

RECEIVED

APR 27 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from York County

J. Ernest Kinard, Jr., Circuit Court Judge

CARLOS LUIS PINALES MEJIA,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-002283

APPENDIX

SUSAN B. HACKETT
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

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED FEBRUARY 11, 2013.....	1
COURT'S EXHIBIT # 1 (PLEA AFFIDAVIT).....	44
COURT'S EXHIBIT # 2 (LETTER FROM DEFENDANT).....	51
COURT'S EXHIBIT # 3 (PLEA WAIVER).....	64
APPLICATION FOR POST-CONVICTION RELIEF	68
MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR POST-CONVICTION RELIEF	75
RETURN	82
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 4, 2014	88
ORDER OF DISMISSAL	116
INDICTMENTS AND SENTENCE SHEETS	124

State of South Carolina.,) In the General Sessions
) Court Of York
)
 County of York.) Case No. 2008-GS-46-03480
) 2008-GS-46-03480 (A)
) 2008-GS-46-02858

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Carlos Luis Pinales-Mejia.,)
)
 Defendant..)

York, South Carolina
 February 11, 2013

B E F O R E:

Honorable Michael Nettles, Judge.

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

Mr. Willy Thompson
 Deputy Solicitor
 Sixteenth Judicial Circuit
 1675 1-A York Hwy.
 York, South Carolina 29745
 803-628-3020
willy.thompson@yorkcountygov.com
 For the Plaintiff

COPY

Mr. Harry Dest
 Chief Public Defender
 Public Defender's Office
 Moss Justice Center
 1675-1E York Hwy.
 York, South Carolina 29745
 803-628-3031
harry.dest@yorkcountygov.com
 For the Defendant

Wanda Nelson, CVR-M
 Official Court Reporter
 Sixteenth Judicial Circuit

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

Witness

By:

Page No.

No witnesses were called and examined.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

I-N-D-E-X - CON'TE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Ct.1	Plea Affidavit		P.34
Ct.2	Letter from Defendant		P.34
Ct.3	Plea Waiver		P.35
	Court Reporter's Certificate Page		P.43

Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 (COURT IN SESSION IN THE MATTER OF STATE VERSUS CARLOS
2 LUIS PINALES-MEJIA MONDAY, FEBRUARY 11, 2013, AT 02:04
3 P.M..)

4 THE COURT: Good afternoon everybody. Please be
5 seated.

6 SOLICITOR THOMPSON: Carlos Pinales-Mejia.

7 (DEFENDANT, CARLOS PINALES-MEJIA, HISPANIC MALE,
8 ENTERS COURTROOM.)

9 THE COURT: Mr. Thompson, you are recognized.

10 SOLICITOR THOMPSON: May it please the Court, Your
11 Honor.

12 THE COURT: Yes.

13 SOLICITOR THOMPSON: The State of South Carolina
14 versus Carlos Luis Pinales-Mejia. He is pleading guilty in
15 several indictments today, Your Honor. 2008-GS-46-3480,
16 where in he was originally charged with murder, he's
17 pleading guilty to voluntary manslaughter. The companion
18 charge, a possession of a firearm during the commission of
19 a violent crime under Warrant K315735 which is count two of
20 that indictment, is being dismissed as part of the plea.

21 As well as he's pleading to Indictment 2006-GS-46-3312
22 for possession of cocaine. 2007-2858 for possession with
23 intent to distribute cocaine. And 2859 for possession with
24 intent to distribute cocaine in the proximity of a school.

25 As well as part of the plea agreement, Your Honor,

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

The recommendation from the State in this case, Your Honor, is a cap of twenty years. He's represented by Harry Dest the Chief Public Defender. The victim's family does wish to address the Court at the appropriate time. And he is receiving credit for six hundred and forty-three days in jail.

Your Honor, the reason for that is he escaped to the Dominion Republic back in 2008 the day of the actual incident. He, while we filed for federal expedition he was picked up in the Dominion Republic I believe in May of 2011 and was incarcerated since that time. He was actually brought to the United States February 2nd of 2012, and that's when he arrived last year here in York County.

THE COURT: Is that the time he is entitled to, Mr. Dest?

MR. DEST: Your Honor, my calculations is he's entitled to Six Hundred and Forty-three days. That counts the day he was arrested in the Dominion Republic and

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 detained for pretrial detention all the way until today.

2 Your Honor, if I may state for the record, with
3 respect to the voluntary manslaughter charge, my client is
4 pleading under North Carolina versus Alford. The rest of
5 the charges he's pleading guilty to but I wanted to clarify
6 that for the Court on the record that under the voluntary
7 manslaughter charge it would be under the Alford Doctrine.

8 THE COURT: Very good.

9 Mr. Dest, do you represent Mr. Mejia?

10 MR. DEST: I do, Your Honor.

11 THE COURT: Have you explained to him the offense of
12 voluntary manslaughter, possession with the intent to
13 distribute within the proximity of a school, and possession
14 with the intent to distribute cocaine, and possession of
15 cocaine first offense; the elements of each of these
16 offenses, the potential defenses and his constitutional
17 rights?

18 MR. DEST: I have, Your Honor.

19 THE COURT: And how does he wish to - He wishes to
20 plead out right guilty to all with the exception of
21 voluntary manslaughter and he's tendering a Alford plea on
22 that?

23 MR. DEST: That's correct, Your Honor.

24 THE COURT: All right. Do you feel as though the
25 facts in this case warrant an Alford plea in that there is

1 overwhelming evidence that establishes guilt and he's
2 receiving the benefit of a bargain here today?

3 MR. DEST: I do, Your Honor.

4 THE COURT: Is that true, Mr. Mejia?

5 MR. MEJIA: Yes, Your Honor.

6 THE COURT: Let's place Mr. Mejia under oath if we
7 could.

8 MADAME CLERK: Please raise your right hand, place
9 your left hand on the Bible.

10 (WHEREUPON: CARLOS LUIS
11 PINALES-MEJIA, BEING FIRST CALLED AND DULY SWORN, TESTIFIED
12 AS FOLLOWS:)

13 THE COURT: Mr. Dest, have you explained to him that
14 voluntary manslaughter falls within a special category of a
15 crime in that it is a violent offense which adversely
16 affects his custody status and a most serious offense
17 subject to the two and three strike rule and the fact that
18 it is a non-parolable offense from which he would serve it
19 day for day subject to the eighty-five percent rule?

20 MR. DEST: Yes, sir, I have.

21 THE COURT: This matter has not been before the Grand
22 Jury. Does he understand what the Grand Jury is?

23 MR. DEST: Yes, sir.

24 THE COURT: And does he waive presentment?

25 MR. DEST: He does, Your Honor.

1 THE COURT: Is that true, Mr. Mejia?

2 MR. MEJIA: Yes, sir.

3 THE COURT: All right. Mr. Mejia, are you under the
4 influence of any drugs or alcohol here today?

5 MR. MEJIA: No, sir.

6 THE COURT: Are you experiencing any kind of physical
7 or mental problem that would prevent you from understanding
8 what's going on here today?

9 MR. MEJIA: No, sir.

10 THE COURT: All right. Mr. Dest --

11 Pay very close to Mr. Thompson - and then we'll
12 address that issue with regard to --

13 Mr. Thompson, would you give us the factual basis for
14 his plea?

15 SOLICITOR THOMPSON: May it please the court, Your
16 Honor. We'll start with the drug charges.

17 As to the possession of cocaine charge that occurred
18 on July 14th of 2006, when the defendant was living with
19 his aunt at [REDACTED] in Rock Hill. The police
20 had sent in a confidential informant who had made an
21 undercover buy from the defendant and they got a search
22 warrant to then search the residence at that time. When
23 they searched the residence they found a Hundred and
24 Thirty-three Dollars on the defendant and Five Hundred and
25 Nine Dollars in his bedroom. 3.5 grams of cocaine in the

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 kitchen under - in a hanging plant. And then in his car
2 they found .2 grams of cocaine under the ash tray in the
3 actual vehicle. And those are the basis for those
4 particular charges.

5 Then as to the possession with intent to distribute
6 cocaine in the proximity, those occurred on May 12th of
7 2007. The school, Sullivan Middle School that was within a
8 half mile of, the defendant was making - was driving a
9 vehicle and made a very hard turn and drew the attention of
10 the police as he fish tailed coming out of that turn almost
11 losing control of the vehicle and the police then turned on
12 their blue lights as the defendant pulled into a gas
13 station there at the Petro Express on Cherry Road.

14 They went up and realized that his tag was expired as
15 well and so they ask to talk with him at that time and
16 while they arrested him for the minor violations they ended
17 up finding a bag of cocaine in his pocket with 3.2 grams
18 which is course is over the inference as well as Five
19 Hundred Dollars on the defendant at that time. Initially
20 he blamed it on the female passenger and said they belonged
21 to her but ultimately he was charged in that case.

22 As well his prior record based off of that his no
23 driver's license, no insurance and the vehicle not being
24 registered. I believe he was convicted of those but these
25 were still pending at the time that the defendant left the

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 country.

2 Then, Your Honor, on January 30th of 2008, that's
3 where the manslaughter comes in, actually starting the
4 morning or the evening before on the 29th. The victim was
5 found on the 30th but on the 29th is when it began. The
6 victim Amber Schiavone who knew the defendant well and who
7 had dated him at some time in the past was out with some
8 friends. They were drinking and unfortunately doing some
9 drugs as well at that time. They ran into the defendant
10 while they were out. She had contact with him and ask him
11 for certain portions of drugs at that time.

12 It is unknown whether she obtained any from him at
13 that time or not, however, ultimately later in that night
14 going in - actually into the early morning of the next day
15 they actually went, her and her friends, to the defendant's
16 apartment to ask him for more drugs at that time. When
17 they went to the apartment it was around 4:40 in the
18 morning, I'm sorry, it was - it was earlier than that. It
19 was around - yeah, it was around 4:30 in the morning is
20 when they went to try to talk to him but she went in alone
21 not letting him know that the folks were out there waiting
22 for her because he had mentioned that he didn't want them
23 coming over to his place.

24 When she went in she took some time. They had contact
25 with her by phone about nineteen minutes after she had been

-11-

1 in there and she said she would be out in fifteen to twenty
2 minutes. About that time later they continued to try and
3 contact her and text her and call her but then never
4 received a response again. They went up to the defendant's
5 apartment and knocked on his door. They were a bit afraid
6 of the defendant because he was known by them as someone
7 who dealt with drugs. and since he was dealing with

8 They took - One of them had had a pistol in the car
9 and they took it up with them. When they went up there
10 they said that the defendant stood at the door with his
11 pistol and they saw that he had a .9 millimeter and saying
12 when he cracked the door that he would not allow them to
13 look inside according to what they would present at a
14 trial.

15 He said that she had already left when they went up to
16 try and find her but they continued to wait because they
17 felt that she was still in the building. They had not seen
18 her leave and they had been hanging around outside the
19 apartment waiting for her to come out.

20 They hung out for quite a bit of time and still she
21 did not come out. Ultimately they heard the defendant's
22 car drive away. At this point they had gone into the
23 apartment of another friend in that complex and when they
24 heard his car drive away they ran out to see if they could
25 see her in it but they couldn't see whether she was in it

1 or not. So later on that morning they gave up and left.
2 When he left it was some time around 5:45; 5:30, somewhere
3 in that area when he took off in his vehicle.

4 The police as they looked into this they found out
5 that later that same day on the 30th around 4:40 p.m., the
6 defendant's girlfriend who lived with him at that apartment
7 came back to the apartment. When she went into the
8 apartment she found Amber Schiavone dead in the hallway,
9 out in the middle of the hallway. She had been shot once
10 in the face. It was a close contact wound or almost a
11 contact wound, it was within inches. There was the burning
12 around the actual site where the bullet entered her body as
13 well as a lot of stippling around her face at that time.

14 Your Honor, the girlfriend of the defendant told the
15 police that earlier that morning, she had been that work
16 that night, that earlier that morning around six something
17 she had called the defendant to wake him up so that he
18 could come pick her up and she never got an answer from him
19 and couldn't get an answer from him all day; that she then
20 called her father who then came and picked her up and she
21 spent much of the day at her father's place until she came
22 to go back to the apartment around 4:40 that evening.

23 She did verify that the defendant did possess a .9
24 millimeter pistol. And the police did recover .9
25 millimeter shells above the kitchen cabinet as well as the

-13-

1 shell casing of the bullet that was actually shot that
2 killed her was a .9 millimeter shell casing. And the
3 weight of the bullet itself had been recovered in the wall
4 behind her about five feet or so off the floor also matched
5 the weight of what a .9 millimeter would be.

6 Those are the basic facts, Your Honor, of this
7 particular incidence. As of course the defendant did leave
8 that very day for the Dominion Republic as the police found
9 out when they contacted his mother later on that day.

10 THE COURT: All right. With regard to the drug
11 offenses, Mr. Mejia, are those facts true and accurate?

12 MR. MEJIA: Yes, Your Honor.

13 THE COURT: Are you indeed guilty of possession of
14 cocaine first?

15 MR. MEJIA: Yes.

16 THE COURT: Are you guilty of possession with intent
17 to distribute cocaine?

18 MR. MEJIA: Yes.

19 THE COURT: Are you guilty of possession with intent
20 to distribute within the proximity of a school?

21 MR. MEJIA: Yes.

22 THE COURT: All right. With regards to the voluntary
23 manslaughter, do you feel as though the State has
24 overwhelming evidence to establish your guilt?

25 MR. MEJIA: Yes.

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 THE COURT: You're standing before me pleading
2 outright guilty to the drug offenses, and guilty pursuant
3 to Alford with regard to the voluntary manslaughter. But
4 it's very important that you understand your jury trial
5 rights. Particularly with regard to voluntary manslaughter
6 offense because you have the absolute right to a jury
7 trial. I will charge the jury as a matter of law that you
8 are presumed to be innocent and no one could require that
9 you take the witness stand. However if you wanted to you
10 could. You could subpoena witnesses' on your own behalf.

11 In addition to that you and your lawyer could cross
12 examine the state's witnesses and you would have an
13 opportunity to eyeball them and confront them as they
14 testified against you. Do you realize that by pleading
15 guilty you're giving up all these rights?

16 MR. MEJIA: Yes, sir.

17 THE COURT: Do you still wish to plead guilty?

18 MR. MEJIA: Yes, sir.

19 THE COURT: All right.

20 Mr. Dest, he understands that with regard to the
21 Alford plea that he will have a record of voluntary
22 manslaughter just as if he pled out right to out right
23 guilty. Does he understand that?

24 MR. DEST: Yes, Your Honor, I have explained that to
25 him. And of course during the presentation of the

-15-

1 mitigation I will elaborate on why it's an Alford plea as
2 we discussed earlier today in chambers with the prosecutor
3 present.

4 Judge, he understands that for all principle purposes
5 in terms of a conviction that it is treated just like a
6 guilty plea. However, due to the extenuating circumstances
7 which we will articulate during mitigation, he understands
8 he's waiving his right to present any defense or any
9 mitigation in terms of whether he's culpable under that
10 charge.

11 THE COURT: Very good.

12 Is that correct, Mr. Mejia?

13 MR. MEJIA: Yes, sir.

14 THE COURT: I understand the plea negotiation is a
15 negotiated cap of twenty years; is that correct, Mr. Dest?

16 MR. DEST: That is correct, Your Honor. And I've told
17 my client that I am allowed to ask for anything below that
18 amount including the minimum...

19 THE COURT: Is that your understanding, Mr. Mejia

20 MR. MEJIA: Yes, sir.

21 THE COURT: Mr. Mejia, are you satisfied with your
22 lawyer?

23 MR. MEJIA: Yes, sir.

24 THE COURT: Have you understood all your conversations
25 with him?

1 MR. MEJIA: Yes, sir.

2 THE COURT: Do you need any additional time to confer
3 with him?

4 MR. MEJIA: No, sir.

5 THE COURT: Do you understand all of your discussions
6 with your lawyer with regard to the elements in these
7 offenses and the potential defenses?

8 MR. MEJIA: Yes, sir.

9 THE COURT: Do you understand your constitutional
10 rights?

11 MR. MEJIA: Yes.

12 THE COURT: Any complaints against your lawyer, law
13 enforcement, or this court?

14 MR. MEJIA: No, sir.

15 THE COURT: Has anybody promised you anything,
16 threatened you, pressured you, mistreated you in any way
17 shape or form in an effort to get you to plead guilty here
18 today?

19 MR. MEJIA: No, sir.

20 THE COURT: It's been your decision to plead guilty?

21 MR. MEJIA: Yes, sir.

22 THE COURT: Are you indeed guilty pursuant to Alford
23 with regard to the manslaughter plea?

24 MR. MEJIA: Yes, sir.

25 THE COURT: Do you understand that you have ten days

-17-

1 to appeal any decision I might render here today?

2 MR. MEJIA: Yes, sir.

3 THE COURT: Based on your testimony I find there is
4 a substantial factual basis for your plea, that your
5 decision was freely and voluntarily entered into, knowingly
6 and intelligently with the consent of competent counsel
7 with whom you say you are satisfied.

