

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. Supreme Court

Honorable D. Garrison Hill, Circuit Court Judge

Case No. 2008-GS-23-009047

Dr. Israel Romero,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

Dr. Israel Romero
94 Birdsong Lane
Taylors, SC 29687
(864) 292-5025
Pro Se Petitioner

Other Counsel of Record:
HONORABLE ALAN WILSON
S.C. Attorney General
Attn: Salley W. Elliott
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 2921
ATTORNEY FOR RESPONDENT

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GRRENVILLE COUNTY
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

APPENDIX TO SUPPLEMENT RECORD ON APPEAL
FOR PAGES 52, 79 AND 80 OF TRIAL TRANSCRIPT

Dr. Israel Romero, Ph.D.
94 Birdsong Lane
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(864) 292-5025
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1 Q Well, were you there at seven o'clock?

2 A No, sir. I was at work.

3 Q Was that when he came back?

4 A Yes, sir. That's when the check was wrote.

5 Q So he came back at a time you weren't there?

6 A Yes, sir.

7 Q The only thing that was discussed with you
8 and Mr. Romero was matters relating to your federal
9 court case, right?

10 A What really upset me is he said he was going
11 to help me.

12 Q Well, he didn't get to finish his
13 representation, did he?

14 A That's because we found out he was not a
15 lawyer. That number belongs to someone else.

16 Q Well, tell us what the number is on that.

17 A 10127.

18 MR. WARDER: I'd like this marked for
19 identification, Your Honor.

20 THE COURT: Go ahead.

21 (WHEREUPON, Defendant's Exhibit 1 is marked for
22 identification purposes only.)

23 BY MR. WARDER:

24 Q Can you tell me what the number was on that?

25 A 10127.

1 free service where you can call and get the number for
2 a lawyer that practices law in your county for the
3 particular area of law that you need a lawyer for. So
4 we're not going to send someone who's been in a car
5 wreck to a bankruptcy lawyer. We want to make sure
6 that doesn't happen.

7 We also have a pro bono program which I used
8 to head up that helps coordinate volunteer lawyers for
9 indigent clients that can't afford a lawyer on their
10 own to make sure that those gaps are filled wherever
11 possible. We also will refer people, we have a good
12 working relationship with legal service, legal
13 services and other legal service providers. We try and
14 reach out wherever possible to maintain good conduct
15 with the public.

16 Q Thank you. I'm going to show you something,
17 Mrs. Rothstein.

18 A Okay.

19 Q It's been marked as Defendant's Exhibit 1. I
20 don't believe it's been entered into evidence.

21 MR. WARDER: It is in evidence.

22 BY MR. MYRICK:

23 Q Would you take a moment and look at it?

24 A Sure. Okay.

25 Q What is it?

1 **A** It is a license from the federal court,
2 certificate.

3 **Q** I'm going to hand you what has been marked
4 as State's 3.

5 **A** Okay.

6 **MR. WARDER:** Your Honor, if, uh, the State
7 is going to have the witness testify about that
8 document, then they have to put it in evidence.

9 **THE COURT:** All right. I'll tell you what.
10 We're going to go ahead and break for lunch.
11 We'll take this up once the break starts.

12 Ladies and Gentlemen, be back in the jury
13 room at 1:45. We'll resume the case at that time.
14 Keep an open mind. Don't talk about the case. All
15 right. Thank you very much.

16 **(WHEREUPON, the jury exits at approximately**
17 **12:20 p.m.)**

18 **THE COURT:** All right. Yes, sir. Mr.
19 Warder, you are objecting to the --

20 **MR. WARDER:** Your Honor, he's attempting to
21 have the witness testify off of a document that
22 isn't in evidence. I don't think you can do that.

23 **MR. MYRICK:** May I be heard? I think he's
24 the one that had it marked and showed to a
25 witness maybe 15 minutes before I did. We are not

CERTIFICATE OF PRO SE APPELLANT

The undersigned hereby certifies that the APPENDIX TO SUPPLEMENT THE RECORD ON APPEAL FOR PAGES 52, 79 AND 80 OF TRIAL TRANSCRIPT of April 21, 2009, contains all material proposed to be included by any of the parties and not any other material, as per Court Order dated February 11, 2010.

February 15, 2010



Dr. Israel Romero
94 Birdsong Lane
Taylors, SC 29687
(864) 292-5025
Pro Se Appellant

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FEB 16 2010
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

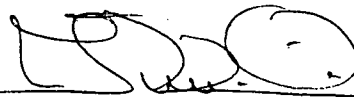
Appellant.

PROOF OF SERVICE

I, Dr. Israel Romero, Pro Se appellant, certify that I have served the within APPENDIX TO SUPPLEMENT THE RECORD ON APPEAL on Respondent, by Hand-Delivering one copy of same at the Office of the Attorney General, Attn: Salley W. Elliott, Assistant Deputy Attorney General, Rembert C. Dennis Building, 1000 Assembly Street, Room 519, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 16th day of February, 2010.



Dr. Israel Romero, Ph.D.
94 Birdsong Lane
Taylors, SC 29687
(864) 292-5025
Pro Se Appellant

criminal

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
D. Garrison Hill, Circuit Court Judge

18232
THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

RECORD ON APPEAL

Dr. Israel Romero, Ph.D.
94 Birdsong Lane
Taylors, SC 29687
(864) 292-5025
Pro Se Appellant

Henry Dargan McMaster
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Norman Mark Rapoport
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ARREST WARRANT

1-476052

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
GreenvilleTHE STATE
against
08-119389

Israel Romero

Address: 94 Birdsong Lane

Taylors, SC 29687-

Phone: SSN: Height: Weight:
Sex: M Race: DL #: Agency ORI #: SC02300000
DOB: Prosecuting Agency: Greenville County Sheriff's Office
Prosecuting Officer: Mark Perry - 0443
Offense: Law / Practice of law without license

Offense Code: 2566

Code/Ordinance Sec: 40-05-0310

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofis to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Israel Romero
on 8/18/08* 951 E42
Signature of Law Enforcement Officer

RETURN WARRANT TO:

City Magistrate 2
4 Mc Gee Street Room 116-B
Greenville, SC 29601

DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

Personally appeared before me the affiant Mark Perry

being duly sworn deposes and says that defendant Israel Romero

did within this county and state on or about 07/06/2008

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

in the following particulars:

DESCRIPTION OF OFFENSE Law / Practice of law without license

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:ISRAEL ROMERO PRESENTED HIMSELF TO THE VICTIM, NICKI MARTINEZ, AS AN ATTORNEY WITH A ATTORNEY
ID NUMBER 10127. THE SC BAR ASSOCIATION CONFIRMED THAT THE DEFENDANT IS NOT LICENSED AS AN
ATTORNEY IN SOUTH CAROLINA. THE DEFENDANT DID PRESENT HIMSELF AS AN ATTORNEY IN FEDERAL
COURT IN GREENVILLE, SC, IN AN EFFORT TO REPRESENT THE VICTIM'S HUSBAND, MR. MARTINEZ, WITH
REGARDS TO HIS IMMIGRATION STATUS. THIS INCIDENT DID OCCUR WITHIN THE JURISDICTION OF
GREENVILLE COUNTY.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mc Gee Street

Greenville, SC 29601-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/6/2008

defendant Israel Romero

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

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Law / Practice of law without license

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 08/18/2008

Judge's Address

4 Mc Gee Street, Room 116-B

(L.S.)

Signature of Issuing Judge

James E. Hudson

Judge's Telephone

(864) 467-5302

Judge Code: 5031

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY

AFFIDAVIT

Form Approved by
SC Judicial Council
April 21, 2003
SCCA 518

who

violate the criminal laws of the

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT

NOV 18 2008

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

UNAUTHORIZED PRACTICE OF LAW

That on or about the period between July 8, 2008, and July 24, 2008, Israel Romero did, in Greenville County, wilfully and unlawfully practice or solicit the cause of another person in a legal action without being admitted and sworn as an attorney, to wit: Israel Romero did present himself as an attorney to Juan Martinez, did give him legal advice, and did appear in a court of record in Greenville County, purporting to represent Martinez and solicit his cause in a matter before the court.

This in violation of § 40-5-310 of the S.C. Code of Laws, 1976, as amended.

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



HENRY MCMASTER (WAM)

SOUTH CAROLINA ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS. Isreal RomeroINDICTMENT/CASE#: 2008 GS-23 9047

AKA:

Race:

Sex: M

Age:

DOB:

SSN:

Address:

City, State, Zip

DL#

SID#

AW#: I-476052Date of Offense: July 6, 2008S.C. Code §: 15-5-310CDR Code #: 2, 5, 6, 6☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: In violation of 15-5-310 of the S.C. Code of Laws, bearing CDR Code # 2, 5, 6, 6in violation of 15-5-310 of the S.C. Code of Laws, bearing CDR Code # 2, 5, 6, 6☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solinger

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 90 days/months/years and/or to pay a fine of \$ 2,000; provided that upon the service of 90 days/months/years and/or payment of \$ 2,000; plus costs and assessments as applicable*, the balance is suspended with probation for 1 month/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.and/or to pay a fine of \$ 2,000; provided that upon the service of 90 days/months/years and/or payment of \$ 2,000; plus costs and assessments as applicable*, the balance is suspended with probation for 1 month/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☒ RESTITUTION: ☐ Heard, ☐ Waived, ☒ OrderedTotal: \$2,000 plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

SPECIAL CONDITIONS:

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

SCCA/217 (2/2006)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PRELIMINARY HEARING - ISRAEL ROMERO

 COPY

STATE

VS.

ISRAEL ROMERO

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PRELIMINARY HEARING - ISRAEL ROMERO

Page 2

1 SOLICITOR:

2 We're here, Your Honor, on warrants I476052, the
3 State v. Israel Romero, for the unauthorized
4 practice of law. And we'll go ahead and call
5 Officer Mark Perry to the stand.

6 THE COURT:

7 Do you solemnly swear or affirm the testimony you
8 give (inaudible)?

9 OFFICER PERRY:

10 I do.

11 THE COURT:

12 Thank you, please be seated.

13 EXAMINATION BY THE SOLICITOR:

14 Q. Good morning. You're the acting on this warrant;
15 can you describe for the court the nature of your
16 involvement in your investigation?

17 A. Yes, I was contacted by the Attorney General's
18 office and -- about a situation where the victim in
19 this case Nicki Martinez, her husband was arrested
20 on some Federal charges due to some immigration file
21 issues, I believe. The victim told me that she was
22 needing the services of an attorney and a friend
23 recommended the defendant, Israel Romero. She made
24 contact with him and he met with her over
25 (inaudible) on Hudson Street, which is in Greenville

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1 County. During this meeting the victim tells me
2 that the defendant told her that he was an attorney,
3 actually he gave her a business card with an
4 attorney ID number and told her that he would
5 represent her husband in court on his charges and
6 that he would try to help her with the legal
7 problems. The victim had her family help her write
8 out a \$2,000 check, which she gave to him. The
9 arrangement was he wanted \$5,000 originally but she
10 said that basically she didn't feel comfortable
11 giving out that much money without seeing some
12 results from his work.

13 Q. How much did she pay him?

14 A. So she -- they paid 2,000. They agreed on 2,000 now
15 and then she would pay him more later, additional
16 (inaudible).

17 Q. And how was the check made out, do you recall?

18 A. No, I do not recall exactly how it was written out.

19 Q. May I approach the witness, Your Honor?

20 THE COURT:

21 (Inaudible).

22 EXAMINATION CONTINUES BY THE SOLICITOR:

23 Q. How was that check made out?

24 A. It's made out to Israel Romero, Esq.; it's \$2,000.

25 Q. Thank you.

PRELIMINARY HEARING.- ISRAEL ROMERO

Page 4

1 A. So basically she said she gave him a check and later
2 after that day they met over at the Federal
3 Courthouse and the victim tells me that she was in
4 the courtroom and that the defendant did represent
5 her husband for some type of hearing. I'm assuming
6 it was a preliminary hearing, I don't know exactly
7 the details of the hearing. She said that he
8 represented her and then after that some time had
9 passed and she thought that Mr. Romero was handling
10 her case. Well she gets a phone call from the
11 Public Defender's office, and the Public Defender's
12 office says, you know, Ms. Martinez do you -- were
13 you aware that Mr. Romero is not a practicing
14 attorney in South Carolina? And the victim of
15 course did not know that and so she then calls the
16 South Carolina Bar Association and confirms with
17 that ID number. The ID number on his business card,
18 which says attorney ID number, that ID number comes
19 back to a female who made a purchase through the
20 South Carolina Bar, but it's actually not an
21 attorney. And furthermore, I had -- later I had the
22 name (inaudible) on Israel Romero and confirmed
23 through the South Carolina Bar he is not a
24 practicing attorney. I had the victim come down,
25 she gave me a statement about these events, about

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1 what happened and also produced a photo lineup,
2 which she positively identified Mr. Romero as being
3 the person who represented himself as an attorney to
4 her and in then later in Court. And after that
5 (inaudible) charged Mr. Romero (inaudible).

6 Q. And have you seen the transcript of an arraignment
7 in Federal Court that lists the defendant as having
8 appeared in Federal Court --

9 A. I saw it this morning.

10 Q. -- before Judge Catoe?

11 A. Yes.

12 Q. And in your interviews with various persons during
13 the course of your investigation did they indicate
14 to you that Mr. Romero had given legal advice in
15 this matter?

16 A. Yes. Yes.

17 Q. And you checked with the South Carolina Bar yourself
18 to verify that he was not an attorney?

19 A. Yes, I did. And also the victim said that after
20 that meeting at the courthouse there was a couple --
21 there was another meeting, she had given Mr. Romero
22 copies of some personal papers containing her Social
23 Security Number, date of birth and she was concerned
24 about getting those papers back, especially when she
25 started hearing that -- when she found out that the

1 person she had hired wasn't really an attorney she
2 became afraid of maybe what was going on and she had
3 -- she eventually got those papers back but ever
4 since that point she said she was trying to get in
5 touch with him to -- basically to question him about
6 what had happened and about his real legal status
7 and she basically told me that she was not able to -
8 - he was not returning her calls, I guess, is what
9 she told me.

10 Q. And his appearance in Federal Court, was that in
11 Greenville County?

12 A. Yes, it was.

13 Q. And when he met with the family at their home, was
14 that in Greenville County?

15 A. Yes, on Hudson Street (inaudible).

16 Q. And when he gave them that advice with respect to
17 Juan's legal status, did that occur in Greenville
18 County?

19 A. Right.

20 Q. Thank you, that's all I have.

21 THE COURT:

22 Thank you.

23 EXAMINATION BY MR. WARDER:

24 Q. The card that she was given -- the victim was given,
25 does it indicate my client's an attorney?

PRELIMINARY HEARING - ISRAEL ROMERO

Page 7

- 1 A. It says attorney admitted to South Carolina,
2 Attorney ID number, that's what it says.
- 3 Q. It has my client's name and then it says attorney
4 admitted to South Carolina?
- 5 A. Not exactly those words. It has admitted to South
6 Carolina and it has Law Office of Israel Romero and
7 then his home address in Taylors.
- 8 Q. It uses the word law office on it?
- 9 A. Right.
- 10 Q. In the statement that she -- the victim gave to you,
11 you said that she said that a friend had referred
12 her?
- 13 A. Right.
- 14 Q. Did she say who the friend is? Well can you publish
15 --
- 16 A. She stated the name --
- 17 Q. -- the statement --
- 18 A. She stated the name.
- 19 Q. Can you publish the statement she gave you so I
20 don't have to keep asking questions?
- 21 A. Actually I don't have it in front of me, but -- what
22 is your question?
- 23 Q. Was she given the card -- in which meeting was it?
24 Do you know what --
- 25 A. I don't know exactly which meeting she got the card,

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1. whether it was the first one or the second one at
2 the court house, I don't know.

3 Q. And the legal proceeding was an arraignment?

4 A. I don't know exactly what the proceeding was.

5 Q. Did my client represent to the court he was an
6 attorney at that time?

7 A. That's according to the victim, yes. Yes, he did.

8 Q. In the transcript does he appear to be representing
9 or asking questions, making representations to the
10 judge?

11 A. She said that the judge, presiding judge, asked him
12 if he was representing the client and also asked him
13 had he met with the client and the victim told me
14 she objected to that because she said that was one
15 of her problems with his service, she couldn't
16 believe that they were going to court and he hadn't
17 actually met with her husband. She was very upset
18 about the fact that he never met with her husband
19 prior to the court proceeding.

20 Q. As the court proceeding proceeded, did he represent
21 the husband? Did he make statements to the court?

22 A. She said that, yes, he stood up at the side of her
23 husband during the proceeding.

24 Q. Did the judge ask him -- in arraignments in Federal
25 Court they usually ask if whether you're in for the

1 duration, whether you're going to represent him for
2 the conclusion, were those the types of things that
3 were asked and did he respond?

4 A. I was not there at the Federal (inaudible).

5 Q. Have you read the transcript of that?

6 A. No, I have not.

7 Q. Were you involved in the arrest of my client?

8 A. Yes.

9 Q. Did you ask him about these things?

10 A. Yes, I did.

11 Q. What statements did he make?

12 A. He said he did not want to answer these questions.

13 Q. Is the answer he made no statements then?

14 A. His statement was, "I don't want to answer your
15 questions."

16 Q. Anybody else hear these conversations or --

17 A. The victim's family was present, the one that wrote
18 him the check.

19 Q. Did he ever meet with the person he was
20 representing?

21 A. I don't -- other than in court, I don't think so
22 because that was what the victim was initially upset
23 about was that he failed to actually meet with her
24 husband, who was in jail I guess.

25 Q. And the address on his business card that said his

PRELIMINARY HEARING - ISRAEL ROMERO

Page 10

1 law office, did you go out and look at that and see

2 what --

3 A. Yes, it's his home.

4 Q. He doesn't have any --

5 A. (Inaudible).

6 Q. -- signage or anything that would indicate --

7 A. Not a law office, no.

8 Q. I know you said Greenville so I'm unclear; it was

9 the Federal Courthouse building in Greenville?

10 A. Yes, sir.

11 Q. Thank you.

12 THE COURT:

13 (Inaudible).

14 SOLICITOR:

15 Your Honor, I know we're closing in on the lunch

16 hour, but if it might benefit the court, maybe I can

17 hand up part of the Federal transcript and

18 witnesses.

19 THE COURT:

20 (Inaudible).

21 MR. WARDER:

22 No objections (inaudible), Your Honor.

23 THE COURT:

24 All right.

25 REEXAMINATION BY THE SOLICITOR:

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PRELIMINARY HEARING - ISRAEL ROMERO

Page 11

1 Q. Detective Perry, I want to hand you the transcript
2 of the proceeding in Federal Court, what day did
3 that take place?

4 A. July 24, 2008.

5 Q. And does it say where it took place?

6 A. It says US District Court (inaudible) South Carolina
7 Greenville Division, Greenville, South Carolina.

8 Q. And does it list on the first page appearances?

9 A. Yes, it does.

10 Q. And does it have the defendant's name on it?

11 A. Yes, it does.

12 Q. And what does it say?

13 A. It says for the Defendant (inaudible), Israel
14 Romero.

15 Q. And if you would turn to the first page of the
16 actual proceeding and skip to line 12.

17 A. It says, "The Court: You've been retained," is the
18 question. And then on line 13, "Mr. Romero: Yes,
19 sir." 14, "The Court: So you are representing him?"
20 question. 15 (inaudible) "I represent Mr. Ramirez."

21 Q. And the court asks a couple more questions as well.

22 A. "I believe this is the first time you have been
23 here; is that right?" Mr. Romero: "Yes, Your
24 Honor." The Court, "Have you advised your client of
25 the charges and possible penalties?" Mr. Romero:

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PRELIMINARY HEARING - ISRAEL ROMERO

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1. "Yes, sir." The Court says, "Waive reading at this
2 time, do you waive reading of the charges and the
3 possible penalty?" Mr. Romero answered, "Yes, we
4 waive."

5 Q. Thank you, Detective.

6 SOLICITOR:

7 Your Honor, the State believes its established
8 probable cause and ask that these charges be bound
9 over for general sessions.

10 THE COURT:

11 (Inaudible).

12 MR. WARDER:

13 Your Honor, may it please the Court, we have no
14 motions at this time.

15 THE COURT:

16 Thank you so much. We bind this over for trial.

17 Thank you, Officer.

18 SOLICITOR:

19 Thank you, Your Honor.
20
21
22
23
24
25

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PRELIMINARY HEARING - ISRAEL ROMERO

CERTIFICATE

I, the undersigned, Jessica Antonucci, Notary Public in and for the State of South Carolina, and representative of Cannon Court Reporting do hereby certify that:

That the foregoing tape was transcribed at the request of Richard Warder, Esquire;

A court reporter was not present at the proceedings and therefore Cannon Court Reporting cannot guarantee that every word of testimony could be heard or that the speaking parties are properly identified;

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 11th day of November, 2008.

COPY

Jessica Antonucci

Notary Public for South Carolina

My Commission expires 7/20/2015

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	)	
COUNTY OF GREENVILLE	)	Case No(s) : 08-GS-23-9047
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Israel Romero,	)	
	)	
Defendant.	)	

April 21, 2009
Greenville, South Carolina

B E F O R E:

HONORABLE D. GARRISON HILL, Judge.

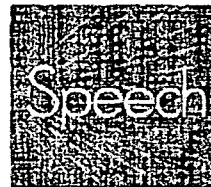
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P R O C E E D I N G S

1
2 **(WHEREUPON, State's Exhibit 1, 2, and 3 are**
3 marked for identification purposes.)

4 **MR. MYRICK:** Your Honor, I don't know if
5 you want to go through the requested voir dire
6 now or at a future time.

7 **THE COURT:** We can go over it now. Yes,
8 sir.

9 **MR. MYRICK:** The first six, Your Honor,
10 including 8, 9 and 10, they are just redundant,
11 Your Honor. They are various ways of repeating
12 the same thing over and over again. We have a
13 specific objection to number 7. That is wholly
14 unrelated to the facts of the case that we have
15 here. It's not what happened. There's not going
16 to be any evidence to say that's what happened.

17 If Your Honor would like to ask a broad
18 question regarding whether or not anybody has any
19 ethic biases that would impeded their ability to
20 give a fair trial, we think that would be a
21 perfectly acceptable way to keep from asking the
22 same questions.

23 Additionally, Your Honor, I have a witness
24 list and proposed voir dire of our own. I would
25 like to hand it up at this time.

1 **THE COURT:** Okay. Let's see. Mr. Thompson,
2 if we can close that door.

3 **THE BAILIFF:** That one?

4 **THE COURT:** That one, yes, sir. And don't
5 let the jurors in until we give them the go ahead
6 here. We want to talk about some things.

7 Mr. Warder, if I inquired as to whether they
8 can be fair and impartial in a case where someone
9 not born in the United States is charge -- what
10 exactly is his immigration status?

11 **MR. WARDER:** Your Honor, he is born in
12 Honduras.

13 **THE COURT:** Right.

14 **MR. WARDER:** Legally immigrated.

15 **THE COURT:** Right.

16 **MR. WARDER:** Was granted citizenship, I
17 believe, in '95.

18 **THE COURT:** Okay. So he's a citizen?

19 **MR. WARDER:** He is a citizen.

20 **THE COURT:** All right.

21 **MR. WARDER:** My concern is that
22 immigration, legal and illegal, has been said so
23 much in the news. It's galvanized a lot of
24 people. Politicians have ran on their platforms
25 of immigration. I don't know how polarized the

1 panel will be. It's a Hispanic country he's from.
2 Hispanic immigration is what seems to me -- they
3 are talking about drug wars in Mexico and, uh,
4 all that. I think that out of fairness, we ought
5 to be able to at least ask questions that are
6 designed to find if there's bias or prejudice out
7 of the news coverage or the feelings that have
8 been developed as a result of that against
9 Hispanic people coming here and working.

10 THE COURT: But he is a citizen. I don't
11 understand.

12 MR. WARDER: He is a citizen. He's an
13 immigrant though. He's a citizen that was born in
14 a foreign country and immigrated here.

15 THE COURT: I'll be glad to ask if anyone
16 has such strong feelings about people who are not
17 born in the United States and immigrate here and
18 whether they should be accorded the full rights
19 and responsibilities as other citizens or
20 something like that and inform them that he is a
21 citizen. I'll be glad to do something along those
22 lines. Is that what you want me to do? I mean,
23 I'll do something in that way. I've got your
24 proposed voir dire. I'll make that part of the
25 record. Okay.

1 Bring them on in.

2 (WHEREUPON, the jury enters at approximately
3 10:16 a.m.)

4 THE COURT: Okay. Good morning, Ladies and
5 Gentlemen. My name is Gary Hill. I'm one of the
6 Circuit Judges here in Greenville and Pickens
7 County. I'm glad to be home with you this week
8 serving a term of court for General Sessions. I
9 know you had the jury qualification yesterday
10 with Judge Patterson. He went over with you some
11 general matters. I now need to go over with you
12 some specific matters related to General Sessions
13 Court or criminal court.

14 We are about to begin the trial of the State
15 of South Carolina versus Israel Romero. I'm going
16 to read to you the indictment that I'm holding in
17 my hand. But before I do that, let me explain
18 some general principles that apply to all
19 criminal cases and certainly apply to this one.
20 This indictment is not evidence of anything. It's
21 not proof of anything. It's simply the ticket so
22 to speak that allows the prosecution to come in
23 the courtroom and begin the case against a
24 citizen and let's the citizen know what he is
25 charged with.

1 Mr. Romero, uh, who is a United States
2 citizen has pled not guilty to this charge and
3 this indictment. That puts the burden of proof on
4 the state. Mr. Romero can only be convicted of
5 this charge if, and only if, you find the State
6 has proven each and every element of the crime
7 beyond a reasonable doubt.

8 The crime he is alleged to have committed is
9 the Unauthorized practice of Law. The indictment
10 alleges that on or about the period between July
11 6th, 2008 and July 24th, 2008, Israel Romero did
12 in Greenville County willfully and unlawfully
13 practice or solicit the cause of another person
14 in a legal action without being admitted and
15 sworn as an attorney, to wit: Israel Romero did
16 present himself as an attorney to Juan Martinez
17 to give him legal advice and did appear in a
18 court of record in Greenville County reporting to
19 represent Martinez and solicit his cause in a
20 matter before the Court in violation of Section
21 40-5-310 of the South Carolina Code of Laws.

22 Now, Mr. Romero is presumed innocent. He does
23 not have to prove anything. He doesn't have any
24 burden of proof in this case. He doesn't have to
25 explain himself whatsoever. The burden instead is

1 on the State. As I said, it can only be met, uh,
2 if you are convinced that, uh, the State has
3 proven each and every element of the crime beyond
4 a reasonable doubt.

5 Now, uh, in order to ensure that we can have
6 a jury that is fair and impartial, uh, in this
7 matter, uh, I need to ask some questions, uh, of
8 you. The first question is is there anyone who is
9 related by blood or marriage to Israel Romero or
10 Juan Martinez? If so, please stand. (No
11 response).

12 Does anyone know anything about this case
13 other than, uh, what has been, uh, told to you
14 here from me this morning? If so, please stand.
15 (No response).

16 Is, uh, anyone a personal, social or business
17 relationship, uh, with, uh, Mr. Romero? Does
18 anyone have a personal business or such
19 relationship with Israel Romero? If so, please
20 stand. (No response).

21 Uh, is, uh, anyone aware of any kind of bias
22 or prejudice that they would have with anyone or
23 any issue in this case? If so, please stand. (No
24 response).

25 All right. I'm going to ask the lawyers who

1 are involved in this case to introduce themselves
2 and, uh, people that they are sitting with. Mr.
3 Myrick.

4 **MR. MYRICK:** Good morning. I'm Allen
5 Myrick. I work for the Attorney General of South
6 Carolina. With me today is Mark Perry of the
7 Greenville County Sheriff's Office.

8 **THE COURT:** Mr. Warder.

9 **MR. WARDER:** I'm Richard Warder. I practice
10 law here in Greenville. It's my privilege to be
11 representing Israel Romero. With us today is
12 Israel's wife seated over here. Thank you.

13 **THE COURT:** All right. Is anyone been
14 employed by or had a memory of their family,
15 immediate family been employed by the South
16 Carolina Attorney General's office or the
17 Greenville County Sheriff's Office? If so, please
18 stand. (No response).

19 Has anyone ever been involved in a dispute
20 where they are represented by Mr. Warder or the
21 other side was represented by Mr. Warder or have
22 you hired Mr. Warder or been employed by him or
23 had any of your immediate family been employed by
24 him? If so, please stand. (No response).

25 Okay. Uh, the people who may testify in this

1 case include Mark Perry, Karen Martin, Sandra
2 Nikki Martinez, Maria Martinez, Filimon Martinez,
3 Bob Wells, Jill Rothstein. Anyone related by
4 blood or marriage to any of those people I just
5 identified or does anyone have any personal,
6 social or business relationship with any of these
7 potential witnesses? If so, please stand. (No
8 response).

9 Now, as I mentioned, Mr. Romero is a United
10 States citizen. He, as I been advised, was born
11 in Honduras. Is there anyone who has strong
12 feelings about people who were born in other
13 countries and immigrate to this country? Or does
14 anyone have any issues or biases or prejudice
15 related to immigration such that you could not
16 give both sides in this case a fair and impartial
17 trial? If so, please stand. (No response).

18 Is there anyone who has personal beliefs
19 regarding the legal system or lawyers which
20 would, uh, prevent you from giving either side in
21 this case a fair trial which alleges that Mr.
22 Romero committed the unauthorized practice of
23 law? If so, please stand. (No response).

24 Okay. Is there any further voir dire
25 requested by the State?

1 **MR. MYRICK:** No, sir.

2 **THE COURT:** By the defense other than
3 anything that had been previously submitted by
4 either the State or the defense?

5 **MR. WARDER:** Your Honor, I would request
6 that you ask, uh, connection with law
7 enforcement.

8 **THE COURT:** Okay. Is anyone employed by or
9 have a member of their immediate family, uh,
10 employed by, uh, I already asked about the
11 sheriff's office but any law enforcement agency?
12 Or does anyone have, uh, such strong feelings
13 about, uh, law enforcement that they don't
14 believe they could give either side in this case
15 a fair trial or an impartial trial? If so, please
16 stand.

17 Yes, sir.

18 **JUROR:** My son is a police officer.

19 **THE COURT:** Your name is?

20 **JUROR:** Peden.

21 **THE COURT:** Mr. Peden. Okay. Who does he
22 work with, Mr. Peden?

23 **JUROR:** City of Fountain Inn.

24 **THE COURT:** Given that, would you have any
25 difficulty in giving both the State and Mr.

