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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Spartanburg County

R. Keith Kelly, Circuit Court Judge

JUAN CARLOS VASQUEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000057

APPENDIX

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INDEX

INDEX.....	i
GUILTY PLEA TRANSCRIPT	1
SENTENCING TRANSCRIPT	36
APPLICATION FOR POST-CONVICTION RELIEF	69
RETURN	83
POST-CONVICTION RELIEF HEARING TRANSCRIPT	90
ORDER OF DISMISSAL	146
INDICTMENTS	156

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Juan Carlos Estrada-Vazquez,) 2009-GS-42-2337;2338
6 Defendant.) 2010-GS-42-3207
7) July 12, 2010
8) Spartanburg, South Carolina
9
10

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE
13
14

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

16 BARRY JOE BARNETTE, ESQUIRE
17 Attorney for the State

18 HUNTER CHASE HARBIN, ESQUIRE
19 Attorney for the Defendant
20
21
22

23 Linda D. Moffitt
24 Circuit Court Reporter
25

INDEX

1

2 Guilty plea -- page 3.

3 No sworn testimony.

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1		<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-1	DVD		4
4	S-2	DVD		4
5	S-3	Miranda (Spanish)		4
6	S-4	Analysis		4
7	S-5	Analysis		4
8	S-6	Miranda (Spanish)		4
9	S-7	Autopsy report		4
10	S-8	Autopsy report		4
11	S-9	Photographs		4
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1 (DVD marked State's Exhibit No. 1; DVD marked State's
2 Exhibit No. 2; Miranda (Spanish) marked State's Exhibit No.
3 3; analysis marked State's Exhibit No. 4; analysis marked
4 State's Exhibit No. 5; Miranda (Spanish) marked State's
5 Exhibit No. 6; autopsy report marked State's Exhibit No. 7;
6 autopsy report marked State's Exhibit No. 8; photographs
7 marked State's Exhibit No. 9.)

8 MR. BARNETTE: May it please the Court, Your Honor.

9 This is the case of the State vs. Juan Carlos
10 Estrada-Vazquez. Your Honor, he's pleading guilty to three
11 indictments.

12 Your Honor, the first indictment is 09-GS-42-2337.
13 It's trafficking cocaine 400 grams or more. Your Honor,
14 that has been true billed by the grand jury.

15 Your Honor, 09-GS-42-2338, possession with intent to
16 distribute marijuana, Your Honor, first offense. That one
17 has been true billed by the grand jury.

18 Then, Your Honor, is 2010-GS-42-3207. It also has an
19 A and B, which it has three counts on it, Your Honor. He's
20 pleading guilty to accessory before the fact to murder,
21 count one, accessory before the fact to murder, count
22 two -- there's two victims in this case -- and accessory
23 before the fact of burglary first degree, Your Honor, which
24 is count three.

25 All of those have been true billed by the grand jury,

1 Your Honor. He's represented by Mr. Chase Harbin, Your
2 Honor. This is a straight-up plea, Your Honor, without
3 negotiations or recommendations.

4 We'd ask for sentencing to be withheld at a later
5 time, Your Honor, in this case. I've talked to defense
6 counsel about that, and possibly he'll be cooperating in
7 the future, Your Honor.

8 There has been no recommendations. If he does
9 cooperate we'll be telling the Court about it at a later
10 date, Your Honor.

11 We do have nine exhibits in this case, Your Honor. I
12 can go through those exhibits and make it a part of the
13 record during the facts, Your Honor.

14 May I approach the bench, Your Honor?

15 THE COURT: Yes.

16 All right. This is the matter of the State vs. Juan
17 Carlos Estrada-Vazquez. Mr. Vazquez is present with Mr.
18 Harbin, his lawyer.

19 There's also present a person serving as an
20 interpreter by the name of Ruby Stephens.

21 Ms. Stephens, you are the interpreter in this matter?

22 THE INTERPRETER: Yes, Your Honor.

23 THE COURT: And are you at least 18 years of age or
24 older?

25 THE INTERPRETER: Yes, Your Honor.

1 THE COURT: Are you in any way related to the
2 defendant?

3 THE INTERPRETER: No, Your Honor.

4 THE COURT: Are you an instructor of foreign language
5 at any institution of education?

6 THE INTERPRETER: No, Your Honor.

7 THE COURT: Do you have educational training or
8 experience that enables you to speak fluently in foreign
9 language --

10 THE INTERPRETER: Yes, your Honor.

11 THE COURT: -- and interpret the language of another
12 person?

13 THE INTERPRETER: Yes, Your Honor.

14 THE COURT: And have you previously served as an
15 interpreter in the court --

16 THE INTERPRETER: Yes, Your Honor.

17 THE COURT: -- circuit court of South Carolina?

18 THE INTERPRETER: Yes.

19 THE COURT: And you are on an approved list with court
20 administration for providing interpreting services in this
21 court?

22 THE INTERPRETER: Yes, Your Honor.

23 THE COURT: And have you had conversations with
24 Mr. Vazquez?

25 THE INTERPRETER: This morning with his lawyer.

1 THE COURT: And do you perceive any difficulties in
2 translation or in understanding the language that
3 Mr. Vazquez speaks?

4 THE INTERPRETER: As long as he enunciates, no.

5 THE COURT: All right. There are no dialects,
6 difficulties or problems?

7 THE INTERPRETER: None that cannot be resolved, no.

8 THE COURT: All right. Ms. Stephens, let me ask you
9 to inform Mr. Vazquez that if at any time during the course
10 of this process he has any difficulty whatsoever in
11 understanding a question or your interpretation to let me
12 know and let you know so that we can address any difficulty
13 we might have.

14 Do you understand that, Mr. Vazquez?

15 THE DEFENDANT: Yes, sir.

16 THE INTERPRETER: Yes, sir.

17 THE COURT: All right. You are Juan Carlos
18 Estrada-Vazquez.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Harbin's your lawyer?

21 THE DEFENDANT: Yes, sir.

22 THE INTERPRETER: Yes, sir.

23 THE COURT: How long has he been representing you with
24 respect to these charges?

25 THE INTERPRETER: From the moment that they detained

1 me.

2 THE COURT: And when was that?

3 THE INTERPRETER: 31st of February -- 31st of January.

4 THE COURT: Of what year?

5 THE INTERPRETER: 2009.

6 THE COURT: During the time that Mr. Harbin has been
7 representing you have you had plenty of time to talk with
8 him about these cases --

9 THE INTERPRETER: Yes..

10 THE COURT: -- as well as your decision to apparently
11 plead guilty?

12 THE INTERPRETER: Yes, sir.

13 THE COURT: Did he go over each of these indictments
14 with you and explain to you what the state claims you did?

15 THE INTERPRETER: Yes.

16 THE COURT: Did he explain to you what would have to
17 be proven in court before you could be found guilty of
18 accessory before the fact to murder?

19 THE DEFENDANT: Yes, sir.

20 THE INTERPRETER: Yes, sir.

21 THE COURT: Of accessory before the fact to burglary
22 in the first degree?

23 THE DEFENDANT: Yes, sir.

24 THE INTERPRETER: Yes, sir.

25 THE COURT: Of trafficking in cocaine?

1 THE DEFENDANT: Yes.

2 THE INTERPRETER: Yes.

3 THE COURT: Of possession with intent to distribute
4 marijuana?

5 THE DEFENDANT: Yes.

6 THE INTERPRETER: Yes.

7 THE COURT: Did he also explain to you the potential
8 sentences that could be imposed upon a conviction for each?

9 THE DEFENDANT: Yes.

10 THE INTERPRETER: Yes.

11 THE COURT: And did you tell him everything you know
12 about the allegations contained in these indictments?

13 THE DEFENDANT: Yes.

14 THE INTERPRETER: Yes.

15 THE COURT: Did you and he discuss whether or not you
16 had a defense to any of the charges?

17 THE INTERPRETER: What do you mean? I don't
18 understand.

19 THE COURT: Did you and he discuss whether or not you
20 have any reason whatsoever why you should not be found
21 guilty of any of these charges?

22 THE INTERPRETER: Yes.

23 THE COURT: And do you know of any reason what you
24 should be found not guilty of any charge?

25 THE INTERPRETER: Yes.

1 THE COURT: And what reason do you have why you should
2 be found not guilty, and to which charge?

3 THE INTERPRETER: That's why I'm declaring myself
4 guilty, because I cannot prove it.

5 MR. HARBIN: I believe he misunderstood your question
6 a bit, Your Honor.

7 THE COURT: Well, suffice it to say, that would be
8 accurate.

9 My question is -- listen carefully to my question. My
10 question is do you know of any reason why you should be
11 found not guilty.

12 THE INTERPRETER: No.

13 THE COURT: I have a number of questions that I'm
14 going to have to ask you about this process. The purpose
15 is for me to determine whether or not your apparent
16 decision to plead guilty is freely and voluntarily made.

17 If at any time you don't understand a question or you
18 need to talk with your lawyer tell me and we'll stop and
19 provide you time to discuss it with your lawyer.

20 Do you understand?

21 THE INTERPRETER: Yes.

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

23 THE INTERPRETER: Yes.

24 THE COURT: Indictment 2010-3207 charges you with
25 three separate and distinct criminal offenses. Count one

1 of the indictment alleges you committed the crime of
2 accessory before the fact to murder.

3 The state alleges on or about January the 24th of 2009
4 that you did aid, assist, procure, counsel or command Rudis
5 Ventura, Lewis Perez, and/or Jose Del Angel Gomez to commit
6 the crime of murder of Hugo Del Carm Lugo-Hernandez and
7 that you did conspire with Rudis Ventura, Lewis Perez
8 and/or Jose del Angel Gomez in violation of a particular
9 section of law.

10 If you were found guilty of that crime or if I accept
11 your plea of guilty to that charge you could receive a
12 sentence of up to life imprisonment. It requires a
13 mandatory minimum sentence of not less than 30 years.

14 Do you understand that charge and the potential
15 sentence?

16 THE DEFENDANT: Yes, sir.

17 THE INTERPRETER: Yes, sir.

18 THE COURT: Count two of this indictment charges you
19 with accessory before the fact to murder.

20 The state alleges that you did here in Spartanburg
21 County on or about January the 24th of 2009, did aid,
22 assist, procure, counsel or command Rudis Ventura, Lewis
23 Perez and/or Jose Del Angel Gomez to commit the crime of
24 murder of Teresa De Jesus Avilla-Martinez and that you did
25 conspire with Rudis Ventura, Lewis Perez and/or Jose Del

1 Angel Gomez in violation of a particular statute of law.

2 Again, accessory before the fact to murder carries a
3 potential sentence of life imprisonment. It requires a
4 mandatory minimum sentence of not less than 30 years.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE INTERPRETER: Yes, sir.

8 THE COURT: And count three of that indictment charges
9 you with accessory before the fact to burglary in the first
10 degree.

11 The state alleges that in this indictment, that you
12 did on or about January the 24th of 2009 aid, assist,
13 procure, counsel or command Señor Ventura Perez or Del
14 Angel Gomez to commit the crime of burglary first degree,
15 that occurring at the residence of Lugo-Hernandez and/or De
16 Jesus Avilla-Martinez. Do you understand that charge?

17 THE DEFENDANT: Yes, sir.

18 THE INTERPRETER: Yes, sir.

19 THE COURT: Do you understand it also carries a
20 sentence of up to life in prison, a mandatory minimum
21 sentence of not less than 30 years?

22 MR. BARNETTE: May we approach for a second, Your
23 Honor?

24 THE COURT: Yes.

25 (Bench conference held off the record.)

1 THE COURT: I'm sorry. Mr. Vazquez, burglary in the
2 first degree carries a minimum sentence of not less than 15
3 and up to a sentence of life imprisonment.

4 Do you understand that charge and the potential
5 sentence?

6 THE DEFENDANT: Yes, sir.

7 THE INTERPRETER: Yes, sir, yes, sir.

8 THE COURT: Indictment 2009-2337 charges you with
9 trafficking in cocaine.

10 The state alleges that occurred back on or about
11 January the 30th of 2009. And they allege on that date
12 that you did knowingly sell, manufacture, cultivate,
13 deliver, purchase or bring into this state, or that you did
14 provide financial assistance, or otherwise did aid, abet,
15 attempt or conspire to sell, manufacture, cultivate,
16 deliver, purchase or bring into the state, or that you did
17 knowingly have in your actual or constructive possession,
18 or did knowingly attempt to become in actual or
19 constructive possession of more than 400 grams of cocaine.

20 If convicted or if I accept your plea of guilty as to
21 that charge you could receive a sentence of up to 30 years
22 in jail. It requires a mandatory minimum sentence of not
23 less than 25 years.

24 Do you understand that charge and the potential
25 sentence?

1 THE DEFENDANT: Yes, sir.

2 THE INTERPRETER: Yes, sir.

3 THE COURT: Indictment 2009-2338 charges you with
4 possession with intent to distribute marijuana.

5 The state alleges on or about January the 30th of 2009
6 you did possess some quantity of marijuana and that at the
7 time you possessed it you intended to distribute it.

8 That carries an additional potential sentence of up to
9 five years in jail and a fine of \$5,000.

10 Do you understand each of the charges in the
11 indictments?

12 THE DEFENDANT: Yes, sir.

13 THE INTERPRETER: Yes, sir.

14 THE COURT: Do you understand each of the potential
15 sentences that I can impose if I accept your pleas?

16 THE DEFENDANT: Yes, sir.

17 THE INTERPRETER: Yes, sir.

18 THE COURT: You have no defense to any of these
19 charges?

20 THE DEFENDANT: No.

21 THE INTERPRETER: No.

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

23 THE DEFENDANT: Yes.

24 THE INTERPRETER: Yes, sir.

25 THE COURT: Has Mr. Harbin explained to you each of

1 the rights that you have that you have to give up if you
2 want to plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE INTERPRETER: Yes, sir.

5 THE COURT: Did he explain to you that you have the
6 right to remain silent?

7 THE DEFENDANT: Yes.

8 THE INTERPRETER: Yes, sir.

9 THE COURT: Which means you do not have to testify;
10 you do not have to make a statement; you do not have to
11 answer any questions that relate to these charges including
12 the questions that I'm asking you right now.

