my knowledge, that is the most recent Amended Indictment.

Is that your understanding Mr. Fitzgerald?

MR. FITZGERALD: Your Honor, I believe so, but I can tell you by just looking at it.

MR. RENSCH: It's dated September 7.

MR. FITZGERALD: Yeah. And this is the one -
- um, yeah, Nathan Whartman's name is on there,

but he did not testify. And so yeah, that is the most recent Indictment.

THE COURT: Okay. Mr. Fitzgerald, would you read the Indictment, please.

MR. FITZGERALD: Yes, sure, I will.

(WHEREUPON, the Indictment was read by Mr. Fitzgerald.)

THE COURT: Thank you.

Mr. Fitzgerald, is there a plea agreement in this case?

MR. FITZGERALD: No. As I said, when I came in here, this was news to me. You were the first person, when you announced that within the last five minutes, that this was taking place.

THE COURT: So if he pleads guilty to the - -

MR. FITZGERALD: I didn't have the Indictment when you listed off what he was going to plead guilty to. I do now.

THE COURT: If he pleads guilty to Count IIA, which is the kidnapping, Class 1 felony, does that foreclose the State from going to trial on first degree premeditated murder, and kidnapping – gross permanent physical injury?

MR. FITZGERALD: No.

MR. RENSCH: It does unless they dismiss the charges to which we're willing to plead guilty, because they're in the alternative.

THE COURT: Yes. But I don't know if it's the Defendant's choice to plead guilty to an alternative charge. I've never had this situation, Mr. Rensch,

where a defendant came in without a plea agreement and chose to plead guilty to an alternative charge.

MR. RENSCH: Correct. And of course if he pleads guilty to the alternative charge and if there's a factual basis therefor, it would be double jeopardy to attempt to try him on the charge that is charged in the alternative.

It is his right to enter the guilty plea. The State has nothing to say in regards to his right to enter a guilty plea, as was advised to this Defendant at the arraignment in this case.

THE COURT: Let me put it this way: Mr. Fitzgerald, do you have any objection to the Defendant entering a guilty plea to Count IA, first degree felony murder; Count IIA, kidnapping, class 1 felony; and then the balance of the charges?

MR. FITZGERALD: Could I have a few minutes to consider this?

THE COURT: I think so. Would you like ten minutes?

MR. FITZGERALD: I'd like more like a half hour, but I think that would be enough time.

THE COURT: What I'm getting at is that if he pleads guilty to these charges, we apparently are going to have a penalty trial.

MR. RENSCH: A penalty hearing.

MR. DUFFY: Hearing with you - - May I speak or would you prefer I not?

THE COURT: I think you better.

MR. DUFFY: Under SDCL 23A-27A-6, "At least one aggravating circumstance required for death penalty imposition. In nonjury cases the judge shall, after conducting the presentence hearing as provided in SDCL 23A-27A-2, designate, in writing, the aggravating circumstance or circumstances, if any, which he found beyond a reasonable doubt. Unless at least one of the statutory aggravating circumstances enumerated in 23A-27A-1 is so found, the death penalty shall not be imposed." So I think upon acceptance of the plea, we would come to you for the sentence.

THE COURT: It was my understanding that the State would have to consent to the waiver of a jury trial in a criminal case. Does anyone understand it differently?

MR. RENSCH: The State doesn't have the right to the jury trial. The Defendant has the right to the jury trial, as was advised to him at the time of the arraignment. Thus, it is his right and his right only to waive.

THE COURT: Do you agree?

MR. DUFFY: I'm looking - - I'm seizing upon, really, the plain language of the statute: "In nonjury cases the judge shall . . .," so it's our position that upon the acceptance of the plea, we will come before you for a sentence of life or death.

THE COURT: Do you know, Mr. Fitzgerald?

MR. FITZGERALD: No. Again, that would be something I'd like the opportunity to look into a little bit.

THE COURT: Why don't we take a 30-minute recess, and if you tell me that you don't know or you don't have enough time, then I'll continue it until tomorrow morning. Because quite frankly, it will be a first, as far as I know, of the cases tried in this state since the death penalty was reenacted where there was a guilty plea to a Class A felony and then a sentencing hearing.