8 I'll be glad to hear from the victims at this time.

9 SOLICITOR THOMPSON: Yes, Your Honor.

10 If you'll come forward.

11 Your Honor, as they are coming forward I would ask the
12 court just one procedural matter. To make sure that the
13 defendant has no problem understanding English, I say that
14 only because I saw the letter that he wrote to the court
15 just prior to coming in and he mentioned that sometimes he
16 does not speak it as well as he would like, and I note from
17 the extradition process we were forced to pay over Eighteen
18 Hundred Dollars to have an interpreter in the Dominion
19 Republic for his court proceedings, so I wanted to make
20 sure that he - no question that he understands what's going
21 on today.

22 THE COURT: Well I've also have occasion to read a
23 fourteen page letter that has been provided me by defense
24 counsel and you've received a copy of it as well. It's
25 clear that he has a command of the English language.

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 Not only that, he has good penmanship.

2 Would you agree?

3 SOLICITOR THOMPSON: I agree, Your Honor.

4 THE COURT: All right. Mr. Dest.

5 MR. DEST: Yes, sir.

6 THE COURT: Is there any question about his ability to
7 understand what we're talking about here today?

8 MR. DEST: No, sir, Your Honor. I've represented him
9 since the inception of the case and there has never been an
10 impediment with respect to a language barrier. English is
11 his second language but he speaks it quite well. As you
12 certainly can discern from his letter he writes well and
13 never had any difficulty explaining to him the evidence.
14 Explained to him the concepts of law involved nor have I
15 ever had any difficulty with him explain to me what
16 transpired on that night and the other occasions that
17 resulted in the drug arrests, the drug charges.

18 THE COURT: Mr. Mejia, do you understand English well?

19 Apparently you spent a substantial amount of time in
20 Jersey City, here in Rock Hill, and various other places.
21 Do you understand English well?

22 MR. MEJIA: Yes, sir.

23 THE COURT: And you understand what I'm saying?

24 MR. MEJIA: Yes, sir.

25 THE COURT: You've understood all of your conversations

1 with your lawyer?

2 MR. MEJIA: Yes, sir.

3 THE COURT: Very good.

4 Mr. Thompson.

5 SOLICITOR THOMPSON: Thank you, Your Honor.

6 THE COURT: Yes, ma'am, your full name?

7 A. ~~Yes~~ Stephanie Dillard.

8 THE COURT: All right, Ms. Dillard, be glad to hear
9 anything that you've got to say yes, ma'am.

10 MS. DILLARD: I just want to say on behalf of my
11 sister that she did not deserve what happened to her. She
12 was loved by all her family and friends. January 30th he
13 took somebody's life. A mother, a sister, a daughter.
14 That she will never be replaced ever. And I'm just asking
15 that he get the maximum sentence that he can get cause
16 while my family will never get over this, never. And I
17 don't feel that he should be taken easy on him at all. He
18 was fully aware and capable of what he was doing. He
19 speaks very good English. Mr. Mejia was a friend of mine
20 as well. Not just a stranger off the street. He's lived
21 with me. You know we were friends. I just in my heart I
22 feel like he should get the maximum sentence.

23 THE COURT: Thank you, ma'am.

24 MS. DILLARD: Thank you.

25 THE COURT: Yes, sir, your full name.

1 A. Robert Andrew Schiavone.

2 THE COURT: And spell your last name.

3 A. Schiavone. It's S-c-h - the same as the victim -
4 S-c-h-I-a-v-o-n-e.

5 THE COURT: Very good.

6 MR. SCHIAVONE: I'm her uncle. She's my niece. I'm
7 Bart's older brother. And I've been part of this family
8 because I always believed it takes a village and I been a
9 part of this family since the day they were born. I know
10 the day exactly where I was the day Amber was born. I was
11 working the Texas State Fair back when I was making little
12 toys for the - and I got a call from my mother you know.

13 But Amber is gonna be sorely missed and she's gonna be
14 missed forever. And it has effected everybody even me.
15 I'm not one that usually breaks down in tears or anything
16 like that. Usually I hold it together pretty well. But
17 you know at that point - you know I been in the mental
18 health system for a while at the VA and they know me very
19 well here in Rock Hill, the folks over there, and before
20 that - this, I might a been able to say I could see a light
21 at the end of the tunnel and today I don't see a light at
22 the end of the tunnel any more. Not when somebody can just
23 shoot somebody and then just leave the country and get out
24 through the airport with such ease under all the
25 circumstances.

-21-

1 Amber is gonna be missed. And I'm not gonna harbor a
2 tremendous amount of hate in my heart. I want to keep my
3 thoughts on Amber.

4 THE COURT: Very good.

5 MR. SCHIAVONE: This I made for Stephanie at the flee
6 market with a dog tag. I took one of the nice pictures. I
7 took Amber on a road trip to the beach to watch the sun
8 come up just about ninety days before this happened. And
9 this is one of the pictures that we took on the beach. And
10 we were gonna have shrimp and grits at the Lost Dog Café.
11 And the same way I took this picture I had this lady at the
12 flee market make this for Stephanie but Stephanie lost it
13 so I been holding on to it and I wear it all the time.
14 People don't see me without this. I fall asleep with it.
15 I take it off my neck and I wrap the string around my
16 fingers and its in my palm. In the middle of the night it
17 will get lost in the covers but I find it every morning and
18 I put it back around my neck.

19 I keep a penny jar at my house and those pennies
20 always go to buy flowers for her. I'm here to support
21 Stephanie and my brother. You know I knew she was gonna
22 have a very hard time with this. I knew it could be a
23 problem for her but I felt that she needed to be here so I
24 drove three hundred miles this morning with sleep
25 deprivation to get her here so she could address this court

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 because this may be her only opportunity to do so. And I
2 wanted her to have that opportunity.

3 That's where I stand. I mean I've always felt that it
4 was sometimes you had to do the right thing and this
5 morning it was the right thing to get in my truck and go
6 and get her. Sometimes you would think my truck would
7 break down but Carmen just carries me

8 Thank you.

9 THE COURT: Thank you for being here.

10 SOLICITOR THOMPSON: Bart Schiavone, Amber's father.

11 THE COURT: Mr. Schiavone, your full name?

12 A. Bart Francis Schiavone.

13 THE COURT: Mr. Schiavone, I'll be glad to hear
14 anything that you've got to say.

15 MR. BART SCHIAVONE: Amber was my first born. The
16 sorrow has been great. I never knew about having to bury a
17 child. And both the grandparents wanted to come but their
18 not able to. They both physical - They had talked about
19 coming for years but they were not able.

20 I don't think he's sorry a bit. I think he's sorry he
21 got caught. He escaped that night - pardon me - part of
22 that morning he escaped. Forgiveness and vengeance just is
23 in my mind all the time. I think he should get the
24 maximum. I hope I never think about him after today. She
25 was - Amber was something else. She would the matriarch.

1 If she would a been - she truly was a special child. She
2 truly was. I miss her greatly. Thank you.

3 THE COURT: Let me see your picture, sir.

4 MR. BART SCHIAVONE: She's resting by her grandma and
5 she's resting by her grandfather. That's over on Main
6 Street at Laurelwood.

7 (PHOTO RECEIVED UP AND VIEWED BY THE COURT.)

8 THE COURT: That's very nice.

9 Anything further, Mr. Thompson?

10 SOLICITOR THOMPSON: Yes, Your Honor, just briefly.

11 Your Honor, it seems to be inexplicable as to why this
12 occurred that particular night and why the defendant did
13 this. I simply point out just a few things.

14 While Amber had a number of drugs in her system at the
15 time of her death, in speaking with the toxicologist she
16 tells me that it was her opinion that she hadn't taken any
17 hard drugs for at least eight hours prior to her death and
18 that she was likely coming down from a high at that time.
19 That's why the alcohol and the Xanax in her body as she
20 said is something people often use to kind of prevent a
21 crash or to easy a crash as you come down off of a high.

22 The defendant truly at this time was someone heavily
23 involved in drugs but not necessarily like Amber was.
24 Amber was a victim who was a drug addict. The defendant on
25 the other hand was someone who supplied those drugs to

1 people like Amber and really helped destroy a lot of lives
2 that way. Not only does he have the convictions now that
3 he's pled to today that were pending at the time that he
4 took off, but the last one of the last acts prior to the
5 shooting itself would have been delivering more drugs to
6 Amber Schiavone.

7 When she was found she was found with some cocaine in
8 a couple of little baggies of cocaine on her person as well
9 as a little baggie of marijuana and some prescription
10 medication pills all of which she presumably would have
11 obtained there at the defendant's residence because that's
12 the whole reason they were there to try and retrieve more
13 drugs.

14 What ultimately precipitated this horrible event I
15 don't know that we'll ever find out, however, I would point
16 out that it does not appear in the state's position to be
17 an accident. This close range shot to her face was one
18 while she was standing up in the hallway in the middle of
19 the hallway. Because one that left a burning around the
20 actual burning entrance and stippling from a six by four
21 inch area around her face, especially the side of her face
22 where the shot hit her, but it really spread out and the
23 entire side of the face was very pronounced when you see
24 it. She did not - her clothing - She did not have any
25 positive GSR on her hands so having handled a gun does

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 not seem to be likely. As well as not having her hands
2 close to a gun if it was fired would not seem to be
3 unlikely. There is nothing indicated visually on the
4 clothing that appeared to be burned or of any nature of
5 that as well.

6 So I point those things out simply to let the Court
7 know the State's position as this is not an accident! This
8 was a horrible act, an intentional act. The defendant ran
9 to the Dominion Republic and quite honestly it was quite a
10 feat to get him back. In working with Bruce Hare and the
11 Rock Hill Police Department and myself filing thing after
12 thing, paper after paper to try and retrieve him back from
13 the Dominion Republic was kind of a difficult procedure.
14 And as I think I've told Bruce before it was probably the
15 first time that I personally was actually successful in
16 actually obtaining someone in bringing them back.

17 But for over three years we weren't able to touch him.
18 And he lived life like any normal person would who was
19 living in the Dominion Republic. And left the country as
20 far as we could tell even prior to Amber's body being found
21 that afternoon.

22 So I point those things out, Your Honor, just to say
23 that we've done a lot in negotiating with the defendant.
24 He had a lot of charges pending and including this one when
25 he took off knowing that this one would be one that we

1 would have gone after him for.

2 So the State has made quite a concession making the
3 offer that we have and the many reasons for it but I think
4 it's a very far offer. But in saying that I would ask as
5 well that the Court sentence to the high end of that offer.
6 I think he does deserve the twenty years that he faces
7 under these plea negotiation and would ask the Court that
8 they sentence him to that twenty years or very close to it.
9 Or at least consider that, Your Honor, in your dealings
10 today. And on behalf of the Schiavone family I thank you
11 for your consideration today.

12 THE COURT: Anything further, Mr. Thompson?

13 SOLICITOR THOMPSON: No, Your Honor.

14 THE COURT: Any prior criminal record?

15 SOLICITOR THOMPSON: The only actual convictions were
16 the things that I think I mentioned earlier. The no
17 driver's licence, insurance, vehicle registration.

18 THE COURT: Nothing real significant?

19 SOLICITOR THOMPSON: Right. The only things that were
20 significant were the things pending at the time that he
21 took off. And of course he's pleading to a couple of those
22 now.

23 THE COURT: All right, Mr. Dest, you're recognized.

24 Be glad to hear from you and Mr. Mejia and anybody who
25 would like to speak on his behalf.

1 MR. DEST: May it please the Court.

2 Your Honor, I have represented Mr. Mejia since the
3 inception of his case. And I have had numerous
4 conversations with his mother, and his sister, and other
5 family members during the time I've been representing him.

6 I would ask that they stand so you can be recognized.

7 ~~THEY SAID BY (SEVERAL MEMBERS OF THE COURTROOM GALLEY STOOD.)~~

8 MR. DEST: Your Honor, they do not wish to speak but
9 they are here in support of him, and wanted me to relate to
10 the court that regardless of what happens today that they
11 know several things. One is that the lives of so many
12 people will never be the same. The Schiavone family, they
13 are hurting, they realize that and they wanted me to
14 express their sorry and their remorse and their
15 understanding how they are going through a very difficult
16 time to the court.

17 They also recognize that regardless of what sentence
18 you hand down today that Carlos will be deported at some
19 point in time when he is released since he is here as a
20 permanent resident and not a citizen of the United States.
21 And they recognize too that their lives are forever altered
22 as well because they are here legally in the United States
23 and intend to stay.

24 Judge, this is a difficult case on so many levels. I
25 know that I handed up to the court a letter that my client

1 wrote regarding his life's history earlier today. And as
2 the court noted it is fourteen pages, it is well written
3 for someone who uses English as a second language. And it
4 also goes through some of his history as a young child, how
5 he came to the United States at the age of eight years old.
6 He lived in Jersey City, New Jersey. He also lived for a
7 period of time in Puerto Rico.

8 In talking with the family they describe the type of
9 neighborhoods that they grew up in which were quite frankly
10 horrible. Crime ridden areas where there is a lot of
11 violence, a lot of drugs, a lot of criminal activity. And
12 throughout his time in Jersey City and Puerto Rico he never
13 was involved in any type of illegal activity. He was never
14 charged with an offense, he was never questioned about an
15 offense. It wasn't until he came to Rock Hill
16 unfortunately that he began to become engaged in criminal
17 activity. A family relative was selling drugs as his
18 letter indicates and as I told the court in chambers that's
19 when it started.

20 At that time, Judge, he was nineteen years old. At
21 the time of this incident he was twenty years old. Prior
22 to that he had worked in both Puerto Rico and Jersey City
23 for Sprint and Direct TV doing work as a communications
24 tech and he earned as much as nine dollars an hour. But
25 when he came to Rock Hill he made some horrible judgments

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

-29-

1 and began to be involved in drug transactions.

2 The prosecutor, I would take issue with his
3 characterization. I don't think he was a major drug dealer
4 by any means. In fact I think he was just somebody who
5 would facilitate the drug transactions like the night in
6 question.

7 Judge, ever since our first conversation Carlos has
8 always told me that what happened was an unintentional
9 shooting. And I recognize that he's pleading to voluntary
10 manslaughter and he's pleading under the Alford doctrine,
11 but I would submit that there are two ways to look at the
12 facts. There are two ways to argue the facts. And there
13 are facts that I would point out which would corroborate
14 his version of it.

15 Obviously he did not give the police a statement. Nor
16 did he give the authorities in the Dominion Republic a
17 statement. But what he told me as to what happened was
18 that he did meet up with Amber Schiavone that night. She
19 approached him in a bar. They had had a relationship; they
20 were boyfriend and girlfriend at one time but not at the
21 time of the incident. That unfortunately Ms. Schiavone as
22 the solicitor indicated had a horrible drug addiction
23 problem and she wanted some drugs.

24 He did not have any on him, however, he did tell her
25 that if she were to come by later that night or early

1 morning hours he would try to help her get some drugs. And
2 in fact she did go to his apartment complex in Rock Hill.
3 She went alone.

4 And I would like to also point out, Judge, that from
5 my investigation there was no prior history of violence
6 between the two parties. There was no prior history of any
7 type of ill will or domestic issues between the two. There
8 was nothing to indicate that there was malice or that there
9 was a problem. And there is nothing to indicate that Ms.
10 Schiavone ever expressed any fear of my client going to his
11 apartment alone that night. What did happen was he did
12 facilitate a drug transaction, that he gave her the drugs.

13 And yes there was a time where people came to his
14 apartment that were there specifically to provide drugs,
15 the drug transaction. They left and then a short time
16 later some of Ms. Schiavone's friends also approached the
17 apartment, knocked on the door, my client opened the door
18 and did tell them that she had left. Based upon her
19 request that she did not want to leave him. She stayed
20 there.

21 And unfortunately, Judge, that shortly after that she
22 ask to look at his gun and he gave it to her foolishly
23 because he had been drinking. There was basically a little
24 play going on. She had the gun moving it back and forth,
25 he snatched at it at very close range and the gun went off.

-31-

1 Judge, that is the story he told me the first time I
2 met him; that's the story he's maintained throughout the
3 course of my representation. In an effort to see if in
4 fact he was telling the truth we hired a polygraph
5 examiner, Mr. Johnny Hartley, who has over twenty-five
6 years experience at SLED as a polygraph examiner, and did
7 question him on the two central questions of did you
8 purposely shoot Amber Schiavone. The answer was no. And
9 did you lie about shooting Amber Schiavone? The answer was
10 no. And he passed. Both of those questions indicated no
11 deception whatsoever.

12 I say that to the court and I also shared that with
13 the court in chambers the results of the polygraph exam
14 because I think that he realizes that that's what he's
15 giving up. He's giving up asserting that. Obviously there
16 are two ways to argue this. The solicitor would argue
17 there was stippling and that there was burns and the
18 contact wound or a close range shot. However I would
19 submit that that is consistent with the story he told me.

