

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Frank R. Addy, Circuit Court Judge

RECEIVED
SEP 17 2012
S.C. Supreme Court

FREDY SIBRIAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
APPLICATION FOR POST-CONVICTION RELIEF	29
RETURN	52
POST-CONVICTION RELIEF HEARING TRANSCRIPT	57
ORDER OF DISMISSAL	99
INDICTMENT	109

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

2008-GS-42-3693, 3693A

THE STATE of SOUTH CAROLINA

-vs-

FREDY E. SIBRIAN,

Defendant.

TRANSCRIPT OF RECORD

November 30, 2009
Spartanburg, South Carolina

Ordered: November 1, 2010
Delivered: November 22, 2010

B E F O R E:

THE HONORABLE JOHN C HAYES III, Presiding Judge.

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

MR. DERRICK BULSA, Esquire
Assistant Solicitor for the State

MR. SCOTT ROBINSON, Esquire
Attorney for the Defendant

MS. TERESA SAMPSON, Accredited Interpreter

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

I N D E X

(No witnesses were called by the State or the Defense.)

State's Exhibits:	Marked:	Received:
(None)		

Defendants' Exhibits:	Marked:	Received:
(None)		

Court's Exhibits:	Marked:	Received:
1 - (Interpreter's Accreditation)	25	25

Fredy E. Sibrian Plea:	Page:
------------------------	-------

Recitation of Charges.....13

Prior Criminal Record.....24

Mr. Robinson's Comments.....22

Mr. Sibrian's Comments.....25

Sentencing.....26

Reporter's Certification.....28

Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

1 November 30, 2009

10:54 a.m.

2 (Off-the-Record Comments)

3 THE COURT: Thank you. Take your seats. Take your
4 seats, please.

5 (The audience complied with the Court's request.)

6 (Off-the-Record Comments)

7 MR. BULSA: Your Honor, the first case involves a
8 Hispanic defendant. We have an interpreter here.

9 THE COURT: Has the interpreter been sworn?

10 MR. BULSA: No, sir, she has not.

11 THE COURT: All right. If we could, have the
12 interpreter sworn, please.

13 (Off-the-Record Comments)

14 (Whereupon,

15 THE INTERPRETER

16 first being duly sworn, testified as follows:)

17 (Document handed up to the Court.)

18 THE COURT: Thank you. Did we get a copy -- I know
19 that's Tennessee and I do have concerns about it. Could
20 we get a copy made and make it a part of the record,
21 Madam Clerk?

22 MADAM CLERK: Yes, sir.

23 MR. BULSA: This is *The State vs. Freddy Sibrian*, on
24 a two count indictment; 08-GS-42-3693 for murder, and
25 count two, possession of a firearm during commission of a

1 violent crime.

2 He is pleading to each count straight up. He is
3 represented by Mr. Scott Robinson.

4 (Brief Pause)

5 THE COURT: Is that Sibrian? Is that the correct
6 name?

7 (Interpreter speaking to Defendant in Spanish.)

8 THE COURT: Is that the correct pronunciation?

9 (Interpreter speaking to Defendant in Spanish.)

10 (Defendant speaking to Interpreter in Spanish.)

11 THE DEFENDANT: Sibrian.

12 THE INTERPRETER: Sibrian.

13 THE COURT: I am Judge John Hayes and I'm going to
14 be hearing your case today. Do you understand that?.

15 (Interpreter speaking to Defendant in Spanish.)

16 THE DEFENDANT: Uh-huh (affirmative).

17 THE INTERPRETER: I understand. -

18 THE COURT: And you're -- you're represented by --
19 and I need "yes" and "no," ---

20 THE INTERPRETER: Yes, sir.

21 THE COURT: --- if he will say a full word, instead
22 of uh-huh (affirmative) and huh-uh (negative).

23 (Interpreter speaking to Defendant in Spanish.)

24 THE DEFENDANT: Okay.

25 THE INTERPRETER: Okay.

1 THE COURT: You are represented by Mr. Scott
2 Robinson?

3 (Interpreter speaking to Defendant in Spanish.)

4 THE DEFENDANT: Si.

5 THE INTERPRETER: Yes.

6 THE COURT: Are you satisfied with his services?

7 (Interpreter speaking to Defendant in Spanish.)

8 THE DEFENDANT: Si.

9 THE INTERPRETER: Yes.

10 THE COURT: Are you here legally or illegally?

11 (Interpreter speaking to Defendant in Spanish.)

12 (Defendant speaking to Interpreter in Spanish.)

13 THE INTERPRETER: Legally.

14 THE COURT: All right. Did the State comply with
15 the Victims' Right Act?

16 MR. BULSA: Yes, sir. We have Delores Mendez
17 (phonetic) with our office who will speak on behalf of
18 the victim.

19 THE COURT: Is there any restitution?

20 (Interpreter speaking to Defendant in Spanish.)

21 MR. BULSA: No, sir.

22 THE COURT: Mr. Sibrian, you are, according to what
23 I have, twenty-three (23) years old -- of age?

24 (Interpreter speaking to Defendant in Spanish.)

25 THE DEFENDANT: Si.

1 THE INTERPRETER: Yes.

2 THE COURT: You have been charged with murder -

3 (Interpreter speaking to Defendant in Spanish.)

4 THE DEFENDANT: Si.

5 THE INTERPRETER: Yes.

6 THE COURT: --- and the possession of a firearm

7 during the commission of a violent crime.

8 (Interpreter speaking to Defendant in Spanish.)

9 THE DEFENDANT: Si.

10 THE INTERPRETER: Yes.

11 THE COURT: Murder is a offense that is a felony.

12 (Interpreter speaking to Defendant in Spanish.)

13 THE COURT: It's a violent offense.

14 (Interpreter speaking to Defendant in Spanish.)

15 THE COURT: A violent offense is an offense which

16 carries with it certain restrictions for an individual

17 who is incarcerated.

18 (Interpreter speaking to Defendant in Spanish.)

19 THE COURT: That is, there are certain programs that

20 nonviolent offenders can participate in.

21 (Interpreter speaking to Defendant in Spanish.)

22 THE COURT: Which violent offenders may not.

23 (Interpreter speaking to Defendant in Spanish.)

24 THE DEFENDANT: Okay.

25 THE INTERPRETER: Okay.

1 THE COURT: It is a -- it is a most serious offense
2 (Interpreter speaking to Defendant in Spanish.)

3 THE COURT: And a most serious offense is a type of
4 offense which, if in your lifetime you receive two most
5 serious or a combination of three serious and most
6 serious offenses, you would be subject to life without
7 parole.

8 (Interpreter speaking to Defendant in Spanish.)

9 THE COURT: That is, a true life sentence.

10 (Interpreter speaking to Defendant in Spanish.)

11 THE DEFENDANT: Si.

12 THE INTERPRETER: Yes.

13 THE COURT: A life -- murder carries a mandatory
14 minimum of thirty (30) years in jail.

15 (Interpreter speaking to Defendant in Spanish.)

16 THE COURT: And one can be sentenced to life
17 imprisonment.

18 (Interpreter speaking to Defendant in Spanish.)

19 THE COURT: Murder does not allow for any parole,
20 early release, or any good time or work credits.

21 (Interpreter speaking to Defendant in Spanish.)

22 THE COURT: Or any other credit which would reduce
23 your sentence.

24 (Interpreter speaking to Defendant in Spanish.)

25 THE COURT: Do you understand all of that?

1 (Interpreter speaking to Defendant in Spanish.)

2 THE DEFENDANT: Si.

3 THE INTERPRETER: Yes.

4 THE COURT: Possession of a firearm during the
5 commission of a violent crime --

6 (Interpreter speaking to Defendant in Spanish.)

7 THE COURT: --- carries five (5) years in jail.

8 (Interpreter speaking to Defendant in Spanish.)

9 THE COURT: Do you understand that?

10 (Interpreter speaking to Defendant in Spanish.)

11 THE DEFENDANT: Si.

12 THE INTERPRETER: Yes.

13 THE COURT: These two offenses are alleged to have
14 occurred here in Spartanburg County on or about April
15 29th, 2008. The murder charge alleges that you
16 feloniously, willfully, and with malice aforethought
17 killed Marcel Antonio Perez (phonetic) by shooting and
18 beating him.

19 (Interpreter speaking to Defendant in Spanish.)

20 THE COURT: And he died of as a proximate result of
21 this incident.

22 (Interpreter speaking to Defendant in Spanish.)

23 THE COURT: The second count alleges that, in the
24 course of that -- the commission of that murder --

25 (Interpreter speaking to Defendant in Spanish.)

1 THE COURT: --- which is a violent crime as I told
2 you a moment ago, that you did possess a firearm. Do you
3 understand that?

4 (Interpreter speaking to Defendant in Spanish.)

5 THE DEFENDANT: Si.

6 THE INTERPRETER: Yes.

7 THE COURT: How do you plead to the charge of
8 murder?

9 (Interpreter speaking to Defendant in Spanish.)

10 (Defendant speaking to Interpreter in Spanish.)

11 THE INTERPRETER: Guilty.

12 THE COURT: How do you plead to the possession of a
13 firearm during the commission of that murder?

14 (Interpreter speaking to Defendant in Spanish.)

15 (Defendant speaking to Interpreter in Spanish.)

16 THE INTERPRETER: Just one question: The firearm
17 wasn't mine.

18 THE COURT: It does not matter whose it was.

19 (Interpreter speaking to Defendant in Spanish.)

20 THE COURT: The charge is that you possessed it at
21 that time of the death -- at the time of the murder of
22 Mr. Perez.

23 (Interpreter speaking to Defendant in Spanish.)

24 (Defendant speaking to Interpreter in Spanish.)

25 THE DEFENDANT: Okay.

1 THE INTERPRETER: Okay.

2 THE COURT: Is not illegal to possess a pistol per
3 se.

4 (Interpreter speaking to Defendant in Spanish.)

5 THE COURT: It is possessing it while committing a
6 violent offense.

7 (Interpreter speaking to Defendant in Spanish.)

8 THE COURT: Do you understand that?

9 (Defendant speaking to Interpreter in Spanish.)

10 THE DEFENDANT: Yes, sir.

11 THE INTERPRETER: Yes, sir.

12 THE COURT: Okay. How do you plead to that offense?

13 (Interpreter speaking to Defendant in Spanish.)

14 (Defendant speaking to Interpreter in Spanish.)

15 THE INTERPRETER: Guilty.

16 THE COURT: Any recommendation?

17 MR. BULSA: No, Your Honor.

18 THE COURT: Has anyone promised anything or
19 threatened you to get you to plead guilty?

20 (Interpreter speaking to Defendant in Spanish.)

21 THE DEFENDANT: No.

22 THE INTERPRETER: No.

23 THE COURT: Are you today under the influence of
24 anything that would cause you to be intoxicated?

25 (Interpreter speaking to Defendant in Spanish.)

1 THE DEFENDANT: No.

2 THE INTERPRETER: No.

3 THE COURT: Are you today entering your plea freely
4 and voluntarily?

5 (Interpreter speaking to Defendant in Spanish.)

6 THE DEFENDANT: Si.

7 THE INTERPRETER: Yes.

8 THE COURT: You have the right, Mr. Sibrian, to a
9 trial by jury.

10 (Interpreter speaking to Defendant in Spanish.)

11 THE COURT: You are presumed innocent of the charges
12 until the State were able to convince a jury of your
13 guilt beyond a reasonable doubt.

14 (Interpreter speaking to Defendant in Spanish.)

15 THE COURT: As to the charges, you have the right to
16 remain silent; that is, to not make a statement or -- or
17 testify against yourself about these crimes.

18 (Interpreter speaking to Defendant in Spanish.)

19 THE COURT: You have the right to confront the
20 witnesses against you; that is, to see and hear and have
21 your attorney question and cross examine the witnesses
22 the State would call to testify against you.

23 (Interpreter speaking to Defendant in Spanish.)

24 THE COURT: Do you understand all of that?

25 (Interpreter speaking to Defendant in Spanish.)

1 THE DEFENDANT: Si.

2 THE INTERPRETER: Yes.

3 THE COURT: You also have a right to have your
4 witnesses made -- made to come to court and testify on
5 your behalf.

6 (Interpreter speaking to Defendant in Spanish.)

7 THE COURT: Do you understand that?

8 (Interpreter speaking to Defendant in Spanish.)

9 THE DEFENDANT: Si.

10 THE INTERPRETER: Yes.

11 THE COURT: I advise you, when you enter a plea of
12 guilt to a charge, you're giving up all of those rights.

13 (Interpreter speaking to Defendant in Spanish.)

14 THE COURT: And you're also giving up any defense
15 that you might have to these charges.

16 (Interpreter speaking to Defendant in Spanish.)

17 THE COURT: Do you understand that?

18 THE DEFENDANT: Si.

19 THE INTERPRETER: Yes.

20 THE COURT: How many days have you spent in jail
21 already, Mr. Sibrian -- Mr. Sibrian?

22 (Interpreter speaking to Defendant in Spanish.)

23 (Defendant speaking to Interpreter in Spanish.)

24 THE INTERPRETER: Nineteen (19) months, something
25 like that -- eighteen (18) months, something like that.

1 (Brief Pause)

2 THE COURT: Mr. Robinson, that would about bring it
3 to April ---

4 (Interpreter speaking to Defendant in Spanish.)

5 MR. ROBINSON: I have to go by what he's telling you
6 personally. I -- I have no independent knowledge of how
7 much time he's been in.

8 (Interpreter speaking to Defendant in Spanish.)

9 THE COURT: Let's see, he was -- he was arrested May
10 3rd, two thousand, eight (2008)?

11 (Interpreter speaking to Defendant in Spanish.)

12 THE DEFENDANT: Si.

13 THE INTERPRETER: Yes.

14 THE COURT: So, we're going to figure out how much
15 time you have already served.

16 (Interpreter speaking to Defendant in Spanish.)

17 THE COURT: All right. I'm going to ask you now to
18 listen with me, Mr. Sibrian, while the Solicitor tells me
19 the facts underlying these charges.

20 MR. BULSA: Thank you, Your Honor. This incident
21 -- incident dates back to April two thousand and eight
22 (2008), April 29th about 10:30 in the morning.

23 (Interpreter speaking to Defendant in Spanish.)

24 MR. BULSA: A couple of ladies were out looking for
25 scrap metal in a field off of Interstate I-85.

1 This field was remote. If you head towards
2 Greenville along I-85 you take the Wellford exit, you
3 cross back over the interstate, and it run into -- that's
4 Four Prince Road (phonetic). It runs into Falling Creek
5 Road.

6 It is now being developed, but back in April of two
7 thousand, eight (2008), it was deserted. It was used as
8 a dumping yard for -- for painters.

9 It had a nickname called "the tanning yard." It's
10 where they used to slaughter cattle in that area. But it
11 is remote and removed from the interstate and dark.

12 And these ladies were out hunting for scrap metal
13 about 10:30 and they came upon a body of a Hispanic male.
14 And basically he was on his knees and bent backwards and
15 his head was resting on the ground.

16 They immediately called the police. And the police
17 arrived and interviewed them and learned they, of course,
18 had no participation in the event.

19 The police began to try to identify the victim. He
20 had no identification on him.

21 The police had to get fingerprints and run those
22 through federal agencies and eventually learned that the
23 victim was Mr. Perez. And he was from Greensboro, North
24 Carolina.

25 (Interpreter speaking to Defendant in Spanish.)

1 MR. BULSA: The police made some inquiries into
2 Greensboro, went to Greensboro and spoke to the police
3 there, and learned that Mr. Perez had some sort of
4 relationship with a lady by the name of Patricia Deramos
5 (phonetic). We learned that he had a nephew in
6 Greensboro.

7 Apparently, Mr. Perez was living with Ms. Deramos.
8 She was found by the police, confronted, and initially
9 she denied any knowledge. And, then, she eventually told
10 the police about having come from Greensboro with Mr.
11 Perez and Mr. Sibrian.