MR. RENSCH: Although there was a case in 1968 out of Yankton that involved a murder of a jeweler and his wife where a person pled guilty and was sentenced by the judge without the benefit of a jury.

MR. DUFFY: There's one other, and I don't mean to reduce this to anecdote, but Mike Butler and Mike Schaffer both represented Mary Galland's brother, I can't think of his last name, on a first degree murder charge in about, oh, I want to guess 1989 in Sioux Falls, and this is - - this is the procedure that was followed. I think Judge Hurd - - I'm 99.99 percent sure Judge Hurd was the sentencing judge.

MR. RENSCH: I should tell the Court, too, tomorrow morning I have a root canal scheduled, but I can sure be here in the afternoon.

THE COURT: Well, we'll take a 30-minute break and then we'll come back and then we'll either do it or we'll reset it.

MR. FITZGERALD: Just for the record, now, I do have this Indictment in hand and we started this proceeding when I didn't have it. he wants to plead guilty to Count IA - -

MR. RENSCH: Correct.

MR. FITZGERALD: - - Count IIA - -

MR. RENSCH: Correct.

MR. FITZGERALD: - - and then the balance of
III, IV, and V?

MR. RENSCH: Correct.

MR. FITZGERALD: Okay. Thank you.

(WHEREUPON, a brief recess was taken.)

THE COURT: When we took the recess, I had a
made a couple of inquiries as far as procedure. Mr.
Fitzgerald asked for a break. We had a break, and
he's since informed me that he was in agreement
with the pleas to the charges indicated.

Is that correct, Mr. Fitzgerald?

MR. FITZGERALD: Yes, that is, Your Honor.

THE COURT: Specifically you would agree to
guilty pleas to Count IA, first degree murder – felony
murder; Count IIA, kidnapping; and then Counts III
through V as set forth in the September 7th
Indictment. Is that correct?

MR. FITZGERALD: Yes, it is, Your Honor.

THE COURT: Next, the Defense indicated that
they would be waiving the right to sentencing by the
jury and have the sentencing hearing and sentencing
conducted by the Court under the same rules and
circumstances as would be done if a jury was to do it.

Is that correct, Mr. Rensch.

MR. RENSCH: That is correct.

THE COURT: Mr. Piper?

MR. PIPER: Yes sir.

THE COURT: Mr. Fitzgerald, have you agreed to that?

MR. FITZGERALD: Yes, I have, Your Honor.

THE COURT: Mr. Piper, we've had numerous hearings in your case. The Amended Indictment was filed on September 7th. I think you were previously arraigned on it and you were certainly arraigned on the earlier Indictments.

With respect to Count I1, the State would have to prove that on or about 13 March 2000 in Lawrence County that you did, while engaged in the perpetration of a kidnapping, kill Chester Allan Poage, a human being.

MR. PIPER: I'm sorry?

THE COURT: Do you understand what the State has to prove under this charge?

MR. PIPER: Yes.

THE COURT: With respect to Count IIA, kidnapping, the State would have to prove that on or about the 13 March 2000 within Lawrence County that you did seize, confine, inveigle, decoy, abduct, or carry away Chester Allan Poage and hold or detain him to facilitate the commission of any felony or flight thereafter or to inflict bodily injury on or to terrorize Chester Allan Poage.

Do you understand what the State has to prove in Count IIA?

MR. PIPER: Yes.

THE COURT: On Count III, robbery – first degree, the State would have to prove that on or about 13 March 2000 in Lawrence County that you intentionally took personal property, regardless of value in the possession of Chester Allan Poage from his person or immediate presence, and against his will, accomplished - - I believe we're missing a word, but I think it's - - by means of force or fear of some immediate injury to his person.

Do you understand what the State must prove in Count III?

MR. PIPER: Yes.

