

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Greenville County

Honorable Grace Gilchrist Knie, Circuit Court Judge

REYNOLDO PIMIENTA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001256

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 REYNALDO R. PIMIENTA,) 2014-GS-23-3268A
8 DEFENDANT.) 2014-GS-23-3268B

9
10 December 19th, 2019
11 Greenville, South Carolina
12

13 B E F O R E:

14 THE HONORABLE PERRY H. GRAVELY, Judge.

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

16 WILLIAM R. HOLLOWAY
17 ASSISTANT SOLICITOR
18 Attorney for the State

19 WILLIAM E. GROVE
20 ASSISTANT PUBLIC DEFENDER
21 Attorney for the Defendant
22

23 Transcribed by Pamela E. Green, from
24 DCRP, Digital Courtroom Recorder Project
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I N D E X

(WHEREUPON, there were no exhibits marked during this hearing.)

P R O C E E D I N G S

THE CLERK: Your Honor, in the case of 2014-GS-23-3268 A and B, the State versus Reynaldo R. Pimienta indicted for assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime. Pleading to assault and battery with intent to kill, and possession of a weapon during a violent crime, and these are true billed.

(WHEREUPON, the Defendant was placed under oath at this time.)

THE CLERK: Thank you.

THE COURT: All right. Are you Reynaldo Pimienta?

THE DEFENDANT: Yes, sir.

THE COURT: How old are you?

THE DEFENDANT: Fifty-five years of age.

THE COURT: And how far did you go in school?

THE DEFENDANT: I did eight years of school. college.

MR. GROVE: He was a -- he's a physician, Your Honor.

THE COURT: Okay. Are you under the influence of any alcohol, drugs, or medication today?

THE DEFENDANT: No, sir.

THE COURT: Any health or mental issues which would keep you from understanding what's going on?

THE DEFENDANT: No, sir.

1 THE COURT: All right. And your cases have been sent
2 to the Grand Jury and true billed, but, but you have certain
3 Constitutional rights which you're giving up by pleading
4 guilty.

5 You have a right to a jury trial. You have a right to
6 make the State prove its case against you beyond a
7 reasonable doubt, and you're presumed innocent up till that
8 point. You have a right to confront all of your witnesses
9 against you. You have a right to examine all evidence
10 against you. You have a right to remain silent, and that
11 can not be used against you.

12 In other words, if you went to trial, and you decided
13 not to testify, then that -- the jury would be instructed
14 they could not consider that.

15 You understand each of these rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you realize that you're waiving these
18 rights by pleading guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. And you have a right to appeal
21 your sentence and your plea. But you'd have to do so in
22 writing within 10 days.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Have you had sufficient time to

1 talk with your attorney, Mr. Grove, about your case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has he, has he answered all your questions
4 and done all the investigation which you felt was
5 appropriate?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you completely satisfied with his
8 representation of you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Any complaints against Mr. Grove or anybody
11 in his office?

12 THE DEFENDANT: No.

13 THE COURT: All right. You have a charge of assault
14 and battery with intent to kill, which carries up to 20
15 years, and a possession of weapon during a violent crime,
16 which carries a mandatory five years.

17 okay. You understand each of these charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And how do you wish to plead?

20 THE DEFENDANT: Guilty.

21 THE COURT: To both charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Also I, I notice that -- maybe
24 because it's old, they, they have negotiated sentence, but
25 this is a recommendation.

1 SOLICITOR HOLLOWAY: Yes, sir.

2 THE COURT: Correct?

3 MR. GROVE: That's correct, Your Honor.

4 SOLICITOR HOLLOWAY: Your Honor, it's -- I'm sorry.
5 It's, it's straight up.

6 THE COURT: Okay. Straight up.

7 SOLICITOR HOLLOWAY: Yes, sir.

8 THE COURT: All right. So, I am changing this form
9 where it previously said negotiated, and then I'm indicating
10 that it's without negotiation or recommendation, and you
11 understand that, Mr. Pimienta?

12 MR. GROVE: If I can explain that?

13 THE COURT: Right. You want to talk to him.

14 (Pause.)

15 MR. GROVE: Thank you, Your Honor.

16 THE COURT: All right. So, you understand that we have
17 changed the form you signed to say without negotiation or
18 recommendation?

19 THE DEFENDANT: Okay. Yes. Yes.

20 THE COURT: And you wish to still go forward on this
21 plea?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. You realize that you're looking at a
24 maximum of 25 years on these charges?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Has anybody promised you anything or
2 threatened you to plead guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you pleading guilty freely and
5 voluntarily?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. I'm gonna hear the facts from
8 the solicitor's office. Then I'm gonna ask if you -- you
9 need to listen up. So, I'm gonna ask if you agree with
10 them.

11 SOLICITOR HOLLOWAY: Yes, sir, Your Honor.

12 To say the least, this day has been a long time coming.
13 On May the 11th, 2000, around 5:40AM, this Defendant
14 followed the victim as she left work, pulled beside her at a
15 traffic light, and fired two rounds---

16 THE INTERPRETER: I'm sorry, Your Honor.

17 SOLICITOR HOLLOWAY: I'm sorry.

18 THE INTERPRETER: The interpreter is behind.

19 SOLICITOR HOLLOWAY: Sure. We're good?

20 THE INTERPRETER: Followed the victim?

21 SOLICITOR HOLLOWAY: Followed the victim, and pulled
22 beside her at a, at a, a light. He then fired two rounds
23 from his gun into her vehicle. This occurred on -- in the
24 area of North Main Street in Mauldin. Two of the bullets
25 entered her vehicle, and one of those, those bullets entered

1 her left side, and struck her, her back.

2 okay. The victim was able to identify this Defendant
3 as the shooter to the first officer on scene, and, over the
4 past 19 years, she has consistently said he is the one who
5 shot her. He was actually stopped for a traffic violation
6 nearby. That officer filled out about half a ticket
7 including his name and tag number.

8 THE INTERPRETER: I'm sorry. But the officer --?

9 SOLICITOR HOLLOWAY: The officer filled out half of a
10 traffic ticket including his name and tag number. That tag
11 number was to a car he rented in Florida.

12 okay. The officer got the call for the shooting and
13 let him go. An employee at a nearby store, as well as a
14 passerby who called the police, also provided information.

15 After her, her surgeries that same day, she told the
16 police she was married to a -- this other gentleman, and
17 broke off an affair with this Defendant. In the days since
18 the, since the breakup, the Defendant harassed her and her
19 husband.

20 In the intervening years, the car rental location did
21 not tell the police -- okay. Did not tell the police when
22 he dropped off the car.

23 In the intervening years, to give you the -- the Court
24 of this investigation---

25 THE COURT: well, as far as the facts though, that's

1 all the facts that relate to---

2 SOLICITOR HOLLOWAY: Yes, sir.

3 THE COURT: Hold on.

4 SOLICITOR HOLLOWAY: She did -- she is paralyzed from
5 the waist down.

6 THE COURT: Well, let me question him on the facts---

7 SOLICITOR HOLLOWAY: Sure.

8 THE COURT: ---and then I'll be glad to get into---

9 SOLICITOR HOLLOWAY: Sure. Thank you, Your Honor.

10 THE COURT: All right. Mr. Pimienta, you heard the
11 facts as far as the, the case of -- you agree with those
12 facts?

13 THE DEFENDANT: The only thing I am not agreeing with
14 is I never threatened her.

15 THE COURT: Okay. But other than that, the charge --
16 the facts for the assault and battery with intent to kill
17 and possession of a weapon during a violent crime, you agree
18 with those facts?

19 THE DEFENDANT: Yes. Yes.

20 THE COURT: And you still wish to plead guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. I will accept your plea. I
23 find that it's been knowingly, intelligently, and
24 voluntarily made with the advice of competent legal counsel
25 with whom you've indicated you're satisfied with his

1 representation, and that there's a substantial factual basis
2 for the plea.

3 All right. Also, your assault and battery with intent
4 to kill is designated as a violent and a most serious
5 charge.

6 All right. And you realize that this will have an
7 affect on your parole eligibility, and, in the event that
8 you should ever get another conviction for most serious,
9 then, then you could be looking at a, a possible sentence of
10 life without parole, and you understand this, and still wish
11 to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Now what I will do is I'll hear the,
14 the record, jail, all the additional information, and be
15 glad to hear from the victim, and then I'll hear from the
16 defense.

17 SOLICITOR HOLLOWAY: Yes, Your Honor. He has no prior
18 record. The victim is here. I would like to add a little
19 bit about the investigation.

20 THE COURT: Right.

21 SOLICITOR HOLLOWAY: I'll be brief.

22 THE COURT: I'll be glad to hear from that now.

23 SOLICITOR HOLLOWAY: Your Honor, in the past, until he
24 was picked up in October, 2017, this case was worked by the
25 City of Mauldin. This case was worked by the FBI, U.S.

1 Marshals, authorities in Florida at the time. I got on, on
2 this case in 2014 when the FBI received intelligence he
3 might be in Spain.

4 We did get a, a, a Red Notice at -- in 2016. Yet, he
5 was still able to fly to his home country in South America.
6 How he was ultimately found is I believe that when
7 Investigator Ben Ford notified Trey Gowdy's Office,
8 Congressman Gowdy, I believe that the FBI in South America
9 really got cracking on trying to find him.

10 They found that he had subscribed to a cell phone.
11 They then pinged the cell phone and they found him.

12 The bullet that struck her spinal, spinal column, it
13 fractured the L1/L2 vertebra. She's been paralyzed for 19
14 years, six months, and five days as of today. That is 7,161
15 days she has sat---

16 THE INTERPRETER: 7,100?

17 SOLICITOR HOLLOWAY: 161 days that she has waited for
18 this day patiently. I have met with her six or seven times
19 since 2015, and every time, after about 20 to 30 minutes,
20 pain from the bullet wound seizes her body, and she does
21 writhe in pain.

22 We believe, based on these facts, he deserves a
23 sentence of 22 years. It's a significant sentence in light
24 of everything that he has put this victim through for nearly
25 two decades.

1 Thank you, Your Honor.

2 THE COURT: Does the victim want -- wish to be heard?

3 SOLICITOR HOLLOWAY: Yes, sir.

4 THE COURT: All right. I'll be glad to hear from you,
5 ma'am.

6 THE VICTIM: Okay. Reynaldo. Reynaldo.

7 THE COURT: No, you need to be -- address the court.

8 THE VICTIM: I thank God today cause the -- God's time
9 is perfect. God, God responds and he does everything
10 perfect.

11 I was told to say or to prepare what I was going to say
12 in court, and the only thing that I have to say is that, on
13 that day, that Reynaldo took a handgun to shoot me. I don't
14 remember if it was two, three, four, five shots. I didn't
15 die on that day. That day God always gave us an opportunity
16 every single day to know of him, and he has made me a new
17 person.

18 He gave me the, he gave me the opportunity to meet God,
19 and when it is time for me to die, and he knows -- and she
20 knows where she's going. And that's why I wanted to give
21 something to Reynaldo because this is a beautiful day so he
22 can start again.

23 We can, we can all be -- I'm sorry. Forgiven --
24 forgive somebody from all the mistakes that we made. And
25 God has forgive me and then, if God has forgive me, I will

1 forgive also. We can be free and Reynaldo is -- he was free
2 for all these years like he don't -- didn't have the true
3 freedom.

4 So now his days are good opportunities for -- God is
5 giving him opportunities for -- so he can have a real
6 freedom. And then all, all the strength that God has given
7 me, and he has given me a lot of peace and love. He has, he
8 has freeded (sic) for all of the mistakes that I have made,
9 and he has given me his whole spirit, peace, love, a lot of
10 patience being a good person, become a lot of faith, and a
11 lot of goodness, and self-control.

12 In those days when this happened, which you have -- if
13 we had God in our hearts, and we have let him guide our
14 lifes (sic), we would not be thinking of hurting somebody
15 else. That is why today, and I have waited for this day,
16 today is the day that I give you this Bible so you can
17 put -- so you can start knowing what is God and who that is.

18 And he -- we are made free and make new people in God's
19 word, and he gave us -- God gave us the opportunity from
20 here from earth to -- yes, to die. Thank you for your love
21 and thank you for your misery, and, Reynaldo, the only thing
22 that I have for you, and I hope you will come free, and, if
23 you want, you can accept this Bible, the word of God.

24 THE COURT: All right. Thank you. And I'm sorry what
25 you've been through on all of this.

1 All right. Anything else from the State?

2 SOLICITOR HOLLOWAY: No, thank you.

3 THE COURT: Mr., Mr. Grove, be glad to hear from you
4 and your client.

5 MR. GROVE: Goodness.

6 I know that Reynaldo has, has talked a lot with me in
7 the days, and weeks, and months leading up today out of
8 concern, obviously, for the sentence that would be imposed,
9 but also out of concern for how he would be received by
10 Olga, and while -- based on his actions, and based on the
11 flight, and, and based on the length of time that he was
12 gone, it, it might be hard to believe, but he has expressed
13 to me the guilt and shame that, that he has carried with him
14 about that day.

15 None, none of that excuses his behavior that day, and
16 what I'm prepared to say, I don't, in any way, intend to be
17 received as projecting blame anywhere else but right here.
18 The -- and, and I think Reynaldo wants that to be clear as
19 well that he is responsible for his actions. Not anybody
20 else.

21 What I can tell you about him is, prior to this
22 incident, he was living in New York. At some point he
23 started a relationship with the victim and moved down here
24 to this area, and, ultimately, obviously, that relationship
25 did not work, and he, in talking with him, he talks about

1 becoming incredibly depressed and alone and, and not really
2 knowing what to do or where to go, and that that depression
3 led to the worst thing by far. I mean, by leaps and bounds,
4 the worst thing that he has ever done.

5 I think that that is clear by his entire lack of record
6 leading up to this, and, obviously, a lack of record after
7 this. If he had ever been arrested following this day, we
8 would of obviously been identified, and apprehended, and,
9 and returned here to face these charges at any previous
10 time.

11 He has a 10 year old daughter, and, again, this doesn't
12 excuse anything that he did back in May of 2000 or any time
13 since. But I can certainly understand how he was, I, I
14 think, at least, there was never a good time for him to turn
15 himself in, that -- I think he was always trying to, after
16 he ran because he was scared and terrified of what he had
17 done, I think that he tried to put himself in a position
18 where he would be better off or more well received when he
19 was ultimately apprehended to try and mitigate the
20 situation.

21 And when you find yourself in that position, tomorrow
22 is always a better day to do it than today. And, and I
23 think that he had lots of I'll try and fix this tomorrows,
24 and just ultimately was never able to put himself in that
25 position, and, and ultimately turn himself in to face these

1 charges.

2 He was arrested in Colombia, South America on October
3 the 24th of 2017. I'm asking Your Honor to consider
4 giving him credit back to that day.

5 The charge that he was arrested on, and I'm probably
6 not gonna say it right, but I believe it is fleeing a
7 jurisdiction to avoid prosecution, which is, effectively, a
8 bench warrant in Federal Court, and that charge arose out of
9 this charge. The, the basis for the Federal charge was
10 these, these two charges in Greenville, and, and, because
11 they are so intertwined, I'd ask Your Honor to consider
12 giving him all of that credit.

13 I have explained to him the law says he is only
14 entitled to credit back to December the 20th of 2018 when
15 he was actually served with these two indictments. But
16 because of the related nature of the two charges, I -- I'd
17 ask you to, to consider giving him 787 days of credit is the
18 math I believe rather than 365 days.

19 I have talked with a couple of lawyers in Federal
20 Court, and I confirmed that charge, the Federal charge, was
21 dismissed the day he was brought here. The only purpose of
22 that charge was to force him in a situation to where he
23 would be served with these warrants or indictments I
24 suppose.

25 I could go on for hours about all of the wonderful

1 things that I know about Reynaldo that sort of highlight how
2 incredibly unusual this situation was, and how completely
3 opposite of, of, of him this type of behavior would be. But
4 I know that he would like to address Your Honor.

5 I, I think it is important to him to ask for
6 forgiveness. I, I know I haven't talked to him since we've
7 heard from the victim, but I, I am comfortable saying that
8 he probably feels a tremendous amount of relief right now
9 having heard the very powerful words issued by the victim,
10 and, and her forgiveness that I know that he is truly
11 thankful for. But I have, I have instructed him that it is
12 best to direct his comments to Your Honor, and not to
13 anybody else. But I would ask you to give him an
14 opportunity to speak at the appropriate time.

15 THE COURT: Mr. Pimienta, I'll be glad to hear from
16 you.

17 THE DEFENDANT: Good morning.

18 First of all, I ask for forgiveness to Olga, to her
19 family, to this country, to the prosecutor for all the
20 damage I've caused. I am very, very embarrassed to be
21 wearing this uniform at this moment.

22 Your Honor, my parents raised me not to cause any
23 damage to anyone, but to help the others. As you, I'm a
24 professional. I went to the university, and these hands
25 that you see right now in handcuffs in several occasions God

1 have used them as an instrument to bring lifes (sic) to this
2 world through the 100 deliveries I worked on during my
3 profession.

4 My intentions, when I came to this country, to New York
5 City, New York, it was to work on my profession. I came
6 legally. I took my exams to get my credit as a doctor, but,
7 unfortunately, due to my lack of English, I did not pass.

8 The truth is, when the terrible incident on that day
9 happened, I was in a deep depression because I just had
10 moved here a few months before from New York with a hope of
11 a beautiful future with Olga.

12 When I arrived here to South Carolina, I was getting
13 along very well with her children, with her family, and
14 suddenly everything came down. I found myself living alone
15 in a house in Columbia where I found a job. Even if it
16 wasn't in my profession, I had to work. I went to that
17 house because it was very difficult for me, living in
18 Mauldin, to travel every day because then I couldn't do my
19 job well.

20 Then I rented the house and I would return to her every
21 weekend, and fortunately I felt alone. I didn't have any
22 friends here in South Carolina because all my friends were
23 her friends. I would come out from work and going to the
24 house just to cry, cry, and cry.

25 I got into such a depression that, that I just couldn't

1 control my emotions. On that day, I was, was in shock. I
2 was in fear. My sentiment were -- I did not know what I was
3 doing. I do not find myself as a violent person.

4 During the time I lived with Olga, we never, never,
5 never had a domestic violent issue, and I never, never had
6 any problems with the justice in any of the countries where
7 I've lived.

8 After that day, I felt a lot of fear. I didn't know
9 what to do. I felt -- I didn't know where to go. I thought
10 the family would go against me, but then I thought they
11 wouldn't because she has a very good family, and, because of
12 that, I left the country.

13 God knows well I'm very, very repentant for what I've
14 done, and, from that moment, I've been praying to God as
15 much as she has, and I'm also very happy that I, I know God
16 as she does.

17 Unfortunately, that incident did happen, and they
18 happened. So, I gave myself to God. I prayed every day for
19 her to heal and God knows that, at this moment, I would
20 change my position to be in her position, for her -- for me
21 to be sitting on the wheelchair rather. God knows that, and
22 would you allow me to ask her for forgiveness?

23 THE COURT: That will be fine.

24 THE DEFENDANT: Olga Lucia, you know very well how much
25 we loved each other. I'm telling you honestly I don't know

1 what I did on that day. And, because of that, I'm here and
2 I'm pleading guilty.

3 So, Your Honor, you will weigh all the motives and will
4 give a sentence. Either way, I know I'm going to spend some
5 time in jail, but, more important than anything, I feel like
6 you do, that my soul is free.

7 I ask you for a lot of forgiveness, and I thank you for
8 the words you gave me, and I thank you a lot for the Bible
9 you've given me. I promise you, for the love we had to each
10 other, that I will read it all thinking of you, and with the
11 hope that in the world of life will finally show you in
12 Heaven, and everything will be completely different.

13 There are no words in the world to tell you how much I
14 feel for what has happened. I'm satisfied, because you know
15 it as well, that God has forgive me as well.

16 So, the most important now is---

17 THE COURT: All right. Let's wrap it up. I'm not -- I
18 mean this is not intended to have a conversation going here.
19 But I'll, I'll be glad to hear any final words you have.

20 MR. GROVE: Your Honor, we're asking for a sentence
21 between 12 and 15 years, and, again, we're also asking
22 credit for the sentence to go back -- credit for his time to
23 go back to October the 24th of 2017.

24 THE COURT: All right. Anything else from either side?

25 SOLICITOR HOLLOWAY: No, sir.

1 THE COURT: All right. After hearing that, I do
2 believe that, since the arrests were all related to this
3 matter, that I, I think is appropriate to backdate to
4 October the 24th.

5 But the Sentence of the Court on the possession of a
6 weapon, that's five years, and on the assault and battery
7 with intent to kill, that's 17 years. These are
8 consecutive.

9 Good luck to you.

10 MR. GROVE: Thank you, Your Honor.

11 SOLICITOR HOLLOWAY: Thank you, Your Honor.

12

13

14 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 19th day of December, 2019.

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

March 27th, 2020

PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Reynaldo Pimiento)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2021-CP-23- 01789

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional, Columbia, S.C.
2. Name and location of Court which imposed sentence Court of General Sessions, Greenville, South Carolina
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014 GS 23 3268
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 19, 2019: Sentenced to 5 years for possession of a weapon and 17

years for assault with intent to kill

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Defendant pled guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) The attorney appointed to represent the Petitioner did not explain to the Defendant his right to appeal and allowed the time for appeal to expire

(b) _____

(c) _____

JH #

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

(a) The Petitioner was denied effective assistance of counsel

(b) The Petitioner was denied the right to appeal

(c) _____

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

(a) The Defendant's Lawyer repeatedly declined Petitioners request for conferences to the extent that the Petitioner was unable to understand the nature of the charges, the criminal justice process or his options within that system..

The Defendant's attorney failed to investigate the facts of the case especially the question of whether the projectile that struck the victim struck the vehicle first which would have supported the theory that the Petitioner never intended to shoot the victim.

The Petitioner's attorney knew that the victim was out of the country when the case was called and that without the victim, the State had no case. The Petitioner's attorney allowed the case to be called for a guilty plea without advising the Petitioner that, if he demanded a jury trial, the case could not have gone forward with the possibility that the victim would never be available.

Petitioner's attorney denied the Petitioner's request for a meeting on December 18, the day before the plea leaving the Petitioner uninformed as to the proceedings that would occur on December 19 and unprepared for what he should say at the plea hearing.

Petitioner requested to see his attorney on December 18 but the atty said he didn't need to. Pimienta wanted to be prepared to speak during the hearing.

The translator used at the trial was not the translator with whom the Petitioner had worked leading up to the trial. The translator at trial was from the same hometown as the victim. That was not made known to the Judge and was changed at trial.

Witnesses have confirmed that the translator did not translate word for word.

The Petitioner's attorney did not advise the Petitioner of his right to appeal. In the court proceedings, the translator omitted the Court's instructions to the Petitioner regarding the right to.

Petitioner's attorney failed to file an appeal from the sentence.

Petitioner's attorney did not make a complete presentation of facts to the Court and

Just

omitted the fact that there had never been any violence between the Petitioner and the victim prior to the shooting. Nor did the attorney advise the Court that the shot was fired to scare the victim not to hit or kill her.

The Petitioner was not told until 3 minutes before the trial, that the State was going to request 22 years plus 5 years consecutive for possession of a firearm. That was not what they had talked about. The Defendant was not given time to understand the change in recommendation or to change his plea

The state wrongly accused the Petitioner of threatening or previously being violent with the victim. The Petitioner's attorney did not challenge that assertion although it was untrue. The Petitioner's attorney would have known that had he conducted a complete investigation of the case and spent enough time with the Petitioner to know the facts of the case.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes(b) your trial, if any? Yes(c) your sentencing? Yes(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Was not advised of right to appeal and the time for appeal expired(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? None

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

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

i. William E. Grove, Office of the Public Defender / 305 E North St #123/Greenville, SC 29601 wgrove@greenvillecounty.org 864 467 8522

ii. _____

iii. _____

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

i. Plea before the Honorable Perry H Gravely

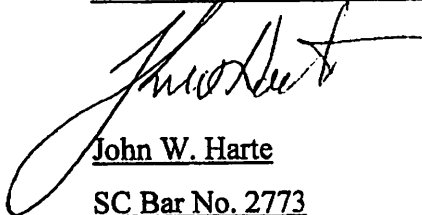
ii. _____

iii. _____

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

New Trial

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

NORESPECTFULLY SUBMITTED:


John W. Harte
SC Bar No. 2773

Attorney for Petitioner

john@jwhartelaw.com

803 226 0755

December 5, 2020

Physical Address

702 Chaffee Lane

Aiken, S.C., 29801

Mailing Address

PO Box 7215

Aiken, S.C., 29804



STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

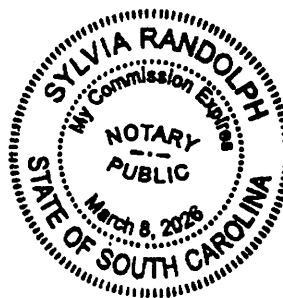
I, Reynaldo R. Pimienta, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature] Reynaldo Pimienta

SWORN to and subscribed before me this 5th
day of APRIL, 2021.

[Signature] (L.S.)
Notary Public

My Commission Expires: MARCH 8, 2026



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Vs.

REYNALDO PIMIENTA

IN THE COURT OF COMMON PLEAS
CERTIFICATE OF SERVICE BY MAIL

2014-GS-23-3268

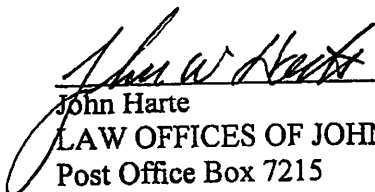
2021-CP-23- 01789

21 APR 13 PM 2:24
SARAH HART
CLERK OF COURT

CERTIFICATE OF SERVICE BY MAIL

THIS IS TO CERTIFY that I, the undersigned John W. Harte, did this day deliver to the Greenville County Clerk of Court and 13th Circuit Solicitor's Office by US Mail with proper postage affixed and addressed to 305 E. North St. # 202 Greenville, SC 29601 and 305 E. North St. #325 Greenville, SC 29601 in the case of **State of South Carolina, County of Greenville V. Reynaldo Pimienta, a: Application for Post-Conviction Relief.**

April 13 2021


John Harte
LAW OFFICES OF JOHN W HARTE
Post Office Box 7215
Aiken, South Carolina 29804
(803) 226 0755

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Reynaldo Pimienta, #381958,	)	Case No.: 2021-CP-23-01789
	)	
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL
	)	MOTION TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	

The State of South Carolina (“Respondent”), making its return to the application for post-conviction relief filed by Reynaldo Pimienta (“Applicant”), through counsel, on April 19, 2021, would respectfully show this Court:

I. Procedural History

During its April of 2014 term, the Greenville County Grand Jury indicted Applicant for assault and battery with intent to kill (2014-GS-23-003268A) and possession of a weapon during the commission of a violent crime (2014-GS-23-003268B). On December 19, 2019, Applicant appeared before the Honorable Perry H. Gravely to plead guilty as indicted. Applicant was represented by William Eugene Grove (“plea counsel”), Esquire. Assistant Solicitor William R. Holloway of the Thirteenth Circuit Solicitor’s Office prosecuted the case. At the guilty plea hearing, the assistant solicitor provided the following recitation of facts:

On May the 11th, 2000, around 5:40 a.m., [Applicant] followed the victim as she left work, pulled beside her at a traffic light

He then fired two rounds from his gun into her vehicle. This occurred on – in the area of North Main Street in Mauldin. Two of the bullets entered her vehicle, and one of those, those bullets entered her left side, and struck her, her back.

Okay. The victim was able to identify [Applicant] as the shooter to the first officer on scene, and, over the past 19 years, she has consistently said he is the one who shot her. He was actually stopped for a traffic violation nearby. That officer filled

out about half a ticket including his name and tag number.

...

That tag number was to a car [Applicant] rented in Florida.

Okay. The officer got the call for the shooting and let him go. An employee at a nearby store, as well as a passerby who called the police, also provided information.

After her, her surgeries that same day, she told the police she was married to a – this other gentleman, and broke off an affair with [Applicant]. In the days since the, since the breakup, [Applicant] harassed her and her husband.

In the intervening years, the car rental location did not tell the police – okay. Did not tell the police when he dropped off the car.

...

[S]he is paralyzed from the waist down.

Guilty Plea Tran. 7-9. Judge Gravely sentenced Applicant to imprisonment for seventeen years for assault and battery with intent to kill, for five years for possession of a weapon during the commission of a violent crime, with both sentences running consecutively, and with credit for Applicant's time served since he was arrested in Colombia, South America.

Applicant did not appeal his convictions and sentences.

II. Current Application

In his application for post-conviction relief, filed through counsel on April 19, 2021, Applicant argues he is entitled to relief based upon multiple claims, which are as follows:

- (1) Applicant did not knowingly and voluntarily waive his right to direct appellate review; and
- (2) Plea counsel was constitutionally ineffective in the following respects:
 - a. "The Defendant's Lawyer repeatedly declined Petitioners request for conferences to the extent that the Petitioner was unable to understand the nature of the charges, the criminal justice process or his options within that system";
 - b. "The Defendant's attorney failed to investigate the facts of the case especially the question of whether the projectile that struck the victim

- struck the vehicle first which would have supported the theory that the Petitioner never intended to shoot the victim”;
- c. “The Petitioner’s attorney knew that the victim was out of the country when the case was called and that without the victim, the State had no case. The Petitioner’s attorney allowed the case to be called for a guilty plea without advising the Petitioner that, if he demanded a jury trial, the case could not have gone forward with the possibility that the victim would never be available”;
 - d. “Petitioner’s attorney denied the Petitioner’s request for a meeting on December 18, the day before the plea leaving the Petitioner uninformed as to the proceedings that would occur on December 19 and unprepared for what he would say at the plea hearing”;
 - e. “Petitioner requested to see his attorney on December 18 but the atty said he didn’t need to. [Applicant] wanted to be prepared to speak during the hearing”;
 - f. “The translator used at the trial was not the translator with whom the Petitioner had worked leading up to the trial. The translator at trial was from the same hometown as the victim. That was not made known to the Judge and was changed at trial”;
 - g. “Witnesses have confirmed that the translator did not translate word for word”;
 - h. “The Petitioner’s attorney did not advise the Petitioner of his right to appeal. In the court proceedings, the translator omitted the Court’s instructions to the Petitioner regarding the right to”;
 - i. “Petitioner’s attorney did not make a complete presentation of facts to the Court and omitted the fact that there had never been any violence between the Petitioner and the victim prior to the shooting. Nor did the attorney advise the Court that the shot was fired to scare the victim not to hit or kill her”;
 - j. “The Petitioner was not told until 3 minutes before the trial, that the State was going to request 22 years plus 5 years consecutive for possession of a firearm. That was not what they had talked about. The Defendant was not given time to understand the change in recommendation or to change his plea”; and
 - k. “The state wrongly accused the Petitioner of threatening or previously being violent with the victim. The Petitioner’s attorney did not challenge that assertion although it was untrue. The Petitioner’s attorney would have known that he had conducted a complete investigation of the case and spent enough time with the Petitioner to know the facts of the case.”

Attached to this return and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding Applicant’s convictions and sentences; Applicant’s records from the South Carolina Department of Corrections; and the transcript from Applicant’s

guilty plea hearing. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Partial Motion to Dismiss

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the “pleadings, depositions and admissions and agreements of fact” and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the face of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view them in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

All claims raised in this present application for post-conviction relief, with the sole exception of Applicant’s claim that he did not knowingly and voluntarily waive his right to direct appellate review,¹ should be dismissed summarily due to Applicant’s failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. The Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

¹ The one-year limitations period in which to file an application for post-conviction relief does not apply when an applicant alleges that he or she was denied a direct appeal due to the ineffective assistance of counsel. Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002), so this claim is not subject to Respondent’s earlier motion to dismiss.

S.C. Code Ann. § 17-27-45(A). The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996) (per curiam). Applicant pleaded guilty and was sentenced December 19, 2019, and did not appeal. The application was, therefore, due on or before December 20, 2020. This application was not filed until April 19, 2021, approximately four months after the statutory filing period expired, making the application subject to summary dismissal.

It is likely that Applicant will raise the doctrine of equitable tolling as a defense to this motion to dismiss. The South Carolina Supreme Court has held that the doctrine of equitable tolling may be applied when the filing of an application for post-conviction relief is delayed due to prison authorities' processing of documents, if the applicant properly raises the doctrine and the circumstances warrant the application of the doctrine. Mose v. State, 420 S.C. 500, 508, 803 S.E.2d 718, 722 (2017). If an applicant relies upon the doctrine in response to a motion to dismiss, he must "substantiate that the correct and complete application was delivered to prison authorities prior to the expiration of the statute of limitations and that any delay in the Clerk of Court's receipt of the application was due to processing." Mose, at 510, 803 S.E.2d at 723. When an applicant raises the doctrine, the PCR court "should make the fact-specific determination of whether equitable tolling is justified." Mose, at 511, 803 S.E.2d at 723 (citing Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 687 S.E.2d 29 (2009)). When making its determination, the PCR court "should consider any reasonably verifiable evidence of the date the document was purportedly in the possession of prison authorities for purposes of mailing." Id. at 510, 803 S.E.2d at 723. A PCR court that finds that the doctrine applies should toll the statute of limitations until the application was delivered to and received by the clerk of court. Id.; see Barnes v. State, 433 S.C. 399, 859 S.E.2d 260, 262 (2021) (instructing that the filing of an application was complete upon the receipt of it by the county clerk of court).

IV. Response to Applicant's Claims

Applicant raises the claim that he did not knowingly and voluntarily waive his right to direct appellate review of his convictions and sentences. In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that, even though a post-conviction relief court may find that an applicant did not voluntarily and intelligently abandon his right to a direct appeal, the PCR court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40. Although he does not specifically request it, Respondent assumes that Applicant seeks this relief.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Id. at 478 (underlining added). In order to establish that he was prejudiced by counsel's failure to file an appeal, an applicant must show he would have appealed absent counsel's deficient performance. See Id. at 484. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981). Respondent submits that Applicant likely cannot show that he is entitled to relief on this claim but requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248

(1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V. Denial of All Other Claims

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VI. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to S.C. Code Ann. § 17-27-150(a) (2008), an applicant in a noncapital post-conviction relief action may invoke discovery under the South Carolina Rules of Civil Procedure only if granted leave to do so by a court upon a showing of good cause. If Applicant attempts to invoke discovery powers without first obtaining leave to do so by a court upon a showing of good cause, Respondent will oppose those attempts.

VII. Conclusion

WHEREFORE, Respondent requests that the Court convene an evidentiary hearing as to Applicant’s claim that he did not knowingly and voluntarily waive his right to direct appellate review and dismiss all of Applicant’s remaining claims summarily.

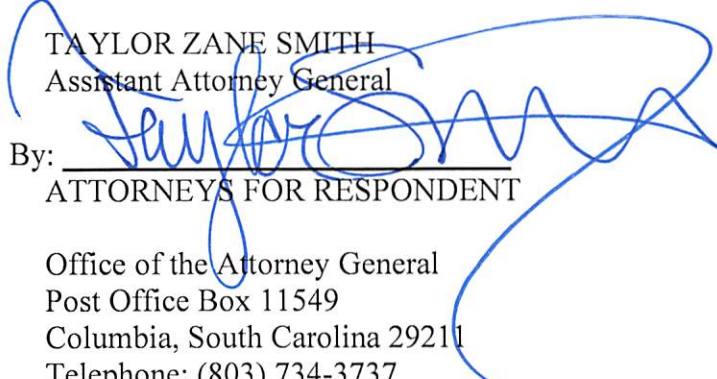
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

August 17, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2021-CP-23-01789
	)	
REYNALDO PIMIENTA, #381958	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

John W Harte, Esquire
John W Harte Attorney At Law, LLC
PO Box 7215
Aiken, SC 29804

DATED this 17th day of August, 2021.



Hannah M. Bradham, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA - COUNTY OF GREENVILLE
THIRTEENTH JUDICIAL CIRCUIT - POST-CONVICTION RELIEF

	)	
REYNALDO PIMIENTA	)	Docket No.
	)	2021-CP-23-1789
Applicant	)	
	)	
V.	)	
	)	Post-conviction relief
	)	Hearing
STATE OF SOUTH CAROLINA	)	
	)	
Respondent.	)	

September 18, 2023
Greenville, South Carolina

B-E-F-O-R-E:

THE HONORABLE GRACE GILCHRIST KNIE

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

John W. Harte, Esq.
Attorney for the Applicant

Dalton Cooper, Esq.
Attorney for the Applicant

Julianna Battenfield, Esq.
Attorney for the Respondent

Interpreter Number 1: Aviel Bat Zion

Interpreter Number 2: Reynerio Romero

Maria DiScioscia, RPR
Official Court Reporter

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I N D E X

<u>WITNESS</u>	<u>EXAMINATION BY</u>	<u>PAGE</u>
REYNALDO PIMIENTA	BY MR. HARTE	20
	BY MS. BATTENFIELD	45
	BY MR. HARTE	47
CHRISTY DIACHENKO	BY MS. BATTENFIELD	51
	BY MR. HARTE	55
RYAN HOLLOWAY	BY MS. BATTENFIELD	57
	BY MR. HARTE	78
WILLIAM GROVE	BY MS. BATTENFIELD	79
	BY MR. HARTE	97

E X H I B I T S

<u>APPLICANT'S</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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2	Judicial Certificates Colombia	43
<u>RESPONDENT'S</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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3	Email dated 12/13/19	69
4	Order of Appointment of Interpreter	53
5	Indictment, Sentencing sheets	65

1 THE BAILIFF: All rise.

2 THE COURT: Be seated.

3 MR. HARTE: Judge, there was a communication
4 between my office and the clerk's office and we were
5 able to arrange for an interpreter. I have not seen one
6 Judge, that fits that description. So I'm a little
7 concerned about that.

8 THE COURT: Okay. First, let's go ahead and
9 call the case and at least get that on the record and
10 then we can make any inquire as to the translator.
11 I know that's handled a little differently in each
12 county, really.

13 So first, let me introduce myself. I am Judge
14 Grace Knie. I'm from the Seventh Judicial Circuit. It
15 is my sincere pleasure to be in this lovely city and in
16 this beautiful courthouse.

17 This is a term of PCR hearings and the matter
18 that has been scheduled for the afternoon session, is
19 Reynaldo Pimienta and this is civil action number
20 2021-CP-23-1789.

21 I see the gentlemen, here, in the courtroom.
22 Are you Mr. Pimienta?

23 MR. PIMIENTA: Pimienta.

24 THE COURT: Good afternoon.

25 MR. PIMIENTA: Good afternoon.

Reynaldo Piminenta versus State of South Carolina

1 THE COURT: Counsel, if you-all would put your
2 appearances on the record, starting with counsel for the
3 State.

4 MS. BATTENFIELD: Yes, ma'am. May it please
5 the Court.

6 Julianna Battenfield with the Attorney
7 General's office.

8 THE COURT: Okay.

9 MR. HARTE: Thank you. John Harte from Aiken
10 South Carolina, I represent Mr. Pimienta. And my
11 associate, Dalton Cooper, is also here with us.

12 THE COURT: And Mr. Cooper, sir, what's your
13 first name?

14 MR. COOPER: Dalton.

15 THE COURT: Dalton.

16 MR. HARTE: Dalton Cooper.

17 THE COURT: It's nice to see you-all.

18 Okay. In that there was something raised by
19 Mr. Harte, let me take that up to begin with.

20 Yes.

21 MR. HARTE: Well, your Honor, my paralegal and
22 also, with me involved, there were a number of exchanges
23 with the clerk of court to arrange a
24 translator/interpreter to be here, because Mr. Pimienta
25 does not speak any English, hardly at all. He's a

1 Spanish speaker. And my understanding was that there
2 was to be someone here to carry that function out. And
3 I know that as late as Friday, I had that confirmed, at
4 least to me, by my paralegal and I don't see anybody
5 here that can do that. So I'm not sure what we need to
6 do about that.