1 Romero a fair and impartial trial?

2 JUROR: I don't think so.

3 THE COURT: Okay. Thank you, sir.

4 JUROR: Your Honor, my son-in-law works
5 for the Department of Transportation in Georgia.

6 THE COURT: Okay. And could you still give
7 both the State and Mr. Romero a fair and
8 impartial trial in this case?

9 JUROR: Yes, sir.

10 THE COURT: All right. Yes, ma'am.

11 JUROR: My father works in the Greenville
12 Law Enforcement Center.

13 THE COURT: And your name is?

14 JUROR: Yolounda Robinson.

15 THE COURT: Mr. Robinson. Okay. You feel
16 you can still give both sides in this case a fair
17 and impartial trial?

18 JUROR: Yes.

19 THE COURT: You can decide the case solely
20 on the evidence and the law?

21 JUROR: Yes.

22 THE COURT: All right. Thank you.

23 JUROR: My name is Iris Manteghi. I have a
24 brother that works for -- he's a policeman but he
25 works in Anderson.

1 **THE COURT:** In Anderson? Okay. Do you feel
2 you could still give both the State and Mr.
3 Romero a fair and impartial trial?

4 **JUROR:** Yes, I do.

5 **THE COURT:** You can decide this case
6 solely on the evidence and the law?

7 **JUROR:** Yes.

8 **THE COURT:** All right. Thank you, ma'am.
9 And your name again?

10 **JUROR:** Iris Manteghi.

11 **THE COURT:** Okay. Thank you.

12 All right. Uh, any further voir dire from
13 either the State or the defense?

14 **MR. MYRICK:** No, sir.

15 **MR. WARDER:** No, Your Honor.

16 **THE COURT:** All right. We will now select
17 the jury. When your name is called, simply stand
18 where you are. If you are selected, bring your
19 belongings with you. Come and have a seat in the
20 jury box. Mr. Thompson will give you one of these
21 shiny buttons over here he's got.

22 Yes, ma'am.

23 **THE CLERK:** Number 185, Alexis Gabela.
24 What says the State?

25 **MR. MYRICK:** Please excuse this jury.

1 **THE CLERK:** Thank you. You are excused
2 from this case.
3 Number 137, Yolounda Robinson.
4 What says the State?
5 **MR. MYRICK:** Please present this juror.
6 **THE CLERK:** What says the Defense?
7 **MR. WARDER:** Please swear the juror.
8 **THE CLERK:** Please have a seat in the jury
9 box.
10 190, Teresa Pierson.
11 What says the State?
12 **MR. MYRICK:** Please present this juror.
13 **THE CLERK:** What says the Defense?
14 **MR. WARDER:** Please excuse the juror from
15 the trial of this matter.
16 **THE CLERK:** Thank you. You are excused.
17 127, David Preuninger.
18 What says the State?
19 **MR. MYRICK:** Please present this juror.
20 **THE CLERK:** What says the Defense?
21 **MR. WARDER:** Please swear the juror.
22 **THE CLERK:** Please have a seat in the jury
23 box.
24 176, David Whiting.
25 What says the State?

1 **MR. MYRICK:** Please present this juror.
2 **THE CLERK:** What says the Defense?
3 **MR. WARDER:** Please excuse the juror from
4 the trial in this case.
5 **THE CLERK:** Thank you. You are excused.
6 56, Lucille Gilliam.
7 What says the State?
8 **MR. MYRICK:** Please present this juror.
9 **THE CLERK:** What says the Defense?
10 **MR. WARDER:** Please swear the juror.
11 **THE CLERK:** Please have a seat in the jury
12 box.
13 167, William Turner.
14 What says the State?
15 **MR. MYRICK:** Please present this juror.
16 **THE CLERK:** What says the Defense?
17 **MR. WARDER:** Please swear the juror.
18 **THE CLERK:** Please have a seat in the jury
19 box.
20 60, Jean Harper.
21 What says the State?
22 **MR. MYRICK:** Please present this juror.
23 **THE CLERK:** What says the Defense?
24 **MR. WARDER:** Please swear the juror.
25 **THE CLERK:** Please have a seat in the jury

1 box.
2 168, Michael Vass.
3 What says the State?
4 **MR. MYRICK:** Please present this juror.
5 **THE CLERK:** What says the Defense?
6 **MR. WARDER:** Please swear the juror.
7 **THE CLERK:** Please have a seat in the jury
8 box.
9 7, Rowen Barefoot.
10 What says the State?
11 **MR. MYRICK:** Please present this juror.
12 **THE CLERK:** What says the Defense?
13 **MR. WARDER:** Please swear the juror.
14 **THE CLERK:** Please have a seat in the jury
15 box.
16 183, Kimberly Clark.
17 What says the State?
18 **MR. MYRICK:** Please present this juror.
19 **THE CLERK:** What says the Defense?
20 **MR. WARDER:** Please swear the juror.
21 **THE CLERK:** Please have a seat in the jury
22 box.
23 157, Marilyn Strawder.
24 What says the State?
25 **MR. MYRICK:** Please present this juror.

1	THE CLERK:	What says the Defense?
2	MR. WARDER:	Please swear the juror.
3	THE CLERK:	Please have a seat in the jury
4		box.
5		144, Timothy Sanford.
6		What says the State?
7	MR. MYRICK:	Please present this juror.
8	THE CLERK:	What says the Defense?
9	MR. WARDER:	Please excuse the juror from
10		the trial of this matter.
11	THE CLERK:	Thank you. You are excused.
12		174, William Whitaker.
13		What says the State?
14	MR. MYRICK:	Please present this juror.
15	THE CLERK:	What says the Defense?
16	MR. WARDER:	Please excuse the juror from
17		the trial of this matter.
18	THE CLERK:	Thank you. You are excused.
19		38, Stephen Dowd.
20		What says the State?
21	MR. MYRICK:	Please excuse this juror.
22	THE CLERK:	Thank you. You are excused.
23		Mr. Warder, four.
24		81, Lisa Jones.
25		What says the State?

1 **MR. MYRICK:** Please present this juror.
2 **THE CLERK:** What says the Defense?
3 **MR. WARDER:** Please swear the juror.
4 **THE CLERK:** Please have a seat in the jury
5 box.
6 152, Althea Smiley.
7 What says the State?
8 **MR. MYRICK:** Please present this juror.
9 **THE CLERK:** What says the Defense?
10 **MR. WARDER:** Please excuse the juror from
11 the trial of this matter.
12 **THE CLERK:** Thank you. You are excused.
13 147, Joseph Selig.
14 What says the State?
15 **MR. MYRICK:** Please present this juror.
16 **THE CLERK:** What says the Defense?
17 **MR. WARDER:** Please swear the juror.
18 **THE CLERK:** Please have a seat in the jury
19 box.
20 39, John Drake.
21 What says the State?
22 **MR. MYRICK:** Please excuse this juror.
23 **THE CLERK:** Thank you. You are excused
24 from this trial.
25 104, Dona McWhite-Dunn.

1 What says the State?

2 **MR. MYRICK:** Please present the juror.

3 **THE CLERK:** What says the Defendant?

4 **MR. WARDER:** Please swear the juror.

5 **THE CLERK:** Please have a seat in the jury

6 box.

7 65, Sharon Hill.

8 **THE COURT:** One alternate.

9 **MR. MYRICK:** I believe we have twelve, Your

10 Honor. Is this the first alternate?

11 **THE COURT:** Yes, sir.

12 **MR. MYRICK:** Please present this juror.

13 **THE CLERK:** What says the Defense?

14 **MR. WARDER:** Please excuse the juror from

15 the trial in this case.

16 **THE CLERK:** Thank you. You are excused

17 from this trial.

18 115, Michael Owens.

19 What says the State?

20 **MR. MYRICK:** Please present this juror.

21 **THE CLERK:** What says the Defense?

22 **MR. WARDER:** Please swear the juror.

23 **THE CLERK:** Please have a seat in the jury

24 box.

25 **THE COURT:** Okay. Any matters or motions

1 related to the selection process or composition
2 of the jury from the State?

3 **MR. MYRICK:** No, sir.. Nothing from the
4 State.

5 **THE COURT:** From the defense?

6 **MR. WARDER:** No, Your Honor.

7 **THE COURT:** All right. Uh, Ladies and
8 Gentlemen, you've been selected to be the jury in
9 the case of the State versus Israel Romero. We're
10 going to start the trial momentarily. I'm going
11 to ask Mr. Thompson to escort you across the
12 hallway to the jury room. Don't talk about the
13 case. We will resume in just a few minutes.

14 **(WHEREUPON, the jury exit at approximately**
15 **10:39 a.m.)**

16 **THE COURT:** I've got good news and bad
17 news. I don't know about y'all. I like to get the
18 bad news first. The bad news is you weren't
19 chosen for this particular chase. I can see the
20 disappointment etched on your faces out there.
21 The good news is that this is the last case on
22 the docket this week I've been told. So you don't
23 need to call back. Your jury obligation is
24 complete. You have a three-year exemption from
25 Circuit Court jury service. Thank you for your

1 cooperation and your patience and your duty. And
2 have a good rest of the week.

3 (WHEREUPON, the jury panel exits at approximately
4 10:41 a.m.)

5 THE COURT: All right. Anything before we
6 commence the trial from the State?

7 MR. WARDER: Your Honor, can we have just a
8 minute. I probably have to check my office. Some
9 things have changed on my calendar.

10 THE COURT: Okay. We'll take a short
11 recess. About five minutes.

12 MR. WARDER: That will be plenty.

13 THE COURT: All right.

14 (WHEREUPON, a short recess is taken.)

15 THE COURT: Okay. Anything before we bring
16 the jury in?

17 MR. MYRICK: Nothing from the State, Your
18 Honor.

19 MR. WARDER: Nothing from the Defendant,
20 Your Honor.

21 THE COURT: Okay.

22 (WHEREUPON, the jury enter at approximately
23 11:11 a.m.)

24 THE COURT: Okay. Good morning, Ladies and
25 Gentlemen. Before we begin the case, I want to

1 give you just a few preliminary instructions.
2 First of all, I want to thank you for your
3 service this week. I know you didn't come down
4 here voluntarily. You probably groaned when you
5 got the summons in the mail to report to the
6 courthouse yesterday morning. I hope this will be
7 an enjoyable and educational week for you to the
8 extent it can.

9 I know you are here in part because you
10 acknowledge and respect and appreciate the fact
11 that the right to a jury trial is a valuable and
12 important right. It's one of the cornerstones of
13 our democracy and our justice system. You are
14 certainly making it possible for the State and
15 Mr. Romero to, uh, have a jury trial on this, uh,
16 issue.

17 Now, you probably know that you were chosen
18 to come down here yesterday morning because you
19 either had a driver's license or you are
20 registered to vote or you have an identification
21 card issued by the Department of Transportation.
22 You may be wondering why you were chosen to sit
23 as a juror on this particular case. The reason
24 you were chosen is because both sides in this
25 case, the State of South Carolina and Mr. Romero

1 believe you can be fair and impartial and you can
2 decide this case without any kind of bias or
3 prejudice or preconceived ideas. That's why you
4 were chosen.

5 I know you've been introduced to the lawyers
6 in the case. Let me introduce some of the other
7 people in the courtroom. Then I will talk to you
8 a little bit about what my role is in this
9 process, then I will talk to you about your role
10 in the process. You met the lawyers.

11 Some of the other people who you may not have
12 met are the Court Reporter, Mrs. Teresa Johnson.
13 Circuit Court is a court of record. She takes
14 down every word that is said and transcribes it.
15 To her right is Rene' Kelley who is with the
16 Clerk of Court's Office. As you saw, she helps
17 with jury selection and helping things run
18 efficiently here during the course of this trial.

19 The bailiffs in this case are Mr. Thompson
20 and Mr. Anderson. They are here for your
21 assistance while you are serving on the jury. If
22 you have needs, they can certainly assist you. Up
23 here on the bench with me is John who is my law
24 clerk. He helps me with legal research regarding
25 issues that may arise during the case and helps

1 me prepare for other issues in the case.

2 As I said, I'm Gary Hill. I'm one of the
3 Circuit Judges here in Greenville. I will tell
4 you a little bit more about my job in just a
5 moment. But everybody I've introduced to you has
6 taken an oath to do their job. You are going to
7 take an oath to do your job. At this time, I'm
8 going to ask Mrs. Kelley to administer the oath
9 to you.

10 **THE CLERK:** Please stand and raise your
11 right hand. The correct response to the oath is,
12 "I will". You shall well and truly try the case
13 2008-GS-23-9047, the State versus Israel Romero
14 indicted for Unauthorized Practice of Law and a
15 true verdict render according to the law and the
16 evidence so help you God?

17 **(WHEREUPON, the jury responds affirmatively.)**

18 **THE COURT:** All right. Thank you. My role
19 in this process is fairly simple when compared to
20 yours. I'm the judge of the law in the case. If
21 there is an issue that arises during the course
22 of this case regarding the law, I'm the one who
23 decides it.

24 If, during the trial, someone objects to
25 evidence, please keep in mind that lawyers have

1 an ethical obligation to object when they think
2 evidence is improper. So don't hold it against
3 them if they do object. If they do object, I will
4 rule on whether the evidence is proper or
5 improper. If I rule that the objection should be
6 sustained, that means the evidence is improper
7 and you may not consider it. If I overrule the
8 objection, that means the evidence is proper and
9 you may consider it.

10 Usually, I can do that right on the spot.
11 Sometimes we have to take a short recess so we
12 can decide these things without taking up your
13 time here in the courtroom. But that's my first
14 job is to rule on the admissibility of evidence.

15 The second thing I do is at the end of the
16 case, I will give you the law that applies to
17 this case. I will instruct you on the law that
18 you are to apply to the facts of this case. I'm
19 known as the judge of the law. You are a judge as
20 well. When it comes to determining the facts of
21 the case, your badge may as well say Judge
22 instead of Juror.

23 Under our Constitution and our system of
24 justice, you, the jury, are the sole and
25 exclusive judge of the facts of a case. I can't

1 have an opinion about the facts of the case that
2 I can share with you. I won't comment on the
3 facts of the case throughout this trial. Your
4 prerogative and your sole prerogative is to
5 determine the facts. That's what juries do under
6 our system of justice. The reason we need a jury
7 here is there is some dispute about the facts.
8 Your job will be to determine what the facts are
9 and also to determine whether the State has met
10 its burden of proof.

11 Now, in determining the facts, you will
12 necessarily have to determine the credibility of
13 the evidence. So for every witness who testifies,
14 you will have to determine whether their
15 testimony is worthy of belief. For evidence
16 exhibit that may be introduced, you will have to
17 determine whether it's worthy of belief as well.

18 Now, how do you determine the facts? You do
19 that by weighing and evaluating the evidence that
20 you are going to hear in this case. Evidence
21 consist of two sources. I've already told you
22 about them. First is witness testimony and second
23 is by way of exhibits. I don't know much at all
24 about this case. I anticipate we will have
25 witness testimony. We may have exhibits in the

1 case.

2 An exhibit is simply a physical, tangible
3 object. It might be a map, photograph, piece of
4 paper. Something of that nature. But you will
5 know it is an exhibit. You will know it is
6 evidence from which you can determine what the
7 facts are because it will be back in the jury
8 room with you at the end of trial and have a
9 sticker on it that says the exhibit number.

10 Those are the two sources of evidence. Those
11 are the two things you can use to determine what
12 the facts are, witness testimony and exhibits.
13 Nothing else is evidence. You must confine your
14 decision to those two sources in this case. As
15 I've said, you will have to determine by
16 necessity the credibility of the evidence. That
17 includes witness testimony and exhibits.

18 There are certain things I can tell you that
19 you may use in determining whether someone is
20 credible or something is credible. You certainly,
21 in the case of a witness, may consider whether
22 the witness has an interest in the outcome of
23 this case, whether they have some bias or
24 prejudice towards one side or another or about
25 some issue in the case. You may consider how well

1 their testimony stacks up to the other evidence
2 in the case, whether it is consistent or
3 inconsistent. You may consider their demeanor on
4 the stand, whether their testimony is hesitant or
5 forthright. You certainly may use anything you
6 use in your day-to-day life when you try to
7 figure out if someone is telling you the truth or
8 not. Your common sense is not something that
9 suddenly evaporated when this case began.

10 So, Ladies and Gentlemen, how many of you
11 have sat on a criminal case before as a juror? If
12 you would, just raise your hand. (No response).

13 Okay. No one has. That, uh, is perfectly
14 fine. Uh, you may know from your experience, uh,
15 how a criminal trial works. So I'm going to go
16 over that with you and let you know a little bit
17 about the structure. The first thing I want to do
18 is emphasize to you once again about some general
19 principles that apply in criminal cases.

20 The first is that the indictment that Mr.
21 Romero is charged with alleges that he committed
22 unauthorized practice of law is not evidence.
23 Remember, it's not a witness. It's not an
24 exhibit. It's simply the way in which the case
25 starts. It's a piece of paper that allows Mr.

1 Romero like any citizen charged with a crime to
2 know what he's charged with and put him on
3 notice.

4 It is not evidence. Mr. Romero has pled not
5 guilty. That put the burden of proof on the
6 State. The State can only obtain a conviction at
7 your hands if it convinces you and all of you
8 that it has proven each and every element of the
9 crime beyond a reasonable doubt.

10 Mr. Romero is presumed innocent. He doesn't
11 have any burden of proof whatsoever. He doesn't
12 have to offer evidence or an explanation or do
13 anything throughout this trial. Again, the burden
14 of proof is on the State. Mr. Romero is presumed
15 innocent.

16 Now, uh, a criminal trial, uh, has a certain
17 structure to it. In just a moment, the State
18 through Mr. Myrick will give an opening statement
19 which is intended to be a roadmap about what the
20 issues are going to be in the case and what the
21 evidence will show. After he completes the
22 opening statement, and remember, he goes first
23 because the State bears the burden of proof, then
24 Mr. Warder on behalf of Mr. Romero will have the
25 opportunity but not the obligation to give an

1 opening statement.

2 Then we will have the presentation of the
3 evidence. Again, the State bearing the burden
4 will go first. Then, Mr. Warder will have the
5 opportunity to challenge that evidence. Once the
6 State completes its presentation of evidence, we
7 will reach a stage to where Mr. Romero has the
8 opportunity, but again not the obligation, to
9 present any evidence he wishes to present.

10 Once you have heard all the evidence, I will
11 give you the instruction on the law. Before I do
12 that, the lawyers will give you their closing
13 arguments where they will tell you what they
14 think the evidence has shown and what your
15 verdict should be. After I give you the closing
16 instructions, the law that you are to apply to
17 the case, the case will be in your hands for a
18 decision and for a verdict.

19 Now, I don't know how long the case is going
20 to take. It may very well go into tomorrow. But
21 regardless of how long or short it is, this is an
22 important day for both sides. This is their day
23 in court. I know you will give this case your
24 keen and full attention.

25 We spent some time this morning and so did

1 you trying to find a jury that could be fair and
2 impartial and have an open mind. We want to keep
3 you that way. So don't talk about the case until
4 the end when you've heard all the evidence, when
5 you've heard the closing arguments, when I've
6 given you the law. Then and only then will you
7 have the tools you need to do your job.

8 It would be easy for me to stop right there
9 and say just don't talk about the case, keep an
10 open mind. Let me tell you why it is so
11 important. You may hear this morning from a
12 witness who says something, testifies about a
13 matter in the case and if you, during the break,
14 uh, started talking about that witness'
15 testimony, you would start talking about what the
16 witness said or didn't say or should have said.

17 And once you do that, you are starting to
18 draw conclusions about this case and you are
19 starting to make up your mind. So you may hear
20 from a witness this afternoon that says something
21 completely different. Remember, a trial is often
22 like a jigsaw puzzle. It must be presented one
23 piece at a time. Don't talk about the case until
24 the end and keep an open mind.

25 I know it's hard to sit for long periods of

1 time and listen to cases and testimony and other
2 proceedings. But remember that it's right when we
3 start letting our minds wonder that something
4 important always happens. So try to keep close
5 attention. We will try to take breaks every hour
6 and a half or so to keep everyone fresh.

7 And, uh, remember also that, uh, the lawyers
8 in this case are not witnesses. So what they say
9 is not evidence. But listen to them very closely.
10 They are trying to help you understand the
11 evidence. They are advocates for their clients.
12 They are going to do their job to the best of
13 their ability to zealously represent their
14 client's interest.

15 You and I, Ladies and Gentlemen, are not
16 advocates. Our job is to be neutral, impartial
17 and fair. Your job is to determine the facts in
18 the case and determine whether the State has met
19 its burden of proof beyond a reasonable doubt.
20 Thank you for your attention. At this time, we'll
21 have the opening statement of Mr. Myrick.

22 **MR. MYRICK:** Thank you, Your Honor. May it
23 please the Court?

24 **THE COURT:** Yes, sir.

25 **MR. MYRICK:** Good morning again, y'all.

1 Again, I'm Allen Myrick. I work for the Attorney
2 General. My client is the State of South
3 Carolina. My job here today is present evidence
4 to you that the Defendant, Mr. Israel Romero, is
5 guilty of the crime that he's been charged with.

6 Y'all heard from the judge. In this courtroom
7 or in any courtroom in the United States, you
8 presumed innocent. As he sits there, he is
9 innocent. It's my job to show you the evidence
10 and present you witness testimony and documents,
11 whatever evidence exists to ensure that when you
12 go and retire to your jury room, uh, you can
13 convict him. That's what I'm going to ask you to
14 do.

15 He's been charged with the unauthorized
16 practice of law. I know you are out there
17 scratching your heads. There is a law in South
18 Carolina. The judge is going to tell you about it
19 at the appropriate time. But you can't come into
20 this courtroom or any courtroom in the state of
21 South Carolina unless you have a license.

22 Mr. Romero doesn't have a license. What you
23 are going to hear is that he went to some folks
24 and said I'm a lawyer. He took their money. He
25 went to court. He's not a lawyer. I never know

1 what, if anything, my colleagues on the other
2 side are going to say. So I won't presume to tell
3 you what the defense could be. But at the end of
4 the trial, I assure you that it will be clear in
5 your minds that he did exactly what the State of
6 South Carolina is alleging that he did and that
7 he didn't have a license.

8 The judge told you earlier that you have to
9 make whatever decision y'all come to based on the
10 evidence. What I say is not evidence. What Mr.
11 Romero's attorney, Mr. Warder, says is not
12 evidence. You are going to hear the evidence from
13 the witness stand and you are going to see some
14 documents. And at the appropriate time, I'm going
15 to ask you to convict him. Thank you.

16 **THE COURT:** Thank you, Mr. Myrick.

17 Mr. Warder.

18 **MR. WARDER:** Thank you, Your Honor.

19 We have opening statements in these cases
20 because it's helpful sometimes for us to tell you
21 what the issues are so you can listen to the
22 testimony and focus in on what the issues are.
23 Now, in this case, I raise on behalf of my client
24 two defenses. The first one is that what they
25 allege is not prohibited by the statute. In other

1 words, the statute says that no person may
2 solicit or cause of another person in a court of
3 this state.

4 **MR. MYRICK:** Your Honor, I'm going to
5 object to him arguing the law in his opening
6 statement.

7 **MR. WARDER:** Your Honor, I'm telling them
8 the law so that they'll know what to look at.

9 **THE COURT:** Overruled. Go ahead.

10 **MR. WARDER:** That phrase "of this state" is
11 what I want you to look, what I want. We are
12 saying we did practice law and we did practice it
13 in the state but we practiced in the court that's
14 not of this state. In other words, we practiced
15 it in federal court. Federal court is not a court
16 of this state. It is a court located in this
17 state. But it's ran strictly by the federal rules
18 of criminal or civil procedure. They are the ones
19 that determine who can practice and can't
20 practice.

21 Our defense would be that there was no act of
22 practice done in anticipation of an appearance in
23 a court of this state. We were going to appear
24 and did appear in the Federal District Court just
25 down the street at the corner of Washington and

1 Church. We submit and our argument will be that
2 that's not a court of this state. So I ask you to
3 listen to the testimony and see if any testimony
4 of any act was designed and set by the
5 Constitution of this state. Magistrate's Court,
6 Family Court.

7 Now, I'm sure when a fellow comes to you and
8 says he has two defenses, the first thing you
9 think is that one isn't good enough so he raises
10 something else trying to muddy the water. I tell
11 you there are in this case two valid defenses.
12 They are completely separate.

13 The second defense we would raise is that my
14 client never had any intent to do anything wrong.
15 The evidence will show in that regard that my
16 client was given a license by the federal
17 district court to practice in the federal
18 district court. You'd say that's simple enough.
19 That license has been revoked after this action
20 was brought. And so, at the time the conduct
21 complained of occurred, my client possessed the
22 license. It was revoked ab initio which means
23 "relating back". But he had no criminal intent on
24 the date charged in the indictment because he was
25 given a license to practice on that date.

1 Now, we'll introduce into evidence the
2 documents that related to that and they ordered
3 it revoked. We do that not to say that they made
4 a mistake when they revoked it but to say that as
5 to my client's state of mind, he had no
6 intention. His Honor will tell you you've got to
7 intend to commit a crime.

8 Listen carefully to the testimony. This would
9 be one of those cases that you never thought you
10 would sit on because most jurors don't think
11 they'll sit on a trial that has no disputed
12 facts. I think, in this trial, there is very
13 little or no material disputed facts. You will
14 hear testimony that my client practiced law. My
15 client will tell you that practiced law. They'll
16 tell you it happened in the State of South
17 Carolina. We'll tell you that it happened in the
18 State of South Carolina. What's at issue is what
19 conduct is prohibited by the statute and my
20 client's state of mind. Thank you.

21 **THE COURT:** Thank you, Mr. Warder.

22 Mr. Myrick, you may present your first
23 witness.

24 **MR. MYRICK:** The State calls Sandra "Nikki"
25 Martinez.

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SANDRA MARTINEZ

having first been sworn, testifies as follows:

THE CLERK: Please have a seat.

DIRECT EXAMINATION

BY MR. MYRICK:

Q Good morning.

A Good morning.

Q Would you tell the jury where you live?

A I live at 357 Hillandale Road.

Q Here in Greenville?

A Yes, sir.

Q And how are you employed?

A I'm work at the Hampton Inn downtown.

THE COURT: We can barely hear you.

THE WITNESS: I'm sorry.

THE COURT: You might want to move that
microphone.

BY MR. MYRICK:

Q Get closer to the microphone.

A I work at the Hampton Inn downtown
Greenville.

Q How long have you worked there?

A Almost two years.

Q What do you do there?

A I work the front desk, customer service.

1 Q Are you married?

2 A Yes, sir.

3 Q Who is your husband?

4 A Juan Martinez.

5 Q And how long have you been married?

6 A Two years.

7 Q You are going to have to speak up.

8 A Two years.

9 Q How long have y'all had a relationship?

10 A Going on eight years.

11 Q Eight years?

12 A Yes, sir.

13 Q And do y'all have children?

14 A Yes, sir.

15 Q Where is Juan now?

16 A He is in Georgia prison.

17 Q Is that a federal prison?

18 A Yes, sir.

19 Q Do you know why he is there?

20 A He is there because false documents. The

21 U.S. Marshalls picked him up.

22 Q He was illegally present in the United

23 States?

24 A Yes, sir.

25 Q And the federal government charged him, is

1 that right?

2 A Yes, sir.

3 Q Had he been in any trouble other than that?

4 A No, sir.

5 Q Your family had trouble. Did y'all seek
6 help?

7 A No, sir. We were looking for a good lawyer.

8 Q And were you referred to someone?

9 A Yes, sir.

10 Q Who were you referred to?

11 A Mr. Romero.

12 Q When did you meet Mr. Romero?

13 A The first time that I met him was April the
14 6th. It was about 1:00 or 1:30. And he gave me his
15 card that you have in your hand.

16 Q Okay. Just bear with me. I don't -- you
17 remember dates better than most of us. You met him.

18 A Yes.

19 Q Did he tell you what he did for a living?

20 A He said he was an immigration lawyer.

21 Q And I'm going to hand you what has been
22 marked as State's Exhibit number 2. Would you take a
23 moment and look at it.

24 A (Reviewing).

25 Q Do you recognize it?

1 **A** Yes, sir.

2 **Q** What does it say?

3 **A** Israel Romeo -- Romero, Attorney and
4 Counselor at Law.

5 **Q** Is that what he gave you?

6 **A** Yes, sir.

7 **Q** May I see it back please. At the first
8 meeting?

9 **A** Yes, sir.

10 **MR. MYRICK:** Your Honor, I'm going to move
11 State's number 2 into evidence at this time.

12 **MR. WARDER:** Without objection, Your
13 Honor.

14 **THE COURT:** It's in evidence.

15 **(WHEREUPON, State's Exhibit 2 is admitted into**
16 **the record.)**

17 **BY MR. MYRICK:**

18 **Q** So it says Israel Romero, Attorney and
19 Counselor at Law?

20 **A** Yes, sir.

21 **Q** Law Office of Israel Romero.

22 **A** Yes, sir.

23 **Q** What did he tell you he was going to do for
24 y'all?

25 **A** He said he was going to help my husband.

1 Q How did he say he was going to help?

2 A He was going to represent my husband. He was
3 going to help try to get my husband out of jail. We
4 went to federal court. He even represented me in
5 federal.

6 Q Did he meet with you and Juan together?

7 A No, sir. My husband has been in jail the
8 whole time.

9 Q Who all was there when you met with him?

10 A Me and Maria and my father-in-law.

11 Q Now who is Maria?

12 A Maria is my sister-in-law.

13 Q How is she related to Juan?

14 A Sister.

15 Q Who else was there?

16 A My father-in-law.

17 Q How is he related to Juan?

18 A That's his father.

19 Q So you met along with Juan's dad and Juan's
20 sister with Mr. Romero. Did y'all explain the problem
21 to him?

22 A Yes, sir.

23 Q You remember what he told you?

24 A He said that he was an immigration lawyer
25 and that he was wanting to help represent my husband.

1 Q Now, did he get paid?

2 A Yes, sir.

3 Q How did he get paid?

4 A He wanted \$5000 in cash. We told him we
5 would give him half the money, \$2000 until he shows us
6 that he can help my husband.

7 Q Now, that meeting, was there a meeting in
8 July?

9 A Yes, sir.

10 Q And where was that?

11 A At my father-in-law's house.

12 Q And what county is that in?

13 A Greenville, South Carolina.

14 Q Were you there for the whole meeting?

15 A No, sir.

16 Q Why weren't you there for the whole meeting?

17 A I had to go to work.

18 Q What time were you supposed to be at work?

19 A Three o'clock.

20 Q And what day was that again?

21 A July the 6th, on a Sunday. It was raining
22 outside.

23 Q It was a Sunday?

24 A Yes, sir.

25 Q And you weren't there for the whole meeting?

1 **A** No, sir.

2 **Q** Do you remember a court appearance that your
3 husband made in federal court?

4 **A** Yes, sir.

5 **Q** Juan Martinez Alvarez?

6 **A** Yes, sir.

7 **Q** And do you remember the date of that court
8 appearance?

9 **A** I do not know, sir.

10 **MR. MYRICK:** Your Honor, I would like to
11 approach the witness and refresh her memory.

12 **BY MR. MYRICK:**

13 **Q** Would you look at that first page there and
14 see if that refreshes your memory as to the date.

15 **A** Yes, sir. It does.

16 **Q** Do you remember now?

17 **A** Yes, sir.

18 **Q** May I have that back?

19 **A** Yes, sir.

20 **Q** Uh, so what date was it?

21 **A** July the 24th.

22 **Q** So what happened in court that day that you
23 remember?