THE COURT: In Count IV the State would have to prove that on or about 13 March 2000 in Lawrence County that you entered or remained in an occupied structure, to wit: the residence of Dottie Sue Poage, Spearfish, with intent to commit the crime of theft. Further, that the offense was committed in the nighttime.

Do you understand what the State has to prove in Count IV?

MR. PIPER: Yes.

THE COURT: Count V, grand theft, the State would have to prove that on or about 13 March 2000 in Lawrence County that you took or exercised control over property of another, namely property belonging to the Poage family, the value of which exceeded \$500, with intent to deprive the owner of the property.

Do you understand what the State has to prove in Count V?

MR. PIPER: Yes.

MR. RENSCH: Your Honor, I'd also like the record to reflect that I've explained to my client that these counts can be proven by aiding and abetting another who's perpetrating the same act, and that if you were aiding and abetting another who was perpetrating that act, you would chargeable as a principal.

THE COURT: That is correct.

Do you understand that, Mr. Piper?

MR. PIPER: Yes.

THE COURT: Is there anything about aiding and abetting that you would like me to explain further at this time?

MR. PIPER: No.

THE COURT: Count IA is a Class A felony. Should you plead guilty or be found guilty, it is punishable by either life imprisonment without parole or punishable by death by lethal injection. Do you understand that?

MR. PIPER: Yes.

THE COURT: Count IIA is a Class 1 felony punishable by up to life in prison. Counts III, IV, and - - V are Class 2 felonies punishable by up to 25 years in prison, a \$25,000 fine, or both such fine and imprisonment.

Count V, grand theft, is a Class 4 felony punishable by up to 10 years in prison, a \$10,000 fine, or both such fine and imprisonment.

Do you understand the penalty that could be imposed, Mr. Piper?

MR. PIPER: Yes

THE COURT: I have previously explained your various constitutional and statutory rights, including your right to be represented by counsel at all stages of the proceedings. You exercised that right upon your return from Alaska, and I appointed Mr. Hubbard to represent you. Mr. Hubbard later moved to withdraw, and my recollection is that you agreed with that motion. Is that correct?

MR. PIPER: Yes.

THE COURT: I then appointed Mr. Rensch and, I believe within a matter of days, appointed Mr. Duffy to be your lawyers, and I believe that was in July of this year - - of 2000. Do you recall that?

MR. PIPER: Yes.

THE COURT: Since then, I appointed, I believe, a private investigator and a private investigator in Alaska. I think there were motions relating to various evaluations which I approved, and I think I have pretty much approved everything that's been requested as far as resources for your attorneys to assist in your defense.

Have you had all the time you've needed to talk to Mr. Rensch and Mr. Duffy?

MR. PIPER: Yes.

THE COURT: Have they answered all of your questions regarding your case?

MR. PIPER: Yes.

THE COURT: Have you had all the time you've needed to discuss the proposal that's being made here today?

MR. PIPER: Yes.

THE COURT: May I ask, Mr. Piper, as best you recall, when did you first discuss this with your lawyers?

MR. PIPER: About a month ago, sir.

THE COURT: And did that include both the possibility of these pleas and the possibility of having the Court deal with the sentencing?

MR. PIPER: Yes sir.

THE COURT: Have you had all the time you've needed to think about those possibilities?

MR. PIPER: Yes.

THE COURT: The only matters remaining that I understand are the motion for continuance, the motion for change of venue. There is a series of motions in limine that Mr. Rensch filed I think yesterday that we would take up within the next few days or next week, and I believe Mr. Fitzgerald has given notice of some other statements that he intended to offer. Other than that, I think everything is pretty much done on your case.

And for the record, I'd be prepared to say at this point, based upon my review of the jury questionnaire, that I would deny the motion for continuance, deny the motion for change of venue, and would plan to go ahead with your trial next Monday was scheduled. So to the extent those pending motions are in any way something that's on your mind before you make a final decision here, I

just want you to know that that's my - - that would be my intention.

And that's not to say that if we had argument on the motion that I might do something different as far as granting a continuance or reconsider the change of venue or something like that. Those are still on the table. But if you want a ruling, that's, at this point in time on this record, what my ruling would be.