7 Obviously, it's one of the -- one of the basis
8 for the PCR has to do with a translator/interpreter at
9 the previous hearings. So I'm concerned that we don't
10 have somebody here now.

11 THE COURT: Yes, sir. I did review the
12 application and so I'm aware that that was listed as a
13 ground. If you would like a moment to contact your
14 paralegal and find out who that person spoke with in the
15 clerk's office or even just to have the bailiff's find
16 out if there is a translator here.

17 MR. HARTE: I'm just wondering if there might
18 be somebody standing in the hall and doesn't know the
19 courtroom.

20 THE BAILIFF: I can check.

21 MR. HARTE: Your Honor, I'd be happy to step
22 out and do that, but I'd have to turn my phone on. So
23 I'll step out to do that.

24 THE COURT: Yes, sir. Y'all, why don't we
25 just take about 5 minutes and see where we are. Okay.

1 (Whereupon, a short recess was taken.)

2 (Respondent's Exhibit 1, Offer letter
3 dated 6/10/2019, was marked for
4 Identification, as of this date.)

5 (Respondent's Exhibit 2, Email dated
6 10/2/2019, was marked for Identification,
7 as of this date.)

8 (Respondent's Exhibit 3, Email dated
9 12/13/2019, was marked for
10 Identification, as of this date.)

11 THE COURT: Back on the record.

12 MR. HARTE: Your Honor, the individual at the
13 clerk's office did confirm that the translator would be
14 here was Kim Campos-Ivy.

15 THE CLERK: Who did you talk to?

16 MR. HARTE: The Clerk of Court from Greenville
17 County, Kim Campos-Ivy. That name not ring a bell?

18 THE CLERK: No.

19 THE COURT: Counsel, can y'all come up for
20 just a moment.

21 (Whereupon, a brief discussion was held
22 off the record.)

23 THE COURT: Why don't we all take a moment.
24 I'll be back out in a few minutes.

25 (Whereupon, a short recess was taken.)

1 THE BAILLIFF: Remain seated. Court is now in
2 session.

3 THE COURT: Madam, if you'll please come
4 forward. I need to have you sworn.

5 INTERPRETER NUMBER 1: Yes, ma'am.

6 THE COURT: If you'll raise your right hand.
7 If you will, state your name.

8 INTERPRETER NUMBER 1: Aviel Bat Zion.

9 THE COURT: If you'll please spell your name
10 for the court reporter.

11 INTERPRETER NUMBER 1: A-V-I-E-L B-A-T
12 Z-I-O-N.

13 *THE COURT: Do you solemnly swear or affirm*
14 *that you will translate the language that you have been*
15 *request today, in this proceeding, without any additions*
16 *thereto or detractions therefrom, so help you God.*

17 INTERPRETER NUMBER 1: Yes, your Honor.

18 THE COURT: Thank you. Is it going to be
19 easiest for you to be seated next to the gentlemen?

20 INTERPRETER NUMBER 1: Whatever helps the
21 Court.

22 THE COURT: For now, that may work. And if
23 things are going too fast, you just let us know and
24 we'll try to slow it down. I know that it's really hard
25 sometimes to remember there's a translator in the

1 courtroom. The gentleman is going to take the witness
2 stand and at that point, you can come up and stand next
3 to him, wherever you feel comfortable. Okay.

4 INTERPRETER NUMBER 1: Thank you so much.

5 THE COURT: Thank you for being here.

6 Okay. So why don't we now call the case
7 again.

8 We are on the record with regard to the matter
9 of Reynaldo Pimienta. This is civil action number
10 2021-CP-23-1789. This is an application for
11 postconviction relief and although, the clock-mark is a
12 little hard to read. In an order issued, it says that
13 this was filed on April 19, 2021 by the Applicant.

14 So I am happy for counsel for the State, the
15 Respondent, to just call the case and give a very brief
16 procedural history. And then we will turn it over to
17 the Applicant. Okay.

18 MS. BATTENFIELD: Yes, ma'am.

19 May it please the Court. Julianna Battenfield
20 for the State. I neglected to introduce our law clerk,
21 Kayla Kemp earlier.

22 THE COURT: Yes.

23 MS. BATTENFIELD: Judge, these charges stem
24 from May 2000 and Mr. Pimienta was located, finally, in
25 2017 after a bench warrant was issued for his arrest

1 August 12, 2014. I'm going to let the solicitor provide
2 you more information about what happened between 2000
3 and 2014, because he did a lot of work on that.

4 But Judge, he plead guilty on December 19,
5 2019 before Judge Gravely, 2014-GS-23-3268(a) to assault
6 and battery with intent to kill, under the old South
7 Carolina Code 16-03-620. It carried up to 20 years,
8 Judge and he received 17 years, he plead straight up.

9 And then he also plead guilty to
10 2014-GS-23-3268(b) the same day to, possession of a
11 weapon during the commission of a violent crime. He
12 received 5 years consecutive Judge.

13 Judge, as you've said, he did file his PCR
14 application on April 19, 2021. Which, as we raised in
15 return on August 17, 2021, he did file four months late
16 Judge. So under the uniform Postconviction Relief Act,
17 we would, of course, first, argue the statute of
18 limitations under Section 17-27-10 and then the
19 following -- and we'd ask you to rule on that first
20 Judge before we proceed. And I would like to advice the
21 Court that the victim is in the courtroom. Her name
22 Olga Restrepo. She's the woman in the pink back here,
23 Judge. She does not wish to address the Court.

24 THE COURT: Okay, thank you.

25 Before we begin with arguments, the State is

1 requesting that I rule on a statute of limitations issue
2 before proceeding with the merits.

3 Is there a motion to sequester witnesses to
4 ask that the potential witnesses exit the courtroom?

5 MR. HARTE: I don't have a motion to that
6 effect, your Honor.

7 THE COURT: I just didn't want to get too far
8 along with this.

9 MR. HARTE: Certainly.

10 MS. BATTENFIELD: None from the State, Judge.

11 THE COURT: Okay. Mr. Harte, tell me your
12 position as to me deciding the statute of limitations
13 issue at the beginning before the merits.

14 MR. HARTE: First of all, I would respectfully
15 submit that the statute of limitations, given the fact
16 that Mr. Pimienta was confined in a maximum security or
17 at least a moderate security facility during COVID,
18 during which time it was impossible for us to
19 communicate with him --

20 INTERPRETER NUMBER 1: -- your Honor --

21 THE COURT: Okay. Just --

22 INTERPRETER NUMBER 1: When he speaks to me, I
23 have to talk. He's just asking me if he's gonna have a
24 chance to ask questions.

25 MR. HARTE: Yes, that's coming.

1 INTERPRETER NUMBER 1: Yes.

2 THE COURT: And ma'am, if you will, if you'll
3 just raise your hand. I just don't want him to say
4 anything through you --

5 INTERPRETER NUMBER 1: -- that's -- that's
6 what I'm trying to stop.

7 THE COURT: -- that would negatively effect his
8 case. You may have to tell his lawyer, but I thought you
9 were telling us to slow down.

10 INTERPRETER NUMBER 1: Oh, no, no, no. I was
11 -- I have to tell you everything that he says, but I
12 can't talk to him without you hearing what he says.

13 THE COURT: Okay. Well, then you tell him to
14 be mindful that he needs to confer with legal counsel.
15 He's not allowed to talk to me directly at this point.
16 He will be given an opportunity to testify in just a few
17 minutes.

18 MR. HARTE: The position we take your Honor,
19 is that the supreme court suspended, during COVID,
20 virtually, all of the limitations that existed because
21 of the delays imposed by COVID. We believe that this
22 particular application was timely, given the delays
23 imposed upon the Applicant and Counsel by COVID. There
24 was a period of, I don't know how many months, but it
25 was quite an extend period when it was not possible to

1 communicate with him. So I take the position that the
2 application was filed in a timely fashion.

3 Further, your Honor, where at a statute of
4 limitations relief would not serve any useful purpose
5 because it would only result in a subsequent application
6 to present essentially the same issues.

7 So I would respectfully submit that the status
8 of limitations does not apply in this case and that the
9 limitations and the orders from the supreme court
10 extending time and so forth, would apply in this case
11 because it was during the COVID emergency.

12 THE COURT: Let me hear from counsel for the
13 State.

14 MS. BATTENFIELD: Judge, I have no reply.

15 THE COURT: Okay. So y'all do acknowledge that
16 there was some stays in filing --

17 MS. BATTENFIELD: Yes, ma'am.

18 THE COURT: -- by the supreme court. And I
19 don't have -- I used have a stack of those orders,
20 because it seemed like we were getting a new order
21 monthly as things developed. I don't have the timeline
22 with me. I'm not faulting either party for not having
23 the timeline, but I think that the Supreme Court of
24 South Carolina encouraged our judiciary to be flexible.
25 And I also, believe Mr. Harte's statement that that would

1 maybe create another issue to be back before the Court,
2 is also well reasoned. So I don't want you to think
3 that I'm being rude or abrupt, but I generally would
4 take that matter, as well as, all other matters under
5 advisement and review it. But since everyone's here,
6 I'll allow the case to go forward to be most efficient.
7 But if the State is asking for the ruling now, my ruling
8 is that I will allow this to go forward and respectfully
9 deny the Respondent's motion.

10 MS. BATTENFIELD: Yes, ma'am. Very good.
11 Thank you, Judge.

12 MR. HARTE: Thank you, your Honor.

13 THE COURT: Is there anything else before we
14 begin with the Applicant's case?

15 MS. BATTENFIELD: No, ma'am. Other than to
16 inquire as to the Court's preference, if I need to show
17 Mr. Pimienta the transcripts, what is the Court's
18 preference of how to do that? Provide a copy to the
19 translator?

20 MR. HARTE: I have a copy of the transcript,
21 your Honor. We have a copy. I'm not sure what
22 she means by, "show" Mr. Pimienta.

23 THE COURT: I think she means with the language
24 issue.

25 MR. HARTE: We will waive any word-for-word

1 translation of the written transcript, your Honor.

2 MS. BATTENFIELD: Just if I need to refresh
3 his recollection during testimony.

4 THE COURT: Then I think you'll need to hand it
5 to the translator.

6 MS. BATTENFIELD: Yes, ma'am. Thank you.

7 MR. HARTE: Your Honor, if you're ready for me
8 to begin. I believe the Court has a copy of the
9 transcript and I would ensure and offer, what I believe
10 to be an accurate copy of the transcript and I'll show
11 that to the State's attorney.

12 THE COURT: Any objection?

13 MS. BATTENFIELD: No, ma'am. Thank you.

14 THE COURT: And I do have a copy.

15 MR. HARTE: I'll put this into evidence so
16 that you can refer to yours. That would be Applicant's
17 Exhibit 1.

18 (Applicant's Exhibit 1, Trial transcript,
19 was entered into evidence.)

20 THE COURT: Do y'all have any -- I'll allow
21 this to be marked. Is there a sealed copy of it?

22 MR. HARTE: I was not provided a sealed copy
23 of it, your Honor.

24 THE COURT: I know now that everything's
25 digital, it's a little different. I will allow the

1 court reporter to mark that as Applicant's 1.

2 Have y'all already identified other potential
3 exhibits?

4 MS. BATTENFIELD: Yes, ma'am. We have State's
5 1, 2, and 3. I'll introduced all of them through Mr.
6 Holloway.

7 THE COURT: Have they already been marked?

8 MS. BATTENFIELD: Yes, ma'am.

9 MR. HARTE: And this will be my only exhibit,
10 your Honor.

11 THE COURT: Okay.

12 MR. HARTE: And Your Honor, may it please the
13 Court. I would like to call his attention to that
14 exhibit that was just passed up. And in particular, the
15 giving portion of the hearing, the sentencing hearing.
16 And your Honor will observe that the individual who was
17 there to translate was not placed under oath, nor was
18 the translator identified in the record. And I would
19 take the position that the failure to place the
20 translator under oath is a fatal flaw in the
21 proceedings.

22 I understand your Honor is going to take the
23 matter under advisement, but I'd like that to be clear
24 on the record. That we believe that is a fatal flaw in
25 the proceedings and would ask the Court, when you are

1 considering the matter to take that into consideration
2 and grant a new plea hearing on that basis.

3 THE COURT: And can I inquiry -- I don't know
4 that y'all know this, but it is possible that the
5 translator could have been placed under oath earlier in
6 possibly a group setting?

7 MS. BATTENFIELD: Yes, ma'am. That's why we
8 call the clerk of court this morning to testify to that
9 fact.

10 THE COURT: Okay.

11 MR. HARTE: Your Honor, I would -- and that
12 may or may not be so. But if it were so, then it should
13 have been included in the transcript of this record.
14 The failure to include it in the record is not "something
15 that can be subsequently added. The translator is not
16 shown as sworn, that is the record. And we are entitled
17 to consider that the record stands on it's own. And as
18 your Honor, back in the day when Rodney Peoples was
19 holding court and I would be in his courtroom, he would
20 have a line of people up there, because he used to do it
21 shotgun style. We would have to be sure that it was
22 included in each record as to exactly what had occurred.
23 I have to assume from that record, because that is the
24 official record of the Court, that there was no sworn
25 translator and as such, I maintain it's a fatal flaw.

1 THE COURT: And you're dating yourself talking
2 about Judge Peoples.

3 MR. HARTE: Well, sadly, I'll go a little
4 further your Honor. In 1978 to 1981, I was a family
5 court judge and I traveled statewide. I had the
6 pleasure of actually traveling in circuits with Judge
7 Peoples as a special circuit judge and that aged me a
8 good bit right there.

9 Well, then your Honor, that having been
10 said...

11 MS. BATTENFIELD: May I respond Judge,
12 briefly?

13 THE COURT: Yes, ma'am.

14 MS. BATTENFIELD: Thank you, ma'am. First
15 Judge, Mr. Harte, when I first responded to him, he did
16 not raise that on the direct appeal. There was no
17 direct appeal at all and that is a direct appeal matter.

18 Second, Mr. Harte did not raise that in PCR
19 application, so it is not properly before this court for
20 the judge to rule upon. We also did put in our return
21 that we deny any and all claims after our return's been
22 filed and he did not provided us notice of that claim.
23 So we would respectfully argue that's procedurally
24 barred.

25 MR. HARTE: And I would point out that the

1 application includes a number of references to the
2 problems arising from the translator and I think the
3 absence of an oath maybe considered as an element of
4 those very things that are cited there. And it's
5 entirely possible that the absence of an oath is one of
6 the things that lead to the problems with the
7 translator. I don't know that I have to specifically
8 plead every little tiny, tiny, minute underlining fact.
9 But that the pleading clearly shows that the translator
10 had -- that there were a number of problems with the
11 translator. And if the absence of an oath is a factor
12 in that, then I think your Honor can consider that along
13 with other matters that we've raised.

14 THE COURT: Okay.

15 Yes, ma'am. Anything else?

16 MS. BATTENFIELD: I don't believe so Judge.

17 THE COURT: Okay. In ruling on that, I will
18 review Rule 604, as well as, all of the relevant case
19 law, statutory law, and rules of civil procedure
20 regarding postconviction relief matters. Okay.

21 MS. BATTENFIELD: Yes, ma'am.

22 THE COURT: Let's keep moving.

23 MR. HARTE: I will call the Applicant, your
24 Honor.

25 THE COURT: Sir, if you'll please rise. I want

1 you to come forward.

2 Okay, sir. If you'll raise your right hand.

3

4 R-E-Y-N-A-L-D-O P-I-M-I-E-N-T-A, the Witness herein,

5 having been sworn by the Court, was examined and

6 testified as follows:

7

8 THE COURT: And sir, again, I apologize if I'm

9 mispronouncing your name. You are Reynaldo Pimienta?

10 MR. PIMIENTA: Pimienta.

11 THE COURT: Sir, you can put your hand down.

12 He said, "yes" correct?

13 You said, "yes"?

14 MR. PIMIENTA: Yes, yes.

15 THE COURT: I'm going to let you come around.

16 I want you to watch your step. Take your time. To all

17 witnesses, we have water if y'all need it when you get

18 up here.

19 Alright. Direct examination.

20

21 DIRECT EXAMINATION

22 BY MR. HARTE:

23 Q. Just so the record is clear, tell us your full

24 name?

25 A. Reynaldo Pimienta.

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1 Q. Mr. Pimienta, you are currently confined to
2 what institution?

3 A. Kirkland.

4 Q. You were charged in 2000 -- you were charged
5 in 2014 with the crime of assault and battery with
6 intent to kill; is that correct?

7 A. Yes.

8 Q. You are also charged with possession of a
9 weapon during the commission of a crime, a violent
10 crime?

11 A. Yes.

12 Q. In connection with that were you appointed a
13 defender?

14 A. Yes.

15 INTERPRETER NUMBER 1: Yes.

16 Q. (By Mr. Harte:) At that time were you able to
17 speak fluent English?

18 A. No.

19 Q. Are you today able to speak fluent
20 English?par.

21 (Whereupon, the pleadings were
22 interrupted by the Court Reporter for
23 clarification.)

24 THE COURT: Ma'am, if you'll move the
25 microphone over to you, madam translator, so that our

1 Court Reporter can get a clean record. Thank you very
2 much.

3 And y'all can slow it down a little bit.
4 We've got plenty of time. Alright, plenty of time.

5 INTERPRETER NUMBER 1: And I just want to say,
6 I'm sorry that it's redundant. He says, "yes", I have
7 to say whatever he says.

8 MR. HARTE: That's fine. You're good. You're
9 good. You're fine. Everything's fine. Nobody's going
10 anywhere soon.

11 Q. (By Mr. Harte:) Mr. Pimienta, when you met
12 with your defender, how did you communicate with the
13 defender?

14 A. He went to the Greenville Detention with a
15 translator.

16 Q. Did he have the same translator all the time
17 when he was speaking with his defender?

18 A. Yes, always.

19 Q. Were you able to communicate efficiently with
20 that translator?

21 A. Yes. Very good with him.

22 Q. Do you remember how many times you met with
23 your defense attorney?

24 A. Five or six times.

25 Q. Did you give him a full understanding of what

1 had happened in your life leading up to the shooting?

2 A. No.

3 Q. And why not?

4 A. He didn't ask.

5 Q. Were there things that you needed to tell him
6 that you were not able to tell him?

7 A. I told him everything he asked, but he didn't
8 ask me for anything like that.

9 Q. Did you tell him about your depression prior
10 to the shooting?

11 A. No.

12 Q. If he had asked you would you have told him
13 about it?

14 A. Yes.

15 Q. What would you have told him and what would
16 you have said that the depression had to do with the
17 shooting?

18 A. I would have told him that I was alone and
19 depressed. That I met Olga along time ago in New York
20 and we had a relationship. And she was coming here to
21 South Carolina. And through one of her friends, I would
22 reach out to her. She told me that she didn't feel safe
23 with her husband. I told her if she could look for an
24 apartment, I would help with the financial aspects of
25 that to help pay for it and so she came here.

1 After that -- and after that, our relationship
2 started breaking, getting more difficult. I helped her
3 brother come here to the United States and he came to
4 New York. We decided we were going to try to live
5 together after that point. I went to New York with the
6 brother and we lived as a couple together. Then the
7 relationship was very, very, very, good. I got along
8 with both of her sons and with her family.

9 Then I found a job in Columbia and everyday I
10 would travel from Mauldin to Columbia. After that, it
11 became very tiring for me to have to get up so early in
12 the morning. So I started renting a house in Columbia.
13 It was better, because I didn't have to go so far for
14 work and I could see her on the weekends. That was fine
15 for three or four months, but she changed very much with
16 me. She kept distancing herself and distancing herself
17 and she became getting closer to her husband. Before
18 that, she told me --

19 MS. BATTENFIELD: Your Honor, we would
20 respectfully object to relevance.

21 THE COURT: When there is an objection, then
22 he would quit talking so that I can hear arguments
23 regarding that. Okay. There's been a 401 objection as
24 to relevance.

25 Any response Mr. Harte?

1 MR. HARTE: Yes, your Honor. The testimony is
2 leading up to his mental state at the time of the
3 shooting. And the fact that the position we take is
4 that that was not properly investigated or prepared for
5 presentation of the Court.

6 THE COURT: Okay. And you're close to getting
7 there I think?

8 MR. HARTE: I am, very close.

9 THE COURT: While I certainly do understand
10 the objection, I will encourage counsel to move forward.

11 Thank you.

12 Q. (By Mr. Harte:) What we need to know
13 Mr. Pimienta, is what effect did this change with your
14 friend have on you?

15 A. She didn't want to be with me. The love
16 became cold. She didn't feel anything for me. Here I
17 didn't have not even one friend. My only friends were
18 her friends.

19 Q. So being alone as he's describing, did that
20 cause him to become depressed?

21 A. Yes. I enter very profound depression. I
22 felt abandon. I didn't have an appetite. All I would
23 do is get home from work and cry and cry. All --
24 everyone was telling me at my work -- everyone that I
25 work with would ask me, what's happening. But I didn't

1 have anybody to talk with because I was alone. I lived
2 alone.

3 The worst thing is, we didn't have a neighbor
4 on the house that we were living. Nobody asked how I
5 was doing. Nobody to check on me. Nobody to connect
6 with, nobody.

7 Q. Did that effect his ability to make good
8 decisions?

9 A. I couldn't navigate that crisis.

10 Q. Did you communicate any of that to the lawyer
11 who was representing you?

12 A. No, they didn't ask me.

13 Q. Did he ask you for any information about why
14 you alledgedly shot at this car?

15 A. No.

16 Q. If he had asked you what you were doing that
17 day, would you have told him that you were shooting to
18 kill the rider of the car?

19 A. I know that I committed an error. My
20 intention was never, never, to harm. I was just trying
21 to scare her, not kill her. If I wanted to kill her,
22 when her car would have stopped and I would have done
23 it. I would have shot the gun multiple times. I just
24 wanted to frighten her and then I went back to Columbia.

25 Q. Were you ever ask if you wanted to talk to a

1 psychologist or psychiatrist?

2 A. No.

3 Q. What is your profession?

4 A. Medical surgeon.

5 Q. What country did you come from before you were
6 living in the United States?

7 A. I lived in Colombia the Country.

8 Q. Were you able to practice medicine in the
9 United States?

10 A. I came legally to this country to pursue
11 further education. I came here to take an equivalency
12 test so that I can do it here.

13 Q. Was he able to pass the test?

14 A. I tried twice, but because I couldn't speak
15 English, I did not.

16 Q. Did that contribute to his mental state?

17 A. I felt a little bit frustrated. I wasn't
18 depressed because of that, because I was going to study
19 a little bit more and try again.

20 Q. The records from Colombia, do have you any
21 criminal record whatsoever from the State of Colombia?

22 A. No, I have a clean record. And I also lived
23 in Mexico and I don't have a record there.

24 INTERPRETER NUMBER 1: He said, he thinks he
25 has certificates and you have his certificates as well.

1 Q. (By Mr. Harte:) To be clear, when you
2 mentioned earlier that he was traveling from Mauldin to
3 Columbia. He was talking about Mauldin, South Carolina
4 to Columbia, South Carolina; correct?

5 A. Yes, First. Columbia, South Carolina.

6 Q. Before he went to trial or went to plea in
7 South Carolina, was he picked up in the Country of
8 Colombia?

9 A. I did go to Spain and then I did go -- I then
10 I went to Colombia, South America.

11 Q. Was he arrested in South America?

12 A. Yes.

13 Q. How long was he held in jail in South America?

14 A. Fourteen months.

15 Q. Was that counted in his favor in the
16 sentencing?

17 A. His lawyer did tell the judge and the judge
18 was aware of it. But, no, it didn't count towards...
19 Because when the judge said that whenever somebody is
20 extradited back to the United States, in which --

21 INTERPRETER NUMBER 1: He said his lawyer said
22 that that would count towards it.

23 Q. (By Mr. Harte:) But that was before -- was
24 that before that it came before the judge?

25 A. The day of court in front of the judge, that's

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1 when the lawyer said it.

2 Q. Did he rely on that promise that the time
3 spent in the South America jail would count?

4 INTERPRETER NUMBER 1: Clarify, the judge or
5 your client?

6 Q. (By Mr. Harte:) Did Reynaldo --

7 A. Yes. Yes, because the government of Colombia
8 and the government of the United States has an agreement
9 that the United States should accept the time spent in
10 jail in South America.

11 Q. If he had known that the time spent in the
12 jail in South America was not going to count, would he
13 have entered the plea?

14 A. Supposedly the judge said, yes. They said,
15 yes. But when I got to the jail, when I got to
16 Kirkland, it wasn't there. They didn't count it.

17 Q. Okay. But my question is, if he had known it
18 wasn't going to count, would he have entered the plea?

19 A. No, because I did fourteen months. I did more
20 than a year.

21 Q. What did he expect when he came into the
22 courtroom and entered a plea of guilty, what he did
23 expect to happen?

24 A. I thought that the judge, because of what my
25 lawyer had told me, that it was going to be 16 years in

1 jail, but 3 minutes before that, we're going to ask for
2 5 more, the whole thing or the whole charge --

3 MS. BATTENFIELD: Judge?

4 THE COURT: Yes, just one moment. There's
5 been an objection.

6 Yes, ma'am. Please state the objection?

7 MS. BATTENFIELD: I apologize I'm not
8 objecting. We do have an interpreter who is
9 interpreting, from the solicitor's office I believe, for
10 the victim. And she's saying she's not understanding
11 Mr. Pimienta, I just wanted to make the Court aware of
12 that.

13 THE COURT: So there's one mic, right, not two
14 there? So sir, I know that it's awkward, but if you
15 will speak more loudly, that would be great. I don't
16 know if her moving would help because the victim is
17 still seated in the back; correct?

18 MS. BATTENFIELD: Yes, ma'am.

19 THE COURT: We will do our best to have him
20 speak up. I think maybe he's been trying to be quite so
21 the interpreter would speak for the court reporter.

22 INTERPRETER NUMBER 1: I can let him speak,
23 lean back and then I can go.

24 THE COURT: Thank you. We will try. Thank
25 you very much, ma'am for letting us know.

1 Please continue.

2 Q. (By Mr. Harte:) I had asked you, what he was
3 expecting before he came into the courtroom?

4 A. I thought that I was gonna be found guilty,
5 because I had been told -- and that he wanted to clear
6 the problem as quickly as possible, because the victim
7 was --

8 MS. BATTENFIELD: Judge, I'm so sorry. I do
9 apologize. May we approach?

10 THE COURT: Yes. Y'all want to step out into
11 the hall?

12 MS. BATTENFIELD: Yes, if we could Judge.

13 THE COURT: Okay. Everybody give us a couple
14 of minutes. We'll be at ease. Okay.

15 (Whereupon, a brief discussion was held
16 off the record.)

17 THE BAILIFF: Remain seated. Court is now in
18 session.

19 THE COURT: Okay. So counsel has brought to
20 the Court's attention that the Spanish speaking person
21 in the audience either may not be hearing clearly or
22 they believe there may be some errors in translation.
23 And so rather than continuing this, counsel has proposed
24 that the brother of the Applicant can come forward and
25 also be here to act as interpreter if needed, if there's

1 an error. And that the interpreter for the solicitor's
2 office, the lady who is here that told me her name, but
3 I don't remember it.

4 MS. BATTENFIELD: Ma'am, her name is Maribel
5 Alvarez.

6 THE COURT: Ms. Alvarez will listen real hard.
7 She's interpreting for the victim.

8 So let me have -- counsel, is that y'all's
9 understanding and your agreement?

10 MR. HARTE: Yes, your Honor.

11 MS. BATTENFIELD: Yes, ma'am. And if we could
12 have time at the end of his testimony to confer and make
13 sure everybody's on the same page as to what has been
14 said, that would be wonderful.

15 THE COURT: And we are trying to be as
16 efficient as possible. We know a lot of people have
17 been subpoenaed to be here today and court time is so
18 very valuable.

19 I'm gonna ask the brother, sir, if you'll come
20 forward. And I know you didn't anticipate this. The
21 same to you, if you would state your full name.

22 MR. ROMERO: Reynerio Romero.

23 THE COURT: If you'll spell your name please?

24 MR. ROMEO: R-E-Y-N-E-R-I-O, last name
25 R-O-M-E-R-O.

1 THE COURT: If you will raise your right hand.
2 Do you swear or affirm that, first, any
3 testimony that you give will be the truth and that you
4 are also going to be acting as a translator and so do
5 you swear to translate the language in this courtroom
6 for the applicant without any additions thereto or
7 detractions therefrom, sir.

8 MR. ROMERO: I do.

9 THE COURT: And everyone understands that you
10 are his brother.

11 MR. ROMERO: I'm not really his brother. We
12 are related, but not brother's.

13 THE COURT: How are you related to him?

14 MR. ROMERO: His -- he has a niece that is my
15 niece. That's kind of the relationship we have.

16 THE COURT: So you-all are related?

17 MR. ROMERO: Yes, ma'am.

18 THE COURT: And as I understand it, everyone
19 is in agreement with you to do this, even though you are
20 a blood relative. Do you understand?

21 MR. ROMERO: I do.

22 THE COURT: So we thank you. You may put your
23 hand down. And let's get a chair for this gentlemen
24 okay.

25 Sir, if you feel you need to bring something

1 to the Court's attention, raise your hand and I will
2 call on you, okay.

3 MR. ROMERO: Sure.

4 THE COURT: You will be Interpreter 2.
5 We need a chair for this gentlemen.

6 INTERPRETER NUMBER 1: And your Honor, I do
7 want everything to be clean. When they are talking,
8 would I have to translate through?

9 MR. ROMERO: Not for me.

10 INTERPRETER NUMBER 1: No, no. Not him. But
11 for example, I was trained, every little person that
12 talks in the courtroom --

13 THE COURT: Yes, ma'am. Everyone that talks.
14 But it's my understanding that Interpreter 2 will not be
15 speaking unless there's a problem and he will raise his
16 hand to that effect. Okay.

17 MR. HARTE: So the arrangement is your Honor,
18 that if the court appointed translator is accurately
19 translating, then Interpreter 2 will sit silent. If he
20 hears something that he disagrees with, he will let us
21 know and we will straighten it out.

22 THE COURT: Yes.

23 MS. BATTENFIELD: Judge?

24 THE COURT: Yes, ma'am.

25 MS. BATTENFIELD: Would you like to go back to

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1 the beginning and see if there were discrepancies up to
2 this point or just continue on?

3 THE COURT: Let me ask the relative.

4 Sir, is there anything that you feel needs to
5 be corrected up to this point?

6 MR. ROMERO: I don't remember everything that
7 she said, but there was something or some words, not
8 "something" that I don't think she interpreted the right
9 way. But I mean, I cannot point out this is what she
10 did or not do. I mean, there were some.

11 THE COURT: Why don't we do this. At the
12 conclusion, we can talk with the interpreter, the
13 witness, to make sure with the brother present before --
14 I'll let counsel do that.

15 MS. BATTENFIELD: Yes, ma'am.

16 THE COURT: Let's continue on please.

17 MR. HARTE: What I want to do, your Honor, if
18 it pleases the Court. I think the issue arose over some
19 of the translations about what he expected. So I will
20 just start back there.

21 Q. (By Mr. Harte:) Reynaldo, before you came
22 into the courtroom to enter your plea --

23 A. -- today?

24 Q. Not today. Back in December of 2014 -- '19.

25 A. Yes.

1 Q. What had you been told what happened --

2 A. -- 2014 --

3 THE COURT: Wait a minute.

4 Q. (By Mr. Hart:) No, '19. What had he been told
5 was gonna be happening?

6 A. My actual lawyer, he told me that they can ask
7 for up to 20 year sentence. But 4 minutes before that,
8 they had told me they were going to ask for 17 with 85
9 percent and 5 years at 100 percent. So I was in a
10 situation where I didn't know what to do. To hear again
11 what the lawyer told me. That because we wanted to get
12 everything done before the victim, they wanted to finish
13 it before she was inside her country.

14 INTERPRETER NUMBER 2: I couldn't hear what she
15 said.

16 THE COURT: Okay. Can you repeat that please.

17 INTERPRETER NUMBER 1: That they wanted to do
18 it before she left to her country. They wanted to get
19 it over with and we accepted that on the 17th, because
20 he had told the judge that. All of a sudden that had
21 changed, the time, the years.

22 THE COURT: Okay.

23 INTERPRETER NUMBER 2: Excuse me, Miss?

24 THE COURT: Okay.

25 INTERPRETER NUMBER 2: He said: "That maybe

1 accepting the date they proposed, the judge would have
2 -- could have reduced his sentence if he agreed to have
3 that trial --

4 MR. HARTE: -- The plea --

5 INTERPRETER NUMBER 2: -- that plea on that
6 day, on the 19th.

7 MR. PIMIENTA: And to accept as guilty all of
8 the charges.

9 Q. (By Mr. Harte:) When he came into the
10 courtroom, was the interpreter that he had used in
11 talking with his attorney the same interpreter that was
12 in the courtroom?

13 A. No. The last time that I was sentenced they
14 told my they were gonna change the translator. I didn't
15 like that idea because I had a relationship with that
16 interpreter and they were interpreting a hundred
17 percent.

18 INTERPRETER NUMBER 2: (Hand raised.)

19 THE COURT: Yes.

20 INTERPRETER NUMBER 2: Not really a
21 relationship, but he was accustom to her interpreting
22 for him.

23 MR. PIMIENTA: They also told me that the
24 interpreter was Colombian nationality and I told them
25 that I had a little bit of fear because the victim was

1 also Colombian.

2 Q. (By Mr. Harte:) I can't hear you. You have to
3 speak up.

4 A. They had told me that the new interpreter was
5 of Colombian decent and I had a little bit of fear
6 because the victim was also from the same nation.

7 Q. Was the interpreter from the same area of
8 Colombia as the victim?

9 A. I'm not sure, but I said that Greenville's not
10 that big of a place and maybe they might know each
11 other. And no, they said it's not a problem wherever
12 they're from, she is going to do her job.

13 Q. When he was in the courtroom with the
14 interpreter, was he able to understand what the
15 interpreter was saying to him?

16 A. I told her many things. Many things I told
17 her, but she didn't translate it completely. I'm not
18 saying she did it on purposes, but she didn't say what I
19 said.

20 Q. Were those things that she did not get right
21 important?

22 A. Yes, it was important. Yes, it was important
23 because I needed it to be listened too.

24 Q. What was, can he tell us some of the things
25 that she did not tell the Court. Let me back up, just

1 forget that.

2 Can he tell us what it was that she failed to
3 translate to the Court?

4 A. For example, I hold him, to the judge, that
5 the hands you see in chains right now, they bring me
6 shame. I've helped God bring life into the world and
7 after all the --

8 INTERPRETER NUMBER 2: Through all the baby's
9 that he have brought into the world.

10 THE COURT: From Interpreter Number 2, okay.

11 MR. PIMIENTA: I wish they would have known
12 that. Not to say that I was innocent, but to know what
13 I have done for a long number of years. And the
14 translator only said, "Oh, he's a doctor."

15 Q. (By Mr. Harte:) What did your lawyer tell you
16 your options were?

17 A. The lawyer told me that we have three options.
18 One, accept the 17 years. Two, accept as guilty, but
19 not the years. And the third --

20 INTERPRETER NUMBER 2: -- go to trial.

21 THE COURT: Thank you, Interpreter 2.

22 Q. (By Mr. Harte:) What did you decide to do?

23 A. I asked, what do they recommend me to do and
24 they said, that it wasn't my decision. I told him that
25 I liked the second option, to accept as guilty, but not

1 the years. He said maybe, but probably gonna happen if
2 we accept, the judge is gonna give me the years.

3 Q. Did the court reporter (sic) translate to you
4 the Court's instructions about your right to appeal?

5 INTERPRETER NUMBER 2: May I?

6 THE COURT: Yes.

7 INTERPRETER NUMBER 2: (Translated in
8 language.)

9 MR. PIMIENTA: Not the translator or the
10 lawyer.

11 Q. (By Mr. Harte:) So did he know he had a right
12 to appeal?

13 A. There's more. Me, I understood the judge, but
14 I understood him bad. I thought it was 9 years -- 9
15 days to appeal. And that's what I told the lawyer when
16 I meet with him for the first time.

17 Q. Were there facts in the case that you wanted
18 investigated? Were there facts in the case that you
19 wanted investigated?

20 A. The lawyer never investigated anything.

21 Q. Was there a question of whether the bullet was
22 fired at the car or at the victim?

23 A. I had doubt.

24 INTERPRETER NUMBER 2: May I?

25 THE COURT: By Interpreter 2.

1 INTERPRETER NUMBER 2: (Translated language.)

2 MR. PIMIENTA: No.

3 Q. (By Mr. Harte:) Well, "no" what?

4 INTERPRETER NUMBER 2: No, that the lawyer,
5 the public defender --

6 THE COURT: No. He needs to, I guess -- ask
7 him again. Ask the Applicant again.

8 MR. PIMIENTA: No, they didn't ask me. They
9 didn't ask me anything about the case.

10 Q. (By Mr. Harte:) Were other witnesses in the
11 courtroom to hear the translation by the translator on
12 that day?

13 INTERPRETER NUMBER 2: (Hand raised.)

14 THE COURT: Interpreter 2?

15 INTERPRETER NUMBER 2: (Translated language.)

16 INTERPRETER NUMBER 1: That's what I said.

17 "He said, "yes"."

18 Q. (By Mr. Harte:) I don't want him to tell me
19 what they said, but were there questions about the
20 translation by the reporter that day?

21 Were there questions about the interpretation
22 on that day?

23 A. No.

24 Q. Now, did you have mitigating evidence to give?

25 A. No.

1 Q. Did you have things you wanted to say to the
2 judge that you thought would have effected his
3 understanding of what happened?

4 A. Of course, but on the day of court the lawyer
5 didn't ask me anything. They never asked me.

6 Q. Was he allowed to finish his statement to the
7 court?

8 A. Yes.

9 INTERPRETER NUMBER 2: (Hand raised.)

10 THE COURT: Okay, Interpreter 2?

11 INTERPRETER NUMBER 2: (Translated language.)

12 MR. PIMINETA: No.

13 Q. (By Mr. Harte:) Let me ask you to -- I'm
14 looking at Page 20 of the transcript at line 16. And
15 this is leading up to that. This is Mr. Pimienta
16 talking. I want you to translate for him line 16 and
17 then 17 through 19.

18 Is that the way you remembered it?

19 A. (Nonresponsive.)

20 Q. Did the Court interrupt you in your statement?

21 INTERPRETER NUMBER 2: (Hand raised.)

22 THE COURT: Interpreter 2?

23 INTERPRETER NUMBER 2: (Translated language.)

24 MR. PIMIENTA: No, they cut me off. The judge
25 did not let me finish.

1 Q. (By Mr. Harte:) Mr. Pimienta, you mentioned
2 earlier that there was a certificate of you not having a
3 criminal record?

4 A. No, but...

5 Q. Is that the certificate that you have no
6 record in Colombia?

7 A. Yes.

8 MR. HARTE: Your Honor, I would offer this as
9 the next exhibit?

10 THE COURT: Any objection?

11 MS. BATTENFIELD: No objection.

12 THE COURT: Okay. Applicant's Exhibit 2 is in
13 without objection. And that is a certificate of or a
14 prior conviction history with a clean record.

15 (Applicant's Exhibit 2, Prior conviction
16 history, was entered in evidence.)

17 MR. HARTE: That's correct, your Honor, from
18 the Nation of Colombia.

19 Q. (By Mr. Harte:) Mr. Pimienta, what are you
20 asking the Court to do today? What do you want the
21 Court to do?

22 A. Above everything, I want Olga to forgive me.
23 I say that from the bottom of my heart and my soul and
24 that she forgives me. Her, her sons, and all of her
25 family, we get along very good. I don't want to be bad

1 because I can't be bad to somebody that I love so much.
2 And her brother as well, because he's my brother in
3 Christ. Everyday I repent for the sin that I did. I
4 didn't come into this world to cause hurt on anybody. I
5 entered this world to save lives. For that, I'm begging
6 for mercy.