12 And, on their way to Greenville, on the night of
13 April 28th, approximately around -- or somewhere around
14 midnight, Mr. Sibrian directed her to leave the
15 interstate to the location I described.

16 (Interpreter speaking to Defendant in Spanish.)

17 MR. BULSA: From Ms. Deramos we learned that she had
18 previously had a relationship with Mr. Sibrian about a
19 year prior.

20 She used to live in Greenville. He is from Inman,
21 which is in Spartanburg County.

22 They had a relationship of boyfriend and girlfriend.
23 She tells me that she left the area and went to
24 Greensboro and met up with Mr. Perez, was living in the
25 Greensboro area, but would periodically come back through

1 to a hairdresser in Greenville.

2 She said the date of April 28th, she and a friend of
3 hers went to the hairdresser in Greenville. She was
4 unable to make her appointment; therefore, she was taking
5 the friend back to Greensboro to make a flight.

6 While she was in Greenville, Mr. Sibrian called her.
7 And they had had some previous contact and he knew she
8 was in the area.

9 They set up a time for her to come pick him up to go
10 to pick up a nephew. This was a child and they dropped
11 the nephew off at a friend's house.

12 (Interpreter speaking to Defendant in Spanish.)

13 MR. BULSA: But, at that time, instead of Mr.
14 Sibrian staying in Spartanburg, he wanted to ride with
15 Ms. Deramos allegedly to meet someone in Charlotte.

16 The person in Charlotte wasn't there. He, then,
17 rode to Greensboro with Ms. Deramos.

18 At this time he learned that -- well, I don't know
19 how he learned it, but he saw that Ms. Deramos had some
20 sort of a relationship with Mr. Perez.

21 Ms. Deramos tried to deflect the relationship saying
22 that saying that Mr. Perez was the boyfriend of her
23 girlfriend that she was dropping off.

24 Nonetheless, Ms. Deramos had agreed with her
25 hairstylist to return to Greenville the next day for her

1 hair appointment. Mr. Perez asked if he could ride with
2 her.

3 Mr. Sibrian was going back home. So, that put the
4 three of them in the car together.

5 (Interpreter speaking to Defendant in Spanish.)

6 MR. BULSA: Then, they traveled down late at night
7 and pulled off the interstate.

8 Now, Mr. Perez had been shot twice, Your Honor, once
9 in the right arm and once in the right flank, the right
10 side of his body.

11 According to the autopsy, neither one of those
12 wounds would have been fatal. In looking at the physical
13 evidence at the scene, there were two spent shell casings
14 and a magazine in one location at this site.

15 There was a trail of blood and muddy footprints and
16 muddy car tracks that led some distance away, probably a
17 good two feet or more away.

18 In listening to Ms. Deramos, her description, the
19 Defendant got the victim out of the car and shot him
20 twice. The victim was able to flee and ran from Mr.
21 Sibrian.

22 And Mr. Sibrian chased him down, caught him, and
23 beat him about the head and the face multiple times. The
24 autopsy count was seven (7).

25 (Interpreter speaking to Defendant in Spanish.)

1 MR. BULSA: He had multiple skull fractures to the
2 head and face.

3 We don't know the actual time of death. We know
4 that it occurred that evening. Had it not been for the
5 two ladies this might have gone unsolved because of the
6 timing and the place and we wouldn't have able to get an
7 identification because Mr. Perez's identification had
8 been removed from him by Mr. Sibrian.

9 He took his wallet and told Ms. Deramos to leave.
10 She dropped him off at his house where he burned the
11 wallet of the victim and he hid -- hid the murder weapon.

12 And there was -- there was a murder weapon because
13 he was pistol whipped. He did that at his house.

14 Ms. Deramos, when she talked to the police in
15 Greensboro, she told them all of this. They were able to
16 find Mr. Deramos -- excuse me, Mr. Sibrian -- and they
17 were able to get a search warrant for his residence.

18 And while searching his house, other officers were
19 interviewing Mr. Sibrian, where he gave two statements;
20 one right after the other.

21 One he gave a general description of what occurred.
22 He wrote it in his own hand. Officers read that and
23 asked him for more specific details as to what occurred.

24 He wrote a second statement in his own hand
25 describing the shooting and the beating.

1 He told him about the pistol and told them where
2 they would find it. They -- they looked there at the
3 house and it did match to shell casings at the scene.

4 (Interpreter speaking to Defendant in Spanish.)

5 MR. BULSA: Mr. Perez, as I stated, has a nephew in
6 Greensboro, has a wife in Mexico. And I think Dolores
7 Mendez would like to speak on their behalf at the
8 appropriate time, Your Honor.

9 In preparation for this trial, we made an offer as
10 discussed in chambers that was not accepted. Therefore,
11 this plea is straight up.

12 (Interpreter speaking to Defendant in Spanish.)

13 THE COURT: Mr. Sibrian, do you believe -- or do you
14 agree with those facts --

15 (Interpreter speaking to Defendant in Spanish.)

16 THE COURT: --- about shooting Mr. Perez and beating
17 him?

18 (Interpreter speaking to Defendant in Spanish.)

19 (Defendant speaking to Interpreter in Spanish.)

20 THE INTERPRETER: I did shoot him --

21 (Defendant speaking to Interpreter in Spanish.)

22 THE INTERPRETER: --- but it was in self-defense.

23 (Defendant speaking to Interpreter in Spanish.)

24 THE INTERPRETER: It's not -- not all that he says
25 is correct.

1 THE COURT: Okay. Well, let me ask you this: But
2 you -- you did shoot him twice?

3 (Interpreter speaking to Defendant in Spanish.)

4 (Defendant speaking to Interpreter in Spanish.)

5 THE DEFENDANT: Si.

6 THE INTERPRETER: Yes.

7 THE COURT: And -- and you hit him with a pistol
8 also in his head and the face?

9 (Interpreter speaking to Defendant in Spanish.)

10 (Defendant speaking to Interpreter in Spanish.)

11 THE INTERPRETER: The -- the first blow it was --
12 the blow was her, that hit her -- hit him with the
13 firearm. It was her.

14 MR. ROBINSON: Your Honor?

15 THE COURT: Yes, sir.

16 MR. ROBINSON: I think maybe if -- if -- If -- I --
17 I -- he acknowledges, I believe, he hit that guy, it's
18 just that she also hit him. I think that's what he's
19 trying to say.

20 (Interpreter speaking to Defendant in Spanish.)

21 THE COURT: You hit Mr. Perez at least once?

22 (Interpreter speaking to Defendant in Spanish.)

23 THE DEFENDANT: Si.

24 THE INTERPRETER: Yes, sir.

25 THE COURT: And shot him twice?

1 (Interpreter speaking to Defendant in Spanish.)

2 THE DEFENDANT: Si.

3 THE INTERPRETER: Yes.

4 THE COURT: All right. And by pleading guilty you
5 understand you are giving up any kind of defense like
6 self-defense?

7 (Interpreter speaking to Defendant in Spanish.)

8 THE DEFENDANT: Si.

9 THE INTERPRETER: Yes.

10 THE COURT: All right. Mr. Perez -- Sibrian, I
11 accept your plea. I find it freely, voluntarily,
12 knowingly and intelligently entered and entered with the
13 advice of competent counsel whom you are satisfied.

14 (Interpreter speaking to Defendant in Spanish.)

15 THE COURT: I find the facts support your pleas. You
16 signed pleas of guilt and the facts support the pleas.

17 (Interpreter speaking to Defendant in Spanish.)

18 THE COURT: And I'll be glad now to hear from
19 somebody on behalf -- anybody on behalf of the victim.

20 (Interpreter speaking to Defendant in Spanish.)

21 THE COURT: And then, we'll -- and, then, Mr.
22 Sibrian, I will hear from your attorney and anyone else.

23 (Interpreter speaking to Defendant in Spanish.)

24 THE DEFENDANT: Okay.

25 THE COURT: Yes, ma'am?

1 MS. MENDEZ: Good morning, Your Honor. My name is
2 Delores and I am a victims' advocate in the solicitor's
3 office. I am speaking today on behalf of Mr. Perez's
4 family. And I have had an opportunity to speak with his
5 wife on several occasions.

6 Her name is Patricia Pasario (phonetic). Ms.
7 Pasario told me that they have five (5) daughters, the
8 oldest being sixteen (16) and the youngest being six (6).

9 Mr. Perez was the breadwinner, the main provider for
10 his family and now they are having a very difficult time
11 making it.

12 When I asked Ms. Pasario what she wanted me to tell
13 you, she respectfully requested for justice.

14 THE COURT: All right, Mr. Robinson?

15 (Interpreter speaking to Defendant in Spanish.)

16 MR. ROBINSON: May it please the Court?

17 THE COURT: Yes, sir.

18 (Interpreter speaking to Defendant in Spanish.)

19 MR. ROBINSON: Your Honor, this was a -- and I am
20 going to go slowly, so, I make sure that the interpreter
21 gets it.

22 (Interpreter speaking to Defendant in Spanish.)

23 MR. ROBINSON: This was a very difficult case. And
24 we were prepared to go to trial on this case if we had to
25 have a trial. We had some communication issues because

1 the family -- his family does not live nearby.

2 (Interpreter speaking to Defendant in Spanish.)

3 MR. ROBINSON: But, Your Honor, from the first time
4 I met with Mr. Sibrian, he has been nothing but
5 remorseful and sorry for this ever happening, for putting
6 himself, and the family of the victim, through this.

7 What I -- I wanted to point out a few things for the
8 Court to -- to -- to see. First, Your Honor, the person
9 who drove that night was the co-defendant, Ms. Deramos.

10 She is the person who picked up Mr. Sibrian. She is
11 the person who had a gun. It was her gun that Mr.
12 Sibrian was given, the gun he received.

13 He did not know this victim other than he was -- he
14 was an acquaintance.

15 (Interpreter speaking to Defendant in Spanish.)

16 MR. ROBINSON: Your Honor, the -- the co-defendant
17 in this case, a Ms. Deramos, had had a prior business
18 relationship with the victim in this case.

19 According to what we understand, she is -- or was
20 involved in the prostitution business. And there had
21 been some dispute between her and the victim in this
22 case.

23 And she has -- she had written -- this is while the
24 two of them were incarcerated -- several letters. And
25 one of the -- one of the things that she used with Mr.

1 Sibrian was this tremendous amount of guilt that -- that
2 she tried to get Mr. Sibrian to think that she had a
3 child with him.

4 But, Your Honor, as far as the self-defense part of
5 this case, we talked about that; we talked about all the
6 defenses in this case. But we did not feel that the
7 defenses were valid under South Carolina law.

8 And we felt that it was best for him to take
9 responsibility and accountability for this terrible
10 incident. And Mister -- Fredy is very, very sorry to
11 everyone involved.

12 (Interpreter speaking to Defendant in Spanish.)

13 MR. ROBINSON: As I mentioned -- or as you mentioned
14 earlier on, he is 23 years old.

15 (Interpreter speaking to Defendant in Spanish.)

16 MR. ROBINSON: According to what he has told you, he
17 is a legal resident of the United States. I have no
18 independent knowledge about what he has told the Court.

19 (Interpreter speaking to Defendant in Spanish.)

20 MR. ROBINSON: He has no prior record. And,
21 according to his mother, and a friend who is in the room
22 who works at BMW in Spartanburg, he doesn't have -- this
23 was -- this was a complete aberration for him to ever be
24 involved in this kind of event.

25 It is just not like Fredy.

1 (Interpreter speaking to Defendant in Spanish.)

2 MR. ROBINSON: But he is sorry for this happening.
3 And he would ask the Court for the minimum sentence in
4 this case if the Court sees fit.

5 (Interpreter speaking to Defendant in Spanish.)

6 MR. ROBINSON: And I think Fredy would like to say
7 something too.

8 (Interpreter speaking to Defendant in Spanish.)

9 THE COURT: Mr. Sibrian?

10 (Defendant speaking to Interpreter in Spanish.)

11 THE INTERPRETER: Your Honor, I just want to
12 apologize; I want to say how sorry I am -

13 (Defendant speaking to Interpreter in Spanish.)

14 THE INTERPRETER: --- to the family of the victim,
15 the victim that I killed.

16 (Defendant speaking to Interpreter in Spanish.)

17 THE INTERPRETER: I am -- I am apologizing to my
18 mother.

19 (Defendant speaking to Interpreter in Spanish.)

20 THE INTERPRETER: I am very sorry for everything
21 that happened.

22 (Defendant speaking to Interpreter in Spanish.)

23 THE INTERPRETER: I never intended to kill that
24 person.

25 (Defendant speaking to Interpreter in Spanish.)

1 THE INTERPRETER: Simply, I was at the wrong place
2 at the wrong time.

3 (Defendant speaking to Interpreter in Spanish.)

4 THE INTERPRETER: What else can I say?

5 MR. ROBINSON: And, Your Honor, I have his family
6 members -- will you all stand up for a second --

7 (Individuals in the audience complied with Mr.
8 Robinson's request.)

9 MR. ROBINSON: --- who are here on his behalf.

10 (Interpreter speaking to Defendant in Spanish.)

11 MR. ROBINSON: I don't believe they want to address
12 the Court, just to show the support that he has, Your
13 Honor.

14 (Interpreter speaking to Defendant in Spanish.)

15 MR. ROBINSON: Thank you, Your Honor.

16 THE COURT: Mr. Sibrian, the sentence is -- on the
17 murder, thirty-five (35) years. I'm giving you credit
18 for the five hundred and seventy-eight (578) days you
19 have already served.

20 The possession of a weapon during the commission of
21 violent crime is a five-year sentence concurrent with the
22 murder sentence and also credit for five hundred and
23 seventy-eight (578) days.

24 MR. ROBINSON: Thank you, Your Honor.

25 THE COURT: Do you understand that, Mr. Sibrian?

1 (Interpreter speaking to Defendant in Spanish.)

2 THE DEFENDANT: Si.

3 THE INTERPRETER: Yes.

4 THE COURT: Thank you.

5 MR. ROBINSON: Thank you, judge.

6 (Whereupon, the proceeding concluded at 11:39 a.m.)

7 THE COURT: Have the court reporter mark this,
8 please.

9 (Whereupon, Court's Exhibit Number 1 was marked for
10 identification and admitted into evidence.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 27, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

October 21, 2010

A handwritten signature in cursive script, reading "Pamela S. Faucette", written over a horizontal line.

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2010-CP-42-5484

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - 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 PERRY Comm Inst.
2. Name and location of Court which imposed sentence Spartanburg General Sessions
3. Name(s) of co-defendant(s) (if any) /
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-4203693 A - Murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Nov 30, 2009 35 yrs 85%
 - (b) _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 14 AM 9:03
H. HOPE BLACKLEY

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
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) my Attorney did not tell me I could appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

FILED
CLERK OF COURT
SPARTANBURG COUNTY
20# OCT 14 AM 9:03
M. HOPE BLACKLEY

- (a) Actual Innocence
 (b) Ineffective Assistance of Plea Counsel
 (c) Involuntary Guilty Plea

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

- (a) _____ See Attachment (memorandums)
 (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)? No
 (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. _____

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 OCT 14 AM 9:03
 M. HOPE BLACKLEY

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) Because this is my first PCR and can(b) only be raised in PCR

(c) _____

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

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 14 AM 9:03
M. HOPE BLACKLEY

- (a) your arraignment and plea? ✓
- (b) your trial, if any? _____
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- Scott D. Robinson
 - 101 Lavinia Ave.
 - Greenville, S.C. 29601
- (b) the proceedings at which each such attorney represented you:
- plea
 - Sentencing
 - _____
19. State clearly the relief you seek in filing this application:
Guilty Plea Vacated
20. Are you now under sentence from any other court that you have not challenged?
NO

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 14 AM 9:03
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

Fredy Sobrin

I, Fredy Sobrin, 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.

x [Signature]

SWORN to and subscribed before me this 23rd
day of September, 2010.