MR. RENSCH: He's also been - - it's also been explained to him that in the event he enters this guilty plea today, that he would be waiving his rights as they relate to the motions which are pending and which have been - - well, which have not been ruled on prior to trial.

THE COURT: And I think, although I've given you an indication what I would do with those if they were presented, I would probably treat them as withdrawn at this point if you enter these pleas. Okay?

MR. PIPER: Yes, sir.

THE COURT: Is there any question about anything I've explained so far?

MR. PIPER: No.

THE COURT: Mr. Piper, are you fully satisfied with the services of your attorneys?

MR. PIPER: Yes.

THE COURT: Have they done everything that you wanted them to do up to this point?

MR. PIPER: Yes.

THE COURT: Is there anything additional that you want either or both of your lawyers to do before you either change your pleas today or before you go to trial next week?

MR. PIPER: I don't believe so.

THE COURT: Are you fully satisfied with their services?

MR. PIPER: Yes.

THE COURT: Before I move on, is there anything else you want to comment on about your legal representation?

MR. PIPER: No.

THE COURT: And the reason I maybe overdo it, Mr. Piper, is that if there's anything about the representation that you've had that doesn't suit you I would rather hear about it now than hear about it later. Okay?

MR. PIPER: Yes, sir.

THE COURT: You have the right to a jury trial here in Lawrence County by a jury of 12 fair and impartial jurors. You'd have the right to be present and represented by your attorneys, the right to confront and cross-examine the State's witnesses, the right to call witnesses and have subpoenas issued for their appearance. You could testify if you wanted to, but under the Fifth Amendment, you could not be forced to be a witness against yourself. Do you understand these rights?

MR. PIPER: Yes.

THE COURT: Is there anything about those rights that you would like me to explain in more detail?

MR. PIPER: No.

THE COURT: You have the right to plead not guilty and persist in that plea even if you know you are guilty. If you plead not guilty, you're entitled to all these rights.

You also have a right to plead guilty. But if you plead guilty, you give up the right to a trial, the right to confront witnesses, and you give up the privilege against self-incrimination. If you plead guilty, all that's left for the Court to do is to pronounce your sentence. Do you understand that?

MR. PIPER: Yes.

THE COURT: With respect to Count IA, which is a Class A felony, you not only have a jury trial right as to the charge itself as to the issue of guilt or innocence, but you have a right to a jury to determine whether or not the State has proved one of more aggravating circumstances and then for that jury to decide whether the penalty should be life or death. The verdict of the jury would have to be unanimous. And even if the jury found that one or more aggravating circumstances existed, I think it is still within their province to sentence you to life imprisonment.

Is that your understanding Mr. Rensch?

MR. RENSCH: Correct.

THE COURT: Mr. Fitzgerald?

MR. FITZGERALD: Yes.

THE COURT: Do you understand that, Mr. Piper?

MR. PIPER: I didn't understand that last part.

THE COURT: Okay. As I understand it, based upon the statutes and the cases so far decided by the Supreme Court of this state concerning the death penalty, that the state of the law is that if you were convicted of either Count I, premeditated murder, or Count IA, felony murder, which is the charge that you intend to plead guilty to today, then we would have a sentencing hearing.

You are proposing that I hold the sentencing hearing rather than the jury hold the sentencing hearing. What you need to understand is that if you have a jury instead of a judge, all 12 jurors must agree on the penalty; and even if the jury found that the State had proved one or more aggravating circumstances - -

MR. RENSCH: Those are circumstances with which the jury would be justified in giving you the death penalty if they saw necessary. Aggravating circumstance is simply something - - The jury must find that it exists in order to impose the sentence of death. If they don't find that that exists, they can't. and if they do find that it exists, they don't have to, but they can.

THE COURT: Do you understand that, Mr. Piper?

MR. PIPER: Yes.

THE COURT: Is there anything you want me to explain in more detail about that?

MR. PIPER: No.