13 But if you want plead to plead guilty you have to give
14 that right up because I have to ask you questions in order
15 to determine the voluntariness of your decision.

16 Do you understand the right to remain silent?

17 THE DEFENDANT: Yes, sir.

18 THE INTERPRETER: Yes, sir.

19 THE COURT: Do you wish to give it up in order to
20 plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE INTERPRETER: Yes, sir.

23 THE COURT: You also have the right to confront any
24 witness that would offer evidence against you. You have a
25 right to require the state to bring each of their witnesses

1 into court.

2 Any person that would offer testimony or other
3 evidence tending to prove your guilt would have to come
4 into court and take the witness stand.

5 They would testify in your presence under oath. You
6 could see who they are and hear what they have to say.
7 Your lawyer would be able to examine the witness and ask
8 them questions in order to test each witness' credibility
9 and the reliability of the information they provide. When
10 you plead guilty the witnesses are not examined in court.

11 Do you understand that right?

12 THE DEFENDANT: Yes, sir.

13 THE INTERPRETER: Yes, sir.

14 THE COURT: Do you wish to give that right up in order
15 to plead guilty?

16 THE DEFENDANT: Yes, sir.

17 THE INTERPRETER: Yes, sir.

18 THE COURT: Do you also understand that you have a
19 right to have a jury trial?

20 THE DEFENDANT: Yes, sir.

21 THE INTERPRETER: Yes, sir.

22 THE COURT: And you have a right for a jury made up of
23 12 people to determine whether or not you are guilty of any
24 crime the state claims you committed.

25 And if you wish to have a jury trial you help pick the

1 jury. Twelve persons are selected. Once selected they sit
2 over there in that jury box.

3 They listen to the testimony. They consider all of
4 the evidence introduced in the case. After all of the
5 evidence has been received the jury is instructed on the
6 law they are to apply. And the jury goes back into a
7 private room to deliberate.

8 During the course of their deliberations they decide
9 the facts that relate to each of your cases. After
10 deciding the facts they apply the law that I will have
11 given them.

12 They determine whether or not you should be found
13 guilty of any crime the state claims you committed. Before
14 you could be found guilty of any of these charges all 12
15 jurors have to be convinced of your guilt beyond a
16 reasonable doubt. And the burden is on the prosecutor to
17 convince the jury of your guilt.

18 You can have a jury trial and still not testify or
19 answer questions in the case. You may testify or present
20 evidence if you wish to. It is your decision as to whether
21 you will or will not.

22 Do you understand your right to have a jury decide
23 whether or not you're guilty?

24 THE DEFENDANT: Yes, sir.

25 THE INTERPRETER: Yes, sir.

1 THE COURT: Do you wish to give that right up in order
2 to plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE INTERPRETER: Yes, sir.

5 THE COURT: Mr. Vazquez, do you understand that the
6 crimes of accessory before the fact to murder, accessory
7 before the fact to burglary in the first degree and
8 trafficking in cocaine more than 400 grams are all
9 classified as violent offenses under the law?

10 THE DEFENDANT: Yes, sir.

11 THE INTERPRETER: Yes, sir.

12 THE COURT: Did Mr. Harbin explain -- did Mr. Harbin
13 explain to you the significance of a crime being classified
14 as violent?

15 THE DEFENDANT: Yes.

16 THE INTERPRETER: Yes.

17 THE COURT: And do you understand it?

18 THE DEFENDANT: Yes, sir.

19 THE INTERPRETER: Yes, sir.

20 THE COURT: Did he also explain to you and do you
21 understand that the crimes of accessory before the fact to
22 murder, accessory before the fact to burglary in the first
23 degree and trafficking in cocaine more than 400 grams are
24 each classified and designated under the law as most
25 serious offenses?

1 THE DEFENDANT: Yes, sir.

2 THE INTERPRETER: Yes, sir.

3 THE COURT: And do you understand the significance of
4 that designation?

5 THE DEFENDANT: Yes, sir.

6 THE INTERPRETER: Yes, sir.

7 THE COURT: Have you ever been convicted of a crime
8 that was classified as violent?

9 THE DEFENDANT: No.

10 THE INTERPRETER: No.

11 THE COURT: Have you ever been convicted of a crime
12 that was classified as serious or most serious?

13 THE DEFENDANT: No.

14 THE INTERPRETER: No.

15 THE COURT: And do you also understand that the crimes
16 of accessory before the fact to murder are classified as
17 no-parole offenses?

18 THE INTERPRETER: Yes, sir.

19 THE COURT: And, more specifically, there's a
20 mandatory minimum sentence that must be served day for day
21 and any sentence imposed for accessory before the fact to
22 murder must be served day for day, whether it be 30 years
23 or anything up to life imprisonment and including life
24 imprisonment?

25 Do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE INTERPRETER: Yes, sir, yes, sir.

3 THE COURT: And do you also understand that the crime
4 of trafficking in cocaine more than 400 grams is also
5 classified as a no-parole offense?

6 THE DEFENDANT: Yes, sir.

7 THE INTERPRETER: Yes, sir.

8 THE COURT: And Mr. Harbin has been over that with you
9 and explained to you the significance of a no-parole
10 sentence?

11 THE DEFENDANT: Yes.

12 THE INTERPRETER: Yes, sir.

13 THE COURT: Has anybody promised you anything that
14 caused you to make your decision to plead guilty?

15 THE DEFENDANT: No.

16 THE INTERPRETER: No.

17 THE COURT: Has anybody threatened you in any way that
18 caused you to make that decision?

19 THE DEFENDANT: No.

20 THE INTERPRETER: No, sir.

21 THE COURT: Has anyone placed any kind of pressure
22 upon you that caused you to arrive at your decision to
23 plead guilty?

24 THE DEFENDANT: No.

25 THE INTERPRETER: No. It's my own decision.

1 THE COURT: Are you pleading guilty freely,
2 intelligently and voluntarily?

3 THE INTERPRETER: Yes, sir.

4 THE COURT: And as you have indicated, it is your
5 decision, and yours alone?

6 THE DEFENDANT: Yes.

7 THE INTERPRETER: Yes, sir.

8 THE COURT: You heard me and understood me reading the
9 allegations contained in the indictments?

10 THE DEFENDANT: Yes, sir.

11 THE INTERPRETER: Yes, sir.

12 THE COURT: Are you pleading guilty because you
13 committed each of the crimes as they are described in each
14 of the separate indictments?

15 THE DEFENDANT: Yes, sir.

16 THE INTERPRETER: Yes, sir.

17 THE COURT: And you are 34 years old?

18 THE DEFENDANT: Yes, sir.

19 THE INTERPRETER: Yes, sir.

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

21 THE INTERPRETER: I studied 12 years.

22 THE COURT: And where did you study?

23 THE INTERPRETER: In the City of Mexico.

24 THE COURT: And you are originally from Mexico?

25 THE INTERPRETER: Yes, in the federal district.

1 THE COURT: And are you now or have you recently been
2 living in the United States?

3 THE DEFENDANT: Yes.

4 THE INTERPRETER: Yes.

5 THE COURT: Where were you living?

6 THE INTERPRETER: At that address that's on there.

7 The thing is I don't know the address.

8 THE COURT: Here in Spartanburg County?

9 THE DEFENDANT: Yes.

10 THE INTERPRETER: Yes.

11 THE COURT: And how long have you been in Spartanburg
12 County?

13 THE INTERPRETER: Four years.

14 THE COURT: And what have you been doing to support
15 yourself here in Spartanburg?

16 THE INTERPRETER: I worked.

17 THE COURT: Where?

18 THE INTERPRETER: With the man that put up fences for
19 horses. And he -- and also bought and sold cars.

20 THE COURT: And do you have family here?

21 THE INTERPRETER: Not one.

22 THE COURT: Have you ever been treated for any type of
23 substance abuse or addiction?

24 THE DEFENDANT: No.

25 THE INTERPRETER: No.

1 THE COURT: Do you suffer from any such condition?

2 THE DEFENDANT: No.

3 THE INTERPRETER: No.

4 THE COURT: Have you ever been treated for any type of
5 mental illness or emotional disturbance?

6 THE DEFENDANT: No.

7 THE INTERPRETER: No.

8 THE COURT: Do you suffer from any such condition?

9 THE DEFENDANT: No.

10 THE INTERPRETER: No.

11 THE COURT: Are you able to speak English?

12 THE DEFENDANT: No.

13 THE INTERPRETER: No.

14 THE COURT: Have you understood fully everything that
15 I have asked and stated through your interpreter?

16 THE DEFENDANT: Yes.

17 THE INTERPRETER: Yes.

18 THE COURT: Have you had any difficulty whatsoever in
19 communicating through your interpreter?

20 THE DEFENDANT: No.

21 THE INTERPRETER: No.

22 THE COURT: I'm going to ask the solicitor to tell me
23 about the facts that relate to your cases, as well as any
24 agreement that he may have with you and your lawyer.

25 Listen to what he tells me because when he's through

1 I'll ask you some additional questions.

2 MR. BARNETTE: Thank you, Your Honor.

3 The -- the accessory before the fact to murder and
4 burglary first occurred on January 24th of 2009.

5 THE COURT: Excuse me just a minute.

6 THE INTERPRETER: Could you speak a little more slowly
7 so that I have time?

8 THE COURT: You're going to have to slow down because
9 she's going to have to tell him everything you say.

10 MR. BARNETTE: No problem.

11 Okay. Accessory before the fact to the two murders
12 and the accessory before the fact to the burglary first
13 occurred on January the 24th of 2009 at 3301 Highway 101
14 South in Greer, South Carolina, in Spartanburg County.

15 The defendant knew the victims, had a controversy
16 about an amount of money and drugs and allegedly around
17 \$50,000.

18 He contacted Yesenia Cortez Ramirez in Atlanta,
19 Georgia. She came and met with him and Jose Reyes
20 Arevalos. She brought along five other folks -- Edgar
21 Pineda, Miguel Lopez, Rudis Ventura, Jose Del Angel Gomez
22 and Lewis Perez.

23 He was in phone contact when Jose Arevalos took
24 Yesenia Ramirez and the five other individuals over to Hugo
25 del Carm Lugo-Hernandez and Teresa De Jesus.

1 Avilla-Martinez's residence in Greer.

2 At that time Rudis Ventura, Jose Del Angel Gomez and
3 Lewis Perez was dropped off at the house. They broke in
4 the front door, went through the house and killed
5 Lugo-Hernandez and Avilla-Martinez.

6 In this case, Your Honor, what I have done, Your
7 Honor, I've got State's Exhibits 1 and 2, which is discs
8 that was turned over to defense attorneys. And I gave Mr.
9 Harbin a copy of this that contains all of this
10 information. I'll make that a part of the facts in the
11 case.

12 State's Exhibit 3, Your Honor, is a random warning
13 that was given by Investigator Nick Hollinger in this case,
14 as well as the statement of Mr. --

15 THE INTERPRETER: Would you repeat that, sir?

16 MR. BARNETTE: Excuse me.

17 State's Exhibit No. 3 was a Miranda warning that was
18 given by Nick Huntsinger (sic) in this case in the presence
19 of Jason Bryant, investigator with the sheriff's
20 department. He gave a partial statement at that time.

21 He also gave a statement about the second incident,
22 Your Honor, the trafficking in cocaine over 400 grams, as
23 well as the marijuana charge. That occurred on January the
24 30th of 2009, Your Honor.

25 Through their investigation, Your Honor, on the murder

1 case Investigator Todd Rufner and other investigators in
2 the sheriff's department had received information about
3 threats that the defendant had made against
4 Mr. Lugo-Hernandez, and through their evidence they
5 obtained a search warrant to search the residence Lugo --
6 Love Franco at [REDACTED] Mountain View Road, Chesnee, South
7 Carolina. And that was the area that the defendant as well
8 as Jose Reyes Arevalos that was another associate of his --
9 had went to that residence. Ms. Franco was the boy -- the
10 girlfriend of Mr. Ramirez.

11 On the search warrant, Your Honor, they found
12 marijuana, Your Honor, in the amount of 539.1 grams. They
13 also found cocaine in the amount of 482.4 grams, as well as
14 crack cocaine in the amount of 26.59 grams. The cocaine
15 and crack together was 508.99 grams.

16 In his statement on State's Exhibit No. 3, Your Honor,
17 on the page -- the second page of the statement the
18 defendant admits that this is his marijuana and his
19 cocaine.

20 Your Honor, State's Exhibit No. 4 is the crack cocaine
21 analysis that was done by Lieutenant Beth Stewart of the
22 Spartanburg County Sheriff's Department.

23 State's Exhibit 5 is the testing that was done on the
24 marijuana by Lieutenant Stewart.

25 Your Honor, State's Exhibit No. 6 is a more detailed

1 statement that was taken by the sheriff's department. Nick
2 Hollinger as well as Investigator Jason Bryant took his
3 statement. And Dwight Garcia was also involved from the
4 sheriff's department.

5 This statement, Your Honor, is giving more detailed
6 involvement where he had talked to the folks from Atlanta
7 and had brought them up to go in the house of the victims
8 in this case. And that statement consists of 13 pages.

9 States Exhibits 7 and 8, Your Honor, are the autopsy
10 reports on both victims, Your Honor.

11 States Exhibit No. 9, Your Honor, is 11 pictures that
12 was taken from the drug case at the residence at [REDACTED]
13 Mountain View Road. And they also found \$963 in cash,
14 digital scales, S.K.S. rifle, all of that, Your Honor.

15 And Exhibits 1 and 2, Your Honor, contains all of the
16 documentation on the murder case or the accessory before
17 the fact to murder and burglary first that was given to the
18 defense. I'll make this all part of the record, Your
19 Honor, and part of the facts of the case if I may pass that
20 up, Your Honor. I'd like to enter that as part of the
21 record.

22 I do have several of the investigators here from the
23 sheriff's department if you have any questions, Your Honor,
24 as well as members of the -- Ms. Martinez's family is also
25 present, Your Honor. And they realize it's just a guilty

1 plea at this time, sentencing will be deferred to a later
2 date.