Carol A. Blackston (L.S.)
Notary Public

My Commission Expires: 07-10-2011

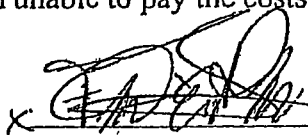
FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 14 AM 9:03
M. HOPE BLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Fredy Sibino

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

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



Applicant

SWORN or affirmed to and subscribed before me this

22nd day of September, 2010.


Notary Public

My Commission Expires: 07-10-2011

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 14 AM 9:03
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Fredy Sibrian,
Applicant,

v.

State of South Carolina,
Respondent.

2010-CP-42 5484

AFFIDAVIT

PERSONALLY, appeared before me, Fredy Sibrian, who duly affirmed and states as follows:

- 1) My name is Fredy Sibrian, I am over the age of twenty-one (21) years, Applicate in the above captioned matter, incarcerated at Perry Correctional Institute in Pelzer, S.C. 29669.
- 2) I am the Applicate who honors the truth and makes this Affidavit in support of my application for (PCR) relief.
- 3) Prior to the entry of guilty plea I fully intended to go to trial.
- 4) Patricia Flores De Ramos planned the murder of Marcial Antonio Perez two (2) weeks before it happened.
- 5) Patricia Flores De Romas hit Antonio Perez from behind twice in the head with a blunt instrument and then told me to make sure he was dead.
- 6) I was in love with Patricia and took the blame for Patricia murdering Antonio Perez because I was in love with her and she has two kids.
- 7) I an innocent of murder because Patricia planned the murder and carried it out.
- 8) I am competent to testify to the facts of the planned murder by Patricia and the facts in this matter as stated in this Affidavit when my PCR hearing is held.

Dated this 22nd day of September 2010
Pelzer, S.C.

SUBSCRIBED AND SWORN TO before me
This 22nd day of September 2010

Notary

Expires: 09-10-2011

[Signature]
Fredy Sibrian
Perry Corr. Inst.
Pelzer, S.C. 29669

FILED
CLERK OF COURT
SPARTANBURG COUNTY
OCT 14 AM 9:03
HOPE BLACKLEY

I.

ACTUAL INNOCENCE

Approximately 2 or 3 weeks before the death of Antonio I called Patricia to tell her that the insurance of her car had been sent with a letter and a check for 12,500 dollars for damages of her car. About a couple days before she told me that she had been in a accident and her car had been totaled and she asked me to do her a favor to change the address of her insurance to the address where I was living at. So that I would receive all the papers for her insurance that they would send. So that I would let her know, because I know she was very busy. I would help her to get the notary to notarize the papers that the insurance agency would send. She told me to go with her to the UPS so she could send the paperwork, and afterwards when she sent them, a couple of days later they sent more paperwork and a check in the amount of 12,500 dollars. The day after that I called her, she came to my house to get the check and then she asked me to take her to the bank to cash the check and I told her yes. Then we went to her car and we went to Bank of America, which was near my house. They told her they didn't have that amount of money to cash the check for cash. Then we went to the other other bank but they said the same thing, but they also said that Sun Trust Bank at Hillcrest maybe could cash that amount of money. We went to Sun Trust Bank and they said that they could cash it and it was there she cashed the check. When we left the bank she asked me to take her to Bank of America that was next to Sun Trust Bank to deposit some of the money and I accompanied her inside the bank and when we finished she had deposited some money we left and got into the car. I asked her if she wanted to get something to eat, because all the running around we did to cash the check it was almost lunch time. She said to me she wanted to eat shrimp and we arrived at the restaurant Red Lobster. When we got there we were ordered lunch and while we was waiting for the food, we were joking around but in the middle of the joking and laughing she told me she wanted to kill a person and I turned and looked at her in the eyes, she was smiling at me and I thought she was joking with me, but when she looked at me more serious I asked her why and she told me, because he is the kind of person you could just look at and hate, and she smiled and she told me, the same again about killing a person and I smiled back at her and she didn't say anything more. After that we finished eating and we went to my house and she left from there. She went to North Carolina and we communicated on the phone from there. On April 28, 2008, she called me real early in the morning and I didn't answer because I was sleeping. So I called her back after I had heard the phone ringing, because I saw on the caller id it was her. When she answered her phone she told me that she calling because she wanted to tell me she coming to Greenville, here in South Carolina, that she wanted me to go with her to the beauty salon and I told her alright. She told me she was going to pick me up at 9 am. I was waiting on her and my dad called me to go help him get some windows he wanted to paint from a job he hadn't finished. He told me that in his car he couldn't fit all the windows and it was raining hard. Then I went to help him and bring the rest of the windows that wouldn't fit into his car. When I got to the house Patricia was there already waiting for me. After I got

FILED
CLERK OF COURT
JUL 1 2008
JUL 1 2008
JUL 1 2008

all the windows down that I brought, I went with her and her friend. She came accompanied by this girl that she told me her name was Cristal and she told me also that her friend was going to the beauty salon with us. When we arrived at the salon Patricia and her friend went inside and I stayed in the car. Ten minutes later Patricia left the salon and stayed with me in the car. Then I told her to borrow me the car to go pick up my nephew, he was staying at his grandma's house. She said it wouldn't be a problem and she also said she wanted to come with me to pick up my nephew and I said okay. Before we left she told me that she wanted to show me something and she went to the trunk of the car and took out a plastic bag and inside of it was a firearm. She told me if I could check out the firearm to see if it was in good condition because she wanted to buy it. I took the gun and check it but without pulling out the clip and I said that I didn't know if it was good or not because I never had one before and not even my family owned one as far as I known. I gave it back to her, she put it back in the bag, she put it back in the same place where she got it from. Then we went to pick up my nephew and after we picked up my nephew we all went back to the salon and Patricia went inside the salon and my nephew and I waited in the car. After she left she came back to tell me that the dash board light was showing a light on the gauge which she didn't know about and wanted me to take it to a machanic. She came with me to look for one and on the side of the salon there was one but nobody was there and we went to see if we could find another one and we couldn't find one. After we looked good we went back to the salon and she went inside and I stayed again in the car with my nephew. It was about 3 pm, Patricia and her friend came out and asked to leave and when we got to my house, I gave my nephew to my mom with all the stuff he had and I went back outside where she was to say goodbye to her. We were outside the car in back of the car and she took out the gun and asked again if it was good to buy and I told her again that I didn't know anything about guns and I gave it back to her. She asked me to come with her to North Carolina so I can bring her back because she had to go back to the salon the next day, because she didn't get her extension put on because it got to late. She had to take her friend to the airport and she was tired of driving and I told her alright and went. When we were 15 minutes from exit 41 to city of Charlotte, North Carolina, she made a couple of calls, after that she received a call and she told the person who she was talking to that today she was going to fix her problems. After that she made one more call and she talked in a low voice. I got off of exit 41 to get something to eat because they were hungry and she asked me to take her to eat at a restaurant called "El Pulgarsito" and She told me where to go. When we got there I saw that there was a autoshop near the front of the restaurant and I told her to go take the car to get the oil change, to see if after the new oil was in the light on the dash would turn off. After they changed the oil I went back to the restaurant to eat something too. When we finished we left. When we got to Greenboro she told me to go to a friend's house to drop me off and I told her okay. When we got to some apartments a guy came out about 25 years old and he introduced himself as Toni and then she left with her friend Cristal and I stayed with her friend Toni at his house. Around 8 pm in the night my mom called to ask me where I was and I told her in North Carolina and I would be coming back late. When I finished talking to my mother, the friend of Patricia told me that Patricia wanted to talk to me and I grabbed the phone from his hand and Patricia told me that she was on her way, that she had ran into some

FILED
CLERK OF COURT
JAN 11 11 AM '06
GREENBORO NC

problems at the airport and was late, so she had to take her friend to the bus station instead. So when she got to Toni's apartment she came with somebody else and she introduced him Antonio.

I said hi and got into the car. I sat in the back seat and Antonio sat in front and Patricia sat in the driver's seat. We went to South Carolina and all the way there Antonio and I didn't talk at all, but when we got to exit 72 on I-85, I told Patricia that she had already passed the exit to my house and she told me we would go back later on then I asked her where we were going and she told me she would tell me in a little bit. Antonio asked her to stop the car because he had to get out. She told him why don't he tell me in front of Fredy, if I didn't have sex with him that was going to go to Miami Florida, that he would go tell her mom what kind of job she was working here. I asked Patricia "what was she talking about" and she told me that he was forcing her to have sex with him. She then exited at exit 68 on I-85 and she took a left and when she got to the end of the road she parked in a spot more concealed a little way from the road. It was dark and Antonio got out and I did too. When I left the car him and I started to argue. He told me don't get involved in this it's not your business and she was crying and she told me that he forced her to have sex with him and sometimes he hit her. Then we started to fight him and me. While we were fighting she hit him in the back of the head with the gun that she had showed me earlier that morning. Antonio fell to the ground because she hit him, but he put one hand on the ground and one knee so he wouldn't fall, then she hit him again in the back of the head. Then he stayed where he was and when I saw this, that he took his hand and reached for his waist, the same time turned around to face me. I thought he would pull a gun so I grabbed the gun Patricia had in her hand and I fired it and he started to run and Patricia yelled to me to kill him! Because if I didn't he would tell the police that I shot at him. I felt scared and started to run after him and shot at him two or three times. So when I was running the clip came out, but I kept running and he fell twice, the third time he fell he didn't get up and I saw him not moving and Patricia told me to move him so nobody could see him when they passed. Because if not somebody will call the police and she also told me to grab his wallet and the keys he had, because his car was parked at her house and she had to move it from there and I did what she told me. I gave it all to her afterwards she told me that the keys were missing to the car and because I was nervous they fell from my hands and we looked for them, but the only thing we found was the gun but the keys and clip we couldn't find them. There were a lot of cars passing and I told her to leave while I was looking for the clip and the keys and she left. She came back a half hour later and I got into her car and we went to my house. When we got to the house everyone was sleeping and Patricia and I went in through the back door. We went into my bedroom, I got a towel and I took a shower and then I left the bathroom afterwards she told me that she wanted to use the bathroom and I told her okay and about ten minutes later she came back to the room and sat on my bed. I told her to tell me again for what reason did she want this guy dead and she started to cry. I started to say what happened when she was in Guatamala in the last months of 2007. Jennifer her cousin called Antonio to go get her because she was in Miami and she didn't have a way back to North Carolina and when Antonio came there, Jennifer showed him where she and Patricia lived. When he came back from his country he said he wanted to be her boyfriend and she said no and when he told her that if she didn't want to be

FILED
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA
JAN 10 2008

with him that he would go to her mom's house to tell her what kind of job she was working in North Carolina and for this reason she was doing sexual relations with him. Sometimes he would beat her and this was the reason she wanted him killed. She couldn't stop crying and I told her to go to sleep on the bed and she told me she wanted to go back and look for the keys and the clip. I told her not to go back there and she said she didn't want to go to jail, because she didn't want to be far from her daughter. I told her that if something happened I was the one that killed him and that she didn't see anything and that she didn't know when or how it happened. After we talked I told her everything was alright and she made me promise not to let her go to jail and I promised her and she went to sleep.

About 5:45 in the early morning, she got up and asked me to go back and look for the keys and clip and I told her no, not to leave the house and around 5:55 early morning I went back to bed. I woke up in the afternoon and I called to see how she was and she told me she felt a little better and she told me she left the gun in the yard of my house that she was scared to get caught by the police with it and I went and got the gun. She asked me to keep it til she would pick it up Saturday or Sunday. I put the gun in the back of the house and wrapped it up in a shirt and I put pieces of concrete and wood over the gun. Friday morning, my mom woke me up and she asked me to get my sister from Greenville because she had to work til 2 pm and she didn't have noone to bring her home to Greenville. I took her to her apartment and on the way I tried to call Patricia but she didn't answer, and when I dropped off my sister at her apartment I went back to my house. I called back to Patricia, but she never answered my calls. I kept calling all afternoon til about 6 pm. The police came to my mother's house and shot a gas bomb in the garage. I was in the back part smoking a cigarette when one of the police told me to show my hands and get on the ground. I didn't resist arrest and I did what the police said. When they arrested me they showed me the picture of Antonio and he told me because this wetback my sorry ass would spend the rest of my life in prison. At that time my brother came out handcuffed and they threw him on the ground and asked if anyone else was in the house. He told them that in the back room the brother-in-law of my dad lived there and instantly they pulled him out the room. When they secured us all and everybody there I went to the police station.

They put me in an interrogation room and asked me questions about what happened and I didn't tell them nothing that happened. They put a detective to talk to me who spoke spanish but he said words in english that he didn't know how to say in spanish. We talked a little about his life and I asked him about how long he was in the army and how was his family and I asked him to let me smoke and he said that wasn't a problem. Also he told me that if I told him what happened that it would go better and he could help me. He looked at me like I wouldn't say anything and left and then another person came in the room. I was in and he got in my face and put the picture of Antonio in my face and told me that they knew everything that happened on April 28 and they asked me if I reconized a pair of tennis shoes that he brought in his hands and when they put them in front of me I knew they were Patricia's and that's what she was wearing the day of the incident with Antonio.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA
JAN 10 1990
M. H. H. H.

They said that she told them everything that had happened and I laughed and it made him mad. He put his face in front of mine and took the shoes and left. That's when the other detective that was in the room with me before then came in and that's when I decided to make a statement so I could take all the blame because I didn't want Patricia to go to jail and for that reason I said she didn't want or know anything about it, that she wasn't there when it took place and my problems with Antonio were because of jealousy and I didn't even know who Antonio was really and around 10 pm I said where I put the gun and Det Garcia took me to jail and told me to sign the papers, because they wanted to check my dental records to know if I had any dental problems, because those were the jail rules, to check for infections and he told me to get a health and hygiene check and he left me with the officials from the jail.

CONCLUSION

Based on the foregoing statement I did not kill Antonio Perez. Patricia Flores De Ramos planned to kill Antonio Perez two (2) weeks prior to the incident.

At the cite of the incident Patricia Flores De Ramos hit Antonio Perez multiple times in the back of the head with the pistol he was shot with.

The two (2) gunshots were through-and-through shots and were not fatal. (see exhibit 1 autopsy report).

I took the blame for the murder of Antonio Perez because I was in love with Patricia and I feared for her kids welfare. I did not plan to kill Antonio Perez nor did I kill him.

Patricia Flores De Ramos killed Antonio Perez. I am innocent of murder and should be entitled to make a showing of actual innocence see U.S. v. Bousley, 523 U.S. 614, 113 S.Ct 1604, 140 L.Ed.2d 323, 66 USLW 4346, 98 CJ. Daily Op. Serv. 3723, 98 Daily Journal D.A.R. 5135, 98 CJC. A.R. 2447, 98 L. Weekly Fed. S 532.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
OCT 14 AM 9:03
M. HOPE BLACKLEY

II.

Plea counsel failed to arrange polygraph before advising to plea guilty.

III.

Plea counsel failed to develop facts of 3rd party guilt before advising to plea.

IV.

Plea counsel ineffective for advising Applicant he would receive 0-30 for voluntary manslaughter.

V.

Plea counsel failed to research or investigate case.

VI.

Plea counsel failed to take to trial and argue mere presence defense.

For the forgoing issues, Applicant's conviction and sentence should be vacated and remanded for a new trial.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 14 AM 9:03
M. HOPE BLACKLEY

SPARTANBURG REGIONAL MEDICAL CENTER AUTOPSY REPORT

FA-08-104 PEREZ, MARCAIL ANTONIO
Page 4

LIVER AND GALLBLADDER: The liver has a mottled but predominantly pale smooth serosa weighing 1,345 grams. Sectioning reveals a slightly softened pale cut surface with no discrete lesions. The gallbladder contains approximately 20 cc's of yellowish green bile with no mucosal lesions or stones.