24 **A** I had met Mr. Romero up there in court. He
25 got up there and represented my husband.

1 Q So you met him on the 24th in federal court?

2 A Yes, sir.

3 Q And you met him when he gave you the card?

4 A I met him prior to that.

5 Q So it's three times?

6 A That was two times. I met him July the 6th.

7 Then I met him in court. I met him three times, Yes,
8 sir. I met him in Spartanburg but they had dismissed
9 my husband's case to another day. They were bringing
10 it down to Greenville federal court.

11 Q In court in Spartanburg?

12 A Yes, sir.

13 Q What did he tell you in Spartanburg?

14 A He was outside waiting for us. He told us
15 the Court had rescheduled to come down to Greenville,
16 South Carolina for federal court.

17 Q So he told you what had happened --

18 A Yes, sir.

19 Q -- and when the next court appearance was
20 and then he showed up?

21 A Yes, sir.

22 Q After having given you his card saying he
23 was a lawyer?

24 A Yes, sir.

25 Q How much did your father-in-law pay him?

1 **A** \$2000.

2 **Q** Do you remember what happened after the July
3 24th court appearance?

4 **A** I got a phone call from --

5 **MR. WARDER:** Objection. Hearsay.

6 **MR. MYRICK:** We hadn't gotten there yet,
7 Your Honor. She said she got a phone call.

8 **THE COURT:** All right.

9 **BY MR. MYRICK:**

10 **Q** You can't say what somebody told you. But
11 what happened to your husband? You can't repeat
12 somebody else's word.

13 **A** July the 24th, my husband -- I met Mr.
14 Romero. A couple of days after that, my husband's
15 appointed lawyer called me. We was already starting to
16 put two and two together. He never went and visit my
17 husband in jail.

18 **Q** He never went to see him in jail?

19 **A** No, sir.

20 **Q** Even after y'all paid him?

21 **A** No, sir.

22 **MR. WARDER:** Objection unless he lay a
23 foundation, Your Honor.

24 **THE COURT:** Overruled.

25 **BY MR. MYRICK:**

1 Q He never went to see him in jail?

2 A No, sir.

3 MR. WARDER: Objection.. She can't possible
4 know.

5 THE COURT: Overruled. Go ahead.

6 BY MR. MYRICK:

7 Q The objection has been overruled. I'm going
8 to ask you again. Did he ever go to see him in jail?

9 A No, sir.

10 Q And ultimately, what did your husband do
11 with these federal charges?

12 A He had to back to jail.

13 Q Do you know exactly what for?

14 A False documents.

15 Q That's all I have for you right now, Mrs.
16 Martinez. Please answer any questions Mr. Warder might
17 have.

18 THE COURT: Cross-examination, Mr.
19 Warder.

20 CROSS-EXAMINATION

21 BY MR. WARDER:

22 Q The card that you got, this is the card that
23 you got from Israel?

24 A Yes, sir.

25 Q Okay. And it says admitted to South Carolina

1 Federal Court. Is that correct?

2 A Yes, sir.

3 Q Was your case headed to federal court?

4 A Yes, sir.

5 Q It wasn't going to state court?

6 A No, it was federal court.

7 Q Okay. And, uh, this card had a federal ID
8 number on it?

9 A Yes, sir.

10 Q Now, Mr. Romero met you in Spartanburg once?

11 A He did.

12 Q Is that where your husband was being held?

13 A He was in Spartanburg County jail before
14 they moved him to Georgia.

15 Q Okay. The time that we're talking about in
16 the July of 2008, was your husband being held in the
17 Spartanburg County Detention Center?

18 A July -- I don't understand what you are
19 trying to say. July the 24th?

20 Q Well, when did he go in the detention center
21 over there?

22 A My husband had been in jail since June the
23 27th of last year.

24 Q Okay. Did he go to Spartanburg Detention
25 Center?

1 **A** Yes, sir.

2 **Q** When did he leave the Spartanburg Detention
3 Center?

4 **A** I'm not sure. I don't know the exact dates.

5 **Q** Do you know the months?

6 **A** He was in Spartanburg County Jail for at
7 least three to four months.

8 **Q** Okay. And, uh, during that time, those three
9 or four months, how often were you over there?

10 **A** I was going to see my husband every weekend.
11 Every week, I went and saw my husband.

12 **Q** You wouldn't be over there to observe what
13 was happening during the days?

14 **A** No, sir.

15 **Q** Just the weekends?

16 **A** Yes, sir.

17 **Q** Now, the time you and Mr. Romero had a
18 meeting, was it seven o'clock?

19 **A** No, sir.

20 **Q** Did you ever tell the investigators at seven
21 o'clock?

22 **A** He was there two times that day, July the
23 6th. I had to be at work. He come back because my
24 father-in-law wanted to talk to him, to my mother-in-
25 law about giving that much money.

1 Q They are the same?

2 A They are the same.

3 Q Thank you.

4 THE COURT: Redirect?

5 MR. MYRICK: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. MYRICK:

8 Q Mrs. Martinez, prior to this thing with your
9 husband, do you have a lot of experience with the
10 courts?

11 A Not a whole lot but I know just a little
12 about the courts and the way it works.

13 Q But a piece of paper, you don't know --

14 A I mean, that could have been made up. You
15 never know.

16 Q You don't know?

17 A No, sir.

18 Q That check your father-in-law wrote, whose
19 money was that?

20 A That was my and my husband's money we had in
21 their savings account.

22 Q Did you get your money back?

23 A No, sir.

24 Q Did Mr. Romero ever do a thing for you or
25 your husband?

1 **A** No, sir.

2 **Q** That's all I have for this witness, Your
3 Honor.

4 **THE COURT:** Any recross?

5 **MR. WARDER:** No.

6 **THE COURT:** Thank you. You may step down,
7 Mrs. Martinez.

8 All right. You may call your next witness.

9 **MR. MYRICK:** Your Honor, the State calls
10 Maria Martinez.

11 **MARIA MARTINEZ**

12 having first been sworn, testifies as follows:

13 **THE CLERK:** Please have a seat.

14 **DIRECT EXAMINATION**

15 **BY MR. MYRICK:**

16 **Q** Good morning.

17 **A** Good morning.

18 **Q** Do you know Israel Romero?

19 **A** Yes.

20 **Q** Do you see him here?

21 **A** Yes, I do.

22 **Q** Would you kind of point him out for the
23 record?

24 **A** (Pointing).

25 **Q** And where is he sitting?

1 A Over there.
2 Q By Mr. Warder?
3 A Uh-huh.
4 Q Where do you live, Maria?
5 A In Greenville.
6 Q Do you work?
7 A Yes.
8 Q Where do you work?
9 A The Hampton Inn.
10 Q What do you do there?
11 A I'm a sales manager.
12 Q You are a sales manager?
13 A Uh-huh.
14 Q How long have you been the sales manager?
15 A About a year on this 28th of this month.
16 Q What did you do before that?
17 A I worked there as a guest service
18 representative.
19 Q So you got promoted?
20 A Uh-huh.
21 Q How long did you work there?
22 A About a year.
23 Q You were here in court. Did you hear your
24 sister-in-law's testimony?
25 A Yes.

1 Q Do you remember when the first time you met
2 Mr. Romero was?

3 A Yes.

4 Q Would you tell the jury when it was.

5 A It was on July 6th around 1:30 p.m. That
6 was the first time I met him.

7 Q Okay. And did you see this card?

8 If I might approach the witness, Your Honor.

9 Did you see this card too that day?

10 A Yes.

11 Q What did Mr. Romero say?

12 A He said he was an immigration attorney. That
13 he helped a lot of people stop their deportation when
14 they have the guilt of using false documents and
15 because he has family in the United States that he can
16 stop the deportation if he shows his marriage license
17 and the birth certificates of their children together.

18 Q So, y'all explained to him your brother's
19 situation?

20 A Yes, sir.

21 Q Did you tell him about your brother's wife?

22 A Yes, sir.

23 Q And your brother has children with his wife?

24 A Yes, sir.

25 Q And y'all explained all that to him?

1 **A** Yes.

2 **Q** Why did y'all tell him all this personal
3 stuff?

4 **A** The two persons that sold my parents their
5 house referenced Mr. Romero to them. He used to attend
6 their church.

7 **Q** So y'all got a referral?

8 **A** Yes, from them that he hands out cards to
9 the people at the church and said that he was an
10 attorney.

11 **Q** So y'all met with him and --

12 **A** Uh-huh.

13 **Q** -- is this the same meeting that your
14 husband, I mean, your brother's wife testified about?

15 **A** Yes.

16 **Q** And it was at your father-in-law's house?

17 **A** Yes. At my father's.

18 **Q** So y'all told him all this personal stuff?

19 **A** Uh-huh.

20 **Q** And what did he tell you after you explained
21 the whole situation to him?

22 **A** He said that he would just need all those
23 papers, his marriage license, the kids' Social
24 Security cards, their birth certificate and he did not
25 want copies. He wanted the originals so that he could

1 present them in court. He was going to fight to stop
2 at least the deportation. If he was going to get
3 sentenced at least some time, he could stop the
4 deportation.

5 Q Did he study those, the documents?

6 A Yes. We gave them to him the same week. We
7 had to get it from Nikki.

8 Q So y'all trusted him?

9 A Yes.

10 Q Did you see him look at these documents and
11 analyze them?

12 A No. The day he went to get them, he just
13 picked them up and left. He said he was going to call
14 us back.

15 Q During one of the visits when you were at
16 your parent's home and Mr. Romero was there, did your
17 brother call?

18 A Yes.

19 Q Was that on purpose or --

20 A No. He was just calling. He was in jail at
21 the time. He's been in jail the whole time. He never
22 met Mr. Romero.

23 Q Were you in the room when the phone rang?

24 A Yes.

25 Q Did you know who was on the other end?

1 A Yes.

2 Q Could you hear the Defendant's side of the
3 conversation?

4 A Yes, sir.

5 Q Do you remember what you heard him say that
6 day?

7 A Yes, sir.

8 Q Would you tell the jury what he said.

9 A He said that he was just meeting with his
10 parents and that he was his attorney now and he was
11 going to help him with his case and stop the
12 deportation.

13 Q And did you hear the Defendant make a
14 statement that he was going to get him released?

15 A Uh, Mr. Romero? I'm sorry.

16 Q Yes. The Defendant, Mr. Romero.

17 A Not that. He could only stop the
18 deportation. He didn't say he was going to get him
19 released. He just said he was going to get him some
20 kind of permission to be here and file for his papers
21 so he could legally be here since he had a wife and
22 kids here.

23 Q Do you know independently whether or not Mr.
24 Romero got paid?

25 A Yes, I do.

1 Q What's your dad's name?

2 A Filimon Martinez.

3 Q Do you recognize this signature?

4 A Yes, I do.

5 MR. MYRICK: Your Honor, I would like to go
6 ahead and get this marked as State, State's
7 number 4 please.

8 (WHEREUPON, State's Exhibit 4 is marked for
9 identification purposes.)

10 MR. WARDER: No objection.

11 THE COURT: It's in evidence.

12 (WHEREUPON, State's Exhibit 4 is admitted into
13 the record.)

14 BY MR. MYRICK:

15 Q I'm going to hand you what's been marked
16 State's Exhibit 4. What is that?

17 A That is the check that my dad wrote to Mr.
18 Israel Romero for \$2000 to start the case.

19 Q And you recognize your dad's signature?

20 A Yes, sir.

21 Q Did you see him write it?

22 A Yes, sir.

23 Q Do you remember talking to Mike Simms?

24 A Yes, sir.

25 Q And who is he?

1 **A** I can't remember his title. He kind of got
2 all the notes from us of what happened. Some
3 investigator I guess.

4 **MR. MYRICK:** Your Honor, I would like to
5 refresh the witness' memory with the
6 investigator's notes of the interview she had
7 with him.

8 **MR. WARDER:** Your Honor, it's not a writing
9 of this witness or anything the witness made.
10 It's -- one of the investigators with the
11 Attorney General's office has written something
12 down that they want her to remember.

13 **MR. MYRICK:** It's a direct quote, Your
14 Honor.

15 **MR. WARDER:** It's not her writing, Your
16 Honor. She can't --

17 **THE COURT:** I will allow you to lay a
18 further foundation under Rule 612.

19 **BY MR. MYRICK:**

20 **Q** Do you remember exactly what you said to
21 Mike Simms that day about the phone call that the
22 Defendant had with your brother? You remember exactly
23 what you said?

24 **A** A little bit, yes.

25 **Q** Would it help if I refreshed your memory?

1 **A** Yes.

2 **MR. MYRICK:** Your Honor, I would like to
3 refresh the witness' memory.

4 **MR. WARDER:** Objection. It would be
5 impossible, improper, Your Honor.

6 **THE COURT:** Well, you can show her that
7 document.

8 **MR. WARDER:** It isn't her document, Your
9 Honor.

10 **THE COURT:** It doesn't matter. Go ahead.
11 You can show it to her.

12 **MR. MYRICK:** Thank you, Judge.

13 **BY MR. MYRICK:**

14 **Q** Would you look at this right here please for
15 just a moment. Whatever you do, don't read it. Would
16 you just look at that portion of the document and look
17 up when you are done.

18 **A** (Reading). Okay.

19 **Q** Do you remember exactly what you heard this
20 man tell your brother on the phone?

21 **A** Uh-huh.

22 **Q** Would you tell the Court and the jury
23 exactly what you heard the Defendant say that day.

24 **A** Okay. He said that he was just now meeting
25 with the first time with his parents and his wife

1 Nikki and he was now going to be representing him on
2 the immigration process of the case, that he was going
3 to stop the deportation because he has a citizen wife
4 here and citizen kids here.

5 Q Thank you so much. That's all I have for
6 right now. Would you please answer any questions Mr.
7 Warder has.

8 **CROSS-EXAMINATION**

9 **BY MR. WARDER:**

10 Q The documentation that Mr. Romero thought
11 would be important to prove that he had a citizen wife
12 and citizen kids, correct?

13 A Yes.

14 Q Okay. And, uh, that would certainly be
15 equities that would weigh into the decision to deport,
16 is that right?

17 A Yes, sir.

18 Q Those are things that certainly you would
19 want to present to anybody that was considering the
20 case to deport your brother, wouldn't you?

21 A Yes.

22 Q Okay. And you must have been somewhat
23 relieved that Mr. Romero was going to get these
24 mitigating factors together so that he could make an
25 argument that it would unjust or sort of a hardship to

1 deport your brother. Is that right?

2 A Uh-huh. Yes, sir.

3 Q Okay. And you are not telling us that there
4 was anything wrong with him getting the information
5 that it would take to make this equitable argument
6 against deportation, are you?

7 A No, sir.

8 Q It isn't like he took that information and
9 done anything bad. There hasn't been identity theft or
10 any of that stuff in this case, has their?

11 A It could have.

12 Q Pardon?

13 A It could have. We just trusted him.

14 Q Well, your trust was well founded. He never
15 did those things, did he?

16 A Not that I know of.

17 Q Uh, and, uh, Mr. Romero had how many days
18 that he worked on your case after this? Do you know?

19 A It was like a week after --

20 Q Okay.

21 A -- we found out he wasn't an attorney.

22 Q He never got a chance to make any equitable
23 arguments, did he?

24 A No.

25 Q Did anybody ever make them?

1 **A** No.

2 **Q** Do you think your brother might have come
3 out a lot better if somebody had done just like the
4 plan Mr. Romero had to show all the ties your brother
5 had and what a hardship it would be to the family and
6 kids. Do you think that would have been -- he might
7 have been better off if somebody had done that?

8 **A** Yes, sir.

9 **Q** Thank you.

10 **THE COURT:** Redirect?

11 **MR. MYRICK:** No, sir, Your Honor. We ask
12 that this witness be excused.

13 **THE COURT:** Any objection? Any objection
14 to Mrs. Martinez being excused, sir?

15 **MR. WARDER:** No.

16 **THE COURT:** All right. Thank you, ma'am.
17 You may call your next witness, Mr. Myrick.

18 **MR. MYRICK:** Thank you, Your Honor. The
19 State calls Jill Rothstein.

20 **JILL ROTHSTEIN**

21 having first been sworn, testifies as follows:

22 **THE CLERK:** Have a seat.

23 **DIRECT EXAMINATION**

24 **BY MR. MYRICK:**

25 **Q** Good morning.

1 **A** Good morning.

2 **Q** Mrs. Rothstein, what is your profession?

3 **A** I am a lawyer.

4 **Q** How are you employed?

5 **A** I am called -- my title is Risk Management
6 Director. I'm employed at the South Carolina Law. My
7 job is basically to help lawyers consider what they
8 are doing and make sure that what they would like to
9 do comports with the Rules of Professional Conduct and
10 the Rules of Appellate Court.

11 **Q** Don't you also sit on the Practice of Law
12 Committee?

13 **A** I do. I'm a non-voting member because I'm a
14 bar staffer.

15 **Q** I'd like, if you could, to talk with me, the
16 jury about how you become a lawyer in South Carolina.

17 **A** It's a long process.

18 **Q** Please tell the jury.

19 **A** Sure. The first thing you have to do to be a
20 lawyer in South Carolina is to go to undergraduate
21 school. You have to graduate. Then you take what is
22 called the LSAT, the Law School Admissions Test. You
23 have to get a certain grade on that to be admitted to
24 different law schools. Different law schools have
25 different grade requirements. You take the LSAT, you

1 sit for that. Then you get admitted to law school. Yu
2 go to law school for three years. Then once you, -- of
3 course, you have to graduate from law school.

4 Q What kind of law school?

5 A An accredited law school which is sort of
6 the stamp of approval that the American Bar
7 Association gives to law schools. So you have to go to
8 an accredited law school actually and graduate from
9 there. Then you sit --

10 Q How long does that take?

11 A It feels like forever but it's three years.

12 Q Can you practice law then? You been to law
13 school. Can you be a lawyer?

14 A No, not yet.

15 Q What's next?

16 A The next thing you do is study. Usually what
17 you do is finish law school in May. You study all
18 summer for the bar exam and then sit for the bar exam
19 which is usually the last week of, I think it's July,
20 the first week of August. It takes -- when I sat for
21 it, it took three and a half days.

22 Q Of testing?

23 A Yes.

24 Q How long are the tests each day?

25 A You take one section in the morning and one

1 section in the afternoon. If I'm remembering
2 correctly, they are about three hours each and each
3 section tests on a different area of the law. So one
4 day, you'll have property and family court law, family
5 law.

6 Q Is it safe to say that each day of testing
7 is a full day?

8 A Yes.

9 Q And when you did it, it was how long?

10 A Three days plus half to take the multi-state
11 portion of the bar which is the section that everybody
12 across the country takes. It's one of those little
13 bubble sheets.

14 Q What's the purpose of that?

15 A The purpose of bar exam?

16 Q Yes, ma'am.

17 A The purpose of the bar exam was to make sure
18 that someone who wants to practice law is proficient
19 enough in different areas of law to practice them,
20 that they have a basic understanding of the state law
21 and what's required to go into a courtroom and
22 practice law.

23 Q If you pass that, do you get to be a lawyer
24 then?

25 A No, and actually, let me back up for one

1 second and add one other thing. In order to sit for
2 the bar exam, you have to apply to sit for that. I
3 should have mentioned that earlier. Applying for the
4 bar exam, you do through an organization that's part
5 of the State court structure called the character and
6 fitness office. You have to pretty much list your life
7 history so that they can determine whether or not you
8 are of good character and can sit for the bar exam.

9 I remember the thing that was hardest for me
10 to find was you have list every parking ticket and
11 speeding ticket you ever remember getting. I got a
12 speeding ticket when I was 18 in a town at the beach
13 and had to go back and call that office person and
14 tell them I got the ticket when I was a teenager. You
15 have to go way back and kind of list your whole
16 history for character and fitness. Then you can sit
17 for the bar exam.

18 Q So you take three days of testing?

19 A Right. Character fitness, then the bar exam,
20 then you find out whether or not you passed.

21 Q After law school?

22 MR. WARDER: I object all of this on
23 relevancy. This doesn't have any thing to do with
24 -- I mean, how you become a lawyer doesn't have
25 anything to do with this case. And certainly this

1 long testimony about the LSAT and how you take it
2 just doesn't have anything. I object on
3 relevance.

4 THE COURT: Okay. Overruled. Go ahead.

5 BY MR. MYRICK:

6 Q So supposing you get this far --

7 A Uh-huh.

8 Q -- do you know what the MPRE is?

9 A Multi-state Professional Responsibility
10 Exam.

11 Q Is that a mandatory test?

12 A It is.

13 Q Do you have to pass it?

14 A Yes.

15 Q What's its purpose?

16 A The purpose is to test on the model rules of
17 professional conduct which are ABA standards that are
18 sort of your baseline for how lawyers should act
19 professionally and ethically.

20 Q What's Bridge the Gap?

21 A Bridge the Gap is a series of seminars that
22 every lawyer that wants to practice must take. Uh,
23 they are on professionalism and practice and courtroom
24 etiquette and so forth. That's about a three day
25 class.

1 Q When you do all that, can you go be a lawyer
2 then?

3 A Nope. Then you get sworn in which is usually
4 I think some time in November. And there is a rule of
5 court called Rule 403. It states that you have to, in
6 order to be able to practice law in a court room, you
7 have to observe certain types of trials in order to
8 practice law in court.

9 Q And you have to go do that?

10 A You do. You have to go get -- you have a
11 sheet that has to be signed by the judge.

12 Q Circuit Court Judge?

13 A Well, some of them are circuit court, some
14 of them are family court, some of them are equity
15 court and so forth.

16 Q So all these rules, are they recorded in a
17 rule book?

18 A They are.

19 Q Who makes the rules?

20 A The Supreme Court.

21 Q Now, do you have access to records in your
22 position at the bar as to who is and who is not a
23 member of the bar?

24 A I do.

25 Q Is Mr. Romero a member of the bar?

1 **A** No.

2 **Q** Is he a graduate of any South Carolina law
3 school?

4 **A** No.

5 **Q** As far as you know, is he a graduate of any
6 accredited United States law school?

7 **A** As far as I know, no.

8 **MR. MYRICK:** Your Honor, I'm going to
9 approach the witness and hand her what has been
10 marked as State's 1. It is a court transcript of
11 a federal proceeding. The Court Reporter signed
12 it. Her name is Karen Martin. She is presently in
13 Judge Herlong's courtroom. Rather than break down
14 court, uh, we believe there is a stipulation.

15 **MR. WARDER:** Your Honor, I stipulate its
16 admissibility.

17 **MR. MYRICK:** We'll go ahead and admit then,
18 Your Honor.

19 **THE COURT:** That's Exhibit 1?

20 **MR. MYRICK:** Yes, sir. It is.

21 **THE COURT:** All right. Thank you.

22 (WHEREUPON, State's Exhibit 1 is admitted into
23 the record.)

24 **BY MR. MYRICK:**

25 **Q** Would you take a moment and look at that

1 please.

2 **A** Sure. You want me to look at the --

3 **Q** We'll get to that.

4 **A** Okay.

5 **Q** Do you know -- you didn't always work for
6 the bar?

7 **A** No. Actually prior to the -- I worked for
8 the bar for eight years. Prior to that, I practiced in
9 Columbia.

10 **Q** Did your practice involve courtroom
11 appearances?

12 **A** Yes.

13 **Q** In circuit court?

14 **A** Mostly family court.

15 **Q** Do you know what a Court Reporter is?

16 **A** Yes.

17 **Q** Would you tell the jury what a Court
18 Reporter is.

19 **A** Sure. There is what is called a court of
20 record which means that someone takes down word for
21 word exactly what is said in the courtroom. That's the
22 Court Reporter's job.

23 **Q** Is that what you have?

24 **A** Yes. This is a transcript which is produced
25 from the Court Reporter.

1 **Q** What case is it on?

2 **A** It is from July 24th, 2008, United States of
3 America versus Juan Martinez Alvarez and Hernandez
4 Ramirez.

5 **Q** Does it list on the front page the people
6 who appeared in court, the lawyers who made
7 appearances?

8 **A** It does.

9 **Q** Is the Defendant's name on there?

10 **A** Yes. He's listed as appearing for the
11 Defendant Alvarez.

12 **Q** May I have that back for just one second.

13 **MR. MYRICK:** Your Honor, since we don't
14 have the Court Reporter and since this has been
15 admitted, I'm going to ask unless there is a
16 defense objection that this witness be allowed to
17 publish this transcript to the jury at this time.

18 **MR. WARDER:** I would hope we could just
19 publish the relevant sections.

20 **MR. MYRICK:** It's only two pages, Your
21 Honor. It's not even a full two pages. It's maybe
22 50 lines at most.

23 **MR. WARDER:** Certainly. I don't have any
24 objection.

25 **THE COURT:** Okay. Go ahead.

1 BY MR. MYRICK:

2 Q If you would --

3 A Sure.

4 Q -- since we don't have the Court Reporter,
5 would you read for the jury what took place in court
6 that day?

7 A Sure.

8 Q And who said what.

9 A Certainly. The first thing that was said was
10 by someone named Mr. Gallian who appears from the
11 front page to be the attorney for the government. He
12 says, "Your Honor, the next case is U.S. v. Juan
13 Franciso Martinez Alvarez, case number 608-682. Mr.
14 Israel Romero is retained dash dash".

15 Then the Court, who is the judge, says, "Is
16 this his first appearance or not?"

17 The clerk, "No, sir. Both have already been
18 seen. Both of them."

19 Q What does "retained" mean?

20 A Retained is usually an indication that
21 someone has been paid to represent someone.

22 Q Thank you. Please continue.

23 A Sure. The Court then says "Who represents
24 him?"

25 Mrs. Hall, who is for Defendant Ramirez says,

1 "Mr. Chamberlain represents of record Juan Francisco.
2 I'm standing in for her."

3 The clerk, "No, Mr. Romero has come in."

4 The Court, "You've been retained?"

5 Mr. Romero, "Yes, sir."

6 The Court, "So you are representing him?"

7 Mrs. Hall then says, "I represent Mr.
8 Ramirez."

9 The Court, "I believe this is the first time
10 you've been here. Is that right?"

11 Mr. Romero, "Yes, Your Honor."

12 The Court, "Have you advised your client of
13 the charges and possible penalties?"

14 Mr. Romero, "Yes, sir."

15 The Court, "Waive reading at this time? Do
16 you waive reading of the charges and the possible
17 penalty?"

18 Q And how does he respond?

19 A Mr. Romero responds, "Yes, we waive."

20 Then the Court says, "Have you advised him of
21 the charges and penalty?"

22 Mr. Romero, "Correct, Your Honor. I did."

23 The Court, "All right. They will provide a
24 discovery package to you giving you all the
25 information. If you need anything, let me know."

1 Mr. Romero, "Yes, Your Honor."

2 The Court, "Glad to have you with us. How
3 long have you been in Greenville?"

4 Mr. Romero, "Since last year."

5 The Court, "All right. All right, Mrs. Hall?"

6 Mrs. Hall says, "Mr. Martin Pollock and I
7 visited with Mr. Ramirez last week. He understands the
8 charges and possible penalties and we waive reading."

9 The Court, "Anything else for the record?"

10 Mrs. Hall, "No, sir. We've received
11 discovery."

12 The Court, "Thank you."

13 Then, underneath that is the certification
14 from the Court Reporter that says that she certifies
15 that the above is a correct transcript from the record
16 of the proceedings. And she has signed her name in
17 blue ink.

18 Q It's signed in ink?

19 A It is signed in blue ink.

20 Q Thank you. Now with all those rules, you
21 been a lawyer for how long?

22 A I graduated in '96. So, uh, 13 years.

23 Q So 13 years in your time at the bar, had you
24 come familiar with South Carolina Appellate Court Rule
25 number 410?

1 **A** Fairly familiar, yes.

2 **Q** Do you have a copy of it up there with you?

3 **A** I do.

4 **Q** It's on page 132 of the 2008 Rule book.

5 **A** I'm there.

6 **Q** If you would take a moment and just look at
7 that rule briefly.

8 **A** Sure. Okay.

9 **Q** What's the purpose of the bar and of
10 licensing? Does that rule say?

11 **A** It does. It goes through several things. But
12 it lists in a specific section all the purposes which
13 are basically to promote a high quality of
14 representation, to protect the public, to require the
15 highest standards of ethical and professional
16 development and to provide high quality of legal
17 education and legal services to the public, promotion
18 of the public good.

19 **Q** Not to protect lawyers? Does it say that
20 anywhere in there?

21 **A** No.

22 **Q** Uh, and does the bar have programs to help
23 people with legal representation?

24 **A** Yes, actually several for several different
25 phases. We have a lawyer referral service which is a

1 seeking to admit it. That's why I had it marked.
2 He had Mrs. Martinez reading the number off the
3 bottom to the jury.

4 **MR. WARDER:** Without objection.

5 **THE COURT:** What's the purpose of showing
6 it to Mrs. Rothstein?

7 **MR. MYRICK:** He had it marked, Your Honor.
8 I hadn't intended to move it into evidence. I'm
9 not going to move it into evidence. I am going
10 to, at the proper time, move this State's number
11 3 which is a self-authenticating public document
12 under 901 of the rules where you don't need a
13 witness and it is not hearsay because it has got
14 a separate exception. We re going to move State's
15 3 into evidence. I can't foresee any objection.

16 **MR. WARDER:** There is none.

17 **MR. MYRICK:** I will go ahead and do that
18 now since we are on the record.

19 **MR. WARDER:** No objection.

20 **THE COURT:** Okay. It's in evidence.

21 (WHEREUPON, State's Exhibit 3 is admitted into
22 the record.)

23 **MR. MYRICK:** I am not offering it into
24 evidence.

25 **THE COURT:** Not offering what into

1 evidence?

2 **MR. MYRICK:** Defense 1.

3 **THE COURT:** Oh, okay. Anything further-at
4 this junction before we break?

5 **MR. WARDER:** Not at this time.

6 **THE COURT:** I'm having a little trouble
7 understanding how in light of Judge Norton's
8 order Mr. Romero can take the position that he
9 was licenced by the federal court.

10 **MR. WARDER:** Your Honor, please, certainly
11 the intent -- you can take something and made it
12 void ab initio, back to its beginning. What the
13 element would be is did he have criminal intent
14 at the time that he did that. The changing of the
15 order back ab initio or back to the beginning
16 wouldn't change the state of mind my client acted
17 with. I think the order can be revoked
18 completely. The question of the jury is the state
19 of mind at him at the moment that he did the
20 crime or the act. I think because he had an order
21 that had not been revoked at the instant he acted
22 even though it was made ab initio that he would
23 not have had criminal intent.

24 **THE COURT:** Doesn't the order include a
25 finding that he misrepresented his status as a

1 member of the ---

2 **MR. WARDER:** I plan to go into that.

3 **THE COURT:** Sir?

4 **MR. WARDER:** I plan to go into that, Your
5 Honor. Please the Court. Brief foundation, I
6 would say. Mr. Romero's application itself had
7 some mistakes in it. He sent a letter with the
8 application that said when I come to fill out
9 this here, I used my certificate from New York
10 and the date written on it is that. He points out
11 what appears to be the mistakes in his letter.
12 And they give him a license. Since he's pointed
13 them out to them anyway in the letter that says,
14 you know, rather than send the application back,
15 they gave a license. We take the position that he
16 had reason to believe that was valid. They are
17 not intention misrepresentations.