20 I would also submit that the state would argue that
21 there is no gun power residue on her hands, either the
22 front or the back of the hands. I interviewed the same
23 trace analysis expert from SLED and she said that unless
24 there was an intervening cause like the person was wearing
25 gloves, or that they had long sleeves, and as I showed the

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 court in chambers the photograph of the crime scene it's
2 clear that Ms. Schiavone had long sleeves. I also told the
3 court based upon my conversations with this expert that
4 they do not check the clothing of either the victim or the
5 defendant for gun powder residue. That's a policy that
6 they have.

7 Judge, I would submit that --

8 THE COURT: The picture actually shows not only the
9 long sleeves but the sleeves covered up her hands.

10 MR. DEST: That's correct, Your Honor. That's
11 correct.

12 I mention that to you as again the fact that I would
13 contend corroborates the possibility of there being no gun
14 powder residue present. I also interviewed the
15 pathologist, Doctor James Maynard, and Doctor Maynard
16 indicated to me that there were no signs of a struggle or
17 fight prior to the incident. Although there were some
18 abrasions he indicated to me that those were not
19 significant. Nor did he think they were a part of any
20 altercation that night. He also indicated that there were
21 no signs of defense wounds. He also indicated to me that
22 you know certainly it's possible that it could have been an
23 unintentional shooting so it can be argued both ways is my
24 point, Your Honor. But, Judge, he is giving all of that
25 up.

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

-33-

1 And just from a practical standpoint, my client and
2 Ms. Schiavone had a prior relationship. There was no ill
3 will between the parties. In fact I think that's one of
4 the things that clearly has bothered him the most that he
5 left her that morning. He panicked. It is true he had two
6 pending drug charges as the solicitor indicated. What he
7 did was reckless, was stupid, was foolish, and thoughtless
8 by just leaving her there. But he was nineteen years old,
9 or twenty years old at the time, he was scared and he left
10 the country.

11 Judge, you know, if you look at this from a practical
12 standpoint if someone had ill will or malice or intended to
13 harm somebody, why would they invite other people over that
14 could substantiate that that other person was there?
15 Talking about the drug dealers. Why would he even open the
16 door to talk to somebody about her and even communicate
17 with about her if he had some intent or some intention of
18 harming her.

19 Judge, I have no doubt that the Schiavone family has
20 suffered. There can be no greater pain than to bury a
21 child. But unfortunately everyone involved in this was
22 reckless to a certain extent. I'm not placing blame on her
23 but the circumstances suggest that there was no malice or
24 ill will or intention to really harm her. But he needs to
25 be punished and I know the Court takes this case extremely

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 seriously and he understands what he's facing in terms of
2 the potential sentence on the voluntary and the drug
3 charges. I would ask the court to consider a sentence on
4 the lower range based upon all the facts in this case.

5 Judge, this is not an easy case, I recognize that.
6 But Carlos Mejia is a young man who has no history of
7 violence; who has no history of predatory violence or any
8 social problems or seeking people out to harm them. He was
9 engaged in the drug trade as a low lever dealer and I
10 believe that he can be rehabilitated; that he can be
11 productive in another country which he will be. I just ask
12 that you not send him away for the maximum. I ask that you
13 sentence him on the lower end of the scale.

14 Judge, I would like to make a part of the court's
15 record the Plea Affidavit which again goes over the
16 *Constitutional* rights.

17 THE COURT: Also make a part of the record the letter
18 referred to.

19 (WHEREUPON: COURT'S EXHIBIT NUMBERS ONE AND TWO,
20 IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)

21 MR. DEST: Your Honor, I believe that there is also
22 another affidavit that now is required by the court that
23 both I have signed and my client has signed and I believe
24 Mr. Thompson has signed as well.

25 THE COURT: We will make that a part of the record.

1 MR. DEST: Yes, sir.

2 (WHEREUPON: COURT'S EXHIBIT NUMBER THREE IDENTIFIED
3 AND MARKED, RECEIVED INTO THE RECORD.)

4 THE COURT: Mr. Mejia, what do you have to say for
5 yourself?

6 MR. MEJIA: First of all now that I've had the chance

7 I would like to say that I'm sorry to the family.

8 Stephanie said I knew them. I knew them and I considered
9 them my friends. I met her first and knowing that she knew
10 me I don't know how she could think I could have done that
11 on purpose to her. I mean they say Amber was a lovely
12 person and a really nice girl. I mean she had some
13 problems with drugs but I mean I can't judge her for that.
14 I had my problems with alcohol. It's almost the same
15 thing.

16 I'm sorry for what happened and I can say I'm sorry
17 but it's just a word. I mean I'm also sorry that I left
18 there. I left the authority here thinking that I had fled
19 cause I had killed her. I mean that's one of the worst
20 things. Even to now they still think I did it. I mean I
21 hope the grace of God that one day they will realize it was
22 an accident and be able to forgive me.

23 I know that by what I did by leaving the country it
24 was foolish. At the time I wasn't thinking. I mean if I
25 was thinking at all I mean the first thing I would do would

1 run to the police station. I know that now. I mean it's
2 been over five years. I mean I had thought about it every
3 day of my life. It had hurt me. I mean I knew Amber. I
4 mean I can't think of anybody that could have done it on
5 purpose.

6 And as Harry over here said if I was trying to do
7 something like that I wouldn't have done it unless they was
8 in my place and they showed a gun to her friend. I mean
9 like the solicitor said that they went to my door because
10 they was scared of me. That is not true because I also
11 knew that there were two persons that went to the door. I
12 believe her friend's name was Andrew. And the other guy I
13 knew him by nickname and it was the guy that I referred to
14 buy the drugs from. I told her, I tried to tell her that I
15 wasn't - I was trying - basically I hadn't seen her in a
16 couple of months. I was out of that. I mean I had no
17 drugs, I was trying to stay out of it. I told her.

18 I cannot remember telling her to go by my apartment
19 later. Actually she had never been there before, either
20 her friends. I was kind of surprised when I seen them over
21 there. When she got over there she had a drink over there
22 with me. I had some friends over that had just left and
23 she ask me again for some drugs. I had called somebody.
24 If they were outside like they said they should know
25 somebody else went to my apartment prior to when they

1 went up.

2 Again I say I know it was foolish for me having a gun.
3 I had reasons to have a gun even though mainly me being out
4 and not having a legal gun. I'm also sorry that I left the
5 country again. I knew that it was the most foolish part I
6 did. And once I was over there I still had a chance to

7 ~~maybe turn myself in but I search advice from a lawyer~~
8 which now it think it was no better than me following my
9 own advice. He advised me, he told me to think, he told me
10 I could come and I could turn myself in. I explained
11 everything that happened to me on my record and everything.
12 He advised me that if I turn myself in I had to consider
13 that I had already fled. That I had a record with drugs,
14 that the victim was a white person and that I was a
15 Hispanic male involved in the drug trade that if I go into
16 court they were gonna make me look like the worst person
17 which is what they're doing right now.

18 And he said that I can take a chance staying over
19 there and getting extradited if they ever come to search
20 for me. He said it could be occasionally they don't come.
21 If they do that they might not have enough evidence to
22 extradite me. So he telling me that he scared me even
23 more. And I told my family so they advised me not to come
24 and turn myself in to just wait and see what happened. I
25 mean all the whole time I was over there I really didn't

1 have a normal life. I mean I couldn't even work in a place
2 with my name just thinking about getting arrested. All the
3 days of my life thinking about the authority over here,
4 about her family thinking I had killed her. I could only
5 run somewhere. I couldn't have a normal life.

6 I mean I got it even worse in the alcohol after that.
7 I was an alcoholic basically. Basically what got me out of
8 there was getting arrested. It was a good thing for me
9 that happened to me. I mean once I got arrested I - I
10 mean I had been out away from drugs, away from the alcohol,
11 I had been a total changed person.

12 I mean I found Christ. I been a year here in York
13 County jail and not one officer can say something bad about
14 me. Nobody that really knows me can think and say I'm a
15 bad person. I had never had a history of fighting or being
16 involved in gangs and drugs or anything which is really
17 hard growing up where I grew up. I mean I did had - I went
18 through some stuff. I mean I found out things from my
19 family that really hurt me at that time.

20 I mean it really hurt me. I was here alone and no
21 friends. So the close friend I could find to a friend was
22 this guy, my aunt's brother in law, I just started hanging
23 out with him. He was selling drugs. I ended up getting
24 involved with him. I mean now I mean it's been - As I
25 said it's been almost five years I had to think about

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

-39-

1 everything and I have thought about everything and I have
2 learned what a foolish mistake I did in getting involved in
3 drugs. Anything.

4 I mean know I had never done drugs in my life but I
5 could see how it would affect whoever sells it or whoever
6 does it. I mean I have family members that were addicts.

7 My sister who is right there. She was a cocaine addict.

8 My aunt was a cocaine addict, all kind of drugs. And when
9 I came here I find out her, she was prostituting herself,
10 my mom was prostituting herself.

11 I mean I grew up trying to be a decent person. I mean
12 I grew up I thought I had a good family which I still do.
13 They had their faults. They got over it. My sister right
14 now has got three kids. My aunt got three more kids and
15 they're Christians. Maybe now that they got out clean and
16 stay clean. I mean now I also have a daughter five months
17 old daughter and I haven't been able to see her. Only
18 pictures.

19 (DEFENDANT CRYING.)

20 MR. MEJIA: And I won't be able to see her until I be
21 able to go back to the Dominion Republic or her mother can
22 come in this country. And even whenever it is I get out I
23 will continue to pay for whatever I did. I will be
24 deported from this country where I grew up where most of my
25 family is at right now. And it has been a struggle over

1 there in the Dominion Republic. Most people do over there.
2 Everyday people risk their lives and they are fleeing and
3 trying to get out of there and trying to find a better
4 life. I wish I had a way. I know I ruined it when I
5 started to get into the drug business.

6 I just want - I can't say how sorry I am. I just want
7 you to know I'm sorry. I just want a chance, I want a
8 chance to start over. I know that Amber will never have a
9 chance. There is nothing I can do about it. What happened
10 was an accident. I had no more, or no reason at all to
11 harm Amber in any way. What happened I mean it could have
12 been me that night.

13 The way we were playing foolish with the gun. I mean
14 none of us knowed there was a bullet was in the chamber.
15 As I can remember when they went to my door and the guy had
16 a gun he had to see my gun. I had taken the clip out of
17 the gun. And he did the same way in his. I had the clip
18 in my pocket. After that was when I went back in the room
19 in the apartment and she was hiding in the bathroom from
20 them. And I did open the door to them and they could see
21 inside the apartment the hallway in the living room right
22 there. Where the accident happened was right in the
23 hallway. If that would have happened already they would
24 have seen her already. It's not that I didn't let them in
25 to search the apartment. They didn't ask. I know I lied

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

-41-

1 to them because she told me. I don't know why she told me
2 to lie to them but she told me to tell them that she had
3 left and she was in the bathroom and she came out of the
4 bathroom. When I was walking back - She had come and she
5 was walking out of the bathroom. She heard me close the
6 door. And that's when the incident happened, with the gun
7 happened. I had it in my hands. She really ask me to let
8 her see it. Before she even said anything she had snatched
9 it from my hand.

10 I mean that was foolish like I say. We were drinking.
11 It was like past four in the morning. I had been drinking
12 about six in the afternoon the day before. I wasn't really
13 thinking. I mean the first place I should never had that
14 gun. And really didn't have no reason to take it out when
15 they knocked on the door. I just got scared because the
16 things I was doing at that time.

17 THE COURT: Anything further, Mr. Dest?

18 MR. DEST: No, sir.

19 MR. MEJIA: I just want to tell you, Your Honor, again
20 I'm sorry. I'm sorry to the family. I know that right now
21 they're just mad at me. They still think I killed their
22 loved one I think. I just want a chance to get my life
23 back and start over. I know I will never be the same at
24 least for my daughter.

25 (PAUSE.)

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

1 THE COURT: Mr. Mejia, on Indictment 2008-GS-46-
2 0-3-4-8-0 voluntary manslaughter, the sentence of the court
3 is that you be committed to the State Department of
4 Corrections for a period of fifteen years. Sentence will
5 run concurrent; credit for the six hundred and forty-three
6 days.

7 In regard to Indictment 2007-GS-46-0-2-8-5-8,
8 proximity, the sentence of the court is you be committed to
9 the State Department of Corrections for a period of ten
10 years. Sentence to run concurrent; credit for six hundred
11 and forty-three days.

12 On Indictment 2007-GS-46-0-2-8-5-9, possession with
13 intent to distribute, the sentence of the court is you be
14 committed to the State Department of Corrections for a
15 period of fifteen years. Sentence to run concurrent;
16 credit for six hundred and forty-three days.

17 In regard to Indictment 2006-GS-46-0-3-3-1-2,
18 possession of cocaine, the sentence of the court is that
19 you be committed to the State Department of Corrections for
20 a period of three years. Sentence to run concurrent;
21 credit for six hundred and four-three days.

22 Good luck to you.

23 SOLICITOR THOMPSON: Thank you, Your Honor.

24 (DEFENDANT LEAVING COURTROOM.)

25 (END OF TRANSCRIPT OF RECORD.)

Wanda Nelson, CVR-M
Official Court Reporter, Sixteenth Judicial Circuit
P.O. Box 749, York, SC 29745

CERTIFICATE OF REPORTER

State of South Carolina)
)
 County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 11th day of February 11th, 2013.

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

Wanda Nelson

Wanda Nelson, CVR-M
 Certified Verbatim Reporter,
 Official Court Reporter,
 Notary Public, in and for
 The State of South Carolina.

My Commission Expires: 1/21/2021
 DATE: 1-13 / 1 2014

Wanda Nelson, CVR-M
 Official Court Reporter, Sixteenth Judicial Circuit
 P.O. Box 749, York, SC 29745

STATE OF SOUTH CAROLINA

COUNTY OF YORK

State of South Carolina

- vs -

RECEIVED
DEC 10 AM 9:39
CLERK OF COURT
YORK COUNTY, SC

IN THE COURT OF GENERAL SESSIONS

AFFIDAVIT OF DEFENDANT FOR
GUILTY PLEA

Defendant

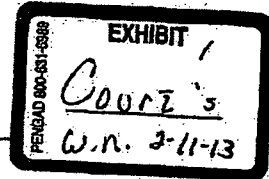
Carlos Luis Pinales Meza

In jail since
May 10, 2011
643 days

The Defendant states to the Court that the Defendant wants to plead guilty to the following charge(s):

Voluntary Manslaughter
PWID 1st Off, Poss of Cocaine, Proximity
Charge

In connection with the plea, I certify that the answers to the following questions are true:

BACKGROUND OF DEFENDANT

- 1) How old are you? 25
- 2) How far did you go in school? 11th
- 3) (a) Can you read and write the English language?
☒ yes ☐ no
 (b) Are you able to read and understand this form?
☒ yes ☐ no
 (c) If not, who is explaining it to you and filling out your answers?
 Name of person: Attorney Harry Best
- 4) What kind of work do you do? DIRECT TV, SPRINT
customer service, tech support
- 5) Have you ever been treated for abuse of alcohol or drugs or for mental illness?
☐ yes ☒ no

If so, when? _____

For how long? _____

Did you successfully complete the program? ☐ yes ☐ no

- 6) Have you taken any medication, drugs, or alcohol in the last 24 hours?
☐ yes ☒ no

If yes, what? _____

How much? _____

6) When? N/A

Does this affect your ability to know and understand what you are doing here today? ☐ yes ☒ no

7) Are you today under the influence of any medication, drugs, or alcohol? ☐ yes ☒ no

8) Are you today aware of any physical, emotional, or nervous problem that might keep you from understanding what you are doing? ☐ yes ☒ no

If yes, explain: _____

9) Have you ever been ordered by a Judge to submit to a mental evaluation to determine your competency to stand trial? ☐ yes ☒ no

WAIVER OF CONSTITUTIONAL RIGHTS

1) Do you understand that you have the right to remain silent, that is, your right against self-incrimination? You cannot be compelled to testify or give evidence against yourself. Do you understand this right? ☒ yes ☐ no

Do you wish to give up this right and plead guilty? UNDER ALFORD
☐ yes ☒ no

2) Do you understand that you have a right to a jury trial, you have a right to have a jury decide whether or not you are guilty beyond a reasonable doubt. They would base their decision upon evidence which the state presents and on any evidence you might wish to introduce. In a trial, you would be presumed to be innocent, and the state would have to produce evidence that would convince all 12 members of the jury that you were guilty beyond a reasonable doubt. Do you understand this right? ☒ yes ☐ no

Do you wish to give up your right to a jury trial and plead guilty? ☒ yes ☐ no

3) Do you understand that you have the right to confront and be confronted by the witnesses against you, that is, the right to see, hear, and cross-examine any witnesses that may be called against you during the trial and the right to subpoena and call witnesses in your own behalf. Do you understand these rights? ☒ yes ☐ no

Do you wish to give up these rights and plead guilty? ☒ yes ☐ no

4) If your case has not yet been before the grand jury, you have the right to have the case presented to the grand jury. After hearing evidence, 12 of the 18 people on the grand jury would have to agree that you were probably guilty before the charge against you could be reported out as a

- 4) True Bill ready for trial. A grand jury might return a No Bill, which would mean that the charge would be dismissed. Do you understand this right? ☒ yes ☐ no

Do you wish to give up your right to have the grand jury examine your case? ☒ yes ☐ no

- 5) Do you understand that when you plead guilty you give up these constitutional rights? ☒ yes ☐ no

Is that what you want to do? ☒ yes ☐ no

Do you understand that you will not get a jury trial if you plead guilty? ☒ yes ☐ no

NATURE OF THE CHARGE AND CONSEQUENCES OF PLEADING GUILTY

- 1) Has your attorney discussed with you the charge(s) and possible punishment for the charge(s)? ☒ yes ☐ no

- 2) What acts did you do which cause you to think that you are guilty of the charge or charges to which you now want to plead guilty?

see indictment

- 3) Are you pleading guilty for any reason other than the fact that you are guilty? ☒ UNDER ☐ yes ☒ no

ALFORD

If so, what is the other reason? _____

- 4) As you understand, the maximum possible penalty for this charge is:

Voluntary Man 2-30 PW/P 15 years

Pos Cracks 3 years Proximity 10-15 Inexpedable
(Includes jail time, and forfeiture, if applicable)

- 5) If an offense with graduated penalties: Do you understand that if you plead guilty to this offense and you are convicted at a later time of the same crime, the punishment will be higher next time? ☒ yes ☐ no

- 6) Do you have any questions about the nature of the charge(s) against you and the possible punishments? ☐ yes ☒ no

6) If so, please write your questions here: _____

- 7) Do you understand that when you plead guilty you admit the truth of the charge(s) against you? ☒ yes ☐ no
- 8) You may have defenses to the charge(s) against you. The Judge does not know whether you do or not. Do you understand that if you plead guilty you will waive or give up any defense to the charge(s)? ☒ yes ☐ no
- 9) You may have given an incriminating statement in this case. Do you understand that if you plead guilty you waive or give up the right to contest or challenge whether such a statement was freely and voluntarily given in accordance with your constitutional rights? ☒ yes ☐ no
- 10) Understanding the nature of the charge(s) against you and the consequences of a guilty plea, do you still wish to plead guilty? ☒ yes ☐ no

PLEA NEGOTIATIONS

- 1) Has any plea agreement been made by you with the Solicitor's office? ☒ yes ☐ no

If so, exactly what do you understand the agreement to be?