7 Q. Is he asking for --

8 INTERPRETER NUMBER 1: He's not finished yet.

9 MR. PIMIENTA: And for that, I'm asking the
10 judge to look at me with pity -- without pity, because I
11 have a clean record, and I was in a depressed state
12 whenever I was found. And I was alone when they found
13 me abandoned. I know that's not justified, the sin that
14 I committed, but I'm being you to have mercy on me.

15 Q. (By Mr. Harte:) Let me try this. Does he want
16 the Court to grant him a new sentence hearing?

17 INTERPRETER NUMBER 2: (Hand raised.)

18 THE COURT: Second interpreter?

19 INTERPRETER NUMBER 2: (Interpreted language.)

20 MR. PIMIENTA: If it's possible. If they
21 reduce it.

22 Q. (By Mr. Harte:) And is he asking it because
23 there were -- is he asking it because his lawyer failed
24 to investigate his mental state at the time of the
25 shooting?

1 A. Yes.

2 Q. Is he asking for it because there were facts
3 about the shooting that were not properly investigated?

4 MS. BATTENFIELD: Objection to leading, Judge.

5 MR. HARTE: Withdrawn. Withdrawn.

6 THE COURT: Okay. That is withdrawn. No need
7 to rule by the Court.

8 MR. HARTE: Thank you, your Honor. Nothing
9 further on direct examination.

10 THE COURT: Cross-examination?

11 MS. BATTENFIELD: Less than five questions
12 Judge.

13 THE COURT: Sir, you will now answer the
14 questions of the Assistant Attorney General, Ms.
15 Battenfield.

16

17 CROSS-EXAMINATION

18 BY MS. BATTENFIELD:

19 Q. Good afternoon. Did you swear to tell the
20 truth, the whole truth, and nothing but the truth,
21 before your plea hearing?

22 A. Yes.

23 Q. At any point during the plea hearing did you
24 interrupt the judge and tell the judge you weren't
25 understanding or tell the judge the translator was not

1 translating correctly?

2 A. No, because I didn't speak in English.

3 Q. You did have an opportunity to speak during
4 the hearing; correct?

5 A. Yes, I talked. I do.

6 Q. But you never told the judge during that time
7 the translator was not translating correctly?

8 A. I don't speak English.

9 INTERPRETER NUMBER 2: (Hand raised.)

10 THE COURT: Interpreter 2?

11 INTERPRETER NUMBER 2: "I found out later when
12 this man," meaning me, "told me what had happened that
13 day in the Court."

14 Q. (By Ms. Battenfield:) Did you or anyone else
15 in the courtroom that day write a letter to anyone
16 informing them of this at any point?

17 A. No.

18 MS. BATTENFIELD: Thank you. No further
19 questions.

20 MR. HARTE: Nothing in reply, your Honor.

21 Applicant rest, your Honor.

22 THE COURT: I have one question that I needed
23 clarification on and this is coming at me like a tidal
24 wave. I know y'all are in the minutia.

25 In looking at the sentencing sheets, I want to

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1 know if you-all know the date that the Applicant was
2 brought to the United States. Maybe that will come out
3 in the States case.

4 MS. BATTENFIELD: Yes, ma'am.

5 THE COURT: Okay. I'll just sit back and
6 wait. Thank you.

7 Any follow-up questions based on that comment
8 by me?

9 MR. HARTE: Well, your Honor. I have one
10 follow-up question.

11

12 REDIRECT EXAMINATION

13 BY MR. HARTE:

14 Q. Mr. Pimienta, do you recognize these
15 documents?

16 A. No.

17 Q. Do you recognize -- is that your signature?

18 A. But what is this about?

19 Q. Did anyone translate this document for you?

20 A. This one, yes. This one, no.

21 THE COURT: I think we need to move back from
22 the mic.

23 INTERPRETER NUMBER 1: It says, "5 years".

24 This one wasn't translated.

25 Q. (By Mr. Harte:) Who translated the one that

1 has 20 years on it?

2 A. This was here in the courtroom. He told me
3 this was the sentencing of the 17 years. And this one,
4 but I don't remember the 5 years being...

5 Q. Did he sign this before or after the judge
6 entered the sentence?

7 A. Before.

8 MR. HARTE: That's all I have.

9 THE COURT: Counsel, if you will, you may have
10 said it and I missed it, but can you state what you're
11 referring to please.

12 MR. HARTE: I'm sorry. These are the
13 sentencing sheet from the 2014--GS-23-03268(A) and
14 2014-GS-23-03268(B).

15 THE COURT: Thank you, sir.

16 Any thing else from the State with regards to
17 those questions?

18 MS. BATTENFIELD: Not those questions Judge,
19 no.

20 THE COURT: Okay. Thank you.

21 Okay, sir, I don't have any follow-up. Please
22 watch your step. And sir, you can return to the
23 gallery. Thank you so much for your help.

24 So I believe that the Applicant stated that
25 they rested and then they unrest and then I need to know

1 if they are ready for the State to go forward?

2 MR. HARTE: I am indeed, your Honor, thank
3 you.

4 THE COURT: Are there any motions at this time
5 by the Applicant or by the State, Respondent?

6 MR. HARTE: None by the Applicant, your Honor.

7 MS. BATTENFIELD: Would you recommend we take
8 sometime to confer with our various interpreters, Judge,
9 to make sure everything was stated correctly on the
10 record?

11 THE COURT: Sure. Why don't we take about 10
12 minutes. And maybe that will give y'all a chance to
13 step out if you need to as well and stretch your legs.
14 I will do that, but if y'all need more time, you just
15 let me know. I know that this is important.

16 MR. HARTE: Thank you, Judge.

17 THE COURT: Alright, we'll be at ease.

18 (Whereupon, a short recess was taken.)

19 THE COURT: Come to order.

20 Counsel, are we ready?

21 MS. BATTENFIELD: Yes, ma'am.

22 THE COURT: Are there any other matters that
23 need to be put on the record regarding the interpreter?

24 MS. BATTENFIELD: Just to briefly lay the
25 record, Judge. Mr. Harte's office contacted my office

1 on Wednesday of last week inquiring about an
2 interpreter. I informed him that I would call your law
3 clerk and ask about that. We were provided a name. Kim
4 Campos, I believe; is that correct, Mr. Harte? In the
5 clerks office to contact. So I had passed that
6 information onto Mr. Hartes office. Mr. Harte's office
7 contacted the clerk of court's office in Greenville for
8 the court of common pleas and requested an interpreter
9 Judge. That's how we came to have this interpreter here
10 today, Judge. We did communicate about that last week,
11 communicated with the clerk's office in Greenville
12 County for a certified interpreter. That's all.

13 THE COURT: Anything else?

14 MR. HARTE: Not from me.

15 THE COURT: We do appreciate the interpreter
16 being here. Let's keep moving than. Is the Respondent
17 ready?

18 MS. BATTENFIELD: Yes, ma'am.

19 We call Christy Diachenko to the stand
20 briefly.

21 THE CLERK: Ms. Diachenko, please place your
22 left hand on the bible and raise your right hand.

23

24 C-H-R-I-S-T-Y D-I-A-C-H-E-N-K-O, the Witness herein,
25 having been sworn by the Clerk of Court, was examined

1 and testified as follows:

2
3 THE CLERK: Please spell your name for the
4 record.

5 MS. DIACHENKO: Christy Diachenko. Christy
6 C-H-R-I-S-T-Y, Diachenko D-I-A-C-H-E-N-K-O.

7
8 THE COURT: Okay. Direct Examination.

9
10 DIRECT EXAMINATION

11 BY MS. BATTENFIELD:

12 Q. Thank you, Ms. Diachenko for being here today.
13 Ms. Diachenko, what is your profession?

14 A. I am the administrative manager of the
15 criminal records office in the Clerk of Court's office.

16 Q. For the court of general sessions?

17 A. Correct.

18 Q. And how long have you been in that position?

19 A. Since 2008.

20 Q. Are you familiar with the translator
21 qualification rules or guidelines for your office
22 procedure?

23 A. Yes.

24 Q. What are they?

25 A. I assume you're referring to "In-court"

1 procedures?

2 Q. Yes, ma'am.

3 A. If an interpreter is needed for a plea or for
4 a trial typically, the clerk in the courtroom would
5 swear that interpreter in at the time of the plea.
6 However, if the presiding judge opts to do groups of
7 people in a plea, the judge may direct that the
8 interpreter be sworn one time if they're interpreting
9 for multiple defendants who are in a group or
10 potentially if the interpreter has multiple defendant's
11 throughout the day, the judge may opt to have the
12 interpreter sworn in one time to cover the entire day.

13 Q. How are interpreter's chosen to be qualified?

14 A. We receive a list from South Carolina Court
15 Administration, a centralized list of interpreters.
16 It's my understanding that they accept those who are
17 certified or other wise qualified.

18 Now, I don't know all the parameters of what
19 that entails. But I do know that we receive a
20 centralized list and we are directed to schedule
21 interpreters from that list where at all possible.
22 Although, other interpreters off the list are not
23 precluded, but they prefer we go by the list.

24 Q. The habit of your office is to always swear in
25 an interpreter?

1 A. Correct, unless the judge were to direct other
2 wise.

3 MS. BATTENFIELD: Judge, I'm showing opposing
4 counsel the order of appointment, a qualified
5 interpreter for this case. It's dated December 19,
6 2019. It's part of the Court's packet. I'd be happy to
7 introduce it as an exhibit if you'd like.

8 THE COURT: Any objection?

9 MR. HARTE: No objection, your Honor.

10 THE COURT: That's the order of appointment or
11 the order for --

12 MS. BATTENFIELD: Order of appointment. Yes,
13 ma'am. Dated 12/19/19.

14 THE COURT: Okay. That will be admitted as
15 Respondent's Exhibit 4.

16 (Respondent's Exhibit 4, Order of

17 Appointment, was entered into evidence.)

18 MS. BATTENFIELD: Thank you, Judge.

19 May I approach the witness?

20 THE COURT: Yes, ma'am.

21 Q. (By Ms. Battenfield:) Ms. Diachenko, I'm
22 showing you what's marked, "Order of appointment of
23 qualified interpreter dated 12/19/19," with Reynaldo
24 Pimienta's name at the top in the caption. Do you
25 recognize that?

1 A. Yes, ma'am.

2 Q. What is that, I know I just said the name of
3 it but...

4 A. Yes. This is the order for appointment of
5 interpreter for this case. I'm trying to read this
6 clocked date. I'm so sorry, your Honor. It looks like
7 December 20, 2019.

8 Q. Is that the standard form your office uses?

9 A. Yes. This is a form from South Carolina Court
10 Administration.

11 Q. Could you read the name of the interpreter, I
12 believe it's possibly on the second page written in
13 cursive?

14 A. Here's her printed name, Juliana, I don't know
15 how you pronounce her last name. It's spelled
16 S-A-C-C-U-C-C-I.

17 Q. Would anyone use this form that's not been
18 qualified by the Centralized Court of Administration?

19 A. Not to my knowledge.

20 Q. And that's for Mr. Pimienta's plea hearing
21 from your office?

22 A. Correct.

23 Q. Thank you.

24 MS. BATTENFIELD: No further questions. Thank
25 you so much again.

1 THE COURT: Cross-examination.

2 MR. HARTE: Just briefly, your Honor.

3

4 CROSS-EXAMINATION

5 BY MR. HARTE:

6 Q. This has been entered into evidence as the
7 transcript of record from Mr. Pimienta's plea. Would
8 you look at the appearances that's shown there on the
9 first page.

10 A. Yes, sir.

11 Q. Do you see any indication that the interpreter
12 was making an appearance?

13 A. Not listed here.

14 Q. And would you look at the beginning of the
15 document. Would you indicate as to whether or not
16 there's any record notating that the translator had been
17 sworn?

18 A. No, sir.

19 Q. Is there any indication there's a translator
20 doing anything in that record?

21 A. Do you want me to read this whole transcript?

22 Q. Well, if you need too.

23 A. Yes, sir. On page 7.

24 Q. That's where the interpreter appears. It
25 says: "The interpreter"?

1 A. Correct.

2 Q. Prior to that, is there any indication that
3 the interpreter was sworn?

4 A. No, sir.

5 Q. The interpreter is not identified in this
6 document, is she?

7 A. Not up to that point. No, sir.

8 Q. Is it the practice that individuals such as
9 court interpreters are not noticed on the record of a
10 appearances?

11 A. I don't know, sir. I'm not all that familiar
12 with reading transcripts.

13 Q. Let me ask you, this document appears to bear
14 the date of December 19, 2019. And I believe you said
15 it had a file date of December 20th; is that correct?

16 A. I believe that's what the clock date is. Is
17 that the order of appointment?

18 Q. Maybe you can find for me where it's clocked
19 in.

20 A. Right there. It's a little hard to read.

21 Q. Why would that have not been clocked in on the
22 same day as it's being filed?

23 A. The interpreter most likely brought it to our
24 office for filing the next day.

25 Q. The next day?

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1 A. Yes.

2 Q. So that was filed after the proceeding; is
3 that correct?

4 A. Correct.

5 MR. HARTE: That's all I have, thank you.

6 THE COURT: Any redirect?

7 MS. BATTENFIELD: No, ma'am.

8 THE COURT: Any objection to our witness
9 stepping down and being excused?

10 MS. BATTENFIELD: No objection.

11 MR. HARTE: No objection, your Honor.

12 THE COURT: Thank you so much. You are
13 excused.

14 Next witness?

15 MS. BATTENFIELD: Thank you, Judge. At this
16 time we call Ryan Holloway to the stand.

17 THE CLERK: Mr. Holloway, please, place your
18 left hand on the bible and raise your right.

19

20 R-Y-A-N H-O-L-L-O-W-A-Y, the Witness herein, having been
21 sworn by the Clerk of Court, was examined and testified
22 as follows:

23 THE CLERK: Please state your full name for the
24 record.

25 MR. HOLLOWAY: First name is Ryan, last name is

1 Holloway.

2 THE COURT: Okay. Direct examination.

3 MS. BATTENFIELD: Thank you, Judge.

4

5 DIRECT EXAMINATION

6 BY MS. BATTENFIELD:

7 Q. Good afternoon, Mr. Holloway.

8 A. Good afternoon.

9 Q. How are you current employed?

10 A. I'm a prosecutor here in this circuit. I've
11 been here 14 years.

12 Q. Excellent. How are you involved in Mr.
13 Pimienta's case?

14 THE COURT: And I'm gonna ask y'all to
15 remember, we do have a translator.

16 MS. BATTENFIELD: Thank you, Judge.

17 THE COURT: And to slow it down just a bit.
18 Thank you.

19 MR. HOLLOWAY: Well, if you bear with me here,
20 it's kind of a long story. In 2014, I happened to be
21 walking through our office around lunchtime and my boss
22 Betty Strom said she was having issues with an attorney
23 with the federal government on a particular case. It
24 was this case. We had learned from the FBI that the
25 defendant who was on the run, at that point about 14

1 years --

2 INTERPRETER NUMBER 1: Can you slow down,
3 just... I'm sorry.

4 THE COURT: Please, if you don't mind.

5 MR. HOLLOWAY: In the summer of 2014, we had
6 learned that the defendant may be in Spain. And I was
7 asked to help with the paperwork so that if he is found,
8 he could be brought back.

9 Q. (By Ms. Battenfield:) What happened after
10 that?

11 A. Well, there was an odyssey of about three or
12 four years. I say, "odyssey" because the case went
13 through at least four attorneys with the State
14 Department, that's pretty common. We, as part of the
15 process of, in case he's found in a Nation with which
16 the US has a treaty, that we ask the US Marshall's and
17 authorities overseas to issue a notice, a Red Notice.

18 A Red Notice is meant to forbid him from
19 flying anywhere in the world with whom we have a treaty.
20 To give you an example of some of the Nations with whom
21 we don't have a treaty. That's Russia, Iran, North
22 Korea.

23 INTERPRETER NUMBER 1: I'm sorry, what was the
24 other one.

25 MR. HOLLOWAY: North Korea.

1 As a part of the process we had to make sure
2 that our paperwork was perfect. And when I say,
3 "perfect" the State Department Attorneys went through it
4 with a fine tooth comb. If even a numeral is off on a
5 statute number, it's sent back. So we don't want that
6 to happen in case he is found.

7 Q. (By Ms. Battenfield:) Did the case appear on
8 the news at all?

9 A. Yes. In doing my research on this case. I'm
10 not from Greenville County. I was not here in the year
11 2000. In fact, the year 2000, when this happened I was
12 about to go to law school. I learned that this case
13 appeared on various national news shows. Nancy Grace
14 for example was one of them. And the reason why is, Mr.
15 Pimienta was on the FBI's most wanted list.

16 Q. Just to sum up, you became aware of these
17 charges, which were?

18 A. He was charged with the arrest warrants for
19 Mauldin were for ABWIK and the gun charge to go along
20 with that. For whatever reason, they did not seek a
21 charge of discharging a firearm into a vehicle. Because
22 of that, for the extradition process, we could not add a
23 charge according to the attorneys from -- the attorneys
24 I was dealing with, with guidance through this process
25 should he be found.

1 Q. And the charges in 2000 stemmed from what set
2 of facts?

3 A. The set of facts is: In May of 2020 -- I'm
4 sorry, 2000, the defendant had fired into a vehicle
5 belonging to our victim, Olga. She is here in the
6 courtroom. And she had gotten of work. Had driven down
7 one of the main roads. I believe Butler Road in
8 Mauldin. She was in a lane, which either the center
9 lane or the right lane of travel. She came to a stop.
10 The defendant came to the left side of her and fired
11 into the vehicle. One of the bullets shattered her L1
12 and L2 bones to the spinal -- spinal bones and she's
13 paralyzed from the waist down.

14 In this case, the defendant had been stopped
15 nearby by a trooper. The trooper wrote down a tag
16 number, vehicle information. The trooper got a radio
17 call of a shooting nearby. He let the defendant go, not
18 knowing who he was. Not knowing that he was possibly
19 involved in the shooting. And then authorities learned
20 that the vehicle had been rented from, I believe Hertz.
21 I believe it was Hertz in Florida. It was either Tampa
22 or St. Petersburg, I can't recall which city.
23 Authorities called authorities from Mauldin, SLED, FBI,
24 local authorities, called that Hertz location at the
25 airport and asked them not to stop him, but to notify

1 them if he shows up. He showed up, turned the vehicle
2 in and fled. Twice he could have been caught in the
3 year 2000 and the ball was dropped.

4 Q. He traveled to Spain and then Colombia where
5 he was apprehended?

6 A. Yes. There's -- my understanding is that a
7 police officer in Spain learned that he might have an
8 arrest warrant from the United States in South Carolina.
9 He contacted FBI in Spain who then contacted FBI here in
10 the U.S. This was roughly the spring and summer of 2014.
11 Most countries expect that when prosecutors file
12 charges, they send indictments to the grand jury for
13 indictment on the front end. We don't do that in South
14 Carolina.

15 But one of my bosses went ahead and sent
16 indictments to the grand jury. In 2014 he was indicted.
17 We asked for and obtained a bench warrant to go along
18 with the arrest warrants.

19 MS. BATTENFIELD: Judge, I'm showing opposing
20 counsel what's in the Court's packet. It's the
21 warrants, it's the sentencing sheets, the indictments,
22 and also the bench warrant Mr. Holloway was just talking
23 about.

24 THE COURT: Is that all one document that
25 you're showing me -- you're gonna put in all in at once.

1 MS. BATTENFIELD: That would make the most
2 sense to me Judge, but it's up to the Court. I'll ask
3 Mr. Holloway with all them at once.

4 THE COURT: Just show those to --

5 MR. HARTE: No objection, your Honor.

6 THE COURT: That's going to be Respondent's 5.

7 MS. BATTENFIELD: Yes, ma'am.

8 May I approach?

9 THE COURT: Yes.

10 (State's Exhibit 5, Indictment,
11 sentencing sheets, was entered into
12 evidence.)

13 Q. (By Ms. Holloway:) Mr. Holloway, I'm showing
14 you the indictments, the sentencing sheets, the warrant,
15 and the bench warrant. Do you recognize those?

16 A. I do. My boss at the time, Ms. Strom, signed
17 the indictment with two counts. I signed the sentencing
18 sheet, it says December 19, 2019.

19 MS. BATTENFIELD: Judge, pursuant to court
20 rules, those are properly redacted for the Court.

21 THE COURT: Thank you.

22 Q. (By Ms. Battenfield:) Starting with the
23 indictments, what date is on those indictments?

24 A. It was, as far as a true bill date, was April
25 22, 2014.

1 Q. He was indicted for ABWIK and possession of a
2 weapon during the commission of a violent crime?

3 A. Yes.

4 Q. Moving to the bench warrant, what date is on
5 that?

6 A. The bench warrant is dated August 14, 2014.

7 Q. Made international or...

8 A. It was included as a part of the packet that
9 went to our State Department.

10 Q. So international authorities would have been
11 made aware of that?

12 A. Correct. In fact, it took a year for him --
13 for basically the supreme court of his home country to
14 approve extradition.

15 Q. At what, are you aware of the exact date Mr.
16 Pimienta was brought back to the United States?

17 A. Yes. I just looked it -- I actually just
18 looked it up. I don't have these date off the top of my
19 head. December 19, 2018. So one year to the day before
20 he plead guilty.

21 Q. And he plead guilty on December 19, 2019?

22 A. Yes.

23 Q. Exactly one year to the date?

24 A. Exactly one year.

25 Q. What happened -- was Mr. Pimienta in custody

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1 the entire time?

2 A. He was in custody the moment that authorities,
3 and I don't recall the exact city. Once they found him,
4 which I believe was by pinging his cellphone. He was in
5 custody from that point forward.

6 Q. Mr. Holloway, do you believe there's anything
7 else the Court needs to know about those documents in
8 order to make its decision?

9 A. No.

10 Q. Let me ask you quickly with the sentencing
11 sheet. The day of the plea, what did it look like to
12 sign Mr. Pimienta up to plead guilty?

13 We'll talk about the plea negotiations in a
14 second --

15 A. Right.

16 Q. -- but just looking at the specific sentencing
17 sheet.

18 A. It was straight up. We did -- it looks like
19 originally he was going to plead to the offer of 18
20 years. So that box is -- was checked. He decided
21 against that and didn't -- he wanted a straight up, so
22 we scratched out that box and put an X in the
23 appropriate box that showed straight up, no
24 recommendation.

25 It also says that the, under the section for

1 Credit For Time Served, "backdate to October 24, 2017."
2 That is my understanding of the date in which he was
3 placed in custody in his home country.

4 Q. Could you say that again. October...

5 A. October 24, 2017. It's on this document.

6 Q. Why is that date important?

7 A. My understanding is, that is the date in which
8 he was placed in custody in his home country awaiting
9 approval for extradition from there to the United
10 States.

11 Q. And I know we're skipping forward a bit, but
12 to your knowledge and in the plea transcript and at
13 SCDC, was Mr. Pimienta given credit for time served
14 dated from that date?

15 A. Yes.

16 Q. Thank you. Now, I am going to show you what's
17 been premarked at State's Exhibit 1, 2, and 3. Defense
18 counsel has already viewed these, as he's showing me.

19 MR. HARTE: No objection.

20 MS. BATTENFIELD: May I approach.

21 THE COURT: No objection. Yes, ma'am.

22 Q. (By Ms. Battenfield:) What are State's 1, 2,
23 and 3, Mr. Holloway?

24 A. State's 1 is my offer letter dated June 10,
25 2019.

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1 Q. Who would this be directed to?

2 A. To his attorney, Mr. Grove, Will Grove.

3 Q. Mr. Grove was his defense attorney the entire
4 time?

5 A. Yes.

6 Q. With the public defender's office?

7 A. Yes.

8 Q. What's the date on that letter if you haven't
9 said it?

10 A. June 10, 2019.

11 Q. What does this document say?

12 A. It says, "The State would recommend 18 years."

13 Q. Actually, back up a little bit. I apologies.
14 Are these fair and accurate representation of your
15 original plea offer and then emails --

16 A. -- yes --

17 Q. -- sent between you and Mr. Grove?

18 A. Yes. I'm sorry.

19 THE COURT: You need to slow down just as
20 little. I'm sorry, if you will repeat your answer.

21 MR. HOLLOWAY: Sure. Yes. Yes, they are.

22 Q. (By Ms. Battenfield:) Do these appear in the
23 exact form as you have seen them and then forwarded them
24 to my office?

25 A. Yes. The original, State's Exhibit 2, is

1 dated -- it's an email from me to Will Grove, on
2 Tuesday, October 1, 2019. It was the offer over given
3 out two months before he actually did plead guilty. The
4 forwarding date is was Friday --

5 THE COURT: -- slow down.

6 MR. HOLLOWAY: Oh, sorry.

7 THE COURT: Go ahead.

8 MR. HOLLOWAY: Friday, September 15, 2023.

9 Q. (By Ms. Battenfield:) And then State's Exhibit
10 3.

11 A. The email is Friday, December 13, 2019 to one
12 of my bosses, Mr. McMaster and our coordinator with our
13 jail...

14 MS. BATTENFIELD: Judge, at this time we'd
15 move State's 1, 2, 3, into evidence. I don't know if
16 we've already done that.

17 MR. HARTE: No objection.

18 THE COURT: And Counsel has already stated,
19 there's no objection. So these will be Respondent's 1,
20 2, and 3 that have been previously marked.

21 (State's Exhibit 1, Offer letter dated
22 6/10/2019, was marked in evidence.)

23 (State's Exhibit 2, Email dated
24 10/2/2019, was marked in evidence.)

25 (State's Exhibit 3, Email dated

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1 12/13/2019, was marked in evidence.)

2 MS. BATTENFIELD: Thank you, Judge.

3 Q. (By Ms. Battenfield:) Briefly, going back to
4 State's Exhibit 1, the one dated 6/10/2019. What was
5 the offer?

6 A. The offer was 18 years.

7 Q. To both charges?

8 A. To both charges.

9 Q. Concurrent?

10 A. Yes, concurrent.

11 Q. Did Mr. Pimienta through Mr. Grove's respond
12 to this?

13 A. The response from Mr. Grove from June 10, 2019
14 over the next roughly six months was -- my usually
15 discourse with Mr. Grove. He, in my humble opinion,
16 he's one of the best we've ever had in the Public
17 Defender's office. He was very diligent. That's the
18 name he established for himself. And in this case, I
19 saw nothing different about the case. We communicated
20 about the case via email. We also spoke about it in the
21 courthouse. Our office is -- I was in our drug unit,
22 which is on the first. Their office is on the first
23 floor, we often saw each other. So periodically, we'd
24 have conversations about it.

25 Q. In State's Exhibit 2, dated October 1, 2019

1 and October 2, 2019, what did those communicate?

2 A. Mr. Grove asked if I would consider or -- I'll
3 quote him:

4 "Hey, are you willing or able to reduce your
5 offer down to the 15, 16 year range?"

6 "I owe them a visit, and would like to update
7 him."

8 My response was: "I'm sticking with an offer
9 of 18 years for straight up."

10 And I made it clear that, if it's straight up,
11 I would ask for what I wanted, which is 22 years. And
12 in that situation, Mr. Grove also asked for what he
13 wanted. So I really didn't have any specific number.
14 We'd throw it out there to the Judge, whoever the judge
15 would be at that time, ask for what I wanted up to the
16 max. And Mr. Grove would ask for what he felt was
17 appropriate and that's ultimately what happened.

18 Q. I know ABWIK's been abolished, but at that
19 particular time, how many years did it carry?

20 A. It carried up to 20 years.

21 Q. And then the weapons charge carried?

22 A. 5 years.

23 Q. So he was facing up to?

24 A. 25 years.

25 Q. And then State Exhibit 3, what does that

1 communicate, dated December 13, 2019?

2 A. Yes. This is just to let the jail coordinator
3 know, our Deputy -- our Solicitor, my boss, Mr.
4 McMaster, note: "The plea is coming up next Thursday
5 and it should be listed as a special -- a priority
6 case."

7 It mentions, they were aware of this case, but
8 he's left since the last time we talked about it, so I
9 brought up the fact that this is the case from May of
10 2000. "The defendant was brought from a different
11 country, extradited."

12 "The victim would be there."

13 "She's paralyzed."

14 Things like that, just so that they know this
15 would be a case that needed to go that particular day.
16 No snafu's with the transport is what I mean.

17 Q. As a seasoned solicitor, you're aware of
18 working with translators, correct, you've done that
19 before?

20 A. Yes.

21 Q. And in your conversations with Mr. Grove about
22 this case, did he raise any concerns about translators
23 or communicating to his client?

24 A. No. No. Most defense attorney's tell us if
25 there are issues, whatever those issues maybe.

1 Sometimes there's things, especially in a case like this
2 where we can find a solution that was never raised in
3 this case.

4 . And I will add, in this case, that our office,
5 his office, was very diligent, even within 48 hours of
6 complying with our treaty. Which is, he has a right to
7 access to officials from his home country, that office
8 would be in Georgia.

9 Q. After he was extradited back here?

10 A. After he was extradited. Made sure the jailer
11 knew he had a right to a phone call to contact his
12 officials.

13 Q. Moving forward to the date of the actual plea,
14 you might not remember, but was Mr. Pimienta's plea
15 standing alone or was it in a group?

16 A. As I recall it was in a group and it look a
17 while. It's a plea that had took a while, because the
18 victim had things she wanted to tell the Court. And I
19 think more importantly to tell him and I think the
20 transcript bears that out. Also, Mr. Grove had much he
21 wanted to say to present to the Court on behalf of the
22 defendant. And I think the defendant had much and the
23 transcript bears this out, much to say to the Court.
24 It's not very common for someone to be on the run for
25 two decades to be found. I've been handling

1 extraditions for our office for 10 years. I've been a
2 prosecutor for 20 years --

3 MR. HARTE: Objection, relevance, your Honor.

4 THE COURT: That would be sustained. Please
5 proceed.

6 MS. BATTENFIELD: Yes, ma'am.

7 Q. (By Ms. Battenfield:) The date of the actual
8 plea, the victim had been involved this whole time, did
9 she ever waver in wanting to prosecute?

10 A. She never wavered and I'll specify. From --
11 over the years from 2014 to the time that he was
12 brought, he was found and brought to the US, I had met
13 with her at least twice --

14 MR. HARTE: Same objection, your Honor.

15 THE COURT: I'm going to allow that. That
16 would be overruled, but I wouldn't go far beyond this.

17 MS. BATTENFIELD: Yes, ma'am.

18 THE COURT: Thank you. Please continue.

19 Q. (By Ms. Battenfield:) But just the victim in
20 wanting to prosecute for all of these years?

21 A. Yes, yes.

22 Q. Mr. Holloway, are you familiar with the
23 "digital courtroom project"?

24 A. Yes.

25 Q. What is that?

1 A. It's a program that allows for, if there's
2 someone like her to take down a transcript, there's also
3 a digital copy that's made concurrently, simultaneously.
4 Also, if there's no one available to take the
5 transcript, that program is also there for the Court to
6 turn on and it does record and transcribe a hearing.

7 Q. I'm showing you what's been admitted as
8 Defense 1, showing the first page. Mr. Holloway, do you
9 recognize that?

10 A. Yes.

11 Q. What is that?

12 A. It's is a transcript -- transcript of record
13 in this case.

14 Q. Is it marked with any label at the bottom of
15 relevance?

16 A. It's transcribe by Ms. Greene and also DCRP.

17 Q. Meaning what?

18 A. Basically, it's the courtroom program that
19 records a transcript concurrently if there's a person
20 here to take down the transcript.

21 Q. Does that mean anything to you in context of
22 this case and the translator claim?

23 A. What it means is that -- what it means to
24 me --

25 MR. HARTE: Objection.

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1 THE COURT: Yes, sir.

2 MR. HARTE: His opinion is not relevant and
3 this kind of redline of questioning is leading to him
4 and it's not relevant that I can see.

5 MS. BATTENFIELD: In this experience Judge.

6 MR. HARTE: So how's that relevant, your
7 Honor?

8 THE COURT: I think you're going to have to lay
9 more of a foundation and explain to me -- I'm not
10 exactly sure of the point that you're trying to make.

11 Does that mean there was a person in the
12 courtroom handling the equipment or was the judge doing
13 the recording, right?

14 MS. BATTENFIELD: Yes, ma'am. Could you answer
15 that Mr. Holloway?

16 THE COURT: Is that where y'all are headed?

17 MS. BATTENFIELD: Yes, ma'am.

18 THE COURT: I don't know that he would be the
19 proper person to answer that for every occasion.

20 MS. BATTENFIELD: Absolutely.

21 THE COURT: He might be able to say what
22 happens when he has been in the courtroom --

23 MS. BATTENFIELD: -- in his personal
24 knowledge. Yes, ma'am --

25 THE COURT: -- but he does not know the habit

1 and routine --

2 MS. BATTENFIELD: -- generally. Yeah, sure --

3 THE COURT: -- as the person over the court
4 reporting system for the State of South Carolina what
5 court administration would know.

6 MS. BATTENFIELD: Yes, ma'am.

7 THE COURT: Thank you.

8 Q. (By Ms. Holloway:) Mr. Holloway, in your
9 personal experience with the Digital Courtroom Project,
10 has there been a physical person, translator, in the
11 room?

12 MR. HARTE: Objection, your Honor. The
13 digital court reporter does not involve a translator.
14 That's the court reporter that's controlling the
15 recording device. It's not a translator. I don't know
16 what the relevance is. We're all familiar with how the
17 court reporting system works, so I don't know what the
18 relevance is. I'm accepting the transcript as it is.
19 I'm not challenging the transcript. I don't know what
20 the relevance of it is.

21 MS. BATTENFIELD: We're just trying to get out
22 Judge, if whether there was an actual court reporter
23 there that day or just a device. But it's okay if he
24 doesn't know.

25 THE COURT: I think you might need to rephrase

1 because you used the term "translator."

2 MS. BATTENFIELD: Yes, ma'am.

3 Q. (By Ms. Battenfield:) Back to your personal
4 knowledge of that particular day, you might not remember
5 it's been a while. Do you remember seeing a physical
6 person in the courtroom who is a court reporter?

7 A. I don't remember specifically. What I
8 remember is that we were not doing DCRP, it was not
9 advertised amongst us up to that point. It became more
10 commonly used once the pandemic shutdown began.

11 Q. In your personal experience, with translators
12 in the courtroom, have you ever had cases that were
13 unusual to you?

14 MR. HARTE: Objection. First of all, I don't
15 know what qualifications -- I don't know what extent his
16 personal experience has to do with... I don't think
17 that's the way you get it in. I'm not sure what she's
18 trying to get in. The bottom line is, his personal
19 experience is not relevant.

20 MS. BATTENFIELD: I'd be happy to rephrase.

21 THE COURT: Okay. It's hard for me to
22 determine whether or not it's relevant until the point
23 is made. I don't even object to you leading him a
24 little bit, just to see where we can go with his.

25 MS. BATTENFIELD: Sure.

1 Q. (By Ms. Battenfiled:) Mr. Holloway, on the day
2 of December 19, 2019 did anything stick out to you as
3 being usually about the translator?

4 A. No. .

5 Q. And you have dealt with many translators in
6 the past in your official position as an officer of the
7 Court?

8 A. Yes.

9 Q. Mr. Holloway, is there anything else you
10 believe the Court needs to know about this case to make
11 it's decision?

12 A. No.

13 MS. BATTENFIELD: Thank you. No further
14 questions.

15 THE COURT: Thank you. Cross-examination.

16

17 CROSS-EXAMINATION

18 BY MR. HARTE:

19 Q. How many languages are you fluent in?

20 A. Just English.

21 Q. So you wouldn't know if the Spanish
22 translation was right or not, would you?

23 A. No.

24 MR. HARTE: Thank you. That's all I have.

25 THE COURT: Any redirect?

1 MS. BATTENFIELD: No, ma'am.

2 THE COURT: Any objection to this gentleman
3 stepping down?

4 MS. BATTENFIELD: No.

5 MR. HARTE: I have none.

6 THE COURT: Thank you. And may he be excused?

7 MS. BATTENFIELD: Yes, thank you.

8 THE COURT: Thank you, sir.

9 The next witness?

10 MS. BATTENFIELD: Last, but certainly not
11 least, we'd call Will Grove to the stand.

12 THE CLERK: Please place your left hand on the
13 bible and raise your right hand.

14
15 W-I-L-L-I-A-M G-R-O-V-E, the Witness herein, having been
16 sworn by the Clerk of Court, was examined and testified
17 as follows:

18
19 THE CLERK: You may be seated. Please state your
20 full name for the record.

21 MR. GROVE: Will Grove, G-R-O-V-E.

22
23 DIRECT EXAMINATION

24 BY MS. BATTENFIELD:

25 Q. Good afternoon, Mr. Grove. By whom are you

1 employed?

2 A. I work for myself. My firm is Grove Ozment,
3 we opened up about two and-a-half years ago.

4 Q. Back in 2014 to December 2019 by whom were you
5 employed?

6 A. In 2015 technically until 2021 I was in the
7 public defender's office here in Greenville County.

8 Q. What involvement have you had in Mr.
9 Pimienta's case?

10 A. I didn't become involved in his case until
11 either December of 2018 or January of 2019. The public
12 defender's office was appointed to represent him once he
13 arrived here in Greenville County. Through our
14 assignment process, I was assigned within our office to
15 represent him.

16 Q. And he was brought here from Colombia,
17 December 19, 2018 on or about?

18 A. Yes. I hate to quibble, but I don't think it
19 was directly from Colombia. He passed through the
20 federal system and had a few stops along the way, but he
21 was served with these warrants and indictments in
22 December of 2018.

23 Q. And he was housed in Greenville County Jail?

24 A. That's correct.

25 Q. From that time until the plea?

1 A. That's correct.

2 Q. And how many times did you meet with him?

3 A. I heard his testimony earlier estimate five or
4 six and that's probably a fair assessment.

5 Q. Always at the jail or ever WebEx or Zoom?

6 A. No, always at the jail if I remember
7 correctly.

8 Q. Did you always have a translator with you?

9 A. Yes, ma'am.

10 Q. Where did you find that translator?

11 A. Within the public defender's office, I and one
12 other lawyer were appointed almost all of translator
13 cases and so we worked fairly regularly with a couple of
14 different translators and we would rely on them for
15 routine -- not only for sometimes pleas in court, but
16 also routine jail visits or appointments in our office.
17 So contacts that I had with local court certified
18 translators.

19 Q. Give her a second to catch up. So these were
20 certified interpreters in someway or just members of
21 your office?

22 A. No, they were independent contractors. I
23 believe the one in question, her name's Theresa Sampson,
24 would have been the interpreter who met with me at the
25 detention center. She was one of two that we used very

1 regularly for private appointments.

2 Q. When you communicated the nature of the
3 charges to Mr. Pimienta, what was his reaction?

4 A. By the time he and I -- I think our first
5 meeting was in January of 2019. He was aware of the
6 charges by then. We discussed the nature of the
7 offenses, the elements, the potentially punishments. We
8 also discussed bond and whether or not that was
9 something we intended to pursue.

10 And I wouldn't say he was surprised by the
11 charges. I think he was aware of them. We talked even
12 from the beginning fairly frankly about how the charges
13 might be resolved.

14 Q. When talking about assault and battery with
15 intent to kill or ABWIK to him, did you communicate
16 there was an intent element?

17 A. Yes, ma'am.

18 Q. What were his response?

19 A. I don't remember specifically what his
20 responses were, but we talked about elements of
21 committing an assault and an accompanying battery with
22 the specific intent to kill. We talked about the facts
23 of his case and the evidence that would be presented at
24 trial, if we decide to go to trial. And we did talk a
25 couple of times about whether or not trial would be our

1 best option and ultimately, he decided to enter a plea.

2 Q. What Constitutional Rights or I know there are
3 many, so what's your opinion of his understanding of his
4 Constitutional Rights, just with the understanding that
5 we're summing up, the Constitutional Rights?