PANCREAS: The pancreas weighs approximately 175 grams with bluish gray wrinkled capsule and mild diffuseness on sectioning.

ADRENAL GLANDS: Each adrenal gland weighs approximately 5 grams with thin yellow cortex and partially autolyzed medulla.

GENITOURINARY SYSTEM: The right and left kidneys weigh 120 and 145 grams, respectively, with easily strippable capsules, smooth slightly pale reddish tan cortical surfaces, and no lesions on sectioning. The ureters are unremarkable. The bladder contains approximately 125 cc's of slightly cloudy urine with no mucosal lesions. The prostate weighs approximately 20 grams with glistening tan cut surfaces. The testicles are without palpable masses.

LYMPHOID SYSTEM AND BONE MARROW: Unremarkable.

CENTRAL NERVOUS SYSTEM: Reflection of the scalp reveals moderately severe hemorrhage in the areas of the lacerations noted externally, and there is severe hemorrhage in the left occipital area. There is a curved up bone fracture of the calvarium in the left frontal region in the area of the curvilinear laceration noted externally, and there is a accompanying fine fracture line also present. Posteriorly, there is a depressed as well as a linear fracture in the occipital area on the left. There is no epidural hemorrhage although there is subdural hemorrhage in the posterior fossae bilaterally. On removal of the brain, the fractures extend into the basilar skull posteriorly, and the depressed fracture is extremely inferior and measures approximately 3.0 centimeters in maximum diameter being only slightly oval in shape. On removal of the brain which weighs 1,270 grams, there is diffuse cerebral edema, and there are contusions of the left occipital lobe as well as the cerebellum in the areas of the more severe fractures. There is diffuse subarachnoid congestion which is extreme, and there is focal subarachnoid hemorrhage. Sectioning of the brain reveals no internal lesions to be present with the contusions only involving the cortex.

SPARTANBURG REGIONAL MEDICAL CENTER AUTOPSY REPORT

COPY

FA-08-104 PEREZ, MARCAIL ANTONIO
 AGE: 35 SEX: MALE RACE: HISPANIC
 SRMC MEDICAL RECORD #73-12-01
 CORONER/FORREST/SHAW
 DR. J. D. WREN, PATHOLOGIST
 DATE OF AUTOPSY: 4/29/2008 @ 4:50PM DATE OF DICTATION: 4/29/2008
 DATE OF TRANSCRIPTION: 5/5/2008

BRIEF HISTORY: This history was provided by Spartanburg County Coroner's Chief Investigator, Ms. Robin Forrest. According to Ms. Forrest, this 38 year old Hispanic male was found near the Tannery off I-85. The decedent appeared to have been struck in the face as well as shot. The case is still under investigation.

DESCRIPTION OF CLOTHING: The decedent is fully clothed in a short sleeved pullover white, gray, and navy striped shirt, a pair of blue denim jeans with black belt through the loops, a pair of gray jockey shorts with red and blue pattern, a pair of black low cut lace-up shoes, and a pair of gray and white socks. About the legs there are strips of clear plastic and black plastic. The strips are not tied but are extensively looped about the lower legs. The shoes are dirty with mud along the front with a small amount of partially dried blood along the heels. No obvious splatters are seen on the tops of the shoes, but there are splatters about the shirt. Further inspection of the shirt reveals defects present in the right side with one near the seam anteriorly containing possible charring of the cloth with one posteriorly slightly higher. There are two additional defects along the posterior right side near the lower border possibly representing a grazing wound.

EXTERNAL DESCRIPTION: This is the body of a normally developed Hispanic male measuring 63.5 inches in length with a weight of 142 pounds. When initially examined the body contained blood caked about the face and within the hair as well as some on the arms bilaterally. The feet are slightly under the body with the knees flexed slightly laterally to the right on the right leg and medially on the left. There is breakable rigor mortis of the extremities and there is minimal but non-blanching posterior livor mortis. After washing the body, there is multiple head trauma visualized which will be partially described, extensively photographed, and drawn on accompanying diagram chart. The decedent has a full head of dark brown hair that measures approximately 1.5 inch in length. There is no palpable skull trauma although there are lacerations palpable in the posterior head with further inspection revealing four lacerations which are listed on accompanying head diagram. There are abrasions about the forehead which are slightly obliquely oriented, and there are two lacerations to the forehead which are likewise

FILED
CLERK OF COURT
SPARTANBURG COUNTY

Spartanburg Regional Medical Center (444-462)

MAY 07 2008

SPARTANBURG REGIONAL MEDICAL CENTER AUTOPSY REPORT

FA-08-104 PEREZ, MARCAIL ANTONIO
Page 5

DESCRIPTION OF GUNSHOT WOUNDS: There are two through-and-through gunshot wounds to the body with order of infliction not indicated by order of description.

GUNSHOT WOUND #1: This gunshot wound appears in the dorsal right forearm with the entrance measuring 0.33 by 0.35 inches in overall dimensions with an abrasion border from 6 to 9 o'clock up to 0.3 inches in width. The exit is separated from the entrance by 2.1 inch and is irregular in shape measuring 0.42 by 0.70 inches in overall dimensions. No obvious tattooing or soot deposition is noted, and the bullet passes from the radial to ulna side slightly superiorly and laterally.

GUNSHOT WOUND #2: This gunshot wound is a through-and-through gunshot wound appearing in the right lateral flank with entrance 23.0 inches from the top of the head and 7.0 inches to the left of midline. The entrance measures 0.40 by 0.70 inches in overall dimensions with burn abrasion from 2 to 5:30 o'clock up to 0.60 inches in width. Separated superiorly and posterolaterally by 1.7 inches, an exit which communicates subcutaneously with the entrance is present with this wound measuring 1.1 by 0.50 inches in overall dimensions with a slight tag of skin within the wound which bridges between the edges. Therefore, the path of this bullet is slightly upward, slightly laterally and posteriorly.

COMMENT: X-rays taken of the arm as well as the abdomen reveal no evidence of bullet fragments within the wounds. Neither wound appears to be immediately fatal.

FINAL SUMMARY: This autopsy was done at the request of and after due authorization of the Spartanburg County Coroner's Office in the SRMC Autopsy Room on 4/29/2008 beginning at approximately 4:50PM.

Postmortem examination and autopsy of the body of Marcail Antonio Perez, 35 year old Hispanic male identified via fingerprints, revealed multiple blunt force trauma to the head as described in the Gross Autopsy Protocol with additional scattered injuries over the body which were likewise described. Moreover, there were two through-and-through gunshot wounds to the body with one in the right arm whereas the other was in the right flank region. Neither gunshot wound appeared to be immediately life threatening.

Spartanburg Regional Medical Center (444-462)

COPY

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2008 OCT 14 AM 9:02

SPARTANBURG REGIONAL MEDICAL CENTER AUTOPSY REPORT

COPY

FA-08-104 PEREZ, MARCAIL ANTONIO

Page 2

sketched and photographed. There are bilateral periorbital hematomas. The irides are brown in color with the pupils bilaterally fixed to approximately 5.0 millimeters with cloudy corneas and bilateral scleral hemorrhage with edema. The nose is palpably fractured with diffuse contusion, and there is a small laceration along the left ala nasi approximately 0.6 inch in length. There is blood about the nostrils which drains freely on manipulation of the body. The face is swollen bilaterally but more severe on the right, and there is an approximately 1.2 centimeter abrasion with contusion along the medial left cheek. Moreover, there is an obliquely oriented abrasion with central laceration extending from the mid right cheek to near the chin measuring up to 3.5 inches in length with the widest abrasion superiorly 0.25 inch in width. There are contusions about both lips with a deep laceration along the lower lip measuring 1.4 inches in length and gaping to approximately 0.4 inches. The frenulum is torn. The teeth appear to be carped, and the maxilla is freely movable within the mouth indicating extensive fracture. There is abrasion of the right mandible extending from just anterior to the earlobe all the way to slightly to the left of the chin covering an area of 6.0 by 1.7 inches. Moreover, there is a deep abrasion which is irregular about the thyroid cartilage in the midline measuring 1.1 by 0.5 inches. The neck is freely movable. Inspection of the chest and abdomen reveals slight abrasions about the left subclavian region measuring no more than 0.6 by 0.3 inches, and there is abrasion with contusion along the right upper chest extending onto the shoulder covering an area of 5.5 by up to 1.6 inches. The external genitalia are those of an uncircumcised male with bilaterally descended testicles with deep diving abrasions about the scrotum. The pubic hair is recently shaved. Inspection of the back reveals a small abrasion along the posterior left shoulder measuring 1.0 by 0.5 inches. The upper extremities bilaterally contain numerous scratch type abrasions which are oriented in various directions extending from proximal upper arm all the way onto the dorsal hands. Moreover, the right arm contains a through-and-through gunshot wound to the mid dorsal forearm with entrance along the ulnar surface and exit along the radial surface. The entrance measures 0.35 by 0.33 inches in overall dimensions with an abrasion border from 6 to 9 o'clock measuring up to 0.3 inches in maximum width. The exit is separated by 2.1 inches and is irregular in shape measuring 0.7 by 0.42 inches. X-rays reveal no bullet fragments, and there are no fractures to the bones particularly the ulna. The right flank contains a through-and-through subcutaneous gunshot wound with entrance anteriorly and exit posterolaterally to be described subsequently. There is a dislocation versus fracture of the left thumb near the PIP joint. The lower extremities contain no evidence of injuries other than a small irregular abrasion along the mid left lower leg measuring 0.6 by 0.3 inches.

J2

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 14 AM 9:03

SPARTANBURG REGIONAL MEDICAL CENTER AUTOPSY REPORT

COPY

FA-08-104 PEREZ, MARCAIL ANTONIO
Page 6

Associated with the blunt force trauma was subdural hemorrhage, focal subarachnoid hemorrhage, areas of contusions of the brain, and multiple calvarial and basilar skull fracture as likewise described. There were also extensive facial fractures. At autopsy, no significant disease processes leading to the demise of this individual were identified. Blood removed at autopsy was forwarded to the Coroner for toxicological examination with results pending. Nevertheless, the cause of death is unequivocal.

Therefore, based on the history and autopsy findings as stated in this protocol, it is my opinion that this individual died as the result of closed head injuries with basilar skull fractures secondary to blunt force trauma to the head. The manner of death will be assigned by the Coroner's Office.

FINAL NECROPSY DIAGNOSES:

- 1) Multiple blunt force trauma to head with lacerations, contusions, facial and calvarial skull fractures, basilar skull fracture, focal subdural hemorrhage, and focal subarachnoid hemorrhage with cerebral contusions.
- 2) Additional contusions with abrasions and lacerations to body as described grossly.
- 3) Two, probably medium caliber, potentially fatal gunshot wounds to right forearm and right flank as described under "Description of Gunshot Wounds."
- 4) Acute aspiration into lungs bilaterally; diffuse acute passive congestion of lungs.
- 5) Very mild serous pericardial effusion; focal very mild coronary artery atherosclerosis with congenitally small coronary arteries.
- 6) Mildly enlarged prostate gland.

J. David Wren 5/6/08
J. David Wren, MD, Ph.D.
Pathologist

JDW/lsw

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT 14 AM 9:03
HOPE BLACKLEY

SPARTANBURG REGIONAL MEDICAL CENTER AUTOPSY REPORT

COPY

FA-08-104 PEREZ, MARCAIL ANTONIO

Page 3

INTERNAL DESCRIPTION: The body is opened with a standard Y-shaped incision to reveal a moderate amount of hemorrhage along the right upper chest extending from near the midline to the shoulder in the subclavian region, but there are no accompanying fractures. There is also a moderate amount of hemorrhage in the musculature of the neck particularly along the right side where the thyroid cartilage is fractured. The hyoid bone is intact. Removal of the chest plate reveals no pleural effusions or adhesions with focal areas in the lung pleura having a dark blue appearance consistent with minor aspiration. The lungs are only mildly to moderately congested elsewhere. There is approximately 5 cc's of serous fluid within the pericardial sac with the heart only borderline enlarged but contracted in appearance. Sectioning of the peritoneal cavity reveals very minor anterior peritoneal adhesions with no evidence of internal injuries.

DESCRIPTION OF ORGAN SYSTEMS:

THYROID: The thyroid weighs approximately 20 grams with pale brownish tan granular cut surfaces with congestion of the right lobe in the area where there is hemorrhage within the musculature.

CARDIOVASCULAR SYSTEM: The heart weighs 350 grams and is contracted in appearance. Sectioning of the coronary arteries reveals only mild atherosclerosis with very little blood remaining in the vasculature. Valves and valve cusps appear normal. Sectioning of the heart reveals reddish brown cut surfaces of normal consistency without scars or evolving infarctions. The aorta contains only mild atherosclerosis.

RESPIRATORY SYSTEM: There are bloody contents within the oropharynx, but the trachea and major bronchi bilaterally contain only a small amount of mucus with slight mucosal congestion. Peripherally, there are areas in which there is a small amount of bloody contents within bronchi. The right and left lungs weigh 495 and 440 grams, respectively, with no masses on sectioning although there is areas of apparently aspirated bloody. There is mild to moderate congestion elsewhere.

GASTROINTESTINAL SYSTEM: The esophagus is unremarkable with slightly irregular gastroesophageal junction. The stomach contains approximately 15 ounces of thick dark brownish contents with odor of chocolate but no other discernible particles. The mucosa is mildly congested. The remainder of the GI tract appears to be within normal limits with the appendix present.

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 OCT 14 AM 9:03

H. O. S. HALEY

Handwritten signature

SPARTANBURG COUNTY SHERIFF'S OFFICE

INVESTIGATION REPORT

SC0420000	TYPE : ☐ PRELIMINARY ☐ CONTINUING	CASE : # 2008041734
INCIDENT TYPE : Murder		VICTIM : Perez, Marcial Antonio
LOCATION : Falling Creek Rd. and Ft. Prince Blvd.		

On 4-29-8, I responded to the incident location and met with investigators Lorin Williams, Demetric Glenn and Jason Bryant, where I was briefed as to the situation as it stood then. A Mexican male had been murdered at a dirt and grassy "parking" area at the "T" where Ft. Prince Blvd. meets Falling Creek Rd. I decided as quickly as possible, to have the finger prints of the victim taken and process for identification. In observation of the scene, it was determined to appear as if a shooting had taken place in one area, followed by a lot of movement by at least 3 people, including the victim, to an area some 40 yards away where the victim was found. Shell casings from a 9mm gun were found as well as a magazine that seemed to fit a 9mm handgun. Found near the magazine was one unspent round of 9mm ammunition. The previous day, our area had rain showers which provided a situation where footprints were maintained. The victim was found face up as if his last moments were on his knees and fell backwards, leaving his legs up under his body. His appearance looked as if he had been beaten and there seemed to be a gunshot wound to the right side of his body, just grazing. There was not any identification on his person and only two sets of vehicle keys, one tentatively identified as a Dodge or Chrysler and the other as maybe a Nissan or Toyota.

The following day, the victim was identified as Perez and it was discovered that he was from Greensboro, North Carolina. Efforts were began to find out everything about the victim, and we discovered that he had at least one vehicle registered to him and it was a Toyota, which we felt may be a match for one of the keys in his pocket. A driver's license picture was obtained from NC and also from Immigration and Naturalization Service from when he tried to enter the United States illegally in 2003. Inv. Williams and Glenn went to Greensboro and began looking into the victim's background there.

On Friday, 5-2-8, enough information was obtained to develop suspects Sibrian and Flores-De Ramos and warrants were obtained for De Ramos though she was in Greensboro. My efforts were to organize personnel to search the residence of Sibrian for evidence related to this murder along with drafting the supplemental report so arrest warrants could be obtained for the suspects.

After entering the home of Sibrian, I found in the first bedroom on the right, starting down the hallway, a dirty clothes container that had several dirty pairs of blue jeans, one of which had a wallet that had Fredy Sibrian's South Carolina driver's license and other documents that belonged to him. This pair of pants was about halfway down inside the container of which had 10+ pairs of dirty pants. In another pair of pants, was a Federal W-2 form for Fredy Sibrian.