3 THE COURT: All right. Mr. Vazquez, you've heard what
4 Mr. Barnette just told me.

5 THE DEFENDANT: Yes, sir.

6 THE INTERPRETER: Yes, sir.

7 THE COURT: Do you agree or disagree with what he has
8 stated?

9 THE INTERPRETER: It's all correct.

10 THE COURT: Mr. Barnette has handed up two exhibits,
11 Nos. 3 and 6, which appear to be statements in written form
12 that he contends were made by you in response to law
13 enforcement interrogation.

14 Are you familiar with those two statements,
15 Mr. Vazquez?

16 THE DEFENDANT: Yes.

17 THE INTERPRETER: Yes, sir.

18 THE COURT: You have discussed them with Mr. Harbin?

19 THE DEFENDANT: Yes, sir.

20 THE INTERPRETER: Yes, sir.

21 THE COURT: When the statements were made did you
22 understand what your rights were?

23 THE DEFENDANT: Yes.

24 THE INTERPRETER: Yes, sir.

25 THE COURT: When you made -- did you make the

1 statements? 2

THE DEFENDANT: Yes.

THE INTERPRETER: Yes.

4 THE COURT: And when you made those statements did you
5 do so freely and voluntarily?

THE DEFENDANT: Yes.

THE INTERPRETER: Yes.

8 THE COURT: Did anybody force you into it?

THE DEFENDANT: No.

10 THE INTERPRETER: No.

11 THE COURT: Anybody coerce you into it?

12 THE DEFENDANT: No.

13 THE INTERPRETER: No.

14 THE COURT: Anybody promise you anything in return for
15 making a statement?

16 THE DEFENDANT: No.

17 THE INTERPRETER: No.

18 THE COURT: You gave them because you wanted to?

19 THE DEFENDANT: Yes.

20 THE INTERPRETER: Yes.

21 THE COURT: Are they truthful?

22 THE DEFENDANT: Yes.

23 THE INTERPRETER: Yes.

24 THE COURT: Mr. Harbin, there are other exhibits which

25 have been introduced into the record. Two of those

1 exhibits are State's Nos. 1 and 2.

2 Mr. Barnette represents that these two discs have all
3 of the documentary evidence that relates to the case of
4 accessory before the fact to murder against Mr. Vazquez.

5 MR. HARBIN: Yes, sir.

6 THE COURT: He says that he has provided you with
7 copies of these discs and -- and/or all of the documents.
8 Which is it?

9 MR. BARNETTE: All of the documents -- all the
10 documents. I think it was the discs themselves, Your
11 Honor, but we definitely gave the documents.

12 MR. HARBIN: I am in possession of two complete discs
13 of discovery in this case.

14 THE COURT: And they contain, I assume, quite a number
15 of documents?

16 MR. HARBIN: The limits, yes, sir.

17 THE COURT: And you reviewed all of the discovery in
18 the case?

19 MR. HARBIN: Yes, sir.

20 THE COURT: You have discussed it with Mr. Vazquez?

21 MR. HARBIN: I have.

22 THE COURT: And are you satisfied that if the cases
23 went to trial that there's a significant likelihood he
24 would be found guilty of all of these offenses?

25 MR. HARBIN: Yes, sir, I am.

1 THE COURT: Have you discussed with Mr. Vazquez the
2 possibility of any defense?

3 MR. HARBIN: At length, Judge.

4 THE COURT: Do you know of any defense that he has to
5 any charge?

6 MR. HARBIN: None that would be successful, Judge.

7 THE COURT: Do you know of any that might be
8 unsuccessful?

9 MR. HARBIN: Sure.

10 THE COURT: And what would those be?

11 MR. HARBIN: Well, it's -- it's simply -- not -- no
12 legal theory that would be successful. Simply in our -- in
13 our discussions he asked why this and why that. And I
14 explained why it would not work.

15 So it would be -- it would take a long time to tell
16 you why because he said, well, I didn't go into the house,
17 why am I guilty of burglary. So that would be -- that's
18 what my response was to him.

19 So I didn't mean to misrepresent. There -- there is
20 no defense that I think I can legitimately present to a
21 jury to sway them one way or the other, Judge.

22 THE COURT: All right. Well, based upon your review,
23 Mr. Harbin, of all of the evidence in the case in
24 possession of the state, as well as based upon what your
25 client has represented to you to be the facts as he knows

1 them to be, are you satisfied that he is guilty of and
2 would be found guilty of each of the crimes to which he's
3 offered to plead guilty?

4 MR. HARBIN: Yes, sir.

5 THE COURT: And do you believe that his decision that
6 he's made today is freely, knowingly, intelligently and
7 voluntarily made?

8 MR. HARBIN: I do.

9 THE COURT: And do you agree with his decision?

10 MR. HARBIN: Completely.

11 THE COURT: All right. Mr. Vazquez, do you understand
12 that today I'm accepting your guilty pleas but sentence
13 will be deferred until a later date?

14 THE DEFENDANT: Yes, sir.

15 THE INTERPRETER: Yes, sir.

16 THE COURT: Do you have any questions you need to ask
17 me about this process or about your decision?

18 THE DEFENDANT: No. It's all fine.

19 THE INTERPRETER: No. It's all fine.

20 THE COURT: Do you need to discuss it with your lawyer
21 any further?

22 THE DEFENDANT: No.

23 THE INTERPRETER: No.

24 THE COURT: Do you wish for me to accept your guilty
25 pleas?

1 THE DEFENDANT: Yes, sir.

2 THE INTERPRETER: Yes, sir.

3 MR. BARNETTE: One thing I just need to put. You'd
4 asked me one other thing, Your Honor. There is no offers
5 in this case, no recommendations or anything.

6 If he does cooperate, that we would obviously
7 represent that cooperation to the Court at the appropriate
8 time.

9 THE COURT: Mr. Vazquez, has anybody promised you any
10 particular sentence will be imposed in these cases?

11 THE INTERPRETER: I didn't understand that.

12 THE COURT: Has anyone promised you that a particular
13 sentence would be imposed by this Court in these cases?

14 THE DEFENDANT: No.

15 THE INTERPRETER: No.

16 THE COURT: And you understand that while Mr. Barnette
17 has indicated that you are to cooperate with the state that
18 any sentence to be imposed is still in my discretion.

19 THE INTERPRETER: Yes, sir.

20 THE COURT: And even if you do cooperate I could still
21 impose a life sentence on the accessory before the fact to
22 murder and accessory before the fact to burglary in the
23 first degree if I think it's appropriate.

24 THE DEFENDANT: Yes.

25 THE INTERPRETER: Yes.

1 THE COURT: And you still wish for me to accept your
2 pleas?

3 THE DEFENDANT: Yes, sir.

4 THE INTERPRETER: Yes, sir.

5 THE COURT: I'll accept them. Sentence will be
6 deferred until a later date.

7 MR. HARBIN: Thank you, Judge.

8 MR. BARNETTE: Thank you, Your Honor.

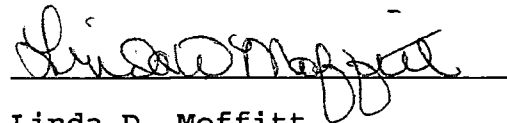
9 END OF REQUESTED TRANSCRIPT OF RECORD
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 12th day of July 2009.

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

September 28, 2011

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,) TRANSCRIPT OF RECORD
5 -vs-) 2010-GS-42-3151;2009-GS-42-2337,
6 Edgar Pineda, Juan Carlos) -2338,2010-GS-42-3207;
7 Vazquez, Jose Reyes) 2010-GS-42-3083,-3885;
8 Arevalos and Rudis Arnoldo) 2010-GS-42-3025,2009-GS-42-2371,
9 Ventura,) 2009-GS-42-2370
10
11
12) May 23, 2012
13 Defendants.) Spartanburg, South Carolina
14
15

16 B E F O R E:

17 HONORABLE J. MARK HAYES, II, JUDGE
18
19

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

21 BARRY JOE BARNETTE, ESQUIRE
22 Seventh Judicial Circuit Solicitor
23

24 SCOTT D. ROBINSON, ESQUIRE
25 HUNTER CHASE HARBIN, ESQUIRE
 PATRICK L. MANGRUM, ESQUIRE
 RALPH SCOTT DAVIS, ESQUIRE
 Attorneys for the Defendants

COPY

Margaret A. Woods
Circuit Court Reporter

1 THE COURT: My understanding is we have three
2 interpreters; if the, if interpreters would approach.

3 (Whereupon, the interpreters came forward.)

4 THE COURT: Alright, if you would I'm gonna ask to please
5 state your name for the record.

6 MS. CHAREZ: Janet Charez (phonetic).

7 MS. BUSTAMONTE: Marie Bustamonte.

8 MS. SAMPSON: Teresa Sampson.

9 THE COURT: Alright, madam clerk, if you will swear the
10 interpreters in.

11 (Whereupon, the interpreters were sworn.)

12 THE COURT: Alright, now if you would also for the record
13 let us know who it is you'll be doing the translating for.

14 MS. CHAREZ: Juan Carlos Vazquez.

15 MS. BUSTAMONTE: Jose Reginal Arevalos.

16 MS. SAMPSON: Edgar Pineda.

17 THE COURT: Okay. Okay.

18 MR. BARNETTE: Thank Your Honor. Uh, ---

19 (Whereupon, a discussion was held off the record.)

20 MR. BARNETTE: Your Honor, if I can call 'em up at one at
21 a time.

22 THE COURT: Um-hum.

23 MR. BARNETTE: First one'll be State vs. Edgar Pina, Your
24 Honor, he'll be to my immediate left. He has pled, Your
25 Honor, he pled back on July 25th 2011 to the following

1 indictment: He plead on Indictment 10-GS-42-3151, Your Honor,
2 he pled to count four which accessory after the fact of
3 murder, count five which is accessory after the fact of murder
4 and count six which is accessory after the fact to burglary
5 first. Your Honor, this is -- there's no recommendation on
6 this case, Your Honor. He's represented by Mr. Scott
7 Robertson and the original plea was taken by Your Honor on
8 that one. If you don't mind, Your Honor, I'll hand 'em one at
9 a time up if that's okay.

10 Your Honor, next one'll be Juan Carlos Estrada Vazquez.
11 Your Honor, the plea was accepted by Judge Durham Cole on July
12 12th 2010, Your Honor. He pled guilty to the following
13 indictments: First one is 09-GS-42-2337, Your Honor, was
14 trafficking cocaine 400 grams or more, Your Honor, that
15 carries a minimum of 25 up to 30 years, Your Honor. Your
16 Honor, he pled to possession with intent to distribute other
17 drugs, Your Honor, on Indictment 09-GS-42-2338, Your Honor.
18 He also pled accessory before the fact to murder on count one
19 of 10-GS-42-3207, Your Honor, that's a mandatory 30 and
20 carries up to potential life sentence, Your Honor. He pled on
21 count two of that indictment which is 2010-GS-42-3207 which
22 accessory before the fact to murder count two, Your Honor.
23 Try to slow down a little bit I apologize.

24 MS. CHAREZ: That's fine.

25 MR. BARNETTE: And, Your Honor, that carries a mandatory

1 30 up to a life sentence, Your Honor. And he pled to count
2 three which accessory before the fact to felony burglary in
3 the first degree and, Your Honor, that carries 15 to life,
4 Your Honor, in that case. May I pass these up, Your Honor?

5 THE COURT: (Nodded in the affirmative.)

6 MR. BARNETTE: And he is repsigned -- represented by
7 Mr. Chase Harbin, Your Honor. There's no recommendations on
8 that case also.

9 Your Honor, the next one will be Jose Reyes Averbis, Your
10 Honor. He is pleading guilty to the, uh, he had plead guilty
11 on July 12th 2010 also in fronta Judge Durham Cole, Your
12 Honor. He pled to the following indictments, Your Honor:
13 First one accessory before the fact, accessory before the fact
14 to burglary first, Your Honor, that's on Indictment
15 10-GS-42-3083 which is count three of that indictment, that's
16 a mandatory 15, Your Honor, can be a potential life sentence.
17 He also pled on 10-GS-42-3885 which is count one, Your Honor,
18 accessory after the fact to murder, Your Honor, carries 0 to
19 15 years and he also pled on count two which is accessory
20 after the fact to murder, Your Honor, which is 0 to 15 on
21 10-GS-42-3885, Your Honor. He is repres -- represented
22 Mr. Patrick Mangrum, Your Honor. There's no recommendation in
23 this case also, Your Honor.

24 Your Honor, the last one State vs. Rudis Ventura, Your
25 Honor. He plead guilty in fronta Judge Cole on February 3rd

1 2010, Your Honor. He pled to the following indictment, Your
2 Honor: 10-GS-42-3025, Your Honor. He pled to burglary in the
3 first degree, Your Honor, that carries a minimum of 15 up to a
4 potential life sentence, Your Honor, then he also, and that
5 was on 10-GS-42-3025, then he also pled that date, Your Honor,
6 to 09-GS-42-2371 which accessory after the fact to murder,
7 Your Honor. He pled to count one and t -- or count two on
8 that indictment, that's a potential 0 to 15 years. Then the
9 other one's 09-GS-42-2370, Your Honor, he also pled to count
10 two to accessory after the fact of murder which carries 0 to
11 15 years, Your Honor. He is represented by Mr. Scott Davis,
12 Your Honor, and there's no recommendation in that case also,
13 Your Honor.

14 Your Honor, there was exhibits that was entered in each
15 one of these pleas I think we've handed up to the Court and I
16 believe you took the two previous co-defendants' pleas, which
17 was Yesenia Cortez-Ramirez, she pled guilty in fronta, Your
18 Honor, on September 16th 2011 and was sentenced by Your Honor
19 and Miguel Lopez, Your Honor, he pled guilty in fronta Your
20 Honor on September 6th 2011 and was sentenced by Your Honor on
21 May 11th 2012.

22 Your Honor, I I think you did sentence -- I mean, you
23 took the plea of Mr. Pina, the other three was actually taken
24 by Judge Cole, I think they're indicated on the record that
25 they don't have any -- they consent to Your Honor doing the

1 sentencing in their matters.