6 A. Oh, sure. We would have had multiple
7 discussions about his Sixth Amendment Right to counsel
8 and his right to confront his witnesses. His right to
9 remain silent. His right to compel the evidence that
10 the State would other wise introduce against him. I
11 think that he understood all of those things. I knew
12 that his background included work as a physician. I
13 never questioned his competency or his intelligence. He
14 always seemed to understand the conversations that we
15 had.

16 Q. Springing off that point. Did you ever have a
17 mind to raise competency to stand trial?

18 A. No, ma'am.

19 Q. I'm showing what's already been admitted as
20 State's 1, 2, and 3, do you recognize these?

21 A. I recognize 1 and 2. Three I recognize as an
22 email, but I don't think it was one I was ever
23 originally on.

24 Q. What are those?

25 A. Exhibit 1 is plea offer conveyed to me from

1 Mr. Holloway regarding Mr. Pimienta's case obviously.
2 Exhibit 2 are email communications between Mr. Holloway
3 and I regarding Mr. Pimienta's case. And Number 3
4 appears to be a scheduling email within the solicitor's
5 office about scheduling Mr. Pimienta's plea.

6 Q. And the plea offer was?

7 A. The plea offer on Exhibit 1 is 18 years as
8 clarified in Exhibit 2, a negotiated 18 years.

9 Q. Did you communicate those to Mr. Pimienta?

10 A. Yes, ma'am.

11 Q. What did he decide to do?

12 A. We -- I suppose you would say, we rejected
13 that offer and elected to enter a plea with an
14 opportunity to argue for a reduced sentence, with the
15 understanding the State would be recommending something
16 else.

17 Q. I'm showing you what's been admitted as
18 State's 5, specifically the sentencing sheets. Do you
19 recognize that?

20 A. Yes, ma'am.

21 Q. Tell me about how that was filled out with Mr.
22 Pimienta on December 19, 2019?

23 A. So this would have been filled out minutes
24 before, maybe hours before, but probably minutes before
25 entering his plea. I would have explained to him that

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1 the top left portion involves his personal information.
2 Top right portion involves specific case information.
3 The sentence describes specifically the offense. Under
4 that is where the prosecutions signature would go, his
5 signature would go, my signature would go. There are a
6 handful of boxes checked reflecting the procedural
7 history of the case. And then remainder of sentencing
8 sheet would be completed by the judge.

9 Q. Is Mr. Pimienta's signature on either
10 document?

11 A. Mr. Pimienta's signature appears on both
12 documents.

13 Q. What about your signature?

14 A. Yes, ma'am. On both documents.

15 Q. What do those signatures represent in your
16 professional opinion?

17 A. Those signatures represent our understanding
18 of the plea. Our understanding of the charges. And our
19 understanding of the negotiations that would be
20 presented to the judge.

21 Q. Backing up quickly, just to prepare for this
22 again. What did you do to investigate these charges? I
23 know they're really old.

24 A. Sure. Our office -- when I say, "our office,"
25 I mean the public defender's office, where I was

1 employed at the time, automatically generated discovery
2 requests, when a case was opened. So we requested
3 discovery. We received that discovery in the form of
4 written statements, incident reports, thing of that's
5 nature. I reviewed those things. I reviewed them with
6 Mr. Pimienta. He and I discussed the case. What we
7 agreed with, what we disagreed with. We would have
8 talked about how the evidence may impact our decision to
9 enter a plea or go to trial or whether or not we felt
10 the State's negotiations accurately reflected the
11 strength or weakness of the case that they would present
12 if we did go to trial. And through my five, six
13 some-odd meetings with him, we discussed those things.
14 Because the case was nearly 20 years old at the time,
15 there wasn't much in the way of true investigating that
16 you might expect. There was no benefit to sending an
17 investigator to the scene of the crime. There was no
18 pursuit of investigation in that way. But he and I had
19 many discussions about the case and I thoroughly
20 reviewed the evidence.

21 Q. In terms of ballistics, did you do an
22 investigation or did you believe that warranted
23 investigation?

24 A. No.

25 Q. Why not?

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1 A. I didn't think that based on the nature of the
2 State's evidence that that was going to yield any
3 results that would have changed in a meaningful way.

4 INTERPRETER NUMBER 1: I'm sorry. What was that
5 question that you had just asked.

6 THE COURT: Ma'am if you will repeat your
7 question?

8 MS. BATTENFIELD: Sure.

9 Q. (By Ms. Battenfield:) In terms of ballistic
10 evidence, did you do any investigation or did you
11 believe it warranted further investigation?

12 What were the main pieces of evidence in this
13 case that wasn't strongest for the State?

14 A. I did not believe that an investigation into
15 the ballistics would have yielded any meaningful change
16 in the case; either in guilt or innocence or in what an
17 appropriate sentence might be at the time of conviction.
18 The primary strike of the State's case was the eye
19 witness testimony of, at the time, of the alleged
20 victim. Who, I believe, either on scene or in the
21 hospital while undergoing treatment identified Mr.
22 Pimienta as a suspect. And for 19 or so years, never
23 wavered in that identification.

24 Q. Did you believe the State could have proven
25 the intent element at trial?

1 A. Yes.

2 Q. Why?

3 A. There were multiple shots fired. Multiple
4 shots fire from, if I remember correctly, one vehicle
5 into another vehicle from incredibly close proximity.
6 At least one of those projectiles striking the victim in
7 her torso severing her spinal cord or fracturing bones
8 in her vertebrae, I don't remember exactly which, but
9 rendering her paralyzed. Given the weapon involved and
10 close proximity of the shooting, I -- going to trial is
11 always an option, but I did not think that arguing lack
12 of intent would have benefited Mr. Pimienta and
13 ultimately I believe he agreed with that.

14 Q. Did Mr. Pimienta request a meeting with you a
15 day before the plea?

16 A. He may have. I have seen his application
17 where he says that I refused a visit from him, the day
18 before. I don't remember that. If I refused a visit,
19 it would not have been for lack of desire to meet with
20 him. It would have been for lack of resource that I
21 would have been in court that day and unavailable to
22 meet with him. But he and I would have met in the days
23 or weeks leading up to his plea. We would have met the
24 day of his plea; if not, the day before as well.

25 Q. And these meetings were always with a

1 translator?

2 A. Yes, ma'am.

3 Q. Did you discuss with Mr. Pimienta his right to
4 appeal the plea?

5 A. I don't have an independent memory of that.
6 That is a standard thing I discuss with my clients. If
7 he had ever asked about an appeal, I would have
8 explained to him that. I have never failed to file an
9 appeal when a client has asked for one, even if I did
10 not think it was going to be fruitful. But I don't
11 remember specifically whether we discussed that. I'd
12 like to think we would have, but I don't have
13 independent memory of it.

14 Q. Sure. But that was your standard practice with
15 all of your clients for the most part?

16 A. Yes, ma'am.

17 Q. Moving to the day of the plea. How was the
18 translator arranged for?

19 A. Provided through --

20 Q. -- The Court. So you didn't have --

21 A. -- the clerk of court's office.

22 Q. Did you have a say in that translator or was
23 that just standard practice?

24 A. At the time, and it may have changed since.
25 But at the time, it was our responsibility to notify the

1 clerk's office of the need for a translator for a trial,
2 or a plea, or some other hearing. And the clerk's
3 office would go, I think literally, down the list and
4 whoever was next on the list would be notified and if
5 they were available, they would be requested to be here.
6 If they were not available, they would continue down the
7 list until they found a certified translator available
8 to be present for whatever purpose.

9 Q. In all of your experience as a public defender
10 have you worked with translators before?

11 A. Yes, ma'am.

12 Q. Did anything stick out that was unusual to you
13 this day with this translator?

14 A. No, ma'am.

15 Q. Did Mr. Pimienta ever stop you during the plea
16 and ask you anything about the translator?

17 A. Not that I recall. No.

18 Q. Did he make any kind of motion or try to alert
19 anyone in the courtroom he was having trouble
20 understanding?

21 A. No, ma'am. I don't believe so.

22 Q. I'm showing you what's already been admitted
23 as Defense 1. This is the plea transcript.

24 MS. BATTENFIELD: May I approach?

25 THE COURT: Yes, ma'am.

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1 Q. (By Ms. Battenfield:) Starting on page 4.

2 MS. BATTENFIELD: And I am rounding home
3 Judge.

4 Q. (By Ms. Battenfield:) In your understanding of
5 what happened at the plea, did the Court discuss Mr.
6 Pimienta's right to appeal his plea?

7 A. Yes.

8 Q. And that's in the transcript?

9 A. Yes, ma'am.

10 Q. Mr. Pimienta during the hearing, did he -- was
11 he asked by the Court whether he had sufficient time to
12 confer with you --

13 INTERPRETER NUMBER 1: -- I'm sorry. Can you
14 slow just a moment.

15 MS. BATTENFIELD: I'm sorry?

16 THE COURT: Thank you, ma'am. Thank you.

17 INTERPRETER NUMBER 1: You're welcome.

18 Just from that last question.

19 Q. (By Ms. Battenfield:) During the plea, did Mr.
20 Pimienta communicate to you that he, or excuse me, to
21 the Court that he had had enough time to talk to you
22 about the charges?

23 A. Yes, ma'am.

24 Q. Did Mr. Pimienta communicate to the Court that
25 you had answered all his questions he had about the

1 charges --

2 A. Yes, ma'am.

3 Q. -- and the time he was facing?

4 A. Yes, ma'am.

5 Q. Did the Court review the amount of years Mr.
6 Pimienta was facing with him?

7 A. Yes, ma'am.

8 Q. And the nature of the charges?

9 A. Yes, ma'am.

10 Q. And did Mr. Pimienta admit guilt during this
11 plea hearing?

12 A. Yes, ma'am.

13 Q. And he was under oath?

14 A. Yes, ma'am. I think in the factual
15 recitation, the only thing he quibbled with was whether
16 or not they had argued or whether or not he had used
17 threatening words to that effect, but he did not dispute
18 shooting her. He did not dispute anything and admitted
19 his guilt. Yes, ma'am.

20 Q. Mr. Pimienta was made aware that there was an
21 18 year offer on the table well before the day of;
22 correct?

23 A. Yes, ma'am.

24 Q. And the victim, the victim -- was the victim
25 out of the country were this case to have gone to trial

1 at that point, to your knowledge?

2 A. As I remember it, the plea was scheduled
3 because of upcoming international travel, but that
4 travel was temporary. And so if the plea had not gone
5 in December of 2019, it would have gone in February of
6 2020 or March of 2020, some future date. We were not
7 scheduled for a trial, we were scheduled for a plea.
8 And we coordinated around her availability. Same as we
9 would have coordinated around mine I supposed. That if
10 I had court protection, the plea would not have been
11 presented.

12 Q. At this particular point in Greenville County
13 who was scheduling trials?

14 A. The solicitor's office.

15 Q. So the victim being out of town, would that
16 have effected their going to trial at all?

17 A. No, ma'am. I don't want to speak on behalf of
18 the solicitor's office necessarily, but I would not have
19 expected them to schedule this case for trial while the
20 victim was unavailable because of international travel.
21 That was not a realistic trial strategy that Mr.
22 Pimienta and I were going to use.

23 Q. And in your professional opinion, when the
24 victim was speaking, what she said to the Court, how did
25 that effect the case? It's okay if you don't answer

1 that question.

2 A. I'm just trying to think of ways to speak in
3 that are easily translatable. I think what she said was
4 about as defendant-friendly a comment you could have
5 asked for as a defense attorney.

6 Q. Did Mr. Pimienta being cut off by the Court
7 concern you?

8 A. I don't remember that. I have seen it in the
9 transcript, but no. If I felt as though that were going
10 to negatively impact his case or his sentence, I
11 certainly would have insisted on the Court giving him an
12 opportunity to continue his remarks or made some
13 objection on the record.

14 Q. Moving to mitigation, how did you choose what
15 to present?

16 A. Every case is different. And when I present
17 mitigation in a case, I try to think of it in theme and
18 theory, the same way I would a trial; presenting roughly
19 age, gender information never seems to be very
20 impactful. I thought his background as a physician was
21 certainly noteworthy. And I know that he had expressed
22 to me a lot of grief about the process and a lot of
23 shame about what had happened and I wanted to make sure
24 the Court was aware of those things. But I also knew
25 from my discussions with him, that he had very wonderful

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1 things to say on his own behalf and I knew that it would
2 be important not only for his case, but also for him
3 personally, to have an opportunity to present on his own
4 behalf. I tried to present what I thought was
5 appropriate and then make sure to give an opportunity
6 for him to present as well and I thought he did a great
7 job.

8 Q. In terms of prior violence between Mr.
9 Pimienta and the victim and your thoughts towards
10 mitigation, how did that come into play?

11 A. I don't remember - there were none. He had no
12 prior record before. He had no record following May of
13 2020. I suppose the only record he had was federal
14 charges involving fugitive from justice based on this
15 case. But I thought that -- and I think that maybe he
16 presented some information about that. But I thought
17 the stronger mitigation points involved what -- we knew
18 the emotional impact of what the victim was, but also
19 what the emotional baggage that Mr. Pimienta carried.

20 Q. Do you think in your professional opinion, had
21 you presented any testimony about prior violence or the
22 lack of prior violence between your client and the
23 victim that, that would have effected the outcome of the
24 case?

25 A. I don't. Could it have? I supposed. Sure,

1 of course. But I don't think knowing what I know now
2 that that would have impacted the outcome at all.

3 Q. And finally, turning your attention to the
4 plea transcript Page 16. And how there's been
5 discussion today about whether Mr. Pimienta received
6 credit for the time that he served in Colombia. Does
7 the plea transcript speak to that at all?

8 A. Yes. I announced his, for lack of a better
9 term, incarceration date of October 24, 2017. That was
10 the day that he was arrested in Colombia, South America.
11 I believe that I went on to acknowledge that we knew he
12 was not entitled to any of that time. That he was not
13 entitled to time until he was served with the warrants
14 or indictments in this case. But because he had been in
15 incarcerated based on this case, since October 24, 2017,
16 we requested credit back to that date and the judge
17 accepted that verbally in the courtroom and also in
18 writing on the sentencing sheet.

19 Q. Mr. Grove, do you believe the Court needs to
20 know anything else to make its decision?

21 A. No.

22 MS. BATTENFIELD: Thank you very much. Please
23 answer any questions opposing counsel will have for you.

24 THE COURT: Cross-examination?

25 MR. HARTE: Thank you, your Honor.

1 CROSS-EXAMINATION

2 BY MR. HARTE:

3 Q. Afternoon, Mr. Grove.

4 A. Good afternoon.

5 Q. I was a public defender in my day, so I do
6 understand the nature of the animal.

7 A. Oh, sure.

8 Q. With respect to this particular case, I was
9 interested in what the witness for State testified to
10 regarding the interest of Nancy Grace in this case.
11 Were you aware of that?

12 A. Not -- during the course of my representation?

13 Q. Yes, sir.

14 A. Yes, sir. I was aware that the case had
15 previously received a substantial amount of publicity, I
16 suppose. But I don't believe there was much of any
17 publicity after Mr. Pimienta was actually arrested.

18 Q. So was there press present for the plea?

19 A. I don't remember there being, but sometimes
20 there is press and sometimes there's not. I don't
21 remember there being any present that day.

22 Q. One of the things about this case that's --

23 INTERPRETER NUMBER 1: I'm sorry. You said,
24 "present that day." Who was present that day?

25 Q. (By Mr. Harte:) Who did you say --

1 MR. HARTE: Oh, the press. News media.

2 Q. (By Mr. Harte:) What I'm curious about is,
3 when you talk about what might be impactful in a plea.
4 Would you agree with me, that you can never be real sure
5 of what will motivate a judge?

6 A. Absolutely.

7 Q. And one of the things you have to do is pretty
8 much the whole Shabang if you have a serious case. Do
9 you agree with that?

10 A. I supposed, sure.

11 Q. Of course, anytime you put a criminal
12 defendant before a judge and ask him, how he feels about
13 things. Generally speaking, they will always tell you
14 that, they're pretty sorry, won't they?

15 A. (No response.)

16 Q. Most defendant's --

17 A. -- yes --

18 Q. -- most defendant's, tell the judge: "I
19 regret what I did."

20 A. I'm sure there are exceptions, but almost
21 exclusively, yes.

22 Q. That's right. Well, in your practice, how do
23 you make that statement credible to a judge?

24 A. How do you mean?

25 Q. When a defendant comes before a judge and says

1 to the judge: "I am profoundly sorry for what I've
2 done."

3 "I deeply regret it."

4 "I wish it hadn't happened."

5 Given the fact that judges -- as Brother Nash
6 used to say: "There are no atheist in foxholes."

7 Given the fact that that's sort of what is the
8 standard dialog for a defendant. How do you go about
9 making that explanation or that mitigating factor
10 believable to a judge?

11 A. Sometimes it is conduct of the accused
12 following arrest. Sometimes it is prior too. Sometimes
13 it is their very own words. It comes in as lot of
14 different forms.

15 Q. Well, one of the ways to do that is to bring
16 forth to the judge people who know how him and people
17 who observed how this has affected him?

18 A. Sure, that's one of the ways.

19 Q. Why wasn't that done here?

20 A. I don't remember -- but we would have made a
21 conscious decision to approach the case in the manner
22 that we did.

23 Q. So it's fair to state that you made a
24 decision, although there were people who knew him,
25 weren't there?

1 A. Sure. Yeah, yeah.

2 Q. I mean, he had relatives. For example, the
3 gentlemen that came up and took the roll of Interpreter
4 Number 2. You had had conversations with him, didn't
5 you?

6 A. Reynerio Romero.

7 Q. Yes.

8 A. Yes, sir.

9 Q. You had a conversation with him?

10 A. I did.

11 Q. And you knew that he was available to help the
12 Court understand how this had impacted Mr. Pimienta.
13 You knew that didn't you?

14 A. Sure, yes. I think he was living -- maybe he
15 was living in Columbia, South Carolina at the time. I
16 don't remember where he was, but he was relatively close
17 by.

18 Q. But the judge didn't know anything about him,
19 does he?

20 A. No, sir. He does not.

21 Q. And he doesn't know anything about any
22 observations Mr. Romero might have had about his
23 relative as to how it had affected him, true or not?

24 A. Sure.

25 Q. Also, that was interesting to me, is the fact

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1 that Dr. Pimienta is in fact, at medical doctor; is that
2 true?

3 A. That is correct.

4 Q. What, if any, effort did you make to determine
5 when he says, he had delivered many babies. What, if
6 any effort, did you make to determine whether that was a
7 true statement or not?

8 A. I had no reason to doubt it. I didn't feel
9 the need to bolster his credibility and I don't think
10 the Court doubted it either.

11 Q. Don't you think the Court would have been
12 interested to know that in fact, there were people who
13 had been brought into the world by Dr. Pimienta?

14 A. I think that he told the judge --

15 Q. Well, I know he told the judge. But I'm back
16 to the same issue about, there are no atheist in
17 foxholes. If you're going to present a story that the
18 defendant gives, don't you feel some responsibility to
19 help corroborate that story?

20 A. If I don't think that the judge will accept it
21 on it's face, sure. But I had no reason to suspect it
22 and I don't specific it today, that those claims were
23 ever discredited.

24 Q. But you don't know that, do you?

25 A. No, sir. But I also don't know that a piece

1 of paper would have changed anything.

2 Q. I'm not talking about a piece of paper. I'm
3 talking about witnesses. There were live witnesses who
4 knew Mr. Pimienta and knew his history of medical care
5 in his home country, weren't they. And they were
6 available to you, weren't they?

7 A. Yes, sir.

8 Q. But you didn't bring them forward, did you?

9 A. No, sir.

10 Q. Now, as far as you talked about ballistics.
11 When you talk about ballistics, are you talking about
12 determining what gun fired the shell or are you talking
13 about something broader than that?

14 A. I was answering the question in the general
15 sense of the study of projectiles as they leave
16 firearms.

17 Q. How about the line of fire. What about the
18 line of fire in this case, was that relevant?

19 A. In my estimation, no, sir.

20 Q. So it didn't matter to you that rather than
21 being numerous shots, there were only two shots?

22 A. I suppose I considered two numerous. I mean,
23 that's more than one.

24 Q. You think two are numerous?

25 A. Multiple shots.

1 Q. Multiple, generally -- alright. So in your
2 opinion, in your translation of the word, or your
3 definition of "multiple", you mean anything that's more
4 than one is multiple; is that correct?

5 A. I suppose so. Yes, sir.

6 Q. In truth and in fact, there were only two
7 shots that were found. Two shells found in the car.

8 A. I will -- I'm not gonna dispute that. I take
9 you at your word. I don't remember offhand.

10 Q. Well, wouldn't that be something that's
11 important to know?

12 I mean, discharging a weapon into a vehicle is
13 one thing. Discharging a weapon to try and kill
14 somebody is two different things; isn't it?

15 A. Potentially, sure. It can also be the same
16 thing.

17 Q. Can be, but they're not necessarily are.

18 A. No.

19 Q. When you have this man who is a doctor and you
20 said, you didn't feel the need to question his history
21 as a good doctor and as a person who had been a medical
22 provider to people, bringing children into the world and
23 here, you've got him charged with trying to kill
24 somebody. Did that seem like -- did those two things
25 seem to fit together to you?

1 A. On their face, no, but he never once disputed
2 the allegations.

3 Q. I understand he didn't dispute the
4 allegations, but did you consider the fact that that
5 behavior was not consistent with his personal history?

6 A. Yes. Yes, of course.

7 Q. That being the case, didn't you feel some
8 compulsion to ask the question: 'Why is this man, who's
9 been a healer all his life, suddenly involved in a
10 shooting like this?'

11 Did that question cross your mind?

12 A. Yes.

13 Q. Did you consider the possibility that he may
14 have been under some form of psychological pressure that
15 rendered his ability to make a good decision impaired?

16 A. I don't think anyone who discharges a firearm
17 into a vehicle isn't suffering from some amount of
18 psychological pressure or whatever the term was that you
19 used. I don't think he was any different.

20 Q. But even though the level of impairment might
21 not reach the issue of proof, to proof of incapacity to
22 know right from wrong, the issue of psychological forces
23 at play can be a mitigating factor; can't it?

24 A. It can be. And Mr. Pimienta and I talked
25 about the depression that he had been under as a result

1 of the fracture of his relationship with the victim, and
2 I believe that was also discussed. But he, so far as I
3 know, never sought any clinical assistance for that back
4 then or since. There were no records for me to review
5 of that. And I didn't think that a 20 year, after the
6 fact, evaluation was going to be beneficial or change
7 our position regarding trial or plea.

8 Q. Well, that's -- you're a public defender;
9 correct?

10 A. I was at the time. Yes, sir.

11 Q. I understand and a well respected one, that's
12 fine. But the truth of the matter is, that you are not
13 a psychologist or psychiatrist, were you?

14 A. No, I'm not today either.

15 Q. And you were not a forensic psychologist, were
16 you?

17 A. No, sir.

18 Q. You didn't consult one in this case, did you?

19 A. No, sir.

20 Q. So you don't know whether a forensic
21 psychologist looking at this set of facts, looking at
22 the history of this case, looking at what forces were at
23 play in Mr. Pimienta's life, might have been able to
24 give some assistance to the judge in understanding that
25 this was an extraordinarily isolated case of an

1 individual who was under incredible personal depression
2 and fear. You didn't discuss that with any
3 psychiatrist, did you?

4 A. That is correct.

5 Q. Or psychologist?

6 A. Correct.

7 Q. You just assumed, based on your experience as
8 a public defender that there was no point in pursuing
9 that; correct?

10 A. Yes.

11 Q. We don't know what a forensic psychologist
12 might have said about that. And we don't know if that
13 forensic psychologist had come forward and addressed the
14 issue of possible repetitive conduct or anything of that
15 nature, that would lead the Court to believe that Mr.
16 Pimienta was dangerous in the future.

17 We don't have any of that in this record, do
18 we?

19 A. We don't have that in the record, but we have
20 that by the lack of repetitive conduct, right?

21 So this case was 17 years from incident to
22 arrest. And the lack of any law enforcement involvement
23 in any way shape or form in the United States and
24 internationally bolstered what I believed to be, that
25 this was an isolated incident. And I don't think anyone

1 questioned whether he was at risk to reoffend. That
2 never crossed my mind as his lawyer.

3 Q. This sentence was based solely on an intent
4 for vengeance; is that correct?

5 A. I don't want to speak for Judge Gravely, but
6 nothing was presented by the State or by us regarding
7 concerns for recidivism.

8 Q. Exactly. You didn't present anything that the
9 judge could base a decision on as to whether or not this
10 man would likely repeat. You didn't provide any
11 evidence of that, did you?

12 A. I didn't put in any exhibits or have him
13 evaluated by a psychiatrist or psychologist, but I did
14 discuss his lack of prior record and his absolutely
15 absence of any sort of allegations of violence following
16 this. I think the 17 years of, no additional incidents
17 would address that at least to a degree, maybe not to an
18 exhaustive one but...

19 Q. Well, one things for sure, it didn't affect
20 Judge Gravely, did it?

21 A. Don't know.

22 Q. Well, it didn't affect him because he gave him
23 just about the maximum, didn't he?

24 A. Sure. But I don't know that it didn't either.
25 And I can't -- if your question is:

1 "Am I happy with the result of the plea?"

2 The answer is, "no".

3 I wanted -- I think we ask for 12 to 15. And
4 I thought that that was an appropriate request. The
5 fact that the judge didn't issue the sentence that we
6 wanted...

7 Would I do things differently now? Well, of
8 course I would, because we didn't get the result that we
9 wanted. Would those things have made a difference, is
10 not a question that I can answer.

11 Q. What was the caliber of the weapon used?

12 A. I don't remember.

13 Q. Was that important at the time?

14 A. No. The caliber of the weapon would certainly
15 be important to a degree of course. But no one disputed
16 how the incident occurred. And again, identity was also
17 not something that we investigated.

18 Q. But the issue was not identity, not whether it
19 happened or not. The issue was, what was the proper
20 punishment for Mr. Pimienta?

21 A. Correct.

22 Q. That is what that hearing was about?

23 A. Absolutely.

24 Q. And what you gave the judge was your unsworn
25 statement and Mr. Pimienta's statement; correct?

1 A. Sure. As an officer of the Court, I'm sworn
2 to tell the truth, but yeah, I wasn't under oath.

3 Q. That's not exactly correct. You're not
4 exactly sworn to tell the truth. We're obligated to not
5 intentionally mislead the tribunal.

6 A. I guess I take it differently.

7 Q. Well, that's fine. But the fact is, as far as
8 any supporting evidence from relatives or friends or
9 acquaintances, there was none?

10 A. Correct.

11 Q. As far as any supporting evidence to establish
12 the effect of his depression and the factors that had
13 lead him to fire these shots, that was not presented in
14 terms from any professional in the mental health
15 business, was it?

16 A. Correct.

17 Q. Basically, the only thing that judge had was
18 the defendant and his lawyer?

19 A. Yes, sir.

20 Q. But there were a couple of other things that
21 could have been looked at. For example, where did the
22 bullets enter the car?

23 A. Are you asking me?

24 Q. I'm asking you, where did the bullets enter
25 the car?

1 A. I believe one went through the door and one
2 went through the window. Don't quote me on that, it's
3 been many years.

4 Q. Where on the door?

5 A. I don't remember.

6 Q. Was the lady shot with a direct shot or was
7 she shot with a ricochet?

8 A. I'm not sure that I can answer that question.

9 Q. Well, the point at where he's aiming is kind
10 of important, isn't it?

11 A. Potentially.

12 Q. But we don't hear anything about that in the
13 record, do we?

14 A. But we weren't there to have a trial. If we
15 wanted a trial to dispute the intent to kill, we would
16 have had a trial. We are entering a plea and I have
17 done enough pleas to know if we're there to plead
18 guilty, we're going to plead guilty. And if we want a
19 trial, if we want to dispute the elements of the
20 offense, then there's a mechanism for that and we opted
21 against it.

22 Q. Was the intent in this case -- was the intent
23 based on the use of a weapon or was the intent based on
24 his actual intent to kill?

25 A. If we didn't have an intent to kill, I would

1 hope that he would have opted for a trial.

2 Q. Well, one of interesting things about the
3 three options you gave him, you didn't mention anything
4 about a lessor include offense, did you?

5 A. In a trial a lessor included offense is always
6 -- well, not always an option, but when available is an
7 option. I don't remember whether or not -- I remember
8 how exhaustive I would have been in my discussion of his
9 right to a trial. But in the, what I believe you're
10 referring too. The three choices that he
11 expressed/accept, effectively a negotiated sentence,
12 enter a guilty plea straight up, or go to trial. Yes, a
13 lessor include offense would, in his case, potentially
14 be an option at trial and I don't remember -- we would
15 have had a conversation about that if he had ever
16 expressed a...

17 Q. Did you discuss with any members of his family
18 the effect of his refusing to accept the plea?

19 A. Can you clarify your question.

20 Q. Sure. If you have a client that's being
21 offered a plea negotiated deal and he looks like he's
22 going to turn it down, one of things that is customary
23 to do is to talk to his family.

24 A. Sure.

25 Q. And to say to them: "Look, we want to be sure

1 that Mr. Pimienta understands completely what the
2 ramifications of this are."

3 "So let me explain to you what the
4 possibilities are."

5 "Then I want you to talk as a family about
6 what's best for Mr. Pimienta?"

7 You do that all the time, don't you?

8 A. When I think it's warranted absolutely. I've
9 had that conversation numerous times.

10 Q. Well, you had a gentlemen here who was looking
11 at negotiated plea of a total of 18 years. And you knew
12 that if he went to court, the other side was going to
13 push as hard as they could for the maximum. That was a
14 pretty darn serious decision Mr. Pimienta was making,
15 wasn't it?

16 A. Yes, sir.

17 Q. But he had family who could have helped him
18 make that decision, didn't he?

19 A. I guess so. He had family he could have
20 talked to about it, sure.

21 Q. But you didn't do anything to say:

22 "Let's get the family together."

23 "Let's talk about this."

24 "Let's make some decisions."

25 "Let me help you understand what's going on."

Reynaldo Piminenta versus State of South Carolina

1 You didn't do that, did you?

2 A. I don't know that I did, probably not. He and
3 I had those conversations amongst ourselves. I know
4 that he was also having conversations with his family.
5 Because I would get calls from Reynerio saying:

6 "Hey, I talked to Mr. Pimienta."

7 "He would like a visit with you."

8 But we collectively never had those
9 conversations. No, sir.

10 Q. Were there times when he asked you to visit
11 and you didn't do it?

12 A. Probably. Yes, sir.

13 MR. HARTE: Just one moment. No further
14 questions, your Honor.

15 THE COURT: Redirect?

16 MS. BATTENFIELD: No, ma'am.

17 THE COURT: Any objection to this witness
18 being excused?

19 MR. HARTE: No, none, your Honor.

20 MS. BATTENFIELD: None from the State.

21 THE COURT: Anything else from the Respondent?

22 MS. BATTENFIELD: The State rest, Judge.

23 THE COURT: Anything on reply?

24 MR. HARTE: No thank you, your Honor.

25 THE COURT: Summations?

1 You don't have too, but you can.

2 MR. HARTE: I'm happy to do it, your Honor. Me
3 first?

4 THE COURT: Yes, sir.

5 MR. HARTE: Thank you.

6 Your Honor, this is a case that is very tragic
7 in a lot of ways. Not the least of which is, a
8 situation in which the lady involved has been tragically
9 injured and that can never be undone. It goes without
10 saying, that all of us as human beings sympathize with
11 her and wished that it didn't happen. But what strikes
12 me about this is the reality of what happens when
13 lawyers decide for themselves what is going to motivate
14 a judge and do not seek outside help or support.

15 In this particular instance, you got a man
16 who's by all accounts, a medical doctor who brought
17 children into the world and was a healer all his life.
18 Then you have this act, which is totally different from
19 the entire rest of his history. We know a little bit in
20 the record about his depression. We know a little bit
21 more today about what he talked about being totally
22 alone in a foreign country not able to communicate.
23 He's trying to get his medical license. We know a
24 little about that. But what we don't know and what the
25 sentencing judge did not know is, the extent those

Reynaldo Piminenta versus State of South Carolina

1 factors lead him to make a decision which was perfectly
2 horrendous. We also don't really know what his intent
3 was, because if you listened to what he said today. And
4 what he said was, he never intended to hit the victim.
5 He intended to hit the car. Well, transfer intent works
6 fine. But there's a difference in terms of how judges
7 should see that. It's one thing if I'm trying to hit
8 the victim. It's another thing if I'm trying to get her
9 attention and I miss aim. That's a different story.

10 Now, I just simply maintain, your Honor, that
11 there was an inadequate investigation by the public
12 defender. There was an inadequate effort to find
13 support for him in making their presentation to the
14 judge. There was an inadequate opportunity for family
15 and friends to come forward. There was an inadequate
16 education of Mr. Pimienta, so he would know exactly what
17 was happening. And if you listened to what Mr. Pimienta
18 said, he pointed out in several occasions, he said: "I
19 wasn't asked." Well, when you're dealing with someone
20 in a depressed state. Depressed enough to do something
21 totally out of character for his entire life and you're
22 dealing with somebody who has a severe language barrier,
23 you can't rely on them to come forward with the same
24 sort of things that you would with somebody who grew up
25 down the street from you and who knows you personally

1 and can testify in English without having any problem.

2 My point simply being, the presentation before
3 the judge was willfully lacking in depth. It was
4 willfully lacking in investigation. And it was
5 willfully lacking in the fundamental things that defense
6 lawyers do to help persuade a judge to issue a lessor
7 sentence. You cannot appear before a judge with nothing
8 but your defendant and your glim use of words and expect
9 to get a result, because judges are smarter than that.
10 Judges know that everybody's gonna say: "I'm sorry."
11 Judges know that everybody's gonna say: "I wish it
12 hadn't happened." Judges know that everybody's gonna
13 say: "I'm sorry for the victim."

14 But what judges want to hear is, is there
15 support for that?

16 Has he demonstrated remorse in his life.

17 What have the people around him seen and
18 heard?

19 What do the psychologist say about what went
20 on that day?

21 Those are the things that a judge is listening
22 for in trying to achieve a good result, is going to be
23 looking for. When it's not there, when it's not there,
24 you've got a real problem. I used to say when I try
25 cases: "If you don't have a preacher, you've got a

1 problem." Not everybody has a preacher. But when you
2 have somebody who's in a position of Mr. Pimienta, you
3 have to look at every possible opportunity to prove the
4 mitigating factors in the case and that's what was
5 missing here and I think he's entitled to a new hearing
6 on the plea. I think your Honor, that he's also because
7 of the defects in the record that I mentioned earlier,
8 he's entitled to that and he's entitled to a new trial.

9 THE COURT: A new sentencing or trial?

10 MR. HARTE: New sentencing.

11 THE COURT: Thank you.

12 Yes, ma'am. For the Respondent.

13 MS. BATTENFIELD: Yes, ma'am. We would submit
14 the case to the Court, your Honor. You've heard all the
15 testimony today. The most important thing that the
16 State would like to make the Court aware of is: You've
17 heard testimony that Mr. Grove met with Mr. Pimienta
18 with a translator, that I believe he knew or from his
19 own hometown. Mr. Pimienta never complained about or
20 raised an issue that he didn't understand what was going
21 on. Mr. Grove discussed the nature of the charges with
22 him. How much -- all the plea offers, the evidence,
23 everything a reasonable normal defense attorney well
24 within the limits or the range of competency Judge or
25 effectiveness, would do judge. And we would say, of

1 course the translator, the day of the plea was sent to
2 the Court by court administration.

3 Mr. Pimienta did say on the record he was
4 guilty under oath of these charges. He never at one --
5 at any time made the Court or his attorney or anyone
6 aware that day or after, until now, that he didn't
7 understand what was happening that day. We would just
8 ask, Judge, that you would deny the claims.

9 We would like to make the Court aware that
10 Mr. Harte did not raise in the PCR application the time
11 that Mr. Pimienta may or may not have accrued in South
12 America, Judge, in Colombia. He did not raise that in
13 the application, so we would deny that and maintain
14 procedurally barred from here. Although, we have
15 presented testimony that Mr. Pimienta was afforded that
16 time.

17 Second, Mr. Harte did not raise competency,
18 mental evaluation or a Blare Hearing at all in the PCR
19 application. We would argue that's procedurally barred.

20 And lastly, he did not raise sufficiency of
21 the evidence, Judge. Thank you very much.

22 THE COURT: Thank you all.

23 Just to be clear Counsels, the Applicant's
24 exhibits are 2 and -- 1 and 2. And the Respondent's
25 Exhibits are 1 through 5.

Reynaldo Piminenta versus State of South Carolina

1 MS. BATTENFIELD: Yes, ma'am.

2 MR. HARTE: Yes, ma'am.

3 THE COURT: Thank you. I want to say to the
4 victim, as well as, Mr. Pimienta, I know this is
5 extremely important to everyone and I take it very
6 seriously. I'm going to review everything again. I did
7 read beforehand and now I get to read again with the
8 benefit and wisdom of meeting and seeing you-all and
9 hearing your testimony. I also want to commend counsel,
10 Ms. Battenfield, Mr. Harte, Mr. Cooper, thank you-all
11 for your efficiency and your presentations. I don't
12 think that people normally understand how difficult it
13 is to put this together. And I know that neither of
14 these attorneys live in Greenville and have to travel a
15 very long distance to be here and set up in a place
16 they're not familiar. And while Greenville is very
17 hospitable, it is still different from going down the
18 street to the courthouse you're normally in and dealing
19 with the people that you're normally dealing with. So I
20 commend you-all on your professionalism, you efficiency.
21 I will issue my ruling in writing to you-all as quickly
22 as I can. Good luck to you all.

23 (Whereupon, the above-captioned hearing
24 was concluded.)

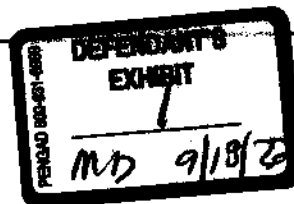
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C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Greenville, South Carolina, on the 18th day of September, 2023.

I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.

Maria DiScioscia
Official Court Reporter



1 STATE OF SOUTH CAROLINA

2 COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,
5 PLAINTIFF,

6 VS.

7 REYNALDO R. PIMIENTA,

8 DEFENDANT.

TRANSCRIPT

OF

RECORD

2014-GS-23-3268A

2014-GS-23-3268B

9
10 December 19th, 2019
11 Greenville, South Carolina

12
13 B E F O R E:

14 THE HONORABLE PERRY H. GRAVELY, Judge.

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

16 WILLIAM R. HOLLOWAY
17 ASSISTANT SOLICITOR
18 Attorney for the State

19 WILLIAM E. GROVE
20 ASSISTANT PUBLIC DEFENDER
21 Attorney for the Defendant

22
23 Transcribed by Pamela E. Green, from
24 DCRP, Digital Courtroom Recorder Project
25

I N D E X

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(WHEREUPON, there were no exhibits marked during this hearing.)

P R O C E E D I N G S

1
2
3 THE CLERK: Your Honor, in the case of 2014-GS-23-3268
4 A and B, the State versus Reynaldo R. Pimienta indicted for
5 assault and battery with intent to kill, and possession of a
6 weapon during the commission of a violent crime. Pleading
7 to assault and battery with intent to kill, and possession
8 of a weapon during a violent crime, and these are true
9 billed.

10 (WHEREUPON, the Defendant was placed under oath at this
11 time.)

12 THE CLERK: Thank you.

13 THE COURT: All right. Are you Reynaldo Pimienta?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: How old are you?

16 THE DEFENDANT: Fifty-five years of age.

17 THE COURT: And how far did you go in school?

18 THE DEFENDANT: I did eight years of school. College.

19 MR. GROVE: He was a -- he's a physician, Your Honor.

20 THE COURT: Okay. Are you under the influence of any
21 alcohol, drugs, or medication today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Any health or mental issues which would
24 keep you from understanding what's going on?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. And your cases have been sent
2 to the Grand Jury and true billed, but, but you have certain
3 Constitutional rights which you're giving up by pleading
4 guilty.