THE COURT: If I do the sentencing instead of the jury, I still have the same situation. I must find one or more aggravating circumstances to be proved by the evidence, and even if I found those to be proved by the evidence, I could sentence you to life imprisonment rather than to death by lethal injection. Do you understand that?

MR. PIPER: Yes.

THE COURT: What is significant about what you're doing here today is that if you waive your right to have the jury do the sentencing, you are trading 12 lay people for one judge to make that call. Do you understand that?

MR. PIPER: Yes.

THE COURT: And if you make that decision, I will hear the evidence, I will follow the law, and I will make the decision. Is that what you want to do?

MR. PIPER: Yes.

THE COURT: Have you had all the time you've needed to think about that?

MR. PIPER: Yes.

THE COURT: The other types of pleas are that of nolo contendere, or no contest; guilty but mentally ill; and not guilty by reason of insanity.

In your opinion, Mr. Rensch, would these pleas have any application to this case?

MR. RENSCH: No.

THE COURT: I believe there has been an evaluation?

MR. RENSCH: He has been evaluated by a psychiatrist; a report has not been prepared of that evaluation. But he has spoken to one, and I have been advised that there is no issue of insanity as it relates to this case. Or diminished capacity.

THE COURT: Mr. Piper, do you have any questions regarding the elements of the offenses charged, that is, what the State has to prove?

MR. PIPER: No.

THE COURT: Do you have any questions regarding the questions regarding the elements of the offenses charged, that is, what the State has to prove?

MR. PIPER: No.

THE COURT: Do you have any questions regarding the penalties that could be imposed in this case?

MR. PIPER: No.

THE COURT: Do you have any questions about your constitutional and statutory rights that I have explained to you?

MR. PIPER: No.

THE COURT: Do you have any questions regarding the types of pleas available?

MR. PIPER: No.

THE COURT: As I understand your case, there is no plea agreement here. The only consequence of your pleading guilty under the terms that are being

proposed is that Count I, first degree murder premeditated design, would either be dismissed by the State or by the Court. And Count II, kidnapping – gross permanent physical injury, would be dismissed by the State or by the Court in exchange for your plea to Count IIA.

MR. RENSCH: As well as the Count 1B, Your Honor, I believe, because he's pleading to the felony murder.

THE COURT: Okay. Count IB would also be dismissed, which is an alternative first degree murder – felony murder charge.

MR. RENSCH: Correct.

THE COURT: The other consequence would be that you would be waiving your right to have the jury do the sentencing. And we've discussed that, Mr. Piper. Is there anything more that you want to tell me about that or want me to explain to you about that?

MR. PIPER: No.

THE COURT: Okay. Mr. Piper, have there been any threats or promises made to get you to plead guilty?

MR. PIPER: No.

THE COURT: Are you under the influence of any drug or alcohol at the present time?

MR. PIPER: No.

THE COURT: Are you taking any prescription medication?

MR. PIPER: Yes.

THE COURT: What do you take, Mr. Piper?

MR. PIPER: Doxepin.

THE COURT: And who prescribed that for you?

MR. PIPER: County doctor.

MR. RENSCH: County doctor, he said.

THE COURT: Do you know, Mr. Larson?

THE BAILIFF: I believe it was Huguley.

THE COURT: Have you taken that prescription today?

MR. PIPER: No.

THE COURT: What effect does that prescription or that drug have on your ability to understand what we're doing here today?

MR. PIPER: None.

THE COURT: At any time since you've been in custody in Lawrence County have you at any time taken prescription drugs that have affected your ability to communicate with your lawyers or understand what they have been telling you?

MR. PIPER: No.

THE COURT: At any time since you returned from Alaska have you taken any prescription drugs that affected your ability to understand what was going on in court proceedings?

MR. PIPER: No.

THE COURT: To the best of your knowledge, Mr. Piper, are you mentally competent?

MR. PIPER: Yes.

THE COURT: Is the plea you're about to enter voluntary and of your own free will?

MR. PIPER: Yes.

THE COURT: Do you understand that if you plead guilty, I'm going to find you guilty?

MR. PIPER: Yes.