2 One other thing, Your Honor, there is a drug case that
3 Mr. Carl -- Juan Carlos Estrada Vazquez has, the two drug
4 offenses. I don't know if you've ever been presented those
5 facts, I know you've been presented the facts on the murder in
6 the burglary cases and I'll be glad to do that at the
7 appropriate time also, Your Honor. And I also have the
8 victims' family here of both victims, would like to address
9 the Court at the appropriate time.

10 THE COURT: Thank you. Mr. Harbin, is the solicitor
11 correct that your client does -- has no objection for me
12 imposing sentence?

13 MR. HARBIN: That's correct.

14 THE COURT: And, Mr. Mangrum, is the solicitor correct
15 that your client has no objection to me imposing the sentence?

16 (Attorney/client discussion held off the record.)

17 THE INTERPRETER: No.

18 MR. MANGRUM: That is correct, Your Honor.

19 THE COURT: And, Mr. Davis, is solicitor correct that
20 your client has no objection for me imposing the sentence?

21 MR. DAVIS: Yes, Your Honor.

22 THE COURT: Alright. Gentlemen, I need to remind you all
23 that you remain under oath, that means you were sworn to tell
24 me the truth so if ever there's any opportunity for you to
25 speak to me, I need you to be mindful that you are under that

1 obligation to provide me truthful information. Also, if ever
2 durin' this process at any time you wish to speak to your
3 lawyer, just let me know and I'll allow you an opportunity to
4 speak to your lawyer in private. Alright, at this time I
5 would like for the State to give me the facts in relation to
6 the trafficking charge and, Mr. Vazquez, I would like for you
7 to please listen.

8 MR. BARNETTE: Your Honor, the trafficking in the drug,
9 both drug charges, Your Honor, occurred on January 30th 2009
10 approximately 3:15 in the afternoon, it occurred at
11 [REDACTED] Mountainview Road in Chesnee, South Carolina in
12 Spartanburg County. Your Honor, based off information they
13 received concerning the the murder case and other information,
14 a search warrant was executed by members of the Spartanburg
15 County Sheriff's Office at [REDACTED] Mountainview Road in Chesnee,
16 South Carolina. A search was conducted and located in the
17 garage was three bags of green plant material and two sets of
18 scales. From the kitchen area of the residence inside a
19 cereal box a quantity of white powder substance was located.
20 Investigator Chris Raymond recovered the grant -- the green
21 plant material, Investigator Paul Norris recovered the white
22 powder material. Officer Nick Hollinger of the Sheriff's
23 Department, Your Honor, gave Mr. Vasquez his rights, Miranda
24 rights, he speaks Spanish and he signed that he understood
25 them. He admitted the drugs found in the kitchen above the

1 fridge in the cereal box and the drugs in the gara -- garage
2 belonged to him. Your Honor, they did testing on those items,
3 I think I entered at the pro -- the appropriate amounts into
4 the record at the plea, Your Honor, but just for information
5 purposes the cocaine was approximately 551 grams give or take
6 and the marijuana was approximately 3 pounds and the drug
7 analysis was done and that was verified by the sheriff's
8 department that those objects was cocaine and marijuana.

9 THE COURT: Alright. And I do have the exhibits, State's
10 Exhibit 1 and 2 which are the disks that are in regards to
11 case 3885, I have reviewed those, also have the State's 1 and
12 2 to Case Number 09-2337, I have those in the computer and
13 ta -- and took a look at those, I also have all of the other
14 exhibits that have been provided by the State regards to the
15 State of Juan Carlos Vazquez and I've got Estrada as as well.

16 MR. BARNETTE: Yes, sir, it's -- yes, sir, it's Juan
17 Carlos Estrada Vazquez.

18 THE COURT: Okay, thank you. And also the other exhibits
19 from the State vs. Jose Reyes Arvelois. I apologize for
20 mispronouncing the name. We will have those -- I had, prior
21 to taking the bench I also had an opportunity to review those
22 as well.

23 Alright, I need to, prior to hearing from the family
24 members I'd like to get some just background information from
25 the defendants. I have Mr., I have Mr. Pina's information but

1 I'd like to get the other information from the defendants.

2 THE COURT: How old are you, Mr. Vazquez?

3 THE INTERPRETER: Thirty-five.

4 THE COURT: How far did you go in school?

5 THE INTERPRETER: Middle school.

6 THE COURT: Are you married? single? divorced? widowed?

7 THE INTERPRETER: Married.

8 THE COURT: Do ya have children?

9 THE INTERPRETER: Two.

10 THE COURT: How old are they?

11 THE INTERPRETER: Thirteen and ten.

12 THE COURT: And prior to being arrested on this charge
13 did ya have a job outside of the home?

14 THE INTERPRETER: Mechanic.

15 THE COURT: Ever serve in the military?

16 THE INTERPRETER: No.

17 THE COURT: And how long have you been in jail on these
18 charges?

19 THE INTERPRETER: Forty months.

20 THE COURT: And, Jose, how old are you?

21 THE INTERPRETER: Forty.

22 THE COURT: How far did you go in school?

23 THE INTERPRETER: No, didn't study.

24 THE COURT: I'm sorry?

25 THE INTERPRETER: I didn't study.

1 THE COURT: Married? single? divorced? widowed?

2 THE INTERPRETER: Married.

3 THE COURT: Children?

4 THE INTERPRETER: Five.

5 THE COURT: How old's the oldest, how young's the
6 youngest?

7 THE INTERPRETER: The oldest is 18, the youngest is 10.

8 THE COURT: Di -- and prior to your arrest on this charge
9 you have a job outside a the home?

10 THE INTERPRETER: Yes.

11 THE COURT: What were ya doin'?

12 THE INTERPRETER: Carpentry.

13 THE COURT: Ever serve in the military?

14 THE INTERPRETER: No.

15 THE COURT: And how long have you been in jail on this
16 charge?

17 THE INTERPRETER: Forty months.

18 THE COURT: And, Mr. Ventura, how old are you?

19 THE DEFENDANT: Twenty-nine.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: College.

22 THE COURT: Where -- how -- did you get a college degree?

23 THE DEFENDANT: No.

24 THE COURT: How how many years of college did you do?

25 THE DEFENDANT: I I just did about a six month.

1 THE COURT: Married? single? divorced? widowed?

2 THE DEFENDANT: Single.

3 THE COURT: Do ya have children?

4 THE DEFENDANT: One.

5 THE COURT: How old?

6 THE DEFENDANT: Ten.

7 THE COURT: And prior to your arrest on this charge did
8 ya have a job outside of the home?

9 THE DEFENDANT: Yes.

10 THE COURT: What were ya doin?

11 THE DEFENDANT: Construction.

12 THE COURT: Ever serve in the military?

13 THE DEFENDANT: No, no.

14 THE COURT: And and have you been in jail also for forty
15 months on this charge?

16 THE DEFENDANT: Yes, um ---

17 THE COURT: Alright. Thank you, gentlemen. At this time
18 how 'bout the -- any prior records on any of them?

19 MR. BARNETTE: Mr.. Pina, Your Honor, has had traffic
20 offenses from Georgia.

21 THE COURT: Those are driving offenses?

22 MR. BARNETTE: Yes, sir.

23 THE COURT: Okay.

24 MR. BARNETTE: I mean, I'm sorry, I shoul'da specified, I
25 apologize. Your Honor, Mr. Vazquez nothin'. Jose Reyes, Your

1 Honor, nothing, Your Honor. He has false information and
2 criminal trespass was it, Your Honor.

3 THE COURT: Alright, and at this time I'll be more than
4 happy to hear from any members representing the victims if
5 you'd like.

6 MR. BARNETTE: Yes, sir, and just on the facts, Your
7 Honor, I'm not gonna go through those 'cause I think Your
8 Honor already knows 'em from that standpoint. Did you want me
9 to say anything on the record about their involvement?

10 THE COURT: Yes, and it -- I I tell you what, I I would,
11 let's get the family so that they can get up and down and then
12 as we move to the individual ones, let me get ya to ---

13 MR. BARNETTE: No problem ---

14 THE COURT: --- supplement the record and let me know
15 their individual involvement.

16 MR. BARNETTE: Your Honor, Alex Lugo would like to
17 address the Court the first one.

18 OFFICER SMITH: Can I get ya'll to shift to your left.

19 MR. ROBINSON: Sure.

20 THE COURT: Sir, if you would, I I know you're aware of
21 this but we are making a recording of everything that happens
22 here and if you would just be sure you speak up loud enough so
23 that both the court ---

24 MR. LUGO: Okay.

25 THE COURT: --- reporter and I can hear you and just

1 start by givin' us your full name.

2 MR. LUGO: Okay, good afternoon first. My name is
3 Alejandro Lugo, I'm the brother of one of the victims, Hugo.
4 The only thing that I wanna say this time is I'm physically
5 tired, I'm mentally tired. I just really wish to to get done
6 with all this. The actions of these individuals really,
7 really, really changed my whole family life, it's been really
8 difficult have to support my whole family. I'm sorry.

9 THE COURT: It's, alright.

10 MR. LUGO: I have to deal every day knowing that I know
11 that my brother wasn't a perfect person, he made mistakes but
12 he he didn't deserve what he get for for the actions of these
13 individuals more so because on the callous way and coward way
14 that they did these actions so that's something that been keep
15 in my mind, be praying every day asking God questions, finding
16 answers but up to this point I still don't know why. In my
17 mind and on my mental judgment I forgive all of them, I don't
18 wish anything bad to them but I have to be honest at the same
19 time my heart doesn't say the same. It's very difficult, it's
20 very difficult to deal with this but I just hope that they
21 find those answers that I been looking for and I hope that
22 they ask God for that forgiveness and I really hope that they
23 find it because they they don't just take a couple life, they
24 break in pieces two families and probly not just two families
25 but also their families because I'm pretty sure they're

1 wondering why they made those actions and I'm pretty sure they
2 paying now suffering for the absence of of their family
3 members and wondering when they're gonna see them again, when
4 they're gonna be together. Those are the same questions that
5 I have but unfortunately I know the answer for that: I never
6 gonna have physically my brother again, I never gonna have the
7 opportunity to give him a hug, to tell how much a love him, to
8 tell him how important he was to me and I'm very proud for him
9 and my always gonna be. I've been livin' in this country for
10 a little over 17 years, been tryin' to do my best to respect
11 the law and I trust in the system of this country, I just wish
12 and hope that we can get what we're looking for: justice.
13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 THE INTERPRETER: My name is Candelaria Hernandez Urbina,
16 I'm the mother of Hugo. This letter that I wrote after, a
17 day, a day after that we buried my son without knowing what
18 day it was and then I realized that was the day that we buried
19 my son, it was the 12th of February, was my birthday, it's
20 when I understood that these people they marked me for life
21 while I live. I hope that nobody of them have to go through
22 what I had to go through. I ask forgiveness of all of you for
23 what my son might have done. Like as a mother I can tell you
24 that Hugo was was a son, was a good son is what I think. He
25 he went through life giving giving love to his, to his nephews

1 and he loved them a lot. Today I feel the loss of my son.
2 His only error was to get involved with this person, his name
3 is Juan Carlos, that today for the first time I'm just
4 meeting him. As the mother of Hugo to this person, he didn't
5 just do damage to us but to Teresa's family too and to
6 everybody that was involved with them. I ask you that you
7 make justice and I respect you, respect your decision and to
8 Juan Carlos, the only thing I can tell you is that it's gonna
9 take time to ask for forgiveness from Jesus Christ and from
10 all his family of him. That's it.

11 MS. URBINA: Thank you.

12 MR. BARNETTE: Ms. Martinez.

13 THE INTERPRETER: Your Honor, my name is Lidia Martinez
14 Delgado, I'm the mother of Teresa. I ask you for justice
15 before these this group of people. Like like Candelaria said,
16 they marked us all and even them themselves and personally my
17 family some days after my daughter died and and the death of
18 my son-in-law my youngest son tried to commit suicide. He was
19 eight days in the hospital and the day that we found out, we
20 found out how how how was -- how they died, my sweet daughter
21 and son-in-law, some days after my husband committed suicide.
22 If if my daughter and my son-in-law had prior problems, I ask
23 for forgiveness for society and to God. They didn't deserve
24 the death that they had and much less from the hands of a
25 person, from a person that they trusted that entered their

1 house and like a friend. He has sons, I hope and and I ask
2 God every day, I ask God and he knows that I'm not lying, that
3 I I believe in God and I believe in the Virgin of Guadalupe
4 then that his children not pay the the errors that he
5 committed, I I don't hold a grudge, that he asks for
6 forgiveness from God, that he prays for them and and for his
7 children because now he's gonna receive before you and God
8 he's gonna receive the the punishment of man but but it's
9 what's left is the punishment of God and for everyone else and
10 and that God forgive them just just that justice of of men is
11 in your hands. I can't anymore.

12 THE COURT: Thank you, ma'am.

13 MR. BARNETTE: Thank Your Honor and there are other
14 family members that are just present for the sentences, Your
15 Honor. Thank you.

16 THE COURT: Alright. Alright, if we would, let's start,
17 we'll just start in order of their location the one closest to
18 you, Mr. Pina.

19 MR. ROBINSON: Yes, Your Honor.

20 THE COURT: You would like to address the Court's memory
21 as to Mr. Pina's involvement?

22 MR. BARNETTE: Yes, sir, Mr. Pina was the boyfriend of
23 Yesenity Cortez-Ramirez. Him as well as her and two of the
24 folks, Jose De Angel Gomez and Louis Perez, which have not
25 been, have not been found by law enforcement, Your Honor, as

1 well as Rudis Ventura and Miguel Lopez came up from Atlanta,
2 Georgia, Your Honor, they stopped, they were on the
3 videotapes, when they stopped and met with a Carlos or Jose --
4 Juan Carlos Estrada Vazquez as well as Jose Riveros Reros,
5 Your Honor. They went to the trailer nearby, Your Honor. He
6 stayed at the trailer, he was there when the guns were brought
7 over but he did not go to the house where the murder occurred
8 which was on 1 -- 3301 Highway 101 in Greer in Spartanburg
9 County, Your Honor, and he also went back with 'em when they
10 came after from the burglary and the murder, Your Honor, and
11 traveled with them back to Georgia, Your Honor.