The State will dismiss the Murder charge pursuant to the plea, State will recommend a cap of 20 years

- 2) Do you understand that the recommendation of the attorneys is not binding on the court and that the Judge could still sentence you up to the maximum if he/she felt it appropriate? ☒ yes ☐ no
- 3) Do you still wish to plead guilty? ☒ yes ☐ no

VOLUNTARINESS OF PLEA

- 1) Has anyone promised you anything or held out any hope of reward to get you to plead guilty? ☐ yes ☒ no

If yes, explain: _____

- 2) Has anyone threatened you or used force to get you to plead guilty? ☐ yes ☒ no

- 2) Has anyone used any pressure or intimidation to cause you to plead guilty? ☐ yes ☒ no

If yes, explain: _____

- 3) Have you had enough time to make up your mind as to whether or not you want to plead guilty? ☒ yes ☐ no

- 4) Are you pleading guilty of your own free will and accord? ☒ yes ☐ no

SATISFACTION WITH ATTORNEY

- 1) Has your attorney reviewed this form with you and answered any questions you have about it? ☒ yes ☐ no

- 2) Are you satisfied with the manner in which your attorney has advised you and represented you? ☒ yes ☐ no

- 3) Have you talked with your attorney as often and for as long as you feel necessary for him/her to properly represent you? ☒ yes ☐ no

- 4) Do you need more time to talk with your attorney? ☐ yes ☒ no

- 5) Have you understood your talks with your attorney? ☒ yes ☐ no

- 6) Has your attorney done everything for you that you feel he/she could have done or should have done? ☒ yes ☐ no

If no, explain: _____

- 7) Has your attorney done anything in this case that you feel he/she should not have done? ☐ yes ☒ no

If yes, explain: _____

- 8) Are you completely satisfied with your attorney's services? ☒ yes ☐ no

- 9) Do you have any complaint that you want to make about your attorney, the solicitor, or any of the police officers? ☐ yes ☒ no

If yes, explain: _____

- 10) Do you understand that you have a right to appeal your guilty plea and the sentence of the court and that you must do this within 10 days of the sentence?

☒ yes ☐ no

CONCLUDING QUESTIONS

- 1) Do you understand all of these questions?

☒ yes ☐ no

If not, which ones do you not understand? _____

- 2) Do you now want to plead guilty?

☒ yes ☐ no

SIGNED BY ME IN THE PRESENCE OF MY ATTORNEY, this 11th day
of February 2013.

X 
DEFENDANT

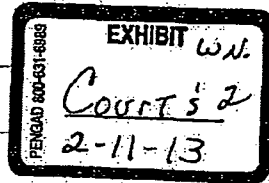
CERTIFICATE OF COUNSEL

- 1) Print your name and telephone number: _____
- 2) I represent the defendant in this case.
- 3) I have read and fully explained to the defendant the allegations contained in the indictment in this case.
- 4) To the best of my knowledge and belief the statements, representations, and declarations made by the defendant in the foregoing petition are in all respects accurate and true.
- 5) I have explained to the defendant the charge(s) contained in the indictment, the possible punishment, and his/her constitutional rights including his/her right to a jury trial.
- 6) I have explained to the defendant the right to have this case submitted to the grand jury for its consideration.
- 7) In my opinion, the defendant understands the charge, the punishment, and the constitutional rights in this case.
- 8) The defendant has indicated to me that he/she wishes to plead guilty.
- 9) The plea of guilty offered by the defendant to count(s) Vol Mans PWID, POSS OF CRACK, PROXIMITY accords with my understanding of the facts the defendant has related to me, is consistent with my advice to the defendant, and, in my opinion, is voluntarily and understandingly made.

SIGNED BY ME IN PRESENCE of the defendant and after full discussion of the contents of this certificate with the defendant, this 16th day of February, 2013.

Harry Dest
ATTORNEY FOR THE DEFENDANT

2-10-2013



Dear judge Nettles;

I would like to take a few moments to tell you a little about me and to tell you about the accident that happened on Jan 30th 2008. The reasons why I'm writing it to you are first because my English isn't too good, second because I get emotional sometimes when talking about the subject, and third because my mother and my sister will be there in court and there are some things I want to say to her you that I wouldn't want them to hear it because it will hurt them and in a way make them feel responsible for the wrong turn I end up taking back them.

I came in to this country on 1993, when I was still a little boy. I started school from the beginning in Jersey City N.J. That's where I was living with my mother, my brother and sisters. I use to visit Dominican Republic on the summers and in three occasions I stayed for a year and went to school there. I also lived in Puerto Rico in two different occasions for about two years all together. N.J. is where I spent most of my childhood. I had returned there and was living with my mother's sister, until late in 2005 I decided to move south where my mom, my brother and sisters and one of my aunts were living. I was 18 years old at that time.

What I'm trying to say so far is that till that time I ~~have~~ lived in some of the worst places a kid can grow up in. And all that had no affect on me. Never got in any kind of trouble, never got involved in gangs nor ~~that~~ I ever did any type of drug not even pot, which is really rare on any kid growing up in any of the places I did.

Now when I came to Rock Hill I started to figure out things that were happening in my family that I didn't know neither was I suppose to know. What I found out hurt me really bad.

I found out that my aunt, her husband at the time and his brother were in the drug trade and that she was also an addict, also that my sister was an addict and was prostituting herself and that my mother too was prostituting herself.

I was real hurt but I have never say nothing to my mom or my sister about it or anyone else. I had no friends in town so I started hanging out with my aunt's brother in law. He started taking me out to bars around Rock Hill and I started drinking every day. He started sending me here and there to deliver stuff which then I learned it was cocaine allways in the stuff he used to send. Later on I started getting involved more and more in-

the drug trade with them. In 2006 I got arrested while I was at my aunt's house on the front yard. They had a search warrant for the property, so they took me inside search me and found nothing on me, in the house in the kitchen they found seven grams of cocaine. I didn't know who it belong to and my aunt wouldn't say so they charged us both with half of the drug they found. Around that time I had met Stephany Schiamone and shortly after I met her sister Amber. Stephany was one of the guys I was hanging out girlfriend and they lived together. Later on I also met some more of her family, four first cousins of Amber and Stephany and on a couple of occasions I met there father. All of them were consumers of cocaine and other drugs.

One night in 2007 I was at a hotel in Rock Hill with Stephany Schiamone, and four other girls that were her cousins and a couple other guys. We were all drinking and most of the others were also doing cocaine. Later in the night we ran out of beers so me and one of the girls called Marie went to the store, on our way there pulling up at the store we got pulled over. The officer asked me out of the car and search me and found about 3.6 grams of cocaine in my pocket. I was charge with possession and attempt of distributing because of the amount. The drug found in my pocket was the-

one they were using in the hotel room but since I was one of the only two persons in the room who did not use it they had me keeping control of it. I accepted the fact that I had the drug on me for whatever reason it was still illegal. When I bond out I went to talk to the narcotic unit in Rock Hill with my aunts brother in law, Miguel and we agreed to help them and work with them. We did a few jobs for them, one of the guys we helped bust got out and Miguel had come across him in Charlotte NC. he had to blame everything on me so that they wouldn't kill him, so when he came to Rock Hill he told me and told me to watch my self. I talked to the guys with the narcotics in Rock Hill and they just told me to call them if anything happens. which if anything had happened it was going to be too late to call them. I told Miguel what they had told me and he got me a gun so I ~~can~~ could protect my self if them people ever came after me. At that time I was staying away from that circle as much as I could. I was doing pretty good, had a job and a girlfriend which we were living together. But once you are in the drug circle even when you get out of it and stay living in the same area where people know you and that you was once in that circle, once in a while some one is going to-

ask you for favors, like it happend on jan 29-2008. I was in a bar in Rock Hill Drinking and playing pool. Around eleven pm. Amber M Schiavone showed up with a friend of her's asking me for some cocaine. We hadn't seen each other in a few months so she maybe didn't know I wasn't doing that no more. So I told her, but she insisted so I told her about another guy in the bar that I knew he sell some Cocaine, I think she also knew him so she went to talk to him.

When they closed the bar at the twelve me and two friends of mine left to my place and on the way we stoped and got some beers. Close to 3am my friends left. My girlfriend was at work so I was by my self.

Little after my friends had left Amber showed up at my door. I was not expecting her so I was a little surprise since she had never been to my place before. She came in and had a beer and again asked me for some cocaine, I think she said that the other guy didn't had any left. She then insisted that I find her some that I had to know someone else, so I called a Kurdish guy I knew and he agreed to go to my place and sell it to her. He got there in about 30 minutes and sold her some. when he left she asked me for another beer and started to do some of the cocaine she had bought.

Then someone knocked on the door. I wasn't expecting

nobody else so I had grab my gun and went to the door, when I was about to open it Amber told me to wait, then told me to open it and that if it was for her to tell them she had left, and she went to the bathroom. I got the door and it was her friend that went to the bar with her and the guy I had told her to go ask him about the drug at the bar. Again I was surprise because neither one of them had never been to my place. so I lied to them like she told me when they asked for her. The other guy seen my gun in my hand and asked to see it, he also had one so I asked to see his. I took the clip out of mine and he did the same with his and pass it to each other then they asked again if I was sure she had left I told them yes and ~~and~~ push the door all the way open so they could look inside. so we exchange back our guns and they left. When I was walking back to the bathroom, Amber was coming back out. When she seen the gun in my hands she ~~at~~ snatch it from me and started playing with it pointing it at me. At the moment I wasn't really worry because I still had the clip in my pockets. The whole time there is a bullet in the chamber and none of us knew it. ~~then~~

Then I'm trying to take the gun back from her. -

Then she starts punk faking me with the gun grabbed by the barrel, trying to pull me close to her ~~like~~ like to kiss me. The third or fourth time she did it at the same time stepping into me, at that moment I also got my hands on the gun and almost at the same moment I heard the bang! and froze for a few seconds not comprehending what had happened, before I was able to look to the floor, I could hear water running but then I realized when I looked down that Amber had been shot and that it was her blood running that sound like water, there was blood spread all over the carpet in just a few seconds. she ~~did~~ died ~~intelly~~ before she hit the floor.

Then I panicked, I was scared and trembling I still couldn't understand ~~what~~ what had happened I didn't know what to do so I grabbed my car keys and started driving to my mother's house. While I was driving I notice I still had the gun in my lap, so I threw it out the window. when I got to my mom's and was putting the keys in my pockets, I still had the clip in my pockets so I just threw it to the back yard. when my mom came to the door, I just past her crying really bad. I couldn't talk clear. I can't remember what I told my mom for sure except that I had killed a friend. and didn't explain anything to her. that it was an-

accident. at that moment I wasn't thinking right, I still didn't know what had happened or how so I guess I made her panicked too. She then told me that I need it to leave. Her boyfriend drove me to the airport and I took the first flight to Dominican Republic.

The next day when I was sober and more calmed down, I started thinking about everything that had happened. I was trying to figure out how it had happened then I realized what a huge mistake I had made by leaving the country.

During the next few days I talked to a lawyer to see how I could turn myself in and if it was a good idea. I explain everything to him about what happened and what was my status in the US and my record with the law regarding my pending charges. He, after hearing everything out told me not to turn myself in for the following reasons. He said to me that because the victim was a white person and I was a hispanic immigrant with a history with drugs, and no one to back up my story, no one was going to believe me and that in a court room they would make me look like a really bad person and would have been convicted for murder. And that on the other hand if I just stay over in D.R. They may not go search for me and that even if-

they did, they may not have enough evidence to convince the Supreme Court to allow my extradition. At that time what he told me just scared me even more I thought I really had a bad criminal record since I didn't know nothing about the law, so I decided to stay over there.

I never felt quite well with the decision knowing that Amber's family and the authority over here would just assume I killed her for some unknown reason and fled away. Even though I did run ~~away~~ I was never in hidden, every day for about three and a half years I was waiting to get arrested. It's like if I wanted to come back and tell the truth to everyone but I couldn't bring myself to turn myself in because I was so scared.

Then finally on May 10, 2011 I got arrested. I stayed in prison for 9 months over in D.R. you can't imagine how horrible it was. I signed the extradition because I wanted to come and face my charges and give my side of the story.

I got extradited Feb 2, 2012 and been in Y.C. DC since, it's not half as bad as in Dominican Republic but bad enough and it has taught me a lot. I haven't got in to any trouble while I been here. Don't even think you could find an officer that would honestly give a bad comment about me.

My public defender and the solicitor have agreed that under the circumstances it would be better—

for both parties if he set up a plea and avoid going through a trial.

Your honor, I want you to know that everything I am telling you here is the truth as best I can remember it, my public defender is probably going to tell you most of ~~me~~ what I am telling you but I wanted to tell you my self in my own words.

What happend on the night of Jan 30 2008 was a terrible accident, that has happend to many others and could happend to anybody. That night it could have been me on the other end of the gun. I know that I was foolish and stupid to have an illegal weapon especially when I didn't know nothing about guns, I know that it was a foolish mistake of mine for learning and not turning my self in even though I was scared, and I also know that it was a foolish and bad choice in my life to ever get involved in the drug trade.

The death of Amber Marie Schianone hurt me really bad. not just because it ruined my life but also because I knew her. She was a lonely person, very kind and caring. I know she did cared about her sister and her brother. She did had problems with drugs after her mother death, but she was a young and very nice girl. I cant imagine how hurt her family had to-

be why this happened and not having a clue why. I did not have any motive nor reason to harm in any way Amber Marie Shiomore. We were friends, I can't even imagine that there was anybody in this world that got to meet her that would want to harm her.

What I'm trying to say is that I'm ~~sincerely~~ sincerely sorry for her death, I can't find enough words to say it. I am sorry for the accident that ~~took~~ her life and for learning and not giving her family a chance to at least know what happened. I'm also sorry for helping her get drugs and for ever getting involved in that circle, because it all started there, one thing lead to the other.

I have learned how bad drugs are and that almost every one who is in that circle if stay long enough will end up dead on or in a prison. I have seen what it can do to people who use it and to there family. I thank God for bringing my aunt and my sister out of it alive and now they have found Christ and live a decent life taking care of there kids. And that was one of the miracles that helped me believed.

Now I just pray to God that her family will hear the truth and forgive me.

Your Honor I want you to know that I'm not a bad person like some people may think, and anyone who thinks that is because doesn't know me.

I did make some bad ~~chase~~ choices, but I was much younger and I was hurt, confused and abusing ~~also~~ alcohol at that time. I have changed a lot and continue to change and I have grown up and matured. I'm not any danger to society or to anyone. I also now have a daughter. She is only five months now. I haven't had the chance to see her, except in photos. Her and her mother live in another country and can't come to the US.

I want to be able to be a father to her, raise her up with her mother so she can have the love of both her parents like every child suppose to grow up with. I want my life back your Honor. I know that I'm never going to be able to have the life I had before but I want a chance to start over, now that I'm still young and my child is still a baby. I want a chance to get out and get a job to help my child's mother to feed our child and go back to school.