THE COURT: And if I'm satisfied that there's a factual basis for your pleas, I will accept those pleas. I will then schedule a sentencing hearing when the State and yourself can present whatever evidence that you wish me to consider at the time of sentencing. After that, I'm going to make a decision as to Count IA, whether it will be life or death, and then I will decide as to the sentence that be imposed on the remaining charges. Do you understand that?

MR. PIPER: Yes.

THE COURT: The Court finds that the Defendant has been regularly held to answer; that he's represented by competent counsel; understands the nature of the crimes charged, the maximum penalties, and the pleas available; that he is not under duress, nor is he under the influence of any drug or alcohol; that he's mentally competent and that he understands the consequences of his plea.

Mr. Piper, before I take your pleas, is there anything you want me to explain in more detail?

MR. PIPER: No.

THE COURT: You are making a significant decision today. I can't emphasize how significant this decision is. If you need time to dwell on it, think about it, or discuss it with your lawyers, this is the

time to take it. if you want to go ahead, we will go ahead.

MR. PIPER: Go ahead, Judge.

THE COURT: Do you wish to go ahead?

MR. PIPER: Yeah.

THE COURT: Are you in agreement, Mr. Rensch?

MR. RENSCH: I am, your Honor.

THE COURT: Mr. Duffy?

MR. DUFFY: Yes, sir.

THE COURT: Mr. Piper, to the charge of first degree murder – felony murder as set forth in Count IA, how do you plead?

MR. PIPER: Guilty.

THE COURT: To the charge of kidnapping as set forth in Count IIA, how do you plead?

MR. PIPER: Guilty.

THE COURT: To the charge of first degree robbery as set forth in Count III, how do you plead?

MR. PIPER: Guilty.

THE COURT: To the charge of first degree burglary as set forth in Count IV, how do you plead?

MR. PIPER: Guilty.

THE COURT: To the charge of grand theft as set forth in Count V, how do you plead?

MR. PIPER: Guilty.

THE COURT: Did you on or about 13 March 2000 in Lawrence County engage in the perpetration of a kidnapping?

MR. PIPER: Yes, I did.

THE COURT: During that time did you participate in the killing of Chester Allan Poage?

MR. PIPER: Yes, I did.

THE COURT: What specifically did you do to Mr. Poage?

MR. PIPER: I assaulted him.

MR. RENSCH: Tell him how.

MR. PIPER: I kicked him.

THE COURT: Let me stop you there. At the residence on Third Street, I believe there was testimony in your statement - - one of your statements, that when Mr. Poage was on the floor of the apartment, that he reached out for your foot and you kicked him in the head. Is that correct?

MR. PIPER: Yes, sir.

MR. RENSCH: If you'd like me to, I can provide the factual basis.

THE COURT: All right. If you'd like to do that.

MR. RENSCH: On the evening of March 13th, 2000, my client, along with Eli Page and Darrell Hoadley, ended up at Chester Allan Poage's residence. While they were at the residence, Eli looked around the place, went in the mother's bedroom, Dottie Poage's bedroom, looked at some stuff, went out on the front porch. Briley Piper went

out to the front porch. Eli said to Briley, "This kid has some good stuff. Let's steal it."

They concocted a plan whereby they would make it appear as though they were going to do a drug deal with Chester Allan Poage. They brought Darrell Hoadley into this plan as well, and he was a part of it.

They tricked Chester Allan Poage into getting into his vehicle and going over to Eli Page's house. While at Eli Page's house, Eli Page pulled out a .22 pistol that he had stolen from Dottie Poage's room and put it to Chester Allan Poage's head, made him get to the floor, began to assault him. At that point Chester Allan Poage was saying something and was reaching, and my client kicked him in the face very hard, knocking him out.

They then, all three of them, tied Chester Allan Poage up and sat him in a chair. They talked to him. Conversations took place, some activity took place there in the house. The long and short of it is they decided they were going to kill him. They loaded him into his own Blazer when he was tied up, and all three of them helped. They walked him to his Blazer.