12 THE COURT: Thank you. Mr. Robinson, be more than happy
13 to hear from ya.

14 MR. ROBINSON: May it please the Court. Your Honor, I
15 have Mr. Pina's family with him today. His involvement I
16 think Mr., uh, Barnette would acknowledge was minimal, at most
17 and periphery. He was cooperative in this, in this case and
18 he has no prior record to speak of except some driving
19 violations I believe, that's it. He's not a legal resident of
20 this country, he does have a hold on him. Your Honor, my
21 understanding that a gentleman was sentenced sometime this
22 week that was in the same position I believe as him, he
23 received a sentence I believe of 10 years approximately,
24 10 years

25 MR. BARNETTE: I think that's correct.

1 MR. ROBINSON: Ten years. I don't know if he had a prior
2 record or not, Mr. Pina has informed me he had, this other
3 gentleman had a prior record but I don't know that for a fact
4 but I would acknowledge that Mr. Pina is very sorry to the
5 family for all this happening to them, horrible circumstance,
6 he has family of his own and he knows the pain that they're
7 going through and he's, every time I see him he's crying about
8 it, being around these people but I think Mr. Barnette will
9 acknowledge it periphery at best being in a car and but we'd
10 ask the Court for a minimum sentence in this case. The Court
11 has a wide range of discretion at its, at its its hands but I
12 would ask for a a a sentence that's suspended possibly to less
13 than the 10 years that the the other individual got in this
14 case but he's been in jail for I believe over 40 months now
15 and he will -- he can't get out, he's gonna be picked up and
16 be in ICE hands as soon as he gets released but we'd ask for
17 the Court's mercy in this case, the Court's guidance as well
18 and Mr. Pina would like to say something as well, Your Honor,
19 at -- as -- at the right time.

20 THE COURT: Mr. Pina, do you agree with the statements
21 that were just made by your lawyer?

22 THE INTERPRETER: Yes.

23 THE COURT: Is there anything that you would like to say
24 or would want me to know or consider?

25 THE INTERPRETER: The only thing that I I like to tell

1 you that please forgive me, I'm sorry. I'm very regretful,
2 I'm very remorse. I never thought I was gonna be in a
3 situation like this one but please, I ask for forgiveness from
4 the family members of the victims, I ask you for forgiveness.
5 I know what you guys are going through and I ask for
6 forgiveness from God. Every day I kneel down just asking that
7 one day he will forgive me. That's all.

8 MR. ROBINSON: Thank Your Honor.

9 THE COURT: Thank you, sir.

10 (Pause.)

11 THE COURT: And now we'll have Mr. Juan Carlos Vazquez.

12 MR. BARNETTE: Yes, sir, he was the one that made the
13 phone call Yesenity Cortez-Ramirez, Your Honor, to ask them to
14 come up from Atlanta, supposedly Hugo Hernandez owed him a
15 great deal a money in this case, and asked for help from her
16 in this case where she brought help with her and led to what
17 occurred from there, Your Honor. He met them, they went over
18 to the trailer which is where Jose lived at, Your Honor, and
19 his involvement was he was originally the one that called to
20 ask for for them to come here.

21 THE COURT: Yes, sir, Mr. Harbin.

22 MR. HARBIN: Judge, may it please the Court. Let's start
23 off by tryin' to add a little bit to what Solicitor Barnette
24 has has told ya and it was kinda confusin' to me at the start
25 and then I realized there's a little bitta cultural

1 boundaries. He began by describing Ms. Yesenia as a psychic
2 essentially and that he was going to her for some sort of
3 advice or or Tarot card reading, that kinda thing. Ms. -- is
4 it Cortez, Mr. Barnette, Ms. Ms. Cortez?

5 MR. BARNETTE: Cortez-Ramirez.

6 MR. HARBIN: That Ms. Ms. Cortez-Ramirez proceeded to
7 tell him that or confirm rather a suspicion that he had that
8 that Hugo had been withholding money or had owed him money or
9 had stolen either money and/or drugs from from my client and
10 as you've seen before he's pleading guilty to trafficking.
11 Mr. Hugo was essentially worked underneath my client so they
12 had essentially a monetary dispute of some sort or he was
13 embezzling or that he owed him money in one form or another.
14 After consulting with Ms. Cortez, she, according to my client
15 she volunteered I can get X, Y and Z together, I can gather
16 this group to solve your problem. Of course the arrangement I
17 believe was some kind of contingency fee: If we got some a
18 your money, you'd give us some of the money for getting it.
19 He wants to make clear to the Court that Hugo was a friend of
20 his, a friend of his like he would go, and I believe the
21 family has alluded to this, they would barbecue together, I
22 mean, they had a social relationship and in part that social
23 relationship was why he chose to have a third party intervene
24 because he he didn't want at first he tells me to that to
25 believe that Hugo took anything from him, that he was being

1 dishonest in any way as it relates to their business dealings
2 and he he wants to make it further clear that he had no
3 intention and regrets to this day that they were hurt, much
4 less killed, that that was not his intention. Mr. Barnette
5 and I have spoken before and essentially what his intention
6 was was to get a third party to go and shake him down for the
7 money. He he he couldn't get the money for himself, he
8 couldn't bring himself to confront Hugo about the money that
9 he owed him and he chose extremely poorly in the folks that he
10 had, that he employed to do that.

11 Judge, I wanna point out to the Court that my client
12 along with Mr. Jose Reyes we were the first folks to plea and
13 and I believe that certainly has a domino effect that I
14 believe the solicitor would would acknowledge. Judge, when I
15 explained these circumstances to my client and how the law
16 worked an and explained to him why, you know, he is charged
17 with murder even though he's not alleged to have been involved
18 in the shooting directly, he acknowledged immediately of
19 course he is a conspirator to burglary and then you're
20 responsible as the hand of one, hand of all or accomplice
21 liability, whatever the Court would like to term it, for
22 whatever happens in the commission of that crime. Judge, he
23 he understands that he is responsible for that no matter his
24 intention but he does wanna make sure that the Court knows
25 that he's very, very sorry that anything this -- like this

1 happened and he didn't intend for that to happen at all.

2 Judge, I I won't, I won't take up anymore a your time
3 'cause I know he wanted to address the Court directly but but
4 he he did want the family to know that he is extremely sorry
5 that the folks he chose to do business with took it to this
6 level, he never intended that to happen.

7 THE COURT: And, Carlos, do do you agree with everything
8 that your lawyer just stated?

9 THE INTERPRETER: Yes.

10 THE COURT: Sir, is there anything that you would like to
11 say or want me to know or consider?

12 THE INTERPRETER: Yes. I just want to clear up that it
13 was never my intention for these people to be murdered, they
14 were very good friends of mine. The intention was just to
15 talk to 'em so they can't -- so they would return the money,
16 that was it. We were such good friends and with Teresa, also
17 I didn't wanna have any any problems with them. It was, it
18 was not my intention and I never thought I would be involved
19 in a problem like this. To Hugo and Teresa's family, I
20 apologize for everything that happened, my intention was never
21 to have them murdered.

22 MR. HARBIN: And, Judge, just so I put this on the record
23 I -- we would, we would ask that you consider on the low end
24 of sentencing for the obviously the more serious charge of
25 murder. Judge, his original crime that that led to all this

1 is obviously burglary and again, he's accepted complete
2 responsibility for the actions of those that he employed to do
3 that.

4 THE COURT: You agree with the statements, those extra
5 statements that were just made by your lawyer?

6 THE INTERPRETER: Yes.

7 THE COURT: And and, sir, the -- you were able to hear
8 the solicitor when he told me the facts related to the drug
9 charges?

10 THE INTERPRETER: Yes.

11 THE COURT: And do you believe he's substantially correct
12 in those facts as well?

13 THE INTERPRETER: Yes.

14 (Pause.)

15 THE COURT: The manufacturing of other substances,
16 Schedule I, II and III, what's the range of sentencing on
17 that?

18 MR. BARNETTE: I believe it's 0 to 5, Your Honor, probly
19 0 to 5 I think.

20 (Pause.)

21 THE COURT: And now we'll do Jose Reyes Arvelos.

22 MR. BARNETTE: Yes, sir, he worked for Juan Carlos
23 Estrada Vazquez, Your Honor. He met with the the folks comin'
24 up from Atlanta, went over to his trailer, couple of men
25 stayed at his trailer. He drove the other three men along

1 with Yesenia Cortez-Ramirez over to the residence of Hugo and
2 Teresa, he dropped the men off. Him and Yesenia stood in --
3 stayed in his vehicle, they contact and let 'em know when they
4 was ready to come back, they picked him up, took him back to
5 the trailer and they obviously spl -- split up at that point.

6 THE COURT: Yes, sir.

7 MR. MANGRUM: May it please the Court, Your Honor. I
8 represent Mr. Reyes, Your Honor, I'll call him Jose just so
9 everybody be clear. He's 40-years-old. He has done
10 carpentry-type work before he was locked up. He's been in
11 since the date of arrest and I believe that's approximately 40
12 months. Judge, I just wanna, there's no way to sanitize what
13 happened here, it's really is bad facts, pretty serious case,
14 I would want the Court to recognize clearly that from day one
15 Mr. Reyes was very remorseful. I know that that really
16 doesn't help a lot of the feelings of of victims' families but
17 he's never, he's never changed, he's always been upfront and I
18 I believe he's always been up front with with law enforcement
19 and with Mr. Barnette. In fact, we met with Mr. Barnette at
20 least two times, I believe maybe three, and just the two of us
21 and Mr. Barnette and as well as a translator. He was always
22 willing to help. I I wanna reiterate what Mr. Harbin said
23 that we did Mr. -- his client and my client did plead guilty
24 first and and I, and I understand that the facts were pretty
25 pretty severe against him but it did I believe play a role in

1 what happened in the other cases and they were, both clients
2 were ready to to testify, including against and and and still
3 ready to testify knowing that there are people out there who
4 haven't been caught, putting not only themselves but others in
5 in danger. My client as Mr. Barnette relayed to the Court was
6 the guy that dropped 'em off at a Highway 101 residence, at
7 the residence. Your Honor, I I and I, my heart of hearts I
8 believe he's always represented to me he didn't know what what
9 they were goin' to do as far as as any violent acts that took
10 place. I do know that he was well aware that Carlos was owed
11 some money and he was takin' these people there and and and I
12 believe in hopes to get the money back. He he's always
13 represented to me that it -- he really truly couldn't know
14 what they were doin' because at times they spoke English.
15 This Mr. Reyes does not speak English and he's told me that,
16 he told me that multiple times. He he he did come back to
17 pick 'em up. I think it as Mr. Barnette relayed to the Court
18 it it's clear we all recognize that there was a burglary gonna
19 take place and my client dropped these people off at that
20 residence. He's he pled to accessory before that fact of
21 burglary and that carries a a long range of sentence, 15 to
22 life, I recognize that; he's also charged with accessory after
23 the fact, he was there to pick 'em up. He does not have a
24 criminal history, Your Honor, there there's no indication of
25 any of this sorta behavior in his past before. I personally

1 believe he was tryin' to help his friend. He he worked for
2 Carlos and and and he was directed to go there, I think he was
3 tryin' to assist him. I would ask Your Honor to consider his
4 lack of a criminal history, consider that he did own up to and
5 and accept responsibility at the, at the appropriate time, I
6 think fairly early in the case, and was willing to further
7 assist law enforcement and the solicitor's office in this
8 case, and and consider the 15-year range. I understand you're
9 limited at what you can do on the burg except accessory before
10 the fact but I would ask Your Honor to consider that that
11 low-end range. He's already done 40 months and and and I'm
12 not saying that that's sufficient for what happened here, it's
13 all and and and li -- and as when when death's occurred, I
14 understand that but I understand we also have to be sentenced
15 fair and and and and and what the Court would deem fair I'll
16 leave that to Your Honor's judgment but I believe that a
17 sentence in the minimum range would suffice in this case and I
18 I'm not sure if he would have anything to say but if he does,
19 I'd like to give him that opportunity.

20 THE COURT: Sir, do you agree with what your lawyer just
21 stated?

22 THE INTERPRETER: Yes.

23 THE COURT: Is there anything that you would like to say
24 or want me to know or consider?

25 THE INTERPRETER: Yes.

1 THE COURT: Be more than happy to hear from ya.

2 THE INTERPRETER: Before anything I want to ask for
3 forgiveness of the Court and the families. For the time that
4 this occurred, I did not know what was goin' on. I know what
5 was done is not repairable but I ask for forgiveness and I ask
6 for forgiveness, that once again it's in your hands.

7 THE COURT: Thank you, sir.

8 (Pause.)

9 THE COURT: Accessory after the fact of murder was...

10 MR. BARNETTE: Zero zero to fifteen, Your Honor.

11 (Pause.)

12 THE COURT: Now we have Mr. Ventura.

13 MR. BARNETTE: Yes, sir. Your Honor, he rode up from
14 Atlanta in the car with the other folks and he was one of the
15 three men that went into the house of Teresa and Hugo. In the
16 information he gave to us he indicated he went upstairs when
17 the other two men did what they did downstairs in the house,
18 he gave a statement concerning that to us.

19 THE COURT: Yes, sir.

20 MR. DAVIS: Please the Court, Your Honor. This is Rudis
21 Ventura, he is 29 years of age, has a high school education
22 and a partial year of college that he went to in Georgia.
23 Your Honor, he is single with one child that is 10 years of
24 age. He's a resident of Marietta, Georgia, has been since
25 1998. He was born in California, Your Honor, both his parents

1 are from El Salvador. He was charged in this offense back in
2 February of 2009, he's been in the Spartanburg County
3 Detention Facility since that time, some 3 years and 4 months.
4 Your Honor, of course we would ask any any sentence that is
5 given that he be given time served on this case.