I know it is going to be hard but with God's help I can do it. I'm not just paying for my mistakes with the time I'm doing in here, I will continue to pay for them when I get out for the rest of my life, because I will be deported and won't be able to come back to this ~~country~~ country which I love and grew up here. I will have to stay in D.R. and struggle like most people do over there just to earn enough for food-

I may be able to get a good job because I know some English and get paid about three dollars an hour just enough to live day by day if your family is small. Some people prefer to live in a prison over here then to live like that over there. That's why so many risk their freedom and even their lives trying to get here.

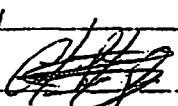
For me it will be even harder because I really don't know the land, and I will have to start from zero. But I'm ready to do it. I have to think about my daughter, to give her a chance of growing up with a good education since I ruined mine.

Your Honor what I'm asking you is for a chance to get my life back. Now that I have the time and strength in me to start over. I wish I could do more than just give ~~me~~ you my word. That I'm not going to mess up again, that I'm not a bad person nor any danger to anyone else.

Please Your Honor give me one chance to live again. I give you my word you won't regret it.

Thank you for your time and consideration.

Sincerely


Carlos L. Pinales Mejia

STATE OF SOUTH CAROLINA
COUNTY OF YORK COUNTY

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

VS

Carlos Luis Pinales-Mejia

CLPM = defendant's initials required

Total Time Served (days): Click here to enter text.

673 days

I want to plead guilty, no contest, or enter a plea under N.C. v. Alford to the charges listed below. I understand that the minimum and maximum penalties as well as some of the collateral consequences for the charges to which I am pleading are listed below:

Subject to deportation due to resident status

Truebilled ☐ Waiver ☒

Indictment #: 2008-GS46-03480 CDR: 0217 Statute #: 16-3-50

Original Charge: Murder

Pleading To: Voluntary Manslaughter

Misdemeanor ☐ Felony ☒

Penalty: 2 to 30 years

☐ Non-Violent ☒ Violent ☐ Serious ☒ Most Serious ☒ No Parole ☐ Sex Offender Registry

☐ Mandatory GPS ☒ Increased Punishment for Future Offenses ☐ Murder Day for Day

List General Sessions Charges Being Dismissed: J161526 PWID Cocaine; K315355 ABHAN; 56005ED No DL 2nd; K315735 Firearm violent crime

List Pending General Sessions Charges not being resolved: None

YOA: ☐ Eligible ☒ Ineligible due to: ☐ Age ☒ Offense ☐ Other: Click here to enter text.

List Prior Convictions: 2007 No DL and Concealed weapon

Currently on Probation? ☐ Yes ☒ No Is this plea a violation of the probation? ☐ Yes ☒ No

CLPM I have agreed to plead guilty, no contest, or enter a plea under N.C. v. Alford as part of a plea arrangement. The Solicitor, my lawyer, and I have informed the court that the following contains all of the terms of conditions of my plea: *see Defendant's plea affidavit*

Type of Plea ☐ Guilty ☒ N.C. v. Alford ☐ Nolo
Recommendation ☒ Negotiated ☐ Without Recommendation ☐

CLPM State is recommending or the negotiation is: Recommendation of a Cap of 20 years

CLPM This plea is not the product of any other promises or any threats whatsoever, except as indicated below:

CLPM I understand that, upon entering a plea under N.C. vs. Alford, I will be treated as being guilty whether or not I admit that I am in fact guilty.

CLPM I understand that a no contest plea is treated by the Court the same as a plea of guilty.

☒ CLPM The Solicitor is making a recommendation to the judge, as listed above. I understand the Judge is not required to accept the recommendation given by the Solicitor and the Judge may accept it, may go below the recommendation, or may go above the recommendation.

☐ This plea is a negotiated plea and the negotiation is listed above. I understand the Judge may refuse to accept the negotiation and that if the Judge refuses, the plea will not go forward.

☐ This plea is without negotiation and I understand I could receive from the minimum to the maximum sentence on each charge to which I am pleading guilty and that those sentences could also be run consecutive to other.

☒ CLPM I am not currently under the influence of any intoxicants, drugs, or narcotics.

☐ I currently DO take the following prescribed medications:

☒ CLPM I am entering my plea today freely, voluntarily, knowingly, and intelligently.

☐ I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer, or the court will appoint a lawyer for me if I cannot afford one. I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing myself. Understanding this, I give up this right.

☒ CLPM I understand that I have the right to plead not guilty and be tried by a jury, and that I am presumed innocent until such time as the jury is convinced of my guilty beyond a reasonable doubt. Understanding this, I give up that right.

☒ CLPM I understand I have the right to have the Court issue subpoenas to bring my witnesses and evidence to a trial at no cost to me. Understanding this, I give up that right.

☒ CLPM I understand I have the right to testify or remain silent at trial. Understanding this, I give up this right.

☒ CLPM My lawyer has reviewed with me all the factual and legal issues surrounding my case, including any defenses I may have and he or she has done everything I have asked him to do. I am satisfied with his or her services.

☒ CLPM I understand that I have the right to remain silent, that is, the right against self-incrimination. Understanding this, I give up this right.

☒ CLPM I understand that in a jury trial I have the right to see and hear all witnesses called to testify against me and to confront, cross-examine, and question them.

☒ CLPM I give up, for each of the charges listed above, my right to a jury trial, my right to a bench trial (trial by Judge with no jury), my right to confront and cross examine witnesses, my right to remain silent and not incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf.

☒ CLPM I understand that by my pleading to each charge, I am waiving all defenses, including, but not limited to the right to challenge any evidence the State may have used in its case against me and the voluntariness of any statements made to law enforcement.

☒ CLPM I understand that upon my conviction I may be ordered to pay restitution to any persons directly and proximately injured as a result of my commission of these crimes and that a civil judgement in favor of each person may be docketed against me and will be a lien against any real estate I own now or may own in the future.

☒ CLPM I understand that if I am not a citizen of the United States, my plea of guilty, no contest, or my plea under N.C. v. Alford may result in my deportation, exclusion from re-entry to the United States, and denial of naturalization and amnesty.

☒ CLPM I understand that I have 10 days within which to appeal this guilty plea.

☒ CLPM I understand that I am pleading guilty, no contest, or under N.C. v. Alford to the charges shown above.

☒ CLPM I now personally plead (☒) guilty; (☒) under N.C. v. Alford; (☐) no contest to the charges above.

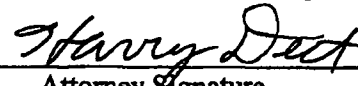
Acknowledgement

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, the effects of any prior convictions and enhancements, have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

Defendant's Signature:  Date: 2-11-13

Defense Counsel's Statement

I, the attorney for the defendant in the above entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges, all discovery provided by the State, and possible defenses with the defendant and the consequences of the plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his or her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Print Name: HARRY PEST  Bar # 11871
Attorney Signature

Date: 2/11/13 Circle One ☒ PD ☐ Retained ☐ Appointed

Solicitor's Review

I have reviewed this form as completed by the Defendant or by the Defendant with his Defense Attorney for completeness and accuracy.

Solicitors Signature:

Willy ThompsonBar # 65118

Date:

2-11-13

Judge's Confirmation

Upon consideration of the record, evidence or factual presentation offered, answers of defendant, and statements of the lawyer for the defendant and the prosecutor and the contents of this plea and waiver form, the undersigned finds that:

1. There is a factual basis for the entry of the plea,
2. The defendant is satisfied with his/her lawyer's legal services,
3. The defendant is competent to stand trial, and
4. The plea is the informed choice of the defendant and is made freely, voluntarily, knowingly, and intelligently.

The defendant's plea is hereby accepted by the Court.

Judge's Signature

Judge's Code: _____

Date: _____

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of YorkCarlos Luis Pinales-Mesia, 354376

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2013 CP46 3702

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (either 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 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 Correctional Institution (SCDC)
2. Name and location of Court which imposed sentence General Sessions Court
for York County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-46-03480 (Murder)
 - (b) 2007-GS-46-02858 (Possession of Cocaine with intent to distribute)

- (c) PWID Cocaine within Proximity of Public School
 (d) Possession of Cocaine
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 11, 2013, Fifteen (15) years
 (b) February 11, 2013, Ten (10) years
 (c) February 11, 2013, Fifteen (15) years
 (d) February 11, 2013, Three (3) years
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?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
 ii. _____
 iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal was denied
 ii. _____
 iii. _____
- (c) the date of each such result:
- i. April 3, 2013
 ii. _____
 iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
 (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of trial Counsel
- (b) 11
- (c) 11
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached Memorandum of Law
- (b) 11
- (c) 11
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. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

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) The grounds set forth in (10) are exclusively PCR grounds

(b) ii

(c) ii

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

No

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

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

i. Harry Dest

ii. Robert M. Dudek

iii. _____

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

i. Trial

ii. Appeal

iii. _____

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

That my Convictions and Sentences be reversed for new trial.

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

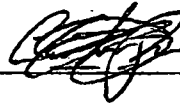
NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of York)

I, Carlos Luis Pinales-Medina, SCDC No. 354376, 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.



SWORN to and subscribed before me this 20
day of November, 2013.

Jamarcus Conwell (L.S.)
Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

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

I, Carlos Luis Pinales-Medina, SCDC No. 354376, 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
20 day of November, 2013.


Notary Public

My Commission Expires
My Commission Expires: September 25, 2023

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Carlos Luis Pinales-Mejia, 354376.

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No.: 2013 QP46-3702MEMORANDUM OF LAW IN SUPPORT
OF APPLICATION FOR POST-CONVICTION
RELIEFFILED-RECEIVED
2013 DEC -5 PM 3:26
ANDREWS & ASSOCIATES
C.C.P. & GS
YORK COUNTY, SC

The applicant presents the Memorandum of Law in Support of Application for Post-Conviction Relief (PCR) and would show the following unto the Honorable Court.

STATEMENT OF THE CASE

The applicant was indicted by the York County Grand Jury during the October 12, 2006, term of General Sessions Court for Possession of Cocaine (2006-GS-46-03312), during the August 16, 2007, term for PWID Cocaine (2007-GS-46-02858) during the August 16, 2007, term for PWID Cocaine within Proximity of Public School (2007-GS-46-02859), and during the August 21, 2008, term for murder (2008-GS-46-03480). On February 11, 2013, he went to trial on these charges before the Honorable Judge Michael Nettles. He was represented by Harry Dent, Chief Public Defender, and the State was represented by Willy Thompson, Deputy Solicitor for York County. The applicant pled guilty to all drug charges, and pled guilty to the lesser included offense of manslaughter. Judge Nettles sentenced him to fifteen (15) years for PWID Cocaine, ten (10) years for PWID Proximity of Public School, three (3) years for Possession of Cocaine, and fifteen (15) years for manslaughter, all sentences to run concurrent. A timely appeal was filed on applicant's behalf.

On direct appeal, the applicant was represented by Robert M. Dudek of the SC Appellate Defense Office. The appeal was denied on April 3, 2013.

(1) The applicant's guilty plea was involuntary by reason of ineffective assistance of trial counsel's failure to inform him of exculpatory evidence prior to entrance of his guilty plea.

The two prong standard in Strickland¹ applies to guilty plea challenges based on ineffective assistance of counsel and requires that an applicant show that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the results of proceeding would have been different. In order to satisfy prejudice prong for evaluating claim of ineffective assistance under Strickland, an applicant must show there was a reasonable probability that, but for counsel's error, he would not have pled guilty and would have insisted on going to trial. See, e.g., Hill v. Lockhard, 105 S.Ct. 366 (1985)

Of particular relevance to this case, the applicant was charged with murder as a result of his ex-girlfriend being shot in the face at his home. It was the applicant's defense that his ex-girlfriend was playing with his gun and accidentally shot in the face when he playfully snatched it out of her hand. In opposition to the applicant's account of the incident, the state's murder charge was primarily based on the fact that there was no gun powder residue on the victim's hands to evidence that the victim handle a gun prior to being shot. Tr. p. 24, L. 24--p. 25, L. 7.

Notwithstanding, the applicant contends that, prior to entrance of his guilty plea, he was rendered ineffective assistance of counsel by counsel's failure to inform him of exculpatory evidence regarding the "absence of gunpowder residue on the victim's hands", and the "absence of any struggle between defendant and the victim" prior to her shooting death. Our Supreme Court has recognized that, for evidentiary purposes, exculpatory evidence is "that which creates a reasonable doubt" about the defendant's guilt. See State v. Forney, 468 S.W.2d 641 (S.C. 1996) (interpreting the application of Rule 804(b)(1) regarding exculpatory evidence).

For an evaluation of the applicant's ineffective assistance of counsel claim, he will recite only so much of his guilty plea proceeding as will be necessary for a determination of his claim, as follows:

Court: Have you explained to him (defendant) the offense of manslaughter, and the potential defense?

1. Strickland v. Washington, 104 S.Ct. 2052 (1984)

Counsel: I have, your Honor.

Court: He wishes to plead our right to manslaughter and he's tendering an Alford² plea?

Counsel: That's correct, your Honor.

Court: All right. Do you feel as though the facts in this case warrant an Alford Plea in "there is overwhelming evidence that establishes (his) guilt and he's receiving the benefit of a bargain here today?"

Counsel: ~~Indeed, your Honor.~~

Court: Is that true, Mr. Mejia?

Mejia: Yes, Your Honor.

Tr.p. 6, L. 11—p. 7, L. 8.

Following this inquiry, the Court accepted applicant's guilty plea to voluntary manslaughter. Tr.p. 17, L. 3-7.

During the Court's acceptance of evidence in mitigation for imposition of applicant's ~~sentence~~, the following evidence was presented:

Solicitor: She (victim) did not—her clothing—she did not have any positive GSR on her hands so having handled a gun does not seem to be likely. There is nothing indicated visually on her hands or clothing that appears to be burns of any nature of that as well.

As I point these things out simply to let the court know the state's position as this is not an accident.

Tr.p. 24, L. 24—p. 25, L. 7.

Counsel: Judge every since our first conversation Carlos has always told me that what happened was an unintentional shooting. And I recognize that he's pleading to voluntary manslaughter and he's pleading under the Alford doctrine, but I would point out that there are two ways to look at the facts... And there are facts that I would point ^{out} which corroborates his (applicant's) version of it.

They (applicant and victim) had a relationship; they were boyfriend and girlfriend at one time but not at the time of the incident.

Tr. p. 29, L. 7—21.

Counsel: Judge, applicant told me that the victim asked to look at his gun and he gave it to her foolishly because he had been drinking. There was basically a little play going on. She had the gun moving it back and forth; he snatched at it at very close range and the gun went off.

Judge that is the story he told me the first time I met him; that's the story he's maintained throughout the course of my investigation.

I would also submit that the State would argue that "there is no gun powder residue on her (victim's) hands, either the front or the back of her hands". I interviewed the same analysis expert

2. North Carolina v. Alford, 91 S.Ct. 160 (1970)

from SLED and she said that unless there was an intervening cause like the person was wearing gloves, or that they had long sleeves, and as I showed the Court in chambers the photograph of the crime scene it's clear that the victim had long sleeves (sweater). I also told the court that based upon my conversation with this expert that they do not check the clothing of either the victim or defendant for gun powder residue.

Court : The picture actually shows not only the long sleeves but the sleeves covered up her hands.

Counsel: That's correct, your Honor...I mention that to you against the fact that I would contend "corroborate the possibility of there being no gun powder residue present".

Tr. p. 30, L. 21—P. 32, L. 11.

Counsel: I also interviewed the pathologist, Dr. James Maynard, and he indicated to me that there was no signs of a struggle or fight prior to the incident....He also indicated that there was no signs of defense wounds. He also indicated to me that certainly it's possible that it could have been an unintentional shooting so it can be argued both ways, your Honor. "But judge he's giving all that up.

Tr. p. 32, L. 14-25.

For the court's evidentiary consideration of his ineffective assistance of counsel claim from the above excerpts from his transcript, the applicant submits that prior to his trial, and acceptance of his guilty plea by the judge, his counsel had failed to disclose to him any of the following evidence for his defense of his murder charge: (1) the photos of the victim's hands that were covered by a long sleeve sweater, (2) the SLED Trace Analysis Expert's Report that the victim's long sleeve sweater could have prevented gun powder from on her hands, (3) the finding by the pathologist, Dr. James Maynard, that the victim had not been involved in any struggle with the applicant, nor did the victim have any defensive wounds, prior to her death.

For proof of his claim, applicant contends that the above excerpts from his transcript shows that, on the one hand, during acceptance of his plea by the court, his counsel was asked by the court whether he believed "there was overwhelming evidence to support his guilt" and counsel responded that he did believe there was such evidence to support the plea. Tr. p. 6, L. 24-p. 7, L. 3. Furthermore, the above excerpts also shows that, on the other hand, during the judge's acceptance of mitigating evidence for a sentencing determination, his counsel disclosed (to his surprise) exculpatory evidence of pictures of the victim's hands that were covered by a long sleeve sweater she wore on the night of the incident. Also to applicant's surprise, his counsel disclosed the findings

by the state's pathologist that no struggle had taken place between the applicant and the victim prior to the victim's death. Where there is any conflict in the evidence, the issue of whether a particular plea was freely, voluntarily, and understandingly entered, is one of fact. White v. State, 179 S.E.2d 906 (S.C. 1971).