Later in the search, it was determined that Fredy stayed in the first bedroom on the left as you come in through the carport door. on the bedside table, was a picture of Patricia Flores De-Ramos, propped up against the table lamp. Much later in the search, it was relayed to me that the suspect, Sibrian, revealed the location of the weapon used to kill Perez. We followed as we were directed by Sibrian, a pile of brick and rock, where wrapped in an old t-shirt or clothe, was one semi-automatic pistol. It was secured as evidence. I left and returned to the office.

Weapon did not kill Victim

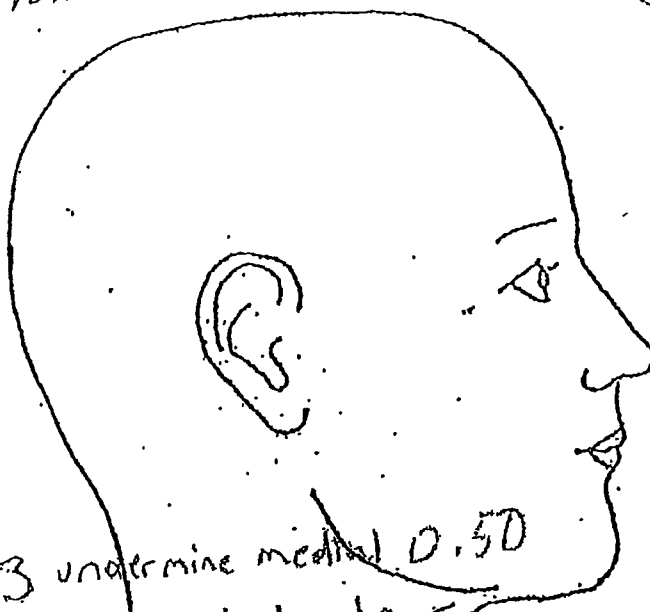
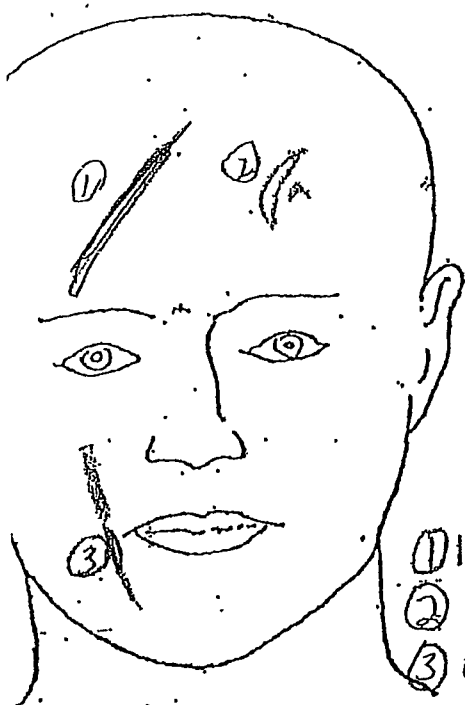
INVESTIGATOR : Allan Wood	DATE : 5-5-8
APPROVING OFFICER : <i>(Signature)</i>	DATE :

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 MAY 14 AM 9:03
 JIM BLACKLEY

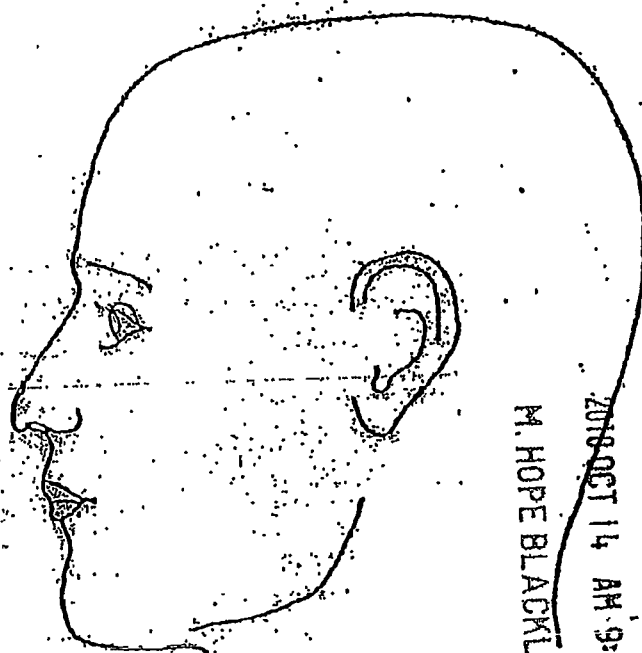
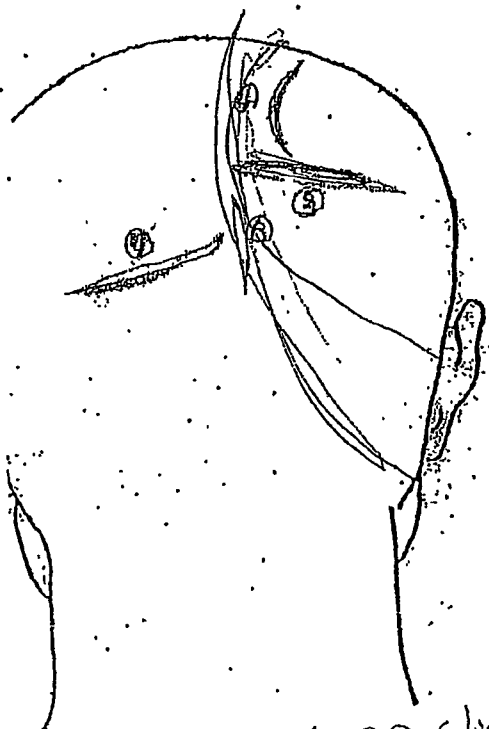
Copy

FA08-107
MARCELL ANTONIO PEREZ

COPY



- ① 1.45 x 3.03 undermine medial 0.50
- ② 1.3 x 0.1 undermine lateral 0.5
- ③ 0.8 x 0.1 0.3 Depth



FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 OCT 14 AM 9:04
M. HOPE BLACKLEY

- ④ 1.35 x 0.20 slight undermine medially 0.15
- ⑤ 2.05 x 0.25 undermine anterior 0.60
- ⑥ 1.2 x 0.15 undermine medial 0.35
- ⑦ 1.92 x 0.30 undermine inferior 0.55

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Fredy Sibrian, #338184,	)	2010-CP-42-5484
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 14, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the July 2008 term of the Spartanburg County Grand Jury for murder and possession of a firearm during the commission of a violent crime (08-GS-42-3693, counts 1 and 2 respectively). He was represented by Scott D. Robinson, Esquire. On November 30, 2009, the Applicant pled guilty as indicted. He was sentenced by the Honorable John C. Hayes III to confinement for a period of thirty-five years for murder (count 1) and five years for the possession of a firearm charge (count 2), both set to run concurrent. The Applicant did not appeal his guilty plea or sentence.

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

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to arrange for a polygraph before advising Applicant to plead guilty,
 - b. Counsel failed to develop possible third party guilty defense before advising Applicant to plead guilty,
 - c. Counsel misinformed Applicant that he would receive between 0-30 years for voluntary manslaughter,
 - d. Counsel failed to investigate and research the case,
 - e. Counsel failed to take the case to trial and argue mere presence defense;
2. Involuntary guilty plea; and
3. Actual innocence.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial: Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Applicant also alleges that he is innocent of the crime for which he pled guilty. Respondent submits that the Applicant waived all non-jurisdictional defects and defenses when he voluntarily pled guilty to the charges of murder and possession of a firearm during the commission of a crime. State v. Snowden, 371 S.C. 331, 638 S.E.2d 91 (2006). Therefore, Respondent submits that the court should summarily dismiss this claim.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

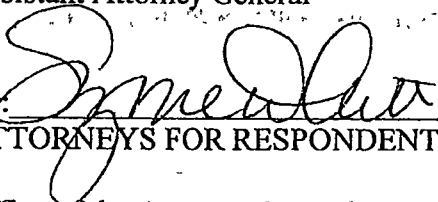
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 3, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS
2010-CP-42-05484

FREDY SIBRIAN,

-VS-

THE STATE of SOUTH CAROLINA,
Defendant.

TRANSCRIPT OF RECORD

February 2, 2012
Spartanburg, South Carolina

Ordered: June 7, 2012

Delivered: August 1, 2012

B E F O R E:

THE HONORABLE FRANK R. ADDY, Presiding Judge.

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

MS. SUZANNE H. WHITE, Esquire
Assistant Attorney General Appearing for the State

MR. SHAWN CAMPBELL, Esquire
Attorney Appearing for the Applicant

Pamela Faucette
Circuit Court Reporter

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

I N D E X

FREDY SIBRIAN PCR	Page:
Ms. White's Recitation of Facts.....	3

W I T N E S S E S

Mr. Fredy Sibrian:	Page:
Direct by Mr. Campbell.....	5
Cross by Ms. White.....	21

Mr. Scott Robinson, Esquire	Page:
Direct by Mr. Campbell.....	27
Cross by Ms. White.....	33

E X H I B I T S

Applicant's Exhibits:	Marked:	Received:
(None)		
Respondent's Exhibits:	Marked:	Received:
(None)		
Court's Exhibits:	Marked:	Received:
(None)		

Reporter's Certification.....	42
-------------------------------	----

Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

Fredy Sibrian PCR - February 2, 2012

Page 3

February 2, 2012

11:52 A.M.

(Off-the-Record Discussion)

(Brief Pause while Mr. Sibrian is brought into the courtroom.)

THE COURT: Ms. White?

MS. WHITE: Thank you, Your Honor. This is the case of *Fredy Sibrian vs. The State*, 2010-CP-42-5484. He is represented today by Shawn Campbell.

Mr. Sibrian was indicted in July of '08 for murder and possession of a gun during the commission of a violent crime.

He was represented at the time by Scott Robinson. He pled guilty before Judge John Hayes on November 30th, two thousand and nine (2009);

Received a sentence of thirty-five (35) years for murder and five (5) years consecutive -- or excuse me -- concurrent for possession of a gun during the commission of a violent crime.

He has raised various allegations of ineffective assistance of counsel, involuntary guilty plea, and actual innocence.

And, Your Honor, I do want to put on the record we continued this case previously. Mr. Sibrian had filed a motion to relieve counsel and tendered basically a notice that his family had intended to retain or that they had

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 retained counsel to represent him on this PCR.

2 Following that, we actually received another letter
3 I believe from Mr. Sibrian -- or Mr. Campbell did --
4 withdrawing that motion and indicating that they wanted
5 to proceed with Mr. Campbell as counsel.

6 So, I did want to put that on the record in case we
7 needed to ask him any questions. And also note,
8 obviously, he does have an interpreter here as he is
9 Spanish-speaking.

10 (Interpreter converses with Defendant in Spanish.)

11 MS. WHITE: But it's my understanding he does want
12 to proceed with an evidentiary hearing today on his PCR.

13 (Interpreter converses with Defendant in Spanish.)

14 THE COURT: All right. Before we proceed further,
15 let me get the interpreter under oath if we may. Ma'am,
16 if you'll just raise your right hand.

17 (Whereupon, the interpreter was sworn.)

18 The COURT: Your name, please, ma'am?

19 MADAM INTERPRETER: My name is Teresa Sanchez
20 (phonetic).

21 THE COURT: Mr. Campbell, are you ready to
22 proceed today?

23 MR. CAMPBELL: I am, Your Honor. And I will inform
24 the Court that I talked to Mr. Sibrian prior to the
25 hearing and asked him if he wanted to go forward with his

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 5

1 motion to relieve me. He indicated he did not; that he
2 wanted me to go forward today with the evidentiary
3 hearing, Your Honor.

4 THE COURT: Mr. Sibrian, are you comfortable with
5 Mr. Campbell representing you, sir?

6 (Interpreter converses with Defendant in Spanish.)

7 THE APPLICANT: Si.

8 MADAM INTERPRETER: Yes.

9 THE COURT: Okay. Thank you.

10 MR. CAMPBELL: Your Honor, then, I would call Fredy
11 Sibrian as my first witness.

12 THE COURT: If you'll come up here, Mr. Sibrian,
13 and just have a seat over here (indicating).

14 (Interpreter converses with Defendant in Spanish.)

15 (Off-the-Record Discussion)

16 (The witness stepped forward to be sworn.)

17 (Whereupon,

18 FREDY SIBRIAN

19 first being duly sworn, testified as follows:)

20 THE COURT: You can sit down.

21 (Interpreter converses with Defendant in Spanish.)

22 (The witness complied with the request.)

23 THE COURT: Mr. Campbell?

24 DIRECT EXAMINATION by MR. CAMPBELL:

11:04 A.M.

25 Q. Fredy, you filed this PCR application against Scott

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 6

1 Robinson, correct?

2 (Interpreter converses with Defendant in Spanish.)

3 (REPORTER'S NOTE: All answers, unless otherwise
4 indicated, were given by the interpreter.)

5 A. Yes.

6 Q. And it's based on ineffective assistance of counsel?

7 (Interpreter converses with Defendant in Spanish.)

8 A. Yes, that's correct.

9 Q. Okay. Now, you are currently in Perry Correctional
10 Institute; is that correct?

11 (Interpreter converses with Defendant in Spanish.)

12 A. Yes.

13 Q. And --and you're there after you pled, -- you pled,
14 guilty to murder in two thousand and nine (2009), correct?

15 (Interpreter converses with Defendant in Spanish.)

16 A. Yes.

17 Q. Actually on or about November 30th, two thousand and
18 nine (2009)?

19 (Interpreter converses with Defendant in Spanish.)

20 A. Correct.

21 Q. Now you were originally arrested I believe April 29th
22 of two thousand and eight (2008)?

23 (Interpreter converses with Defendant in Spanish.)

24 A. No, May 2nd.

25 Q. May 2nd? Okay. But an arrest warrant was issued,

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 7

1 though, April 29, two thousand, eight (2008)?

2 A. Uh-huh (affirmative).

3 (Interpreter converses with Defendant in Spanish.)

4 A. Okay.

5 Q. And you were charged with murder and possession of a
6 firearm, correct?

7 (Interpreter converses with Defendant in Spanish.)

8 A. Yes, that's correct.

9 Q. Describe to the Court what happened and how you --
10 how you were charged with murder.

11 (Interpreter converses with Defendant in Spanish.)

12 A. Because I shot the victim.

13 Q. Okay. Now, after you were arrested, when did Scott
14 Robinson become your attorney?

15 (Interpreter converses with Defendant in Spanish.)

16 A. I can't remember exactly. It could have been weeks
17 after or maybe a month after.

18 Q. Was he a retained lawyer? Did you pay him or was he
19 appointed for you?

20 (Interpreter converses with Defendant in Spanish.)

21 A. My mother paid.

22 Q. Okay. So, he was a retained lawyer?

23 (Interpreter converses with Defendant in Spanish.)

24 A. Yes.

25 Q. Now, after Scott was retained, did he get discovery

1 for you?

2 (Interpreter converses with Defendant in Spanish.)

3 A. Yeah, he gave it to me, but since I don't read or
4 speak English, so, I couldn't know what was in it. And he
5 didn't explain anything -- anything to -- to me.

6 Q. Okay. At -- and I believe you pled guilty well over
7 a year after you were arrested, correct?

8 (Interpreter converses with Defendant in Spanish.)

9 A. Yes, about nineteen (19) months after.

10 Q. Were you in jail that entire time?

11 (Interpreter converses with Defendant in Spanish.)

12 A. Yes.

13 Q. How many times did you meet with Scott during that
14 -- that year?

15 (Interpreter converses with Defendant in Spanish.)

16 A. Two, three, or four, maybe five at the most.

17 Q. Okay. Three or four times?

18 (Interpreter converses with Defendant in Spanish.)