5 You have a right to a jury trial. You have a right to
6 make the State prove its case against you beyond a
7 reasonable doubt, and you're presumed innocent up till that
8 point. You have a right to confront all of your witnesses
9 against you. You have a right to examine all evidence
10 against you. You have a right to remain silent, and that
11 can not be used against you.

12 In other words, if you went to trial, and you decided
13 not to testify, then that -- the jury would be instructed
14 they could not consider that.

15 You understand each of these rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you realize that you're waiving these
18 rights by pleading guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. And you have a right to appeal
21 your sentence and your plea. But you'd have to do so in
22 writing within 10 days.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Have you had sufficient time to

1 talk with your attorney, Mr. Grove, about your case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has he, has he answered all your questions
4 and done all the investigation which you felt was
5 appropriate?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you completely satisfied with his
8 representation of you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Any complaints against Mr. Grove or anybody
11 in his office?

12 THE DEFENDANT: No.

13 THE COURT: All right. You have a charge of assault
14 and battery with intent to kill, which carries up to 20
15 years, and a possession of weapon during a violent crime,
16 which carries a mandatory five years.

17 Okay. You understand each of these charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And how do you wish to plead?

20 THE DEFENDANT: Guilty.

21 THE COURT: To both charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Also I, I notice that -- maybe
24 because it's old, they, they have negotiated sentence, but
25 this is a recommendation.

1 SOLICITOR HOLLOWAY: Yes, sir.

2 THE COURT: Correct?

3 MR. GROVE: That's correct, Your Honor.

4 SOLICITOR HOLLOWAY: Your Honor, it's -- I'm sorry.

5 It's, it's straight up.

6 THE COURT: Okay. Straight up.

7 SOLICITOR HOLLOWAY: Yes, sir.

8 THE COURT: All right. So, I am changing this form
9 where it previously said negotiated, and then I'm indicating
10 that it's without negotiation or recommendation, and you
11 understand that, Mr. Pimienta?

12 MR. GROVE: If I can explain that?

13 THE COURT: Right. You want to talk to him.

14 (Pause.)

15 MR. GROVE: Thank you, Your Honor.

16 THE COURT: All right. So, you understand that we have
17 changed the form you signed to say without negotiation or
18 recommendation?

19 THE DEFENDANT: Okay. Yes. Yes.

20 THE COURT: And you wish to still go forward on this
21 plea?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. You realize that you're looking at a
24 maximum of 25 years on these charges?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Has anybody promised you anything or
2 threatened you to plead guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you pleading guilty freely and
5 voluntarily?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. I'm gonna hear the facts from
8 the Solicitor's Office. Then I'm gonna ask if you -- you
9 need to listen up. So, I'm gonna ask if you agree with
10 them.

11 SOLICITOR HOLLOWAY: Yes, sir, Your Honor.

12 To say the least, this day has been a long time coming.
13 On May the 11th, 2000, around 5:40AM, this Defendant
14 followed the victim as she left work, pulled beside her at a
15 traffic light, and fired two rounds---

16 THE INTERPRETER: I'm sorry, Your Honor.

17 SOLICITOR HOLLOWAY: I'm sorry.

18 THE INTERPRETER: The interpreter is behind.

19 SOLICITOR HOLLOWAY: Sure. We're good?

20 THE INTERPRETER: Followed the victim?

21 SOLICITOR HOLLOWAY: Followed the victim, and pulled
22 beside her at a, at a, a light. He then fired two rounds
23 from his gun into her vehicle. This occurred on -- in the
24 area of North Main Street in Mauldin. Two of the bullets
25 entered her vehicle, and one of those, those bullets entered

1 her left side, and struck her, her back.

2 Okay. The victim was able to identify this Defendant
3 as the shooter to the first officer on scene, and, over the
4 past 19 years, she has consistently said he is the one who
5 shot her. He was actually stopped for a traffic violation
6 nearby. That officer filled out about half a ticket
7 including his name and tag number.

8 THE INTERPRETER: I'm sorry. But the officer --?

9 SOLICITOR HOLLOWAY: The officer filled out half of a
10 traffic ticket including his name and tag number. That tag
11 number was to a car he rented in Florida.

12 Okay. The officer got the call for the shooting and
13 let him go. An employee at a nearby store, as well as a
14 passerby who called the police, also provided information.

15 After her, her surgeries that same day, she told the
16 police she was married to a -- this other gentleman, and
17 broke off an affair with this Defendant. In the days since
18 the, since the breakup, the Defendant harassed her and her
19 husband.

20 In the intervening years, the car rental location did
21 not tell the police -- okay. Did not tell the police when
22 he dropped off the car.

23 In the intervening years, to give you the -- the Court
24 of this investigation---

25 THE COURT: Well, as far as the facts though, that's

1 all the facts that relate to---

2 SOLICITOR HOLLOWAY: Yes, sir.

3 THE COURT: Hold on.

4 SOLICITOR HOLLOWAY: She did -- she is paralyzed from
5 the waist down.

6 THE COURT: Well, let me question him on the facts---

7 SOLICITOR HOLLOWAY: Sure.

8 THE COURT: ---and then I'll be glad to get into---

9 SOLICITOR HOLLOWAY: Sure. Thank you, Your Honor.

10 THE COURT: All right. Mr. Pimienta, you heard the
11 facts as far as the, the case of -- you agree with those
12 facts?

13 THE DEFENDANT: The only thing I am not agreeing with
14 is I never threatened her.

15 THE COURT: Okay. But other than that, the charge --
16 the facts for the assault and battery with intent to kill
17 and possession of a weapon during a violent crime, you agree
18 with those facts?

19 THE DEFENDANT: Yes. Yes.

20 THE COURT: And you still wish to plead guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. I will accept your plea. I
23 find that it's been knowingly, intelligently, and
24 voluntarily made with the advice of competent legal counsel
25 with whom you've indicated you're satisfied with his

1 representation, and that there's a substantial factual basis
2 for the plea.

3 All right. Also, your assault and battery with intent
4 to kill is designated as a violent and a most serious
5 charge.

6 All right. And you realize that this will have an
7 affect on your parole eligibility, and, in the event that
8 you should ever get another conviction for most serious,
9 then, then you could be looking at a, a possible sentence of
10 life without parole, and you understand this, and still wish
11 to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Now what I will do is I'll hear the,
14 the record, jail, all the additional information, and be
15 glad to hear from the victim, and then I'll hear from the
16 defense.

17 SOLICITOR HOLLOWAY: Yes, Your Honor. He has no prior
18 record. The victim is here. I would like to add a little
19 bit about the investigation.

20 THE COURT: Right.

21 SOLICITOR HOLLOWAY: I'll be brief.

22 THE COURT: I'll be glad to hear from that now.

23 SOLICITOR HOLLOWAY: Your Honor, in the past, until he
24 was picked up in October, 2017, this case was worked by the
25 City of Mauldin. This case was worked by the FBI, U.S.

1 Marshals, authorities in Florida at the time. I got on, on
2 this case in 2014 when the FBI received intelligence he
3 might be in Spain.

4 We did get a, a, a Red Notice at -- in 2016. Yet, he
5 was still able to fly to his home country in South America.
6 How he was ultimately found is I believe that when
7 Investigator Ben Ford notified Trey Gowdy's Office,
8 Congressman Gowdy, I believe that the FBI in South America
9 really got cracking on trying to find him.

10 They found that he had subscribed to a cell phone.
11 They then pinged the cell phone and they found him.

12 The bullet that struck her spinal, spinal column, it
13 fractured the L1/L2 vertebra. She's been paralyzed for 19
14 years, six months, and five days as of today. That is 7,161
15 days she has sat---

16 THE INTERPRETER: 7,100?

17 SOLICITOR HOLLOWAY: 161 days that she has waited for
18 this day patiently. I have met with her six or seven times
19 since 2015, and every time, after about 20 to 30 minutes,
20 pain from the bullet wound seizes her body, and she does
21 writhe in pain.

22 We believe, based on these facts, he deserves a
23 sentence of 22 years. It's a significant sentence in light
24 of everything that he has put this victim through for nearly
25 two decades.

1 Thank you, Your Honor.

2 THE COURT: Does the victim want -- wish to be heard?

3 SOLICITOR HOLLOWAY: Yes, sir.

4 THE COURT: All right. I'll be glad to hear from you,
5 ma'am.

6 THE VICTIM: Okay. Reynaldo. Reynaldo.

7 THE COURT: No, you need to be -- address the Court.

8 THE VICTIM: I thank God today cause the -- God's time
9 is perfect. God, God responds and he does everything
10 perfect.

11 I was told to say or to prepare what I was going to say
12 in Court, and the only thing that I have to say is that, on
13 that day, that Reynaldo took a handgun to shoot me. I don't
14 remember if it was two, three, four, five shots. I didn't
15 die on that day. That day God always gave us an opportunity
16 every single day to know of him, and he has made me a new
17 person.

18 He gave me the, he gave me the opportunity to meet God,
19 and when it is time for me to die, and he knows -- and she
20 knows where she's going. And that's why I wanted to give
21 something to Reynaldo because this is a beautiful day so he
22 can start again.

23 We can, we can all be -- I'm sorry. Forgiven --
24 forgive somebody from all the mistakes that we made. And
25 God has forgive me and then, if God has forgive me, I will

1 forgive also. We can be free and Reynaldo is -- he was free
2 for all these years like he don't -- didn't have the true
3 freedom.

4 So now his days are good opportunities for -- God is
5 giving him opportunities for -- so he can have a real
6 freedom. And then all, all the strength that God has given
7 me, and he has given me a lot of peace and love. He has, he
8 has freeded (sic) for all of the mistakes that I have made,
9 and he has given me his whole spirit, peace, love, a lot of
10 patience being a good person, become a lot of faith, and a
11 lot of goodness, and self-control.

12 In those days when this happened, which you have -- if
13 we had God in our hearts, and we have let him guide our
14 lifes (sic), we would not be thinking of hurting somebody
15 else. That is why today, and I have waited for this day,
16 today is the day that I give you this Bible so you can
17 put -- so you can start knowing what is God and who that is.

18 And he -- we are made free and make new people in God's
19 word, and he gave us -- God gave us the opportunity from
20 here from earth to -- yes, to die. Thank you for your love
21 and thank you for your misery, and, Reynaldo, the only thing
22 that I have for you, and I hope you will come free, and, if
23 you want, you can accept this Bible, the word of God.

24 THE COURT: All right. Thank you. And I'm sorry what
25 you've been through on all of this.

1 All right. Anything else from the State?

2 SOLICITOR HOLLOWAY: No, thank you.

3 THE COURT: Mr., Mr. Grove, be glad to hear from you
4 and your client.

5 MR. GROVE: Goodness.

6 I know that Reynaldo has, has talked a lot with me in
7 the days, and weeks, and months leading up today out of
8 concern, obviously, for the sentence that would be imposed,
9 but also out of concern for how he would be received by
10 Olga, and while -- based on his actions, and based on the
11 flight, and, and based on the length of time that he was
12 gone, it, it might be hard to believe, but he has expressed
13 to me the guilt and shame that, that he has carried with him
14 about that day.

15 None, none of that excuses his behavior that day, and
16 what I'm prepared to say, I don't, in any way, intend to be
17 received as projecting blame anywhere else but right here.
18 The -- and, and I think Reynaldo wants that to be clear as
19 well that he is responsible for his actions. Not anybody
20 else.

21 What I can tell you about him is, prior to this
22 incident, he was living in New York. At some point he
23 started a relationship with the victim and moved down here
24 to this area, and, ultimately, obviously, that relationship
25 did not work, and he, in talking with him, he talks about

1 becoming incredibly depressed and alone and, and not really
2 knowing what to do or where to go, and that that depression
3 led to the worst thing by far. I mean, by leaps and bounds,
4 the worst thing that he has ever done.

5 I think that that is clear by his entire lack of record
6 leading up to this, and, obviously, a lack of record after
7 this. If he had ever been arrested following this day, we
8 would of obviously been identified, and apprehended, and,
9 and returned here to face these charges at any previous
10 time.

11 He has a 10 year old daughter, and, again, this doesn't
12 excuse anything that he did back in May of 2000 or any time
13 since. But I can certainly understand how he was, I, I
14 think, at least, there was never a good time for him to turn
15 himself in, that -- I think he was always trying to, after
16 he ran because he was scared and terrified of what he had
17 done, I think that he tried to put himself in a position
18 where he would be better off or more well received when he
19 was ultimately apprehended to try and mitigate the
20 situation.

21 And when you find yourself in that position, tomorrow
22 is always a better day to do it than today. And, and I
23 think that he had lots of I'll try and fix this tomorrows,
24 and just ultimately was never able to put himself in that
25 position, and, and ultimately turn himself in to face these

1 charges.

2 He was arrested in Colombia, South America on October
3 the 24th of 2017. I'm asking Your Honor to consider
4 giving him credit back to that day.

5 The charge that he was arrested on, and I'm probably
6 not gonna say it right, but I believe it is fleeing a
7 jurisdiction to avoid prosecution, which is, effectively, a
8 bench warrant in Federal Court, and that charge arose out of
9 this charge. The, the basis for the Federal charge was
10 these, these two charges in Greenville, and, and, because
11 they are so intertwined, I'd ask Your Honor to consider
12 giving him all of that credit.

13 I have explained to him the law says he is only
14 entitled to credit back to December the 20th of 2018 when
15 he was actually served with these two indictments. But
16 because of the related nature of the two charges, I -- I'd
17 ask you to, to consider giving him 787 days of credit is the
18 math I believe rather than 365 days.

19 I have talked with a couple of lawyers in Federal
20 Court, and I confirmed that charge, the Federal charge, was
21 dismissed the day he was brought here. The only purpose of
22 that charge was to force him in a situation to where he
23 would be served with these warrants or indictments I
24 suppose.

25 I could go on for hours about all of the wonderful

1 things that I know about Reynaldo that sort of highlight how
2 incredibly unusual this situation was, and how completely
3 opposite of, of, of him this type of behavior would be. But
4 I know that he would like to address Your Honor.

5 I, I think it is important to him to ask for
6 forgiveness. I, I know I haven't talked to him since we've
7 heard from the victim, but I, I am comfortable saying that
8 he probably feels a tremendous amount of relief right now
9 having heard the very powerful words issued by the victim,
10 and, and her forgiveness that I know that he is truly
11 thankful for. But I have, I have instructed him that it is
12 best to direct his comments to Your Honor, and not to
13 anybody else. But I would ask you to give him an
14 opportunity to speak at the appropriate time.

15 THE COURT: Mr. Pimienta, I'll be glad to hear from
16 you.

17 THE DEFENDANT: Good morning.

18 First of all, I ask for forgiveness to Olga, to her
19 family, to this country, to the prosecutor for all the
20 damage I've caused. I am very, very embarrassed to be
21 wearing this uniform at this moment.

22 Your Honor, my parents raised me not to cause any
23 damage to anyone, but to help the others. As you, I'm a
24 professional. I went to the university, and these hands
25 that you see right now in handcuffs in several occasions God

1 have used them as an instrument to bring lifes (sic) to this
2 world through the 100 deliveries I worked on during my
3 profession.

4 My intentions, when I came to this country, to New York
5 City, New York, it was to work on my profession. I came
6 legally. I took my exams to get my credit as a doctor, but,
7 unfortunately, due to my lack of English, I did not pass.

8 The truth is, when the terrible incident on that day
9 happened, I was in a deep depression because I just had
10 moved here a few months before from New York with a hope of
11 a beautiful future with Olga.

12 When I arrived here to South Carolina, I was getting
13 along very well with her children, with her family, and
14 suddenly everything came down. I found myself living alone
15 in a house in Columbia where I found a job. Even if it
16 wasn't in my profession, I had to work. I went to that
17 house because it was very difficult for me, living in
18 Mauldin, to travel every day because then I couldn't do my
19 job well.

20 Then I rented the house and I would return to her every
21 weekend, and fortunately I felt alone. I didn't have any
22 friends here in South Carolina because all my friends were
23 her friends. I would come out from work and going to the
24 house just to cry, cry, and cry.

25 I got into such a depression that, that I just couldn't

1 control my emotions. On that day, I was, was in shock. I
2 was in fear. My sentiment were -- I did not know what I was
3 doing. I do not find myself as a violent person.

4 During the time I lived with Olga, we never, never,
5 never had a domestic violent issue, and I never, never had
6 any problems with the justice in any of the countries where
7 I've lived.

8 After that day, I felt a lot of fear. I didn't know
9 what to do. I felt -- I didn't know where to go. I thought
10 the family would go against me, but then I thought they
11 wouldn't because she has a very good family, and, because of
12 that, I left the country.

13 God knows well I'm very, very repentant for what I've
14 done, and, from that moment, I've been praying to God as
15 much as she has, and I'm also very happy that I, I know God
16 as she does.

17 Unfortunately, that incident did happen, and they
18 happened. So, I gave myself to God. I prayed every day for
19 her to heal and God knows that, at this moment, I would
20 change my position to be in her position, for her -- for me
21 to be sitting on the wheelchair rather. God knows that, and
22 would you allow me to ask her for forgiveness?

23 THE COURT: That will be fine.

24 THE DEFENDANT: Olga Lucia, you know very well how much
25 we loved each other. I'm telling you honestly I don't know

1 what I did on that day. And, because of that, I'm here and
2 I'm pleading guilty.

3 So, Your Honor, you will weigh all the motives and will
4 give a sentence. Either way, I know I'm going to spend some
5 time in jail, but, more important than anything, I feel like
6 you do, that my soul is free.

7 I ask you for a lot of forgiveness, and I thank you for
8 the words you gave me, and I thank you a lot for the Bible
9 you've given me. I promise you, for the love we had to each
10 other, that I will read it all thinking of you, and with the
11 hope that in the world of life will finally show you in
12 Heaven, and everything will be completely different.

13 There are no words in the world to tell you how much I
14 feel for what has happened. I'm satisfied, because you know
15 it as well, that God has forgive me as well.

16 So, the most important now is---

17 THE COURT: All right. Let's wrap it up. I'm not -- I
18 mean this is not intended to have a conversation going here.
19 But I'll, I'll be glad to hear any final words you have.

20 MR. GROVE: Your Honor, we're asking for a sentence
21 between 12 and 15 years, and, again, we're also asking
22 credit for the sentence to go back -- credit for his time to
23 go back to October the 24th of 2017.

24 THE COURT: All right. Anything else from either side?

25 SOLICITOR HOLLOWAY: No, sir.

1 THE COURT: All right. After hearing that, I do
2 believe that, since the arrests were all related to this
3 matter, that I, I think is appropriate to backdate to
4 October the 24th.

5 But the Sentence of the Court on the possession of a
6 weapon, that's five years, and on the assault and battery
7 with intent to kill, that's 17 years. These are
8 consecutive.

9 Good luck to you.

10 MR. GROVE: Thank you, Your Honor.

11 SOLICITOR HOLLOWAY: Thank you, Your Honor.
12
13

14 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 19th day of December, 2019.

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

March 27th, 2020

PAMELA E. GREEN, Court Reporter



República de Colombia
Departamento Administrativo de Seguridad

Certificado Judicial

El Departamento Administrativo de Seguridad certifica:

Que a la fecha miércoles 15 junio 2011 REINALDO RAMON PIMIENTA HERNANDEZ
con Cédula de Ciudadanía N° 12559876 de Santa Marta

NO REGISTRA ANTECEDENTES

de acuerdo con el art. 248 de la Constitución Política de Colombia.

Código de Verificación: 471469575620

Para verificar la autenticidad del presente certificado, deberá ingresar a www.certificadojudicial.gov.co
al servicio "Consultar Certificado Judicial".

Haciendo más fácil tu relación con el Estado | Todos los Derechos Reservados 2011 ©

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601

Telephone: 864-467-8647
Telefax: 864-467-8610



W. Walter Wilkins

Pickens County Courthouse
214 E. Main Street, B-120
Pickens, SC 29671

Telephone: 864-898-5905
Telefax: 864-898-5798

6/10/2019

WILLIAM E. GROVE
305 EAST NORTH ST.
STE 123
GREENVILLE, SC 29601

RE: Plea Offer for State v. Reynaldo R Pimienta

Dear William E. Grove :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2014GS2303268B	Possession of a weapon during the commission of a violent crime.
2014GS2303268A	Assault and battery with intent to kill.

The State will make the following sentence recommendations/negotiation:

18 years.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 8/15/2019 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Ryan Holloway
Assistant Solicitor

Julianna Battenfield

From: Holloway, Ryan [REDACTED]
Sent: Friday, September 15, 2023 3:42 PM
To: Julianna Battenfield
Subject: FW: Reynoldo Pimienta



From: Holloway, Ryan
Sent: Wednesday, October 2, 2019 8:03 AM
To: Grove, Will [REDACTED]
Subject: RE: Reynoldo Pimienta

I'm sticking with an offer of a negotiated 18 years or straight up and I ask for 22 years and you ask for what you want.

Ryan

From: Grove, Will
Sent: Tuesday, October 01, 2019 3:15 PM
To: Holloway, Ryan
Subject: Reynoldo Pimienta

Did we ever follow up on this guy? Are you set on your rec of, essentially, negotiated 18 or straight up where you're asking for 22-ish and I'm asking for whatever I please? Or are you willing/able to reduce your offer down to the 15-16 year range. I owe him a visit and would like to update him.

Will

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Julianna Battenfield

From: Holloway, Ryan [REDACTED]
Sent: Friday, September 15, 2023 3:47 PM
To: Julianna Battenfield
Subject: FW: Reynaldo Pimienta--plea next Thursday



From: Holloway, Ryan
Sent: Friday, December 13, 2019 1:58 PM
To: Hilton, Jeanie [REDACTED]
Cc: McMaster, William [REDACTED]
Subject: Reynaldo Pimienta--plea next Thursday

Hey Jeannie,

William wanted me to let you know that Reynaldo Pimienta has signed up to plead next Thursday and should be listed as a special priority. This is an international extradition case from May 2000. The victim, who is paralyzed, will be here for the plea. Instead of accepting my offer of a negotiated 18 years, Pimienta has decided to plead straight up, knowing that I will ask for 22 years.

Let me know if you have any questions. Thank you, and have a great weekend.

Ryan

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State 187
11/19

ORDER OF APPOINTMENT
OF QUALIFIED INTERPRETER

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

State of S.C.
Plaintiff

vs.

Reynaldo Pimiento
Defendant

IN THE COURT OF General Session

13 JUDICIAL CIRCUIT
No.

CASE NO. 2014 GS 2303268 A/B

☐ Deaf/Sign Language

☒ Non-English speaking

SPANISH
(Specify Language)

Reynaldo Pimiento is a deaf or non-English speaking person and/or a juror, or a party to a legal proceeding or a witness therein, or confined to an institution and is in need of the services of a qualified interpreter.

Therefore, pursuant to S.C. CODE ANN. Section 15-27-15, 15-27-155, or 17-1-50, it is ordered that Juliana Saccucci, a qualified interpreter approved by the Court, is appointed.

For Team Interpreting:

I have determined this matter meets the following team interpreting requirement(s):

- ☐ The proceeding is scheduled to last more than three (3) hours.
- ☐ The proceeding involves both an LEP defendant and LEP witness or witnesses.
- ☐ This case involves multiple LEP parties with adverse interests.

_____, a qualified interpreter, has also been appointed.

(Order of Appointment is required for each Team Interpreter)

12/19/19

Date

at Greenville, South Carolina
(City)

[Signature]

Presiding Judge Signature

Verde

Printed Name of Judge

Note: This form must be completed in its entirety. The Original form or Certified True Copy only are required for reimbursement. Forms not in compliance will be returned.

REQUEST FOR PAYMENT FOR QUALIFIED INTERPRETER

STATE OF SOUTH CAROLINA

COUNTY OF Greenville13 JUDICIAL CIRCUITCASE NO: 2014 GS 2303268 A/B

CASE NAME:

State of SC

Plaintiff

Reynaldo P. Mienta

Defendant

TYPE OF COURT:

☒ General Sessions/GSNJ ☐ Common Pleas/CPNJ☐ Family Court ☐ Other☐ Sign Language/ASL☒ Non-English Speaking Spanish
(Specify Language)Date Service Rendered: 12/19/19

Case Number	Start Time	End Time	Hours/Min. Interpreting
<u>2014 GS 2303268 A/B</u>	<u>9:00</u>	<u>11:30</u>	<u>2.5</u>
*TOTAL ACTUAL INTERPRETING TIME:			<u>2.5</u>

* If more than three cases were interpreted, please attached a separate sheet of paper with the case numbers and names

Pursuant to S.C. Code Ann. §§ 15-27-15, 15-27-155, or 17-1-50 (2010), claim is hereby made for compensation of the services of a qualified interpreter who has been approved by the Court. Note: Interpreters will receive an hourly rate for services rendered in a one day (not per case), with a two-hour minimum. If interpreting services exceed one day, the hourly rate per hour will be paid for actual time of services rendered (to the nearest quarter-hour.) Mileage may be reimbursed at official state rate when assignment is outside your residence county or place of business.

2.5 Hours at \$ 45 per hour\$ 112.50

0 Miles/ Greenville / Greenville To / at \$0.58 \$ 0
from City County City County

TOTAL \$ 112.50

I hereby certify that this is a true and correct statement of my mileage and services rendered for interpreting the court proceeding(s) to a deaf or non-English speaker person who is a juror or a party to the proceeding or a witness therein.

X Juliana Saccucci
Signature of InterpreterJuliana Saccucci
Printed name of Interpreter

I am (check one): ☐ S.C. State Employee ☒ Privately Employed
(State employees attest by their signature that they did not perform these services as part of their normal duties or on State time.)

CHECK WILL BE MADE PAYABLE AND MAILED TO THE INDIVIDUAL OR FIRM LISTED BELOW. LAST 4 DIGITS OF SOCIAL SECURITY OR F.E.I. NUMBER MUST BE INCLUDED. IF A W-9 IS NOT ON FILE, PLEASE ENCLOSE.

NAME: Juliana SaccucciADDRESS: Draper Street Apt. #Greenville, SC 29611TELEPHONE #: Last Four Digits of S.S # (ONLY) or F.E.I. #: X Verdi
Signature of Presiding JudgeVerdi
Printed Name of Judge12/19/19
Date

189
5-24-14

WITNESSES

CARL E. RABON 8F

MAULDIN POLICE DEPT

DOB: [REDACTED] 1964 W/M SSN [REDACTED]

ARREST WARRANT NUMBER
DIRECT PRESENTMENT
DIRECT PRESENTMENT

ACTION OF GRAND JURY
TRUE BILL
Ricky T. Hall
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23-^{BCS} 003268A, b

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2014

THE STATE

vs.

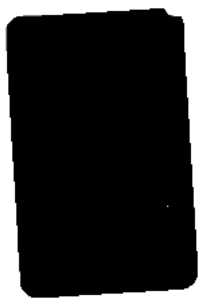
REYNOLDO R. PIMIENTA

Quera
Indictment for
0014, 0549

ASSAULT AND BATTERY WITH INTENT TO
KILL AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME

VIOLATION § 16-03-0620 and § 16-23-0490

ENTERED
ACCT
[Signature]



STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR
 ASSAULT AND BATTERY WITH INTENT TO KILL AND
 POSSESSION OF A WEAPON DURING THE COMMISSION OF A
 VIOLENT CRIME

At a Court of General Sessions, convened on **APR 22 2014** the Grand Jurors of Greenville
 County present upon their oath:

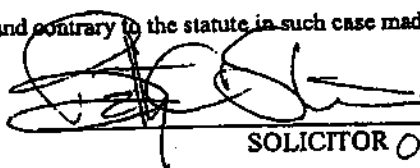
COUNT ONE**ASSAULT AND BATTERY WITH INTENT TO KILL**

That REYNALDO R. PIMIENTA did in Greenville County, on or about the 11th day of May, 2000, willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon OLGA LUCIA RESTREPO. This is in violation of §16-03-0620 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO**POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME**

That REYNALDO R. PIMIENTA did in Greenville County, on or about the 11th day of May, 2000, possess or visibly display a weapon during the commission or attempted commission of a violent crime, to wit: Assault And Battery With Intent To Kill. This is in violation of §16-23-0490 of the South Carolina 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.



SOLICITOR 015305

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

AKA: Reynaldo Ramon Pimienta

Race: WHITE Sex: M Age: 35

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault and battery with Intent to Kill (ABWIK)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2303268A

A/W#: 2014GS2303268A

Date of Offense: 5/11/2000

S.C. Code § 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Holloway, Ryan 71605 SC Bar# GROVE, WILLIAM E 77931 SC Bar#
Holloway, Ryan Defendant Grove, William E Attorney for DefendantWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for 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: 12/19/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOD. Back dated to 11/24/17☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 37.5

TOTAL

\$ 128.75

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 FundOther: NO VICTIM CONTACT!☐ Appointed PD or appointed other counsel. Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.Presiding Judge Judge Code: 2755Sentence Date: DEC 19 2019Clerk of Court/ Deputy Clerk Paul D. WisemanCourt Reporter: Theresa OCSO

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Reynaldo Ramon Pimienta

AKA: Reynaldo Ramon Pimienta

Race: Sex: M Age: 55

DOB: SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession of weapon during violent crime.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2303268B

A/W#: 2014GS2303268B

Date of Offense: 5/11/2000

S.C. Code § 16-23-0490

CDR Code #: 0549

5 years

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSIn violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☒ Guilty, ☐ Not Guilty, ☐ Negotiations or Recommendation,☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Holloway, Ryan

71605
SC Bar#

Defendant.

GROVE, WILLIAM E.
Attorney for Defendant77931
SC Bar#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 _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
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: 12/19/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. Procedured to 10/21/17
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5 %)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§36-5-2995 (DUI Assessment)

§36-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§36-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Presiding Judge

Judge Code: 0255

Sentence Date:

DEC 19 2019

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

0008240

ARREST WARRANT

G- 069618

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
MAULDIN

 THE STATE
 against

PIMIENTA, REYNALDO R

 Address:
COLUMBIA SC 29169

 Phone: SSN:

 Sex: M Race: W Height: 511 Weight: 200

 DL State: SC DL #:

 DOB: Agency ORI #: 230400

 Prosecuting Agency: MAULDIN PD

 Prosecuting Officer: CARL E RABON

 Offense: ABWI/K

 Code/Ordinance Sec. 16-3-620

 This warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of
Greenville The accused
 is to be arrested and brought before me to be
 dealt with according to law.

 (L.S.)
 Signature of Judge

 Date: 8-11-05

RETURN

 A copy of this arrest warrant was delivered to
 defendant REYNALDO R PIMIENTA
 on 12-20-2008
 803
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
MAULDIN

 Personally appeared before me the affiant CARL E RABON who
 being duly sworn deposes and says that defendant REYNALDO R PIMIENTA
 did within this county and state on 05-11-00 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
 in the following particulars:

 DESCRIPTION OF OFFENSE: **ASSAULT AND BATTERY WITH INTENT TO KILL**
(16-3-620)

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts: **THE VICTIM, OLGA**
LUCIA RESTREPO, WAS SHOT WHILE IN HER VEHICLE ON US276 IN
MAULDIN, SOUTH CAROLINA. THE DEFENDANT WAS WITNESSED FLEEING
THE SCENE IN A RENTED VEHICLE. WHEN ASKED BY POLICE WHO SHOT
HER, THE VICTIM GAVE THE DEFENDANTS NAME.

 THIS DID OCCUR IN THE CITY OF MAULDIN, COUNTY OF GREENVILLE,
 STATE OF SOUTH CAROLINA.

 Sworn to and subscribed before me
 on 05-11-00
 (L.S.)
 Signature of Issuing Judge

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
MAULDIN

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 05-11-00 defendant REYNALDO R PIMIENTA
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of MAULDIN as set forth below:
 DESCRIPTION OF OFFENSE: **ABWI/K**

 Now, therefore, 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.

 (L.S.)
 Signature of Issuing Judge
 Judge Code: 2304

 Judge's Address 5 E BUTLER AVE
MAULDIN SC 29662
 Judge's Telephone 864-289-8900
 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

General Sessions Tracking Sheet
Indictment # 0000GS23

Name: Pimienta, Reynaldo R

AKA:

Addr:

Warrant/Ticket #: G069618

Date of Arrest: 12/20/2018

Date of Offense: 05/11/2000

Date Rcv by Clerk 01/03/2019

Magistrate: Salvini, Jessica Ann

Counts: Code: 0014/Retired / Use 3410 / Assault /
 Assault and battery with Intent to Kill
 (ABWIK)

SSN# 000-00-0000

Sex: M Race: W

DOB: [REDACTED] /1964

DL# [REDACTED]

FILED**DEC 26 2019**

Indictment # 0000GS23

Disposition Information

1. Transmitted to SOL & SCCA:

2. Disp Received by Clerk:

3. Date of Disposition: 12/20/19

Clerk of Court
Greenville County

- Disposition
- ☐ 1. Guilty plea
 - ☐ 2. Trial -- guilty
 - ☐ 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain:

Explain:

Explain:

Explain:

Explain:

04D - Plea guilty to other
 charges.

Judge: _____

Defense Atty: _____

Counts: _____ Code: _____

Sentence: _____

Court Reporter: _____

Solicitor: _____

[Signature] 71605

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 05/06/21

C0212

PIMIENTA, REYNALDO RAMON FBI # 305739NB1 SID# SC02351182 SCDC # 381958

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ..: KIRKLAND CORR INST

SECURITY/CUST.: 2 ADULT-STRAIGHT SENTENCE

CURR INCARC SENT...: 22 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...:XXXX[REDACTED]

DORM.....: B2B0057B

RACE....:O SEX...:M

PROJ MAXOUT DATE: 03/31/2037

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: COMMISSARY OPER HELP

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 2F5 EEC LEVEL:

ASSIGNMENT...: COMMISSARY

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 57 DATE OF BIRTH...: [REDACTED]

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		V/NV	CATEGORY
	YRS	MOS	DYS		START			
ASSLT & BATT W/INTNT KIL	17	0	0	GREENVILLE	10/24/2017	V		4
FIREARMS PROVISION	5	0	0	GREENVILLE	10/24/2017	N		3

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD,WANTED,NOTIFY):

CODE NOT IN TABLE

WANTED

E. DIEGO

CATEG: 4

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
8/24/20	KIRKLAND	INCARCERATED	ADMINISTRATIVE
8/24/20	PRISMA HEALTH R	AUTH ABSENCE (AWL)	MEDICAL
12/23/19	KIRKLAND	INCARCERATED	R&E PROCESSING
12/23/19	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
COMMISSARY OPER HELP	03/10/20	0/ 0/ 0		2F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Reynaldo Ramon Pimienta

AKA: Reynaldo Ramon Pimienta

Race: WHITE Sex: M Age: 55

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault and battery with intent to Kill (ABWIK)

IN THE COURT GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2303268A

A/W#: 2014GS2303268A

Date of Offense: 3/11/2000

S.C. Code § 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSIn violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature] 71605 [Signature] 77931
Holloway, Ryan SC Bar# GROVE, WILLIAM E. SC Bar#
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
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: 12/19/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. Bude dated 10/24/17☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5 %)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(B)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$300
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§50-21-114 (BUJ Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/2 (7/04/2018)

Presiding Judge

Judge Code: 2755

Sentence Date:

DEC 10 2019

WITNESSES

CARL E. RABON

BF

MAULDIN POLICE DEPT

DOB: [REDACTED] 1964 W/M SSN [REDACTED]

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

Ricky T. Hall

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

1998 Date:

DOCKET NO. 2014-GS-23-

BCS

003268A, B

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2014

THE STATE

vs.

REYNOLDO R. PIMENTA

Indictment for

0014, 0549

**ASSAULT AND BATTERY WITH INTENT TO
KILL AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME**

VIOLATION § 16-03-0620 and § 16-23-0490

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) INDICTMENT FOR
) ASSAULT AND BATTERY WITH INTENT TO KILL AND
) POSSESSION OF A WEAPON DURING THE COMMISSION OF A
) VIOLENT CRIME

At a Court of General Sessions, convened on **APR 22 2014** the Grand Jurors of Greenville
 County present upon their oath:

COUNT ONE

ASSAULT AND BATTERY WITH INTENT TO KILL

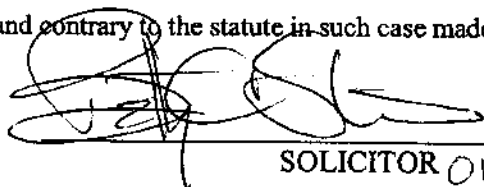
That REYNALDO R. PIMIENTA did in Greenville County, on or about the 11th day of May, 2000, willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon OLGA LUCIA RESTREPO. This is in violation of §16-03-0620 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That REYNALDO R. PIMIENTA did in Greenville County, on or about the 11th day of May, 2000, possess or visibly display a weapon during the commission or attempted commission of a violent crime, to wit: Assault And Battery With Intent To Kill. This is in violation of §16-23-0490 of the South Carolina 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.


 SOLICITOR 015305

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE)

INDICTMENT # 2014-GS-23-003268A, 3268B

THE STATE)

-VS-)

ORDER FOR BENCH WARRANT

REYNOLDO R. PIMIENTA)

DOB: [REDACTED])

R: W/M)

SS#: [REDACTED])

2014 DEC 12 PM 12:08

This matter appears before me on Motion of the State of South Carolina by and through its undersigned representative of the Office of the Solicitor for the Thirteenth Judicial Circuit.

After a review of the attached certified copy of the Indictment handed down by the Grand Jury of Greenville County, directly presented on April, 22, 2014, it appears that it is necessary and proper for this Court to issue a Bench Warrant for the arrest of the Defendant. This is necessary to have the Defendant brought before the Court for arraignment and determination of bail/bond.

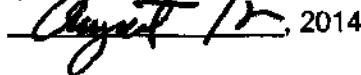
THEREFORE IT IS ORDERED that a Bench Warrant be and hereby is issued for the immediate arrest of the Defendant.

IT IS SO ORDERED!



Edward M. Miller
Chief Administrative Judge
General Sessions
Thirteenth Judicial Circuit

Greenville, South Carolina



, 2014

I SO MOVE:



Betty C. Storn

Deputy Solicitor

Thirteenth Judicial Circuit

305 East North Street

Greenville, SC 29601

(864) 467-8636

SC Bar Number: 015305

WITNESSES

CARL E. RABON

BF

MAULDIN POLICE DEPT

DOB: [REDACTED] W/M SSN [REDACTED]

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-
BCS

003268A, B

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2014

THE STATE

vs.

REYNOLDO R. PIMIENTA

Indictment for

0014, 0549

ASSAULT AND BATTERY WITH INTENT TO
KILL AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME

VIOLATION § 16-03-0620 and § 16-23-0490

A Certified Copy

Paul B. Wickham
Clerk of Court C.P. & G.S.
Greenville County, SC

Dated

8-11-14

2014 GS 2303268A
2014 GS 2303268B

2014GS2303208A
2014GS2303208BSTATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)INDICTMENT FOR
ASSAULT AND BATTERY WITH INTENT TO KILL AND
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
VIOLENT CRIMEAt a Court of General Sessions, convened on **APR 22 2014** the Grand Jurors of Greenville
County present upon their oath:

COUNT ONE

ASSAULT AND BATTERY WITH INTENT TO KILL

That REYNALDO R. PIMIENTA did in Greenville County, on or about the 11th day of May, 2000, willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon OLGA LUCIA RESTREPO. This is in violation of §16-03-0620 of the South Carolina Code of Laws (1976) as amended.

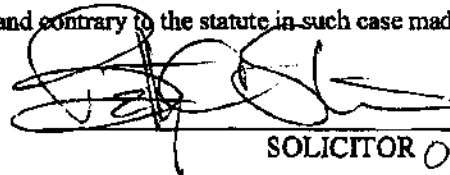
COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That REYNALDO R. PIMIENTA did in Greenville County, on or about the 11th day of May, 2000, possess or visibly display a weapon during the commission or attempted commission of a violent crime, to wit: Assault And Battery With Intent To Kill. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

A Certified Copy
Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 8-11-14

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


SOLICITOR 015305

203

Greenville General Sessions
COUNTY OF Greenville
STATE OF SOUTH CAROLINA

1-14-8063 47
BENCH WARRANT

2014B2300101280

THE STATE

VS.