By comparison, in applicant's case there was obviously a conflict between the evidence proffered for acceptance of his plea and the evidence proffered for mitigation of his sentence by his counsel. Hence, as the state's evidence to support its murder against him rested entirely upon the absence of any gun powder residue on the victim's hands, he contends that the evidence by the SLED Trace Analyst for the absence of gun powder residue on the victim's hands, coupled with the evidence of the state's pathologist's report that no struggle had taken place between the applicant and the victim prior to her shooting death, was sufficient evidence that was capable of raising a reasonable doubt in the minds of the jury as to applicant's guilt of his murder charge. In deciding guilt, it necessarily follows that if the omitted evidence could have created a reasonable doubt that did not otherwise exist, constitutional error has been committed. See, e.g., United States v. Agur, 96 S.Ct. 2393 (1976).

In conjunction, the applicant contends that his counsel's presentation of conflicting evidence that both incriminated him during his guilty plea, and that exculpated him during presentation of mitigating evidence for his sentencing, by his counsel, is prima facie evidence of a deception that supports his claim that his counsel had failed to either discuss and/or provide him with discovery of this evidence prior to his trial and guilty plea. ~~He thus contends that had his counsel gave him discovery he would not have pled guilty and would have instead went to trial.~~

(2) The applicant's guilty plea was involuntarily entered as a result of ineffective assistance of his trial counsel's failure to inform him that his drug indictments insufficiently charged his offenses.

A defendant who pleads guilty upon advice of counsel may only attack the voluntary and intelligent character of his guilty by showing (1) counsel's representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that but for counsel's errors he would not have pled guilty, but would have instead gone to trial. See Harden v. State, 602 S.E.2d 48 (S.C. 2004).

In this case, the applicant was charged with "possession of cocaine with intent to distribute (PWID)" in an indictment No. 2007-GS-46-02858 that alleged his drug offense, in relevant part, as follows:

That on or about May 12, 2007, in York County, SC, the Defendant, Carlos Luis Pinales-Mejia, did unlawfully possess with intent to distribute... "quantity of cocaine"

In conjunction, applicant was also charged with Possession of cocaine of cocaine with intent to distribute within proximity of a public school" in a companion indictment No. 2007-GS-46-02859 that charged his offense, in relevant part, as follows:

That on or about May 12, 2007, in York County, SC, the Defendant, Carlos Luis Pinales-Mejia, ...did "possess with intent to distribute...cocaine ...within a one-half mile radius of Sullivan Middle School...located in Rock Hill, SC....

With regard to the sufficiency of his above PWID offenses, the applicant contends that Section 44-53-370(a) states that it shall be unlawful for any person to "poss with intent to distribute cocaine". Moreover, Section 44-53-370 (d)(4) states that "a person who possesses more than one (1) gram of cocaine is prima facie guilty of a violation of subsection (a) of 44-53-370. Therefore, it is clear that the S.C. Legislators intended that it is the statutory amount of cocaine, rather than the criminal act, which distinguishes the PWID drug offense from the "actual distribution of cocaine". See, e.g., State v. Peay, 468 S.E.2d 669 (S.C.App. 1996).

Therefore, in keeping with the intent of the SC Legislators, the applicant submits that his indictments charging that he "possessed with intent to distribute a quantity of cocaine" failed to sufficiently charge him with a PWID cocaine offense pursuant to section 44-53-370(d)(4), IN THAT IT DOES NOT CHARGE THAT HE "POSSESSED in excess of one gram of cocaine". He further submits that his counsel rendered him ineffective assistance by failing to inform him of the state's statutory violation of insufficiently charging his PWID offense. See Franklin v. Caroe, 552 S.E.2d 718 (S.C. 2001) (holding that a counsel's failure to advise of statutory error is ineffective assistance of counsel.).

The applicant submits that had counsel informed him of the state's failure to sufficiently charge his PWID offense in accordance with SC Legislative Laws he would not have pled guilty and would have, instead, went to trial and moved for dismissal of his indictments.

(3) The applicant's guilty plea to all of his drug charges were involuntary based on his trial counsel's failure to inform him of the state's discovery and Brady violations.

A solicitor has a duty to disclose Reports of Examinations and Tests of drug evidence upon request by a defendant or his attorney. Rule 5, S.C.R.Crim.P. Also, in Brady v. Maryland, 383 U.S. 83 (1966), the Court held that a prosecutor must disclose evidence which is both favorable to the accused and material to guilt or punishment. It further held that evidence is material only if there is a reasonable probability that had the evidence been disclosed to the defense the results of the proceeding would have been different. See State v. Taylor, 508 S.E.2d 870 (S.C. 1998), citing Brady.

Accordingly, the applicant's drug indictments charge him with PWID Cocaine (2007-GS-46-02859), PWID Cocaine within Proximity of School (2007-GS-46-02859), and Possession of Cocaine (2006-GS-46-03312). Consequently, the applicant was never provided any discovery of "drug analyses reports" or "chains of custody" for any of the above drug offenses by either the solicitor or his counsel prior to, or after, his guilty plea to the above drug offenses. Before a criminal defendant can be required to present a defense, the prosecution must present some proof of the corpus delicti of the offense. State v. McCombs, 515 S.E.2d 547 (S.C.App. 1999).

The applicant accordingly contends that had his counsel informed him that the State had failed to provide him any discovery of ^{drug} analyses reports, and chain of custody for such evidence, to support its charges against him, he would not have pled guilty and would have gone to trial and moved for suppression of the state's alleged drug charges. See Strickland, Supra, Hill, Supra.

CONCLUSION

WHEREFORE, for the foregoing reason, the applicant pray the Honorable Court grant a hearing to reverse his convictions and sentences to serve the interest of justice.

This 2 day of December, 2013

Tamara Conwell

My Commission Expires
September 25, 2023

/s/

[Signature]
Carlos Luis Pinales-Rejia, 354376
Perry Correctional Institution
430 Oaklawn Road-Q35/
Pelzer, S.E. 29569

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Carlos Luis Pinales-Mejia, #354376,

2013-CP-46-3702

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 5, 2013, 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 York County Clerk of Court. The Applicant was indicted at the August 2007 term of the York County Grand Jury for Possession of Cocaine with Intent to Distribute (PWID) (2007-GS-46-2858) and PWID Cocaine within proximity of a school (2007-GS-46-2859). He was also indicted at the August 2008 term of the York County Grand Jury for Murder (2008-GS-46-3480). Harry Dest, Esquire, represented him. On February 11, 2013, the Applicant pled pursuant to North Carolina v. Alford as indicted to PWID Cocaine, 1st offense and PWID within proximity of a school and to Voluntary Manslaughter as a lesser included offense of Murder before the Honorable Michael G. Nettles. Judge Nettles sentenced the Applicant, pursuant to a recommendation from the State, to fifteen (15) years for Voluntary Manslaughter, fifteen (15) years, concurrent, for PWID Cocaine, 1st offense, and ten (10) years

for PWID within proximity of a school. Applicant filed a notice of appeal, but his appeal was denied by the South Carolina Court of Appeal on April 3, 2013.

Attached herewith and incorporated herein are the records of the York 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 Trial Counsel"

- a. "The applicant's guilty plea was involuntary by reason of ineffective assistance of trial counsel's failure to inform him of exculpatory evidence prior to the entrance of his guilty plea."
- b. "The applicant's guilty plea was involuntary by reason of ineffective assistance of trial counsel's failure to inform him that his drug indictments insufficiently charges his offenses."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

Respondent construes these allegations as ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective assistance of counsel. 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.

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

V.

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

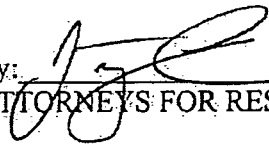
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

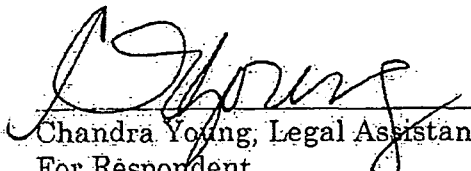
March 4, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2013-CP-46-3702
	)	
CARLOS PINALES-MEJIA, 354376	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

W. Michael Hemlepp, Jr., Esquire
 3027 S. Parham Rd
 York, SC 29745

DATED this 4th day of March, 2014.


 Chandra Young, Legal Assistant
 For Respondent

1 State of South Carolina Court of Common Pleas
2 County of York Sixteenth Judicial Circuit

3
4 Carlos Luis Pinales-Mejia,) Transcript of Record
5 Applicant,) 2013-CP-46-3702
6 vs.)
7 The State of South Carolina,)
8 Respondent.)

9
10 August 4, 2014
York, South Carolina

11 B E F O R E:

12 The Honorable J. Ernest Kinard, Judge
13

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

15 W. Michael Hemlepp, Jr., Esquire
Attorney for the Applicant

16 J. Rutledge Johnson, Esquire
17 Attorney for the State of South Carolina

18

19

20

STACY S. JOHNSON
CIRCUIT COURT REPORTER

21

22

23

24

25

I N D E X

WITNESS	PAGE
Carlos Luis Pinales-Mejia	
Direct Examination by Mr. Hemlepp	4
Cross-Examination by Mr. Johnson	12
Harry A. Dest	
Direct Examination by Mr. Johnson	16
Cross-Examination by Mr. Hemlepp	23
Certificate of Reporter	28

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
---------------	--------------------	------------	-------------

NO EXHIBITS WERE INTRODUCED

P R O C E E D I N G S

1
2 **MR. JOHNSON:** May it please the Court, Your
3 Honor. This is the case of Carlos Pinales-Mejia
4 versus the State of South Carolina. It's Case Number
5 2013-CP-46-3702. Mr. Pinales-Mejia was indicted at the
6 2007 term of the York County Grand Jury for possession
7 of cocaine with intent to distribute and PWID cocaine
8 within proximity of a school. He was also charged with
9 murder in 2008.

10 On February 11, 2013, he waived presentment to the
11 Grand Jury and pled pursuant to North Carolina versus
12 Alford to voluntary manslaughter as a lesser included
13 offense and as indicted to the PWID cocaine first and
14 the PWID proximity of a school before the Honorable
15 Michael G. Nettles. There was a recommendation of a
16 cap of 20 years. He was sentenced concurrently to
17 15 years for voluntary manslaughter, 15 years for the
18 PWID cocaine first offense, and 10 years for the
19 proximity charge. There was a Notice of Appeal filed
20 on his behalf, but the appeal was denied by the South
21 Carolina Court of Appeals on April 3, 2013. He filed a
22 timely PCR application December 5, 2013, and the State
23 filed its return on March 4, 2014, and he is represented
24 here today by Mr. Mike Hemlepp.

25 **THE COURT:** Okay.

1 **MR. HEMLEPP:** Thank you, Your Honor. The Applicant
2 would -- I would call the Applicant as my first witness,
3 Carlos Luis Pinales-Mejia.

4 CARLOS LUIS PINALES-MEJIA,
5 having been duly sworn, testified as follows:

6 **MR. HEMLEPP:** May it please the Court, Your Honor?

7 **THE COURT:** You may.

8 **MR. HEMLEPP:** Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. HEMLEPP:

11 Q. Carlos, would you please give us your full name and
12 would you spell your last name for the court reporter?

13 A. Carlos Luis Pinales-Mejia. The last name,
14 P-I-N-A-L-E-S M-E-J-I-A.

15 Q. Now, Carlos, the judge is gonna make a decision
16 based upon your testimony and the testimony of other
17 people today, but it's really hard to hear in this
18 courtroom. I need you to speak slower and louder, if
19 you can. You and I spoke before. You do tend to speak
20 kind of fast and low. I want you to speak as loudly as
21 I am right now. Will you do that for me?

22 A. I'll try.

23 Q. Thank you. You are currently in the Department of
24 Corrections; are you not?

25 A. Yes.

1 Q. And what are you in the Department of Corrections
2 for?

3 A. Why am I there for?

4 Q. Why are you there?

5 A. Well, right now for the charge of manslaughter,
6 voluntary manslaughter, possession with intent to
7 distribute in -- in proximity of a school, and simple
8 possession.

9 Q. Okay. And did you get convicted by a jury or did
10 you plead guilty to those charges?

11 A. I -- to three of the charges, I pleaded guilty and
12 to the voluntary manslaughter I pleaded to the -- under
13 the Alford -- Alford Doctrine they call it.

14 Q. Okay. But did you plead to all of those -- you
15 came before one judge and was sentenced at one time; is
16 that correct?

17 A. Yes.

18 Q. Okay. And you pled under Alford to voluntary
19 manslaughter; the other charges you pled guilty to?

20 A. Yes.

21 Q. The ones that you pled guilty to, did you plead
22 guilty because you were guilty?

23 A. The ones that I pleaded --

24 Q. That you pled guilty to.

25 A. Well, some of them I pled guilty because I thought,

1 okay, I was guilty and because I also had advice of my
2 lawyer.

3 Q. Okay. Why didn't you plead guilty to voluntary
4 manslaughter?

5 A. 'Cause from the beginning, like I told my lawyer
6 and I told the judge and everybody, I'm not guilty of
7 it. I pled guilty because of the advice of him. He was
8 saying that it was the best for me or whatever, but not
9 because I was guilty. I never said I was guilty and I
10 still don't feel guilty and that's why I'm here today.
11 I don't feel satisfied with the sentence I got for that.

12 Q. Now when -- were you represented by a lawyer at
13 the time that you pled guilty? When you came to the
14 courtroom?

15 A. Yes.

16 Q. And was that here in York County?

17 A. Yes.

18 Q. Okay. Who was your lawyer?

19 A. Mr. Harry Dest.

20 Q. And prior to you coming before the Court for your
21 proceeding, how long had Mr. Dest represented you on
22 that charge?

23 A. For about a year.

24 Q. Okay. And did you have the opportunity to talk to
25 him about the case?

1 A. Yes, on multiple occasions.

2 Q. Okay. Did you tell him that you believed you were
3 not guilty of the -- the homicide?

4 A. Yeah, multiple times. And the first time we talked
5 I told him my version of what happened, including where
6 he asked me if I was willing to take a polygraph exam,
7 which we did. I took it and passed it.

8 Q. Who -- who arranged for the polygraph?

9 A. My lawyer.

10 Q. Okay. And where was that done?

11 A. Right here.

12 Q. And you passed that exam?

13 A. Yes.

14 Q. Okay. Why did you decide to plead under Alford to
15 the voluntary manslaughter?

16 A. Well, from what he was explaining to me, he was
17 telling me that if I didn't plead guilty, that if I go
18 to a trial, basically he was saying that with the other
19 charges I was gonna go to trial first and by the time I
20 go to a trial for the manslaughter or go for the murder,
21 it would have been that I would have already had most
22 likely more time than what they was offering me; that he
23 believed that they had overwhelming evidence to find me
24 guilty of it, so I -- at the end he ended up convincing
25 me of taking the plea, but I never, you know, took the

1 plea because I thought I was guilty or anything like
2 that.

3 Q. Now at the guilty plea, do you remember the
4 proceeding in front of the judge?

5 A. Yes.

6 Q. Okay. And at the guilty plea in front of Judge
7 Nettles, do you remember the Solicitor giving the
8 version of the facts that the State said about the
9 homicide?

10 A. Yeah.

11 Q. And do you remember the discussion with the judge
12 about the gunshot residue?

13 A. Yes.

14 Q. Okay. And you had been told prior to the pleading
15 -- prior to pleading that there was a gunshot residue
16 test that was involved in this case? You knew that that
17 had happened; did you not?

18 A. I knew about the test, but I didn't knew --

19 Q. Right. You knew about the test?

20 A. Yes, I knew the test and the result, but I didn't
21 knew -- well, go ahead and ask what you were gonna ask.

22 Q. At the plea, the pleading -- at the hearing where
23 you pled guilty, did your lawyer talk to the judge about
24 the gunshot residue test?

25 A. Yes, he did.

1 Q. Did he tell the Court that he had actually spoken
2 with the SLED agent and that the SLED agent had given
3 him information that was actually exculpatory?

4 A. In court he did, but to me --

5 Q. Had you known that prior to that hearing?

6 A. No, not all of it. Like the -- what he didn't
7 tell me exactly was that they had told him that the
8 reason it could have been -- that because of she having
9 a long-sleeved sweater or wearing gloves, which the
10 victim was wearing a long-sleeved sweater, it was
11 covering her hands, could have been the reason why the
12 gunshot residue was not on her body. That he did not
13 mention to me. 'Cause he had told me that he had talked
14 to them, but he didn't tell me that part. He didn't
15 tell me, you know, what position basically that the
16 testimony favored.

17 Q. Okay. Had you known that prior to that hearing,
18 would you have pled guilty?

19 A. Definitely not.

20 Q. Why?

21 A. 'Cause, I mean, it corroborates my story. I
22 mean, the whole time I'm saying what happened and the
23 Solicitor is just saying that he doesn't believe me
24 because of the fact that I ran and that there was no
25 gunpowder residue on the body, but, I mean, I didn't

1 know what -- I'm no expert and so I don't know why could
2 that be. I'm just -- you know, if he would have told
3 me that, that could have explained a lot right there.