19 A. Yeah, something like that.

20 Q. Okay. Now I want to go over several things that
21 you've alleged that Scott did not do and the reasons he is
22 ineffective, okay?

23 (Interpreter converses with Defendant in Spanish.)

24 A. Yes.

25 Q. Okay. Did you ever request Scott to arrange a

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 9

1 polygraph examination?

2 (Interpreter converses with Defendant in Spanish.)

3 A. Yes.

4 Q. Okay. Did he do so?

5 (Interpreter converses with Defendant in Spanish.)

6 A. No.

7 Q. Okay. Now you're aware that polygraph examinations
8 are not admissible in court?

9 (Interpreter converses with Defendant in Spanish.)

10 A. I didn't know that. He didn't explain it to me.

11 Q. Okay. But you asked for one anyway?

12 (Interpreter converses with Defendant in Spanish.)

13 A. Yes.

14 Q. And how do you feel this polygraph examination would
15 have helped you in your case?

16 (Interpreter converses with Defendant in Spanish.)

17 A. Yeah, it would have actually helped me a lot because
18 it would have proved that actually I was a part of it, that I
19 did fire the gun but, you know, I wasn't like the one just
20 doing it all.

21 1Q. Okay. Now, in this case the victim was shot,
22 correct?

23 (Interpreter converses with Defendant in Spanish.)

24 A. He -- yes, he was.

25 Q. But the victim was also struck in the head?

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 (Interpreter converses with Defendant in Spanish.)

2 A. Yes.

3 Q. Did the victim die as a result of the gunshot wound?

4 (Interpreter converses with Defendant in Spanish.)

5 A. Not -- not -- not from the gunshot, no. According
6 to the autopsy -- autopsy ---

7 Q. Autopsy report.

8 A. Autopsy report.

9 Q. Now did you ever ask Mr. Robinson to -- to develop I
10 believe you called it the third-party defense?

11 (Interpreter converses with Defendant in Spanish.)

12 A. Yes.

13 Q. Okay. Was there a co-defendant in your case?

14 (Interpreter converses with Defendant in Spanish.)

15 A. Yes, my ex-girlfriend.

16 Q. And what was her name?

17 (Interpreter converses with Defendant in Spanish.)

18 A. Patricia Ramas Brown (phonetic).

19 Q. Okay. And what was she charged with?

20 (Interpreter converses with Defendant in Spanish.)

21 A. Death.

22 (Interpreter converses with Defendant in Spanish.)

23 A. Murder.

24 Q. She was charged with murder?

25 (Interpreter converses with Defendant in Spanish.)

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 11

1 A. Yes.

2 Q. And did -- was she ever convicted of this crime?

3 (Interpreter converses with Defendant in Spanish.)

4 A. No, she wasn't convicted of murder. She was
5 convicted of accessory, accessory after the fact.

6 Q. Okay. What was her role in this crime?

7 (Interpreter converses with Defendant in Spanish.)

8 A. Uh-huh (affirmative). Well, her participation in
9 this case was that she hit the victim twice in the head.

10 Q. And you feel that, as a result of these blows, that
11 the victim died?

12 (Interpreter converses with Defendant in Spanish.)

13 A. Based on the autopsy report.

14 Q. Okay. Did you ask Scott to prepare a defense based
15 on this?

16 (Interpreter converses with Defendant in Spanish.)

17 A. Of course.

18 Q. Okay. And did he do so?

19 (Interpreter converses with Defendant in Spanish.)

20 A. No.

21 Q. Okay. Now also you state in your application that
22 Scott misinformed you that you would receive between zero (0)
23 and thirty (30) years for voluntary manslaughter?

24 (Interpreter converses with Defendant in Spanish.)

25 A. Yes.

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 Q. But you pled guilty to murder?

2 (Interpreter converses with Defendant in Spanish.)

3 A. Yes.

4 Q. Did Scott tell you, you were going to be pleading to
5 voluntary manslaughter or how was he ineffective there?

6 (Interpreter converses with Defendant in Spanish.)

7 A. Yes. He told me the best thing for me would be just
8 to go ahead and plead guilty because otherwise, if I go to a
9 jury trial, I will -- I will get a life sentence.

10 Q. And the murder charge carried a life sentence,
11 correct?

12 (Interpreter converses with Defendant in Spanish.)

13 A. Yes.

14 Q. And you're aware that, if your PCR is granted today,
15 you could still have that life sentence imposed on you down
16 the road should you be found guilty?

17 (Interpreter converses with Defendant in Spanish.)

18 A. Yes, of course, yes.

19 (Interpreter converses with Defendant in Spanish.)

20 A. But thirty-five (35) years is still life for me.

21 Q. Okay. Now also you allege that Scott failed to
22 investigate and research the case?

23 (Interpreter converses with Defendant in Spanish.)

24 A. Yes.

25 Q. Now understand that is a very general allegation. I

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 13

1 want to get into some specifics if I can.

2 (Interpreter converses with Defendant in Spanish.)

3 A. Okay.

4 Q. Can you explain to the Court about a letter that a
5 girl received saying that you were threatening her?

6 (Interpreter converses with Defendant in Spanish.)

7 A. The letter was for Patricia Ramas Brown (phonetic).

8 Q. You know that?

9 A. Si.

10 (Interpreter converses with Defendant in Spanish.)

11 A. Yes.

12 (Interpreter converses with Defendant in Spanish.)

13 A. Her and I we -- we were communicated --
14 communicating through letters.

15 (Interpreter converses with Defendant in Spanish.)

16 A. But all the time I will tell her, "Don't worry about
17 it. I'm going to go ahead and plead guilty. I'm in love with
18 you."

19 (Interpreter converses with Defendant in Spanish.)

20 A. But I never, ever threatened her or anything like
21 that, made threats to her in letters.

22 Q. Okay. Did you ask Scott to do anything with this
23 letter that you supposedly threatened her with?

24 (Interpreter converses with Defendant in Spanish.)

25 A. Yeah, I expect him to go ahead and have that letter

1 examined because definitely that wasn't my handwriting. You
2 know, did it have my fingerprints on it?

3 Q. In addition, you wanted Scott to investigate
4 Patricia's car?

5 (Interpreter converses with Defendant in Spanish.)

6 A. Yes.

7 Q. And why did you want Scott to investigate this car?

8 (Interpreter converses with Defendant in Spanish.)

9 A. Because that was the car that the victim used to
10 drive. But the car was on under Patricia's name. And it was
11 parked right across from her house.

12 And she wanted to move it from there. She wanted to
13 make that car disappear.

14 Q. What did you think that car would have shown that
15 may or may not have exonerated you?

16 (Interpreter converses with Defendant in Spanish.)

17 A. It will show that I was -- it was never my intention
18 to kill this guy. I didn't have any intentions to kill
19 anybody.

20 (Interpreter converses with Defendant in Spanish.)

21 A. That is what the -- the car would show.

22 Q. How would it have shown that?

23 (Interpreter converses with Defendant in Spanish.)

24 A. Because the person that moved that car would have
25 had the intention to kill the victim. And it would have shown

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 15

1 why and how.

2 Q. Okay. Also, when you were arrested, you gave a
3 statement to the police, correct?

4 (Interpreter converses with Defendant in Spanish.)

5 A. Yes.

6 Q. Where you admitted shooting the victim?

7 (Interpreter converses with Defendant in Spanish.)

8 A. Yes.

9 Q. Now was an interpreter present during this
10 interview?

11 (Interpreter converses with Defendant in Spanish.)

12 A. Yes.

13 Q. What nationality was the interpreter?

14 (Interpreter converses with Defendant in Spanish.)

15 A. He told me -- or she told me that it was -- was born
16 here but from Puerto Rican descendants.

17 Q. And where are you originally from?

18 (Interpreter converses with Defendant in Spanish.)

19 A. Honduras.

20 Q. Okay. Is that a different dialect from Puerto
21 Rico?

22 (Interpreter converses with Defendant in Spanish.)

23 A. Some words they do have different meanings.

24 (Interpreter converses with Defendant in Spanish.)

25 A. The meaning of the words is different sometimes.

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 16

1 Q. Now having an interpreter, of a different
2 nationality at your interview, did that affect your interview
3 in any way?

4 (Interpreter converses with Defendant in Spanish.)

5 A. Yeah, of course it did because first of all, his --
6 his Spanish wasn't all that great. And there were some words
7 that he couldn't say in Spanish.

8 So, he was -- he would say -- say them in English.

9 Q. Okay. Now, at any point during this interview, did
10 you ask for an attorney?

11 (Interpreter converses with Defendant in Spanish.)

12 A. Yes.

13 Q. And what time was that?

14 (Interpreter converses with Defendant in Spanish.)

15 A. According to doce -- documents, it was between eight
16 (8:00) and eight-thirty (8:30).

17 Q. Okay. And, then, did your interview continue even
18 after you asked for an attorney?

19 (Interpreter converses with Defendant in Spanish.)

20 A. Yes, they continued to interrogate -- interrogate
21 me.

22 Q. Did you tell Scott about this?

23 A. Yeah.

24 (Interpreter converses with Defendant in Spanish.)

25 A. Yes.

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 17

1 Q. Did you ask him to try to suppress your statement
2 based on the fact you asked for an attorney and one was not
3 provided to you?

4 (Interpreter converses with Defendant in Spanish.)

5 A. Yes. I did ask him because, first of all, I asked
6 him to suppress that statement because I had asked for a
7 lawyer and they continued to interrogate me.

8 And also I asked him to suppress the statement
9 because the interpreter that I had didn't speak Spanish well
10 enough like I did.

11 Q. Do you know if Scott ever tried to suppress the
12 statement?

13 (Interpreter converses with Defendant in Spanish.)

14 A. Not to this day, no.

15 Q. Okay. I want to go to the day of your plea.

16 (Interpreter converses with Defendant in Spanish.)

17 A. Okay. That's fine.

18 Q. You state in your application that your plea was not
19 voluntarily given.

20 (Interpreter converses with Defendant in Spanish.)

21 A. Exactly.

22 Q. How was your plea not voluntarily given?

23 (Interpreter converses with Defendant in Spanish.)

24 A. Well, because the lawyer that was representing me,
25 he told me that the best for me to -- would be to go ahead and

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 18

1 plead guilty. And that to me is not doing something
2 voluntarily. It's like playing with your mind.

3 Q. During your plea, the judge asked you several
4 questions. Do you remember that?

5 (Interpreter converses with Defendant in Spanish.)

6 A. I do remember, but I cannot remember all the
7 questions precisely.

8 Q. Do you remember the judge asking you if your guilty
9 plea was of your own free will and you were doing it
10 voluntarily?

11 (Interpreter converses with Defendant in Spanish.)

12 A. Yes.

13 Q. Okay. And, at that time, you said you were doing it
14 voluntarily.

15 (Interpreter converses with Defendant in Spanish.)

16 A. Yes, I did say that.

17 Q. How is your testimony -- or why is your testimony
18 different today than it was when you were in front of the
19 judge in two thousand, nine (2009)?

20 (Interpreter converses with Defendant in Spanish.)

21 A. What are you talking about this one? What you're
22 saying.

23 Q. Well, you told the judge in your plea that you were
24 pleading voluntarily.

25 (Interpreter converses with Defendant in Spanish.)

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

Mr. Fredy Sibrian - Direct by Mr. Campbell

Page 19

1 A. Yes.

2 Q. Now today you're asking the judge to overturn that
3 guilty plea based on the fact that it was involuntarily given
4 and wasn't of your own free will.

5 (Interpreter converses with Defendant in Spanish.)

6 A. Like I -- I stated before, you know, my attorney
7 told me that my best opportunity that day would be to go ahead
8 and plead guilty. And he also told me that I was facing from
9 zero (0) to thirty (30) years.

10 Q. Okay. Now, before you went in for your guilty plea,
11 did you ask Scott to ask for a continuance?

12 (Interpreter converses with Defendant in Spanish.)

13 A. Yes.

14 Q. Because you were up for trial, correct?

15 (Interpreter converses with Defendant in Spanish.)

16 A. Yes, exactly.

17 Q. Do you know if he asked for a continuance?

18 (Interpreter converses with Defendant in Spanish.)

19 A. No, he never did.

20 Q. Why did you want a continuance on that day?

21 (Interpreter converses with Defendant in Spanish.)

22 A. Because I wanted to talk to me -- talk to him about
23 my case. I wanted to see what the evidence was against me.

24 I wanted to -- for him tell me what kind of defenses
25 I could have. And actually he never did any of that.

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 Q. Now also in your application you're alleging
2 something called "actual innocence." What do you mean by
3 that?

4 (Interpreter converses with Defendant in Spanish.)

5 A. I'm innocent of the charge of murder.

6 (Interpreter converses with Defendant in Spanish.)

7 A. Okay. Well I'm claiming that I'm innocent because
8 in my indictment I'm being accused of shooting the victim and
9 hitting the victim.

10 But my co-defendant was accused of striking the
11 victim on the head. And the victim, according to the autopsy
12 ~~As for the autopsy report, died of the blows to the head.~~

13 That's what it shows.

14 (Brief Pause)

15 Q. You're here claiming today innocence of the charges,
16 but you pled guilty at your plea. Why did you tell the Court,
17 "I am guilty of murder"?

18 (Interpreter converses with Defendant in Spanish.)

19 A. Because my attorney, Scott Robinson, never did tell
20 me what was the cause of death, the victim's.

21 (Interpreter converses with Defendant in Spanish.)

22 A. Because I thought he died from the gun shot but --
23 because I did fire the gun, but actually, he didn't die of
24 that.

25 MR. CAMPBELL: No further questions for this

Mr. Fredy Sibrian - Cross by Ms. White

Page 21

1 witness, Your Honor.

2 (Interpreter converses with Defendant in Spanish.)

3 THE COURT: Ms. White?

4 MS. WHITE: Thank you.

5 CROSS EXAMINATION by MS. WHITE:

12:21 P.M.

6 Q. Mr. Sibrian, you don't deny that you got into a
7 fight with the victim on the night and, then, shot him ---

8 A. No.

9 Q. --- is that right?

10 (Interpreter converses with Defendant in Spanish.)

11 A. No, I'm not denying that.

12 Q. And it was basically a fight over -- or in your mind
13 maybe to protect your girlfriend at the time?

14 (Interpreter converses with Defendant in Spanish.)

15 A. Okay. What happened was to protect her and protect
16 myself because he was sexually abusing her.

17 (Interpreter converses with Defendant in Spanish.)

18 A. That's why we start arguing and fighting.

19 (Interpreter converses with Defendant in Spanish.)

20 A. And -- and, then, when we both were fighting,
21 Patricia came from behind and he got a weapon that he had --
22 that she had shown me earlier.

23 (Interpreter converses with Defendant in Spanish.)

24 A. And, then, she hit the deceased on the head.

25 (Interpreter converses with Defendant in Spanish.)

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 A. And, then, when the deceased kind of like fell to
2 the ground like a distance from like from where I'm here right
3 now to my attorney ---

4 (Interpreter converses with Defendant in Spanish.)

5 A. --- he put his hands on his waist and he like turned
6 around and I thought he was reaching for a weapon.

7 (Interpreter converses with Defendant in Spanish.)

8 A. Then, I grabbed Patricia's weapon thinking that he
9 had -- he was armed and that's when I shot.

10 Q. Okay. And, at the time, you had already been
11 fighting with him some; isn't that right?

12 (Interpreter converses with Defendant in Spanish.)

13 A. Before I shot him?

14 Q. Yes...

15 (Interpreter converses with Defendant in Spanish.)

16 A. Yeah, that's when we started arguing because
17 Patricia was sort of like getting in front of us.

18 Q. And she had already told you that she wanted him to
19 be killed?

20 (Interpreter converses with Defendant in Spanish.)

21 A. Two or three weeks prior to that she had told me
22 that she wanted to kill somebody, but this -- and she was
23 like, "No, I was just kidding; it was a joke."