Reynoldo R. Pimienta

West Street

Columbia, SC 29169

(Last known address)

2014 000510

Bench Warrant No. 2014B2300101280

Case No. Direct Presentment
2014GS2303268A
Retired / Use 3410 / Assault / Assault and
battery with Intent to Kill (ABWIK)

Date Issued August 13, 2014

Soc. Sec. No.

Sex M Race W DOB

Height

Weight

Eyes

Hair

Date Served 12-20-2014 Served by

DL No.

DL State

COMPUTER ENTERED

AUG 19 2014

GREENVILLE COUNTY
SHERIFF'S OFFICE

AUG 14 '14 PM 4:07

BENCH WARRANT STAMPED IN RED IS ORIGINAL
PLEASE RETURN TO GCSO
WARRANTS DIVISION

THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ORDER FOR BENCH
WARRANT- DIRECT
PRESENTMENT

THE STATE
VS.
Reyaldo Pimienta

2014GS2303268A

Direct Presentment

Retired / Use 3410 / Assault / Assault and
battery with Intent to Kill (ABWIK)

To all and Singular the Sheriffs Deputy Sheriffs Constables and other Peace Officers of the said State Greeting:

WHEREAS, at the Term of Court of General Sessions County Court for the County aforesaid, it was among other things Ordained that a Bench Warrant should be issued for the arrest of Reyaldo Pimienta

THESE ARE, THEREFORE, to command you and every one of you to make diligent search after the said above named and him to take and safely keep until he be delivered to the keeper of the Common Jail of the County or discharged by due course of law. And this shall be a good and sufficient warrant for you doing so, and for the keeper of said Jail receiving said above named from you and keeping him safely until he be discharged by due course of law.

WITNESS, Paul B. Wickensimer, Clerk of Court of General Sessions and Common Pleas for the County of Greenville,

August 13, 2014.

Paul B. Wickensimer

Clerk of Court of General Sessions and Common Pleas

THE STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

THE STATE)

v.)

REYNALDO PIMIENTA,)

DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
 THIRTEENTH JUDICIAL CIRCUIT

Warrant Nos.: 2014GS2303268A,
 2014GS2303268B

**REQUEST PURSUANT TO S.C. RULES OF
 CRIMINAL PROCEDURE – RULES 5 & 6
 AND BRADY v. MARYLAND**

To: Thirteenth Circuit Solicitor

The Defendant respectfully requests that the Solicitor produce or otherwise make available to the Defense all documents, tangible objects, reports of examinations and tests, witness statements, physical evidence, and any other information subject to disclosure pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.

The Defendant further requests, under the authority of Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, that your office supply to us all information which may be favorable to the Defendant with regard to the offense with which he has been charged. This request is a continuing request for all such discoverable information as it becomes known to the Solicitor or any prosecution agents.

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, the Defendant objects to the introduction of any chemist's or analyst's laboratory or other scientific report at trial without such person being personally present at trial and demands the State present all persons within the chain of custody of all evidence offered at trial.

Respectfully submitted,

GREENVILLE COUNTY PUBLIC DEFENDER

By: William Grove
 William Grove, Esq.
 Bar No. 77931
 Attorney for Defendant

Date: December 27, 2018

CERTIFICATE OF SERVICE

I hereby certify that this motion was served on the Solicitor by hand delivery at 305 E. North St., Ste. 325 on or about this 27 day of December, 2018.

By: Jessie Hayes

WITNESSES

CARL E. RABON BF

MAULDIN POLICE DEPT

DOB: [REDACTED] W/M SSN [REDACTED]

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

Ricky T. Clark

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

BCS

003268A;B

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2014

THE STATE

vs.

REYNOLDO R. PIMIENTA

C. P. [Signature]

Indictment for

0014, 0549

ASSAULT AND BATTERY WITH INTENT TO
KILL AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME

VIOLATION § 16-03-0620 and § 16-23-0490

ENTERED
ACCT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 ASSAULT AND BATTERY WITH INTENT TO KILL AND
 POSSESSION OF A WEAPON DURING THE COMMISSION OF A
 VIOLENT CRIME

At a Court of General Sessions, convened on **APR 22 2014** the Grand Jurors of Greenville
 County present upon their oath:

COUNT ONE

ASSAULT AND BATTERY WITH INTENT TO KILL

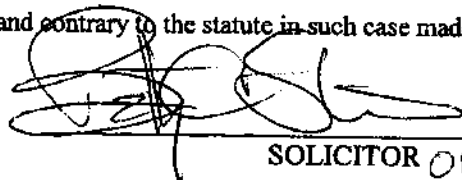
That REYNALDO R. PIMIENTA did in Greenville County, on or about the 11th day of May, 2000, willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon OLGA LUCIA RESTREPO. This is in violation of §16-03-0620 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That REYNALDO R. PIMIENTA did in Greenville County, on or about the 11th day of May, 2000, possess or visibly display a weapon during the commission or attempted commission of a violent crime, to wit: Assault And Battery With Intent To Kill. This is in violation of §16-23-0490 of the South Carolina 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.



SOLICITOR 015305

STATE OF SOUTH CAROLINA

COUNTY OF

Greenville

STATE

VS.

Reynaldo Ramon Pimienta

AKA: Reynaldo Ramon Pimienta

Race:

Sex: M

Age:

55

DOB:

SS#: 1

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession of weapon during violent crime.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2303268B

A/W#: 2014GS2303268B

Date of Offense: 5/11/2000

S.C. Code § 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Holloway, Ryan

71605

SC Bar#

Defendant

GROVE, WILLIAM E.
Attorney for Defendant

77931

SC Bar#

WHEREFORE, the Defendant is committed to the

for a determinate term of 5 days/months/years or ☒ State Department of Corrections, ☐ County Detention Center,

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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: 12/19/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP. Backdated to 10/24/17☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5 %)

\$

§14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso (Public Def/Probation)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$

§14-1-213 (Drug Court Surcharge)

\$150

\$

§50-21-114(BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

TOTAL

\$

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: AS☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Presiding Judge

Judge Code: 0255

Sentence Date: DEC 19 2019

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Reynaldo Ramon Pimienta

AKA: Reynaldo Ramon Pimienta

Race: WHITE Sex: M Age: 55

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault and battery with Intent to Kill (ABWIK)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2303268A

A/W#: 2014GS2303268A

Date of Offense: 5/11/2000

S.C. Code § 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Holloway, Ryan 71605 SC Bar# GROVE, WILLIAM E. 77931 SC Bar#
Holloway, Ryan Defendant GROVE, WILLIAM E. Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ 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: 12/19/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. Book dated 10/24/17☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

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)

§56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

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:

NO VICTIM CONTACT!☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Presiding Judge

Judge Code: 2755

Sentence Date:

DEC 19 2019

1 STATE OF SOUTH CAROLINA IN COMMON PLEAS
2 COUNTY OF SPARTANBURG 7th JUDICIAL CIRCUIT

3 REYNALDO PIMIENTA,
4 Applicant,

5 vs. CASE NO. 2021-CP-23-01789

6
7 STATE OF SOUTH CAROLINA,
8 Respondent.

9
10 HEARING BEFORE: HONORABLE GRACE G. KNIE
11 DATE: March 12, 2024
12 TIME: 10:05 AM
13 LOCATION: Spartanburg County Judicial Center
14 180 Magnolia Street
15 Spartanburg, SC 29306
16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:
20 ATTORNEYS FOR THE APPLICANT
21 JOHN W. HARTE, ESQ.
22 ATTORNEYS FOR THE DEFENDANT
23 JULIANNA BATTENFIELD, ASSISTANT ATTORNEY GENERAL
24 and ANTHONY MABRY, ASSISTANT ATTORNEY GENERAL
25

REYNALDO PIMIENTA vs. STATE OF SOUTH CAROLINA

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I N D E X

WITNESS/EXAMINATION	DIRECT	CROSS	REDIRECT	RECROSS
PAMELA GREEN				
BY MS. BATTENFIELD	11	--	16	--
BY MR. HARTE	--	26	--	--

CERTIFICATE OF REPORTER Page 41

E X H I B I T S

FOR I.D. IN EVD.

RESP. EXH. 6, Transcript	8	40
APP. EXH. 3, Petitioner's Memorandum	9	9
COURT EXH. 1, Memorandum of law	7	7
(RESP. EXH. 1 through 5 were marked in previous hearings.)		
(APP. EXH. 1 and 2 were marked in previous hearings.)		

REYNALDO PIMIENTA vs. STATE OF SOUTH CAROLINA

1 THE COURT: Ma'am, let me swear you first. If you
2 will state your name.

3 THE INTERPRETER: Paula Batory, B-A-T-O-R-Y.

4 PAULA BATORY

5 being first duly sworn to translate the questions and answers
6 from English to Spanish and Spanish to English.

7 THE COURT: Will you be doing this
8 simultaneously --

9 THE INTERPRETER: As much as possible.

10 THE COURT: If you need for me to slow down, just
11 stand up and say slow down, or anybody else in the courtroom.
12 Okay?

13 We are on the record in the matter of Reynaldo
14 Pimienta versus the State of South Carolina. This is a
15 post-conviction relief matter. It is civil action number
16 21-CP-23-1789.

17 Good morning, everyone. Thank you-all for being
18 here in Spartanburg. I know that, when we last met, we were in
19 Greenville. That was on September 18th of 2023. And the court
20 reporter at that hearing was Maria -- and I may mispronounce
21 her name -- DiScioscia. And we began the hearing on that date
22 that Monday in Greenville at 2:00, and it lasted until about
23 5:30 in the afternoon.

24 We are reconvening the hearing today at the request
25 of Counsel, and I will let them put their presence on the

REYNALDO PIMIENTA vs. STATE OF SOUTH CAROLINA

1 record in just a moment.

2 I want to explain to the Applicant that court time
3 is very valuable, and this was scheduled as a chambers week for
4 me. And that is the reason that we were able to get this
5 scheduled this week. And as it turned out, I'm actually
6 covering court this week for another judge so we've worked it
7 in.

8 Our court reporter today is Lora McDaniel, and she
9 will be keeping the record. We also have a member of our
10 clerk's office, the deputy clerk of court, Toryia Massey is
11 with us. My law clerk, Sonia Henrickson, is here. We are at
12 the Spartanburg County Courthouse at 180 Magnolia Street in
13 courtroom 6C.

14 I will now let Counsel put their presence on the
15 record starting with Counsel for the Applicant.

16 MR. HARTE: Your Honor, my name is John Harte. I'm
17 a member of the South Carolina Bar, 2773. I practice primarily
18 in Aiken, South Carolina, although I appear all over the state.
19 I'm representing the Applicant, Mr. Pimienta.

20 THE COURT: Thank you. And present with you, is
21 that Mr. Pimienta's brother-in-law?

22 MR. HARTE: I think it's his cousin, Your Honor.
23 He helps me communicate just to be sure. We've had some
24 interpreting problems, as you know, from before.

25 THE COURT: Welcome.

REYNALDO PIMIENTA vs. STATE OF SOUTH CAROLINA

1 Yes, ma'am.

2 MS. BATTENFIELD: I'm Julianna Battenfield with the
3 Attorney General's Office. I'm here with my colleague, Anthony
4 Mabry.

5 MR. MABRY: Good morning.

6 THE COURT: Nice to see you-all.

7 Why don't we, because we have a different court
8 reporter today than we did at the first hearing, I'd like
9 for -- and the way that this normally works is Counsel for the
10 AG will give a very brief procedural history and then we will
11 begin. At that time I would like for y'all to put any exhibits
12 that you agree to come in. Lora can either mark those or if
13 y'all have premarked those, we'll go ahead and get those made a
14 part of the record. And then I'll let Ms. Battenfield call any
15 witness and, of course, the Applicant as well.

16 Yes, ma'am.

17 MS. BATTENFIELD: May it please The Court. As Your
18 Honor stated, we're back on the record in 2021-CP-23-1789.
19 Mr. Pimienta pled guilty to assault and battery with intent to
20 kill, and possession of a weapon during the commission of a
21 violent crime before Judge Gravely on December 19, 2019, and
22 that's 2014-GS-23-3268A and 3268B.

23 And he had, as Your Honor stated, his first PCR
24 hearing a few months ago. Now we're back here on the record
25 with the sole issue, as my understanding, because with the

REYNALDO PIMIENTA vs. STATE OF SOUTH CAROLINA

1 original plea hearing transcript, Mr. Harte pointed out at the
2 beginning of the last PCR hearing that there's a possibility
3 the original interpreter had not been sworn in.

4 My office -- as we'll be discussing with Ms. Green
5 in one minute -- my office contacted Ms. Green through the
6 official channels pursuant to Rule 607 of the Rules governing
7 the administration of the courts and requested that Ms. Green,
8 with full knowledge of Mr. Harte, go back and listen to the
9 original official plea hearing recording to see whether the
10 original interpreter for Mr. Pimienta had or had not been sworn
11 in. She confirmed yes. That was on the recording.

12 So she gave us an updated transcript. So we're
13 going to be admitting the new transcript, which only has about
14 three additional lines in the very beginning, into the record
15 today, Your Honor.

16 THE COURT: Do you have any exhibits? I know that
17 you-all submitted some information to me subsequent to the
18 September 18th hearing. And according to my notes from that
19 hearing, the Applicant's exhibits -- there were two submitted
20 at the hearing, trial transcript and exhibit 2, judicial -- I'm
21 sorry, I'm going too fast -- judicial certificate of no
22 conviction history.

23 The Respondent's Exhibits were five in number; plea
24 offer, e-mails, e-mails, order of appointment of interpreter,
25 and then the sentencing record, indictment and sentencing

REYNALDO PIMIENTA vs. STATE OF SOUTH CAROLINA

1 sheet. Is that what y'all have?

2 MS. BATTENFIELD: Yes, ma'am.

3 THE COURT: Is there anything that y'all want to
4 add right now that y'all stipulate to?

5 MS. BATTENFIELD: I'd like to introduce memorandum
6 of law, Your Honor, requested on this issue as Court's Exhibit
7 1.

8 THE COURT: Any objection to that, Counsel?

9 MR. HARTE: No, Your Honor.

10 THE COURT: That will be Court's Exhibit 1.

11 Anything else from Respondent?

12 (COURT EXH. 1, Memorandum of law, was marked for
13 identification and received into evidence.)

14 MS. BATTENFIELD: I would like to introduce the new
15 updated transcript as State's Exhibit -- I guess at this point,
16 would you like me to start over with 1 or to add as 6?

17 THE COURT: Let me ask the court reporter.

18 THE COURT REPORTER: Whatever you like, Judge.

19 THE COURT: I would prefer that it be Respondent's
20 Exhibit 6. Any objection to that? I know that she has not yet
21 laid the foundation for it.

22 MR. HARTE: I'm not in a position to object or not
23 object.

24 THE COURT: We'll just premark it for
25 identification.

REYNALDO PIMIENTA vs. STATE OF SOUTH CAROLINA

1 (Resp EXH. 6, Transcript, was marked for
2 identification.)

3 MS. BATTENFIELD: Because the original plea hearing
4 transcript has already been admitted, I would like to show
5 Mr. Harte my copy of the old one; if he would be okay with me
6 using it.

7 THE COURT: This is the one that was previously --

8 MS. BATTENFIELD: Correct. And it's identical.

9 MR. HARTE: If it's already marked as an exhibit,
10 we don't need to remark it, if we know which number it is. I
11 do think it needs to be part of the record, Your Honor.

12 I do not object to the introduction of the old
13 transcript, if they want to call it that.

14 THE COURT: I've got that as being Applicant's
15 Exhibit 1 from the September 18th hearing.

16 MR. HARTE: That's the way I recall it.

17 MS. BATTENFIELD: I'll be using this exact replica
18 of that transcript.

19 THE COURT: I've got a copy of that as well. I've
20 made notes on mine.

21 Anything else from the Respondent regarding
22 exhibits or procedural history before I hear from Mr. Harte?

23 MS. BATTENFIELD: No, ma'am; not at this time.

24 MR. HARTE: Thank you, Your Honor. I do not
25 disagree with the procedural history provided by the State's

REYNALDO PIMIENTA vs. STATE OF SOUTH CAROLINA

1 representative. Just hasten to add, of course, we're here on
2 issues related to this transcript.

3 However, I'm sure I don't have to invite The
4 Court's attention to it, it would be, I think, inappropriate
5 for me not to, there are a number of grounds cited in the
6 Applicant's petition for relief. And the fact that we have
7 this one issue that has been focused on today does not mean
8 that the other issues that were raised are not to be
9 considered.

10 I appreciate the State putting a part of that in
11 their memorandum because they numbered some of them and I would
12 specifically and particularly invite The Court's attention to
13 the Applicant's grounds two, nine, 11 as shown in their
14 memorandum. It's also on the -- it's in the Complaint itself.
15 They're not numbered. The numbering helps with that.

16 Other than that, Your Honor, I think we have
17 everything we need to move forward.

18 THE COURT: Sir, do you want to offer your memo as
19 an exhibit as well?

20 MR. HARTE: Yes, Your Honor. If you are prepared
21 for me to do that, I have the memorandum that I submitted,
22 premarked. It was marked as Petitioner's Exhibit 1 for this
23 hearing, Your Honor. I don't know how you want to do that.
24 Otherwise, perhaps you would like to change that number.

25 THE COURT: We'll change it to Applicant's 3.

REYNALDO PIMIENTA vs. STATE OF SOUTH CAROLINA

1 Any objection?

2 MS. BATTENFIELD: No objection.

3 (APP. EXH. 3, Petitioner's Memorandum, was marked
4 for identification and received into evidence.)

5 MR. HARTE: I move the introduction of Applicant's
6 3.

7 THE COURT: Are y'all ready?

8 MS. BATTENFIELD: Yes.

9 MR. HARTE: I am, Your Honor.

10 THE COURT: Are there any additional witnesses from
11 the Applicant?

12 MR. HARTE: Not at this stage of the hearing, Your
13 Honor. I do not have anyone to call at this stage of the
14 hearing.

15 THE COURT: Respondent.

16 MS. BATTENFIELD: Yes, ma'am. At this time we
17 would call Pamela Green to the stand.

18 THE COURT: Please come forward and be sworn by the
19 clerk.

20 PAMELA E. GREEN
21 being first duly sworn, testified as follows:

22 THE COURT: Good morning.

23 THE WITNESS: Good morning.

24 THE COURT: If you will, state your full name,
25 spelling your last for the record.

PAMELA GREEN DIR BY MS. BATTENFIELD

1 THE WITNESS: Pamela Green. My last name is
2 spelled G-R-E-E-N.

3 THE COURT: Ms. Battenfield, your witness. And
4 everyone please be reminded that we do have an interpreter. I
5 keep forgetting. And let's just keep our pace very slow.

6 MS. BATTENFIELD: Yes, ma'am. May it please The
7 Court.

8 DIRECT EXAMINATION

9 BY MS. BATTENFIELD:

10 Q. Good morning, Ms. Green.

11 A. Good morning.

12 Q. Thank you so much. I know this is a courtesy to
13 us, and we really appreciate it.

14 By whom are you employed?

15 A. State of South Carolina, the judicial branch.

16 Q. What is your exact title?

17 A. Circuit Court Reporter 2.

18 Q. How are you involved in this case?

19 A. I was sent the audio for that hearing to type it
20 up. I wasn't the court reporter when the hearing was done. So
21 court administration sent me the audio to type it up, and I
22 typed up the transcript.

23 Q. You're referring to the plea hearing that occurred
24 on December 19, 2019 in Greenville, South Carolina?

25 A. Yes, ma'am.

PAMELA GREEN DIR BY MS. BATTENFIELD

1 Q. Mr. Pimienta's plea hearing?

2 A. Yes, ma'am.

3 THE INTERPRETER: Excuse me, Your Honor. I cannot
4 hear well.

5 MS. BATTENFIELD: I can speak louder, Your Honor.

6 (Off-the-record discussion.)

7 MS. BATTENFIELD: I can sit down if you like. That
8 might be better.

9 THE COURT: Why don't we do that. I can hear you a
10 lot better from that mike. If you're comfortable being seated.
11 I will certainly allow that deviation from the Rules.

12 MS. BATTENFIELD: Thank you.

13 Your Honor, would you like me to start over?

14 THE COURT: Yes, for the benefit of the Applicant.

15 BY MS. BATTENFIELD:

16 Q. Good morning, Ms. Green. By whom are you employed?

17 A. State of South Carolina, judicial branch.

18 Q. In what capacity?

19 A. As a circuit court reporter.

20 Q. How are you involved in this case?

21 A. I was sent the audio by court administration to
22 type the hearing that Mr. Pimienta had in Greenville. I was
23 not the actual court reporter there. They just sent it to me
24 to type it, and I typed the transcript.

25 Q. You're referring to the hearing that occurred on

PAMELA GREEN DIR BY MS. BATTENFIELD

1 December 19, 2019?

2 A. Yes.

3 Q. So you weren't actually present in the courtroom?

4 A. I was not.

5 Q. What is that called specifically when you're asked
6 to translate or -- excuse me -- I suppose transcribe a hearing
7 that occurred afterwards via the audio?

8 A. I mean, I don't know if there's a name for it.
9 It's just a digital court reporter was in the courtroom. They
10 do not type transcripts. They're sent to certified court
11 reporters to type, and I'm one of them that offered to type.
12 That's what happened.

13 Q. What did the initials DCRP mean?

14 A. Digital courtroom reporter project.

15 Q. Is that what you were part of?

16 A. I am not. I'm not a digital reporter. I'm a
17 machine writer like Lora here is.

18 Q. I'm going to show you what's been already admitted
19 as Applicant's Exhibit 1. This is the old transcript, your
20 original transcript.

21 MS. BATTENFIELD: May I approach, Your Honor?

22 THE COURT: Yes, ma'am.

23 BY MS. BATTENFIELD:

24 Q. Do you recognize this?

25 A. I do.

PAMELA GREEN DIR BY MS. BATTENFIELD

1 Q. What is it?

2 A. It's the transcript I typed from the first time;
3 the first transcript I typed.

4 Q. What's the date on page 22? When is the date you
5 finished the transcript?

6 A. March 27, 2020.

7 Q. This is a fair and accurate version of the original
8 transcript?

9 A. It is.

10 Q. Now I'm showing you what's been premarked as
11 Respondent's Exhibit 6. What is that?

12 A. That's the transcript that I did on December 7,
13 2023 where I corrected the mistake I made.

14 Q. Is that a fair and accurate version of what you
15 sent Mr. Harte and I?

16 A. It is.

17 Q. What's the date on page 22; the date?

18 A. December 7, 2023.

19 Q. You can keep that. I'll go sit down.

20 MS. BATTENFIELD: Your Honor, at this time,
21 Respondent would move Respondent's Exhibit 6 into the record.

22 MR. HARTE: I have some questions regarding the
23 exhibit, Your Honor. However, for the purposes of where we
24 stand now, I will not object to it being introduced into
25 evidence. I do not admit that either of those are accurate.

PAMELA GREEN DIR BY MS. BATTENFIELD

1 THE COURT: Yes, sir.

2 Any other questions?

3 MS. BATTENFIELD: Yes, ma'am, briefly.

4 BY MS. BATTENFIELD:

5 Q. What was your process when you originally went to
6 transcribe Applicant's Exhibit 1?

7 A. Okay, I received the audio from court
8 administration. They send it to me through an e-mail. They
9 send me the transcript request along with it.

10 What court administration does, because we aren't
11 in the courtroom, they write on the transcript request where
12 the hearing starts and where it ends. So I go to that spot on
13 there. I go a little bit ahead of it, then I listen to the
14 audio and transcribe it, make this (indicating) transcript.

15 Q. How did you come to transcribe a second transcript
16 in this case?

17 A. You contacted me and asked me to check and see if
18 the interpreter was sworn in because I did not put that she was
19 sworn in, in this transcript. I went back to the audio. Went
20 back farther and, apparently, I missed it. I went back farther
21 from where they said it started and found where she was sworn
22 in and then corrected the transcript to show that the
23 interpreter was sworn in.

24 Q. We contacted you via the official South Carolina
25 judicial branch transcript request form?

PAMELA GREEN CROSS BY MR. HARTE

1 A. You did.

2 Q. Wonderful.

3 Does the new transcript, Respondent's Exhibit 6,
4 fairly and accurately represent the full and complete plea
5 hearing of Mr. Pimienta?

6 A. It does.

7 MS. BATTENFIELD: Thank you very much, Ms. Green.
8 No further questions.

9 MR. HARTE: Thank you. Ms. Green.

10 THE WITNESS: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. HARTE:

13 Q. Ms. Green, first of all, the transcript that you
14 originally produced, what was done with that transcript?

15 A. I provided it to you and, I guess, the State. I
16 don't remember. I think I provided a copy to you and also to
17 the State.

18 Q. And that was certified. And on the last page, I
19 believe, if you'll turn to the last page of that transcript
20 where you affix your signature, would you read to me the
21 statement that's made before that.

22 A. Are you talking about just read the certificate
23 page?

24 Q. Yes, ma'am, please, your certificate.

25 A. I, Pamela E. Green, official court reporter for the

PAMELA GREEN CROSS BY MR. HARTE

1 State of South Carolina, do hereby certify that the foregoing
2 is a true, accurate, and complete transcript of record of the
3 proceedings had and evidence introduced in the trial of the
4 captioned case relative to appeal, in the court of General
5 Sessions for Greenville County, South Carolina on the 19th day
6 of December, 2019. I do further certify that I am neither of
7 kin, counsel, nor interest to any party hereto.

8 Q. Now, is that the same certificate that you affixed
9 to the second transcript that you produced?

10 A. Yes, sir.

11 Q. When you executed the first certificate, you were
12 relying on what you had been told by the court administration
13 was the plea entered by Mr. Pimienta; is that correct?

14 A. I'm not sure I understand your question.

15 Q. As I understood your testimony, you received from
16 the court administrator a designation of what you were to
17 listen to and transcribe; is that correct?

18 A. Yes, sir.

19 Q. And you relied on that in transcribing it; is that
20 correct?

21 A. Yes, sir.

22 Q. Then subsequently when the issue of whether the
23 court reporter was sworn or not, you went back and looked at
24 something else; is that correct?

25 A. I went back and looked at the same, listened to the

PAMELA GREEN CROSS BY MR. HARTE

1 same audio. I just went back a little farther.

2 Q. You looked at material that you had not looked at
3 when you transcribed the first; is that correct? You looked at
4 some part of that transcript that was not part of what you
5 looked at the first time?

6 A. I can't 100 percent say I didn't hear the first
7 time she wasn't sworn in. I mean, I'm not sure why I made this
8 mistake, 100 percent.

9 I either did not go back -- like you said, I either
10 did not go back far enough or I heard it the first time and
11 just made a mistake and didn't put her being sworn in. I'm
12 really not sure which one I did.

13 Q. I don't want to belabor the point but the reality
14 is that, for one year and nine months, the parties,
15 Mr. Pimienta, myself, and others were relying on that
16 transcript under the certification that it was complete.
17 That's correct, isn't it?

18 A. I assume y'all did rely upon it, yes, sir.

19 Q. In order for you to add to it, you had to go back
20 in the digital recording; correct?

21 A. I went farther back than I -- I mean, I went way
22 back. But I went back to the person before; that went before
23 him in the courtroom. That's where I started listening the
24 second time. And just listened until it came to the
25 interpreter was sworn in. It was a little bit of gap. They

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1 were -- in Greenville, it's done a little differently. They
2 were passing up the paperwork, the clerk reads out everything.
3 I mean --

4 Q. You said you went back to the person before him?

5 A. I did.

6 Q. Was this then what I call a group plea?

7 A. No, sir.

8 Q. Was the court reporter sworn for each plea?

9 A. You mean the interpreter?

10 Q. I apologize. Was the interpreter sworn -- that's
11 my mistake. Was the interpreter sworn for each plea?

12 A. I don't know because I went to the end of the plea
13 before. So the interpreter, even if that was a plea of someone
14 speaking another language, I don't know. I went to the end of
15 that plea where he was or she was being sentenced before.
16 That's where I started listening. Whether the interpreter was
17 sworn for another plea or not, I don't know.

18 Q. Ma'am, if I said to you that it was my
19 understanding that plea for Mr. Pimienta was taken when there
20 were a number of defendants standing in a row in front of the
21 judge, can you confirm or deny that?

22 A. I cannot. I was not in the courtroom. I can tell
23 you that this transcript would not look like this if there were
24 lined up people to plea. I would've had to do -- you would've
25 got a transcript of every single person standing there. That's

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1 the way I do it when there are group pleas.

2 Q. Have you discussed with anyone before today whether
3 there was a group plea?

4 A. I don't -- I think I told the State -- I mean, I
5 said I obviously made a mistake here in not putting that in. I
6 think maybe in the e-mail there was something about it being a
7 group plea, but I don't remember.

8 Q. Who's e-mail?

9 A. Ms. Battenfield.

10 Q. Ms. Battenfield told you it was a group plea?

11 A. No, she did not tell me it was a group plea.

12 Q. Why did she mention group plea?

13 A. I think she had the understanding it was a group
14 plea. I'm not sure. I don't 100 percent remember that e-mail.
15 I remember something about a group plea from somebody.

16 Q. When a group plea is taken, and you're requested to
17 do a transcript of one of those people in the group, how do you
18 know whether it's a group plea or not?

19 A. When they do group pleas in Greenville, it's like
20 you said; they line them up. And the judge goes down the line
21 with all the questions and they say like, are you guilty,
22 Mr. Whoever. Next person. And they go down and answer each
23 question individually. This plea was not that way. It's by
24 itself.

25 Q. Let me let you finish.

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1 A. Go ahead.

2 Q. Your assumption is that, in that proceeding, this
3 could not possibly have been a group plea because the judge on
4 the record that you have reviewed went a complete colloquy with
5 one defendant and then a complete colloquy with another
6 defendant; is that correct?

7 A. Yes, sir.

8 Q. Have you never seen a group plea -- let me ask you
9 this. You now are in a courtroom now; correct?

10 A. I am.

11 Q. Have you seen group pleas done?

12 A. Many, many, many times.

13 Q. Have you seen the judges -- different judges do it
14 different ways?

15 A. Yes, sir. I've never seen a judge in a group plea
16 do what you're saying. I've only seen them go down the line,
17 ask their qualifying questions. Then they break them apart and
18 finish the plea.

19 Q. Have you ever -- looking at the record, the judge
20 who was presiding over that hearing, have you ever been in the
21 courtroom when he was presiding?

22 A. I have.

23 Q. Have you ever been in the courtroom when he was
24 presiding on a group plea?

25 A. I have.

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1 Q. Have you ever seen him individually question the
2 defendants?

3 A. On a group plea?

4 Q. Yes, ma'am.

5 MS. BATTENFIELD: Your Honor, we object. I think
6 we've established it was not a group plea.

7 MR. HARTE: No, we have not.

8 THE COURT: I will overrule that right now. This
9 is cross-examination.

10 BY MR. HARTE:

11 Q. Ma'am, have you ever seen him examine an individual
12 as a single colloquy in a group plea?

13 A. No.

14 Q. Have you ever had -- you weren't in the courtroom
15 for this one. Have you ever seen him do a group plea when one
16 of the individuals doesn't speak English?

17 A. I don't know about that. I don't know.

18 Q. Why would the court administration send you the
19 transcript from multiple defendants if there was not a group
20 plea? Why would you get that?

21 A. They send you the audio for the whole day. Because
22 the way this works, it was -- it was recorded by what they call
23 For The Record. So the way that is recorded is recorded in
24 five-minute increments. So they send me the audio for all day.

25 Q. Were you in the courtroom to observe the demeanor

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1 of the parties?

2 A. I was not.

3 Q. What is the accepted practice for recording the
4 demeanor of parties during a plea?

5 A. I don't think there is. I don't know how to record
6 anybody's demeanor. I'm just recording what they're saying.

7 Q. The way in which a person reacts to what is
8 happening is not recorded?

9 A. No, sir. Unless he speaks it, unless he says it,
10 it's not recorded.

11 Q. Could you hear the Spanish in the transcript you
12 received?

13 A. Could I hear --

14 Q. Could you hear the Spanish translation in the
15 recording you received?

16 A. I could.

17 Q. Could you transcribe that?

18 A. Oh, no.

19 Q. Have you ever been asked to do that?

20 A. No, sir. I don't know Spanish. I do not.

21 Q. The translation cannot be checked from the
22 transcript which you provided, can it?

23 A. I mean, if somebody spoke Spanish and got the audio
24 and listened to it, they could. I can't do it. I don't know
25 Spanish.

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1 Q. A portion of this transcript which included words
2 spoken in Spanish were not transcribed; is that correct?

3 A. By the interpreter?

4 Q. By you.

5 A. I would not -- I don't know Spanish. I couldn't
6 put it down. I'm sorry, I'm talking too fast. If he had said
7 something in Spanish, I mean, the interpreter would have
8 interpreted. I would not have typed anything for that. I
9 don't know Spanish, so I do not know what he's saying.

10 Q. Were there instances when Mr. Pimienta spoke
11 directly to the judge, not through the interpreter?

12 A. I don't recall.

13 Q. Wouldn't that be important to know?

14 A. If he's speaking in English, it's on this paper.
15 If he spoke in Spanish, I would've put -- I would've put some
16 kind of parenthetical or something that said he spoke in
17 Spanish because I don't know what he's saying.

18 Q. Did you identify on the record when the words that
19 were being spoken and being transcribed came from the
20 interpreter, or did you indicate that they came from the
21 Defendant?

22 A. The Defendant.

23 Q. In terms of the accuracy of this document, the
24 reality is that the person speaking, when you entered that it
25 was the Defendant speaking, was actually the interpreter

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1 speaking?

2 A. Yes, sir.

3 Q. And while you have access to whatever was recorded
4 in Spanish, that is not part of this record?

5 A. No, sir.

6 Q. There's no way to verify whether the interpreter
7 was interpreting correctly or not, is there?

8 A. Not through me there's not.

9 Q. I just want to be sure I understand. You said
10 there was some sort of break. Was that in the beginning of the
11 hearing?

12 A. Well, they swore the interpreter. You can hear
13 like the papers shuffling and handed them up. I'm sitting
14 right by the clerk. They're handing them up to her. She puts
15 them in --

16 Q. You weren't sitting by the clerk that day?

17 A. No, no. I would've been if I was in there. I'm
18 sorry, I said that wrong. You can hear like paper shuffling
19 like they're handing them up to her.

20 I've been in Greenville enough to know the clerk
21 put those papers a certain way. Then they start. And they
22 read it. I can hear that. The interpreter is sworn. I can
23 hear that, the papers being shuffled and all that start. Then
24 it starts.

25 Q. How many minutes back did you have to go to find

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1 this swearing in?

2 A. I mean, I can't be exact. It may have been a
3 minute or two. I mean, it was -- it was -- it didn't just
4 happen right off the bat, you know, where she's sworn and you
5 start. It was handing up of the papers and all that stuff so a
6 minute or two.

7 Q. When did you first realize that there was an
8 interpreter involved in this plea?

9 A. I'm sure when I did the transcript and heard the
10 interpreter talking I realized it. And it just didn't click
11 with me to, you know, find where she was sworn. I mean, I just
12 made a mistake. I just made a mistake and missed that when she
13 was sworn.

14 MR. HARTE: Thank you. That's all the questions I
15 have, Your Honor.

16 MS. BATTENFIELD: Very brief redirect, Judge.

17 THE COURT: Yes, ma'am.

18 REDIRECT EXAMINATION

19 BY MS. BATTENFIELD:

20 Q. Ms. Green, you're under oath this morning; correct?

21 A. Yes, ma'am.

22 Q. And you are sworn. You will tell the truth, the
23 whole truth?

24 A. Yes, ma'am.

25 Q. If I could direct you to page 3 of Respondent's

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1 Exhibit 6. This is the new version of the transcript.

2 A. Yes, ma'am.

3 Q. If I could direct you to the first lines three
4 through eight. What is that?

5 A. That's the interpreter being sworn in by the clerk.

6 Q. Could you briefly read that into the record because
7 it's only a few lines.

8 A. The clerk speaking and she says: Do you solemnly
9 swear that you will in -- she corrected herself -- accurately
10 interpret the language requested in this courtroom of the
11 Defendants without additions thereto or detractions therefrom
12 or any other amendments of your own interpretation, so help you
13 God.

14 And the interpreter said: I do.

15 MS. BATTENFIELD: Thank you. I don't believe I
16 have any other questions. Thank you so much, Ms. Green.

17 THE COURT: I know it's a little unusual.
18 Mr. Harte, since we do have Ms. Green here, is there anything
19 else you want to ask? I will give Ms. Battenfield the
20 opportunity if she desires to ask anything after that.

21 MR. HARTE: No, thank you, Your Honor.

22 THE COURT: Any objection to allowing Ms. Green to
23 be excused so she can get back to her busy day?

24 MS. BATTENFIELD: No, ma'am. We really appreciate
25 it again, Ms. Green. Thank you.

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1 MR. HARTE: No objection, Your Honor. Thank you,
2 Ms. Green.

3 (The witness exited the stand.)

4 THE COURT: I'll take the exhibits.

5 Now, Mr. Harte, is there any further objection to
6 exhibit 6 coming in?

7 MR. HARTE: Your Honor, I object to it because it's
8 an inaccurate transcript in two respects. First of all, the
9 transcript says that the Defendant was speaking when, in fact,
10 the Defendant was not speaking; it was the interpreter. You
11 cannot determine from that transcript whether there were
12 instances where Mr. Pimienta spoke directly to the judge or
13 only spoke through the interpreter. The transcript is
14 inaccurate in that respect.

15 Secondly, it is also inaccurate because, from the
16 witness's testimony, there were instances where she could hear
17 on the transcript Spanish words being spoken. Those words
18 should -- were part of the record. That is part of what is
19 happening in that courtroom at that time. And that should've
20 been included in the record or it should have been noted that
21 there was a foreign language spoken, which was not transcribed.

22 The record is incomplete and it is inaccurate for
23 the reasons I have stated. And I move -- I object to it.

24 Frankly, Your Honor, that really is very important
25 in the terms of what exactly can you calculate -- what

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1 determinations can you make based on the transcript that's not
2 complete?

3 THE COURT: Ms. Battenfield?

4 MS. BATTENFIELD: Thank you, Your Honor. Well, I
5 believe the system has worked in the right way. Because we
6 have a PCR hearing. We have Mr. Harte who uncovered the
7 possibility the interpreter hadn't been sworn in. We went
8 through the official channels created by the court
9 administration, the Supreme Court, went through official
10 channels with Ms. Green, the court reporter, and got the
11 updated version. She admitted she made a mistake. It was
12 under oath.

13 She provided a self-proving affidavit that this was
14 actually on the official plea hearing recording.

15 Regarding the interpreter issue, Judge, that's
16 how -- at least my understanding is -- interpretations work.
17 Yes, I believe, for purposes of PCR hearing, we have
18 established there was a Spanish-speaking translator at the plea
19 hearing. That was testified under oath. It's in the record
20 now.

21 We have a -- we have a Spanish speaking interpreter
22 here today, translating for Mr. Pimienta. I believe it's been
23 firmly established by the record there has been a
24 court-approved translator every stage of Mr. Pimienta's process
25 here for his criminal charges and convictions, Judge.

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1 So we have had the court reporter here. We did not
2 subpoena her because she's part of the court branch, judicial
3 branch. It was a courtesy to us that she came today. The
4 process of my office, the official process of my office, just
5 ask respectfully. And thankfully she came. She said, yes, she
6 made a mistake. She swore under oath this is the correct
7 version of the transcript.