18 They say I move for reciprocity to be
19 admitted on my New York certificate. I put down
20 where it said South Carolina bar date of
21 admission, my New York date of admission. And
22 when I put down my bar number, I put down my New
23 York certificate number.

24 **THE COURT:** May I see the order from Judge
25 Norton?

1 **MR. WARDER:** Certainly.

2 **THE COURT:** Okay. I'll see you back at
3 1:45. Thank you.

4 **(WHEREUPON, a lunch recess is taken.)**

5 **MR. MYRICK:** The State has, I'm not sure
6 what the number is, asked to be admitted State's
7 3 which is an order from Judge Norton. Is it on
8 the bench?

9 **THE COURT:** Yes, sir.

10 **MR. MYRICK:** Judge Norton's order which was
11 properly admitted under the rules says that the
12 license that was under the subject of
13 consternation before the break is void ab initio.

14 **THE COURT:** Right.

15 **MR. MYRICK:** The State ask that the Court
16 take judicial notice pursuant to Rule 201 of the
17 Rules of Evidence that this is a fact which under
18 the rules is capable of accurate and ready
19 determine by resorting to sources whose accuracy
20 can not reasonably be questioned. Section D says
21 if the Court is supplied with the appropriate and
22 necessary information, 201(b) and (d), Your
23 Honor, that the Court not only can but probably
24 ought to go ahead and take judicial notice of the
25 fact that the license marked as Defense A is not

1 and never was valid. I have the admitting copy of
2 Judge Norton's order if you would like me to hand
3 it up, Your Honor.

4 **THE COURT:** Okay. Yes, sir.

5 All right. Yes, sir. Mr. Warder.

6 **MR. WARDER:** Under rule four what?

7 **THE COURT:** 201.

8 **MR. MYRICK:** If I may, Your Honor, it's
9 201(b)(2) and (d) which the State cited in its
10 motion.

11 **MR. WARDER:** Your Honor, the effect of a
12 document is not the kind of fact that judicial
13 notice would be taken of. I would submit to you,
14 Your Honor, that judicial notice is appropriate
15 in taking notice of what days of the week fall
16 on, what, uh, time summer starts, uh, things like
17 that that are facts that are undisputable and
18 have no other inference. To take judicial notice
19 of an interpretation of an order seems to me is
20 not appropriate.

21 **THE COURT:** What exactly are you asking me
22 to take judicial notice of, Mr. Myrick? It's
23 already in evidence. What exactly are you seeking
24 to accomplish?

25 **MR. MYRICK:** Yes, Your Honor. State's

1 number 3 is in evidence. The document marked as
2 Defense A is not and never has been valid. We
3 would ask that the Court instruct the jury at the
4 appropriate time pursuant to Section G of that
5 rule.

6 (WHEREUPON, there is a pause.)

7 **THE COURT:** All right. Rule 201 at issue
8 here allows the Court to take judicial notice
9 only on an adjudicative fact. An adjudicative
10 fact is a finding of fact about a particular
11 event that gave rise to the lawsuit of litigation
12 and helps explain who did what, when, where, how
13 and with what motive or intent. Judicial notice
14 takes the place of proof.

15 The basis of the rule, of course, is
16 efficient use of Court's time and judicial
17 economy. As Mr. Warder alluded to, it typically
18 involves taking judicial notice of matters of
19 common knowledge such as distances or time,
20 things that are capable of accurate
21 determination. That saves time by not requiring
22 witnesses to come in or evidence to be brought in
23 to prove things that really can't be disputed.

24 As our Supreme Court has said, the courts are
25 not required to be more ignorant than the rest of

1 mankind which can have all kinds of applications,
2 I'm sure. But at any rate, here, we have a
3 federal court order in the matter of Israel
4 Romero entered August 27th, 2008. It's in
5 evidence already. It's State's Exhibit 3. And,
6 uh, the State is seeking to have the Court take
7 judicial notice that Defense A -- is that what
8 you are saying?

9 COURT REPORTER: It's 1.

10 THE CLERK: 1?

11 MR. MYRICK: A or 1, Your Honor. It's
12 Defendant's Exhibit A or 1. I don't know how the
13 clerk --

14 THE COURT: It's 1 according to Mrs.
15 Johnson. So Defendant's Exhibit 1, it's in
16 evidence as well? It's not in evidence. The
17 hesitation I have is its not in evidence. Again,
18 I'm confused about what exactly to be instructing
19 the jury. Subsection G says the Court shall
20 instruct the jury to accept as conclusive any
21 fact judicially noticed. You want me now, under
22 Rule 201 to make a comment about the content of
23 Exhibit 3. Is that what I'm understanding?

24 MR. MYRICK: Yes, sir. Specifically that
25 the Defendant is not and never was licensed to be

1 in any court, any federal court or any court of
2 this state.

3 **THE COURT:** How is that subject to
4 dispute, Mr. Warder?

5 **MR. WARDER:** Your Honor, the effect of
6 something that was found to be void ab initio
7 months later doesn't relate to my client's state
8 of mind. It's not in evidence right now. So I
9 mean, they want you to comment on the facts so
10 they don't have to worry about that part of the
11 charge. What they are getting you to try to do is
12 take judicial notice of the facts in such a way
13 that it would lead to no defense.

14 **THE COURT:** But isn't that the true fact
15 that a prior order of Judge Norton established
16 beyond dispute that the certificate was void ab
17 initio? So, uh, --

18 **MR. WARDER:** They want you to say he never
19 was. I don't think that's proper judicial notice.

20 **THE COURT:** Well, you made the statement
21 in your opening that --

22 **MR. WARDER:** To show his intent, yes.

23 **THE COURT:** That he was licensed. So, uh,
24 there's been testimony about him appearing in
25 federal court. There's been testimony about the

1 certificates. How, how is that permissible in
2 light of Judge Norton's order? I think that's
3 what the State is trying to prevent.

4 **MR. WARDER:** I'm trying to say, Your Honor,
5 that he still relied upon it. That goes to
6 whether or not he had criminal intent. If you
7 rely on something and not intending to commit a
8 crime and then some time later somebody comes
9 back and says the piece of paper you relied on is
10 void ab initio, I can't see how that can make you
11 a criminal.

12 **THE COURT:** Yes, sir. Mr. Myrick?

13 **MR. MYRICK:** Your Honor, Mr. Warder and his
14 client remain free to say he thought he could.

15 **THE COURT:** He thought he could do what?

16 **MR. MYRICK:** Evidently, the nature of their
17 defense is he thought he could practice which is
18 separate from the actual fact exemplified by
19 Judge Norton's order that he couldn't. He never
20 could.

21 **MR. WARDER:** I guess they are just asking
22 you to reemphasize Judge Norton's order. That
23 would be highly improper. They are asking you to
24 say the same thing another judge has. I guess
25 that's important to them.

1 **THE COURT:** Well, I don't have a problem
2 telling the jury that a certificate by prior
3 order of federal court has been declared to be
4 void ab initio and explain to them that void ab
5 initio means that it was never valid and they are
6 to accept that as being conclusively established.
7 Beyond that, I don't know how I can comment
8 without infringing on the constitutional
9 prohibition of commenting on facts.

10 **MR. MYRICK:** We wouldn't ask for any more
11 than that, Your Honor.

12 **THE COURT:** I do think that has been
13 established and would be something I could take
14 judicial notice of another Court's unappealed
15 order just as you can take judicial notice of
16 pleadings and other matters that may have been
17 filed in a court action. It's already in
18 evidence. There's no dispute about it. I'll be
19 glad to do that. Beyond that, I don't feel
20 comfortable.

21 Y'all certainly argue as you will about the
22 effect of it. My concern that I brought up before
23 we broke was to ensure that Judge Norton's order
24 wasn't being used improperly or misinterpreted.
25 To that end, I think it may be important to set

1 forth on the record that it is conclusive. Okay.

2 Anything further before we bring the jury in?

3 **MR. MYRICK:** No, sir.

4 **THE COURT:** Okay. And I'll make the
5 statement after she finishes testifying.

6 **MR. MYRICK:** Thank you, Your Honor.

7 (WHEREUPON, the jury enters at approximately
8 2:18 p.m.)

9 **THE COURT:** Okay. Ladies and Gentlemen, I
10 hope you had a nice lunch. We're now going to
11 continue with the testimony.

12 Yes, sir. Mr. Myrick.

13 **MR. MYRICK:** Thank you, Your Honor. May it
14 please the Court.

15 **BY MR. MYRICK:**

16 **Q** Before the break, Mrs. Rothstein, I can not
17 remember exactly where we were. But one topic we
18 haven't covered is did you in your official capacity
19 at the South Carolina bar make inquiries as to whether
20 he ever applied for admission in South Carolina?

21 **A** Yes, I did.

22 **Q** Is there any record of him at the Supreme
23 Court?

24 **A** No, no record.

25 **Q** Is there any record in your offices of him

1 ever having applied?

2 **A** There is no record of him whatsoever.

3 **Q** Thank you.

4 **MR. MYRICK:** Madam Court Reporter, would
5 you hand me what's been marked as State's number
6 3.

7 Your Honor, if I might approach the witness.

8 **THE COURT:** Yes, sir.

9 **BY MR. MYRICK:**

10 **Q** Mrs. Rothstein, would you take a moment and
11 look at that please.

12 **A** Okay.

13 **Q** What is that?

14 **A** This is a court order from the United States
15 District Court, District of South Carolina, Charleston
16 division.

17 **Q** Who signed it?

18 **A** Judge David C. Norton who is the Chief United
19 States District Judge.

20 **Q** Federal judge?

21 **A** Yes.

22 **Q** What does that order concern?

23 **A** It concerns Mr. Romero and his admission to
24 the district court bar.

25 **MR. MYRICK:** Your Honor, that's in

1 evidence. I would like to ask that the witness be
2 able to publish the relevant portions as it
3 proceeds.

4 MR. WARDER: It's in evidence, Your Honor.

5 BY MR. MYRICK:

6 Q What is that order about and what does it
7 say? Please feel free to read the portions that you
8 think are relevant to my question. What is it about?

9 MR. WARDER: Objection to that.

10 THE COURT: It's already in evidence.

11 MR. MYRICK: Please read it. Please read
12 it.

13 THE COURT: He's objecting to that. I
14 sustain the objection.

15 MR. MYRICK: The objection to what? The
16 witness publishing?

17 THE COURT: That's correct.

18 MR. MYRICK: It's in evidence, Your Honor.

19 THE COURT: I've ruled.

20 MR. MYRICK: May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 (WHEREUPON, a bench conference is held off the
23 record.)

24 MR. MYRICK: Your Honor, I'm going to
25 publish this to the jury if I may.

1 **THE COURT:** Yes, sir, Mr. Myrick.

2 **MR. MYRICK:** This is captioned in the
3 matter of Israel Romero, Esquire. It is signed
4 by Judge David Norton. What it says is Israel
5 Romero applied for an admission to the district
6 court bar for the district of South Carolina
7 period. In the application, Mr. Romero certifies
8 that he is, quote, a member in good standing of
9 the South Carolina bar period, end-quote. So he
10 said he's a member in good standing.

11 The South Carolina bar has informed the Clerk
12 of Court that Mr. Romero is not a member of the
13 South Carolina bar. Membership in the South
14 Carolina bar is a prerequisite to membership in
15 this Court's bar. Therefore, his admission to bar
16 of this court is void ab initio.

17 **BY MR. MYRICK:**

18 **Q** Mrs. Rothstein?

19 **A** Yes, sir.

20 **Q** Do you know what "void ab initio" means?

21 **A** I do.

22 **MR. WARDER:** Objection.

23 **THE COURT:** What's the basis of your
24 objection?

25 **MR. WARDER:** Your Honor, she has not been

1 qualified as an expert in language.

2 MR. MYRICK: It's a common legal phrase,
3 Your Honor.

4 THE COURT: Let me just see y'all up here
5 real quick.

6 (WHEREUPON, a bench conference is held off the
7 record.)

8 BY MR. MYRICK:

9 Q Where did you go to undergraduate school?

10 A I went to Meredith College which is in
11 Raleigh, North Carolina. It's a women's college of
12 about 4000 students.

13 Q Where did you go to law school?

14 A University of South Carolina, Columbia.

15 Q When did you graduate?

16 A '96.

17 Q You been practicing law every since?

18 A Yes.

19 Q Does the study of the law involve the use of
20 Latin phrases?

21 A Yes, it does.

22 Q During your time at law school, did you learn
23 the meanings of what are commonly used and referred to
24 Latin phrases in the law?

25 A Yes.

1 **Q** And have you done that since 1996 when you
2 begin your practice?

3 **A** Yes, there is actually a section in the back
4 of Black's Law Dictionary call Latin Legal Maxims.

5 **Q** Have you studied that?

6 **A** Not extensively but yes.

7 **Q** Are you familiar with it?

8 **A** Relatively.

9 **MR. MYRICK:** Your Honor, based on her law
10 school experience and her membership in the bar,
11 we would like to proffer her with regard to the
12 limited purpose of common legal Latin terms and
13 normal use in South Carolina courts.

14 **THE COURT:** Mr. Warder?

15 **MR. WARDER:** Voir dire?

16 **THE COURT:** Yes, sir.

17 **CROSS-EXAMINATION**

18 **BY MR. WARDER:**

19 **Q** You ever take Latin as a subject?

20 **A** I did in college which was quite a while ago.

21 **Q** You ever written articles on the meaning of
22 Latin?

23 **A** Never.

24 **Q** You ever been qualified as an expert in any
25 court on the meaning of Latin?

1 **A** No.

2 **Q** Ever been qualified in court as a linguist,
3 meaning, an expert in a language?

4 **A** In linguist? No.

5 **Q** Published any articles or anything like that
6 on language, Latin words?

7 **A** No.

8 **Q** You purport to have any special knowledge in
9 Latin phrases?

10 **A** I don't purport to have special knowledge. I
11 have the knowledge that goes along with my career and
12 what I do day in and day out. I'm not published in any
13 thing in that regard.

14 **Q** Do you use a lot of Latin phrases daily?

15 **A** No, not a lot probably.

16 **MR. WARDER:** Your Honor, if it please the
17 Court, we would respectfully submit she has no
18 special training that would help the jury
19 understand the charge on the law or anything
20 about the order. I would submit she is not an
21 expert.

22 **THE COURT:** Thank you for your voir dire.
23 I find she is qualified.

24 **DIRECT EXAMINATION**

25 **BY MR. MYRICK:**

1 Q Mrs. Rothstein, do you know what the phrase
2 "void ab initio" means?

3 A "Void" is not the Latin word. "Ab initio" is
4 the Latin phrase. "Ab-" means before or back to.
5 "-initio" means beginning so void back to the
6 beginning.

7 Q This goes on to say that Mr. Romero's
8 admission to this court is void ab initio. It goes on
9 to say that it is ordered that the admission of Israel
10 Romero to the district court bar is revoked. A copy of
11 this order will be sent to the disciplinary authority
12 for the New York bar and to the United States District
13 Court for further action they may deem appropriate.
14 This order shall not be sealed but all other docket
15 entries in this case shall remain sealed. And it's
16 certified by the Court.

17 Do you remember, Mrs. Rothstein, how this
18 case came to your attention?

19 A Actually, yes. This came to my attention
20 through a phone call. Part of my job at the bar is to
21 take phone calls from members of the public who think
22 that they might have a problem with their lawyer. One
23 of the programs that the bar has is called CAP, Client
24 Assistance Program. It's designed to be a diversionary
25 program so that the smaller issues between a client

1 and an attorney can be resolved so it doesn't have to
2 go to a formal grievance process which is bad for the
3 client and bad for the attorney. The idea is to use
4 mediation and low level type dispute resolutions to
5 solve the problems. A lot of times, people start with
6 the bar because they don't know --

7 **MR. WARDER:** Objection as to all of this,
8 Your Honor. How people usually or a lot of times
9 start complaints has nothing to do with this
10 case.

11 **THE COURT:** I sustain the objection.

12 **BY MR. MYRICK:**

13 **Q** So how did this come to your attention?

14 **A** It came through the Client Assistance Program
15 phone line.

16 **Q** And who called you?

17 **A** Which I sometimes, I answer.

18 **Q** Who called you?

19 **A** Uh, --

20 **Q** Was it a member of the Martinez family?

21 **A** Yes, it was Mrs. Martinez.

22 **Q** Is that when you learned that Mr. Romero is
23 not a member of the bar?

24 **A** Yes.

25 **Q** What did you do then?

1 **A** When I find out that someone is not a member
2 of the bar, that becomes an issue for law enforcement,
3 not for the bar.

4 **Q** What did you do?

5 **A** I turned it to the Attorney General's office.

6 **Q** Thank you very much. Please answer any
7 questions Mr. Warder may have.

8 **THE COURT:** Cross-examination,
9 Mr. Warder.

10 **CROSS-EXAMINATION**

11 **BY MR. WARDER:**

12 **Q** You got your South Carolina Rules book?

13 **A** I do. I actually have the 2008 version.

14 **Q** And, uh, does that contain all the rules that
15 relate to the practice in court?

16 **A** Yes. Most of them.

17 **Q** Tell us -- turn to the section on federal
18 court.

19 **A** This is actually the state court rule book.

20 **Q** Well, does the State court rule book have
21 anything about federal court in it?

22 **A** Not to my knowledge, no.

23 **Q** Does it say who can be admitted to federal
24 court?

25 **A** No.

1 **Q** Does it say what the requirements are to be
2 admitted into federal court?

3 **A** It does not.

4 **Q** Does it say you have to be a member of the
5 South Carolina Bar to practice in federal court?

6 **A** It doesn't say that in here. I'm pretty sure
7 it says that in the federal court rule book.

8 **Q** The point is the federal court makes the
9 rules for practicing there. Is that right?

10 **A** Yes, sir.

11 **Q** Because that's a court of the United States
12 Government, is that right?

13 **A** Yes.

14 **Q** And the Supreme Court can make rules to
15 govern all the practice and all the courts of the
16 state. Is that right?

17 **A** Yes.

18 **Q** And they do that.

19 **A** Yes.

20 **Q** And you would have to look to the federal
21 rules to find out rules about practice and admission
22 to the federal law?

23 **A** Correct.

24 **Q** Do you know whether federal court has rules
25 that allow persons who are not members of the South

1 Carolina Bar to become licensed or eligible to
2 practice in federal court?

3 **A** I'm sorry. Could you repeat? I just couldn't
4 hear the first part of your question.

5 **Q** Are you aware of whether or not federal court
6 has rules that would allow people who are not members
7 of the South Carolina Bar to practice?

8 **A** I know just like the state court, they have
9 pro hac vice rules which allows for admission under
10 certain circumstances but it has to be -- to my
11 knowledge, and I have very, very limited experience
12 with federal court but it has to be approved and
13 signed by a judge.

14 **Q** The federal court is the determiner of who
15 can practice in it?

16 **A** That's my understanding.

17 **Q** Okay. And that's all the questions I have.
18 Thank you.

19 **THE COURT:** Any redirect?

20 **MR. MYRICK:** Briefly, Your Honor.

21 **REDIRECT EXAMINATION**

22 **BY MR. MYRICK:**

23 **Q** Mrs. Rothstein, --

24 **A** Yes.

25 **Q** -- you read Judge Norton's order?

1 **A** Uh, --

2 **MR. WARDER:** Objection. Beyond the scope of
3 cross-examination.

4 **THE COURT:** Overruled.

5 **BY MR. MYRICK:**

6 **Q** Didn't Judge Norton's order say membership to
7 the South Carolina Bar is a prerequisite to membership
8 in the federal bar?

9 **A** Yes.

10 **Q** Thank you.

11 **THE COURT:** Any recross?

12 **MR. WARDER:** No.

13 **THE COURT:** Okay. Thank you, Mrs.
14 Rothstein.

15 **THE WITNESS:** Thank you.

16 **THE COURT:** Okay. You may call your next
17 witness, Mr. Myrick.

18 **MR. MYRICK:** The State rests.

19 **THE COURT:** All right. Ladies and
20 Gentlemen, we've reached the stage in the trial
21 when the State has completed its presentation of
22 evidence. That means I have to take a short
23 recess while we discuss something out here on the
24 record. That's just a legal formality we're not
25 going to bother you with. We will resume the case

1 probably at a quarter til 3:00.

2 If you would, please select someone to be the
3 foreperson of the jury and write their name down
4 on a sheet of paper and give it to the bailiff.
5 Remember to keep an open mind. Don't discuss the
6 case. Thank you very much.

7 (WHEREUPON, the jury exits at approximately
8 2:34 p.m.)

9 **THE COURT:** Okay. Any matters or motions
10 at this stage? Mr. Warder?

11 **MR. WARDER:** Pardon?

12 **THE COURT:** Any motions or matters at this
13 stage?

14 **MR. WARDER:** Yes. Your Honor, I would move
15 for directed verdict on the grounds that 40-5-310
16 relates to courts of this state. I think a fair
17 reading of the languages is that is courts that
18 get their power to exist from the State of South
19 Carolina. Courts that are established by the
20 legislature, appeals taken to the Supreme Court,
21 those are the courts of this state. This rule can
22 not be applied to courts of the federal
23 government which happen to be located within this
24 state.

25 **THE COURT:** Mr. Myrick?

1 **MR. MYRICK:** If I may approach, Your Honor.

2 **THE COURT:** Yes, sir.

3 **MR. MYRICK:** I'm going to hand up a Court
4 of Appeals from 2002 cited at 349 S.C. 488. Prior
5 to becoming the Chief Prosecutor for the State
6 Grand Jury, Jennifer Evans for a brief time
7 prosecuted the unauthorized practice of law. She
8 actually indicted Mr. Brent McLauren in the early
9 90's and tried him, I believe in Dorchester
10 County, Your Honor. What I've handed up is the
11 Court of Appeals decision regarding Mr. McLauren
12 which was decided April of 2002.

13 On page 7 of the opinion, it's 8 of 10 on the
14 Westlaw top sheet, the Court takes pains in the
15 subheading, Section 2, to address Mr. McLauren's
16 arguments under 40-5-310. I would submit to the
17 Court that they are virtually identical to the
18 defense motions in the present case.

19 The top full paragraph on the right-hand side
20 begins with the following quote, "McLauren argues
21 in his brief that he did not", quote, "solicit
22 the cause of another person." And in bold, this
23 is Court of Appeals boldface, not the Attorney
24 General, it says in a court of this state. There
25 is a period. That's the end. The Court of Appeals

1 says quite bluntly this argument is without
2 merit.

3 They go down to say and make assertions that
4 are in accord with over 100 years worth of
5 decisions by the South Carolina Supreme Court to
6 say that the generally understood definition of
7 the practice of law embraces preparation of
8 pleadings, management of such actions,
9 proceedings on behalf of clients before judges.
10 It also says "Our Supreme Court has defined the
11 practice of law to include the preparation and
12 filing of legal documents, involving the giving
13 of advice, consultation, explanation or
14 recommendations of matters of law", quoting State
15 v. Robinson.

16 Finally, Your Honor, the very last sentence
17 in that full paragraph on page 7 of the opinion
18 is, "Just because McLauren was not", quote, "in
19 court did not mean that he was not practicing law
20 as he was preparing documents which in itself
21 constitutes the practice of law. So, Your Honor,
22 I would submit that the Court of Appeals and
23 Supreme Court in a long, long line of decisions
24 that doesn't bear repeating here has addressed
25 this identical motion in the Appellant Court and

1 make very clear our State's position. Thank you.

2 **THE COURT:** Thank you, Mr. Myrick.

3 Mr. Warder.

4 **MR. WARDER:** Your Honor, if it please, this
5 case has absolutely nothing to do with the issues
6 as I see it. It is not whether my client
7 practiced law. My client is, my debate is whether
8 or not he practiced in a court of this state.
9 This whole opinion deals with a filing of post-
10 conviction release pleadings and motions in state
11 court. Certainly, there, the practice of law is
12 broad. But it sheds no light on the issue of
13 whether or not federal court would be a practice
14 in a court of this state.

15 I submit to you it is not on point. It would
16 help if it was an issue as to whether it was a
17 practice of law. We said in opening statement
18 that my client practiced law, that it just wasn't
19 in a court of this state. And there is nothing
20 here that changes that. In the plain meaning of
21 the language "a court of this state" rather than
22 a court in this state has got to be there for a
23 purpose. And it's because they only have power to
24 regulate courts of this state. They don't have
25 the power to regulate federal courts. Certainly,

1 it doesn't apply to Custom Courts or duties,
2 Immigration Courts and to Federal Court. I spoke
3 with an immigration lawyer that said in
4 Immigration Court membership was not required. I
5 have not researched that.

6 **THE COURT:** I thought you might be citing
7 John C. Calhoun.

8 **MR. WARDER:** Your Honor, I was actually
9 citing Jeff Wilkes. But I submit that in this
10 case, there is no evidence that anyone could find
11 and there is no issue as to whether this is not a
12 court of this state. It's federal court.

13 **THE COURT:** Well, I understand your
14 argument. The State has presented evidence that,
15 if believed -- and I can't weigh the credibility
16 of the evidence at this point -- but if believed
17 would be sufficient to sustain a conviction. I
18 find that as McLauren Court found, the definition
19 of the practice of law which is in the statute
20 rather the phrase practice of law or the practice
21 or solicit the cause of another person in a court
22 of this state is very broad. Practice of law
23 includes filing legal documents, giving advice,
24 consultation, explanation or recommendations on
25 matters of law.

1 I believe the record contains testimony that
2 there were consultations made, there were
3 statements made by Mr. Romero to the client.
4 There was a fee obtained. That, in itself, would
5 seem to be sufficient to take it to the jury
6 regardless of what court it ended up in according
7 to the McLauren case.

8 So I respectfully deny your motion. I
9 understand your argument that federal court would
10 not be a court of this state. I believe in the
11 absence of a definition of "court of this state"
12 in Title 40, in this particular article, the
13 Court would have to use the plain and ordinary
14 meaning of the term. That was not excluded in
15 federal court.

16 Certainly, there are many courts that are not
17 state courts such as the city court. There are
18 other tribunals which seem to be within the scope
19 of the legislatures intent in using the common
20 sense definition of the ordinary meaning of the
21 phrase "court". I believe the federal district
22 court is included. So I respectfully deny the
23 motion. All right. Anything further before we
24 resume the case?

25 Mr. Romero, uh, have you talked with him

1 about his right to testify or not to testify, Mr.
2 Warder?

3 **MR. WARDER:** We talked about it briefly. We
4 actually need a minute to go over what we are
5 going to do on that.

6 **THE COURT:** All right. Well, let me ask
7 him some questions.

8 I'm going to ask Mrs. Kelly to swear you in,
9 Mr. Romero.

10 **ISRAEL ROMERO**

11 having first been sworn, testifies as follows:

12 **THE COURT:** Thank you. Sir, you can have a
13 seat. Mr. Romero, we have reached a stage in the
14 trial now where you can present evidence
15 including your own testimony and if you choose to
16 testify, you would be subject to the same cross
17 examination that the other witnesses have been
18 subject to. You would be able to tell your side
19 of the story but you would also be subject to
20 being asked about questions that are relevant to
21 this case or bear on your credibility by the
22 Attorney General. Do you understand that, sir?

23 **MR. ROMERO:** Yes, I do.

24 **THE COURT:** Okay. If I say anything or you
25 want me to -- say anything you don't understand

1 or you would like for me to repeat something that
2 I'm saying to you or if I'm not making sense,
3 just speak up, let me know. I'll be glad to
4 repeat the question. Otherwise, I'm assuming that
5 you heard my question and you are answering it
6 truthfully. Is that okay with you, sir?

7 **MR. ROMERO:** Yes, it is.

8 **THE COURT:** All right. Now, uh, if you
9 choose to not testify, I will tell the jury that
10 you have the absolute right guaranteed by the
11 constitution to remain silent. They can not hold
12 that against you in any way in reaching their
13 decision as to whether you are guilty or not
14 guilty.

15 But if you do present evidence, including
16 your own testimony, you understand that you would
17 also give up the right to give a final closing
18 argument to the jury. That is, the State would
19 have the last closing argument. You would have an
20 opportunity to give a closing argument through
21 Mr. Warder, but you would not get the final word,
22 so to speak, if you presented evidence. Do you
23 understand that, sir?

24 **MR. ROMERO:** I understand.

25 **THE COURT:** Okay. And is there any prior

1 conviction or anything the State would seek to
2 impeach him on?

3 **MR. MYRICK:** No, sir.

4 **THE COURT:** All right. So understanding
5 that the right to testify is a personal right,
6 it's your right, nobody else's, I'm going to give
7 you a few minutes to further discuss it with Mr.
8 Warder and your overall strategy. Then we will
9 resume the case in about ten minutes. If you need
10 further time, let me know. You can let me know
11 your decision at that time. Is that alright, sir?
12 Is that okay with you, sir?

13 **MR. ROMERO:** Yes, it is.

14 **THE COURT:** Okay. Have you understand all
15 my questions and statements?

16 **MR. ROMERO:** No, I don't.

17 **THE COURT:** Have you understand everything
18 I told you, sir?

19 **MR. ROMERO:** Yes, I do.

20 **THE COURT:** All right. We'll take about a
21 ten minute recess.

22 (WHEREUPON, a short recess is taken.)

23 **THE COURT:** Okay. Mr. Romero, have you
24 decided whether you wish to testify or not, sir?

25 **MR. ROMERO:** Yes, we have made the decision

1 we are not going to take the stand.

2 **THE COURT:** All right. Thank you.

3 How many witnesses do you have, Mr. Warder?

4 **MR. WARDER:** I will rest.

5 **THE COURT:** Okay. All right. If you do
6 that, we will certainly let you do that in front
7 of the jury. Are there any specific jury
8 instructions that either side are requesting?

9 **MR. MYRICK:** Yes, sir, Your Honor.

10 **THE COURT:** Okay.

11 **MR. MYRICK:** If I might approach.

12 **THE COURT:** Yes, sir.

13 **MR. MYRICK:** Your Honor, I prepared a
14 charge.

15 **THE COURT:** Okay. Thank you.

16 **MR. MYRICK:** What the Attorney General is
17 trying to do is briefly summarize, uh, the
18 statutory and the Supreme Court's case law in a
19 concise fashion. The one thing that the State
20 would probably add at this point would be that
21 one word from McLauren which we didn't know would
22 turn out to be such a big deal here today but the
23 word "consultation".

24 **THE COURT:** All right.

25 **MR. MYRICK:** And that would be in the third

1 paragraph. Preparation of legal instruments,
2 advise to clients, all actions to be taken for
3 any matter connected with law including
4 consultations or whatever the Court thinks is
5 appropriate. I put all the cites in here, Your
6 Honor.

7 **THE COURT:** Thank you, sir.

8 **MR. WARDER:** Your Honor, the proposed
9 charge, I would object to the first paragraph. It
10 doesn't have anything to do with the facts of it.
11 There's no contention that he is a member of the
12 bar, all the stuff about admission of the bar is
13 irrelevant the way the case has developed. The
14 second paragraph seems proper. The third
15 paragraph is an accurate statement of law but it
16 just isn't particularly relevant to the facts.