6 Your Honor, Mr. Ventura was the first person to cooperate
7 in this case, his cooperation began early in 2009. From the
8 time I was retained to represent him, he's expressed remorse
9 on -- in this case and he wanted to do whatever he could to
10 make it right and, Your Honor, I understand that Mr. Carlos
11 and and Mr. Reyes were the first people to enter guilty pleas
12 but it was because that Mr. Ventura had made statements
13 implicating them and I believe, Your Honor, all of the
14 defendants who have pled guilty to this point and have been
15 sentenced to this point pled because of Mr. Ventura's
16 cooperation. I think the State would've struggled to convict
17 a number of these defendants without his cooperation, I think
18 they would would admit that. Your Honor, he met with the
19 investigators on numerous occasions, he gave them oral
20 statements, one of his statements was reduced to writing in
21 February of 2011 when two other co-defendants were scheduled
22 for trial and I think that ended up in guilty pleas because of
23 the statement that he gave implicating those defendants. Your
24 Honor, he has continued his cooperation up until the time that
25 all of the defendants had entered guilty pleas and he was

1 willin' to testify at any point when their cases were called
2 to trial. He also tried to help the investigators find the
3 two defendants that have not been located and gave them any
4 information that he had, although it it it may have been
5 limited because he was in jail, he he tried to help them find
6 the defendants and bring them to justice.

7 Your Honor, I am asking you today based on his extensive
8 cooperation and his minimal involvement in this case to
9 sentence him to the minimum sentence that is allowed by the
10 statute that he has pled guilty under, give him credit for
11 time served and run his other charges concurrently. Your
12 Honor, his mother, his father and his sister are back here on
13 the middle row and his sister is the only one that speaks
14 English and she would have a -- would like to -- a moment to
15 speak to Your Honor before sentence.

16 THE COURT: Mr. Ventura, do you agree with what your
17 lawyer just just stated?

18 THE DEFENDANT: Yes, Your Honor. Yes, Your Honor.

19 THE COURT: Thank you. Yes, sir, Mr. Davis, do do you
20 have somebody ---

21 MR. DAVIS: Yes. Carmen, can you come up, please.

22 THE COURT: Ma -- Ma'am, I just need to let you know we
23 are makin' a recording of everything that happens here so when
24 you speak, please speak up loud enough so that both the court
25 reporter and I can hear ya and if you would just start by

1 givin' us your full name.

2 MS. AVILLAS: Okay, my name is Carmen Avillas, I'm Rudis'
3 older sister and I know, you know, the victims of the families
4 are here and I feel bad for them, also for them because, you
5 know, they were involved in all that and really I don't know
6 what happened there but all I can say about my brother, you
7 know, growing up he's, you know, he was a good boy and I know
8 everybody can say anything about him, like my family we miss
9 him out there. His daughter's 10-years-old and he needs
10 her -- he needs him out there, you know, for for his daughter,
11 that's all I can say and we love him and I know, you know, how
12 they are feel what the family, you know, is going through but
13 all I can say only about my brother we need him out there,
14 okay?

15 THE COURT: Thank you, ma'am.

16 MR. DAVIS: Your Honor, and may I say that in my
17 conversations with Ms. Carmen Avillas prior to this time that
18 she had expressed to me that this was outta character for
19 Rudis that to be involved in somethin' like this and I believe
20 Rudis has some things he would like to express to Your Honor
21 and to the family.

22 THE COURT: Mr. Ventura, is there anything that you would
23 like to say or want me to know or consider?

24 THE DEFENDANT: Yes, Your Honor. First of all, I wanna
25 say I'm sorry, you know, I never, I never meant, never in my

1 life thought I was gonna be in this position goin' through
2 this and gettin' involved in somethin' like this. By knowin'
3 the person I am, you know, I was in the wrong time with a,
4 with a, with a crowd that you -- I was follow a crowd and
5 that's how you get involved. You know, by not, by not being
6 around them, by bein' in jail I understand myself my heart
7 why -- who I am, by turning myself to the Lord and being in in
8 the cell for 20 hour to 2 -- to 22 hours for 3 years, clear my
9 mind to see the person I am and I ask for for some mercy
10 because I couldn't see before I turned myself to the Lord and
11 I wanna do the right thing and I wanna ask the family, you
12 know, to forgive me. I know the pain I'm feeling they they
13 they probly feelin' it worse than me and to this time I pray
14 for them and I pray for the soul of their family 'cause no, it
15 it wasn't never intention to to to harm nobody and I ask you
16 for some mercy.

17 MR. DAVIS: Thank Your Honor.

18 THE DEFENDANT: Thank you.

19 THE COURT: Thank you, sir.

20 MR. DAVIS: Thank Your Honor.

21 (Pause.)

22 THE COURT: Alright, in regards to Juan Carlos Vazquez,
23 the sentence on the accessory before the fact of murder, those
24 two charges, and also accessory before the fact of burglary in
25 the first degree, all three of those sentences will be a life

1 sentence at the South Carolina Department of Corrections.
2 I've indicated that he will receive credit for, he will
3 receive credit for 40 months, that'll run concurrent with the
4 30 years on the trafficking in cocaine 400 grams or more as
5 well as the I believe that there is the 5-year sentence on the
6 other drug manufacturing charge will also run concurrent.

7 The the charges on Jose Reyes Avalores on the accessory
8 before the fact burglary in the first degree, that will be a
9 30-year sentence at the Department of Corrections, he'll
10 receive credit for the 40 months, consecutive to that 30 years
11 will be a 15-year sentence to the accessory after the fact
12 felony murder on both of those two counts.

13 On the charges for Rudis Ventura, to the burglary in the
14 first degree charge, it is a life sentence at the Department
15 of Corrections, get credit for the 40 months, that'll run
16 concurrent with the 15-year sentences on the accessory after
17 the fact murder charges.

18 On the charges in regards to Mr. Pina, those charges will
19 be a 15-year sentence at the Department a of Corrections,
20 they'll run concurrent with each other, he'll receive credit
21 for the 40 months. Good luck to you, sir. We'll step down.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on May 23, 2012 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 32, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

January 21, 2013

Margaret A. Woods 4/14/13

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

69 DM

FORM 5

STATE OF SOUTH CAROLINA

County of Spartanburg

Juan Carlos Vazquez #351021

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013-CP-42-00518

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Corr. Inst. 306 Redemption
Way McCormick, SC 29899
2. Name and location of Court which imposed sentence General Sessions
Spartanburg Co.
3. Name(s) of co-defendant(s) (if any) Jose Reyes Arenallos; Edgar
Pineda; Arnaldo Ventura; Yesenia Cortez-Ramirez
4. The indictment number or numbers (if known) upon which and the offenses for which
sentence was imposed:
(a) 2010-GS-4203207 - Accessory before the fact
of Murder / first degree Burglary

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SPARTANBURG COUNTY
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(c) Ind. unknown - Trafficking (DRBS)

5. The date upon which sentence was imposed and the terms of the sentence:

(a)

LIFE

(b)

(c) 30 years concurrently

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

NO

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

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

i.

N

ii.

iii.

A

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

i.

N

ii.

iii.

A

(c) the date of each such result:

i.

N

ii.

iii.

A

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

i.

N

ii.

iii.

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

(a)

N

(b)

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- (b) _____
 (c) _____

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

- (a) Ineffective Assistance of Counsel
 (b) Prosecutorial Misconduct
 (c) Guilty plea "was not" voluntarily or intelligently made

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

- (a) _____
 (b) SEE ATTACHED SHEETS 1-14
 (c) _____

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

- (a) any petition in a State Court under South Carolina Law? YES
 (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? YES

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

- (a) the specific nature thereof:
 i. Motion to reconsider sentence
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. General Sessions - Spartanburg
 ii. _____
 iii. _____

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(c) the disposition thereof:

- i. unknown
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. unknown
- ii. _____
- iii. _____
- iv. _____

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

- i. unknown
- ii. _____
- iii. _____
- iv. _____

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

N | A

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

(a) which grounds have been presented:

- i. N
- ii. _____
- iii. _____

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

- i. N
- ii. _____
- iii. _____

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SPARTANBURG COUNTY
2013 FEB -4 PM 3:37
A. HURLEY

Revised 3/2003

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) See 10 (a) Applicant first time presenting ground
 (b) See 10 (b) " " " " "
 (c) See 10 (c) " " " " "

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

(a) your arraignment and plea? YES
 (b) your trial, if any? N/A
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. Hunter Chase Harbin
419 Vardry St. Greenville, SC 29601
 ii. _____
 iii. _____

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

i. Plea & Sentencing
 ii. _____
 iii. _____

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 H. HUR E. BLACKLEY

19. State clearly the relief you seek in filing this application:
New trial, and any other relief I am entitled to
and the court(s) deems just and fair.
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)
 County of McCormick)

VERIFICATION

I, Vizquez Juan Carlos, 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.

Vizquez Juan Carlos

SWORN to and subscribed before me this 01
 day of Feb, 2013.

J. Frankles
 Notary Public

My Commission Expires: 12-16-2019

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 SPARTANBURG COUNTY
 2013 FEB -4 PM 3:37
 M. H. BLACKLEY

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

I, Vazquez Juan Carlos, 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.

Vazquez Juan Carlos
Applicant

SWORN or affirmed to and subscribed before me this
01 day of Feb, 2013.

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 FEB -4 PM 3:37
M. JUNE BLACKLEY

2013-CP-42-CDSIX

INEFFECTIVE ASSISTANCE OF COUNSEL

(1) For the Bill of Rights to the Federal

Constitution I was denied the right

to effective assistance of counsel.

Which my pleas, convictions and

Sentences violates the Constitutions
and laws of the United States,
as guaranteed by the 6th and 14th

Amendments and S.C. Const. Article

I sec. 3 and sec 14 Also see

Strickland v Washington 104 S.Ct. 2052.Brady v Maryland 373 U.S. 83. AffirmLookhart 106 S.Ct. 366I can clearly show prejudiceFILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 FEB -4 PM 3:30

JUDICE BLACKLE

1 of 5

Where there is a reasonable probability that, but for counsel Hunter Chase Harbin unprofessional errors, the result.... would have been different. I would not have pled guilty and would have insisted on going to trial Hill v Lockhart Id. Also see Cherry v State 386 SE2d 624 Johnson v State 480 SE2d 733 and Butter v State 334 SE2d 813.

Mr. Harbin acts and or omissions including but not limited to prejudiced me when he failed to properly research and investigate the facts laws surrounding the entitlement

my case.

2013-CP-42-00518

78

PROSECUTORIAL MISCONDUCT

The Prosecution failed to disclose
exculpatory, favorable and or
impeachment evidence to me

SEE: Brady v Maryland 373 U.S. 83;

U.S. v Bagley 473 U.S. 419; U.S. v

Agurs 427 U.S. 97; Giglio v U.S. 925 Ct. 763

If the State assert that I
can not allege/argue this issue.

It will be my burden to prove
actual prosecutorial misconduct SEE:

Ala v Smith 109 S Ct. 2207.

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SPARTANBURG COUNTY
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M. HOFF BLANCHLEY

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SPARTANBURG COUNTY

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SHURE BLACKLEY

495

Including but not limited all the above grounds my guilty plea was not voluntarily or intelligently made. And if it was not for the above grounds — including but not limited to — I would not have pled guilty but would have insisted on going to trial SEE: Hill v Lachart 106 S.W.3d 66

Which I will prove by the preponderance of evidence SEE: Freiser v State 570 S.W.2d 172. Thereby, I am entitled to a full and fair evidentiary hearing to do so SEE

GUilty PEA "WAS NOT VOLUNTARILY OR INTELLIGENTLY MADE

2013-CP-42-00518

Shaper v State 305 S.E.2d 247. And

I am also entitled to a ruling upon "all" issues per. 17-27-80.

Marlar v State 653 S.E.2d 266 Also

See Bostick v Stevenson 589 F.2d

164.

I further argue that any grounds set out in my original P.C.R. expressly, or not argued, is subject to amendment per. 17-27-90.

DATE:

Respectfully Submitted

Walter Juan Carlos

595

2013-CP-42-00518

The Hon. Clerk of Ct.

M. Hope Blackley
P.O. Box 3483

Spartanburg, SC 29304-3483

Date 2/1/13

Dear Hon. Clerk of Ct.

Please find enclosed for filing my
P.C.R. form. I should you be so kind as
to forward the Atty Gen's Office a
copy and me one back

LEGAL MAIL
MAIL ROOM

Thank you

Sincerely,
Wazquez Juan Carlos

M. Hope Blackley

2013 FEB -4 PM 3:37

FILED
CLERK OF COURT
SPARTANBURG COUNTY

PROOF OF SERVICE

I, Juan Carlos certify that I have

Served my P.C.R. form upon the below

Attn. Clerk of Ct. By placing the above said
in the Mr. Carr. Inst. mail room on this
day of Feb 2013 to be placed in the U.S.
mail with postage prepaid.

Sworn to and subscribed before me
this day of Feb 2013.

Juan Carlos
Notary Public

My Commission Expires 12.14.2015

FILED
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SPARTANBURG COUNTY

2013 FEB -4 PM 3:37

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Juan Carlos Vazquez, #351021,	)	2013-CP-42-0518
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed on February 4, 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 Spartanburg County Clerk of Court. He was indicted at the May 2009 term of the Spartanburg County Grand Jury for trafficking in cocaine more than 400 grams (2009-GS-42-2337) and possession with intent to distribute marijuana (2009-GS-42-2338). Applicant was then indicted at the May 2010 term for two counts of accessory before the fact to murder and one count of accessory before the fact to burglary – 1st degree (2010-GS-42-3207, counts 1-3, respectively). The Applicant was represented by H. Chase Harbin, Esquire. On July 12, 2010, the Applicant pled guilty before the Honorable J. Derham Cole to all charges as indicted. Sentencing in the case was delayed. The Honorable J. Mark Hayes II sentenced Applicant on May 23, 2012, to concurrent sentences of life for accessory before the fact to burglary – 1st degree and each count of accessory after the fact to murder, and concurrent sentences of thirty years for trafficking and five years for possession with intent to distribute. Upon information and belief, a

motion for reconsideration was filed on Applicant's behalf on June 4, 2012, but was denied. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the plea and sentencing transcripts. 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:

- a. Ineffective assistance of counsel, in that;
 - i. Counsel failed to properly research and investigate the facts surrounding Applicant's case,
- b. Involuntary guilty plea, in that;
 - i. Applicant would have insisted on proceeding to trial, but for the improper actions of Counsel and the prosecution,
- c. Prosecutorial misconduct, in that;
 - i. Brady violation.

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that

"counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

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.

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.