They drove him to Higgins Gulch. The Higgins Gulch was Darrell Hoadley's idea. When they arrived at Higgins Gulch, Eli Page said, "Let's make him take his clothes off so he can't run away." They corralled him around the back part of the tailgate of the vehicle. He took his clothes off. They took his billfold from him. They took the cards in the billfold. They looked at the license, everything in his billfold.

Whereupon they escorted Chester Allan Poage down to the edge of the creek. All three of them started to beat Chester Allan Poage. During that time, they knew that it was going not be a killing. Briley Piper engaged in kicking him and beating him during that period of time. That went on for some minutes. Chester tried to run across the stream. Eli brought him back.

Briley goes up to the vehicle. He never stabs Chester Allan Poage, even though he'd made statements to that effect. And I've gone over that in great detail with him to see if he, in fact, stabbed him. In any event, Briley Piper goes up to the vehicle. He doesn't stop it, he doesn't leave, he doesn't try to get help.

The two down by the creek continue stabbing and beating and hurting Chester Allan Poage. Briley Piper comes back down. At that point Chester Allan Poage wants to wash the blood off, wants to get in the vehicle; they don't let him in the vehicle. Piper goes back up to the vehicle. And he hears rock on rock, and Eli and Darrell at that point ended Chester Allan Poage's life with rocks.

Now, some of that may not be perfect. My client can correct me where I'm wrong, but that's generally my understanding of the factual basis as it relates to the felony murder perpetrated during the course of the kidnapping, satisfies the elements for the robbery because they took the billfold, thereafter they went back to Dottie Poage's residence, stole everything in the residence, which constitutes a burglary, and possessed what was in the residence, which constitutes grand theft.

THE COURT: Mr. Piper, is there anything that Mr. Rensch has just said which you wish to comment on, qualify, or contradict?

MR. RENSCH: And I may not have said it correctly, so it's important that you give the right sequence.

MR. PIPER: No. That's how it happened.

THE COURT: Did you ever stab Chester Allan Poage?

MR. PIPER: No, I did not.

THE COURT: You made statements in the past that you stabbed the victim in the side of the head with a knife.

MR. PIPER: Yes, I did.

THE COURT: Do you recall that?

MR. PIPER: Yes.

THE COURT: I believe the other defendants have made the statement that you did that. That's my recollection, Mr. Rensch.

MR. RENSCH: I think one of them said he did once. I don't recall exactly. Although other people said that he said that he stabbed Mr. Poage.

THE COURT: I better ask. Did you tell Deputy Brian Dean that you stabbed him in the side of the head?

MR. PIPER: Yes, I did.

THE COURT: Why did you tell him that?

MR. PIPER: I had asked him - -

MR. RENSCH: Tell him about the deal.

MR. PIPER: I asked him if there was - - what I would have to do in order for any chance of a deal to be made. I can't remember exactly what he'd said to me, but he felt that I wasn't being honest in what I had told him, and that in order for any chance or hope for the State's Attorney to consider a deal would be - - would be to go back and - - He felt that - - He felt that I had lied to him about stabbing Mr. Poage, and that he felt very secure in the evidence that he did have that I did do it, and that for any chance for the State's Attorney to make a deal would be for me to say that - - to admit that I did, that I did stab him.

THE COURT: Did you ever tell anyone else that you stabbed Chester Allan Poage in the head or anywhere else?

MR. PIPER: No, I didn't.

THE COURT: You need to understand, Mr. Piper, that in the sentencing portion of this case, the State has alleged aggravating circumstances. And I think within the scope of those aggravating circumstances that they have specified, they have the right to introduce evidence that your participation in the killing may have been more than what you've admitted to here today, and I think you need to understand that, that just because you plead guilty, the State is not foreclosed at the sentencing hearing from introducing probably about everything that they had intended to introduce in the case-in-chief if we went to trial on the charges. Do you understand that?

MR. PIPER: Yes, sir.

THE COURT: I didn't say it very well, but what I'm trying to make clear to you is that the fact that

you say something didn't happen or you didn't do something that you may or maybe not have previously admitted to doesn't foreclose the State from introducing evidence that you did. Do you understand that?