4 Q. The victim in that case, did y'all get along?

5 A. The victim?

6 Q. Yes, the victim in the homicide.

7 A. Yeah, we never had a problem. I mean, we didn't
8 have no ill or no beef like you would say.

9 Q. Was that event an accident?

10 A. Yes, it was an accident.

11 Q. Okay. And you've contended that the whole time?

12 A. I've contended that the whole time and I still do.

13 Q. Now Mr. Dest advised you to take the Alford plea
14 in part because as you just said that the drug charges
15 could have been tried first, added on top of each other,
16 and your sentence could have actually been, prior to
17 you even dealing with this homicide, more than what you
18 have now?

19 A. Yeah.

20 Q. You understood that at the time?

21 A. Yes, I understood it.

22 Q. And you and I have talked and you understand that
23 if Judge Kinard were to agree and grant your relief
24 today, you would be facing that again? You could be
25 facing more time now. You understand that; do you not?

1 A. I do understand that.

2 Q. And do you still want to go forward?

3 A. I still want to go forward because, like I said, I
4 feel like I've been convicted of something that I didn't
5 do. I don't care -- I know the consequences of me going
6 back and starting all over, what I'm facing, but I know
7 that I'm innocent and I believe that I'm not gonna be
8 found guilty of something I didn't do, especially after
9 the evidence that I know now of that I didn't know then.

10 Q. Okay. Before Judge Kinard makes a decision in this
11 case, do you believe there's anything else about this
12 matter that he needs to know that would help him make a
13 decision?

14 A. I mean, it's everything on -- on the application
15 and the transcript and I said -- I even wrote the judge
16 last time a letter and I believe it's on record. I
17 mean, I --

18 Q. And in that letter you told the judge that you
19 had --

20 A. I know the polygraph exam test is not admissible
21 in court, but most people believe in it. If not, I
22 wouldn't have never gotten the test, but -- it never
23 would have been brought up, so what I'm saying is I know
24 it wasn't no witness in my case that they corroborated
25 my story, but that's why the experts are there to do

1 the test and all, to give you their opinion, so they
2 corroborate what I'm saying in part.

3 Q. And let me correct something. You didn't write the
4 judge, you wrote the Solicitor. Is that correct?

5 A. What, the letter?

6 Q. Yes.

7 A. No, I wrote the judge.

8 Q. Oh, and gave it to -

9 A. Yeah.

10 Q. It was handed up during the plea?

11 A. Yeah.

12 Q. And you recognize that if the judge grants your
13 relief, you could be facing more time?

14 A. Yes, I recognize that.

15 Q. And you still want to go forward?

16 A. Yes, I do.

17 **MR. HEMLEPP:** That's very brave. Thank you very
18 much. Answer any questions that the Attorney General
19 may have. Thank you, Your Honor. I don't have any
20 further questions.

21 **MR. JOHNSON:** May it please the Court, Your Honor?

22 **THE COURT:** All right.

23 CROSS-EXAMINATION

24 BY MR. JOHNSON:

25 Q. Mr. Pinales, when you pled guilty to the drugs and

1 then Alford to the voluntary manslaughter, under oath
2 you said that you were not under any influence of drugs
3 or alcohol and you had no mental issues; isn't that
4 correct?

5 A. Yes.

6 Q. And that when the Solicitor read the facts into the
7 record, you agreed with those facts, correct?

8 A. Yes, sir.

9 Q. Because you were, indeed, guilty, correct?

10 A. No.

11 Q. Is that not what you said under oath at your guilty
12 plea?

13 A. No. I said I was pleading guilty, but I ain't said
14 I was really guilty. That's why I pled under certain --
15 Alford plea.

16 Q. And the judge read your constitutional rights to
17 you?

18 A. Yes.

19 Q. The right to a trial, the right to remain silent,
20 the right to present and cross-examine witnesses?

21 A. Yes.

22 Q. Okay. And you wanted to waive those rights?

23 A. Yes.

24 Q. Because you wished to plead guilty; guilty on the
25 drugs and Alford on the manslaughter case, right?

1 A. (Nods head.)

2 Q. Correct?

3 A. Yes.

4 Q. Okay. You said you were satisfied with your
5 attorney and that you understood all your conversations
6 with Mr. Dest?

7 A. To that moment, I was.

8 Q. Okay. And you had no complaint about your
9 attorney?

10 A. To that moment, I didn't.

11 Q. Nobody promised or threatened you to get you to
12 plead guilty?

13 A. No.

14 Q. And it was your decision to plead, correct?

15 A. With advice of my lawyer, yes.

16 Q. And you also apologized for fleeing the country,
17 correct?

18 A. Yes.

19 **MR. JOHNSON:** Okay. That's all I have at this
20 point, Your Honor.

21 **THE COURT:** All right. You can step down.

22 (Witness excused.)

23 **MR. HEMLEPP:** I have nothing further at this time.
24 Thank you, Your Honor.

25 **MR. JOHNSON:** The State calls Mr. Harry Dest.

1 **THE COURT:** All right.

2 **MR. HEMLEPP:** Your Honor, if I may, prior to
3 resting if I could go through the Court's file to make
4 sure that your record is complete.

5 **THE COURT:** Well, I'm not through with it yet. I
6 haven't read the transcript all the way through.

7 **MR. HEMLEPP:** I just want to make sure that you
8 have everything.

9 **THE COURT:** I understand. When I finish reading
10 the transcript, I'll look at the rest of it.

11 **MR. HEMLEPP:** Thank you, Your Honor.

12 **THE COURT:** I read his application.

13 **MR. HEMLEPP:** Yes, sir.

14 **THE COURT:** I haven't seen a 14-page letter that he
15 wrote to the judge. It may be in there, I don't know,
16 but let me read this first. I know he went to -- he
17 went to the Dominican Republic, it took three years to
18 get him back. Apparently he left before the body was
19 found.

20 Okay. I read the 42-page transcript and the other
21 things I have, of course, is his application and then I
22 have a Memoranda of Law that I glanced at earlier, which
23 is pretty long, seven pages, the sentencing sheet, and
24 I apparently have the letter, a 14-page letter it looks
25 like, and the affidavit for a guilty plea, a motion that

1 they filed and I've got his charges. That's all I've
2 got.

3 MR. HEMLEPP: With that, Your Honor, the Applicant
4 would rest.

5 THE COURT: Okay.

6 MR. HEMLEPP: Thank you, Your Honor.

7 MR. JOHNSON: The State would call Mr. Dest to the
8 stand, Your Honor.

9 HARRY A. DEST,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q. Good morning, Mr. Dest.

14 A. Good morning.

15 Q. Please tell the judge how you became involved in
16 this case.

17 A. Shortly after Mr. Mejia was arrested, our office
18 was appointed to -- to represent him. And he was
19 initially charged with murder and two counts of
20 possession with intent to distribute. Also there was
21 an assault and battery of a high and aggravated nature
22 charge and a minor driving offense. Those were the
23 initial charges. The charges dealing with the drug --
24 the drug charges were actually from 2006 and 2007 and
25 Mr. Mejia was out on bond. The murder charge was from

1 an incident that occurred on January 30, 2008.

2 Ultimately, just to kind of summarize, he did
3 plead to voluntary manslaughter. It was dropped from
4 murder to voluntary manslaughter. One of the possession
5 with intent to distribute charges was dropped down to
6 possession of crack -- or possession of cocaine, and he
7 did plead to possession with intent to distribute and a
8 possession with intent to distribute in proximity of a
9 school, so those were ultimately the charges he pled to.
10 The assault and battery of a high and aggravated nature
11 was dropped and one of the possession with intent to
12 distribute charges was dropped.

13 As he indicated in his testimony, he is correct
14 that the prosecutor prior to trying the murder charge
15 was going to try the drug cases first and then try
16 the murder charge at the end. So he was facing a
17 considerable amount of time, fifteen apiece on the
18 PWIDs, even prior to -- to getting to the murder charge.

19 Q. And he ultimately got 15 years total in this case,
20 correct?

21 A. That is correct.

22 Q. Okay. Did you file a discovery in both cases, the
23 drug cases and the murder case?

24 A. Yes, sir.

25 Q. And did you review that with him immediately after?

1 A. I did. I did, and if I may address the point of
2 contention, which is the voluntary manslaughter case, it
3 is true that Mr. Mejia always maintained that it was an
4 unintentional killing in that he never purposely tried
5 to shoot Ms. Schiavone.

6 In looking at the case, one of the things that I
7 wanted to do to try to convince the prosecutor that
8 perhaps an involuntary charge would have been a more
9 appropriate charge in this case was that I did hire my
10 own polygraph examiner, Mr. Johnny Hartley, out of
11 Columbia, who was a SLED examiner for, I believe,
12 28 years. Mr. Hartley did ask my client after I
13 arranged the polygraph examination two questions: Did
14 you purposely shoot Amber Schiavone and did you lie
15 about it? He passed both those questions.

16 I then went to the prosecutor to try to convince
17 him to come off the murder charge and hopefully come
18 down to involuntary manslaughter. Unfortunately, I was
19 not successful in convincing him to do that for a couple
20 of reasons. One, as indicated in the prior testimony,
21 Mr. Mejia left the area the very next day. In fact, in
22 the early morning hours of the next -- of that morning,
23 he went to Charlotte and contacted his mother and then
24 got on a flight to Dominican Republic and left the
25 country and was not apprehended until six hundred and

1 some odd days later, so he was in Dominican Republic
2 for quite some time.

3 The forensic evidence, if I may just briefly
4 summarize, the fatal -- it was a one shot. It was a
5 nine-millimeter pistol that actually hit Ms. Schiavone
6 in the face and then went through her brain and so it
7 was one shot. There was stippling or at least an
8 indication of a contact wound from what the pathologist
9 had testified to. The pathologist also would have
10 testified to, Dr. James Maynard, that there was no
11 defense wounds of any kind.

12 And it is true that there was no -- from my
13 investigation, there was no ill feeling or any type
14 of confrontation brewing between my client and
15 Ms. Schiavone. They had, in fact, been boyfriend and
16 girlfriend for some time. On the night in question,
17 he was out at a bar, she was out at a bar. She was
18 looking for drugs. And what transpired was that he did
19 arrange for her to come over to his apartment later in
20 the evening and that he did call some drug dealers who
21 brought over some cocaine and they left shortly before
22 Ms. Schiavone arrived and he was able to facilitate a
23 drug transaction and get her the drugs that she needed.
24 She was by all accounts a pretty severe drug addict.

25 At one point in time, some of the people that

1 Ms. Schiavone was with, they were looking for her. They
2 came to his apartment. My client answered the door with
3 a nine-millimeter pistol. Those individuals left and
4 she remained with him. At some point in time after
5 that, she got a hold of the nine-millimeter pistol and
6 began playing with it according to him and then he
7 tried to grab it from her and then he -- that's when he
8 told me the gun went off. So he was pretty consistent
9 from the first time that I met him about it being an
10 unintentional shooting.

11 I did interview Mr. Simmons, who was the trace
12 examiner, the SLED agent, and what he did say was that
13 he would have expected to find gunpowder residue on
14 Ms. Schiavone's hands if she, in fact, had her hands
15 on the pistol when it was discharged; however, if there
16 was an intervening cause, meaning, quite simply, if
17 there was something on her hands that would prevent the
18 gunpowder residue from being on her hands, that could
19 be a possible explanation such as gloves or long
20 sleeves, and as I indicated in the plea itself that she
21 had a long sleeve-type sweater on, and even Judge
22 Nettles said, that covered the hands.

23 What SLED did not do was try to detect whether any
24 gunpowder residue was on her clothing. And I don't
25 know why they did that, but -- or didn't do that, but

1 in asking Mr. Simmons he just said as a policy we don't
2 normally do that, which I didn't quite understand, but
3 I did tell the client all of these things as a part of
4 this case, and clearly I indicated those factors on the
5 record and told the judge that he recognizes he's giving
6 all of this up by entering an Alford plea. The reason
7 -- and, again, the reason for Alford was that he would
8 never admit to an intentional shooting and I told the
9 prosecutor that and I told Judge Nettles that in
10 chambers. I even showed Judge Nettles everything that I
11 was gonna talk about in court, including the polygraph
12 examination, including revealing to him my discussions
13 with the experts, but, again, as I indicated on the
14 record, it could be viewed two very different ways.

15 My sense is that in talking with the trace examiner
16 that he would have been more on the side that you would
17 expect to find something on her hands. That coupled
18 with the fact that he clearly was facilitating a drug
19 transaction, that he left the country right after this
20 before the body was found, were facts that we had to
21 contend with. I -- my thought was that it would be
22 better to enter a plea under Alford and clearly try to
23 minimize the amount of time that he was facing with the
24 cap of 20 years and, of course, I would argue for much
25 less.

1 I was hoping to get a sentence, I mean, quite
2 candidly, in the 10-year range as -- in an effort to
3 mitigate this. Unfortunately, the judge gave -- kind
4 of split it down the middle and gave him 15. I do not
5 think that was an unreasonable sentence based upon
6 everything involved and clearly it would give him a
7 chance at life some day outside the Department of
8 Corrections. Had we gone to trial, I'm not so sure
9 what the outcome would have been, but I was trying to
10 mitigate -- mitigate the situation as much as I could
11 and I felt that this was a reasonable resolution to
12 try to do that.

13 Q. Did you ever promise Mr. Pinales-Mejia any type of
14 sentence?

15 A. No, I never promised him a specific sentence, no,
16 because I just would never do that unless it was a
17 negotiated plea.

18 Q. Whose decision was it to accept the plea offer that
19 was given by the State?

20 A. It was his.

21 Q. And you discussed all of this with Mr. Mejia?

22 A. I did.

23 Q. And he was onboard with this as well?

24 A. Yes, sir.

25 **MR. JOHNSON:** I beg the Court's indulgence, Your

1 Honor. That's all I have at this time.

2 MR. HEMLEPP: May it please, the Court?

3 THE COURT: Sure.

4 CROSS-EXAMINATION

5 BY MR. HEMLEPP:

6 Q. Mr. Dest, this is actually a fairly simple PCR.
7 We're not questioning the sentencing, we're not
8 questioning your work in representing your client and
9 everything. It's a very simple PCR. My client's
10 testimony was that had he known the result of your
11 conversations with SLED, that that evidence was actually
12 exculpatory to him, that he would not have pled guilty.
13 That he learned of that at the guilty plea. The rest of
14 the case he testified was -- that's not a question of
15 your ability. You have indicated to Judge Kinard that
16 you did tell him about the results of your conversations
17 with SLED?

18 A. Yes.

19 Q. How many times did you visit with him in the jail?

20 A. Many times. I don't have an exact number, but at
21 least ten times.

22 Q. Do you keep a record of that?

23 A. Sometimes.

24 Q. Okay. In this matter, did you keep a record of
25 that?

1 A. I don't believe I did, no.

2 Q. Okay. Do you remember, and to the best of your
3 recollection, he indicated that you represented him for
4 about a year prior to the plea; is that correct?

5 A. Uh-huh.

6 Q. Do you remember at what point in the year you asked
7 Jonathan Hartley to do a polygraph?

8 A. I don't remember off the top of my head, no.

9 Q. And being that -- was it at the beginning, was it
10 the middle, the end? Was it right before the plea, was
11 it --

12 A. No, I mean, it -- I think it probably was in the
13 middle of the representation probably.

14 Q. Okay. Was it before or after you spoke to the SLED
15 agent regarding the gunshot --

16 A. Before.

17 Q. It was before you talked to the SLED agent about
18 the gunshot residue?

19 A. Uh-huh.

20 Q. I apologize. I didn't mean to step in before you
21 finished. Would it be fair to say -- now you worked
22 with Willy Thompson on this case from the Solicitor's
23 office?

24 A. Yes.

25 Q. Did you have a good working relationship with him?

1 A. Yes.

2 Q. Given the fact that your client indicated that he
3 was innocent --

4 A. Uh-huh.

5 Q. -- would it be fair to say that there was lots of
6 discussion between you and Assistant Solicitor Thompson?

7 A. Yes, I would say that's accurate, yes, sir.

8 Q. Okay. And how would you ensure that as the
9 investigation continued that you didn't -- you didn't
10 through oversight or the complexity of the case fail to
11 mention to your client -- how did you make sure that you
12 told him everything he needed to know to make a knowing
13 decision?

14 A. I mean, it was on-going. I mean, we met many
15 occasions and every time that I would have some issue,
16 I would talk to him about it. So, I mean, I know it was
17 clear that we talked about it because, as I indicated
18 on the record, you know, I -- I never disputed or
19 challenged his rendition of the facts. In fact, I tried
20 to in the plea itself, and prior to the plea, give the
21 Solicitor as much information as I could to move it in
22 that direction, so everything that -- that I talked
23 about in the plea was something that I had talked to
24 him about as well and even up until the end, you know,
25 the only way that we would have entered any type of a

1 plea was under Alford and as I explained to my client,
2 it's my understanding under Alford you can still have
3 a protestation of innocence even going forward and
4 waiving your right to a jury trial. So I -- you
5 know, my -- my recollection was that we talked about
6 everything.