The Applicant also alleges that he did not plead guilty freely and voluntarily. The State

submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, *supra*; Dover, *supra*. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

The Respondent construes the allegation of prosecutorial misconduct to allege that the State withheld favorable evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). The Respondent submits that this ground for relief is totally without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.

VI.

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

VII.

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

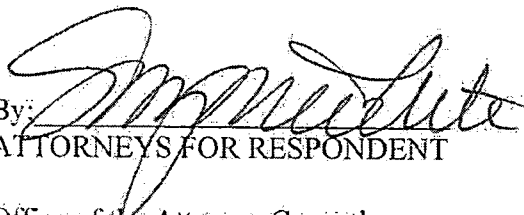
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 19, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2013-CP-42-0518
	)	
JUAN CARLOS VAZQUEZ, #351021	)	
	)	
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 by depositing same in the United States mail, postage prepaid:

J. Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, South Carolina 29601

DATED this 19th day of March, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

COURT OF COMMON PLEAS
2013-CP-42-6518

Juan Carlos Vasquez,

Applicant,

-VS-

The State of South Carolina,

Respondent.

TRANSCRIPT OF RECORD

November 3, 2014
Spartanburg, South Carolina

Ordered: February 28, 2015

Delivered: April 26, 2015

BEFORE:

The Honorable R. Keith Kelly, Presiding Judge.

APPEARANCES:

Mr. Brandt Rucker, Esquire
Attorney Appearing for the Applicant

Ms. Suzanne H. White, Esquire
Assistant Attorney General Appearing for the State

Pamela Faucette
Circuit Court Reporter

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

I N D E X

Juan Carlos Vasquez PCR

Page:

Voir Dire of Interpreter.....	3
Motions & Matters.....	5
Recitation of Facts by Ms. White.....	7

W I T N E S S E S

Mr. Juan Carlos Vasquez:

Page:

Direct by Mr. Rucker.....	9
Cross by Ms. White.....	24

Mr. Chase Harbin, Esquire:

Page:

Direct by Ms. White.....	30
Cross by Mr. Rucker.....	36
Redirect by Ms. White.....	53

E X H I B I T S

Applicant's Exhibits:

Marked:

Received:

(None)

Respondent's Exhibits:

Marked:

Received:

(None)

Court's Exhibits:

Marked:

Received:

(None)

Reporter's Certification:..... 56

Reporter's Note: Throughout the hearing, the interpreter could be heard speaking to the Applicant in Spanish.

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

Reporter's Note: Some names in this transcript are spelled phonetically.

(Off-the-Record Comments)

THE COURT: Ma'am, I understand you're going to be my interpreter; is that correct?

MS. CHAVEZ: Yes, sir.

THE COURT: Okay. Would you raise your right hand and be sworn?

(Whereupon,

Janet Chavez, Interpreter

having been duly sworn, testified as follows:)

MR. RUCKER: Your Honor, I have to ask her a few questions because we had a translator issue from the guilty plea and I want to make sure she wasn't a part of the original guilty plea.

THE COURT: That's fine.

MR. RUCKER: Ma'am, what is your name again?

INTERPRETER: Janet Chavez (phonetic).

MR. RUCKER: Okay. Have you ever translated for my client, Mr. Vasquez?

INTERPRETER: I don't recall.

MR. RUCKER: Okay. You don't recall from — the original guilty plea was May 23rd, 2012. Do you recall — and I'm going to show you the — if there's no objection — a copy of the transcript?

(Off-the-Record Comments)

(Transcript shown to interpreter.)

INTERPRETER: Excuse me. He just informed me that he wants to cancel the court or reschedule for another day because he hasn't received all

1 of the information from his attorney.

2 **MR. RUCKER:** Okay. Your Honor, may I — I haven't had a
3 chance to talk to him in the back with the translator present. May I briefly
4 speak with him about that issue?

5 **THE COURT:** I tell what let's do. Let's take — why don't we take
6 — Brandt, you need about 10 minutes, 15?

7 **MR. RUCKER:** Yes, sir. That would be fine.

8 **(Off-the-Record Discussion)**

9 **(Whereupon, a recess was taken.)**

10 **(Off-the-Record Comments)**

11 **(Interpreter continuously translated throughout the proceeding to**
12 **the Applicant and can be heard on audio doing so.)**

13 **THE COURT:** Okay. All right. I have sworn my interpreter. Is
14 there an issue now about whether she ----

15 **MR. RUCKER:** She was actually the interpreter at the sentencing
16 hearing, but we do not — we do not believe there is a conflict as to this
17 hearing, Your Honor.

18 **THE COURT:** Okay.

19 **MR. RUCKER:** So, we waive any ----

20 **THE COURT:** All right. Is your client going to testify?

21 **MR. RUCKER:** My client may. He's asked me to ask for a couple
22 of motions, to — to argue some motions before we get to that, Your Honor.

23 **THE COURT:** Okay. All right. All right, Mr. Rucker, let me hear
24 from you.

25 **MR. RUCKER:** Your Honor, my client, in — in talking to him in the

1 back, he does not feel like he's fully prepared. He alleges that there was
2 discovery that Mr. Harbin had. And — and, in candor to the Court, my office
3 sought out, through subpoena, for this paperwork.

4 We got all of the discovery from Mr. Harbin and sent it to my client. He
5 believes there's a — a crucial statement that was not included in that
6 discovery.

7 I believe we sent — I don't want to create a conflict with my client, but
8 beyond that, he says he hasn't communicated with me sufficiently. And,
9 again, I can't get into — I don't know that I can get into a conflict by anything of
10 what he's saying.

11 But, finally, he — he believes he needs to go forward pro se or get a
12 new — a new attorney if we cannot get a continuance today because of the
13 previously stated reasons.

14 **THE COURT:** Well, like Judge Couch told the previous
15 gentleman, he — he can — he can fire you, if he chooses, but he's not going
16 to get another lawyer. He can go forward pro se ----

17 **(Off-the-Record Comments)**

18 **THE COURT:** He can go forward pro se, but he — he's not going
19 to get a new — a new appointment, not from me he's not.

20 **MR. RUCKER:** Yes, sir.

21 **THE COURT:** You want to talk to him about that?

22 **MR. RUCKER:** Yes, sir.

23 **(Off-the-Record Discussion)**

24 **MR. RUCKER:** My client informs me that he wants me to continue
25 to represent him, but he does want — now, that we've been heard on the

1 motions, he wants to see what the judge — what Your Honor is going to do
2 with that.

3 **THE COURT:** Okay. Yes, ma'am?

4 **MS. WHITE:** Your Honor, the State would argue, like you said,
5 we have the attorney here, we have the victims' family here, we're ready to go
6 forward. I don't think there's any need to continue the case on — on the issue
7 of the fact he thinks he didn't have discovery because that's something we
8 can discuss with testimony.

9 So I will acknowledge this is the first request from the Applicant's side.
10 We did have to continue because of some issues with — with Mr. Harbin
11 being able to — to attend for testimony. But this is the first request from them
12 for a continuance.

13 **MR. RUCKER:** Your Honor, I apologize. I failed to add my client
14 has informed me today that there may be two witnesses he would like to
15 subpoena that, in our conversations last week, he did not go over those
16 witnesses.

17 **THE COURT:** Well, he's just now telling you that?

18 **MR. RUCKER:** Yes, sir.

19 **THE COURT:** How long have you been appointed, Mister ----

20 **MR. RUCKER:** I've been appointed over a year.

21 **THE COURT:** Over a year?

22 **MR. RUCKER:** Yes, sir.

23 **THE COURT:** Okay. Well, that — I'm not going to continue the
24 case. He had plenty — ample time to talk with you about that. You've been
25 on the case for ----

1 MR. RUCKER: Yes, sir.

2 THE COURT: ---- for over a year. I'm familiar with you and your
3 work ethic and — and we're — I know you're ready to go forward.

4 MR. RUCKER: Yes, sir.

5 THE COURT: So we're going forward.

6 MR. RUCKER: Thank you, Your Honor.

7 THE COURT: Or he can withdraw if he wants to withdraw.

8 (Interpreter converses with Defendant in Spanish.)

9 (Off-the-Record Discussion)

10 MR. RUCKER: We're ready to go forward. We're not going to
11 withdraw.

12 THE COURT: Okay. All right. We're ready.

13 MS. WHITE: Thank you, Your Honor. This is the case of *Juan*
14 *Carlos Vasquez vs. The State*. It's case number two — 2013-CP-42-0518.
15 He is represented today by Mr. Brandt Rucker.

16 Mr. Vasquez was indicted May of '09 for trafficking in cocaine over 400
17 grams and possession with intent to distribute marijuana.

18 He was, then, indicted May of 2010, on two counts of accessory before
19 the fact of murder and accessory before the fact of burglary first degree.

20 He proceeded, represented by Mr. Chase Harbin, to a plea July 12th,
21 2010, at which time he pled to all charges as indicted, received three
22 concurrent life sentences for the accessory before the fact of murder and
23 burglary, 30 years for trafficking cocaine, and five (5) years for the possession
24 with intent to distribute marijuana.

25 He was sentenced --- sentence was delayed until May 23rd, 2012.

1 There were, I believe, five (5) other co-defendants involved in this case. So
2 multiple other pleas and issues with cooperation.

3 He's alleged ineffective assistance of counsel, for counsel's failure to
4 properly research and investigate the facts surrounding the case, involuntary
5 guilty plea for the fact that he said he would have insisted on a trial but for the
6 improper actions of counsel and the prosecution;

7 And, then, prosecutorial misconduct with a *Brady* violation, but there
8 are no specifics as to that. And, at this point, I'll turn it over to Mr. Rucker.

9 **THE COURT:** Mr. Rucker?

10 **MR. RUCKER:** Your Honor, may it please the Court?

11 **THE COURT:** Yes?

12 **MR. RUCKER:** I call my client, Juan Vasquez, to the stand.

13 **(Interpreter converses with Defendant in Spanish.)**

14 **THE COURT:** Sir, come up and be sworn.

15 **(Interpreter converses with Defendant in Spanish.)**

16 **(The witness stepped forward to be sworn.)**

17 (Whereupon,

18 **Juan Carlos Vasquez**

19 having been duly sworn, testified as follows:)

20 **INTERPRETER:** Yes.

21 **THE COURT:** Thank you, sir. Tell us your full name, please.

22 **(Interpreter converses with Defendant in Spanish.)**

23 **INTERPRETER:** My name is Juan Carlos Vasquez.

24 **THE COURT:** Okay. Thank you. You may be seated.

25 **(Interpreter converses with Defendant in Spanish.)**

1 THE COURT: Mr. Rucker?

2 MR. RUCKER: May it please the Court? Thank you, Your Honor.

3 Direct Examination by Mr. Rucker: 10:46 A.m.

4 Q. Carlos, do you know what — what you're here for today, what the
5 hearing is?

6 (Interpreter converses with Defendant in Spanish.)

7 INTERPRETER: Yes.

8 Q. All right. And what is the hearing today about?

9 (Interpreter converses with Defendant in Spanish.)

10 INTERPRETER: What is it for?

11 Q. What is the hearing about? What are the issues in the hearing?

12 (Interpreter converses with Defendant in Spanish.)

13 INTERPRETER: This court is because I had problems
14 communicating with my attorney, Mr. Harbin, before I pled guilty and there
15 was not enough research done.

16 Q. Okay. Did you recall what you pled guilty to, what charges you pled
17 guilty to?

18 (Interpreter converses with Defendant in Spanish.)

19 INTERPRETER: Accessory before and after a murder, trafficking
20 cocaine and trafficking marijuana.

21 Q. And what is your current sentence that you're serving?

22 (Interpreter converses with Defendant in Spanish.)

23 INTERPRETER: Life plus — plus 30 years.

24 Q. Okay. Do you believe that your sentences is because — that you pled
25 guilty because of errors made by Chase Harbin, your trial counsel?

1 (Interpreter converses with Defendant in Spanish.)

2 INTERPRETER: Yes, it was involuntary because the attorney never
3 explained the elements of the case against me or anything about the case.

4 Q. Okay. Did you cooperate in this case with law enforcement?

5 (Interpreter converses with Defendant in Spanish.)

6 INTERPRETER: Yes, I cooperated with the State.

7 Q. Was that before or after you got an attorney?

8 (Interpreter converses with Defendant in Spanish.)

9 INTERPRETER: Before.

10 Q. Okay. Did you give statements to the police?

11 (Interpreter converses with Defendant in Spanish.)

12 INTERPRETER: I gave statements to the police and I also asked for
13 an attorney. I had money to pay for the attorney, but I was not provided one.

14 Q. Okay. Did you ask for an attorney before you gave statements to the
15 police?

16 (Interpreter converses with Defendant in Spanish.)

17 INTERPRETER: Yes. Yes, I asked — I asked for an attorney about
18 four (4) or five (5) times.

19 Q. Okay. Did you inform Mr. Harbin of this?

20 (Interpreter converses with Defendant in Spanish.)

21 INTERPRETER: Mr. Harbin knows that.

22 Q. Did — did Mr. Harbin discuss with you your — your invocation of your
23 right to counsel?

24 (Interpreter converses with Defendant in Spanish.)

25 INTERPRETER: I told Mr. Harbin that's what had happened, but he

1 didn't say anything.

2 Q. Okay. And how many times did you actually meet with Mr. Harbin?

3 (Interpreter converses with Defendant in Spanish.)

4 INTERPRETER: About four (4) times. The first time he went to see
5 him, he said that he was going to represent me. But the second time...

6 (Interpreter converses with Defendant in Spanish.)

7 INTERPRETER: The second time he told me he had information on
8 the case and that he was going to work on the case, but he didn't give me that
9 information.

10 (Interpreter converses with Defendant in Spanish.)

11 INTERPRETER: And, then, the third time, it was four (4) days before
12 I pleaded guilty. I didn't know what I was going to plead guilty to. I thought
13 that my charges were to murder, not to accessory to murder.

14 (Interpreter converses with Defendant in Spanish.)

15 INTERPRETER: So I didn't know — I didn't know what the charges
16 were before and after accessory to a murder. I didn't know what those meant.

17 Q. How much time did Mr. Harbin tell you, you were looking at if you pled
18 guilty?

19 (Interpreter converses with Defendant in Spanish.)