MR. PIPER: Yes, sir.

THE COURT: And at the close of this factual record or at the close of the sentencing phase, I may find as a matter of fact that you participated in the actual stabbing. Do you understand that?

MR. PIPER: Yes, sir.

THE COURT: Okay. as far as what Mr. Rensch has said concerning the charges that you've pled guilty to, is there any further comment you wish to make?

MR. RENSCH: Don't just say no so we can get out of here. If there's something you want to clarify, clarify it.

MR. PIPER: The reason why I wanted to come and change my plea today is I want to take responsibility for what I did, but I will not now nor ever admit to something I didn't do.

THE COURT: Apparently you were willing to admit to it back in July.

MR. PIPER: I said that - - Sir, I'm 20 years old. I've never had to deal with anything but traffic violations, and now the State wants to kill me for something, yes, that I was a part of but didn't specifically do. And to be 20 years old, to try to save my own life, I did what I thought I had to do.

MR. RENSCH: Are you talking about when you were speaking to Investigator Dean?

MR. PIPER: Yes.

THE COURT: Okay. Mr. Fitzgerald, at this time is there anything additional you wish to offer for factual basis?

MR. FITZGERALD: No, Your Honor.

THE COURT: May I use Mr. Piper's statements of August - - excuse me, April 28th and June 9th for purposes of factual basis?

MR. RENSCH: Yes, Your Honor.

THE COURT: Do you agree, Mr. Piper?

MR. PIPER: Yes.

THE COURT: We will be discussing, I'm sure, the factual basis in more detail at the sentencing hearing, but for purposes of your pleas to these charges, I find that there's a substantial factual basis to your pleas and your pleas of guilty will be received.

We spoke in chambers concerning scheduling of the sentencing hearing, and since we had originally intended to begin testimony on September 17 - -

MR. RENSCH: January.

THE COURT: I'm sorry. January 17th, that we agree to begin on the 17th and set aside three days if needed.

Is that correct, Mr. Rensch?

MR. RENSCH: Correct, Your Honor.

THE COURT: Mr. Fitzgerald?

MR. FITZGERALD: Yes, Your Honor.

THE COURT: We will reconvene at 9 a.m. on January 17th for the sentencing hearing.

One other thing that was discussed off the record was how you wanted to present your evidence, particularly if you had people from your hometown that you wanted to have in person. I told Mr. Rensch that I would accept the evidence in whatever form that you and he wanted to present it, whether it was in affidavit form or in the form of live testimony. He will discuss that with you in more detail, but that option is available.

And I believe you've agreed as far as affidavits, Mr. Fitzgerald?

MR. FITZGERALD: Yes, I did.

THE COURT: I just want to assure you on the record that if you want those people here live and in person, that's the way it will be. Do you understand?

MR. PIPER: Yes.

THE COURT: Do you have anything further today, Mr. Fitzgerald?

MR. FITZGERALD: No, Your Honor.

THE COURT: Mr. Rensch?

MR. RENSCH: Nothing, Your Honor.

THE COURT: Mr. Duffy?

MR. DUFFY: Nothing further.

THE COURT: Do you have any questions?

MR. PIPER: No.

THE COURT: Court will be in recess.

STATE OF SOUTH DAKOTA)

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CERTIFICATE

COUNTY OF LAWRENCE)

I, Tracy L. Binder, Court Reporter and Notary Public, South Dakota, duly commissioned to administer oaths, certify that I placed the witnesses under oath before the witnesses testified; that the foregoing testimony of said witnesses was taken by me in shorthand, and that the same has been reduced to typewritten form under my supervision; that the foregoing transcript is a true transcript of the questions asked, of the testimony given, and of the proceedings had.

I further certify that I am not related to, employed by, or in any way associated with any of the parties to this action, or their counsel, and have no interest in its event.

Witness my hand and seal at Deadwood, South Dakota, this 4th day of January, 2001.

Tracy Binder

/s/

Tracy

L. Binder

Certified Shorthand Reporter