24 Q. Okay. Now, when you said you met with Mr. Robinson
25 several times, what did you talk about if you didn't talk

1 about your case and your defenses?

2 (Interpreter converses with Defendant in Spanish.)

3 A. Well he was just talking about Patricia; where was
4 Patricia's job and also how things had happened.

5 (Interpreter converses with Defendant in Spanish.)

6 A. And we also talked about stuff that had nothing to
7 do with my case really.

8 Q. Okay. Did you ever talk ---

9 COURT REPORTER: I'm sorry. I didn't understand
10 what she just said.

11 THE COURT: Could you repeat that?

12 A. Okay. We also talked about stuff that -- that had
13 nothing to do with my case.

14 Q. Did you ever talk about self defense?

15 (Interpreter converses with Defendant in Spanish.)

16 A. Yes.

17 Q. Did you ever talk about whether or not the victim
18 had a gun that night?

19 (Interpreter converses with Defendant in Spanish.)

20 A. Well, yeah, we did talk about that. And, after the
21 victim was shot, I told him that I -- I went and touched the
22 victim and it looked like the victim was dead.

23 And, then, I saw that he didn't have a weapon. But
24 since it was really dark, I didn't know that before.

25 Q. So, you talked about the fact that the victim didn't

1 have a weapon and that, that might affect your self defense
2 argument?

3 (Interpreter converses with Defendant in Spanish.)

4 A. Yeah, but I didn't know that because how would I
5 know because it was really dark. And that was my short
6 reaction at the time.

7 Q. Okay. Now Patricia was charged you said with
8 accessory after the fact to murder?

9 (Interpreter converses with Defendant in Spanish.)

10 A. Well the indictment, her indictment, was murder.

11 (Interpreter converses with Defendant in Spanish.)

12 A. But she was sentenced to accessory after the fact.

13 Q. Do you know if she was willing or if she had told
14 the police that she was going to testify against you if you
15 went to trial?

16 (Interpreter converses with Defendant in Spanish.)

17 A. No, I'm not sure. I don't know.

18 Q. Okay.

19 (Interpreter converses with Defendant in Spanish.)

20 A. But I'm assuming that that's really what happened
21 because her initial charges, the indictment it's really not
22 for her to be convicted of accessory after the fact, even
23 though in her statement, she stated that she was present the
24 whole time.

25 Q. Okay. Now, you said that you thought you were going

Mr. Fredy Sibrian - Cross by Ms. White

Page 25

1 in and Scott had told you, you would potentially get zero (0)
2 to thirty (30) for voluntary manslaughter.

3 But the judge read to you the fact that you were
4 charged with and there to plead to murder, right?

5 (Interpreter converses with Defendant in Spanish.)

6 A. I thought that murder and manslaughter was the same
7 thing.

8 Q. Okay. What about, when the judge told you that
9 murder carried a mandatory thirty (30) years in jail, but he
10 could also sentence you to life imprisonment?

11 (Interpreter converses with Defendant in Spanish.)

12 A. Yeah, the -- the judge did say that, but since my
13 attorney had previously given me some papers to sign, and I
14 thought it was like zero (0) to thirty (30) years.

15 Q. So, you heard the judge say that and said you
16 understood, but you were still thinking you were getting less
17 than thirty (30)?

18 (Interpreter converses with Defendant in Spanish.)

19 A. Yeah, because I had signed that paper. And, then --
20 then, to just say I'm somewhat ignorant of the Laws of this
21 country. And back then I was even more ignorant.

22 Q. Now, at the time, the judge also asked you if you --
23 if anyone had promised you anything or threatened you to plead
24 guilty. And you said no.

25 (Interpreter converses with Defendant in Spanish.)

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

Mr. Fredy Sibrian - Cross by Ms. White

Page 26

1 A. Yes, I did say that.

2 Q. And he also told you that you have the right to a
3 jury, to confront witnesses, to cross examine them, and to
4 have -- have witnesses made to testify on your behalf.

5 (Interpreter converses with Defendant in Spanish.)

6 A. Yes, he did say that.

7 Q. And, then, he also told you that you were going to
8 give up any defense that you might have to the charges and
9 asked if you understood that.

10 (Interpreter converses with Defendant in Spanish.)

11 A. Yeah, I did say that because I felt guilty at the
12 time... I thought the victim had died because of the shot gun,
13 but -- and I wanted to make good for my mistakes. I wanted to
14 repair those mistakes.

15 Q. And you did acknowledged to the Court that you hit
16 the victim at least once?

17 (Interpreter converses with Defendant in Spanish.)

18 A. Yes, on the face. I hit him on the face. But, once
19 again, the autopsy report shows that he died because of the
20 blow to the head. And I have never ever admitted to hitting
21 him on the head.

22 MS. WHITE: Okay. All right. Thank you. That's
23 all I have, Your Honor.

24 (Interpreter converses with Defendant in Spanish.)

25 THE COURT: Mr. Campbell, any redirect?

Mr. Scott Robinson, Esq. - Direct by Ms. White

Page 27

1 MR. CAMPBELL: Nothing further, Your Honor.

2 THE COURT: Mr. Sibrian, you may step down. Thank
3 you, sir.

4 (Interpreter converses with Defendant in Spanish.)

5 (The witness complied with the request.)

6 THE COURT: Mr. Campbell, any other witnesses?

7 MR. CAMPBELL: No additional witnesses, Your Honor.

8 THE COURT: Ms. White?

9 MS. WHITE: We call Scott Robinson.

10 THE COURT: Mr. Robinson, come forward, please,
11 sir.

12 (The witness complied with the request.)

13 (Whereupon,

14 SCOTT ROBINSON, ESQUIRE

15 having first been duly sworn, testified as
16 follows:)

17 THE COURT: Have a seat, please.

18 (The witness complied with the request.)

19 DIRECT EXAMINATION by MS. WHITE: 12:31 P.M.

20 Q. Mr. Sibrian has testified that his family retained
21 you to represent him on these charges. Do you recall how many
22 times you met with him?

23 A. I really don't. I -- I can't give you an automatic
24 number. I think it was like five. It was at least three or
25 four times in total I met with him.

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 Q. And, in regards to the situation and the facts of
2 the case ---

3 A. Uh-huh (affirmative).

4 Q. --- in your conversations with him, did you talk
5 about taking this to trial?

6 A. We did. We talked about -- I mean, the -- we talked
7 about the self defense back on September 16th, about the issues
8 with self defense.

9 We also talked about third party liability. We
10 talked about every defense that he had in this case.

11 We talked about his statements. He gave two
12 statements, not one, and the problematic nature of the
13 statements in this case.

14 They found the weapon at his house that was used to
15 kill this individual. And it was -- it was really a situation
16 where he -- it was more of a lovers kind of quarrel, almost
17 like a triangle almost between him, the girl, who was his co-
18 defendant, and this individual that was killed.

19 Q. Okay. Obviously, he's alleging that the shots that
20 he fired did not kill the victim, but that the blows to the
21 head did. Was that your understanding from the autopsy report
22 as well?

23 A. I think the autopsy said -- I -- I got a copy of the
24 autopsy. It says blunt trauma I believe, but I think he also
25 hit the victim as well.

Mr. Scott Robinson, Esq. - Direct by Ms. White

Page 29

1 I mean, there were several -- he actually went back
2 and chased the victim according to his statement.

3 He chased the victim. They found the victim in a
4 field in pretty bad shape. He had been beaten real hard. And
5 I guess there was some other weapon that had been used to make
6 some pretty significant marks on his head.

7 Q. Okay. Did you think, in your conversations with
8 him, that he would have a -- a decent chance at trial? Or did
9 you think that maybe trying to negotiate a plea would be a
10 good option?

11 A. The solicitor in the case -- the assistant solicitor
12 was Derrick -- Derrick Bulsa, who is a fine prosecutor. He's
13 not really the type that would negotiate very much in a case
14 where the -- the Defendant has given two statements to
15 officers.

16 This is the first I've heard there was an issue with
17 the officer being a different nationality. It's kind of new
18 to me.

19 And each time I met with him -- I have a Hispanic
20 assistant. I would go with her to meet him. And -- but I
21 didn't -- I'm already ready to go to trial.

22 I prepare a case like I'm going to trial. So, I'm
23 going to cover everything, including self defense, third-party
24 liability, attacking the statements in this case as far as I
25 -- this is really the first trial that I've had with Judge

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 Hayes from Rock Hill.

2 And he doesn't do them before and I think he does
3 them at time of trial. So, we would have had a *Jackson v.*
4 *Denno* hearing and all of that of that nature.

5 Q. Okay. Now did you feel like -- at the time, was
6 this called for trial? Is that how it got to a plea? Or did
7 you all decide ahead of time to make it a plea?

8 A. No. We had -- we had received a letter from Derrick
9 Bulsa with a recommendation as far as, if he plead to murder
10 and the second count of possession weapon -- weapon during the
11 commission of a violent crime, he would recommend a thirty-
12 five (35) year sentence,

13 But it was always going to be murder, not voluntary
14 manslaughter.

15 Q. Okay. And ---

16 A. And ---

17 COURT REPORTER: I'm sorry. It wasn't going to be
18 murder. It was going to be voluntary...?

19 A. It was never going to be voluntary manslaughter. It
20 was always murder.

21 (Brief Pause)

22 Q. Okay. And, in regards to your understand -- or the
23 Applicant's understanding, did you feel like in your
24 conversations with him that he understood his options with
25 regards to what he was facing in his sentence and potential

Mr. Scott Robinson, Esq. - Direct by Ms. White

Page 31

1 for trial versus pleading guilty?

2 A. Yes. We had extensive conversations. I wanted to
3 make sure he understood everything that was going on.

4 We discussed -- when we received the Rule 5
5 information, we went over it with him because most of it was
6 in English.

7 So, we went over it in Spanish with him, so, that he
8 understood it. It took some time, but we would make sure that
9 he understood everything.

10 When we received this offer that was from October
11 6th, two thousand, nine (2009), we immediately went to the jail
12 and discussed the offer with him and to tell him, "This is
13 what they're offering. These are the problems, good points in
14 the case and so forth."

15 Q. Okay.

16 A. There was just -- I think the big issue for the
17 prosecutor was it was really a heinous kind of crime. This --
18 this individual that was murdered, he was -- it was some --
19 there were some really bad injuries in this case.

20 Q. Okay. In regards to a polygraph, do you recall him
21 asking you to have a polygraph done?

22 A. If he -- if he did, I would not recommended it
23 because it's not -- I don't think it would have been
24 beneficial for him.

25 Q. Okay.

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 A. And I've never felt that polygraphs, unless it's
2 something in the early parts of the case where it's like a --
3 a criminal sexual conduct or lewd act or something like that,
4 it's not really useful.

5 Q. He also mentioned something about a letter
6 apparently that was to Patricia that maybe indicated some
7 threats that he wanted anal -- analyzed regarding handwriting
8 or fingerprints. Do you recall anything about that?

9 A. I remember the letter because it was -- it actually
10 wasn't from him. And they determined it was not from him.

11 Q. And was it even used against him?

12 A. No, no, not at all because they determined it was
13 not his handwriting and not his signature.

14 Q. And, in regards to a car, was that anything that you
15 felt would be helpful in this case, Patricia's car and any
16 evidence obtained from that?

17 A. I didn't think it was helpful at all. I mean, he
18 acknowledged that -- that he shot the guy, chased after the
19 guy, hit him.

20 She was the co-defendant in the case. And she was
21 also charged with murder. And she had agreed to testify
22 against him from what I recall.

23 And it was kind of heartbreaking for him I think
24 because I really think he cared for her. And I think it was
25 very heartbreaking when she decided to kind of betray him a

Mr. Scott Robinson, Esq. - Cross by Mr. Campbell

Page 33

1 little bit in this case.

2 Q. On the day of the plea, did you feel that he was
3 pleading freely and voluntarily?

4 A. I did.

5 Q. Okay.

6 MS. WHITE: That's all the questions I have, Your
7 Honor.

8 THE COURT: Cross examination, Mr. Campbell?

9 MR. CAMPBELL: Yes, Your Honor.

10 CROSS EXAMINATION by MR. CAMPBELL:

12:39 P.M.

11 Q. Scott, I believe you testified too this was
12 essentially a lover's triangle, correct?

13 A. I thought it was. That was my opinion of it, yeah.

14 Q. Between, you know, Fredy, Patricia, and the other
15 man?

16 A. It was -- it was a lover's triangle but she really
17 did not like this guy. This particular guy that was killed,
18 she did not like him very much.

19 Q. Patricia was running the show?

20 A. Yeah, she was.

21 Q. Okay.

22 A. She was running the show.

23 Q. As a matter of fact, I think she had even suggested
24 about killing this guy even two weeks prior?

25 A. She had. And she kind of got Fredy into this. I

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 don't know what she did for him or what she paid him; I don't
2 know. But I know she was a -- we had looked into possibly a
3 prostitution kind of thing from up in North Carolina.

4 But he did this -- one of the first conversations we
5 had, I mean, this was for her. The statements that he made
6 this was to protect her.

7 All throughout the whole thing, when he shot this
8 guy and struck this guy, it was for her because he thought he
9 was doing her something.

10 Q. And I believe even in his application he states he
11 pled for her?

12 A. Absolutely., Absolutely.

13 Q. All right.

14 A. That's what I believe. That's my -- that's my view
15 of that.

16 Q. Now -- and I believe you said you investigated about
17 the third-party defense. And that is whether or not Patricia
18 -- and I'm assuming that was the investigation that was done,
19 correct?

20 A. That wasn't really a investigation. She was the co
21 -- she was the co-defendant. It was -- we thought there was
22 something else because I think his allegations was that or
23 what he said was that although he shot -- shot him and hit him
24 -- and this is -- his statement is contrary.

25 The statement is -- is that he chased after the guy,

Mr. Scott Robinson, Esq. - Cross by Mr. Campbell

Page 35

1 beat him, and so forth. But I think that the third-party
2 would have been someone else, not the girl, but someone else
3 that had done this.

4 Q. Okay.

5 A. Not her.

6 Q. Now -- and I believe even the autopsy report showed
7 that the gunshot wounds were not the fatal wounds, correct?

8 A. I think it said potentially fatal because they
9 weren't -- it wasn't like a gunshot wound to the brain or the
10 heart. It was like it was something near the shoulder or arm
11 and one of the legs.

12 It may have hit a -- it may have hit a bad blood
13 vessel or something or like that, an artery, but I think the
14 main -- although they were potentially fatal, I think that it
15 was more of the blunt force trauma that did it.

16 Q. The more likely?

17 A. Uh-huh (affirmative).

18 Q. And the fact that this victim was left in a field
19 for several hours?

20 A. Yes. I think he was -- I think he was moved from
21 what I -- from what I gathered, he was moved to the field at
22 some point and a passerby saw him. And his body was in a very
23 contorted position the way he was dragged.

24 Q. Did Fredy ever tell you, "Hey, look, it wasn't me
25 who -- who hit him; it was Patricia was the one that was

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 hitting -- hitting him with the pistol, hitting him with the
2 gun"?

3 A. She -- he said -- this was in the September 16th
4 meeting we had with him. One thing he said, when -- he said
5 he shot -- he said he shot the guy twice supposedly, but he
6 said that it was her gun and her car, okay?

7 It was almost like a set-up almost. She kind of got
8 him to do this for her, to shoot this guy, kill this guy for
9 her, and he just went along with it pretty much.

10 Q. Almost like she set him up to shoot this guy?

11 A. I -- I thought so. I thought it was -- I -- I
12 thought she -- he was enamoured with her. And he would have
13 done anything for her.

14 But, unfortunately, that's not really a defense to
15 -- to murder in this case.

16 Q. And she wasn't nearly as enamoured with him as he
17 was with her?

18 A. I just think that, after the fact, she became very
19 not as friendly I should say ---

20 Q. I understand.

21 A. --- as I understand.

22 Q. Now I believe -- at any point, did Fredy tell you
23 that, during his interview -- during his interview, he had
24 asked for an attorney?