17 **THE COURT:** All right. This is what I
18 propose. I will read them, uh, the first sentence
19 of Section 40-5-310. No person may practice or
20 solicit the cause of another person in a court of
21 this state unless he has been admitted and sworn
22 as an attorney. I will then go to the second
23 paragraph of the State's proposed charge and add
24 to that the word "consultation". I think that
25 covers the essence of the law as far as the

1 substantive defense charged with the duty of
2 determining whether the State has proven beyond a
3 reasonable doubt the elements. I will, of course,
4 charge him on presumption of innocence and burden
5 of proof. But as far as the substantive -- I will
6 charge him on intent. Any objection or comment on
7 that proposed charge?

8 **MR. MYRICK:** Nothing from the State, Your
9 Honor.

10 **THE COURT:** Mr. Warder?

11 **MR. WARDER:** No, sir.

12 **THE COURT:** Okay. All right. Yes, sir, Mr.
13 Myrick.

14 **MR. MYRICK:** I'm sure Your Honor is
15 prepared. We would like to go ahead and ask the
16 Court to instruct the jury as to your finding of
17 judicial notice --

18 **THE COURT:** Right.

19 **MR. MYRICK:** -- either at the appropriate
20 time before or after the charge. I guess before
21 would be the appropriate time.

22 **THE COURT:** Yeah. I'll go ahead and do it
23 before your closing. Got a verdict form prepared.
24 Let you look at that to make sure it's all in
25 order.

1 **MR. MYRICK:** That State has no objection,
2 Your Honor.

3 **THE COURT:** Okay. All right. You can bring
4 the jury on in.

5 **THE BAILIFF:** Yes, sir.

6 (WHEREUPON, the jury enters at approximately
7 3:04 p.m.)

8 **THE COURT:** All right. Ladies and
9 Gentlemen, as you observed, the State has rested
10 its case. And as I've mentioned, Mr. Romero has
11 no obligation to present any evidence but he has
12 the opportunity to.

13 So at this time, Mr. Warder?

14 **MR. WARDER:** Your Honor, if it pleases the
15 Court, the Defendant rests?

16 **THE COURT:** Okay. That means that you've
17 heard all the evidence in the case. I will tell
18 you before you hear the closing arguments that
19 the Court has taken judicial notice of a fact.
20 That is that by order of Chief Judge David C.
21 Norton, United States District Court dated August
22 27th, 2008, Mr. Romero's admission to the bar of
23 the Court of the District of South Carolina is
24 void ab initio. All right. With that, we will
25 have the closing arguments.

1 Mr. Myrick.

2 MR. MYRICK: Thank you, Your Honor. If it
3 please the Court.

4 THE COURT: Yes, sir.

5 MR. MYRICK: Thank you, Your Honor.

6 Y'all will have this back there with you.

7 This is where Israel Romero got paid. This is a
8 copy of the check. Y'all will have this back
9 there, his business card that he gave to the
10 Martinez family. It says he's a lawyer, attorney
11 admitted to federal court. You will have this,
12 uh, certified copy by Karen Martin. She signed it
13 in blue ink of what took place that day. I hope
14 you all look at it. I'm asking you to look at it.

15 Look at where the Court, that means the Judge
16 who was in that courtroom that day says, Have you
17 advised your client of the charges and penalties?
18 Mr. Romero, right here, goes oh, yes, sir. Then
19 the Court says with a question, Do you waive
20 reading at this time? Do you waive reading of the
21 charges and the possible penalty. Yes, we waive.
22 And the Court asks again, Have you advised him on
23 the charges and penalties? And Mr. Romero says,
24 Correct, Your Honor. I did.

25 Now, when the Court found out, they issued

1 this. When you read it back there, it's going to
2 say and I paraphrase it, he lied to us. He lied
3 to us. That's the only reason he was allowed in
4 here.

5 Now, Mr. Martinez's wife and his sister
6 wanted to help him. Mr. Martinez was facing real
7 trouble that day. Mr. Martinez has the same
8 rights as anybody. No one is taking up for the
9 fact that Mr. Martinez had committed a crime. But
10 when you come into this or any courtroom, you
11 have rights. If the person who's standing up
12 going, oh, we waive the reading. I told him about
13 the penalties doesn't know what he's doing, how
14 can Mr. Martinez get any justice?

15 What happens in here or any courtroom matters
16 not only to the people on the witness stand and
17 sitting at the table, it matters to everyone. You
18 need to know and everybody needs to know that
19 whatever result comes out of the courtroom is the
20 right one. The only way you can get a right
21 result is if people know what they are doing. If
22 the Court Reporter knows what she's doing and the
23 clerk and the lawyer, Mr. Romero didn't know what
24 he was doing.

25 You heard Jill Rothstein say you have to go

1 to undergraduate school. You have to go to law
2 school. You have to get back and then do a
3 character and fitness. Then you have to take a
4 three and a half day test. Then you have to take
5 an ethics test. Then you have to go sit in court
6 and watch court. You have to do all these things.
7 And it takes a long time.

8 I submit to you that those rules are for the
9 benefit of everyone in our community. They would
10 have worked for the benefit of Mr. Martinez on
11 July 24th but for the fact that Israel Romero
12 said oh, no. I informed him. It's no problem.

13 Now, what you heard from the defense in
14 cross-examination and opinion is Oh, my guy
15 didn't have the intent to lie to anyone. Look at
16 what Judge Norton said. He said, He lied to get
17 this received. Intent -- the Court will instruct
18 you on the law. If anything I say regarding
19 intent is wrong or different than what the Court
20 says, ignore me. Listen to the Court.

21 I think what the Court is going to tell you
22 is that intent is that you mean to do something.
23 Now, if Mr. Romero had been walked into the
24 courtroom at gunpoint and said those words, maybe
25 can say I didn't mean to do it. Somebody was

1 threatening me. But you are not going to hear
2 that he slipped on a banana peel and ended up in
3 federal court saying these things that he said.
4 The printer didn't accidentally come up with his
5 business card that said Attorney at Law.

6 You will also hear from the defense, cause
7 we've already heard it, well, we were in federal
8 court. When the judge instructs you on the law,
9 you will know what the practice of law is in
10 South Carolina. I believe that -- I submit to you
11 that the practice of law is do you give advice,
12 do you engage in consultations like you heard
13 from the Martinez? Oh, we can get you out on
14 bond. Oh, you've got an American family. You will
15 read here he says in his own words, I informed
16 him about the penalties. He waived somebody's
17 rights that day. All this advice, all these
18 discussions constitute the practice of law.

19 So the defense request that you look at the
20 specific appearance and say this is a red
21 herring. He was engaged in the practice of law
22 from the minute he picked up the phone at the
23 Martinez's home and talked to Juan. He was
24 practicing law. He was giving them advice. He was
25 listening to the facts. He took all their

1 documents and poured over them and then got on
2 the phone with Mr. Martinez and said we can help
3 you.

4 Well, you see how it turned out. I can't say
5 it would have turned out any other way. But look
6 at what he did. Look at what he did. Look at the
7 money he took. Look at what the federal court
8 said about how he got this thing. Once they found
9 out, they said this was void ab initio. That
10 means, it's void all the way back to when it was
11 first issued as if it had never been issued.

12 I think the defense, I would submit to you
13 that they would have you believe that if you
14 somehow trick the federal court into issuing you
15 a certificate, you can practice law until they
16 catch you. The federal court is not buying it.
17 They said void all the way back to Day 1, it's
18 never any good. The Court informed you before I
19 stood up, exactly that.

20 Thank y'all again. The evidence is right
21 here. You're going to have it back there with
22 you. I'm asking you to go back and find him
23 guilty of Unauthorized Practice of Law. Thank
24 you.

25 **THE COURT:** Yes, sir, Mr. Myrick.

1 Mr. Warder.

2 MR. WARDER: You know, I guess the argument
3 of the State is somehow this fellow got
4 ineffective of bad representation. This is a
5 transcript of an arraignment where they told him
6 about the charges. All the proceedings that
7 follow were another lawyer. There's no testimony
8 that there's anything improper about waiving the
9 reading of the indictment. They serve it to you.
10 They will read it to you. No testimony in this
11 case that anything was ineffective.

12 There's no testimony in this case that Mr.
13 Romero doesn't know the law. There's only
14 testimony that he's not a South Carolina lawyer.
15 The order they talk about tells him to notify the
16 New York bar and the United States District Court
17 for the South District of New York. They are
18 saying he's not a member of a bar. They are
19 saying telling a bar about this.

20 There was testimony that he was given
21 information to mitigate, to show the reasons why
22 it would be a substantial hardship. No one else
23 did that. No one else did that to make that
24 argument. No one got the children birth
25 certificates. No one else did that. He might have

1 been ineffective representation. But there's no
2 testimony in evidence of anything to do with my
3 client.

4 But this is a case involving a particular
5 statute. You know what we don't do or try not to
6 do is find things that people have done bad and
7 say even though there is not a law that exactly
8 applies, we'll convict them of one we think is
9 fairly close. That is not what justice is about.
10 Justice is a weighing of the evidence where you
11 take the law as His Honor gives it and see if
12 what was proven in the case fits the pattern,
13 fits what the judge says.

14 In this case, my client's conduct resulted in
15 them revoking his license ab initio and notifying
16 the United States District Court in New York and
17 telling the New York Bar Association. That's what
18 the federal court did find. The State's got new
19 rules. They want to punish him. They say this
20 fits our statute. The statute says no person that
21 practice or solicit a cause of another person in
22 a court of this state. They just don't have any
23 conduct in a court of this state. They have it in
24 federal court.

25 You may well say, that's close. You are just

1 picking on the words. The legislature might have
2 meant no court in this state. They just didn't
3 say it. I submit to you that of this state means
4 a particular thing. It means a court that gets
5 its power from the state, from the State
6 Constitution. That's the one that this state can
7 regulate. The federal court. Down in Charleston,
8 they have a Customs Court. They have an
9 Immigration Court. They have a Federal District
10 Court in Columbia, in Charleston and Greenville.
11 Those are courts regulated by the federal
12 government. They are not courts of South
13 Carolina.

14 Think back to when the lady of the bar
15 testified. We asked here to turn to the page in
16 the rule book that says anything about federal
17 court. There was nothing. They can make no rules.
18 It's not a court of this state.

19 My client is guilty of practicing law in
20 South Carolina but he's not guilty of practicing
21 it in a court of this state. And even though
22 practicing law is bigger than just your court
23 appearance, everything was aimed at the federal
24 court. When the client first talked, they were
25 talking about federal court. When my client

1 talked to him on the phone, they were talking
2 about a federal court case. They were preparing
3 and practicing for federal court. He's being
4 punished for that.

5 He's not guilty of the state statute that
6 applies only to courts of the state, not in the
7 state. I submit to you that justice is truly a
8 careful analysis designed to find the very truth
9 of the issue. The issue in this case is was his
10 practice in the court, the federal court, located
11 in this state practiced in a court of this state.
12 They might make rules. The South Carolina rule
13 book doesn't say anything about it. It's because
14 it is -- federal court is not a court of the
15 State of South Carolina. It's a dual system, a
16 federal system and a state system.

17 The law for the state system just doesn't
18 apply. It's wrong to try and hammer around the
19 rules. Matters of immigration is a federal court.
20 He only went to federal court. It might not have
21 been right to do it but he only broke federal
22 statutes, federal law, federal rules of court,
23 not this rule that the Attorney General wants to
24 prosecute him for.

25 In a case like this, your job is to weigh the

1 evidence. I think the most effective way is to
2 consider whether the case is proven or unproven.
3 The State has to prove its case. It has to prove
4 it beyond a reasonable doubt. Our Supreme Court
5 has said that a reasonable doubt is the kind of
6 doubt that would make somebody hesitate to act.
7 If careful consideration would make you hesitate
8 to act, then that's a reasonable doubt.

9 They said it another way. They said if you
10 believe there is a real possibility that the
11 Defendant is innocent of the charge, that's a
12 reasonable doubt. I submit to you that's a real
13 possibility as opposed to an imaginary one. If
14 there's just a real possibility. That's how
15 powerful the State has to prove its case.

16 In this case, I would submit to you the
17 correct, the right and just verdict is the
18 verdict of not guilty which means not proven.
19 There is not evidence that proves the violation
20 of the State law that the practice was in a court
21 of this state. They might have proved it happened
22 in the state but not in a court of this state.
23 Thank you very much.

24 **THE COURT:** Thank you, Mr. Warder.

25 All right. Ladies and Gentlemen, you have

1 heard all the evidence you are going to hear in
2 the case. It is now my obligation to instruct you
3 on the law that applies in this case. You must
4 apply the law I give you to the facts of the
5 case.

6 → You must follow the law as I give it to you.

7 You should not be concerned with what the law
8 should be but with what it is. You must not be
9 influenced in this case by any kind of likes or
10 dislikes or opinions or prejudices or undue
11 sympathy. That means you must decide this case
12 solely on the evidence before you and according
13 to the law. You will recall you took an oath to
14 do just that when we started this case.

15 These instructions are all equally important.
16 So don't single out some and ignore others. And
17 don't read into these instructions or into
18 anything I may have said or done during the
19 course of this trial as suggesting to you what I
20 think your verdict should be or what I think the
21 facts are in this case. As I told you at the
22 outset, you are the sole and exclusive judges of
23 the facts. I'm certainly not going to intrude on
24 your decision and your province. Just as I know
25 you will not intrude on my province of telling

1 you what the law is, I'm not going tell you what
2 the facts are. That's your call.

3 You and you alone are the judges of the
4 facts. How do you decide what the facts are? As I
5 told you earlier this morning, you do that by
6 weighing or evaluating the evidence you've heard.
7 There's obviously no way I can give you a set of
8 scales to take back into the jury room and
9 conduct experiments. That wouldn't be practical.

10 It is, instead, a mental process. You weigh
11 and evaluate the evidence simply by using your
12 good common sense, your sense of logic and
13 reasoning and your life experiences and you bring
14 those things to bear on what you've heard during
15 the course of this trial.

16 Now, this is a criminal case. I told you at
17 the beginning, like any case, uh, you must
18 determine the facts from the evidence. I told you
19 evidence consist of sworn testimony of witnesses
20 both on direct and cross-examination, the
21 exhibits that have been received into evidence
22 and it would include anything, any fact which the
23 lawyers have agreed are stipulated or that I have
24 instructed you on. There are certain things that
25 are not evidence and that you may not consider in

1 determining what the facts are.

2 As I told you at the beginning, the lawyers
3 are not witnesses. What they say is not evidence.
4 Their arguments or statements are designed to
5 help you understand the evidence but they are not
6 evidence in and of themselves. Likewise, anything
7 you've seen or heard while court is not in
8 session is not in evidence. You may not consider
9 that in determining the facts in this case.

10 Ladies and Gentlemen, I told you also that
11 when you weigh facts and evaluate the evidence,
12 you have to, by necessity, determine the
13 credibility of every witness and the
14 believability of every exhibit. I gave you some
15 guidelines for doing that. I'm not going to
16 repeat that to you. I know you heard me the first
17 time.

18 But I will tell you this. You can believe
19 everything a witness says, you can believe
20 nothing a witness says. You can believe part of a
21 witness' testimony and reject the other part. You
22 can believe one witness over several or several
23 over one. Your sole function is to determine the
24 facts from the evidence. You do that, not
25 arbitrarily but by using your common sense and

1 your sense and powers of reasoning and your life
2 experiences.

3 As I said, this is a criminal case. There are
4 certain principles that apply that I've already
5 gone over with you. I need to repeat them one
6 more time. The mere fact that an indictment has
7 been issued is not evidence of anything. It
8 doesn't incur suspicion of guilt. It simply is a
9 formal way the case starts.

10 And Mr. Romero in this case pled not guilty
11 to this indictment. That puts the burden of proof
12 on the State. He may only be convicted if you
13 find that the State has proven each and every
14 element of the crime of the unauthorized practice
15 of law beyond a reasonable doubt.

16 Mr. Romero is presumed innocent. He has
17 remained presumed innocent throughout the trial.
18 And even into your deliberations, he would be
19 presumed innocent. That presumption of innocence
20 may only be removed if you find that the State
21 has proven each and every element of the crime
22 beyond a reasonable doubt. The presumption of
23 innocence is not some legal technicality or
24 nicety in the law. It is a fundamental right that
25 every person who is charged with a crime is

1 entitled unless you are convinced the State has
2 proven guilt beyond a reasonable doubt.

3 Now, what does this phrase beyond a
4 reasonable doubt mean? How is that defined? A
5 reasonable doubt is defined as the kind of doubt
6 that would cause a reasonable, sincere,
7 conscientious person to hesitate to act in a
8 matter that is important in their own affairs.

9 Proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of guilt. There are
11 very few things, of course, that we know with
12 absolute certainty. In criminal cases, the law
13 does not require proof that overcomes every
14 possible doubt.

15 If, based on your view of the evidence, you
16 are firmly convinced that Mr. Romero is guilty,
17 you must find him guilty. On the other hand, if
18 your view of the evidence leaves you to believe
19 there is a real possibility that he is not
20 guilty, you must give him the benefit of that
21 doubt and find him not guilty. A reasonable
22 doubt may arise from the evidence or lack of
23 evidence. A Defendant is entitled to every
24 reasonable doubt that may arise in a case. So as
25 to any issue of fact that is essential to a

1 conviction and a verdict of guilty and you have a
2 reasonable doubt as to how that issue should be
3 resolved, it's your duty to resolve that doubt in
4 favor of Mr. Romero.

5 Now, this defense is, uh, set forth in
6 Section 40-5-310 of the South Carolina Code which
7 states as follows: no person may practice or
8 solicit the cause of another person in a court of
9 this state unless he has been admitted and sworn
10 as an attorney. The practice of law includes
11 court appearances, preparation of legal
12 instruments of all kinds and in general, all
13 advice to clients, consultation and all action
14 taken for clients and matters connected with the
15 law. That, uh, is the offense.

16 Like any offense, uh, in order to prove it,
17 the State must prove beyond a reasonable doubt
18 that Mr. Romero had criminal intent. Uh, criminal
19 intent must be proven by the State beyond a
20 reasonable doubt. Criminal intent is always a
21 matter, uh, to be determined from the
22 circumstances. There's no way to prove intent to
23 a mathematical certainty. There is no way, uh, of
24 course, to dissect someone's brain and determine
25 what they had in mind at a particular moment in

1 time.

2 The law says that criminal intent may be
3 inferred by the circumstances. This is how you
4 make a determination of whether the element
5 requiring intent was present. It is not necessary
6 to establish intent by direct, uh, evidence. But
7 it may be established by inference in the same
8 way as any other fact, by taking into
9 consideration the acts of the parties and all the
10 circumstances. Criminal intent is a mental state.
11 It is a conscious wrongdoing. It's up to you to
12 determine what the Defendant intended to do based
13 on the circumstances.

14 Now, the burden of proof is on the State. As
15 I mentioned to you before, a Defendant in a
16 criminal trial has no obligation to produce any
17 evidence. In fact, our constitution and the
18 constitution of the federal government states
19 that anyone charged with a crime has the right to
20 remain silent. The mere fact that someone claims
21 this right is not something, uh, you may discuss
22 in the jury room. It would not be in keeping with
23 your oath to hold it against Mr. Romero for
24 claiming his constitutional right to remain
25 silent. Remember, the State has the burden of

1 proof and he is not required to prove himself
2 innocent or prove himself not guilty. You have
3 heard the phrase innocent until proven guilty.
4 That is the same idea of the presumption of
5 innocence. Mr. Romero has no burden whatsoever.

6 Let me mention to you a couple of things
7 about your deliberations before we, uh, give the
8 case to you. And, uh, remember you were not
9 chosen in this case to be partisans or advocates
10 for either side. Both the State and Mr. Romero
11 chose you because they believe you can be fair
12 and impartial. That means you are to use your,
13 uh, powers of reason and your common sense and
14 bring them to bear on what you've heard as
15 evidence during this trial.

16 Take the law I have given you, to you and
17 apply it to the facts once you determine the
18 facts. Then you will be able to come up with a
19 decision and a verdict. The word "jury" comes
20 from an old phrase that means a company of people
21 sworn to render a true answer. Here, your job is
22 to determine whether the State has met its burden
23 of proof beyond a reasonable doubt.

24 Now, each of you has a vote in this matter.
25 And your vote is exactly that. It's your vote and

1 no one else's. The genius of our jury system is
2 that it allows 12 people from different
3 backgrounds and walks of life to come together
4 and discuss the evidence in the case and reason
5 together and ultimately reach a verdict.

6 So listen to each other's perspectives and
7 points of view and don't be afraid to change your
8 mind if you are persuaded that you should. But
9 don't surrender some conscientiously held belief
10 just to get the case over with towards reaching a
11 unanimous verdict. This case is important to both
12 sides. This is their day in court and they are
13 entitled to your fair, full and impartial
14 consideration.

15 Now, uh, I'm going to just go over the
16 verdict form with you, Mrs. Clark. You have been
17 selected to be the foreperson. It's very
18 straightforward. It just asks as to the charge of
19 Unauthorized Practice of Law whether the jury
20 finds Mr. Romero not guilty or guilty. Don't be
21 influenced in any way by which one I put first. I
22 had to put one option first. It doesn't mean
23 anything whatsoever.

24 You are only authorized to sign the verdict
25 form when the verdict is unanimous. Your signal

1 that you can begin deliberating about the case or
2 talking about the case is when you receive the
3 exhibits. When you get that, you can start
4 talking about the case. And Thank you for your
5 attention.

6 (WHEREUPON, the jury exits at approximately
7 3:35 p.m.)

8 THE COURT: All right. Any objections to
9 the charge from the State?

10 MR. MYRICK: Nothing from the State, Your
11 Honor.

12 THE COURT: From the defense?

13 MR. WARDER: No, Your Honor.

14 THE COURT: All right. Y'all want to
15 confer about the exhibits and make sure we get
16 everything we need and nothing more and send it
17 back to the jury.

18 MR. MYRICK: Okay.

19 THE COURT: Okay. All right. Thank you for
20 your courtesies. We'll be at ease until we hear
21 from the jury.

22 (WHEREUPON, deliberations begin at approximately
23 3:37 p.m.)

24 (WHEREUPON, the Court resumes at approximately
25 4:10 p.m.)

1 **THE COURT:** Okay. Anything before I bring
2 the jury in?

3 **MR. WARDER:** No, sir.

4 **THE COURT:** All right. Thank you very
5 much.

6 **THE BAILIFF:** Yes, sir.

7 (WHEREUPON, the jury enters at approximately
8 4:12 p.m.)

9 **THE COURT:** Okay. Mrs. Clark, has the jury
10 reached a unanimous verdict?

11 **JUROR:** Yes, we have.

12 **THE COURT:** All right. If you would hand
13 the verdict form to Mr. Thompson, we will receive
14 it and publish it.

15 Thank you.

16 **THE BAILIFF:** Uh-huh.

17 **THE CLERK:** Your Honor, this is case 2008-
18 GS-23-9047 as to the charge of Unauthorized
19 Practice of Law, we, the jury, unanimously find
20 the Defendant Israel Romero guilty.

21 **THE COURT:** All right. Any matters or
22 motions before the jury is discharged from the
23 State?

24 **MR. MYRICK:** No, sir.

25 **THE COURT:** From the defense?

1 **MR. WARDER:** No, Your Honor.

2 **THE COURT:** All right. Ladies and
3 Gentlemen, thank you for your service this week.
4 As I told the remainder of the panel this
5 morning, I've been informed that there are no
6 more cases on the docket for either civil side of
7 the court or the criminal side this week. For
8 criminal, we had a term of court for the State
9 Grand Jury. That case largely resolved itself on
10 Monday. So we had this case. That is it.

11 So you are through with your obligation of
12 jury service in Circuit Court for three years
13 now. You have an exemption in this court. I want
14 to thank you for your cooperation, your time. And
15 if you need something for your work or other
16 purpose, the clerk will be glad to provide you
17 with any paperwork to that end. Have a good
18 afternoon. Thank you very much.

19 **(WHEREUPON, the jury exits at approximately**
20 4:16 p.m.)

21 **THE COURT:** Okay. At this time any matters
22 or motions from the State or the defense?

23 **MR. MYRICK:** Nothing from the State, Your
24 Honor.

25 **MR. WARDER:** No, sir.

1 **THE COURT:** Okay. Y'all ready to proceed
2 with sentencing?

3 **(WHEREUPON, the Defendant approaches the bench.)**

4 **THE COURT:** Yes, sir, Mr. Myrick.

5 **MR. MYRICK:** I was handing up the
6 sentencing sheet, Your Honor. It's in the clerk's
7 hands now.

8 **THE COURT:** All right. Okay. Yes, sir, Mr.
9 Myrick. Anything further on behalf of the State?

10 **MR. MYRICK:** Yes, sir, Your Honor. Whether
11 or not it was elicited during the trial, at this
12 point, the Ramirez family has paid this man
13 \$2000. We think restitution is in order first and
14 foremost. Second, as Your Honor knows, his wife
15 and his sister are present. I believe they would
16 like to address the Court.

17 Third, Your Honor, we all know what happened
18 in this case because we've got a court record
19 here from July 24th. We also know from his wife's
20 testimony where he is now. As I'm sure Your Honor
21 knows, federal court moves quickly. Had Mr.
22 Ramirez gotten a licensed lawyer who knew what he
23 was doing sooner, we can't say that this would
24 have been the end result. I'm not saying it would
25 have been any different. But I think, Your Honor,

1 it's plain as can be that when federal court is
2 moving rapidly from indictment to plea, every
3 day, it counts. The time between July 6th and
4 July 24th amounts to lost time for Mr. Martinez
5 that he will never get back.

6 Finally, Your Honor, his practice of
7 soliciting victims from the illegal immigrant
8 community is despicable. And what was his undoing
9 in this particular case is that Maria Martinez is
10 legally present in the United States and his wife
11 is a United States citizen. Were it not for them
12 coming forward to speak on Juan's behalf, the
13 Attorney General's office nor this Court nor
14 members of a jury would ever have heard of this
15 plight because Mr. Romero's scheme concluded with
16 his victim being locked incommunicado in a
17 federal prison.

18 Finally, Your Honor, given his defense,
19 there is no remorse. And at the appropriate time,
20 I think the Court's sentence should take into
21 account the fact that this is causing harm in the
22 community. It's causing great difficulties with
23 this family and everyone who is a resident in
24 South Carolina whether they are legally present
25 regardless deserves better treatment than what

1 this family got from this con man standing before
2 you. If the victims would like to speak at the
3 appropriate time.

4 **THE COURT:** I'll be glad to hear from
5 them. Of course, I heard your testimony. I'll be
6 glad to hear anything you wish to say at
7 sentencing related to the impact.

8 **MRS. MARIA MARTINEZ:** Uh, --

9 **THE COURT:** All right. This is Maria
10 Martinez?

11 **MRS. MARIA MARTINEZ:** Maria.

12 **THE COURT:** Yes, ma'am.

13 **MRS. MARIA MARTINEZ:** Well, I just want to say
14 I forgive him for doing that. And -- I'm sorry.
15 We --

16 **THE COURT:** Okay. Just take your time.
17 Mrs. Sandra Martinez, you wish to say
18 something?

19 **MRS. SANDRA MARTINEZ:** I mean, I forgive him.
20 But it's hard to trust a lawyer now because you
21 got people like him. And you put all your trust
22 into someone thinking they are going to help you
23 and they turn out to be fake.

24 **THE COURT:** Okay. Mrs. Warder.

25 **MR. WARDER:** Yes, sir. I practiced in

1 federal court quite a while. The waiver of an
2 arraignment is the most routine proceeding.
3 Seldom ever do you require the U.S. Magistrate at
4 the first proceeding to read to you the
5 indictment that you are given. Discovery packages
6 were given at the same time. The lawyers, I
7 think, that ultimately defended him were actually
8 in the courtroom.

9 I think that to categorize the fate of the
10 federal defendant as directly related to
11 something that my client did is just a stretch
12 and probably bears some little reality.

13 **THE COURT:** How long did he stay in the
14 case? I'm unclear on after that point.

15 **MR. WARDER:** Very shortly. I think about a
16 week. Your Honor, my client immigrated from
17 Honduras, came to the United States in 1991. He
18 was an attorney in Honduras. He went to law
19 school here at, uh, Albany which is an ABA
20 accredited with the Bar. He completed about 30
21 hours, 31 hours. He then went to LaSalle which is
22 an online law school. Was admitted to the Eastern
23 District New York Bar on a provisional
24 admittance.

25 Your Honor, uh, he's not licensed in the

1 State of South Carolina. He's worked in real
2 estate sales. If you were to talk to him, he says
3 he wanted to help people, wanted to help people
4 with immigration problems. He thought what was
5 going on with immigration was not right. He
6 thought he could benefit people.

7 Your Honor, he's been locked up since
8 December. He been on house arrest since the time
9 of his arrest until December. I urge the Court to
10 be lenient. This is not a mean spirited man, a
11 mean man. He certainly thought that people would
12 benefit. He's never wanted to hurt anybody. I
13 don't think this is a case for an aggravated type
14 of punishment.

15 **THE COURT:** All right. Mr. Romero,
16 anything you would like to say, sir?

17 **MR. ROMERO:** Yes, only that my father is
18 Jehovah, the God of Justice, the God of
19 Righteousness. Amen.

20 **THE COURT:** I'm sorry. I couldn't
21 understand what you were saying. Talk slowly and
22 make sure Mrs. Johnson down here can pick up
23 everything you say. Yes, sir.

24 **MR. ROMERO:** Yes, that the name of my
25 father is Jehovah, the God of Justice, the God of

1 Righteousness. Amen.

2 **THE COURT:** Is there any information about
3 any other victims out in the community?

4 **MR. MYRICK:** No, sir. I didn't want to
5 prejudice the Court during consideration of this
6 sentence. The fact is our investigator went out
7 into the community. And what he encountered was a
8 great deal of fear in the immigrant community of
9 the government and the police. And they can not
10 distinguish between one agency of the government
11 and another. If you are legally present -- my
12 understanding is that Immigration and Customs
13 Enforcement has been very active in the upstate
14 the past six or eight months. Again, were it not
15 for the fact that his sister is legally present,
16 we would have never known of this case.

17 All indications are that he had a practice of
18 doing this which is why he had business cards.
19 Again, Your Honor, it bears mentioning at this
20 point following Mr. Warder's statement, as part
21 of our investigation, the Office of the Attorney
22 General checked and ran a 50 state database
23 search of professional licenses. He's not
24 licensed as a lawyer anywhere in the United
25 States.

1 There was a brief period of pro hac admission
2 in 1991 and '92 in New York. It is our belief
3 that it was obtained in the same fraudulent
4 manner as the one in the court here was which is
5 why Judge Norton had been notified. I think, Your
6 Honor, he was counting on the same level of
7 busyness in the South Carolina courts that
8 allowed this to go unacknowledged in the New York
9 courts. But there's no evidence of any license
10 anywhere in the United States.