7 **MR. HEMLEPP:** Okay. Thank you. Nothing further.

8 **MR. JOHNSON:** No further questions and no further
9 witnesses from the State.

10 **THE COURT:** All right. You can step down.

11 (Witness excused.)

12 **MR. JOHNSON:** And I ask that Mr. Dest be released.

13 **THE COURT:** In a minute. Okay. The judge was
14 well aware that your client maintained his innocence
15 throughout. He claimed it was an accident and he
16 even wrote him a letter and all the plea things and
17 everything. So, as you mentioned, it was just --
18 pleading under Alford is a trade-off, as we know, and
19 he may not. From the prior transcripts I'm surprised
20 that Judge Nettles didn't give him 20 years since he
21 seems to like to give maximums and that he pled to that
22 and he just gave him 15 concurrent. He would have been
23 in bad shape if he had gone to trial and there are a
24 couple of other situations against him, so it just comes
25 down in this case as to whether or not Mr. Dest told him

1 about the residue situation, which even with the residue
2 situation, you've got a dead person and him leaving the
3 county and the country and so forth would create
4 problems in a trial. But if he was not advised of the
5 residue results, he would be entitled to a trial even
6 though it wouldn't be in his best interest, but having
7 dealt with Mr. Dest and whatever, he's got a pretty
8 good recollection, I just find that he advised him. He
9 didn't understand the consequences at that time and he's
10 been in jail long enough to think about it and think
11 about it, so I have to find that his application fails.
12 I'm sorry.

13 **MR. HEMLEPP:** Thank you, Your Honor.

14 **THE COURT:** He writes pretty good English. I read
15 his letter, you know.

16 **MR. HEMLEPP:** Yes, sir. Yes, sir.

17 (Proceedings were concluded at 11:30 AM.)
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eighth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete transcript of record of all
the proceedings had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
4th day of August, 2014.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

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

December 3, 2014

s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Carlos Luis Pinales-Mejia, #354376,

2013-CP-46-3702

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED - RECEIVED
2014 OCT -7 AM 10:48
DAVID HAMILTON
C.C.P. & GS.
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 5, 2013. Respondent made its Return on March 4, 2014. An evidentiary hearing into the matter was convened on August 4, 2014, at the Moss Justice Center in York, SC. W. Michael Hemlepp, Jr., Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Harry Dest, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the August 2007 term of the York County Grand Jury for Possession of Cocaine with Intent to Distribute (PWID) (2007-GS-46-2858) and PWID Cocaine within proximity of a school (2007-GS-46-2859). He was also indicted at the August 2008 term of the York County Grand Jury for Murder (2008-GS-

46-3480). Harry Dest, Esquire, represented him. On February 11, 2013, Applicant pled guilty as indicted to PWID Cocaine, 1st offense and PWID within proximity of a school and pled pursuant to North Carolina v. Alford to Voluntary Manslaughter as a lesser included offense of Murder before the Honorable Michael G. Nettles. Judge Nettles sentenced Applicant, pursuant to a recommendation from the State, to fifteen (15) years for Voluntary Manslaughter, fifteen (15) years, concurrent, for PWID Cocaine, 1st offense, and ten (10) years for PWID within proximity of a school. Applicant filed a notice of appeal, but his appeal was denied by the South Carolina Court of Appeals on April 3, 2013. The Remittitur was issued on April 22, 2013.

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

1. "Ineffective Assistance of Trial Counsel"
 - a. "The applicant's guilty plea was involuntary by reason of ineffective assistance of trial counsel's failure to inform him of exculpatory evidence prior to the entrance of his guilty plea."
 - b. "The applicant's guilty plea was involuntary by reason of ineffective assistance of trial counsel's failure to inform him that his drug indictments insufficiently charged his offenses."

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he pled guilty to the drug charges and pled under Alford to the Voluntary Manslaughter charge. He claimed he pled guilty to the drug charges because he was guilty and because of the advice of Counsel. He also claimed he pled under Alford

to Voluntary Manslaughter because he was not guilty of that charge. He testified he was represented by Counsel and spoke with him about the case on several occasions and told Counsel he was not guilty of the murder. Applicant also stated he took a polygraph test, which was arranged by Counsel, and passed it.

Applicant also testified that during the plea, the State recited its version of the facts: Applicant then claimed he knew about the gun-shot residue test and that Counsel spoke about it during the plea, but Counsel did not discuss it with him prior to the plea. Applicant claimed had he known about the gun-shot residue test before the plea, he would not have pled. Applicant further claimed the incident was an accident and Counsel advised him to plead under Alford. Applicant lastly testified he understood the drug charges could be worse if they were tried separately from the murder charge and also testified he understood he could face all of the charges again if he were successful in this PCR action.

On cross-examination, Applicant admitted he was not under the influence of drugs or alcohol and had no mental or emotion issues during the guilty plea. Applicant also agreed with the facts of the case as the solicitor articulated during the plea. Applicant admitted the plea judge advised him of his constitutional rights and that he waived them in order to plead guilty. Applicant testified he was satisfied with Counsel's representation and had no complaints about Counsel. Applicant stated it was his decision to plead guilty and that nobody threatened him or promised him anything to plead guilty.

Counsel testified he is the Chief Public Defender for the 16th Circuit and has been practicing criminal defense for twenty-four years. Counsel testified Applicant's drug charges stemmed from 2006 and 2007 while his murder charge was from 2008. Counsel stated the State would have tried

the drug cases separately from the murder case had Applicant not pled to all charges. Counsel testified he filed for discovery in both cases. Counsel also testified Applicant maintain that the killing of Victim was an accident. Counsel stated he engaged in negotiations with the State and even hired a polygraph examiner to test Applicant, which Applicant passed. Counsel testified that Applicant then absconded to the Dominican Republic and returned two years later.

Counsel additionally testified the forensic evidence revealed there was one shot to Victim's face with a .9mm and there was stippling on Victim's face from a contact wound. Counsel stated there were no defensive wounds found on Victim, which revealed there was no physical confrontation between Applicant and Victim. Counsel testified the evidence at trial would have been that Applicant and Victim were out at a bar and that Victim was looking for drugs. Applicant then called a drug dealer for Victim and Applicant facilitated a drug transaction at Applicant's apartment. Then Victim's friends came to Applicant's apartment and saw Applicant with a .9mm handgun. According to Applicant, while inside the apartment, Victim tried to grab the gun from Applicant and an unintentional shooting occurred, killing Victim. Counsel also testified the trace evidence would have shown gun-shot residue on Victim's hands had she grabbed the gun; the South Carolina Law Enforcement Division (SLED) report revealed there was no gun-shot residue on the palms of her hands. Counsel further stated Victim was wearing a long-sleeved sweater at the time of the incident and that SLED did not test Victim's sweater or the back of her hands for gun-shot residue. Counsel then testified he explained all of this to Applicant before the hearing and on the record.

Counsel again testified Applicant pled under Alford because Applicant never admitted to an intentional shooting. Counsel advised Applicant about Alford and argued for less time than what Applicant received; Counsel argued for around a ten-year sentencing range. Counsel also testified if

Applicant proceeded to trial, he would not know the outcome, but that it was Applicant's decision to plead to these charges.

On cross-examination, Counsel testified he explained the SLED results to Applicant and met with him many times. Counsel also stated he worked with the State to obtain a favorable plea offer and that the only way Applicant was going to plead was under Alford.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds the testimony of the Applicant not credible while finding Counsel's testimony very credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

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 (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. 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 (1985).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

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. Therefore, these allegations are denied.

CONCLUSION

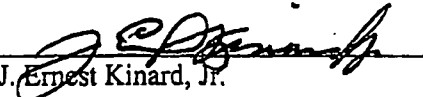
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the 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 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!


J. Ernest Kinard, Jr.
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

9/3, 2014
Beaufort, South Carolina

WITNESSES

DEVLubben

DOCKET NO. 2006-GS-46

083/2

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Carlos L. Pinales-Mejia
hereby appear in my own proper person and plead guilty to the within indictment or to
as charged

✓ [Signature]
Defendant

Witness:
Sophiane Naudin, Victim Supper
C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

J-161527

THE STATE

VS.

CARLOS LUIS PINALES-MEJIA

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

1013-00

VERDICT

Indictment for

POSSESSION OF COCAINE

Foreperson of Petit Jury
Date:

SC Code: § 44-53-370
CDR Code: 3011

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

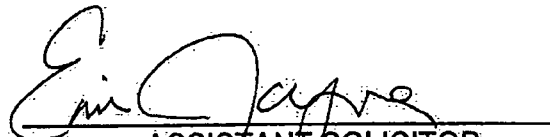
INDICTMENT

At a Court of General Sessions, convened on October 12, 2006, the Grand Jurors of York County present upon their oath:

POSSESSION OF COCAINE

That on or about July 14, 2006, in York County, South Carolina, the Defendant, Carlos Luis Pinales-Mejia, did possess a quantity of cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law, all in violation of Section 44-53-370, 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

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006-GS46-03312

A/W#: J161527

Date of Offense: 7/14/2006

S.C. Code §: 44-53-0370 (d)(3)

CDR Code #: 3011

SENTENCE SHEET

ORIGINAL

☐ CONVICTED OF or ☒ PLEADS

AKA:

Race: [REDACTED] Sex: M Age: 25

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City/State/Zip: Rock Hill, SC 29730

DL#: [REDACTED] SID#: SC 01705195

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs/possession of cocaine, 1st offense

in violation of § 44-53-0370 (d)(3) of the S.C. Code of Laws, bearing CDR Code # 3011

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. 6/21/06 (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: Erin M. Joyner 6/21/06 SC Bar# 65718 Carlos L. Pinales Defendant Harry Dat Attorney for Defendant 11871 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2006-GS46-0340, J163399, J163400☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 6/23/06☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: \$ _____

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150/ea \$ 100

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 226Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code: 2142

Sentence Date: 2-11-13

WITNESSES

RHPD / HAIRE

Mac

ARREST WARRANT NUMBER

COUNT ONE: Dir. Ind. Re: K315475
COUNT TWO: Dir. Ind. Re: K315735

ACTION OF GRAND JURY

TRUE BILL

Gabriel J. Mac
Foreperson of Grand Jury
8/21/08

VERDICT

Forfeiture of Petit Jury
Date:

DOCKET NO. 2008-GS-46-03480

03480A

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

AUGUST 21, TERM 2008

THE STATE

vs.

CARLOS LUIS PINALES-MEJIA

Indictment for

COUNT 1 - MURDER

SC Code: § 16-3-10
CDR Code: 0116

~~COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME~~

SC Code: 16-23-0490
CDR Code: 0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Carlos L. Pinales-Mejia
hereby appear in my own proper person and
plead guilty to the within indictment or to
only

Voluntary Masslaughter

Defendant

Witness:

Stephanie Nolas, Clerk Superior
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

DEC 10 AM 9:39

At a Court of General Sessions, convened on August 21, 2008, the Grand Jurors of York County present upon their oath:

COUNT 1 - MURDER

Carlos Luis Pinales-Mejia, did in York County on or about January 30, 2008, feloniously, willfully and with malice aforethought, kill one Amber Marie Schiavone by means of shooting said victim and Amber Marie Schiavone died as a result thereof, all in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended. The Murder occurred at or in close proximity to [REDACTED] in the City of Rock Hill, South Carolina.

COUNT 2 - POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

On or about January 30, 2008, Carlos Luis Pinales-Mejia, did in York County possess a firearm while committing the violent crime of Murder. The crime occurred at or in close proximity to [REDACTED] in the City of Rock Hill, South Carolina, all in violation of Section 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.

Villy Thompson
DEPUTY SOLICITOR

SOUTH CAROLINA

York

VS.

Carlos Luis Pinales Mejia

AKA:

Race: HISPANIC Sex: M

Age: 25

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Rock Hill, SC 29730

DL#: [REDACTED] SID#: SC 01705195

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Voluntary Manslaughter

IN THE COURT OF GENERAL SESSIONS

129

INDICTMENT/CASE#: 2008-GS46-03480

A/W#: 2008GS4603480

Date of Offense: 1/30/2008

S.C. Code § : 16-03-0010; 0020

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. *CLM* (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Walter Thompson
Thompson, Walter W.

SC Bar#

Defendant

Harvey Best
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: § 16-15-27, § 16-34-00, § 16-33-49☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 643 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$ 130

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code: 2140

Sentence Date: 2-11-13

WITNESSES

DeJ/Schettler

ARREST WARRANT NUMBER

J163399

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-46- 02858

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 16, Term 2007

THE STATE

vs.

CARLOS LUIS PINALES-MEJIA

Indictment for

POSSESSION OF COCAINE WITH INTENT
TO DISTRIBUTE

SC Code: § 44-53-370
CDR Code: 0183

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Carlos L. Pinales-Mejia
hereby appear in my own proper person and plead guilty to the within Indictment or to
as charged

Defendant

Witness:
Marjorie Naulia, Court Reporter
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

FILED
DEC 10 AM 9:38

At a Court of General Sessions, convened on August 16, 2007, the Grand Jurors of York County present upon their oath

POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE

That on or about May 12, 2007, in York County, South Carolina, the Defendant, Carlos Luis Pinales-Mejia, did unlawfully possess with intent to distribute, dispense, deliver a quantity of cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such possession with intent to distribute not having been authorized by law, all in violation of Section 44-53-370, 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.

Em. J. [Signature]
ASSISTANT SOLICITOR

OF York
VS.
Carlos Luis Pinales Mejia

INDICTMENT/CASE#: 2007-GS46-02858

A/W#: J163399

Date of Offense: 5/12/2007

S.C. Code §: 44-53-0370(b)(1)

CDR Code #: 0183

Race: HISPANIC Sex: M Age: 25

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Rock Hill, SC 29730

DL#: SID#: SC 01705195

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. CLM (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Walter Thompson 65728 SC Bar# Carlos L. Pinales Defendant Harvey Dest 11871 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2008GS460340, J161527, J163400☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 643 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 225

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk
Court Reporter:

David Hamilton
Wanda Nelson

Presiding Judge

Judge Code: 2/4Sentence Date: 2/11/13

WITNESSES

DEUSchettler

DOCKET NO. 2007-GS-46-

02859

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 16, Term 2007

ARREST WARRANT NUMBER

J-163400

THE STATE

vs.

CARLOS LUIS PINALES-MEJIA

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

8-16-07

VERDICT

Indictment for

POSSESSION OF COCAINE WITH
INTENT TO DISTRIBUTE WITHIN
PROXIMITY OF A PUBLIC SCHOOL

SC Code: § 44-53-445

CDR Code: 107

Foreperson of Petit Jury
Date:

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

Carlos L. Pinales-Mejia
hereby appear in my own proper person and plead
guilty to the within indictment or to

as charged

Defendant

Witness:
S. D. MAJIA, Notary Public
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF YORK

2013 DEC 10 AM 9:38

At a Court of General Sessions, convened on August 16, 2007, the Grand Jurors of York County present upon their oath:

**POSSESSION OF COCAINE DRUG WITH INTENT
TO DISTRIBUTE WITHIN PROXIMITY OF A PUBLIC SCHOOL**

That on or about May 12, 2007, in York County, South Carolina, the Defendant, Carlos Luis Pinales-Mejia, did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a controlled substance, to wit: cocaine, within a one-half mile radius of the grounds of Sullivan Middle School, a public school located in the city of Rock Hill, South Carolina, such possession with intent to distribute not having been authorized by law, all in violation of Section 44-53-445, 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.

Erin Jaynes

ASSISTANT SOLICITOR

COUNTY OF
STATE

York

VS.

Carlos Luis Pinales Mejia

INDICTMENT/CASE#: 2007-GS46-02859

A/W#: J163400

Date of Offense: 5/12/2007

S.C. Code §: 44-53-0445(B)(1)

CDR Code #: 0107

AKA:

Race: HISPANIC

Sex: M

Age: 25

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Rock Hill, SC 29730

DL#: [REDACTED]

SID#: [REDACTED]

SC 01705195

*CDL [REDACTED] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was

[] CONVICTED OF or [X] PLEADS

TO: Drugs / Distribute, sell, purchase, manuf. drug other than crack cocaine, or pwid, near school, pwid 6-15

in violation of § 44-53-0445(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0107

[X] NON-VIOLENT [] VIOLENT [X] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [X] Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: [] Without Negotiations or Recommendation, [] Negotiated Sentence, [X] Recommendation by the State.

ATTORNEY

Wally Thompson

65718

Carlos L. Pinales

Harvey Pest

1187

Thompson, Erin M.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center,

for a determinate term of 15 days/months/years or [] under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 2007-GS46-03480, 2007-GS46-03399, 2007-GS46-03527

[X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 643 days

[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

[] Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforcement Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 100
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 225

PTUP

_____ days/hours Public Service Employment

Obtain GED []

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling []

Random Drug/Alcohol testing []

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

[] Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

David Hamelton

Court Reporter:

Wanda Nelson

Presiding Judge

Judge Code: 2170

Sentence Date: 2/11/13