25 A. I don't think he ever talked about that. If he did,

Mr. Scott Robinson, Esq. - Cross by Mr. Campbell

Page 37

1 I don't remember.

2 Q. So, he never asked you to try to suppress the
3 statements based on the fact that he had asked for an attorney
4 and none was provided for him?

5 A. If he had -- if he had, if that was a course that he
6 was going to pursue in a trial, if he had told me that, what I
7 would have done, if we had gone to trial, would proceed under
8 a *Jackson v. Denno* as far as voluntariness and all that kind
9 of stuff. That's what we would have done.

10 Q. And, obviously, when you pled guilty, you gave up
11 that ---

12 A. Well, I mean, he was offered -- he, on direct
13 examination, talked about not knowing about the murder versus
14 voluntary manslaughter.

15 It was pretty -- we actually took the letter to him
16 after we got it to convey the offer to him. And it's clear it
17 says, on the October 6th, two thousand, nine (2009) letter from
18 the solicitor in the case, it's pretty specific. It's murder
19 and firearm and thirty-five (35) year recommendation.

20 That was it. And that was actually the low end of
21 the murder spectrum.

22 Q. So, he knew all along that he was actually pleading
23 to murder; is that your testimony?

24 A. I don't know if he knew that all along. I mean, I
25 didn't -- I didn't approach it from the beginning as a plea

1 because you can't -- as an attorney, you can't do that because
2 you give up all your options I think.

3 So, we had to look at it in terms of every single
4 option that was available. So, we investigated self defense.
5 We couldn't do self defense in this case because, you know,
6 there's definitely some fault bringing this on.

7 The third-party, not really much we could do under
8 the -- the *Holmes v. South Carolina* (phonetic) case, not
9 really a lot of and different case at the time.

10 And we looked at everything; looked at everything.
11 I mean, we could surely have gone to trial. If he wished to
12 go to trial, we would have gone to trial. We would have been
13 prepared to go to trial.

14 Q. And I guess what I'm saying is ---

15 A. Uh-huh (affirmative).

16 Q. --- is the voluntary manslaughter, did you ever
17 approach him with that during your representation?

18 A. Never. That was never on the table. If it would
19 have been, if they had -- if they would have offered that, we
20 would have been -- we would have been on a jet plane to
21 Spartanburg to do that. But that was never offered.

22 And I thought the -- while a thirty-five (35) year
23 offer is not thirty (30) years, which is the bottom of the
24 murder spectrum, it's actually the low end of it.

25 And they could have offered, with his two statements

Mr. Scott Robinson, Esq. - Cross by Mr. Campbell

Page 39

1 that he gave, a lot more time.

2 (Brief Pause)

3 MR. CAMPBELL: May I beg the Court's indulgence?

4 THE COURT: Certainly.

5 (Off-the-Record Discussion)

6 Q. (By Mr. Campbell) If, for some reason, that you
7 felt like the statements could possibly have been suppressed,
8 as if he had asked for an attorney and they continued to
9 question him ---

10 A. Uh-huh (affirmative).

11 Q. --- would that have been beneficial to his case if
12 his statements could have been suppressed?

13 A. Would it have been...? I think -- I mean, first of
14 all, this would be -- this is purely hypothetical and
15 conjectural obviously; it's assuming that a -- a judge would,
16 I -- I don't -- I don't think -- I didn't see anything that
17 would indicate that he asked for an attorney.

18 I didn't see anything that indicated that. And, if
19 he did, at the trial of the case, it would have been -- we
20 would have asked for a *Jackson v. Denno* ---

21 Q. A *Jackson v. Denno*?

22 A. --- hearing, gone through all of that. And Judge
23 Hayes would have -- if he thought -- if he thought there was
24 an issue, he would rule on it.

25 He would rule either -- he looks at both sides. And

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

Mr. Scott Robinson, Esq. - Cross by Mr. Campbell

Page 40

1 -- but, if we went that far, that offer of thirty-five (35)
2 years that he had, which was the minimum, would be gone.

3 And I think that he -- not that I -- I don't know
4 what someone would have thought or what he was thinking, but I
5 think he thought that life was much worse than thirty-five
6 (35) years in this case.

7 Q. Now, they did find the murder weapon ---

8 A. Uh-huh (affirmative).

9 Q. --- on him, though, or in his presence, right?

10 A. They found the gun in his house.

11 Q. The gun?

12 A. Yeah. And they found some clothes that had been
13 thrown away and stuff like that in his house.

14 Q. Okay. Now did he tell you that she -- that Patricia
15 actually asked him to store that at her house?

16 A. I don't recall that. I mean, I can't recall that
17 after two years obviously. If he did, I -- I -- if he did --
18 if he says he did, I don't know.

19 Q. Okay.

20 A. But it wouldn't -- that would not change my view of
21 -- of the case.

22 Q. Did you ever know if that gun was registered to
23 Patricia or not?

24 A. I have no idea. I don't know.

25 MR. CAMPBELL: No further questions, Your Honor.

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

Page 41

1 MS. WHITE: Nothing from the State, Your Honor.

2 THE COURT: Thank you. You may step down.

3 THE WITNESS: Thank you, Judge.

4 (The witness complied with the request.)

5 MS. WHITE: The State has no other witnesses.

6 THE COURT: Anything in reply?

7 MR. CAMPBELL: Nothing from the Applicant.

8 THE COURT: Okay. I'll -- I'll consider the
9 situation and have you all an order sometime tomorrow
10 afternoon.

11 MR. CAMPBELL: Thank you, Your Honor.

12 THE COURT: Thank you very much.

13 MS. WHITE: Thank you, Your Honor.

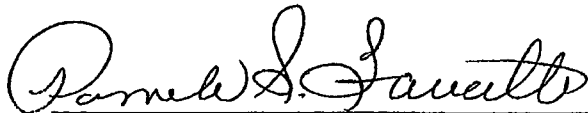
14 (WHEREUPON, the proceeding concluded 12:50 p.m.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA S. FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 41, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

July 29, 2012



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Fredy Sibrian, #338184,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-5484

ORDER OF DISMISSAL

2012 MAY -2 PM 1:10
M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post-Conviction Relief October 14, 2010.. The Respondent made its Return on or about May 3, 2011. An evidentiary hearing into the matter was convened on February 2, 2012, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Shawn, M. Campbell, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf with the assistance of certified court interpreter Teresa Sampson. Also testifying was Scott D. Robinson, Esquire ("Counsel"). This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the July 2008 term of the Spartanburg County Grand Jury for murder and possession of a firearm during the commission of a violent crime (08-GS-42-3693, counts 1 and 2

Ans

COMPUTER

respectively). He was represented by Scott D. Robinson, Esquire. On November 30, 2009, the Applicant pled guilty as indicted. He was sentenced by the Honorable John C. Hayes III to confinement for a period of thirty-five years for murder (count 1) and five years for the possession of a firearm charge (count 2), both set to run concurrent. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to arrange for a polygraph before advising Applicant to plead guilty,
 - b. Counsel failed to develop possible third party ~~guilty~~ defense before advising Applicant to plead guilty,
 - c. Counsel misinformed Applicant that he would receive between 10-30 years for voluntary manslaughter,
 - d. Counsel failed to investigate and research the case,
 - e. Counsel failed to take the case to trial and argue mere presence defense;
2. Involuntary guilty plea; and
3. Actual innocence.

M. HOPE BLACKLEY

2012 MAY -2 PM 1:10

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Handwritten signature

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

The Applicant claims that Counsel was not prepared and had not fully investigated his

dm

2012 MAY 2 PM 1:10
A. HOPE BAILEY

case prior to the day of his guilty plea. The Applicant testified that he was arrested May 2, 2008, and pled guilty nineteen months later. Applicant testified that he never denied fighting with and shooting the victim, but claimed that it was done in defense of himself and in defense of his girlfriend, Patricia Ramos. Applicant testified that Patricia informed him that the victim was sexually abusing her. Applicant testified that Patricia brought the gun and hit the victim on the head first with the gun, but then gave the gun to Applicant and the Applicant thought the victim had a gun, so he shot him. Applicant testified that he did discuss the facts of the case and the involvement of Patricia with Counsel, along with the potential for a self-defense argument. Counsel testified that he and the Applicant met at least three or four times and discussed both a self-defense and third-party guilt defense. Counsel testified that he always had an interpreter present at each meeting with the Applicant and reviewed discovery materials with Applicant in Spanish.

Applicant testified that he asked Counsel to have a polygraph exam conducted to prove his innocence, but one was never done. However, Applicant testified that he was not aware that they were not admissible in court. Applicant testified that a polygraph would have proven that he was involved in part of the crime, but not all of it. Counsel testified that he would not have recommended having a polygraph taken, even if the Applicant had asked for one to be taken.

Applicant also testified that he asked Counsel to investigate a possibility of a third-party defense because his co-defendant, Patricia Ramos, hit the victim in the head and the autopsy showed that the victim did not die from the gunshot wounds that he inflicted. Applicant testified that Patricia hit the victim in the head twice and he informed Counsel of this fact and asked him to prepare a defense based upon this fact. Applicant acknowledged that Patricia was originally indicted for murder, but pled guilty to accessory after the fact to murder. Counsel testified that

2/18

Patricia had agreed to testify against the Applicant if he proceeded to trial. Counsel also testified that the weapon that was used to shoot the victim was found at the Applicant's house and the victim did not have a weapon at the time of the crime. Additionally, Counsel testified that the Applicant hit the victim and chased him down before leaving him in the field, which hampered the argument that Patricia was the guilty party.

Applicant testified that Counsel failed to investigate properly because Counsel never had a letter that Patricia claimed was from him tested for handwriting or fingerprints. Applicant also testified that he wanted Counsel to investigate the car that they had been in because it would show that he had no intention to kill anyone. Counsel testified that this was not necessary because the letter was determined to not be from the Applicant without any additional analysis and there was no reason to investigate the car, when there had never been any allegation of any crime occurring in the car.

Applicant testified that he asked Counsel to try and suppress the statement that he gave to police. Applicant testified that although he gave a statement to police admitting the shooting, the interpreter they provided was of Puerto Rican descent and Applicant is of Honduran descent. This Court notes that the Applicant appeared to have no problems communicating with the interpreter during the post-conviction relief hearing, nor did she have any problems understanding the Applicant. Additionally, Applicant claimed that he asked for an attorney, but the interview continued. Counsel testified that the two statements given by Applicant were detrimental to the case. Counsel testified that the Applicant never told him that there were issues with language during his interview. Counsel testified that he did not recall Applicant ever telling him that he asked for an attorney during his interviews, but had Applicant proceeded to trial, he would have asked for a Jackson v. Denno hearing.

2008 MAY 2 PM 1:11
 M. JEFFREY L. ACHLEY

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, *supra*, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. This Court finds that the Applicant was aware of and informed of the charge to which he was pleading guilty. Counsel reviewed all discovery materials with the Applicant and reviewed the charge, as well as any lesser-included charges, and potential sentences he faced. This Court finds that Counsel cannot be found ineffective for failing to request a polygraph when it would not be admissible in court. This Court also finds that Counsel is an experienced attorney who was prepared for and effectively represented Applicant at his guilty plea. This Court finds that the Applicant has failed to meet his burden of proof as to this claim; therefore, this claim is denied and dismissed.

Involuntary Guilty Plea

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless

a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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. Roscœ v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

The Applicant testified that he wanted to go to trial because he was innocent of the crime. Applicant testified that the indictment referenced shooting and beating and Applicant's co-defendant was the one who beat the victim and the victim died from the blows to the head. Applicant also testified that he asked Counsel to seek a continuance on the day of the plea because he wanted additional time to talk with Counsel about the evidence and defenses; however, Applicant did acknowledge that he told the court that he was pleading voluntarily on that day. Applicant also testified that Counsel had told him that he was pleading to voluntary manslaughter and could get up to thirty years, but Applicant thought he would get less than thirty. Counsel testified that he approached the case originally as if it would be a trial, but after reviewing the options and the evidence, including the statements and the lack of defenses, it became clear that a plea was in the Applicant's best interest. Counsel testified that the only negotiations with the State were that the State would recommend a sentence of thirty-five years if the Applicant pled guilty to murder. Counsel testified that he felt that the Applicant

understood that because thirty-five years was at the bottom of the spectrum of the sentencing range for murder.

This Court finds that the Applicant was aware of the charge to which he was pleading and of the potential sentence he faced. A review of the plea transcript and testimony presented during the post-conviction relief hearing indicate that on the day of the plea Applicant was proceeding voluntarily with knowledge of all potential options. Counsel's performance comported with professional and ethical expectations for an attorney. Therefore, this Court finds that the Applicant failed to meet his burden of proof as to this claim and it is denied and dismissed.

Actual Innocence

The Applicant raised the claim of actual innocence in his application and continued to express his belief that Patricia, rather than he, was the person who killed the victim in this matter. However, this Court finds the Applicant voluntarily waived his right to contest his guilt when he pled guilty to the crime. The plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. "Where a defendant voluntarily, intelligently, and understandingly enters a plea of guilt, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment." State v. Allen, 261 S.C. 448, 200 S.E.2d 684, 686 (1973). This is because the guilty plea "admits all matter of fact averments of the accusation." Id. The defendant admits all circumstances described in the indictment, leaving only sufficiency of the indictment for review and waiving all other defenses. State v. Thomason, 341 S.C. 524, 534 S.E.2d 708, 709 (2000). The time for the Applicant to raise claims of innocence would have been prior to or at the guilty plea, not during his post-conviction relief hearing. Therefore, this Court finds that the Applicant, as indicated previously, voluntarily pled

211

guilty and admitted to the charge, therefore waiving his right to challenge the evidence or his guilt. This claim is denied and dismissed.

Summary

This Court finds Counsel's testimony to be more credible than Applicant's in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea. This Court further finds counsel adequately conferred with the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

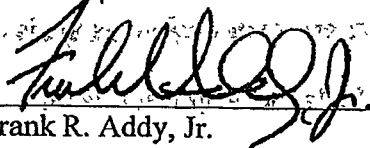
2012 MAY -
M. HOPE
BACILEY
PHI: 1

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26th day of April, 2012.


 Frank R. Addy, Jr.
 Presiding Judge

Newberry, South Carolina

FILED
 14 OF 5000
 2012 MAY -2 PM 1:11
 M. HOPE BLACKLEY

WITNESSES

1. SENTENCE MADE **Computer**

2. REPORT ENDED

Spartanburg County Sheriff's Office

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. CHECKED SIGNATURE ☒

7. ASSESSMENT AND **Computer**

FIELD CARD MADE

8. TRAFFIC VIOLATIONS COPY ☒

ARREST WARRANT NUMBER

M021700 (COUNT ONE)

DIRECT INDICTMENT (COUNT TWO)

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

MARC KITCHENS

Foreperson of Petit Jury

Date:

DOCKET NO.

08-GS-42-3693

The State of South Carolina

County of Spartanburg

(02) Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 07 2008

TERM

THE STATE

VS.

Fredy Edwardo Sibrian

Indictment for

MURDER AND POSSESSION

OF FIREARM DURING COMMISSION

OF A VIOLENT CRIME

SC Code 16-03-0010, 0020 and 16-23-490

CDR CODE: 0116: 0549

CLASS: FEL-EXM: FEL/F

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 26 2008, the
Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE—MURDER

That Fredy Edwardo Sibrian did in Spartanburg County on or about April 29, 2008, feloniously, wilfully and with malice aforethought, kill one Marcial Antonio Perez, by shooting and beating the victim, and that the said victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**COUNT TWO—POSSESSION OF FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

That Fredy Edwardo Sibrian did in Spartanburg County on or about April 29, 2008, possess of a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: MURDER, in violation of Code §16-23-490. *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended

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


ASSISTANT SOLICITOR