11 **THE COURT:** People go to see a lawyer,
12 they are often at a very desperate time in their
13 life. And they rely on people at that stage to be
14 not only interested in helping them but able to
15 help them. They certainly don't need to be, uh,
16 further victimized or have their situation
17 deteriorate due to some type of misrepresentation
18 which here went to the point of someone appearing
19 in federal court imposing as a lawyer.

20 The fact that a certificate was issued, I
21 think, goes to the brazen nature of it. I don't
22 understand how Mr. Romero could have ever thought
23 that he was legitimately in federal court after
24 taking these people's hard earned money. So the
25 sentence of the Court is you be committed to the

1 Department of Corrections for a period of five
2 years suspended upon 90 days and probation for
3 one year. Pay the restitution of \$2000. All
4 right. Thank you very much.
5
6
7

8 (END OF PROCEEDING)
9
10

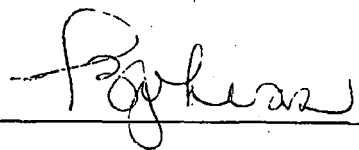
CERTIFICATE

147

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of General
8 Sessions for Greenville, South Carolina, on the 21st
9 day of April, 2009.

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

12
13 June 28, 2009

14
15 
16 _____
17 Teresa B. Johnson
18 Official Court Reporter
19
20
21
22
23
24
25

THE UNITED STATES OF AMERICA



District of South Carolina

I, Larry W. Propper, Clerk of the United States District Court,

certify that

Israel Romero

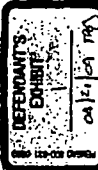
*was duly admitted and qualified to practice as an attorney in the
District Court on the 23rd day of January 2008.*

*In testimony whereof, I sign my name and affix the seal
of this Court on this 23rd day of January 2008.*



Larry W. Propper
Clerk of Court

Attorney Identification Number: 10127





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

UNITED STATES OF AMERICA,	)	
	)	
	)	July 24, 2008
-versus-	)	
	)	Greenville, SC
	)	
JUAN MARTINEZ-OLIVARES	)	6:08-682
& GUILLERMO HERNANDEZ-RAMIREZ,	)	6:08-684
Defendants.	)	

TRANSCRIPT OF ARRAIGNMENT

BEFORE THE HONORABLE WILLIAM M. CATOE
UNITED STATES MAGISTRATE JUDGE, presiding

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

For the Government:	JAMES D. GALYEAN, AUSA US Attorney's Office PO Box 10067 Greenville, SC 29603
For Defendant Olivares:	ISRAEL ROMERO, ESQ. 94 Birdsong Lane Taylors, SC 29687
For Defendant Ramirez:	JANIS R. HALL, ESQ. 606 Pettigru Street Greenville, SC 29601
Court Reporter:	KAREN E. MARTIN, RMR, CRR P.O. Box 10771 Greenville, SC 29603

The proceedings were taken by mechanical stenography and
the transcript produced by computer.

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Thursday, July 24, 2008

MR. GALYEAN: Your Honor, the next case is US v. Juan Francisco Martinez Olivares, Case No. 6:08-682. And Mr. Israel Romero is retained --

THE COURT: Is this his first appearance or not?

THE CLERK: No, sir, both have already been seen, both of them.

THE COURT: Who represents him?

MS. HALL: Ms. Chamberlain represents of record Juan Francisco and I'm standing in for her.

THE CLERK: No, Mr. Romero has come in.

THE COURT: You've been retained?

MR. ROMERO: Yes, sir.

THE COURT: So you are representing him?

MS. HALL: I represent Mr. Ramirez.

THE COURT: I believe this is the first time you have been here; is that right?

MR. ROMERO: Yes, Your Honor.

THE COURT: Have you advised your client of the charges and possible penalties?

MR. ROMERO: Yes, sir.

THE COURT: Waive reading at this time? Do you waive reading of the charges and possible penalty?

MR. ROMERO: Yes, we waive.

THE COURT: Have you advised him of the charges

1 and penalty?

2 MR. ROMERO: Correct, Your Honor, I did.

3 THE COURT: All right. They'll provide a
4 discovery package to you giving you all the information.
5 And if you need anything, you let me know.

6 MR. ROMERO: Yes, Your Honor.

7 THE COURT: Glad to have you with us. How long
8 have you been in Greenville?

9 MR. ROMERO: Since last year.

10 THE COURT: All right.

11 All right, Ms. Hall?

12 MS. HALL: Mr. Martin Pollack and I visited with
13 Mr. Ramirez last week. He understands the charges and
14 possible penalties and we'd waive reading.

15 THE COURT: Anything else for the record?

16 MS. HALL: No, sir. We've received discovery.

17 THE COURT: Thank you.

18 ***

19 I certify that the foregoing is a correct transcript from
20 the record of proceedings in the above-entitled matter.

21 *Karen E. Martin*

22 s/Karen E. Martin

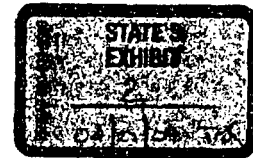
9/15/08

23 Karen E. Martin, RMR, CRR

Date

24

25

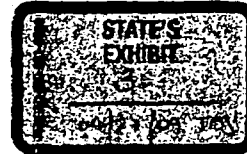


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Attorney & Counselor at Law
Federal Matters & Immigration
ADMITTED TO SC FEDERAL COURT
ATTORNEY ID # 10127

3:08-mc-00117-DCN Date Filed 08/28/2008 Entry Number 5 Page 1 of 1

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN THE MATTER OF

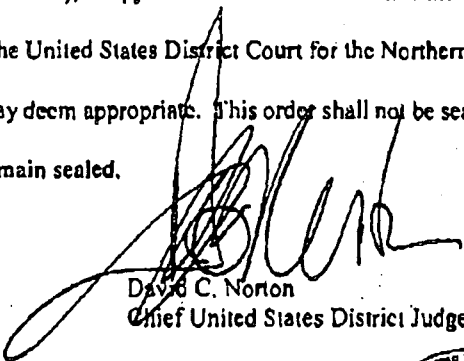
3:08-MC-117

Israel Romero, Esquire,

ORDER

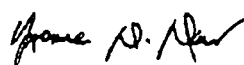
Israel Romero applied for admission to the District Court Bar for the District of South Carolina. In the application, Mr. Romero certifies that he is "a member in good standing of the South Carolina Bar." The South Carolina Bar has informed the Clerk of Court that Mr. Romero is not a member of the South Carolina Bar. Membership in the South Carolina Bar is a prerequisite to membership in this Court's Bar. Therefore, Mr. Romero's admission to the Bar of this Court is void *ab initio*.

IT IS ORDERED that the admission of Israel Romero to the District Court Bar for the District of South Carolina is revoked. Pursuant to Rule X(C) of the Rules of Disciplinary Enforcement, Local Civil Rule 83.1.08 (D.S.C.), a copy of this Order shall be sent to the disciplinary authority for the New York Bar and to the United States District Court for the Northern District of New York for any further action they may deem appropriate. This order shall not be sealed, but all other docket entries in this case shall remain sealed.

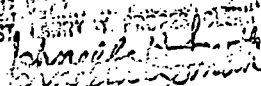
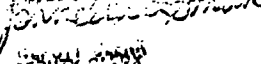

Dayle C. Norton
Chief United States District Judge

August 28, 2008
Charleston, South Carolina

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BY: 
DEPUTY CLERK



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Interest Checking : Account Activity

Transaction Details:

Description: Check 1154

Posting date: 07/07/2008

Amount: \$2,000.00

Reference Number:

Check number: 1154

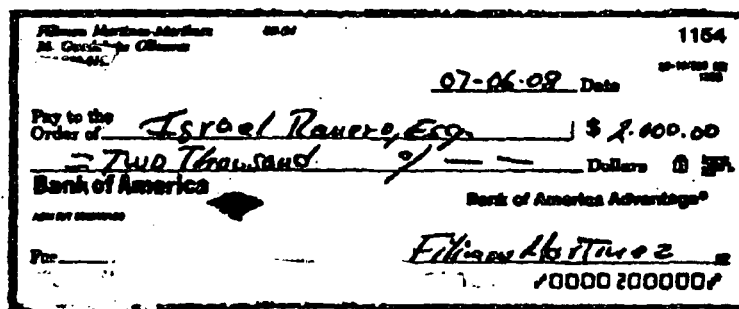
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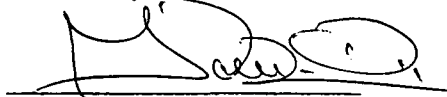
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CERTIFICATE OF PRO SE APPELLANT

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 13, 2010

A handwritten signature in black ink, appearing to read 'Dr. Israel Romero', is written over a horizontal line.

Dr. Israel Romero
94 Birdsong Lane
Taylors, SC 29687
(864) 292-5025
Pro Se Appellant

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

PROOF OF SERVICE

I, Dr. Israel Romero, Pro Se appellant, certify that I have served the within RECORD ON APPEAL on Respondent, by Hand-Delivering one copy of same at the Office of the Attorney General, Attn: Norman Mark Rapoport, Senior Assistant Attorney General, Rembert C. Dennis Building, 1000 Assembly Street, Room 519, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 13th day of January, 2010.



Dr. Israel Romero, Ph.D.
94 Birdsong Lane
Taylors, SC 29687
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Pro Se Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Final Brief
of
Appellant

APPEAL FROM GREENVILLE COUNTY
General Sessions Court

Garrison D. Hill, Circuit Court Judge

Case No. 2008-GS-23-009047

STATE OF SOUTH CAROLINA,

Respondent,

v.

ISRAEL ROMERO,

Appellant.

FINAL BRIEF OF APPELLANT

Israel Romero
94 Birdsong Lane
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(864) 292-5025
Pro Se Appellant

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO APPLY THE EX POST FACTO RULE, THE STATUTORY CONSTRUCTION RULE, AND THE PREEMPTION RULE?
2. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT IT HAS NO JURISDICTION OVER THIS CASE?
3. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THIS ACTION IS BARRED BY DOUBLE JEOPARDY?
4. DID THE TRIAL COURT ERR IN CHARGING THE JURY WITH THE ELEMENTS OF CRIME, BUT FAILING TO GIVE THEM THOSE ELEMENTS, AND FOR FAILING TO CHARGE THEM WITH THE PROPER LAW?

STATEMENT OF THE CASE

On August 18, 2008, the Attorney General of the State of South Carolina brought this action alleging that Israel Romero, on or about July 06, 2008 had committed the offense of practicing law without license, and that have violated the South Carolina Code of Laws, Section 40-05-0310 of 1976. On November 11, 2008 the Preliminary Hearing for this matter took place in Greenville County. On November 18, 2008, the Grand Jury of Greenville County indicted Israel Romero upon the same alleged offense and same South Carolina Code violation.

On April 21, 2009, the case was tried by a jury, which found Israel Romero guilty. On the same day, Israel Romero was sentenced to five years suspended incarceration, with ninety days of service in County Jail and with probation for one year, and two thousand dollar restitution added to \$100 Conventional Surcharge, and \$25 Law

Enforcement Funding.

On April 24, 2009, Israel Romero served the Notice of Appeal on the State of South Carolina by serving the State Attorney General.

FACTS

On January 18, 2008, Israel Romero applied for admission to the District Court Bar for the District of South Carolina. (Supp. R. 2-3; R. 72). On January 23, 2008 Israel Romero was admitted and sworn as an attorney of the District Court Bar, received the Certificate of Admission with the Attorney Identification Number 10127. (R. 98; R. 163; Supp. R. 1). On January 31, 2008 Israel Romero made business cards bearing his name and address with the legend "Federal Matters & Immigration – ADMITTED TO SC FEDERAL COURT ATTORNEY ID# 10127. (R. 168; R. 60, lines 14, 15, 21-25; Supp. R. 3, lines 1-2). On July 6, 2008, Israel Romero was retained by Juan Francisco Martinez Olivares to assist him in a federal Immigration Law matter pending in Federal Court. (R. 63, line 21). On July 24, 2008, Israel Romero appeared in Federal Court, Greenville Division in behalf of Mr. Martinez Olivares. (R. 166-167). On August 18, 2008 the SC State Attorney General arrested Israel Romero, and charged him with the violation of the South Carolina Code of Laws, Section 40-05-0310 Practice of Law Without License (R. 1). On August 24, 2008, the U.S. District Court District of South Carolina revoked the license to Israel Romero in application of Rule X(C) of the Federal Court Rules of Disciplinary Enforcement (R. 169).

On November 18, 2008, a Grand Jury of the County of Greenville, indicted Israel Romero with the charge of UNAUTHORIZED PRACTICE OF LAW in violation of § 40-5-310 of the S.C. Code of Laws, 1976 (R. 2). On April 21, 2009, at the trial of this matter the State introduced evidence proving that Israel Romero had represented a person in Federal Court on a federal matter (R. 164 – 170; R. 60, lines 21-22; R. 61, lines 10-16; R. 89, lines 9-23; R. 96, lines 21-22; R. 77, lines 17-18). During the trial of this matter the Court ruled that Section 40-5-0310 of the S.C. Code of Laws includes federal court (R. 124, lines 8-15). During the charge to the jury, the Court charged the jury with finding to be proved every element of the crime of unauthorized practice of law (R. 145, lines 12-15, lines 19-22). The Court explained one element of the crime, intent (R. 147, lines 18-25, R. 148, lines 1-13). The Court told the jury that Section 40-5-310 of the S.C. Code of Laws, “states as follows: no person may practice or solicit the cause of another person in a court of this state unless he has been admitted and sworn as an attorney. The practice of law includes court appearances, preparation of legal instruments of all kinds and in general, all advice to clients, consultation and all action taken for clients and matters connected with the law. That, uh, is the offense.” (R. 147, lines 5-15). On April 21, 2009 at trial of this matter Appellant was convicted, and sentenced. (R 3).

ARGUMENTS

- I. BECAUSE THE STATE STATUTE REGULATES STATE LEGAL MATTERS AND ACTIONS TAKING PLACE IN STATE COURTS, THE STATE OF SOUTH CAROLINA IS BARRED FROM BRINGING THIS CRIMINAL ACTION UNDER EX POST FACTO LAW, THE SOUTH CAROLINA STATUTORY CONSTRUCTION RULE, AND THE PREEMPTION OF FEDERAL LAW.

Appellant, Dr. Israel Romero (hereinafter called Appellant), was charged with a violation of the § 40-5-310 of the S.C. Code of Laws that regulates the practice of state law as well as actions in the courts of this State, which means the courts generated under the South Carolina State Constitution and laws (R. 139, lines 3-18; R. 115, lines 12-25). The statute used to charge Appellant talks about practice of law of this state and in courts of this state. The State's witness Jill Rothstein, Risk Management Director for the South Carolina Law, testified holding the S.C. Rules on her hands, that the State of S.C. regulates the practice of State Laws and the practice before State Courts, and that the State of S.C. neither regulates the practice of federal law nor the practice before the federal courts. Jill Rothstein confirmed that the Federal Court System regulates the practice of federal law and the practice before the federal courts (R. 139, lines 3-18). It was proven, during the course of the entire trial that Appellant have practiced federal law, and in federal court during the time charged. There is no contention regarding this issue in the record. Appellant, however, have practiced immigration law as well as appeared in Federal Court in behalf of another person because Appellant received a license issued by the Federal Court of South Carolina, which "would essentially emasculate §40-5-310." State v. MacLauren, 349 S.C. 488; 563 S.E.2d 346 (2002). MacLauren practiced State Law and had no license at all. Appellant was practicing federal

law, and at that time, Appellant had a license issued by the Federal Court of South Carolina, even though said license was revoked ex post facto by the Federal Court. (R. 169). The Supreme Court of South Carolina has conceded that when a person has acted in good faith, believing that he had a right to counsel and to practice before a tribunal because the person had a license issued by that tribunal, for this reason the State does not prosecute said person neither “impose a fine upon him. He is required to cease and desist from the practice complained of.” State ex rel. Daniel, Atty. Gen., et al. v. Wells, 191 S.C. 468 (1939). More recently, the Supreme Court of South Carolina has ruled that when a person has been allowed to practice before a tribunal, the person had been lead “to believe that such was acceptable,” and the person was subject to no punishment. Brown v. Coe, 365 S.C. 137, 616 S.E.2d 705(2005).

a. EX POST FACTO RULE

By mandate of the supreme law of the land the states are forbidden to pass “any ex post facto law.” U.S. Constitution, Article I §10. The supreme law of this state has the same mandate: “No...ex post facto law...shall be pass, and no conviction shall work corruption of blood or forfeiture of estate.” S.C. Constitution, Article I §4. The U.S. Supreme Court, in a South Carolina capital punishment case stated that, “The constitutional inhibition on ex post facto laws was intended to secure substantial personal rights against arbitrary and oppressive legislative action.” Malloy v. South Carolina, 237 U.S. 180; Rooney v. North Dakota, 196 U.S. 319. In Malloy, the court wrote that, “The often-quoted opinion of Mr. Justice Chase in Calder v. Bull, 3 U.S. 390-391, summarizes ex post facto laws within the intendment of the Constitution thus: 1st. Every law that

makes criminal an action done before the passing of the law, and which was innocent when done, [Page 237 U.S. 184], and punishes such action. 2nd. Every law that aggravates a crime, or makes it greater than it was when committed. 3d. Every law that alters the legal of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender. All these, and similar laws, are manifestly unjust and oppressive.”

In the instant case, Appellant received a license from the Federal Court of South Carolina, practiced federal law with it, and tried to help another person with the authority from said license. On July 24, 2008 appeared in Federal Court where he has been admitted to practice as an Attorney and Counselor at Law, and had received the respective training for filing papers electronically (in Federal Court you cannot file papers by handing them out in the Clerk’s Office. You only can file electronically). The Court’s Clerk knew about Appellant representing the other person, and the Judge acknowledged it. (see R. 164; R. 165; R. 166, lines 1-25; R. 167, lines 1-23).

On Aug. 18, 2008 Appellant then was arrested (see Arrest Warrant, R. 1;), and Indicted (see Indictment dated 11/18/2008, R. 2). On Aug. 27, 2008 the Federal Court revoked Appellant’s license “ab initio.” By virtue of the S.C. Constitution, Article I §4, by virtue of the U.S. Constitution Article I §10, by virtue of the U.S. Supreme Court rulings in *Malloy* (supra), *Rooney* (supra), *Calder* (supra), acts or omissions charged against Appellant are null and void because Appellant had a license at that time. Appellant presented same arguments during the trial of this matter. (R. 97, lines 10-23; R. 98, lines 4-23). The trial court erred when ignored the cited authority, laws and

rules above cited, ruled that Appellant was not licensed (R. 97, lines 6-9) and also ruled that acts or omissions charged against Appellant were valid, in clear violation of the law above cited.

b. RULES OF STATUTORY CONSTRUCTION

South Carolina has long recognized the principle that penal statutes are to be strictly construed. Long time ago this principle was made a rule by the courts of this State. State v. Germany, 216 S.C. 182, 188; 57 S.E.2d 165, 168 (1949). In addition to that, South Carolina ruled, “that a criminal statute must be strictly construed against the State and any doubt must be resolved in favor of the defendant.” Germany, supra. Appellant was charged with a criminal statute that regulates activity under State Law, and this statute does not mention at all federal matters or federal courts. “This is a penal statute and must be strictly construed” as stated by the S.C. Supreme Court in State v. Lewis, 141 S.C. 207, 211; 139 S.E. 386, 389 (1927). On 2003, this Court of Appeals ruled that, “Penal statutes are strictly construed against the State and in favor of the defendant.” State v. Dupree, 354 S.C. 676, 693; 583 S.E.2d 437, 446 (Ct. App. 2003). The preposition “of” is defined as “coming from, or located at,” (Standard Encyclopedic Dictionary, p. 452. Funk and Wagnalls, A Division of Reader’s Digest Books, Inc. New York, NY. 1968). Another definition is found at Black’s Law Dictionary, which states that of means, “A term denoting that from which anything proceeds; indicating origin, source, descent, and the like. Associated with or connected with, usually in some causal relation, efficient, material, formal, or final. The word has been held equivalent to at, or belonging to.” (Black’s Law Dictionary, Fifth Edition, p 975. West Law Publishing Co.; St. Paul, MN. 1979). This is the reason why the State of S.C. does not regulate federal law, the practice

of federal law, and federal courts, as is it confirmed by the testimony of Mrs. Rothstein (supra).

In addition to the “strict construction rule,” in penal law, the courts of this state have ruled that, “The primary rule of statutory construction is to ascertain and give effect to the intent of legislature.” Joiner v. Rivas, 342 S.C. 102, 108, 536 S.E.2d 372, 375 (2000); Shealy v. Doe, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct. App. 2006). South Carolina has stated that, “The first inquiry is whether the statute’s meaning is clear on its face.” Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). The §40-5-310 clearly talks about state law and S.C. State Courts. South Carolina has ruled that, “With any question regarding statutory construction and application, the court must always look to legislative intent as determined from the plain language of the statute.” State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002); State v. Frey, 362 S.C. 511, 516, 608 S.E.2d 874, 877 (Ct. App. 2005). The statute used to charge Appellant must not be given any other meaning but its application to practice of state law for state matters at state courts, because the S.C. Supreme Court says that, “When a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this court has no right to impose another meaning.” Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519, 642 S.E.2d 751, 754 (2007). The statute used to charge Appellant must not be expanded to mean practice of federal law and in federal courts because it would be a violation of Article VI of the U.S. Constitution, and because the S.C. Supreme Court rules that, “The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Mun. Ass’n of South

Carolina v. AT&T Commc'n of Southern States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004); see also Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) ("In determining the meaning of a statute, the terms used therein must be taken in their ordinary and popular meaning."). The courts of this state also ruled that, "At the same time, the cardinal rule of statutory construction requires that we endeavor to ascertain and effectuate the intent of the legislature." Branch v. City of Myrtle Beach, 340 S.C. 405, 409; 532 S.E.2d 289, 292 (2000); State v. Baucom, 340 S.C. 339; 531 S.E.2d 334, 336 (Ct. App. 2002). One more rule states that, "A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. Abell v. Bell, 229 S.C. 1, 4; 91 S.E.2d 548, 550 (1956). This tribunal also has ruled that, "A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 22; 579 S.E.2d 334, 336 (Ct. App. 2003). In the instant case, the intention of the South Carolina Legislature is clear that intends to regulate the practice of State Law and the appearances at State Courts. It is clear because the recent intents of the South Carolina Legislature to amend the § 40-5-310 of the Code of Laws of South Carolina, 1976. A report found at the South Carolina Legislative Multi-Criteria Search, shows that in Session 118, the Bill # H 3132 (Rat #0093, Act #0038 of 2009) is a General Bill, by J.E. Smith, H.B. Brown, Cleod, Horne, Weeks, Hutto and T.R. Young, in regard to Attorneys. This bill was introduced to the House on January 13, 2009, and read for the first time on that day (HJ-56). On February 26, 2009 the bill was read for the second time at the House (HJ-13). On February 27, 2009 the bill was read the third time

at the House and sent to Senate (HJ-1). On March 3, 2009 the bill was introduced and read first time at the Senate (SJ-11). On April 23, 2009 the bill was read second time at the Senate (SJ-21). On May 7, 2009 the bill was read the third time and returned to the House with amendments (SJ-23). On May 13, 2009 the House concurred in Senate amendment and enrolled (HJ-48). On May 27, 2009 the bill was ratified (R 93). On June 2, 2009 the Governor signed the bill into law. On June 11, 2009 was published and declared to have June 2, 2009 as effective date. This law, as amended, now reads: "SECTION 1. Section 4-5-310 of the 1976 is amended to read: Section 50-4-310. No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The type of conduct that is subject of any charge filed pursuant to this section must have been defined as the unauthorized practice of law by the Supreme Court of South Carolina prior to any charge being filed. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both. SECTION 2. This act takes effect upon approval by the Governor." Please take notice that, "on or about the period between July 6, 2008, and July 24, 2008" as charged on November 18, 2008, in the Indictment by the Grand Jury of Greenville County against Appellant, the statute textually read: "§ 40-5-310. Practicing without being admitted and sworn prohibited. No person may practice or solicit the cause of another person in a court of this State unless he has been admitted and sworn as an attorney. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars and imprisoned not more

than five years, or both.”

Both statutes the one from 1976, and the one amended and effective on June 2, 2009 regulate state law and state courts. On the amended statute, the one that is effective June 2, 2009 the legislature is attempting to give the appearance that the State of South Carolina can regulate federal matters, but that attempt fails because the statute does not say it (Joiner, Shealy, Wade, Scott, Frey, Catawba, Mun. Assoc. of S.C., Miller, Branch, Baucom, Abell, Georgia-Carolina Bail Bonds, Germany –all of them, supra). Again, the State of “South Carolina has long recognized the principle that penal statutes are to be strictly construed.” State v. Germany (supra); (R.139, lines 1-13). Hence, the statute used in this case does not apply to the facts, evidence and circumstances, and the trial court erred when heard this case, and by making a decision in clear violation of the Ex Post Facto Rule (supra). The written evidence (4 pieces by the State and 1 piece by Defendant/Appellant) and the testimony by three witnesses at trial, proved that Appellant was involved only in Immigration Law, and at Federal Court. Hence, the trial court did not acquire jurisdiction over this case. (R. 119, lines 14-24; R. 122, lines 4-25). Therefore, the trial court erred when denied the motion for directed verdict on the grounds that the court did not acquire jurisdiction to hear this case, and by violating the Ex Post Facto Rule, and by violating the S.C. State Rules of Statutory Construction. (R. 124, lines 8-15). The amendment to §40-5-310 effective on June 2, 2009 cannot be applied retroactively to actions occurred before June 2, 2009 because of the ex post facto rule, and because the amendment so states: “The type of conduct that is the subject of any charge filed pursuant to this section must have been defined as the

unauthorized practice of law by the Supreme Court of South Carolina prior to any charge being filed.” §40-5-310 of the S.C. Code of Laws as amended on June 2, 2009.

Therefore, the instant case cannot, MUST NOT, be used to test the new statute because the new statute has to be applied to an action occurred after June 2, 2009.

c. THE PREEMPTION RULE

Furthermore, the principles of preemption to resolve conflicts between federal and state law rests upon the authority of Article VI of the U.S. Constitution, which declares federal law to be the supreme law of the land (U.S. Constitution, Article VI). Federal courts and federal law enforcement agencies are the ones that regulate the practice of federal law as admitted by the Respondent through a State’s witness (R. 139, lines 3-18). The evidence at trial of this matter showed that Appellant have practice Immigration Law at Federal Court. A Federal Court is Federal Property wherever it is located. (R. 122, lines 15-25; R. 123, lines 1-5; Defendant's Exhibit 1, R. 163; State's Exhibits 1, 2, 3, 4, R. 164 - 170).

The practice of immigration law is more informal than most. Immigration and Nationality Law § 1.01 (k) (2). This law states that, “The major enforcement responsibilities under the immigration laws are assigned to the U.S. Attorney General. The second enforcement agency is the U.S. Secretary of State. The third enforcement agency is the U.S. Public Health Service. The Department of Labor, acting through its Employment and Training Administration, has substantial responsibilities. The Executive Office for Immigration Review oversees the Board of Immigration Appeals, the Immigration judges and the administrative law judges.” In the instant case there is no

evidence presented, no state rule or statute that may apply even by implied authority.

There are federal rulings, however, that clarify when implied preemption occurs. “(1) If a scheme of federal regulations is so pervasive as to make reasonable the inference that U.S. Congress left no room for the States to supplement it; (2) If the Act of Congress touches a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject; or (3) If the goals sought to be obtained and the obligation imposed reveal a purpose to preclude state authority.” Garcia v. Wyeth-Ayerst Laboratories, 385 F.3d 961 (6th Circuit, 2004).

It is also clearly stated that, “while the power of the federal government to regulate immigration is not specifically mentioned in the U.S. Constitution, the U.S. Supreme Court has long recognized an implied federal power over immigration as a core attribute of national sovereignty.” The Chinese Exclusion Cases, 130 U.S. 581 (1890); Fong Yue Ting v. U.S., 149 U.S. 698 (1893). As per the U.S. Supreme Court, “We know that only the U.S. Congress, not the states, can regulate immigration.” DeCanas v. Bica, 424 U.S. 351, 358 (1978). The Supremacy Clause makes it crystal clear that federal law trumps state law if U.S. Congress wants it that way. U.S. Constitution, Article VI §2. This includes both federal statutes and the regulations that implement them. Not only U.S. Congress but also duly authorized federal agencies acting “within the scope of its constitutionally delegated authority.” Medronics v. Lohr, 518 U.S. 470, 485 (1996); Gibbons v. Ogden, 22 U.S. 1, 211 (1824). It is by statute regulated that, “when state prescriptions significantly impair the exercise of authority, enumerated or incidental, the state’s regulations must give way.” 12 U.S.C.A. §21 (also §24-7). The U.S. Supreme

Court also has stated that, "The authority vested in federal agencies and federal courts to regulate federal law and federal matters, is to prevent inconsistent or intrusive state regulations." Watters v. Wachovia Bank, N.A., 550 U.S. 1, 21(2007). Hence, the trial court erred because violated the preemption rule when made a decision in this case.

II. BECAUSE TO HEAR AND TRY A CASE, A COURT MUST HAVE JURISDICTION OVER THE MATTER, THE TRIAL COURT ERRED WHEN WITH WANT OF JURISDICTION IT HEARD, TRIED THIS CASE AND CONVICTED THE APPELLANT.

Jurisdiction refers to the powers and privileges of a court; ultimately, they are powers to render punishments. Just having a judge, a fancy courthouse, and being recognized by the State Legislature as part of a numerical circuit system doesn't give a court its jurisdiction. In State v. Gentry, 363 S.C. 93, 101-02, 610 S.E.2d 494, 499 (2005), our supreme court "abandoned the view that, in criminal matters, the circuit court acquires subject matter jurisdiction to hear a particular case by way of a valid [grand jury] indictment." State v. Means, 367 S.C. 374, 381, 626 S.E.2d 348, 352 (2006). Prior to Gentry, the circuit court did not have subject matter jurisdiction in a criminal case unless: (1) there was an indictment sufficiently stating an offense..." Means, 367 S.C. at 381; Evans v. State, 363 S.C. 495, 507-09 (2005), and its progeny. Consequently, a defective or insufficient indictment often resulted in the lack of subject matter jurisdiction, "which is a matter that may be raised at any time, including on direct appeal, in a [post-conviction relief] action or sua sponte by the trial or appellate courts." Means, 367 S.C. at 381; see also State v. Munn, 292 S.C. 497, 499, 357 S.E.2d 461, 463 (1987) (concluding trial court lacks subject matter jurisdiction to convict defendant for an

offense charged with State Law for the practice of Federal Law when the jury is sworn). The Federal authorities did what they had to do in this case. (State's Exhibit 3, R. 169). They revoked the license they had issued to Appellant on January 23, 2008. (Defendant's Exhibit 1, R. 163). Because Appellant had that license, issued by the Federal Court, the Federal Authorities concluded that Appellant did not commit any crime while practicing federal law with that license.