8 THE COURT: I do understand the objections of the
9 Applicant, but I am going to allow Respondent's Exhibit 6 to
10 come in, understanding that I also have Applicant's Exhibit
11 Number 1. That's the first version and the second version.

12 Ms. Battenfield, I have your copy of the old one as
13 well, if you want to retrieve that one.

14 MS. BATTENFIELD: Thank you.

15 THE COURT: Is there anything else that y'all want
16 to take up today while y'all are here? You've come all this
17 way. I'm happy to hear from you.

18 MR. HARTE: Your Honor, the only thing I would like
19 to do is to point out what I believe to be a correct statement
20 of the facts in this case, which is that the plea was fatally
21 flawed as a result of several things. And the record is
22 fatally flawed. They're fatally flawed for these reasons.

23 First of all, with respect to the transcript --

24 THE COURT: Excuse me a minute. Y'all can be
25 seated. I should be more formal. I'm going to let everybody

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1 summarize for me their positions.

2 MR. HARTE: Is that where we are now, Your Honor?

3 THE COURT: No, I'm just giving you an opportunity.
4 You had not presented witnesses. And I didn't know if, based
5 on the witness that has been presented, if you wanted to
6 present anything else before you-all make your summations.

7 MR. HARTE: No, Your Honor. I'm relying on the
8 record which I made in the prior hearing and the
9 cross-examination today.

10 THE COURT: Anything else before you make your
11 summations?

12 MS. BATTENFIELD: No, ma'am.

13 THE COURT: Let me then let the Applicant make
14 summation, Respondent, and then Applicant can reply just like
15 before a jury to anything new that he feels he needs to.

16 MR. HARTE: Your Honor, as I was saying, this
17 plea -- this proceeding is fatally flawed for a number of
18 reasons. And the ultimate conclusion that we think should be
19 drawn is that the way in which this has been handled by the
20 attorney who was representing Mr. Pimienta at the hearing and
21 then following on the way in which the transcript has been
22 produced, the contents of the transcript, the error made,
23 omission in the transcript, the length of time that it took to
24 correct that, the way in which it got corrected, all of those
25 things amount to a denial of equal protection and due process.

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1 The reason that I say that, the reasons, are
2 several. The application that Mr. Pimienta files outlines very
3 clearly a series of things that were wrong with the proceeding.

4 I am confident that Your Honor is capable of
5 reading that so I'm not going to read it to you now. I am
6 going to invite The Court's attention to it and ask that if, in
7 the process of this, I have omitted anything that is in the
8 petition, then I would ask that Your Honor consider that as is
9 proper from the record.

10 THE COURT: Excuse me just one moment. I don't
11 know if it's an emergency alarm.

12 (An interruption was had.)

13 THE COURT: Sir, if you can turn that off.

14 UNIDENTIFIED VOICE: I thought I had it off.

15 MR. HARTE: I have mortal fear of mine.

16 THE COURT: Me, too. Can you get it off?

17 UNIDENTIFIED VOICE: Yes, ma'am.

18 THE COURT: Thank you. Please continue.

19 MR. HARTE: Judge, I want to make a couple comments
20 about items that I think are really important in regard to what
21 happened here. One of the central issues in question for
22 Mr. Pimienta's case was his intent. And what happened in the
23 process of this case -- and the record reflects Your Honor
24 heard the testimony and the examination and cross-examination
25 of the attorney who represented Mr. Pimienta. There was, in my

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1 view, a very, very inadequate, nearly incomplete, totally
2 incomplete investigation.

3 One of the most important things that one
4 investigates when you have a bullet entering something and then
5 hitting the victim is you want to know what was the angle of
6 impact. It's a fundamental basic first-year law student
7 analysis.

8 The reason you want to know that is because the
9 angle of fire tells you whether the individual is shooting at
10 the person or at something else. Lay people, even people that
11 go to ranges, do not understand or appreciate how bullets act,
12 and they will fire a bullet thinking they're going to hit the
13 front end of a car. And they will hit the front end of the
14 car, all right. The bullet doesn't necessarily stop there.

15 In this particular case there was no investigation,
16 no analysis done to determine where the bullets hit when they
17 were fired. Why is that important? It's important because
18 what must Mr. Pimienta had told his lawyer was that he did not
19 intend to hit the victim. That's a very important issue when
20 you're charged with a crime of attempted murder. That was not
21 investigated.

22 Also, when the presentation was made to the
23 court -- and that incidentally is cited, it's coming straight
24 from the petition.

25 Secondly, Your Honor, there was an implication in

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1 the plea itself -- and I re-read that this morning -- the way
2 it was presented, it was suggested that Mr. Pimienta had
3 threatened the victim early on. There was nothing, no
4 indication of that. This shooting was an act of pure passion
5 and almost arose to the question of momentary insanity. And
6 I'm not sure that defense should not have been raised because
7 Mr. Pimienta is a medical doctor.

8 What he's done here, even under his version of it,
9 is a totally insane act as it relates to his history. That was
10 not explored.

11 Also, Your Honor, there was an indication that he
12 had been previously violent with the victim. And that was not
13 accurate. There's all sorts of things in that record that
14 reflect the fact that Mr. Pimienta had inadequate defense
15 counsel.

16 I think I've made the point as well as I can about
17 the transcripts because, as Your Honor will recall, the issue
18 of whether the interpreter who was brought in at the last
19 minute at that plea, I'm recalling, if I may, that the
20 interpreter who had worked with Mr. Pimienta leading up to the
21 plea understood Mr. Pimienta and Mr. Pimienta understood him.

22 When they got to the actual plea, which is most
23 important stage of the whole event, there is a new person
24 brought in who had no acquaintanceship, no experience with
25 Mr. Pimienta at all, and there was a complete breakdown of

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1 communication as testified to by Mr. Pimienta.

2 And Your Honor observed in the previous hearing
3 when we had so much trouble even after getting a certified
4 reporter. I think we ended up using three people to get an
5 interpretation. That tells you that the statements made by
6 Mr. Pimienta about the difficulty he had with the interpreter
7 and his plea are rational and reasonable and they're borne out
8 by what you and I both observed that day.

9 What is right? Justice demands that people have
10 fair trials. Justice demands that we take the steps necessary
11 when someone comes before us and has a disability, whether it's
12 a physical disability, or a learning disability, or a speaking
13 and language disability. Justice demands that lawyers be
14 zealous -- zealous, Your Honor, in their defense.

15 Failing to investigate, failing to take the time to
16 ensure that your client understands what's happening, springing
17 on him at the last minute a sudden demand by the State for 22
18 years, springing on him a new interpreter does not fall within
19 the definition of zealous representation. It also doesn't fall
20 within the definition of competent and complete representation.

21 I, therefore, Your Honor, submit that he was
22 entitled to have that plea set aside, and the matter returned
23 for further proceedings at the trial level. Thank you, Your
24 Honor.

25 By the way, I do very much appreciate your taking

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1 the time to do this today. This is most kind of you. I do
2 appreciate it. Thank you.

3 THE COURT: Yes, sir. My pleasure.

4 Yes, ma'am, your summation. Either of your
5 summation, I guess.

6 MS. BATTENFIELD: Thank you, ma'am. May it please
7 The Court. Just briefly for the record, some housekeeping. We
8 have been in contact with the victim. She did not want to be
9 here today. And I want to make sure to get it on the record
10 that Mr. Pimienta has waived venue to appear today in
11 Spartanburg, not Greenville.

12 MR. HARTE: That's correct.

13 MS. BATTENFIELD: Wonderful.

14 We would object to any kind of claim regarding
15 insanity. That's never been raised before, Judge. It wasn't
16 raised in the first PCR hearing. It wasn't raised in the
17 application. We would just briefly for the record object to
18 that being raised.

19 Your Honor, you heard -- at the first PCR, heard
20 from William Grove, who is Mr. Pimienta's original defense
21 attorney. He was with the office of the public defender. He
22 testified that he had met with Mr. Pimienta on multiple
23 occasions with an interpreter. And he affirmed on the record
24 that Mr. Pimienta understood the charges against him. And it
25 was a straight up plea. So Mr. Grove said that Mr. Pimienta

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1 understood that he wasn't guaranteed any kind of a sentence.
2 He understood what ABWIK and possession of a weapon charge
3 carried.

4 Mr. Pimienta, at no time, like I said before,
5 raised the issue at the plea hearing. He never said: I don't
6 understand what's going on.

7 And also, there's no right to have the same
8 interpreter that you've been working with present at your plea
9 hearing, at least I don't believe so, Judge.

10 Regarding the transcript, as I said before, we
11 reached out to Ms. Pamela Green on December 6, 2023, which was
12 shortly after the original -- month or so after the first PCR
13 hearing after Your Honor had us submit memorandums about this
14 issue. And we reached out to her under Rule 607 of the rules
15 governing administration of courts.

16 We used the official transcript request form. We
17 looped in court administration, transcript@sccourts.org. And
18 we followed the May 1, 2018 Order of the Supreme Court
19 governing how to officially request a transcript or an update
20 of a transcript. And we, of course, looped in Mr. Harte,
21 defense Counsel.

22 Your Honor, we would just ask that you would deny
23 the application. Thank you very much.

24 We appreciate your time, just like Mr. Harte.

25 MR. HARTE: I have just a very brief comment. The

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1 real problem here is that a lot of what we're deciding,
2 according to them, is based on what Mr. Grove says about what
'3 Mr. Pimienta understood.

4 The reality is that Mr. Grove did not understand
5 the case against his client. He didn't conduct an
6 investigation. He didn't properly inform his client. He
7 didn't perform the duties necessary.

8 And I'm not one of these lawyers that believes in
9 the good old boy system. I'll support a lawyer when he's
10 right. I'm going to call him out when he's not. I know The
11 Court will do the same. Mr. Grove did not do the proper job
12 for Mr. Pimienta.

13 THE COURT: Anything else?

14 MS. BATTENFIELD: No, ma'am.

15 THE COURT: And so, just to be clear, today, the
16 additional exhibits are Respondent's Exhibit 6, Applicant's
17 Exhibit 3, and Court's Exhibit 1; right?

18 MS. BATTENFIELD: Yes, ma'am.

19 MR. HARTE: And Your Honor, my Applicant's Exhibit
20 was 3; is that correct?

21 THE COURT: Yes, sir. That is your memorandum.

22 MR. HARTE: Thank you, Your Honor.

23 THE COURT: And I just want to make sure that I get
24 the interpreter's name.

25 THE INTERPRETER: I'm Paula Batory, B-A-T-O-R-Y.

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1 THE COURT: B-A-T-O-R-Y?

2 THE INTERPRETER: Yes, ma'am.

3 THE COURT: As I've stated before, to Mr. Pimienta,
4 and I would state to the victim as well, I know this is very
5 important to you. I take it very seriously. And I am going to
6 review my notes, the transcripts again, and I will issue
7 instructions for an order as quickly as I can. Thank you all
8 for being here. Unless there's anything else, this will --

9 MR. HARTE: Your Honor, I would be happy to order
10 immediately the transcript from the other hearing and the
11 transcript from this one, if Your Honor would like to have that
12 to review as you're looking at the record.

13 THE COURT: I certainly have no objection to that.

14 MS. BATTENFIELD: No objection.

15 THE COURT: That will slow us down a little bit. I
16 certainly do welcome that. I know that the hearing on
17 September 18th was a lengthy hearing, a very unusual hearing.
18 I don't think I've had a hearing quite like that before. I do
19 appreciate the efforts of the gentleman that's here today in
20 helping us interpret that day as well. Thank you, sir.

21 MR. HARTE: Your Honor, I will ask them to expedite
22 that, and I will, of course, copy you and opposing Counsel with
23 that request.

24 THE COURT: Yes, sir.

25 MR. HARTE: Thank you very much, Your Honor.

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1 THE COURT: Thank you all for being here.

2 MS. BATTENFIELD: Can we get Mr. Pimienta's
3 cousin's name for the record, Judge.

4 MR. ROMERO: Reynerio Romero. R-E-Y-N-E-R-I-O.
5 Last name, R-O-M-E-R-O.

6 MS. BATTENFIELD: Thank you.

7 THE COURT: Nice to see you-all.

8 That will conclude the hearing.

9 MR. HARTE: Thank you very much, Your Honor.

10 (The hearing was concluded at 11:05 a.m.)

11 (RESP EXH. 6, Transcript, was entered into
12 evidence.)

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PAMELA GREEN BY MS. BATTENFIELD

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter,
and Notary Public for the State of South Carolina at Large, do
hereby certify that the foregoing transcript is a true,
accurate, and complete record.

I further certify that I am neither related to nor
counsel for any party to the cause pending, or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 18th day of May, 2024 at Spartanburg, Spartanburg
County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

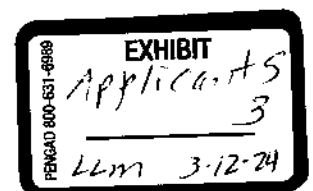
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	2014-GS-23-3268
REYNALDO PIMIENTA	)	
	)	
PETITIONER	)	
	)	PETITIONER'S MEMORANDUM
Vs.	)	
	)	AS TO INTERPRETER NOT SWORN
	)	
STATE OF SOUTH CAROLINA	)	
	)	

The Petitioner respectfully submits that he is entitled to relief because according to the transcript provided to the undersigned, the interpreter at the guilty plea was not sworn, and his attorney did not interpose an objection to the interpreter not being sworn.

South Carolina cases have held that: while the administration of the oath to a witness is fundamental to give the witness's testimony binding force, in the absence of a timely objection, unsworn testimony does not constitute a nullity. Further, "no constitutional provision is violated when unsworn testimony is received." 81 Am. Jur.2d Witnesses § 712 (1976). State v. Perez, 334 S.C. 563, 566

In this case, two principles support the Petitioner's right to relief. First, the interpreter at the guilty plea was not sworn, according to the record. Second, the attorney for the Petitioner failed to interpose an objection. The failure to interpose an objection meant first that the trial court was not called upon to swear the interpreter. The second impact of the failure to impose an objection meant that the relief could not have been obtained on appeal.

This failure of the Attorney for the Petitioner mirrors the argued errors in State v. Perez, 334 S.C. 563 (S.C. 1999); the result of which was that the petitioner was barred from raising the issue on appeal. The Petitioner in the instant case argued that "An interpreter is considered a



witness in the sense that the accuracy of her translation is a question of fact for the jury which may be disputed by counsel. *State v. Puente-Gomez*, 121 Idaho 702, 827 P.2d 715 (1992). ” *State v. Perez*, 334 S.C. 563, 566 n.2 (S.C. 1999). This Petitioner makes this same argument and contends that had his Attorney objected to the Clerk’s failure to administer the oath to the interpreter he would not have entered the guilty plea.

If there were no questions about the accuracy of the translation provided by the unsworn interpreter, it would be a harmless event. However, that is not the case here. The underlying injustice in this case arises from the fact that the Petitioner was not accorded a fair trial because the interpreter at the guilty plea spoke so that the Petitioner could not understand what was being said. The reliability of the translation was never questioned by the Attorney for the Petitioner, although there were several instances in which the Interpreter indicated a difficulty interpreting See Transcript of Record p 7:16 – 8:8 and 11:16.

The petitioner invites the Court’s attention to the case of Leon V State 379 SC 448 (Sc Ct of Appeals, 2008, 666 SE 2d 260. (2008) in which the Court held that:

“In order to satisfy the ‘prejudice’ requirement [in the context of a guilty plea], the defendant must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Alexander*, 303 S.C. at 542, 402 S.E.2d at 485.”

In the Leon case, Leon testified he did not understand the interpreter provided by the court because he was nervous, and the interpreter spoke too fast. The Appellate Court held that Leon’s testimony was insufficient to meet the standard required for relief.

The Petitioner in the instant case respectfully submits that the instant case differs greatly from the Leon v State case for the following reasons:

First the Court in this case at the PCR hearing experienced substantial difficulty in crafting a method of translation that would ensure that the Court and the Petitioner could understand each other and so that the attorneys could examine and cross examine the Petitioner. In the hearing, even with a Court approved interpreter who was sworn, very serious difficulties arose forcing the Court to rely on a second interpreter who was not an official translator and that set up was further overseen by the State's interpreter who was also not an official translator. Even with all three involved, the effort was very difficult.

It is a fundamental rule of law that, in order to be entitled to relief, the PCR litigant must establish not only that counsel was inadequate, but also that the result would have been different had the attorney not fallen short of the standard for counsel in similar proceedings.

In the case at hand, the Petitioner believes that the fact that the interpreter was not sworn is an important fact. To conclude that the imposition of the oath would not have made any difference renders the requirement of an oath nothing more than a mere whim equivalent to question of whether Anne Boleyn was wearing white or black or crimson on the day of her death. If the oath makes no more difference than the color of Anne's frock, why bother to administer it at all? (If it mattered,, which it didn't, she wore crimson and thereafter English Judges set their traditional crimson robes aside for black or so the legend goes)

The answer is that, unlike the color of a death dress, an oath matters; it is fundamental to our system of justice and a proceeding that does not adhere to the rules cannot be allowed to stand. Otherwise, defendants in South Carolina will share with that Queen the fate of all those to whom justice is denied. Does that mean that every time an oath is inadvertently omitted, relief must be granted? Of course not, but when the failure to administer the oath combines with a

failure to preserve that fact for the record and those facts lead to an inability to communicate, relief should be granted.

Paul Newman was told in the movie “Cool Hand Luke” that what the Boss of the chain gang had was a “failure to communicate”. That was not Luke’s fault, but he suffered mightily for it. What we have in this case is a real-life failure to communicate and part of that includes the unsworn interpreter. Mr. Pimienta is not saying that what Mr. Leon said. The interpreter was not speaking too fast. Mr. Pimienta was not so nervous that he could not understand. The unsworn or even if he were sworn, the interpreter was not communicating with Mr. Pimienta. Just like the Boss who was really responsible for the Hollywood condition in the film, the interpreter caused the “failure to communicate”. Mr. Pimienta does not deserve to suffer for the interpreter’s failure any more than Luke deserved to suffer because of the Chain Gang Boss’s inability to communicate.

Immediately prior to submission of this memorandum, a new transcript was forwarded to the Court. Appearing in the new version is a section in which the interpreter was sworn. Even Perry Mason could not create a better finish to an otherwise lost case. But, here, it isn’t Perry Mason, or the prosecutor who comes up with the winning twist. Out of the wings we have the sudden appearance of the court reporter with the silver bullet.

That sort of thing works on the stage, but it should not work here nor should it divert attention from the simple reality that Mr. Pimienta was denied due process because no one at that Plea hearing gave adequate consideration to the complexity involved when a Defendant does not understand what is happening and cannot make that known because the person designated to speak for him was too far behind to be of help.

If the record provided by the Court Reporter upon the first request is accurate, then the interpreter was not sworn and the Petitioner is entitled to relief. If the new and “improved” version of the record is accurate, then the issue of an unsworn interpreter doesn’t exist. What does exist is the record made under oath that it was a group plea, both records that show that the interpreter was not able to keep up, the personal observation of the difficulties encountered at the PCR hearing, and the sworn testimony from Mr. Pimienta that he did not understand what was happening. All or any of those facts justify a new trial.

RESPECTFULLY SUBMITTED

s/John W. Harte
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1 STATE OF SOUTH CAROLINA

2 COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,

5 PLAINTIFF,

6 VS.

7 REYNALDO R. PIMIENTA,

8 DEFENDANT.

TRANSCRIPT

OF

RECORD

2014-GS-23-3268A

2014-GS-23-3268B

9
10 December 19th, 2019
11 Greenville, South Carolina
12

13 B E F O R E:

14 THE HONORABLE PERRY H. GRAVELY, Judge.

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

16 WILLIAM R. HOLLOWAY
17 ASSISTANT SOLICITOR
18 Attorney for the State

19 WILLIAM E. GROVE
20 ASSISTANT PUBLIC DEFENDER
21 Attorney for the Defendant

22
23 Transcribed by Pamela E. Green, from
24 DCRP, Digital Courtroom Recorder Project
25

I N D E X

(WHEREUPON, there were no exhibits marked during this hearing.)

P R O C E E D I N G S

THE CLERK: Do you solemnly swear that you will in -- accurately interpret the language requested in this courtroom of the defendants without additions thereto or detractions therefrom or any other amendments of your own interpretations so help you God?

THE INTERPRETER: I do.

THE CLERK: Thank you.

Your Honor, in the case of 2014-GS-23-3268 A and B, the State versus Reynaldo R. Pimienta indicted for assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime. Pleading to assault and battery with intent to kill, and possession of a weapon during a violent crime, and these are true billed.

(WHEREUPON, the Defendant was placed under oath at this time.)

THE CLERK: Thank you.

THE COURT: All right. Are you Reynaldo Pimienta?

THE DEFENDANT: Yes, sir.

THE COURT: How old are you?

THE DEFENDANT: Fifty-five years of age.

THE COURT: And how far did you go in school?

THE DEFENDANT: I did eight years of school. College.

MR. GROVE: He was a -- he's a physician, Your Honor.

1 THE COURT: Okay. Are you under the influence of any
2 alcohol, drugs, or medication today?

3 THE DEFENDANT: No, sir.

4 THE COURT: Any health or mental issues which would
5 keep you from understanding what's going on?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. And your cases have been sent
8 to the Grand Jury and true billed, but, but you have certain
9 Constitutional rights which you're giving up by pleading
10 guilty.

11 You have a right to a jury trial. You have a right to
12 make the State prove its case against you beyond a
13 reasonable doubt, and you're presumed innocent up till that
14 point. You have a right to confront all of your witnesses
15 against you. You have a right to examine all evidence
16 against you. You have a right to remain silent, and that
17 can not be used against you.

18 In other words, if you went to trial, and you decided
19 not to testify, then that -- the jury would be instructed
20 they could not consider that.

21 You understand each of these rights?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you realize that you're waiving these
24 rights by pleading guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. And you have a right to appeal
2 your sentence and your plea. But you'd have to do so in
3 writing within 10 days.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Have you had sufficient time to
7 talk with your attorney, Mr. Grove, about your case?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Has he, has he answered all your questions
10 and done all the investigation which you felt was
11 appropriate?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you completely satisfied with his
14 representation of you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Any complaints against Mr. Grove or anybody
17 in his office?

18 THE DEFENDANT: No.

19 THE COURT: All right. You have a charge of assault
20 and battery with intent to kill, which carries up to 20
21 years, and a possession of weapon during a violent crime,
22 which carries a mandatory five years.

23 Okay. You understand each of these charges?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And how do you wish to plead?

1 THE DEFENDANT: Guilty.

2 THE COURT: To both charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Also I, I notice that -- maybe
5 because it's old, they, they have negotiated sentence, but
6 this is a recommendation.

7 SOLICITOR HOLLOWAY: Yes, sir.

8 THE COURT: Correct?

9 MR. GROVE: That's correct, Your Honor.

10 SOLICITOR HOLLOWAY: Your Honor, it's -- I'm sorry.
11 It's, it's straight up.

12 THE COURT: Okay. Straight up.

13 SOLICITOR HOLLOWAY: Yes, sir.

14 THE COURT: All right. So, I am changing this form
15 where it previously said negotiated, and then I'm indicating
16 that it's without negotiation or recommendation, and you
17 understand that, Mr. Pimienta?

18 MR. GROVE: If I can explain that?

19 THE COURT: Right. You want to talk to him.

20 (Pause.)

21 MR. GROVE: Thank you, Your Honor.

22 THE COURT: All right. So, you understand that we have
23 changed the form you signed to say without negotiation or
24 recommendation?

25 THE DEFENDANT: Okay. Yes. Yes.

1 THE COURT: And you wish to still go forward on this
2 plea?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. You realize that you're looking at a
5 maximum of 25 years on these charges?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Has anybody promised you anything or
8 threatened you to plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you pleading guilty freely and
11 voluntarily?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. I'm gonna hear the facts from
14 the Solicitor's Office. Then I'm gonna ask if you -- you
15 need to listen up. So, I'm gonna ask if you agree with
16 them.

17 SOLICITOR HOLLOWAY: Yes, sir, Your Honor.

18 To say the least, this day has been a long time coming.
19 On May the 11th, 2000, around 5:40AM, this Defendant
20 followed the victim as she left work, pulled beside her at a
21 traffic light, and fired two rounds---

22 THE INTERPRETER: I'm sorry, Your Honor.

23 SOLICITOR HOLLOWAY: I'm sorry.

24 THE INTERPRETER: The interpreter is behind.

25 SOLICITOR HOLLOWAY: Sure. We're good?

1 THE INTERPRETER: Followed the victim?

2 SOLICITOR HOLLOWAY: Followed the victim, and pulled
3 beside her at a, at a, a light. He then fired two rounds
4 from his gun into her vehicle. This occurred on -- in the
5 area of North Main Street in Mauldin. Two of the bullets
6 entered her vehicle, and one of those, those bullets entered
7 her left side, and struck her, her back.

8 Okay. The victim was able to identify this Defendant
9 as the shooter to the first officer on scene, and, over the
10 past 19 years, she has consistently said he is the one who
11 shot her. He was actually stopped for a traffic violation
12 nearby. That officer filled out about half a ticket
13 including his name and tag number.

14 THE INTERPRETER: I'm sorry. But the officer --?

15 SOLICITOR HOLLOWAY: The officer filled out half of a
16 traffic ticket including his name and tag number. That tag
17 number was to a car he rented in Florida.

18 Okay. The officer got the call for the shooting and
19 let him go. An employee at a nearby store, as well as a
20 passerby who called the police, also provided information.

21 After her, her surgeries that same day, she told the
22 police she was married to a -- this other gentleman, and
23 broke off an affair with this Defendant. In the days since
24 the, since the breakup, the Defendant harassed her and her
25 husband.

1 In the intervening years, the car rental location did
2 not tell the police -- okay. Did not tell the police when
3 he dropped off the car.

4 In the intervening years, to give you the -- the Court
5 of this investigation---

6 THE COURT: well, as far as the facts though, that's
7 all the facts that relate to---

8 SOLICITOR HOLLOWAY: Yes, sir.

9 THE COURT: Hold on.

10 SOLICITOR HOLLOWAY: She did -- she is paralyzed from
11 the waist down.

12 THE COURT: well, let me question him on the facts---

13 SOLICITOR HOLLOWAY: Sure.

14 THE COURT: ---and then I'll be glad to get into---

15 SOLICITOR HOLLOWAY: Sure. Thank you, Your Honor.

16 THE COURT: All right. Mr. Pimienta, you heard the
17 facts as far as the, the case of -- you agree with those
18 facts?

19 THE DEFENDANT: The only thing I am not agreeing with
20 is I never threatened her.

21 THE COURT: Okay. But other than that, the charge --
22 the facts for the assault and battery with intent to kill
23 and possession of a weapon during a violent crime, you agree
24 with those facts?

25 THE DEFENDANT: Yes. Yes.

1 THE COURT: And you still wish to plead guilty?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. I will accept your plea. I
4 find that it's been knowingly, intelligently, and
5 voluntarily made with the advice of competent legal counsel
6 with whom you've indicated you're satisfied with his
7 representation, and that there's a substantial factual basis
8 for the plea.

9 All right. Also, your assault and battery with intent
10 to kill is designated as a violent and a most serious
11 charge.

12 All right. And you realize that this will have an
13 affect on your parole eligibility, and, in the event that
14 you should ever get another conviction for most serious,
15 then, then you could be looking at a, a possible sentence of
16 life without parole, and you understand this, and still wish
17 to plead guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. Now what I will do is I'll hear the,
20 the record, jail, all the additional information, and be
21 glad to hear from the victim, and then I'll hear from the
22 defense.

23 SOLICITOR HOLLOWAY: Yes, Your Honor. He has no prior
24 record. The victim is here. I would like to add a little
25 bit about the investigation.

1 THE COURT: Right.

2 SOLICITOR HOLLOWAY: I'll be brief.

3 THE COURT: I'll be glad to hear from that now.

4 SOLICITOR HOLLOWAY: Your Honor, in the past, until he
5 was picked up in October, 2017, this case was worked by the
6 City of Mauldin. This case was worked by the FBI, U.S.
7 Marshals, authorities in Florida at the time. I got on, on
8 this case in 2014 when the FBI received intelligence he
9 might be in Spain.

10 We did get a, a, a Red Notice at -- in 2016. Yet, he
11 was still able to fly to his home country in South America.
12 How he was ultimately found is I believe that when
13 Investigator Ben Ford notified Trey Gowdy's Office,
14 Congressman Gowdy, I believe that the FBI in South America
15 really got cracking on trying to find him.

16 They found that he had subscribed to a cell phone.
17 They then pinged the cell phone and they found him.

18 The bullet that struck her spinal, spinal column, it
19 fractured the L1/L2 vertebra. She's been paralyzed for 19
20 years, six months, and five days as of today. That is 7,161
21 days she has sat---

22 THE INTERPRETER: 7,100?

23 SOLICITOR HOLLOWAY: 161 days that she has waited for
24 this day patiently. I have met with her six or seven times
25 since 2015, and every time, after about 20 to 30 minutes,

1 pain from the bullet wound seizes her body, and she does
2 writhe in pain.

3 We believe, based on these facts, he deserves a
4 sentence of 22 years. It's a significant sentence in light
5 of everything that he has put this victim through for nearly
6 two decades.

7 Thank you, Your Honor.

8 THE COURT: Does the victim want -- wish to be heard?

9 SOLICITOR HOLLOWAY: Yes, sir.

10 THE COURT: All right. I'll be glad to hear from you,
11 ma'am.

12 THE VICTIM: Okay. Reynaldo. Reynaldo.

13 THE COURT: No, you need to be -- address the Court.

14 THE VICTIM: I thank God today cause the -- God's time
15 is perfect. God, God responds and he does everything
16 perfect.

17 I was told to say or to prepare what I was going to say
18 in Court, and the only thing that I have to say is that, on
19 that day, that Reynaldo took a handgun to shoot me. I don't
20 remember if it was two, three, four, five shots. I didn't
21 die on that day. That day God always gave us an opportunity
22 every single day to know of him, and he has made me a new
23 person.

24 He gave me the, he gave me the opportunity to meet God,
25 and when it is time for me to die, and he knows -- and she

1 knows where she's going. And that's why I wanted to give
2 something to Reynaldo because this is a beautiful day so he
3 can start again.

4 We can, we can all be -- I'm sorry. Forgiven --
5 forgive somebody from all the mistakes that we made. And
6 God has forgive me and then, if God has forgive me, I will
7 forgive also. We can be free and Reynaldo is -- he was free
8 for all these years like he don't -- didn't have the true
9 freedom.

10 So now his days are good opportunities for -- God is
11 giving him opportunities for -- so he can have a real
12 freedom. And then all, all the strength that God has given
13 me, and he has given me a lot of peace and love. He has, he
14 has freeded (sic) for all of the mistakes that I have made,
15 and he has given me his whole spirit, peace, love, a lot of
16 patience being a good person, become a lot of faith, and a
17 lot of goodness, and self-control.

18 In those days when this happened, which you have -- if
19 we had God in our hearts, and we have let him guide our
20 lifes (sic), we would not be thinking of hurting somebody
21 else. That is why today, and I have waited for this day,
22 today is the day that I give you this Bible so you can
23 put -- so you can start knowing what is God and who that is.

24 And he -- we are made free and make new people in God's
25 word, and he gave us -- God gave us the opportunity from

1 here from earth to -- yes, to die. Thank you for your love
2 and thank you for your misery, and, Reynaldo, the only thing
3 that I have for you, and I hope you will come free, and, if
4 you want, you can accept this Bible, the word of God.

5 THE COURT: All right. Thank you. And I'm sorry what
6 you've been through on all of this.

7 All right. Anything else from the State?

8 SOLICITOR HOLLOWAY: No, thank you.

9 THE COURT: Mr., Mr. Grove, be glad to hear from you
10 and your client.

11 MR. GROVE: Goodness.

12 I know that Reynaldo has, has talked a lot with me in
13 the days, and weeks, and months leading up today out of
14 concern, obviously, for the sentence that would be imposed,
15 but also out of concern for how he would be received by
16 Olga, and while -- based on his actions, and based on the
17 flight, and, and based on the length of time that he was
18 gone, it, it might be hard to believe, but he has expressed
19 to me the guilt and shame that, that he has carried with him
20 about that day.

21 None, none of that excuses his behavior that day, and
22 what I'm prepared to say, I don't, in any way, intend to be
23 received as projecting blame anywhere else but right here.
24 The -- and, and I think Reynaldo wants that to be clear as
25 well that he is responsible for his actions. Not anybody

1 else.

2 what I can tell you about him is, prior to this
3 incident, he was living in New York. At some point he
4 started a relationship with the victim and moved down here
5 to this area, and, ultimately, obviously, that relationship
6 did not work, and he, in talking with him, he talks about
7 becoming incredibly depressed and alone and, and not really
8 knowing what to do or where to go, and that that depression
9 led to the worst thing by far. I mean, by leaps and bounds,
10 the worst thing that he has ever done.

11 I think that that is clear by his entire lack of record
12 leading up to this, and, obviously, a lack of record after
13 this. If he had ever been arrested following this day, we
14 would of obviously been identified, and apprehended, and,
15 and returned here to face these charges at any previous
16 time.

17 He has a 10 year old daughter, and, again, this doesn't
18 excuse anything that he did back in May of 2000 or any time
19 since. But I can certainly understand how he was, I, I
20 think, at least, there was never a good time for him to turn
21 himself in, that -- I think he was always trying to, after
22 he ran because he was scared and terrified of what he had
23 done, I think that he tried to put himself in a position
24 where he would be better off or more well received when he
25 was ultimately apprehended to try and mitigate the

1 situation.

2 And when you find yourself in that position, tomorrow
3 is always a better day to do it than today. And, and I
4 think that he had lots of I'll try and fix this tomorrows,
5 and just ultimately was never able to put himself in that
6 position, and, and ultimately turn himself in to face these
7 charges.

8 He was arrested in Colombia, South America on October
9 the 24th of 2017. I'm asking Your Honor to consider
10 giving him credit back to that day.

11 The charge that he was arrested on, and I'm probably
12 not gonna say it right, but I believe it is fleeing a
13 jurisdiction to avoid prosecution, which is, effectively, a
14 bench warrant in Federal Court, and that charge arose out of
15 this charge. The, the basis for the Federal charge was
16 these, these two charges in Greenville, and, and, because
17 they are so intertwined, I'd ask Your Honor to consider
18 giving him all of that credit.

19 I have explained to him the law says he is only
20 entitled to credit back to December the 20th of 2018 when
21 he was actually served with these two indictments. But
22 because of the related nature of the two charges, I -- I'd
23 ask you to, to consider giving him 787 days of credit is the
24 math I believe rather than 365 days.

25 I have talked with a couple of lawyers in Federal

1 Court, and I confirmed that charge, the Federal charge, was
2 dismissed the day he was brought here. The only purpose of
3 that charge was to force him in a situation to where he
4 would be served with these warrants or indictments I
5 suppose.

6 I could go on for hours about all of the wonderful
7 things that I know about Reynaldo that sort of highlight how
8 incredibly unusual this situation was, and how completely
9 opposite of, of, of him this type of behavior would be. But
10 I know that he would like to address Your Honor.

11 I, I think it is important to him to ask for
12 forgiveness. I, I know I haven't talked to him since we've
13 heard from the victim, but I, I am comfortable saying that
14 he probably feels a tremendous amount of relief right now
15 having heard the very powerful words issued by the victim,
16 and, and her forgiveness that I know that he is truly
17 thankful for. But I have, I have instructed him that it is
18 best to direct his comments to Your Honor, and not to
19 anybody else. But I would ask you to give him an
20 opportunity to speak at the appropriate time.

21 THE COURT: Mr. Pimienta, I'll be glad to hear from
22 you.

23 THE DEFENDANT: Good morning.

24 First of all, I ask for forgiveness to Olga, to her
25 family, to this country, to the prosecutor for all the

1 damage I've caused. I am very, very embarrassed to be
2 wearing this uniform at this moment.

3 Your Honor, my parents raised me not to cause any
4 damage to anyone, but to help the others. As you, I'm a
5 professional. I went to the university, and these hands
6 that you see right now in handcuffs in several occasions God
7 have used them as an instrument to bring lifes (sic) to this
8 world through the 100 deliveries I worked on during my
9 profession.

10 My intentions, when I came to this country, to New York
11 City, New York, it was to work on my profession. I came
12 legally. I took my exams to get my credit as a doctor, but,
13 unfortunately, due to my lack of English, I did not pass.

14 The truth is, when the terrible incident on that day
15 happened, I was in a deep depression because I just had
16 moved here a few months before from New York with a hope of
17 a beautiful future with Olga.

18 When I arrived here to South Carolina, I was getting
19 along very well with her children, with her family, and
20 suddenly everything came down. I found myself living alone
21 in a house in Columbia where I found a job. Even if it
22 wasn't in my profession, I had to work. I went to that
23 house because it was very difficult for me, living in
24 Mauldin, to travel every day because then I couldn't do my
25 job well.

1 Then I rented the house and I would return to her every
2 weekend, and fortunately I felt alone. I didn't have any
3 friends here in South Carolina because all my friends were
4 her friends. I would come out from work and going to the
5 house just to cry, cry, and cry.

6 I got into such a depression that, that I just couldn't
7 control my emotions. On that day, I was, was in shock. I
8 was in fear. My sentiment were -- I did not know what I was
9 doing. I do not find myself as a violent person.

10 During the time I lived with Olga, we never, never,
11 never had a domestic violent issue, and I never, never had
12 any problems with the justice in any of the countries where
13 I've lived.

14 After that day, I felt a lot of fear. I didn't know
15 what to do. I felt -- I didn't know where to go. I thought
16 the family would go against me, but then I thought they
17 wouldn't because she has a very good family, and, because of
18 that, I left the country.

19 God knows well I'm very, very repentant for what I've
20 done, and, from that moment, I've been praying to God as
21 much as she has, and I'm also very happy that I, I know God
22 as she does.

23 Unfortunately, that incident did happen, and they
24 happened. So, I gave myself to God. I prayed every day for
25 her to heal and God knows that, at this moment, I would

1 change my position to be in her position, for her -- for me
2 to be sitting on the wheelchair rather. God knows that, and
3 would you allow me to ask her for forgiveness?

4 THE COURT: That will be fine.

5 THE DEFENDANT: Olga Lucia, you know very well how much
6 we loved each other. I'm telling you honestly I don't know
7 what I did on that day. And, because of that, I'm here and
8 I'm pleading guilty.

9 So, Your Honor, you will weigh all the motives and will
10 give a sentence. Either way, I know I'm going to spend some
11 time in jail, but, more important than anything, I feel like
12 you do, that my soul is free.

13 I ask you for a lot of forgiveness, and I thank you for
14 the words you gave me, and I thank you a lot for the Bible
15 you've given me. I promise you, for the love we had to each
16 other, that I will read it all thinking of you, and with the
17 hope that in the world of life will finally show you in
18 Heaven, and everything will be completely different.

19 There are no words in the world to tell you how much I
20 feel for what has happened. I'm satisfied, because you know
21 it as well, that God has forgive me as well.

22 So, the most important now is---

23 THE COURT: All right. Let's wrap it up. I'm not -- I
24 mean this is not intended to have a conversation going here.
25 But I'll, I'll be glad to hear any final words you have.

1 MR. GROVE: Your Honor, we're asking for a sentence
2 between 12 and 15 years, and, again, we're also asking
3 credit for the sentence to go back -- credit for his time to
4 go back to October the 24th of 2017.

5 THE COURT: All right. Anything else from either side?

6 SOLICITOR HOLLOWAY: No, sir.

7 THE COURT: All right. After hearing that, I do
8 believe that, since the arrests were all related to this
9 matter, that I, I think is appropriate to backdate to
10 October the 24th.

11 But the Sentence of the Court on the possession of a
12 weapon, that's five years, and on the assault and battery
13 with intent to kill, that's 17 years. These are
14 consecutive.