As our Supreme Court recognized in Gentry (supra), the subject matter jurisdiction of the circuit court and the sufficiency of an indictment are two distinct concepts. Gentry, 363 S.C. at 102 n.6, 610 S.E.2d at 499 n.6 ("Presentment of an indictment...is not needed [is not enough] to confer subject matter jurisdiction on the circuit court."). (R. 99, lines 5-13; R. 101, lines 7-14; R. 116, lines 8-10; R.117, lines 14-16). "Subject matter jurisdiction is the power of a court to hear and determine cases of general class to which the proceedings in question belong." The written evidence (4 pieces by the State and 1 piece by Defendant/Appellant) and the testimony by three witnesses at trial, proved that Appellant was involved only in Immigration Law, and at Federal Court. Hence, the trial court did not acquire jurisdiction over this case. (R. 119, lines 14-24; R.12, lines 4-25). Therefore, the trial court erred when tried this case and rendered a decision, on the grounds that the court did not acquire jurisdiction to hear this case. (R.124, lines 8-15).

III. BECAUSE APPELLANT WAS ALREADY PUNISHED BY THE FEDERAL AUTHORITIES IN THIS MATTER, THE STATE OF SOUTH CAROLINA IS BARRED BY THE DOUBLE JEOPARDY RULE FROM BRINGING THIS ACTION.

The courts of South Carolina are very jealous in the enforcement of the rights

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

Final Brief
of
Respondent

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Is Romero's Issue 1 available for appellate review?

II.

Did the trial court have jurisdiction to try Romero for unauthorized practice of law?

III.

Is Romero's Issue 3 available for appellate review?

IV.

Is Romero's Issue 4 available for appellate review?

STATEMENT OF THE CASE

Appellant Israel Romero was tried and convicted in Greenville County on May 21, 2009, before the Honorable D. Garrison Hill, and a jury, for unauthorized practice of law. Romero was sentenced to five years imprisonment, suspended upon the service of ninety days, with probation for one year. Romero was also ordered to pay \$2000 in restitution. A Notice of Appeal was filed and served.

STATEMENT OF FACTS

Romero was not a member of the South Carolina Bar. (R. 88-89). He never applied for admission to practice law in South Carolina. (R. 106-107). In fact, Romero was not a graduate of any accredited law school in the United States. (R. 89). Romero obtained a license to practice law in the District Court of South Carolina, however. (Supp. R. 2-3). United States District Judge David Norton later determined this license was void *ab initio* in an Order (State's Exhibit 3; R. 169) dated August 27, 2008.¹ (R. 107-110, 113).

Sandra Martinez testified that her husband, Juan, was in a Georgia federal prison because he was illegally in the United States. (R. 58-60). They had been together eight years and had children. (R. 59). She was referred to Romero. (R. 60). Sandra recalled that she first met with Romero in April of 2008. Her sister-in-law and father-in-law were there, too. Romero told her that he was an immigration lawyer, and he would represent her husband in district court and attempt to get him out of jail. (R. 61-62). Romero demanded \$5000 cash for his services. Sandra said her family would only pay him \$2000, "until he shows us that he can help my husband." (R. 63). Sandra again briefly met with Romero in Spartanburg, and then a third time in July at her father-in-law's house. (R. 63-65).

Maria Martinez is the sister-in-law of Sandra Martinez. (R. 72). Maria testified she learned of Romero from friends who obtained a business card that he distributed in their church and that Romero claimed he was an attorney. (R. 74). Romero's purported business card (State's Exhibit 2; R. 168) was admitted into evidence at trial. (R. 60-61). It is captioned: "ISRAEL ROMERO, ESQ., Attorney & Counselor at Law." Romero claims he

¹All Exhibits referenced herein are in the possession of this Court.

is admitted to practice "Federal Matters & Immigration" in "SC FEDERAL COURT," and he lists an attorney identification number.

Maria said that she met with Romero at her father's house on July 6. Sandra was also there. (R. 74). Romero requested personal documents from them to present in district court. Romero claimed he could stop the deportation of her brother. (R. 74-75).

Maria recalled that her brother telephoned her when Romero was at the house. (R. 75). Romero told her brother that he now represented him and he would stop the deportation. Maria recalled that "[Romero] said he was going to get him some kind of permission to be here and file for his papers so he could legally be here since he had a wife and kids here." (R. 76, 79-80). Maria saw her father give Romero a check for \$2000 for his services. (R. 76-77). The check was made out to "Israel Romero, Esq." (State's Exhibit 4; R. 170).

Romero later appeared for the arraignment of Juan Martinez-Olivares in district court in Greenville, on July 24, 2008. (R. 64, 89-94; see State's Exhibit 1 - district court transcript; R. 164-167). Sandra Martinez testified that Romero did nothing for her husband. (R. 70-71). She said Romero never met with her husband, who remained in jail. (R. 66-67).

Sandra Martinez reported Romero to Jill Rothstein through the Client Assistance Program at the South Carolina Bar. Rothstein discovered that Romero did not have a license to practice law in South Carolina and she referred the matter to the Attorney General's Office. (R. 114-115).

ARGUMENT

I.

Romero's Issue 1 is not available for appellate review. (Romero's Issue 1; Respondent's Issue I).

Romero argues his prosecution pursuant to S.C. Code Ann. §40-5-310 (2001) constituted an *ex post facto* violation and violated the federal preemption rules, and that the application of §40-5-310 to his conduct was contrary to statutory intent.

A. Error preservation

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731, 733 (1998). "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial judge, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial judge with sufficient specificity." Jean Hoefer Toal et al., Appellate Practice in South Carolina 57 (2nd ed. 2002). The issue preservation requirement applies to assertions of constitutional violations as well. State v. Perry, 359 S.C. 646, 598 S.E.2d 723 (Ct. App. 2004); see also In re Care and Treatment of Corley, 365 S.C. 252, 616 S.E.2d 441, 444 (Ct. App. 2005) [holding that "constitutional issues, like most others, must be raised to and ruled on by the trial court to be preserved for appeal"].

In the present case, defense counsel did not specifically raise these assignments of error at trial. Romero's reference to a ruling by the trial judge, in which he merely discussed his decision to consider Judge Norton's Order voiding Romero's license to practice in the

United States District Court, is totally misplaced.² (R. 97-106). Defense counsel then discussed Romero's charge in context of the directed verdict motion. He argued Romero was entitled to a directed verdict, because Romero did not practice law in "a court of this state" and, therefore, Romero did not violate §40-5-310.³ (R. 104, 122-123). Romero's issues raised for the first time on appeal, therefore, must be dismissed. *Id.*

B. Legal analysis

Romero's prosecution pursuant to §40-5-310 did not constitute an *ex post facto* violation or otherwise violate the Supremacy Clause. His prosecution further did not violate the intent of the legislature.

The purpose of an *ex post facto* clause is to prevent lawmakers from passing "arbitrary or vindictive legislation." *Miller v. Florida*, 482 U.S. 423, 429 (1987). An *ex post facto* clause also ensures that legislative enactments "give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed." *Weaver v. Graham*, 450 U.S. 24, 28-29 (1981). For a law to present an *ex post facto* violation, the law must (1) be

²Because Romero fails to ask this Court to reverse his conviction on this ground, it is deemed abandoned and is not properly before this Court on appeal. *Video Gaming Consultants, Inc. v. South Carolina Dep't of Revenue*, 342 S.C. 34, 535 S.E.2d 642 (2000)[issue not argued in the brief is deemed abandoned and precludes consideration on appeal]; *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997)[holding an unappealed ruling is the law of the case]; *State v. Black*, 319 S.C. 515, 462 S.E.2d 311, 312 n.2 (Ct. App. 1995)[an issue not argued in the brief is deemed abandoned on appeal]; see also *State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691, 694 (2003)[no point will be considered which is not set forth in the statement of issues on appeal]; *State v. Bray*, 342 S.C. 23, 535 S.E.2d 636 (2000)[holding it is error for an appellate court to consider issues not raised to it]; cf. *Hunter v. Staples*, 335 S.C. 93, 515 S.E.2d 261, 267 (Ct. App. 1999)[finding appellant is precluded from asserting an argument for the first time in its reply brief].

³See footnote 2, *supra*.

retrospective and apply to events taking place prior to its enactment and (2) work to disadvantage the offender. State v. Huiett, 302 S.C. 169, 394 S.E.2d 486, 487 (1990); State v. Bryant, 382 S.C. 505, 675 S.E.2d 816, 819 (Ct. App. 2009).

In the present case, §40-5-310 was neither applied retrospectively, disadvantaged Romero by altering the definition of the conduct deemed criminal, nor increased the punishment for his crime. Lynce v. Mathis, 519 U.S. 433 (1997); State v. Matthews, 296 S.C. 379, 373 S.E.2d 587 (1988). Romero's *ex post facto* challenge is, therefore, without merit.

Additionally, the United States Supreme Court squarely recognized the broad authority of the states to regulate against the unauthorized practice of law in Sperry v. Florida ex rel. Florida Bar, 373 U.S. 379 (1963). In the absence of federal legislation to the contrary, the states have jurisdiction over the protection of their citizens from the practice of law by unauthorized laymen. *Id.* at 383; see also Leis v. Flynt, 439 U.S. 438, 442 (1979)[“Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions”].

It does not derive from a local rule which permits an attorney to practice in a court. Thus, Congress could enact statutes providing for the licensing of individuals to practice in specific areas of federal law, and those statutes would preempt incompatible state laws. For example, in Sperry, the Court struck down a state court injunction that prohibited a non-attorney from practicing patent law, because a federal statute specifically authorized that practice by non-attorneys who were deemed sufficiently qualified by the Commissioner of Patents. Except in a few specialized areas, “Congress thus far has chosen to leave regulation of the federal bars to the courts.” Frazier v. Heebe, 482 U.S. 641, 646 n.4 (1986). As the

Court made clear in Sperry, “the State maintains control over the practice of law within its borders except to the limited extent necessary for the accomplishment of . . . federal objectives.” Id. at 402.

There were no such “federal objectives” in this case. Here, the case turns on the scope of the authorization granted by the district court and the Supreme Court. As discussed in Respondent’s Argument II, the United States District Court for the District of South Carolina, the district court in which Romero appeared on behalf of Juan Martinez-Olivares, restricts the practice of law to those individuals who are “[a] member in good standing of the Bar of South Carolina . . .” See Rule 83.I.02, FRCP. Romero did not meet this standard for practice in the district court, because he was not licensed as an attorney in South Carolina, or any state for that matter. In fact, this is not even disputed by Romero on appeal.⁴ In the absence of preemption by Congress, Romero could be tried for unauthorized practice of law in the district court. There is no reason why §40-5-310 should give way in favor of Romero, who seeks to escape regulation of the practice of law by the Supreme Court on the ground that his practice is within a field of federal jurisdiction, particularly when he was not authorized to practice in that jurisdiction.⁵

Further with respect to federal agencies, nothing in §40-5-310 prohibited Romero from appearing on behalf of persons before any federal agency that permitted non-lawyer representation. See Sperry, 373 U.S. at 385 [holding state law incompatible with federal law

⁴See footnote 2, supra.

⁵It is evident, then, that Romero’s practice of law before the district court was improper, as shown by Judge Norton’s Order that determined Romero’s license to practice was void *ab initio*.

authorizing non-lawyer practice before federal agencies is preempted]. Rather, by its terms and as previously explained, enforcement of §40-5-310 merely precluded Romero from practicing law in the United States District Court of the District of South Carolina in this case, particularly for the reason that the Court by its own rules depended on South Carolina to determine who may or may not practice law before it. In other words, the restrictions on Romero were consistent with, and complementary to, the federal government's power to authorize non-lawyers to practice before federal agencies. That power does not oblige this Court to allow persons in the United States District Court of the District of South Carolina to provide false or misleading information about their authority to practice law in any context, including appearances before federal administrative or regulatory agencies.⁶

Finally, Romero contends that §40-5-310 is not meant to apply to the unauthorized practice of law in federal court. Instead, he argues the statute is intended solely to prevent non-lawyers from unauthorized practice in the state courts. This interpretation of §40-5-310 contravenes the plain language of the statute.

Section 40-5-310 clearly states that “[n]o person may practice or solicit the cause of another person in a court of this State unless he has been admitted and sworn as an attorney.” (Emphasis added). The statute does not differentiate between the state courts or the district court. It is well-settled that, in determining the meaning of a statute, this Court must ascertain and effectuate the legislative intent whenever possible. State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002)[citing State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000)];

⁶No federal statute, regulation, or order neither authorized nor condoned Romero's false and misleading statements to prospective clients that he was qualified to represent them in any forum in South Carolina, including the federal courts.

State v. Ramsey, 311 S.C. 555, 430 S.E.2d 511 (1993). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999). The determination of legislative intent is a matter of law. Id.

The legislature's intent should be ascertained primarily from the plain language of the statute. Morgan, 574 S.E.2d at 206. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. Id. This Court must apply clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). It should consider, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997).

When a statute's language is plain and unambiguous, and conveys clear and definite meaning, there is no occasion for employing rules of statutory interpretation and this Court cannot look for or impose another meaning. City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Id.

Article V, § 4 of the South Carolina Constitution confers on the Supreme Court the duty to regulate the practice of law in South Carolina. See In re Unauthorized Practice of Law Rules, 309 S.C. 304, 422 S.E.2d 123 (1992). The Supreme Court has stated: "[o]ur duty to regulate the legal profession is not for the purpose of creating a monopoly for lawyers, or

for their economic protection; instead, it is to protect the public from the potentially severe economic and emotional consequences which may flow from the erroneous preparation of legal documents or the inaccurate legal advice given by persons untrained in the law.” See State v. Buyers Service Co., Inc., 292 S.C. 426, 357 S.E.2d 15, 18 (1987). Indeed, protection of the public “is our ‘paramount concern’ in these matters.” Id. 357 S.E.2d at 19.

Thus, to protect the public from unsound legal advice and incompetent representation, South Carolina limits the practice of law to licensed attorneys and prohibits the unauthorized practice of law in §40-5-310. See Doe v. Condon, 341 S.C. 22, 532 S.E.2d 879 (2000); State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002). The Supreme Court recognized “it is neither practicable nor wise” to attempt to formulate a comprehensive definition of what constitutes the practice of law. Unauthorized Practice of Law Rules, 422 S.E.2d at 124. Because of this ambiguity, the Supreme Court has decided what is, and what is not, the unauthorized practice of law is best decided in the context of an actual case or controversy. See id.

South Carolina is not alone in regulating who may practice law in its jurisdiction. Most states have substantially similar statutes that serve to protect their citizens from unlicensed attorneys who engage in unauthorized legal practice. In the present case, Romero solicited, consulted and counseled Sandra Martinez and her family, he collected a fee for his “services,” and he appeared in district court without a license to practice law in South Carolina. Section 40-5-310 was clearly intended by the legislature to protect its citizens from unlicensed attorneys who engage in unauthorized legal practice in this State, particularly where the United States District Court for the District of South Carolina provides that only

those who are permitted to practice in South Carolina may appear before it. Application of §40-5-310 under these circumstances furthered the legislature's intent and purpose.

II.

The trial court had jurisdiction to try Romero for unauthorized practice of law.
(Romero's Issue 2; Respondent's Issue II).

Romero argues the trial court had no subject matter jurisdiction to try his case, because he was involved only with immigration law in the district court.

Under the South Carolina Constitution, the Supreme Court has the duty to regulate the practice of law in South Carolina. See S.C. Const. art. V, §4; In re Unauthorized Practice of Law Rules, 309 S.C. 304, 422 S.E.2d 123 (1992); see S.C. Code Ann. §40-5-10 (2001)[the Supreme Court has inherent power with respect to regulating the practice of law]. To that end, the Supreme Court has punished violations of the professional rules of conduct committed in district court proceedings. See, e.g., In the Matter of Drayton, 359 S.C. 138, 597 S.E.2d 791 (2004)[attorney failed to complete bankruptcy proceeding on behalf of a client]; In the Matter of Gibbs, 349 S.C. 261, 562 S.E.2d 639 (2002)[attorney filed frivolous claims in district court, and filed various motions, requests, and attorney affidavits relating to matter pending before district court after an attorney transferred to incapacity inactive status]. The United States Supreme Court squarely recognized the broad authority of the states to regulate against the unauthorized practice of law in Sperry v. Florida ex rel. Florida Bar, 373 U.S. 379 (1963). In the absence of federal legislation to the contrary, the state has jurisdiction over the protection of its citizens from the practice of law by unauthorized laymen. Id. at 383; Leis v. Flynt, 439 U.S. 438, 442 (1979)[“Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions”]; see also State v. Wells,

191 S.C. 468, 5 S.E.2d 181, 186 (1939)[noting “the policy of prohibiting laymen from practicing law is not for the purpose of creating a monopoly in the legal profession, nor for its protection, but to assure the public adequate protection in the pursuit of justice, by preventing the intrusion of incompetent and unlearned persons in the practice of law].

Romero was never licensed as an attorney in South Carolina. Romero, however, solicited, consulted and counseled Sandra Martinez and her family, and he collected a fee from them in South Carolina. “The generally understood definition of the practice of law ‘embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.’ ” State v. Despain, 319 S.C. 317, 460 S.E.2d 576, 577 (1995). The Supreme Court has defined the practice of law to include the preparation and filing of legal documents involving the giving of advice, consultation, explanation, or recommendations on matters of law. State v. Robinson, 321 S.C. 286, 468 S.E.2d 290 (1996); State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002). Jurisdiction to try Romero for unauthorized practice of law pursuant to §40-5-310 was thus properly in the trial court. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)[holding that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong].

Additionally, in the United States District Court for the District of South Carolina, the district court in which Romero appeared, the practice of law is restricted to those individuals who are “[a] member in good standing of the Bar of South Carolina . . .” See

Rule 83.I.02, FRCP.⁷ Romero appeared in district court without a license to practice law in South Carolina. In the absence of preemption by the district courts, he was properly tried in the trial court for this offense.

Other states have acted similarly. *See, e.g., Disciplinary Counsel v. Givens*, 106 Ohio St.3d 144, 832 N.E.2d 1200, 1201 (2005) (“[W]e are also authorized to enjoin the unauthorized practice of law before federal courts located in this state”); *Kennedy v. Bar Ass’n of Montgomery County, Inc.*, 316 Md. 646, 561 A.2d 200, 208-09 (1989) [holding that state court could regulate the practice of law in district courts located in the state]; *People v. Shell*, 148 P.3d 162, 174 (Colo. 2006)[same]; *State ex rel. Disciplinary Comm’n v. Crofts*, 500 N.E.2d 753, 756 (Ind. 1986)[same]; *State ex rel. Morrison v. Price*, 285 Kan. 389, 172 P.3d 561, 563 (2007)[same].

⁷Rule 83.I.05, FRCP, states that attorneys not admitted in the United States District Court for the District of South Carolina may appear, provided that person is a member in good standing of a Bar of the United States District Court and the Bar of the highest court of any state or the District of Columbia, and is associated with a member of the Bar of the District of South Carolina.

III.

Romero's Issue 3 is not available for appellate review. (Romero's Issue 3; Respondent's Issue III).

Romero argues that, because he was "already punished by the federal authorities in this matter," his indictment and conviction are a violation of the Double Jeopardy Clause.

A. Error preservation

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731, 733 (1998). "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial judge, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial judge with sufficient specificity." Jean Hoefer Toal et al., Appellate Practice in South Carolina 57 (2nd ed. 2002).

Romero's argument is not preserved. Defense counsel failed to raise a double jeopardy claim any time at trial. Romero's issue, therefore, cannot be considered for the first time on appeal and must be dismissed. State v. Rice, 348 S.C. 417, 559 S.E.2d 360, 361-62 (Ct. App. 2001); see also Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001, 322 S.C. 127, 470 S.E.2d 373, 376 (1996)[a double jeopardy claim may not be raised for the first time on appeal].

Moreover, even if the issue was preserved, Romero has failed to provide this Court with the means to analyze the merits of his claim. Nowhere in the Record or in any documents submitted at trial is there evidence Romero was tried and convicted in district

court for unauthorized practice of law. It is impossible, therefore, for this Court to decide the issue without such information. Romero has the burden of providing the appellate court with a sufficient record upon which to make a decision. State v. Williams, 321 S.C. 455, 469 S.E.2d 49, 55 n.4 (1996); State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278, 283 (Ct. App. 1999). Romero's Issue should be dismissed on this ground. Id.

B. Legal analysis

Romero maintains his protection from double jeopardy was violated when District Judge Norton determined his license to practice in federal court was void *ab initio*, and he was subsequently tried under S.C. Code Ann. §40-5-310 (2001) for the unauthorized practice of law. Romero misconstrues the protections afforded by the Double Jeopardy Clauses of the United States and South Carolina Constitutions.

Both the United States Constitution and the South Carolina Constitution protect against double jeopardy. U.S. Const., amend. V; S.C. Const., art. I, §12. These clauses protect an individual from twice being punished for criminal conduct. The "guarantee [against double jeopardy] has been said to consist of three separate constitutional protections. It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense." North Carolina v. Pearce, 395 U.S. 711, 717 (1969), *overruled on other grounds by* Alabama v. Smith, 490 U.S. 794 (1989); Stevenson v. State, 335 S.C. 193, 516 S.E.2d 434, 436 (1999); State v. Cuccia, 353 S.C. 430, 578 S.E.2d 45 (Ct. App. 2003).

However, the Double Jeopardy Clause does not prohibit the imposition of all

additional sanctions that could, “in common parlance,” be described as punishment. Id., 578 S.E.2d at 47 [citing Hudson v. United States, 522 U.S. 93, 98-99 (1997)]. “The Clause protects only against the imposition of multiple criminal punishments for the same offense.” Cuccia, 578 S.E.2d at 48. Nevertheless, the Clause may prevent the government from subjecting a defendant to both a criminal punishment and a civil sanction. Id. [citing State v. Price, 333 S.C. 267, 510 S.E.2d 215, 217 (1998)]. The Double Jeopardy Clause is not automatically violated by the mere fact that a civil penalty has some deterrent effect. Cuccia, 578 S.E.2d at 48. “To determine whether a penalty is criminal or civil, a court must look to the face of the statute and then determine if the statutory scheme is so punitive in purpose or effect as to transform what was intended as a civil sanction into a criminal penalty. Id.; see also In re Matthews, 345 S.C. 638, 550 S.E.2d 311, 316 (2001)[“As the United States Supreme Court recently reiterated, the determination whether a statute is civil or criminal is primarily a question of statutory construction, which must begin by reference to the act’s text and legislative history”]. “Only the clearest proof will suffice to override legislative intent and transform what has been denominated as a civil remedy into a criminal penalty.” Cuccia, 578 S.E.2d at 48 [citing Price, 510 S.E.2d at 218]; accord In re Matthews, 550 S.E.2d at 316.

Clearly, a jurisdiction has inherent authority to discipline and regulate professionals, including suspending the privilege to practice, without running afoul of the Double Jeopardy Clause. The revocation or suspension of a professional license serves the remedial purpose of protecting the public from unfit practitioners. District Judge Norton’s Order that determined Romero’s license was void *ab initio* was the exercise of the district court’s inherent power and was not criminal punishment. Romero was properly prosecuted for

unauthorized practice of law without violation of the Double Jeopardy Clause.

Most jurisdictions which have addressed the matter have held that disciplinary proceedings are not criminal in nature so as to evoke double jeopardy protections. Thus, no perceived action by the United States District Court for the District of South Carolina prevented Romero's prosecution pursuant to §40-5-310. See, e.g., Disciplinary Matter Involving Triem, 929 P.2d 634 (Alaska 1996)[Bar Counsel's appeal, seeking judicial review of attorney discipline matter, did not violate substantive due process or double jeopardy; disciplinary proceeding was exercise of court's inherent power and jurisdiction over attorneys as officers of the court]; In Re Matter of Pete Manuel Rubi, 148 Ariz. 167, 713 P.2d 1225, 1226 (1985)[principles of double jeopardy and double punishment do not apply to bar disciplinary proceedings in the strictest sense]; Fitzsimmons v. State Bar of California, 34 Cal.3d 327, 193 Cal.Rptr. 896, 667 P.2d 700 (1983)[attorneys subject to disciplinary proceedings are not afforded all of the procedural safeguards which are extended to criminal defendants as they are *sui generis* as opposed to purely civil or criminal in character]; Matter of Sheaffer, 655 N.E.2d 1214 (Ind. 1995)[disciplinary action against an attorney is not "criminal proceeding" for double jeopardy purposes; discipline of a member of the bar is determined independently from any other proceeding, even if alleged professional impropriety involves criminal conduct]; Maryland State Bar Association v. Frank, 272 Md. 528, 325 A.2d 718 (1974)[principles of double jeopardy and *res judicata* which bar certain criminal prosecutions are not a bar to disciplinary proceedings against an attorney]; People v. Artman, 218 Mich. App. 236, 553 N.W.2d 673 (1996)[sanction of disbarment of attorney does not constitute punishment for double jeopardy purposes]; In Re Harry Oxman and

Ralph S. Levitan, 496 Pa. 534, 437 A.2d 1169 (1981)[double jeopardy does not apply to disciplinary proceedings]; In Re Disciplinary Action of George McCune, 717 P.2d 701, 707 (Utah 1986)[double jeopardy principles apply only in criminal cases, whereas bar disciplinary proceedings are civil in nature designed to maintain the honesty, integrity and professionalism of the bar]; In the Matter of The Disciplinary Proceeding Against Anton Miller, 99 Wash.2d 695, 663 P.2d 1342 (1983)[reconsider of order by disciplinary board was not precluded by double jeopardy under the state and federal constitutions]; cf. Cuccia, 578 S.E.2d at 48 [holding the revocation of a driver's license, where a driver under the age of twenty-one registers a blood alcohol concentration of two one-hundredths of one percent, is a civil sanction which has not been transformed into a criminal punishment for purposes of the Double Jeopardy Clause].

IV.

Romero's Issue 4 is not available for appellate review. (Romero's Issue 4; Respondent's Issue IV).

During the charge conference, the State submitted requests to charge. Defense counsel objected to the State's proposed instructions. He argued several portions were not relevant to the facts presented. (R. 129, lines 8-16). The trial judge stated:

I will read them, uh, the first sentence of Section 40-5-310. No persona may practice or solicit the cause of another person in a court of this state unless he has been admitted and sworn as an attorney. I will then go to the second paragraph of the State's proposed charge and add to that the word "consultation." I think that covers the essence of the law as far as the substantive defense charged with the duty of determining whether the State has proven beyond a reasonable doubt the elements. I will, of course, charge him on presumption of innocence and burden of proof. But as far as the substantive - - I will charge him on intent . . .

(R. 129-130). There was neither an objection by defense counsel nor a request to charge by him. (R. 130, line 11).

During his charge the trial judge instructed the jury on Romero's presumption of innocence, Romero's right not to testify or to present evidence, and the State's burden of proof. (R. 145-146, 148-149). He also defined reasonable doubt to the jury. (R. 146-147).

The trial judge instructed on the charged offense as follows:

Now, this defense [sic] is, uh, set forth in Section 40-5-310 of the South Carolina Code which states as follows: no person may practice or solicit the cause of another person in a court of this state unless he has been admitted and sworn as an attorney. The practice of law includes court appearances, preparation of legal instruments of all kinds and in general, all advice to clients, consultation and all action taken for clients and matters connected with the law. That, uh, is the offense.

(R. 147). Moreover, the trial judge extensively instructed the jury on the requisite criminal intent for the charged crime. (R. 147-148).

At the conclusion of the instructions to the jury, there were no objections by defense counsel. (R. 151, line 13).

On appeal, Romero argues the trial judge's instructions to the jury (1) failed to correctly charge the offense or explain its terms, (2) amounted to a comment on the facts, and (3) improperly defined reasonable doubt.⁸

A. Error preservation

Romero's assignments of error are not properly preserved for review. For a defendant to preserve an alleged error with a trial judge's jury charge, he must object to the charge on the record and receive a ruling on that objection by the trial judge. State v. Ard, 332 S.C. 370, 505 S.E.2d 328, 336 n.9 (1998); State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388, 391 (1995), *overruled on other grounds by* State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998); State v. Longworth, 313 S.C. 360, 438 S.E.2d 219 (1993)[where a defendant fails to object to jury charge, the issue is not preserved for consideration on appeal]; see also Rule 20(b), SCRPC ["Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule shall constitute a

⁸The undersigned notes that he meticulously reviewed Romero's "Issue 4" and was only able to discern the assignments of error discussed herein. Any perceived failure by the undersigned to address other issues "raised" by Romero in his argument is unintentional and is not a concession of error on any additional matters.

waiver of objection”].

Here, defense counsel failed to object to the trial judge’s jury charge on any ground, or to request additional instructions, despite a clear opportunity to do so at trial. Therefore, Romero is barred from raising his issues for the first time on appeal. State v. Johnson, 315 S.C. 485, 445 S.E.2d 637, 638 (1994); see also State v. Hollman, 232 S.C. 489, 102 S.E.2d 873 (1958) [holding the failure to object or request additional instruction constitutes a waiver of the right to a more complete charge], *overruled on other grounds by Stevenson v. State*, 335 S.C. 193, 516 S.E.2d 434 (1999); State v. Ford, 334 S.C. 444, 513 S.E.2d 385 (Ct. App. 1999)[when a charge is inadequate as given, a party must request further instructions or object on grounds of incompleteness to preserve the issue for review]. Romero’s Issue must be dismissed. See State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003)[holding that an issue not preserved for review cannot be addressed on appeal]; see also Campbell v. Bi-Lo, Inc., 301 S.C. 448, 392 S.E.2d 477 (Ct. App. 1990)[holding where the ground for an objection is not stated in the record, there is no basis for appellate review].

B. Legal analysis

Generally, the trial judge is required to charge only the current and correct law of South Carolina. State v. Burkhart, 350 S.C. 252, 565 S.E.2d 298 (2002); see also State v. Buckner, 341 S.C. 241, 534 S.E.2d 15 (Ct. App. 2000)[holding jury charge is proper if, as a whole, it is free from error and reflects current and correct law of South Carolina]. In reviewing jury charges for error, an appellate court must consider the trial judge’s jury charge as a whole in light of the evidence and issues presented at trial. State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986) If, as a whole, the charges are reasonably free from error, isolated

portions which might be misleading do not constitute reversible error. State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991); State v. Jackson, 297 S.C. 523, 377 S.E.2d 570 (1989); see also State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997)[jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error].

A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. In re McCracken, 346 S.C. 87, 551 S.E.2d 235 (2001); State v. Johnson, 315 S.C. 485, 445 S.E.2d 637 (1994); see also State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990)[charge is sufficient if, when considered as a whole, it covers law applicable to case]. The substance of the law is what must be charged to the jury, not any particular verbiage. Burkhart, 565 S.E.2d at 303; State v. Rayfield, 357 S.C. 497, 593 S.E.2d 486 (Ct. App. 2004).

A jury charge which is substantially correct and covers the law does not require reversal. State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996); State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980); see also State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994)[as long as the charge is substantially correct and covers the law, reversal is not required]; State v. Hewitt, 205 S.C. 207, 31 S.E.2d 257 (1944)[the purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict]. To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000); State v. Harrison, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000).