15 Good luck to you.

16 MR. GROVE: Thank you, Your Honor.

17 SOLICITOR HOLLOWAY: Thank you, Your Honor.

18

19

20 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

21

22

23

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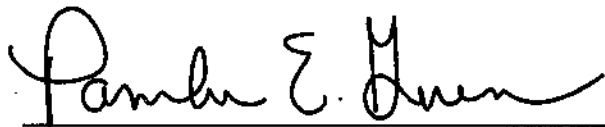
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C E R T I F I C A T E

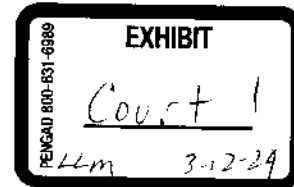
I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 19th day of December, 2019.

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

December 7th, 2023

A handwritten signature in cursive script, reading "Pamela E. Green", written over a horizontal line.

PAMELA E. GREEN, Court Reporter



STATE OF SOUTH CAROLINA
In The Court of Common Pleas

Post-Conviction Relief, Greenville County
The Honorable Grace Gilchrist Knie, Circuit Court Judge

Case No. 2021-CP-23-1789

REYNOLDO PIMIENTA aka REYNOLDO PIMIENTO,.....APPLICANT,

v.

STATE,.....RESPONDENT.

**MEMORANDUM OF LAW IN SUPPORT OF
THE CONCLUSION THAT THE PLEA HEARING
INTERPRETER WAS SWORN IN**

After nearly twenty years on the run, Applicant Reynoldo Pimienta aka Reynoldo Pimiento¹ was extradited back to the United States and pled guilty to assault and battery with intent to kill and possession of a weapon during the commission of a violent crime (2014-GS-23-3268A and -3268B) on December 19, 2019 before the Honorable Perry H. Gravely. (Court's Packet pp. 19–20, 29–30). He pled guilty to shooting his ex-girlfriend while she was in her vehicle, leaving her paralyzed from the waist down. (Court's Packet pp. 45–47). Judge Gravely sentenced him to 17 years for ABWIK and 5 consecutive years for the weapons indictment. (*Id.*)

Applicant, through counsel, then filed an application for post-conviction relief on April 19, 2021, raising the following issues:

1. The Defendant's Lawyer repeatedly declined Petitioner's request for conferences to the extent that the Petitioner was unable to

¹ Applicant was indicted and convicted as Reynoldo R. Pimienta. However, the post-conviction relief action lists him as Reynoldo Pimiento. They are one and the same person. *See* Public Index.

understand the nature of the charges, the criminal justice process or his options within that system;

2. The Defendant's attorney failed to investigate the facts of the case especially the question of whether the projectile that struck the victim struck the vehicle first which would have supported the theory that the Petitioner never intended to shoot the victim;
3. The Petitioner's attorney knew that the victim was out of the country when the case was called and that without the victim, the State had no case. The Petitioner's attorney allowed the case to be called for a guilty plea without advising the Petitioner that, if he demanded a jury trial, the case could not have gone forward with the possibility that the victim would never be available;
4. Petitioner's attorney denied the Petitioner's request for a meeting on December 18, the day before the plea leaving the Petitioner uninformed as to the proceedings that would occur on December 19 and unprepared for what he should say at the plea hearing;
5. Petitioner requested to see his attorney on December 18, but the attorney said he didn't need to. Pimienta wanted to be prepared to speak during the hearing;
6. The translator used at trial was not the translator with whom the Petitioner had worked leading up to the trial. The translator at trial was from the same hometown as the victim. That was not made known to the Judge and was changed at trial. Witnesses have confirmed that the translator did not translate word for word;
7. The Petitioner's attorney did not advise the Petitioner of his right to appeal. In the court proceedings, the translator omitted the Court's instructions to the Petitioner regarding the right to;
8. Petitioner's attorney failed to file an appeal from the sentence;
9. Petitioner's attorney did not make a complete presentation of facts to the Court and omitted the fact that there had never been any violence between the Petitioner and the victim prior to the shooting. Nor did the attorney advise the Court that the shot was fired to scare the victim not to hit or kill her;
10. The Petitioner was not told until 3 minutes before the trial, that the State was going to request 22 years plus 5 consecutive for possession of a firearm. That was not what they had talked about.

The Defendant was not given time to understand the chance in recommendation or to change his plea; and

11. The State wrongly accused the Petitioner of threatening or previously being violent with the victim. The Petitioner's attorney did not challenge the assertion although it was untrue. The Petitioner's attorney would have known that had he conducted a complete investigation of the case and spent enough time with the Petitioner to know the facts of the case.

(Court's Packet pp. 4–5; Applicant's PCR Application).

Respondent filed a return and partial motion to dismiss on August 20, 2021, and specifically “reserved the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to *Love v. State*, 428 S.C. 231, 238–39, 834 S.E.2d 196, 199–200 (2019).” (Return p. 7). At the evidentiary hearing on September 18, 2023, however, Respondent was told by Applicant that the alleged failure to swear the interpreter would be raised less than five minutes before the hearing was to begin, leaving Respondent no time to prepare to defend the claim. This unduly prejudiced Respondent, so as it so moved at the PCR hearing, Respondent once again moves to dismiss the claim on that ground alone.

The Uniform Post-Conviction Relief Act mandates that all “grounds for relief available to an applicant under this chapter must be raised in [the] original, supplemental or amended application.” S.C. Code § 17-27-90 (1962). Applicant did not raise the ground in his petition, so he has waived it. Had Applicant notified Respondent he was going to raise the claim, Respondent would have, among many other things, subpoenaed the plea hearing interpreter, Juliana Saccucci, to the PCR hearing and questioned her regarding whether she was sworn in at Applicant's plea hearing. The State was thus materially prejudiced by Applicant's attempt to play “gotcha” with Respondent. The claim should therefore be deemed procedurally barred.

The ground may additionally be barred by laches. Laches is “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in the law should have been done.” *Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (quoting *Hallums v. Hallums*, 296 S.C. 195, 198–199, 371 S.E.2d 525, 527 (1988)). The Supreme Court of South Carolina upheld the PCR judge’s decision to bar a claim based on laches in *Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005). Bray raised a claim seven years after the denial of his first PCR application and offered “no explanation for the delay other than the fact that he only recently discovered he could seek a belated review of that denial.” *Bray*, 66 S.C. at 140, 620 S.E.2d at 745. The Court found that as the “tapes of petitioner’s first PCR hearing [had] been destroyed,” and as no other evidence existed about what occurred at the hearing, the “PCR judge properly found that petitioner’s claim was barred by laches.” *Id.* “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party” *Whitehead v. State*, 352 S.C. at 219, 574 S.E.2d at 202 (citation omitted.) Under the facts of this case this Court should find laches applies and hold the claim is procedurally barred.

To the extent this Court would find the ground can be entertained on the merits, notwithstanding the fact that it is Applicant’s burden to prove the court interpreter was not sworn, it is also his burden to overcome the presumption of regularity. Courts are presumed to operate according to procedure, and proceedings are presumed to be regular unless there is clear evidence to the contrary. *State v. James*, 321 S.C. 75, 75, 472 S.E.2d 38, 40 (Ct. App. 1996); *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995) (“Absent evidence to the contrary the regularity and legality of proceedings in general sessions court is presumed.”); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986) (finding that as there was testimony by the foreman of the

grand jury that the regular procedure was to have the clerk publish the indictment in open court after the grand jury returned a true bill, petitioner did not meet his burden of proving his indictment was not true billed even though it was missing the grand jury foreman's signature); *State v. Jones*, 211 S.C. 319, 45 S.E.2d 29 (1947); *State v. Waring*, 109 S.C. 52, 95 S.E. 14 (1918). Applicant could have proven his claim by subpoenaing the plea hearing interpreter to the PCR hearing himself or could have obtained the necessary portion of the transcript himself (as he did not ask Respondent to do so), but he has not done either. He has offered no other evidence to prove his claim other than making the bare assertion that the interpreter was not sworn.

Respondent, on the other hand, even though Applicant gave no prior notice, provided testimony at the PCR hearing from the solicitor and a member of the Office of the Clerk of Court that established that Applicant had pled guilty and that it was the Office of the Clerk of Court's habit to swear in interpreters before guilty pleas. Therefore, it can be legally presumed that the interpreter was sworn in before the Applicant pled guilty. The original plea hearing transcript only included Applicant's guilty plea, but because Applicant did not raise this claim in his PCR application, the State had no reason to request any transcript other than what was presented to this Court by the Applicant at the hearing. Therefore, not only should the presumption of regularity stand, this Court should find the claim has no merit as the State also offered affirmative evidence by which it can be solidly presumed the interpreter was, in fact, sworn according to the normal course of operations in the Court of General Sessions. This Court should find the claim is procedurally barred for the reasons delineated above, or, in the alternative, find Applicant failed to meet his burden of proving the claim has merit.

Alternatively, as the State has the right to defend any claim raised, the State contacted the original court reporter Pamela E. Green on December 6, 2023, through the procedure outlined by

the Supreme Court of South Carolina in its May 1, 2018 Order and Rules 207 and 607, SCACR, and requested that she review the original, official tape of the proceedings again. She responded on December 7, 2023, and admitted she had inadvertently left out the first seven lines in her original transcript. Those lines are:

THE CLERK: Do you solemnly swear that you will in – accurately interpret the language requested in this courtroom of the defendants without additions thereto or detractions therefrom or any other amendments of your own interpretations so help you God?

THE INTERPRETER: I do.

THE CLERK: Thank you.

State v. Pimienta, Dec. 19, 2019 Transcript of Record, p. 3.

She included a self-proving affidavit at the end, as is the usual course of business for court reporters, and certified that “the foregoing is a true, accurate and complete Transcript of Record of the proceedings” Applicant has not shown how this was an improper course of action for the State to take to defend his last-minute claim, nor has he overcome the presumption of regularity, nor has he made a showing that the court reporter was in any way fraudulent or improper in how she went about correcting the transcript to match the official recording of the plea hearing. The court reporter and the State’s actions are in no way like *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007), where the court reversed because the trial court attempted to reconstruct a record that was entirely lost by permitting a hearing on the issue where the solicitor merely summarized the testimony presented at trial.

In fact, the court reporter’s notes here were not lost; she merely made an omission as all humans do are apt to do from time to time, and quickly and formally corrected it after learning of it. It is Applicant’s burden to “demonstrate prejudice flowing from an inadequate record,” and Applicant has done nothing of the sort here. *Ladson*, 373 S.C. at 325, 644 S.E.2d at 273. This court

has the authority to reconstruct the record in order to allow for “meaningful appellate review,” (*Ladson*, 373 S.C. at 325, 644 S.E.2d at 274) and Respondents move this Court to substitute the new plea transcript for the old one (properly requested by Applicant and provided to this Court), finding the court reporter made an understandable omission that has been properly corrected.

For all the foregoing reasons, this Court should dismiss the claim with prejudice as the Applicant has not met his burden of proving the court reporter was not sworn in, of overcoming the presumption of regularity, or proving Applicant suffered any kind of prejudice.

Respectfully submitted,

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Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

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By: s/Julianna E. Battenfield

ATTORNEYS FOR RESPONDENT

December 21, 2023

Aug 01 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Reynoldo R. Pimienta, #381958,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-23-01789

ORDER OF DISMISSAL
(with prejudice)

24 JUL 22 PM 2:25
Brice Garrett CDC GUL SC

This is a Post-Conviction Relief matter. By way of counsel, Applicant Reynoldo Pimienta ("Pimento" on the Public Index) filed his Post-Conviction Relief ("PCR") application on April 19, 2021. The first evidentiary hearing was held before the Honorable Grace G. Knie on September 18, 2023, at the Greenville County Courthouse and a second, follow-up hearing was held on March 12, 2024 at the Spartanburg County Courthouse by waiver. The Applicant was present and was represented by John W. Harte, Esq., and Assistant Attorney General Julianna E. Battenfield, Esq., and Senior Assistant Attorney General J. Anthony Mabry, Esq., represented Respondent. The Court Reporters were Maria DiScioscia (on September 18th) and Lora L. McDonald (on March 12th).

At the conclusion of day two of the hearing, Counsel requested that the Court leave the record open and refrain from ruling until Counsel could procure the transcript of record for these proceedings and provide them to the Court. The Court received the first transcript on April 1, 2024, and received the second transcript on May 21, 2024.

The Court has reviewed the transcript of record from the underlying action, the application, the return, and other pertinent documents. The Court has also taken into consideration all testimony and exhibits presented at the Post-Conviction Relief hearing including witness testimony from the

Applicant; Christy Diachenko, Assistant Clerk of Court; W. Ryan Holloway, Esq.; William E. Grove, Esq.; Pamela E. Green, Court Reporter; and Exhibits entered into evidence including: Applicant's Exhibits 1: Plea Transcript and Exhibit 2: Judicial Certificate of No Conviction History; Exhibit 3: Memorandum of Law; and Respondent's Exhibits 1: Plea Offer dated 6/10/19; Exhibit 2: Emails to William Grove, Esq., dated 10/1/19 and 10/2/19 regarding the case; Exhibit 3: Email to Mr. Holloway's boss, Attorney McMaster, and the jail coordinator regarding scheduling; Exhibit 4: Order of Appointment of Interpreter dated 12/19/19; Exhibit 5: Indictments, Sentencing Sheets, Warrants, and Bench Warrants; Exhibit 6: Corrected Plea Transcript; and Court's Exhibit 1: Memorandum of Law from Respondent.

The Court concludes that the Applicant has not met the required standards articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof of proving the outcome of the proceeding would have been different but for the alleged errors of counsel. The application is **DENIED** and **DISMISSED** with prejudice.

PROCEDURAL HISTORY

During the April of 2014 term, the Greenville County grand jury indicted Applicant for assault and battery with intent to kill (2014-GS-23-003268A) and possession of a weapon during the commission of a violent crime (2014-GS-23-003268B). On December 19, 2019, Applicant appeared before the Honorable Perry H. Gravely to plead guilty as indicted. Applicant was represented by William Eugene Grove, Esq. Assistant Solicitor W. Ryan Holloway, Esq., of the Thirteenth Circuit Solicitor's Office prosecuted the case. At the guilty plea hearing, the assistant solicitor provided the following recitation of facts:

On May the 11th, 2000, around 5:40 a.m., [Applicant] followed the victim as she left work, pulled beside her at a traffic light

He then fired two rounds from his gun into her vehicle. This occurred on - in the area of North Main Street in Mauldin. Two of the bullets entered her vehicle, and one of those, those bullets entered her left side, and struck her, her back.

Okay. The victim was able to identify [Applicant] as the shooter to the first officer on scene, and, over the past 19 years, she has consistently said he is the one who shot her. He was actually stopped for a traffic violation nearby. That officer filled out about half a ticket including his name and tag number.

That tag number was to a car [Applicant] rented in Florida. Okay. The officer got the call for the shooting and let him go. An employee at a nearby store, as well as a passerby who called the police, also provided information.

After her, her surgeries that same day, she told the police she was married to a -this other gentleman, and broke off an affair with [Applicant]. In the days since the, since the breakup, [Applicant] harassed her and her husband.

In the intervening years, the car rental location did not tell the police -okay. Did not tell the police when he dropped off the car.

[S]he is paralyzed from the waist down.

(Guilty Plea Tr. 7-9). Judge Gravely sentenced Applicant to imprisonment for seventeen years for assault and battery with intent to kill, imprisonment for five years for possession of a weapon during the commission of a violent crime, with both sentences running consecutively, and with credit for Applicant's time served since he was arrested in Colombia, South America, on October 24, 2017.

Applicant did not appeal his convictions and sentences.

CURRENT ALLEGATIONS

Applicant asserts in the application filed on April 19, 2021, and oral amendments thereafter, the following:

- I. The Defendant's Lawyer repeatedly declined Petitioners request for conferences to the extent that the Petitioner was unable to understand the nature of the charges, the criminal justice process or his options within that system.
- II. The Defendant's attorney failed to investigate the facts of the case especially the question of whether the projectile that struck the victim struck the vehicle first which would have supported the theory that the Petitioner never intended to shoot the victim.
- III. The Petitioner's attorney knew that the victim was out of the country when the case was called and that without the victim, the State had no case. The Petitioner's attorney allowed the case to be called for a guilty plea without advising the Petitioner that if he demanded a jury trial the case could not have gone forward with the possibility that the victim would never be available.
- IV. Petitioner's attorney denied the Petitioner's request for a meeting on December 18, the day before the plea leaving the Petitioner uninformed as to the proceedings that would occur on December 19 and unprepared for what he should say at the plea hearing.
- V. Petitioner requested to see his attorney on December 18 but the attorney said he didn't need to. Pimienta wanted to be prepared to speak during the hearing.
- VI. The translator used at the trial was not the translator with whom the Petitioner had worked leading up to the trial. The translator at trial was from the same hometown as the victim. That was not made known to the Judge and was changed at trial.
- VII. Witnesses have confirmed that the translator did not translate word for word.
- VIII. The Petitioner's attorney did not advise the Petitioner of his right to appeal. In the court proceedings, the translator omitted the Court's instructions to the Petitioner regarding the right to.
- IX. Petitioner's attorney failed to file an appeal from the sentence.
- X. Petitioner's attorney did not make a complete presentation of facts to the Court and omitted the fact that there had never been any violence between the Petitioner and the victim prior to the shooting. Nor did the attorney advise the Court that the shot was fired to scare the victim not to hit or kill her.

- XI. The Petitioner was not told until 3 minutes before the trial, that the State was going to request 22 years plus 5 years consecutive for possession of a firearm. That was not what they had talked about. The Defendant was not given time to understand the change in recommendation or to change his plea.
- XII. The state wrongly accused the Petitioner of threatening or previously being violent with the victim. The Petitioner's attorney did not challenge that assertion although it was untrue.
- XIII. The Petitioner's attorney would have known that had he conducted a complete investigation of the case and spent enough time with the Petitioner to know the facts of the case.
- XIV. At the hearing Counsel for Applicant also raised the issue that the interpreter had not been placed under oath at the hearing for Applicant's guilty plea proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As to Applicant's Post Conviction Relief Application and all issues raised to the Court, as well as the issue raised by Applicant regarding the interpreter at the guilty plea not being sworn and that counsel was deficient in not raising that issue to the Court, upon review of the transcript of the guilty plea, which was held on December 19, 2019, for the criminal offenses of Assault and Battery with Intent to Kill and Possession of a Weapon During a Violent Crime, the Application, the Return, the record, and all other pertinent documents, the exhibits, the testimony presented and arguments of Counsel, the Court concludes that the Applicant does not meet the required standard.

In post-conviction proceedings, the burden of proof is on the Applicant to prove the allegations in his application." *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008). "The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence." Rule 71.1(c), SCRPC. As articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), the standard required of the Applicant is to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency.

The Court has thoroughly reviewed the record in its entirety. The Court concludes that the Applicant does not meet the required standards articulated in *Strickland*, in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof.

Summary of PCR Testimony

September 18, 2023 - Greenville County Courthouse

As an initial matter, this Court ensured that no witnesses required sequestration prior to the start of the hearing. Neither party raised concern or issue. The State raised a statute of limitations defense, to which Mr. Harte, counsel for Applicant, argued that there was an inability to communicate during Co-vid thus delaying his filing. This Court allowed the matter to proceed forward on the merits. Mr. Harte raised issue regarding the swearing in of the interpreter at Applicant's guilty plea hearing and introduced the transcript of record from Applicant's plea hearing as Applicant's Exhibit 1. He argued that the transcript does not reflect that the interpreter was sworn-in, and such a mistake is to be considered a "fatal flaw." Respondent argues that the issue was not previously raised in Applicant's application, and that the State's return denied future allegations. This Court elected to consider the allegation on the merits.

Applicant testified on his own behalf at the hearing. Court-appointed interpreter, Aviel Bat Zion, was appointed to translate for Applicant. On direct examination, Applicant testified that he met with plea counsel five to six times prior to entering his plea and that an interpreter was present at those meetings. He testified that plea counsel did not ask about his backstory, and that plea counsel was unaware of his depression, a significant mitigating factor Applicant alleges is relevant. Applicant testified that had his attorney asked, Applicant would have told him that he was depressed and explained the situation between himself and the victim. Applicant gave a lengthy

description regarding his relationship with the victim and the effects the ups and downs in the relationship had on his mental state. Applicant testified that he would often cry after work because he did not know how to navigate his mental crisis. When asked if Applicant would have told plea counsel if he had intended to kill the victim, Applicant testified that he never intended to kill her and that if he had, he would have shot multiple times when the car stopped.

Applicant testified that he came to America to be a doctor, however, he was unable to pass the exam to become licensed in the United States because he is not fluent in English. He testified that he was awaiting sentencing in South America for fourteen months, and when he asked plea counsel if that time would count towards his sentencing credits, plea counsel said it would. Applicant testified that had he known it would not, he would not have agreed to the plea. When asked about his understanding of plea, Applicant testified that the sentence changed right before the hearing. He further testified that the plea court did not allow him to finish his statement.

Regarding the State's plea offer, Applicant testified that plea counsel told him that his two options were to plead guilty and accept seventeen years or go to trial. Applicant said he told his lawyer he liked the second option. Applicant testified that plea counsel did not ask him anything about his case and presented no mitigating evidence. Applicant introduced Applicant's Exhibit 2, showing that Applicant does not have any prior criminal history.

Regarding the allegations related to the interpreter, Applicant testified that he was worried that she would inaccurately translate on his behalf. Because the interpreter was Colombian, same as the victim, Applicant believed she would be biased in her translation. He testified that the interpreter did not completely convey important things he had said, and the judge did not get to hear how Applicant "brought babies into the world" for a living.

Applicant testified that he was in a depressed mental state at the time of the shooting and asked this Court to have mercy to reduce his sentence. Applicant testified that he was requesting a new sentence because his lawyer failed to investigate his mental state.

On cross examination, Applicant testified that he did not tell Judge Hawley he could not understand because he himself does not speak English. Applicant confirmed that he was given the opportunity to speak at his plea hearing.

The State called Christy Diachenko, Assistant Clerk of Court in Greenville County. On direct examination, Respondent asked if it is the habit of the office to swear in interpreters, to which Ms. Diachenko responded that it was. On cross-examination, Ms. Diachenko testified that the interpreter's name¹ was not listed under appearances and there was no indication the interpreter had been sworn. She testified she was unsure if it was unusual that the interpreter's name did not appear on the transcript.

The State called the assistant solicitor who prosecuted the case, Ryan Holloway Esq., to testify. He provided a detailed recollection of how he became involved in Applicant's case. The State introduces Exhibit 5: Applicant's indictments, sentence sheet, and bench warrant. He testified that Applicant was in custody in Colombia and that he was getting credit for the time he served over there waiting for extradition approval. The State introduced Exhibit 1: plea offer dated 6/10/19; Exhibit 2: Emails to plea counsel, Mr. Grove dated 10/1/19 and 10/2/19 regarding the case; and Exhibit 3: email to Mr. Holloway's boss, Attorney McMaster, and the jail coordinator regarding scheduling. Assistant solicitor Holloway testified that plea counsel did not seem to have any issue with the interpreter at the plea hearing. On cross-examination, Mr. Harte asked him if he spoke any languages other than English, to which he confirmed that he only spoke English.

¹ The court appointed interpreter for the plea hearing was Julianna Saccucci.

The State called Applicant's plea counsel, William Grove Esq. On direct examination, plea counsel testified that Applicant's recollection of the number of their meetings, five to six times, is accurate and that if he ever refused to visit Applicant, it would have been because of another court obligation, not because he did not want to or refused to. He testified that he had a certified interpreter with him at every meeting with Applicant. Plea counsel recalled discussing bond and the elements of the charges Applicant was facing to which he also added that Applicant did not seem surprised by the charges against him. He recalled speaking to Applicant about the facts of the case and if trial would be a good option for him. When asked if Applicant understood his constitutional rights, plea counsel testified that he did and that he never questioned his competency or intelligence and Applicant seemed to always understand what he was telling him.

Regarding the plea offer from the state, a plea counsel testified that he communicated the plea offer to Applicant and Applicant rejected the offer. To the extent of requesting discovery, plea counsel testified that he automatically requests discovery with every case. When asked about the ballistics evidence from the shooting, plea counsel stated he did not believe the State's evidence warranted further investigation. Plea counsel testified that he thought the strongest evidence the State had was the victim herself. Plea counsel additionally added that he did not believe the victim's statement during sentencing affected the outcome of Applicant's sentence, nor did the information concerning the prior history of violence between Applicant and the victim.

On cross examination, when asked if he was aware of the media attention surrounding the case, plea counsel testified that he was aware of the media but does not recall if any press were present at the plea hearing. When asked why he did not present any family to testify on behalf of Applicant, plea counsel testified that he did not specifically remember but he would have made a

conscious decision not to do so. He further testified that he did not believe presenting any witnesses on behalf of Applicant would help him in regard to his sentence.

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The State called Pamela Green, Circuit Court Reporter 2 of the South Carolina Judicial Branch. Ms. Green testified that she was sent the audio from Applicant's guilty plea hearing which occurred on December 19, 2019, with the instructions to type the transcript. (3/12/24 PCT Tr. 11). Ms. Green testified that she had inadvertently omitted the interpreter being sworn in in the original transcript and upon notification and proper avenue of request by Respondent, she rewound the audio and re-transcribed where the interpreter had been sworn-in. (3/12/24 PCT Tr. 15). Respondent introduced Respondent's Exhibit 6, the corrected transcript.

On cross-examination, Mr. Harte asked if there was any way to verify whether the interpreter was translating correctly, to which she responded that there was not. (3/12/24 PCT Tr. 25). Ms. Green further testified that she had simply made a mistake and missed where the interpreter had been sworn. (3/12/24 PCT Tr. 26).

Ineffective Assistance of Counsel: Strickland Standard

To show a violation of the Sixth Amendment, an Applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, 466 U.S. at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland* at 689. It is the applicant's burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (c), SCRPC. *See also Speaks*

v. State, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“The burden of proof is on the applicant to prove the allegations in his application.”).

In *Hill v. Lockhart*, The United States Supreme Court held that the aforementioned two-part *Strickland* test additionally applies to allegations of ineffective assistance of plea counsel. 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). The first half of the test remains as intended in *Strickland*; however, the prejudice requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. *Hill*, 474 U.S. at 57-59. “In other words, in order to satisfy the “prejudice” requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.*

As such, A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). Even if a defendant shows that particular errors of counsel were unreasonable, the defendant must show that they actually had an adverse effect on the defense.” *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted). The “preeminent authority for all” courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the

evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000).

FINDINGS ON THE MERITS

ISSUES I, IV & V

Ineffective Assistance Allegations

Plea Counsel Failed to Meet with Applicant, Explain the Charges, and Prepare for the Plea Hearing

Applicant alleges that plea counsel repeatedly declined Applicant's request for conferences. He alleges that plea counsel failed to explain the nature of the charges against him, the criminal justice process or his options, and was unprepared to speak at his guilty plea hearing.

Applicant and plea counsel both testify at the evidentiary hearing that they met five or six times prior to Applicant entering his plea. Plea counsel recalled discussing bond and the elements of the charges Applicant was facing to which plea counsel added that Applicant did not seem surprised. He recalled speaking to Applicant about the facts of the case and if trial would be a good

option for him. Plea counsel testified that he never questioned his competency or intelligence and Applicant seemed to always understand what he was telling him. Plea counsel further testified that the only time he would have denied a request to meet with Applicant, was if he had court obligation. Applicant testified that plea counsel told him that his two options were to plead guilty and accept the State's offer of seventeen years or proceed to trial. Applicant said he told his lawyer he liked the second option.

Further, the record does not support Applicant's allegation. Any inaccurate advice by plea counsel or misconception by Applicant was cured by the colloquy during the guilty plea hearing. *See Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 372 (1997). The plea court asked Applicant if he understood the charges against him, and further ensured that Applicant understood the designation of changing the plea form from indicating a negotiated sentence or recommendation to a straight up plea. (Guilty Plea Tr. 5-6). The plea court asked Applicant if he understood that he could face a maximum of 25 years on the charges to which Applicant responded in the affirmative. (Guilty Plea Tr. 6).

Applicant has not provided any supporting evidence to show that plea counsel's failure to meet with him to prepare a statement to the court affected the outcome of the plea process. In fact, Applicant provided a lengthy statement to the court and even addressed the victim, asking for her forgiveness. (Guilty Plea Tr. 17-20). Applicant did not present any testimony at the evidentiary hearing as to any further statements he was unable to convey other than informing the court that "he brought babies into the world." He has thus failed to show that he suffered any prejudice from counsel's failure to meet with him at his request or that counsel failed to adequately explain the charges and the proceedings.

Therefore, Applicant has failed to show that counsel's alleged constitutionally ineffective performance affected the outcome of the plea process. This allegation is denied and dismissed with prejudice.

ISSUE III

Ineffective Assistance Allegation

Plea Counsel Failed to Adequately Advise

Applicant raises an allegation that plea counsel was ineffective for allowing the case to be called for a guilty plea without advising him that if he demanded a jury trial the case could not have gone forward with the possibility that the victim would never be available.

"A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and [Applicant's] counsel, or both." *Pittman v. State*, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999). Applicant did not provide specific testimony as to this allegation; however, Applicant was aware of his constitutional right to proceed to trial as he chose to do so when he declined the State's initial plea offer. The record shows that the plea court advised Applicant of his constitutional right to a jury trial and the right to confront and examine all the witnesses against him. Applicant stated that he understood these rights and wished to waive them to plead guilty. (Guilty Plea Tr. 4).

Applicant has failed to meet his burden. Applicant originally elected to proceed to a jury trial and was then again advised that he was foregoing his constitutional right to a jury trial by entering a guilty plea. Applicant has not provided any testimony regarding plea counsel's advice on this matter. In fact, Applicant testified that he wants reduction in his sentence and does not request a trial. As such, Applicant cannot show that but for counsel's inadequacy, there is a

reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial. *See Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Therefore, this allegation is denied and dismissed with prejudice.

ISSUES VI & VII

Interpreter Error Allegations

Applicant raises issue with the court-appointed interpreter at his plea hearing. Applicant finds issue that the court-appointed interpreter was not the interpreter he had previously used leading up to the proceeding. He further alleges that the plea court should have been informed that the interpreter is from the same South American country as the victim. Additionally, Applicant finds issue with the interpreter's translation at the plea hearing, asserting that the interpreter did not translate word for word.

At the evidentiary hearing, Applicant testified that he was concerned that the interpreter was Colombian because the victim was also Colombian, and he feared the interpreter would be biased in her translation when translating to English. This allegation has no merit. Applicant himself is from Colombia. He fled to his home country and was arrested there nineteen years after he shot the victim. Applicant has not provided any rationale to support his allegation that the Court did not understand and consider Applicant's statement at sentencing. This Court has found that the interpreter took an oath to accurately translate the testimony given and there is no evidence to indicate that the interpreter intentionally or unintentionally misconstrued Applicant's statements.

As to the allegation that the interpreter did not translate word for word, Applicant, with capability to understand English, did not indicate to the judge or plea counsel that the interpreter was not translating his testimony accurately or that he did not understand what was being translated to him due to a dialect issue. Further Applicant did not testify to any further information he wished

to relay to the Court at the evidentiary hearing other than how he “brought babies into the world” for a profession.

As such, Applicant has failed to show a constitutional violation, and is not entitled to relief. This allegation is denied and dismissed with prejudice.

ISSUES VIII & IX

Ineffective Assistance Allegations

Plea Counsel failed to Inform Applicant of his Right to Direct Appeal

Applicant alleges that plea counsel did not advise him of his right to appeal and that the interpreter omitted the Court’s instructions regarding his right to appeal at the plea proceeding. He additionally alleges that plea counsel failed to file an appeal from his sentence.

Applicant testified that he thought he had *nine (9) days* to appeal his sentence or conviction. Plea counsel testified that he could not recall specifically reviewing Applicant’s option to appeal his sentence, however that would be something he usually discusses. Further the record shows that the plea court informed Applicant that he had the right to appeal his sentence and his plea, but he must do so within ten days. (Guilty Plea Tr. 4). Applicant responded that he understood that right.

There is no indication from the record or from the evidence presented by Applicant that there was any extraordinary circumstance warranting an appeal nor any testimony indicating that Applicant desired to appeal. “In a plea proceeding there is no requirement that plea counsel inform a defendant of the right to a direct appeal absent extraordinary circumstances.” *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995); *see also Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000) (holding that counsel has a constitutional duty to inform a defendant of his right to appeal a guilty plea if there is reason to think that a rational defendant would want to appeal or that the defendant demonstrated an interest in appealing). Additionally,

Applicant testified that he thought he had nine days to appeal. Considering Applicant knew he had to appeal within a ten-day time frame and that there is no indication that Applicant asked plea counsel to file a direct appeal, Applicant has failed to show that he involuntarily waived his right to a direct appeal. Even if counsel omitted a discussion with Applicant about a direct appeal, there was no evidence of extraordinary circumstances which would require counsel to advise Applicant of his right to a direct appeal. *Roe v. Flores-Ortega, supra; Weathers v. State, supra.*

Therefore, Applicant has failed to show plea counsel acted deficiently and that he involuntarily waived his right to a direct appeal. This allegation is denied and dismissed with prejudice.

ISSUES II, X, XII & VIII

Ineffective Assistance Allegations

Failure to Investigate and Present Facts to the Court

Applicant alleges that plea counsel failed to make a complete presentation of the facts and failed to clarify that there had never been any previous violence between Applicant and the victim. Applicant asserted that he did not have any intention to kill or harm the victim, and that he only wanted to scare her, and that plea counsel failed to investigate the ballistics which would show as such. He alleges that counsel was ineffective because he failed to discuss the case with Applicant and investigate the facts further resulting in an incomplete presentation to the plea court.

“[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A decision “not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Id.* When counsel’s performance falls below this standard, a “defendant must show

that there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

Applicant testified that had his attorney asked, he would have told him that he never intended to harm or kill the victim but just wanted to scare her. He testified that had he wanted to kill her he would have shot multiple times when the car stopped. Plea counsel testified that he did not believe the State's evidence warranted further investigation. Plea counsel also testified that he thought the strongest evidence the State had was the testimony of the victim herself.

The record supports plea counsel's testimony. The assistant solicitor informed the plea court that Applicant followed the victim, pulled up beside her at a traffic light and proceeded to fire two rounds from his gun into her vehicle. (Guilty Plea Tr. 7-8). The victim, who was previously having an affair with Applicant, was able to identify Applicant as the shooter to the responding officer and over the course of nineteen years, consistently maintained the identification. (Guilty Plea Tr. 8). Considering the facts and evidence presented against him at the plea hearing, Applicant has failed to overcome the *Strickland* burden and has failed to show that counsel's failure to request ballistics testing affected the outcome of the plea process or that if counsel had requested ballistics testing that there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial.

The record does not indicate that there was any mention of previous violence between the victim and Applicant. When asked if he felt plea counsel investigated sufficiently, Applicant responded in the affirmative. (Guilty Plea Tr. 5). The assistant solicitor informed the court that the victim broke off an affair with Applicant, and Applicant harassed the victim and her husband after she ended the relationship. (Guilty Plea Tr. 8). When asked if Applicant agreed to the facts,

he stated that he never threatened the victim but otherwise confirmed. (Guilty Plea Tr. 9). Nevertheless, there is no explicit statement regarding a history of violence between the victim and Applicant. Even so, Applicant was able to convey to the court that he never threatened the victim.

Applicant has not presented any testimony or evidence supporting the allegation that plea counsel's failure to investigate or dispute the intent of harm to the victim would have affected the outcome of his sentencing. Applicant has failed to show that plea counsel acted unreasonably as to his investigation and has failed to show that plea counsel was ineffective for failing to challenge the assertion that Applicant was previously violent towards the victim. Therefore, this allegation is denied and dismissed with prejudice.

ISSUE XI

Involuntary Guilty Plea

Applicant alleges that he was informed only a mere matter of minutes before his plea proceedings that the State was going to request twenty-two years plus five years consecutive for possession of a firearm. Applicant asserts that was not discussed with him and he was not given time to understand the change in recommendation or time to change his plea.

Again, Applicant was informed on the record by the plea court of the sentencing parameters of the charges, and that the State was no longer making a recommendation or negotiating a sentence. (Guilty Plea Tr. at 6-7). Considering Applicant rejected a previous plea offer from the State, Applicant was no longer entitled to receive the benefits of that offer. Applicant does not assert that he would have gone to trial had he known he would not be receiving the State's initial recommendation, he only alleges that he did not have time to "understand the change in recommendation or to change his plea." Both assertions are disputed by the record. In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the

consequences of the plea. *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991) (citing *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980)). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. *Id.* at 434-435, 405 S.E.2d at 392. Applicant was informed by the plea court of the change to a straight up plea without recommendation or negotiation and had the opportunity to withdraw his plea if he so desired. He now asks this Court for relief by requesting a new sentencing hearing. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

Applicant was asked multiple times by the plea court if he wished to proceed with the plea and each time Applicant confirmed that he wished to continue. The colloquy establishes that Applicant did not have any misconceptions regarding sentencing. Applicant acknowledged that he understood the charges, the maximum possible sentences, that his plea was a "straight-up" plea without any negotiations or recommendations, and that his guilty plea was not induced by any promises. Taking all of these considerations into account, the Applicant freely and voluntarily plead guilty. Therefore, this allegation is denied and dismissed with prejudice.

ISSUE XIV

Ineffective Assistance Allegation

Interpreter for Applicant was not Placed Under Oath

As to the issue raised by Applicant regarding the interpreter at the guilty plea not being sworn and that plea counsel was deficient in not raising that issue to the plea court, this Court

allowed the issue to be argued by Applicant over the objections of Respondent. This Court denies the Respondent's Motion to Dismiss on that issue.

As to the question of whether the interpreter was sworn, although it appears that the initial transcript provided of the plea hearing that the interpreter was not sworn (Applicant's Exhibit Number 1), after comparing the second transcript, (Respondent's Exhibit Number 6) it appears that the first transcript was not incorrect, it was incomplete. The second transcript provided shows that the interpreter was sworn earlier in the proceeding.

Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds that Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for Post-Conviction Relief.

IT IS THEREFORE ORDERED:

1. This application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 16 day of July, 2024.


 THE HONORABLE GRACE G. KNIE
 Presiding Judge

Greenville, South Carolina

WITNESSES

CARL E. RABON BF

MAULDIN POLICE DEPT

DOB [REDACTED] /1964 W/M SSN [REDACTED]

ARREST WARRANT NUMBER
DIRECT PRESENTMENT
DIRECT PRESENTMENT

ACTION OF GRAND JURY

Ricky T. Clark
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-003268A₃^B
BCS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2014

THE STATE

vs.

REYNOLDO R. PIMIENTA

C. Perez

Indictment for

0014, 0549

ASSAULT AND BATTERY WITH INTENT TO
KILL AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME

VIOLATION § 16-03-0620 and § 16-23-0490

ENTERED
ACCT.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR
 ASSAULT AND BATTERY WITH INTENT TO KILL AND
 POSSESSION OF A WEAPON DURING THE COMMISSION OF A
 VIOLENT CRIME

At a Court of General Sessions, convened on **APR 22 2014** the Grand Jurors of Greenville
 County present upon their oath:

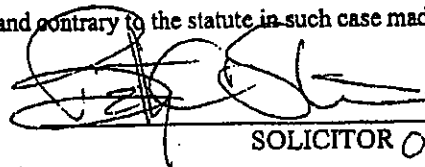
COUNT ONE**ASSAULT AND BATTERY WITH INTENT TO KILL**

That REYNALDO R. PIMIENTA did in Greenville County, on or about the 11th day of May, 2000, willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon OLGA LUCIA RESTREPO. This is in violation of §16-03-0620 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO**POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME**

That REYNALDO R. PIMIENTA did in Greenville County, on or about the 11th day of May, 2000, possess or visibly display a weapon during the commission or attempted commission of a violent crime, to wit: Assault And Battery With Intent To Kill. This is in violation of §16-23-0490 of the South Carolina 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.



SOLICITOR 015305