The trial judge properly set forth the elements required to satisfy the charge set forth

in S.C. Code Ann. §40-5-310 (2001). The general criminal intent charge was likewise sufficient. Additionally, “[t]he generally understood definition of the practice of law ‘embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.’ ” State v. Despain, 319 S.C. 317, 460 S.E.2d 576, 577 (1995); State v. McLauren, 349 S.C. 488, 563 S.E.2d 346, 350 (Ct. App. 2002). The Supreme Court has further defined the practice of law to include the preparation and filing of legal documents involving the giving of advice, consultation, explanation, or recommendations on matters of law. Id. [citing State v. Robinson, 321 S.C. 286, 468 S.E.2d 290 (1996)]. The trial judge clearly explained that the State had to prove every element of the crime and he further extensively instructed the jury on the requisite criminal intent for the charged crime. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63, 77 (1998). Thus, the jury instructions were correct and adequately covered the law, and they were not misleading or confusing to the jury. See State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)[the substance of the law is what must be instructed to the jury]. No further explanations were necessary. State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996).

Further, article V, §21 of the South Carolina Constitution states: “Judges shall not charge juries in respect to matters of fact, but shall declare the law.” The law dictates that a trial judge should refrain from any comment which tends to indicate to the jury his opinion on the credibility of the witnesses, the weight of the evidence, or the guilt of the accused. State v. Jackson, 297 S.C. 523, 377 S.E.2d 570 (1989); State v. Smith, 288 S.C. 329, 342 S.E.2d 600 (1986). However, jury instructions must be considered in their entirety and, if in

their entirety are free from error, any potentially misleading portions do not constitute reversible error. Jackson, 377 S.E.2d at 572. The test is how a reasonable juror would have understood the charge. Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462, 472 (2004).

As previously discussed, the trial judge properly defined the crime charged. The instructions did not offer an improper comment regarding the facts of the case. The jury was instructed several times that it was the sole arbiter of the facts and the credibility of witnesses. Most important, at the outset of the trial judge's charge to the jury, he instructed as follows:

. . . And don't read into these instructions or anything I may have said or done during the course of this trial as suggesting to you what I think your verdict should be or what I think the facts are in this case. As I told you at the outset, you are the sole and exclusive judges of the facts. I'm certainly not going to intrude on your decision and your province. Just as I know you will not intrude on my province of telling you what the law is, I'm not going tell you what the facts are. That's your call. You and you alone are the judges of the facts. . . .

(R. 142-143).

In this case, the trial judge explained the elements of the offense as defined in §40-5-310 and the common law. Romero's reliance on the trial judge's statement in the charge that, "[t]hat, uh, is the offense," is misplaced. The trial judge simply conveyed to the jury these were the elements of the law; it was not a commentary the State had proved its case! By contrast, the trial judge in Smith instructed that "[if] the State proves [elements one through four], then the results of the test can be admitted into evidence and the jury to consider. You have heard such evidence." Smith, 342 S.E.2d at 601. This was clearly error in Smith, because a reasonable juror could have construed that the trial judge felt the State had met its

burden of proof on the required elements. Id. It is unlikely a reasonable juror here would have singled out any portion of the charge and interpreted it as the trial judge's opinion on the facts of this case or as an instruction as to the weight to be given the evidence, particularly in light of his earlier instructions to them. Romero's argument to the contrary is without merit. See Williams v. Southeastern Life Ins. Co., 197 S.C. 171, 14 S.E.2d 895, 897 (1941)[holding a charge that states the legal conclusions that would result from the establishment of certain facts is not necessarily an improper charge on the facts, nor a mandate to the jury to assume the truth of the facts as stated]; State v. Dickey, 380 S.C. 384, 669 S.E.2d 917, 927 (Ct. App. 2008)[holding illustration during his instructions to the jury on voluntary manslaughter was merely an explanation of the offense rather than a commentary on the facts at trial].

Finally, the trial judge defined reasonable doubt, in relevant part:

... A reasonable doubt is defined as the kind of doubt that would cause a reasonable, sincere, conscientious person to hesitate to act in a matter that is important in their own affairs.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of guilt. There are very few things, of course, that we know with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible doubt.

If, based on your view of the evidence, you are firmly convinced that [Romero] is guilty, you must find him guilty. On the other hand, if your view of the evidence leaves you to believe there is a real possibility that he is not guilty, you must give him the benefit of that doubt and find him not guilty. A reasonable doubt may arise from the evidence or lack of evidence. ...

(R. 146).

Romero argues this charge was improper because it tended to place the burden on him to prove his innocence. The charge in this case was not error. In State v. Darby, 324 S.C. 114, 477 S.E.2d 710 (1996), the Supreme Court approved a similar jury charge. See State v. Lowery, 332 S.C. 261, 503 S.E.2d 794, 797 (Ct. App. 1998). In State v. McHoney, 344 S.C. 85, 544 S.E.2d 30, 36 (2001), the Supreme Court approved the following jury instruction:

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. . . . If based upon your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, then you must find him guilty. If on the other hand you think there is a real possibility that he is not guilty, you must give him the benefit of that doubt and find him not guilty.

Citing to Darby, the Court reiterated that “[c]ourts specifically addressing whether the ‘real possibility’ language lessens the government’s burden of proof have held it does not in the context of the preceding language requiring that the juror be ‘firmly convinced’ of the defendant’s guilt.” McHoney, 544 S.E.2d at 36-37 (internal citation omitted).

As in McHoney and Darby, nothing in the trial judge’s reasonable doubt instruction suggested that Romero had the burden of proof. See McHoney, 544 S.E.2d at 36; Darby, 477 S.E.2d at 711. Moreover, the Supreme Court approved of the “real possibility” language in State v. Needs, 333 S.C. 134, 508 S.E.2d 857, 868 n.12 (1998), and this Court also approved the language in Lowery, 503 S.E.2d at 796-97. As such, Romero’s claim of error on this ground is without merit.

The trial judge’s instructions were proper and Romero is not entitled to a new trial.⁹

⁹At the conclusion of his Issue 4, Romero alleges an investigating officer misstated facts during a preliminary hearing. (See preliminary hearing transcript). He then argues, “[i]f not for such misstatements, the Grand Jury would be clear that they could not make a decision

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court should be affirmed.

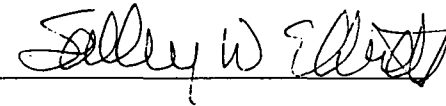
Respectfully submitted,

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Attorney General

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ATTORNEYS FOR RESPONDENT

February 17, 2010

in this case, or not to indict [him].” (BOA at 21). Because defense counsel failed to raise this issue to the trial judge, Romero’s assignment of error is not preserved. State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991)[a contemporaneous objection on proper grounds is required to preserve an error for appellate review]; see also Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005)[holding a defendant must challenge the legality and sufficiency of the process of the state grand jury before the jury renders a verdict in order to preserve the error for direct appellate review]. Additionally, no point may be considered on appeal which was not set forth by Romero in his statement of issues on appeal. (BOA at 1). See Rule 208(b)(1)(B), SCACR; State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000)[it is error for an appellate court to consider issues not raised to it].

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

CERTIFICATE OF COUNSEL

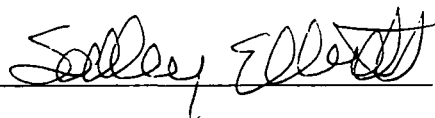
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

HENRY DARGAN McMASTER
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ATTORNEYS FOR RESPONDENT

February 17, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

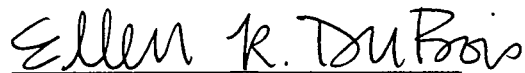
PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Israel Romero
94 Birdsong Lane
Taylors, SC 29687

I further certify that all parties required by Rule to be served have been served.

This 17th day of February, 2010.



Ellen R. DuBois
Legal Assistant
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

Case No. 2008-GS-23-009047

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

FINAL REPLY

Israel Romero, PhD
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Pro Se Appellant

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STATEMENT OF ISSUES ON REPLY

- I. Appellant's Issue 1 is available for appellate review.
- II. The trial court never acquired jurisdiction to try Appellant because the prosecuting Agency had no jurisdiction to bring this action.
- III. Appellant's Issue 3 is available for appellate review. It was preserved at trial in the lower court.
- IV. Appellant's Issue 4 is available for review because it is an issue of pure law and Statutory interpretation.
- V. NEW ISSUE DISCOVERED: RESPONDENT'S MISCONDUCT IS PREJUDICIAL TO APPELLANT'S CASE AND WARRANTS DISMISSAL.

STATEMENT OF THE REPLY

On July 28, 2009, Appellant filed the INITIAL BRIEF OF APPELLANT, with arguments for four issues on appeal.

On November 24, 2009, Respondent filed the INITIAL BRIEF OF RESPONDENT with the answer to Appellant's four issues.

This REPLY is filed in a timely manner, pursuant to Rule 208(3), SCACR, with the reply to Respondent's four answers, and the addition of a new issue discovered, arising out of false and misleading remarks with inflammatory color that are prejudicial to Appellant's case.

ARGUMENT IN REPLY OF RESPONDENT'S ARGUMENTS

Appellant reaffirms the issues presented in the Initial Brief of Appellant (IBA), as well as repeats the entire argument, and is not abandoning anything by this general reply.

Appellant dismisses the issues on appeal presented by the Respondent based on the fact that Respondent failed to meet the burden of proof and for being unfounded.

Appellant affirms that does not accept any of the issues, any arguments, or any points raised and made by the Respondent in the Initial Brief of Respondent (IBR).

I.

Appellant's issue 1 is available for appellate review.

The argument by Appellant is stated in the Initial Brief of Appellant as a violation of the U.S. Constitution, Article I § 10, and S.C. Constitution, Article I § 4, both precepts related to the ex-post facto law. (see pp 4- 5, Initial Brief of Appellant) Also argues violation of the South Carolina Statutory Construction Rule (pp 4, 7, IBA) and violation of the Preemption of Federal Law (pp 4, 12, IBA).

A. Error is preserved

The issue was (1) raised to and ruled upon the trial judge (R. 97 – 106), (2) it was raised by the appellant, (3) it was raised in a timely manner, and (4) it was raised to the trial judge with sufficient specificity. The transcript shows that Appellant had complied with Jean Hoefer Toal et al. rule, and with the rules of Appellate Practice in South Carolina 57 (2nd ed. 2002). Therefore, the issue was properly raised at the lower court, and the appeal should be granted, and the conviction should be reversed and the indictment dismissed.

In the CONCLUSION of the INITIAL BRIEF OF APPELLANT, Appellant asks this Court, in compliance with Rule 208(E), SCACR which reads, "A short conclusion stating the precise relief requested," the following: "For the reasons stated, this Court should reverse the judgment of the circuit court." This short statement follows the format given by this Court on FORM 13 brief of appellant. The issue, as well as any other issue, was properly argued in the Initial Brief of Appellant, is not abandoned, and the claim by

Respondent is futile, and should not be taken in consideration by this Appellate Court. Therefore, the conviction should be reversed, and the indictment dismissed.

In addition, new issues, which could not have been resolved by an evidentiary showing or by legal countersteps, even if they have been raised at trial, are not subject to the requirement of preservation. Hence, pure questions of law or statutory interpretation may be raised for the first time on appeal because their resolution does not hinge on the particular facts in the record below. Questions of constitutional violations, and other laws violations, fall within this category. This Court of Appeals have ruled that if the appellant did not raised the issue, or if Appellant's motions or objections "were technically insufficient to preserve the issue, the court would not apply the rules of error preservation so rigidly as to bar an otherwise properly presented issue." Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009).

B. Respondent makes the wrong legal analysis

The argument, again, by Appellant is that due to the ex post facto rule, the license issued to Appellant by the South Carolina Federal Court is deemed valid at the time of the alleged crime. Therefore, the State of South Carolina is barred from bringing this prosecution under any circumstances, including under § 40-5-310 because doing so violates the rights of Appellant under the Ex Post Facto rule (Federal and State), under the Statutory Construction rule, and under the Preemption rule. Therefore, for all the reasons stated above, the conviction should be reversed, and the indictment dismissed.

The argument, again, by Appellant is that the intent of the South Carolina Legislation is to regulate the practice of the laws enacted by them, and also the practice in the courts created and regulated by them. Federal laws, and federal courts are not within the jurisdiction of the South Carolina Legislation. Any contention is this regard by Respondent is baseless, and cannot be proved by Respondent. And was not proved by Respondent at trial. Besides, Appellant had a license issued by the Federal Court at the time he represented a person in Federal Court. Appellant was allowed by the federal judge to act in behalf of a client because Appellant had the proper admission to do it. Therefore, the conviction should be reversed, and the indictment dismissed.

II.

The trial court never acquired jurisdiction to try Appellant because the prosecuting agency had no jurisdiction to bring this action.

Since the State of South Carolina, through the Attorney General of South Carolina, had no jurisdiction to try this case, because at the time of the alleged crime, the Appellant had a license to practice law as an attorney before the Federal Court of South Carolina, the trial court never acquired jurisdiction to try the case. Appellant repeats and reaffirms the entire argument made in the Initial : Brief of Appellant. Therefore, the conviction should be reversed, and the indictment dismissed.

III

Appellant's Issue 3 is available for appellate review. It was preserved at trial in the lower court.

A. Error preservation

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731, 733 (1998). "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial judge, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial judge with sufficient specificity." Jean Hoefer Toal et al., Appellate Practice in South Carolina, 57 (2nd ed. 2002).

Notwithstanding, regarding new issues, which could not have been resolved by an evidentiary showing or by legal countersteps, even if they have been raised at trial, are not subject to the requirement of preservation. Hence, pure questions of law or statutory interpretation may be raised for the first time on appeal because their resolution does not hinge on the particular facts in the record below. Violation of the double jeopardy rule by a trial court falls within this category. This Court of Appeals have ruled that if the appellant did not raise the issue, or if Appellant's motions or objections "were technically insufficient to preserve the issue, the court would not apply the rules of error preservation so rigidly as to bar an otherwise properly presented issue." Chastain v.

Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009).

Defense counsel raised the claim of double jeopardy at trial. (R. 113, lines 7-16; R. 138, lines 14-25; State's Exhibit 3: R. 169). Hence, the issue was preserved for appeal. Appellant repeats and reaffirms the argument made in the Initial Brief of Appellant. Therefore, should be reviewed, and the conviction should be reversed, and the indictment dismissed.

IV

Appellant's Issue 4 is available for review because it is an issue of pure law and statutory interpretation.

New issues, which could not have been resolved by an evidentiary showing or by legal countersteps, even if they have been raised at trial, are not subject to the requirement of preservation. Hence, pure questions of law or statutory interpretation may be raised for the first time on appeal because their resolution does not hinge on the particular facts in the record below. Inflammatory and misleading remarks by a trial judge fall within this category. This Court of Appeals have ruled that if the appellant did not raised the issue, or if Appellant's motions or objections "were technically insufficient to preserve the issue, the court would not apply the rules of error preservation so rigidly as to bar an otherwise properly presented issue." Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009).

Giving the wrong law interpretation when said, "That was not excluded in federal court" (R. 124, lines 14-15) is an error and it is prejudicial to Appellant's case. The state law does not say that. The trial judge, again, cut the reading of the law, did not give the rest of the statute to the jury, but instead said, "That, uh, is the offense." (R. 147, lines 14-15) This is error and is prejudicial to Appellant's case. Added to that, the judge did not read the rest of the statute, which states the penalty, "A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both." People in the jury do not know this information, unless they are judges or lawyers, and have read this particular statute. Jurors are not required to know the law. Judges are required to give them the correct law. For the jury ignoring that the charge is a felony, as well as ignoring the five

years penalty it carries, let them in limbo to make a sound decision. (see State v. Belcher, S.C. Supreme Court, Opinion No. 26729, decided October 12, 2009). It is prejudicial to Appellant, and an error that warrants reversal. Therefore, the conviction should be reversed, and the indictment dismissed.

V. NEW ISSUE DISCOVERED

Respondent's misconduct is prejudicial to Appellant's case and warrants dismissal.

New issues, which could not have been resolved by an evidentiary showing or by legal countersteps, even if they have been raised at trial, are not subject to the requirement of preservation. Hence, pure questions of law or statutory interpretation may be raised for the first time on appeal because their resolution does not hinge on the particular facts in the record below. Inflammatory and misleading remarks to this Court by the Attorney General, Attorney for Respondent, in the Initial and Final Brief for Respondent fall within this category. This Court of Appeals have ruled that if the appellant did not raised the issue, or if the issue is newly discovered, or if the issue was not available at trial, or if the motions and objections by the Appellant “were technically insufficient to preserve the issue, the court would not apply the rules of error preservation so rigidly as to bar an otherwise properly presented issue.” Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009).

On page 9 of the INITIAL BRIEF FOR RESPONDENT, the Respondent states that, “That power does not oblige this Court to allow persons in the United States District Court of the District of South Carolina to provide false or misleading information about their authority to practice law in any context, including appearances before federal administrative or regulatory agencies.” (BR p 9, lines 7-10). At the bottom of the same page 9, Respondent remarks, “No federal statute, regulation, or order neither authorized nor condoned Romero’s false and misleading statements to prospective clients that he was qualified to represent them in any forum in South Carolina, including the federal courts.” Despite Respondent’s contention, Appellant’s attorney made an objection and raised the issue during the trial. The trial judge ignored the issue. (R. 98, lines 4-23).

Now, because this is a direct accusation against Appellant, Appellant has the right to respond to it, as well as to present the necessary evidence to refute the inflammatory remarks, raising the issue on appeal for the first time as a consequence of the remarks from the Respondent. On January 14, 2008, Appellant submitted an Application for Admission to Practice before the United States District Court District of South Carolina. In the cover letter, Applicant explained, "Please take notice that I am making this application under the reciprocity statute based upon my admission to practice before the United States District Court Northern District of New York (USDC NDNY) with Bar Roll Number 505744. Hence, where it reads SC, I am giving my admission on January 7, 1992 (01/07/92), corresponding to the USDC NDNY, and the Bar No. 505744." On January 30, 2008, the Court Clerk provided Appellant with the certificate of admission. The cover letter reads in the first paragraph, "Enclosed please find your certificate to practice in the District Court for the District of South Carolina. Your attorney identification number is located at the bottom of the certificate." The certificate reads, "THE UNITED STATES OF AMERICA, District of South Carolina...I, Larry W. Propes, Clerk of the United States District Court, certify that ISRAEL ROMERO was duly admitted and qualified to practice as an attorney in the District Court on the 23rd day of January 2008. In testimony whereof, I sign my name and affix the seal of this Court on this 23rd day of January 2008. Seal and signature: Larry Propes, Clerk of Court. Attorney Identification Number: 10127." Appellant opposed a Respondent's motion to strike Appellant's Exhibit 1, which is the Certificate of Admission issued by the South Carolina Federal Court. In addition, Appellant filed a motion to supplement the Record on Appeal. The documents proposed to constitute the supplement are eight pages: Appellant's cover letter (1 page), Appellant's Application for Admission to Practice (4 pages), Applicant's Certificate of Good Standing from USCD NDNY (1 page), South Carolina U.S. District Court cover letter (1 page), and U.S. District Court certificate of admission (1 page). These documents should be accepted as newly discovered evidence, because this is a new issue raised on appeal because it came up on appeal, as a consequence of Respondent's misconduct. These documents should be admitted to supplement the Record on Appeal.

The above set of documents show that Appellant did not "provide false or

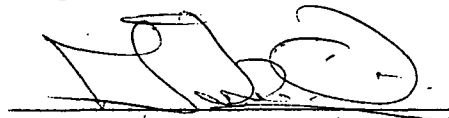
misleading information” to the Federal Court. The only one providing false and misleading information, as well as inflammatory, is the Respondent. In addition, Respondent had copy of those documents, but did not show them to the trial court, where the law imposes an obligation to the prosecution to provide documents or information that favors the defendant. That is false and misleading as well as prejudicial to Appellant’s case. And becomes inflammatory and prejudicial to Appellant when the remarks are brought by Respondent in the Initial Brief of Respondent. This behavior unbecoming an honest and responsible prosecutor by the Respondent is a misconduct that warrants reversal. (see State v. Belcher, S.C. Sup. Ct., Opinion No. 26729, decided Oct. 12, 2009). Therefore, the appeal should be granted, and the conviction should be reversed, and the indictment dismissed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court should be reversed, and the indictment dismissed.

February 24, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dr. Israel Romero', is written over a horizontal line.

Dr. Israel Romero, PhD
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Taylors, SC 29687
Phone (864) 292-5025
Pro Se Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

CERTIFICATE OF PRO SE APPELLANT

The undersigned certifies that this FINAL REPLY complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court filings."

February 24, 2010



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

FEB 24 2010

SC Court of Appeals

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

Case No. 2008-GS-23-009047

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

PROOF OF SERVICE

I, Dr. Israel Romero, Pro Se Appellant, certify that I have served the within REPLY on Respondent, by depositing one copy of same at the Office of the Attorney General, Attn: Salley W. Elliott, Assistant Deputy Attorney General, Office of the Attorney General, Rembert C. Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 24th day of February, 2010.



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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Israel Romero,

Appellant.

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

Unpublished Opinion No. 2011-UP-137
Submitted February 1, 2011 – Filed April 5, 2011

AFFIRMED

Israel Romero, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Senior Assistant Attorney General Norman Mark
Rapoport, all of Columbia, for Respondent.

PER CURIAM: Israel Romero appeals his conviction for the unauthorized practice of law, arguing (1) the trial court erred in denying his directed verdict motion and failing to apply the ex post facto rule, the statutory construction rule, and the preemption rule; (2) the trial court lacked subject matter jurisdiction; (3) his conviction violated double jeopardy; and (4) the trial court erroneously instructed the jury. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to Romero's directed verdict motion: State v. Zeigler, 364 S.C. 94, 103, 610 S.E.2d 859, 863 (Ct. App. 2005) ("The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling.") (citation omitted); id. at 102, 610 S.E.2d at 863 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.") (citation omitted); see also S.C. Code Ann. § 40-5-310 (2001) ("No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The type of conduct that is the subject of any charge filed pursuant to this section must have been defined as the unauthorized practice of law by the Supreme Court of South Carolina prior to any charge being filed."); State v. McLauren, 349 S.C. 488, 497-98, 563 S.E.2d 346, 350-51 (Ct. App. 2002) ("The generally understood definition of the practice of law embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts. . . . [T]he practice of law . . . include[s] the preparation and filing of legal documents involving the giving of advice, consultation, explanation, or recommendations on matters of law.") (citations omitted) (internal quotation marks omitted).

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

2. As to Romero's subject matter jurisdiction argument: State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters.").

3. As to Romero's remaining issues: State v. Turner, 373 S.C. 121, 126 n.1, 644 S.E.2d 693, 696 n.1 (2007) (noting an issue not raised to or ruled upon by the trial court is not preserved for review); see also State v. Owens, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (holding the preservation rules apply to arguments regarding constitutional violations).

AFFIRMED.

FEW, C.J., and THOMAS and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Honorable D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

RECEIVED

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SC Court of Appeals

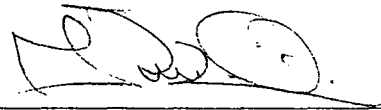
PETITION FOR REHEARING

Here comes Dr. Israel Romero, the Appellant acting on his own behalf and representation in the above captioned case pursuant to Rule 221 SCACR filing a Petition for Rehearing in the Unpublished Opinion No. 2011-UP-137, Submitted February 1, 2011, and Filed April 5, 2011 by the Court of Appeals of the State of South Carolina.

The Appellant files the original of this Petition for Rehearing along with six (6) copies of same, and the attachments as per Rule 240 SCACR: (1) An original certificate of service reflecting the date of service upon all parties; (2) A memorandum with citation of authorities in support of the motion; (3) The facts relied upon in support of the petition are contained in the Record on Appeal, and Briefs of Appellant and Respondent.

Therefore, the Appellant prays this Court to grant the petition. and to reverse the conviction from the lower court.

Date: Taylors, South Carolina
May 27, 2011



Dr. Israel Romero
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Taylors, SC 29687
(864) 292-5025
Pro Se Appellant

Copy to be returned to: Dr. Romero

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Honorable D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

ISRAEL ROMERO,

Appellant.

MEMORANDUM OF LAW

Here comes Dr. Israel Romero, the Pro Se Appellant in the above captioned case filing this Memorandum of Law in support of the Petition for Rehearing and action thereon pursuant to Rule 221 SCACR, and the following authorities:

1. The court erred in the decision on the directed verdict motion presented by the Appellant because the Record shows that Appellant had authority to represent people in the United States District Court, District of South Carolina, when Appellant represented a person on said Court. (See Defendant's Exhibit 1 p. 166 Record on Appeal). With the CERTIFICATE OF ADMISSION TO PRACTICE LAW in the Court the Appellant was accused of practicing law, the Appellant showed the Court that there is no evidence to support the judge's ruling, because there is evidence proving the Appellant's innocence to be declared not guilty: State v. Zeigler, 364 S.C. 94, 103, 610 S.E.2d 859, 863 (Ct. App. 2005). In Ziegler, the court stated that, "The Appellate Court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling." This very same court ruled in Ziegler that, "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." (Id. at 102, 610 S.E.2d at 863). In this case, the evidence shows the contrary. In addition, the Appellant was charged with the violation of S.C. Code Ann. § 40-5-310 (1976) that

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states: *"No person may practice or solicit the cause of another person in a court of this State unless he has been admitted and sworn as an attorney."*(emphasis added). This statute clearly regulates the courts created, hold, and maintained by the State of South Carolina. This statute does not, because cannot, regulate the federal courts. Besides, the Appellant was admitted and sworn as an attorney, in compliance with the statute used to charge and convict the defendant. This court in the decision filed April 5, 2011, is citing a law that started its effect on June 2, 2009. Appellant was charged with having violated the statute on July 24, 2008. Therefore, the statute of June 2, 2009 does not apply due to the Ex Post Facto Rule. This court also cites State v. McLauren, 349 S.C. 488, 497-98, 563 S.E.2d 346, 350-51 (Ct. App. 2002), where McLauren had no license at all to represent or advise other person. The Appellant had a license, and acted in the federal court that issued the license to the Appellant, and McLauren does not apply to this case. Therefore, the conviction should be reversed.

2. The lower court had no subject matter jurisdiction because the Appellant was charged with practicing federal law in federal court. State courts had no jurisdiction on subject federal matters. The Supreme Court of South Carolina has ruled that the subject matter jurisdiction of the circuit court and the sufficiency of an indictment are two distinct concepts. (See State v. Gentry, 363 S.C. 93, 101-02, 610 S.E.2d 494-499 (2005). In Gentry, the court ruled that, "Presentment of an indictment...is not needed [is not enough] to confer subject matter jurisdiction on the circuit court." *Id.* At 499 n.6. That is the reason why the S.C. Supreme Court, "Abandoned the view that, in criminal matters, the circuit court acquires subject matter jurisdiction to hear a particular case by way of a valid [grand jury] indictment." (State v. Means, 367 S.C. 374, 381, 626 S.E.2d 348, 352 (2006). If the case belongs to the federal authorities, the case must be tried in federal courts, and not in the state circuit court. Therefore, the lower court erred, and the lower court decision should be reversed.

3. The issue III was raised at the trial level, and the lower court ruled on it several times. State v. Turner, 373 S.C. 121, 126 n.1, 644 S.E.2d 693, 696 n.1 (2007). In addition, this appeals court has ruled that pure questions of law or statutory interpretation may be raised for the first time on appeal because their resolution does not hinge on the

particular facts in the record below. Violation of the double jeopardy rule by a trial court falls within this category. This court has ruled that if the appellant did not raise the issue, or if Appellant motions or objections “were technically insufficient to preserve the issue, the court would not apply the rules of error preservation so rigidly as to bar an otherwise properly presented issue.” Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009). Therefore, the issue should be reviewed, and the conviction should be reversed.

4. The issue IV is available for review because it is an issue of pure law and statutory interpretation, because new issues, which could not have been resolved by an evidentiary showing or by legal countersteps, even if they have been raised at trial, are not subject to the requirement preservation. (See Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009). Hence, pure questions of law or statutory interpretation may be raised for the first time on appeal because their resolution does not hinge on the particular facts on the record below. Inflammatory and misleading remarks by a trial judge fall within this category. The trial court judge said, “That was not excluded in federal court.” (R. 124, lines 14-15). This is an error, and it is prejudicial to Appellant’s case because the state law or the statute S.C. Code Ann. § 40-5-310 used to charge Appellant does not state that inclusion by the judge. Moreover, the judge did not read the rest of the statute, which states the penalty, “A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.” People in the jury do not know this information. Jurors are not required to know the law. Judges are required to give them the correct law. For the jury ignoring that the charge is a felony, as well as ignoring the five years imprisonment it carries, let them in limbo to make a sound decision. (See State v. Belcher, S.C. Supreme Court, Opinion No. 26729, decided October 12, 2009). The trial judge’s conduct is prejudicial to appellant, and an error that warrants reversal. Therefore, the conviction should be reversed.

5. A new issue was discovered during this appeal. On page 9 of the INITIAL & FINAL BRIEF OF RESPONDENT, the Respondent states that, “That power does not oblige this Court to allow persons in the United States District Court of the District of

South Carolina to provide false or misleading information about their authority to practice law in any context, including appearances before federal administrative or regulatory agencies.” (Brief of Resp. p. 9, lines 7-10). At the bottom of the same page 9, Respondent remarks, “No federal statute, regulation, or order neither authorized nor condone Romero’s false and misleading statements to prospective clients that he was qualified to represent them in any forum in South Carolina, including the Federal courts.” The Appellant had the admission to practice law in federal court in South Carolina (see Defendant’s Exhibit 1, Certificate of Admission to Practice in U.S. District Court of South Carolina, Record p. 166). In addition, Appellant’s attorney made an objection and raised the issue during the trial. The trial judge ignored the issue. (R. 98, lines 4-23). The Respondent’s statements are false and misleading as well as prejudicial to Appellant’s case, and become inflammatory and prejudicial to Appellant when the remarks were brought by Respondent in the Initial & Final Brief of Respondent. This behavior unbecoming an honest and responsible prosecutor by the Respondent is a misconduct that warrants reversal. (See State v. Belcher, S.C. Sup. Ct. Opinion No. 26729, decided Oct. 12, 2009). Therefore, the appeal should be granted, and the conviction should be reversed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be reversed, and the indictment dismissed.

May 27, 2011.

Respectfully submitted,



Dr. Israel Romero
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Pro Se Appellant

The South Carolina Court of Appeals

The State,

Respondent,

v.

Israel Romero,

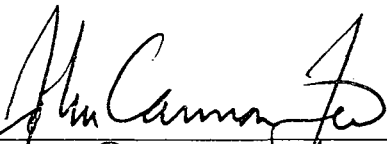
Appellant.

The Honorable D. Garrison Hill
Greenville County
Trial Court Case No. 2008-GS-23-09047

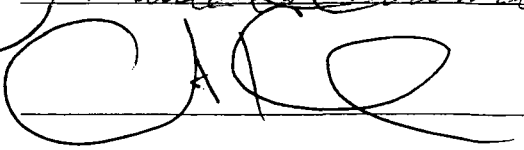
ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

IT IS SO ORDERED.



C.J.


J.


J.

Columbia, South Carolina

FILED

June 23, 2011