20 INTERPRETER: Mr. Harbin did not tell me anything about the
21 sentencing or about how much time I was going to get. I wanted to have more
22 time because I had not seen the discovery yet.

23 (Interpreter converses with Defendant in Spanish.)

24 INTERPRETER: But he told me that I had no time; that I had to
25 decide from one day to the other.

1 (Interpreter converses with Defendant in Spanish.)

2 INTERPRETER: And, then, the next day he wanted to see me and
3 he told me I had to sign because I had no more time.

4 (Interpreter converses with Defendant in Spanish.)

5 INTERPRETER: And, if — if my case was a serious and as strong as
6 that was, why didn't he give me an explanation to the case?

7 Q. Did Mr. Harbin ---- how — how long did Mr. Harbin represent you before
8 the hearing?

9 (Interpreter converses with Defendant in Spanish.)

10 INTERPRETER: What do you mean before...?

11 Q. After he was hired, how long was it before you actually went forward to
12 plead guilty?

13 (Interpreter converses with Defendant in Spanish.)

14 INTERPRETER: About a year and a half.

15 Q. Okay. Did you ask him for — to see the discovery that the State had
16 provided?

17 (Interpreter converses with Defendant in Spanish.)

18 INTERPRETER: I asked him to see the discovery, to allow me to see
19 it and to give me more time, before we went to trial.

20 Q. Okay. And when was the earliest you asked him to see the discovery?

21 (Interpreter converses with Defendant in Spanish.)

22 INTERPRETER: Since the beginning, I asked — I asked to see all
23 types of evidence.

24 (Interpreter converses with Defendant in Spanish.)

25 INTERPRETER: But I never — never received any paperwork or

1 anything from him.

2 (Interpreter converses with Defendant in Spanish.)

3 INTERPRETER: He never wrote to me.

4 (Interpreter converses with Defendant in Spanish.)

5 INTERPRETER: I never talked on the phone with him either.

6 (Interpreter converses with Defendant in Spanish.)

7 INTERPRETER: I only saw him four times. And, in those four times,
8 he never gave me an explanation of what my charges were.

9 Q. Did — who — did — did you — did he speak Spanish with you or did
10 he have a translator?

11 (Interpreter converses with Defendant in Spanish.)

12 INTERPRETER: He had an interpreter.

13 (Interpreter converses with Defendant in Spanish.)

14 INTERPRETER: The first interpreter that he brought I told him that I
15 didn't want him. He — that interpreter had drug charges and I didn't have
16 anything — I didn't want to have anything to do with that.

17 (Interpreter converses with Defendant in Spanish.)

18 INTERPRETER: He didn't know how to explain properly to me.

19 (Interpreter converses with Defendant in Spanish.)

20 INTERPRETER: He had problems interpreting me.

21 Q. Okay. And did you also have trouble with the investi — with the
22 sheriff's office interpreters as far as they were writing down what you were actually
23 saying?

24 (Interpreter converses with Defendant in Spanish.)

25 INTERPRETER: Yes.

1 (Interpreter converses with Defendant in Spanish.)

2 INTERPRETER: Yes, that interpreter, I remember that sometimes he
3 didn't sit and explain to me what he wanted to say.

4 And, then, when he was writing down the statements, he would write a
5 lot that I didn't know what he was writing.

6 Q. Was that Mr. Harbin's interpreter or was that the sheriff's department
7 interpreter?

8 (Interpreter converses with Defendant in Spanish.)

9 INTERPRETER: The sheriff's office interpreter.

10 Q. Okay. Did Mr. Harbin's interpreter ever go over your statements with
11 you with Mr. Harbin?

12 (Interpreter converses with Defendant in Spanish.)

13 INTERPRETER: No.

14 Q. Okay. And how many different interpreters did Mr. Harbin use at the
15 different meetings?

16 (Interpreter converses with Defendant in Spanish.)

17 INTERPRETER: When I was at Spartanburg County, it took three
18 interpreters.

19 Q. Okay. And none of those --- every time you met with him, you were ---
20 you had an interpreter there; is that right?

21 (Interpreter converses with Defendant in Spanish.)

22 INTERPRETER: Yes, it was with an interpreter.

23 (Interpreter converses with Defendant in Spanish.)

24 INTERPRETER: But I had problems with the interpreter. They
25 couldn't explain properly to me the things that the attorney was saying. And,

1 then, at times the attorney was not understanding what I was trying to say
2 through them.

3 Q. Okay. How long did each meeting last when you met with Mr. Harbin
4 and the interpreter?

5 (Interpreter converses with Defendant in Spanish.)

6 INTERPRETER: From 15 to 20 minutes.

7 Q. Okay. How much total time did you spend with Mr. Harbin before you
8 pled guilty?

9 (Interpreter converses with Defendant in Spanish.)

10 INTERPRETER: Probably an hour.

11 Q. Okay. And to — to make clear, you — when did you first get discovery
12 from Mr. Harbin?

13 (Interpreter converses with Defendant in Spanish.)

14 INTERPRETER: I would write to Mr. Harbin, when I was in prison to
15 get the discovery, and he never sent me the discovery. I had to write to write
16 to the Supreme Court so that they could send me the discovery. And they
17 finally got him to send me the discovery.

18 Q. Do you ---

19 (Interpreter converses with Defendant in Spanish.)

20 INTERPRETER: I received the discovery in November of 2012.

21 Q. Okay. Do you believe you received all the discovery that Mr. Harbin
22 got from the Solicitor's office?

23 (Interpreter converses with Defendant in Spanish.)

24 INTERPRETER: No, the discovery isn't complete because I don't
25 have statements from my co-defendants.

1 (Interpreter converses with Defendant in Spanish.)

2 INTERPRETER: And, actually, I have a — a paper or letter that —
3 that says that — that says that was just a part of my discovery and that I would
4 receive more in a week, but I never received anything else.

5 Q. Okay. And did you receive discovery from my office from Chase
6 Harbin?

7 (Interpreter converses with Defendant in Spanish.)

8 INTERPRETER: It's the same.

9 Q. Okay. Was it the same you initially received from Mr. Harbin?

10 (Interpreter converses with Defendant in Spanish.)

11 INTERPRETER: Yes, it's the same.

12 Q. Okay. Why do you believe there's more evidence out there that he
13 didn't discover?

14 (Interpreter converses with Defendant in Spanish.)

15 INTERPRETER: I don't have any statements or anything from Ms.
16 Cortez (phonetic) or from Lopez. There is a lot of information that is missing.

17 Q. Okay. And who is Ms. — Ms. Cortez?

18 (Interpreter converses with Defendant in Spanish.)

19 INTERPRETER: She's some friend in the case.

20 (Interpreter converses with Defendant in Spanish.)

21 INTERPRETER: She's my co-defendant.

22 Q. And who was the other gentleman you were speaking — the
23 gentleman?

24 (Interpreter converses with Defendant in Spanish.)

25 INTERPRETER: He is also a co-defendant.

1 Q. Okay. And you've never seen their statements based on anything that
2 Mr. Harbin has given you?

3 (Interpreter converses with Defendant in Spanish.)

4 INTERPRETER: I don't have a statement. I don't have anything.

5 Q. Did Mr. Harbin explain to you how accessory after the fact or
6 accessory before the fact of murder works?

7 (Interpreter converses with Defendant in Spanish.)

8 INTERPRETER: I don't understand that so that's why I asked him for
9 time so that I could understand.

10 (Interpreter converses with Defendant in Spanish.)

11 INTERPRETER: And he told me that I didn't have time; that I had to
12 sign.

13 (Interpreter converses with Defendant in Spanish.)

14 INTERPRETER: So that's why I asked for the discovery so that I
15 could get more time because I wanted to go to trial.

16 Q. Did you believe that you were actually pleading guilty to something less
17 than murder — or that you would get time less than murder?

18 (Interpreter converses with Defendant in Spanish.)

19 INTERPRETER: Of course I thought it was less time.

20 (Interpreter converses with Defendant in Spanish.)

21 INTERPRETER: Because they had supposedly taken from me the
22 ---- or had removed the murder charge. And I thought that accessory to
23 murder was less than the initial charge of murder.

24 (Interpreter converses with Defendant in Spanish.)

25 INTERPRETER: So I didn't understand what the consequences were

1 with those new charges.

2 Q. Okay. And, as to the other charges, the trafficking charge, did he
3 explain to you the implications of that?

4 (Interpreter converses with Defendant in Spanish.)

5 INTERPRETER: With the drug charges, he didn't explain anything
6 about that either. He told me that we had to leave those aside and we had to
7 concentrate on the ones that I had.

8 Q. Did you all ever go fully the trafficking charge at all?

9 (Interpreter converses with Defendant in Spanish.)

10 INTERPRETER: Very little because he ---- he was focused more on
11 the murder charges. He said he wanted to concentrate on those.

12 Q. Are you a U.S. citizen?

13 (Interpreter converses with Defendant in Spanish.)

14 INTERPRETER: No.

15 Q. Did Mr. Harbin ever discuss with you the — the implication of pleading
16 guilty on — on the ability for you to be deported?

17 (Interpreter converses with Defendant in Spanish.)

18 INTERPRETER: No. No, he didn't explain any of that to me.

19 Q. Okay. Are there other things you believe Mr. Harbin did incorrectly other
20 than what we've talked about?

21 (Interpreter converses with Defendant in Spanish.)

22 INTERPRETER: Yes. I believed that, as serious of a case that I
23 have, I thought he — he needed to communicate well with me. He needed to
24 explain to me the charges and the consequences of the — the charges that I
25 had.

(Interpreter converses with Defendant in Spanish.)

INTERPRETER: And he knew that I had given statements without — or involuntary statement while I was — when I requested to have an attorney. He knew that and he didn't do anything about that.

(Interpreter converses with Defendant in Spanish.)

INTERPRETER: And, then, I also told attorney Harbin that I was willing to pay an interpreter because the interpreters that they had or that he provided were just not working.

Q. And how did he respond to that?

(Interpreter converses with Defendant in Spanish.)

INTERPRETER: He didn't answer anything.

Q. Okay. Did you money at the time to be able to pay an interpreter?

(Interpreter converses with Defendant in Spanish.)

INTERPRETER: When I was arrested, I had several thousand dollars and I wanted to use that money towards my attorney.

Q. Okay. Was Mr. Harbin appointed or retained in this case?

(Interpreter converses with Defendant in Spanish.)

INTERPRETER: Through my ex-wife, she looked for him so that he could represent me.

Q. And how much did you pay Mr. Harbin to represent you?

(Interpreter converses with Defendant in Spanish.)

INTERPRETER: Forty thousand dollars (\$40,000).

Q. All right. Do you believe you had sufficient funds to get whichever interpreter you thought was best?

(Interpreter converses with Defendant in Spanish.)

1 INTERPRETER: I told him that I had ----

2 (Interpreter converses with Defendant in Spanish.)

3 INTERPRETER: ---- I told him that I had someone that could really
4 interpret for me or that I could pay someone to interpret for me.

5 Q. Did you — have you been able to review your own statements in the
6 discovery?

7 (Interpreter converses with Defendant in Spanish.)

8 INTERPRETER: I've seen it — I've seen them, but they're not very
9 legible. I know there's things that are there that I never said.

10 (Interpreter converses with Defendant in Spanish.)

11 INTERPRETER: And I don't remember signing so many sheets.

12 (Interpreter converses with Defendant in Spanish.)

13 INTERPRETER: And I told Mr. Harbin that. He knew that.

14 (Interpreter converses with Defendant in Spanish.)

15 INTERPRETER: I told him that I did not remember signing that many
16 — those — those many statements.

17 Q. Okay. Do you recall if the translators — not Mr. Harbin's translators,
18 but the other translators — were working for the police?

19 (Interpreter converses with Defendant in Spanish.)

20 INTERPRETER: I don't know.

21 Q. Were some of the statements actually taken by a bilingual deputy?

22 (Interpreter converses with Defendant in Spanish.)

23 INTERPRETER: No, I don't know.

24 Q. Okay. But you believe that — go ahead.

25 (Interpreter converses with Defendant in Spanish.)

1 **INTERPRETER:** The interpreters were Mr. Harbin's. I don't know
2 where he got them. I don't know if they were working for the police or who
3 they were working for.

4 **Q.** Well, I'm asking specifically for — about the sheriff's office. Were the
5 sheriff's interpreters employees of the sheriff's office?

6 **(Interpreter converses with Defendant in Spanish.)**

7 **INTERPRETER:** The interpreters were officers.

8 **Q.** Okay. And did you talk to Mr. Harbin about the fact that they mis-
9 interpreted you?

10 **(Interpreter converses with Defendant in Spanish.)**

11 **INTERPRETER:** Yes, I told him.

12 **(Interpreter converses with Defendant in Spanish.)**

13 **INTERPRETER:** Yes, I told him, but because we had problems
14 communicating, he would repeat the same thing over and over through the
15 interpreter and — or sometimes he would say, "How do you say this?" Or
16 "How do you write this?"

17 **Q.** But, to your knowledge, he never attempted to challenge those
18 statements that were used as confessions against you?

19 **(Interpreter converses with Defendant in Spanish.)**

20 **INTERPRETER:** No, I told him that my statements were involuntary.

21 And I —

22 **(Interpreter converses with Defendant in Spanish.)**

23 **INTERPRETER:** --- and I always told him to talk to me about that,
24 but, he never gave me information about that.

25 **Q.** Carlos, have we covered everything you want the judge to know about

1 as far as Mr. Harbin's representation?

2 (Interpreter converses with Defendant in Spanish.)

3 INTERPRETER: Yes. Well, I just want to say that I was not happy
4 with the work that he did. And he knows that. That's why I asked for the other
5 two witnesses. El Pino (phonetic), my ex-wife, she's one of the witnesses I'm
6 requesting well because she's the one that had all the information.

7 (Interpreter converses with Defendant in Spanish.)

8 INTERPRETER: And she knew — she knew that I was unhappy with
9 this work. And I wanted him [sic] to go see him — I mean, I wanted him to go
10 see me or to visit me so we could talk about the case.

11 She always knew that I was unhappy with his services.

12 (Interpreter converses with Defendant in Spanish.)

13 INTERPRETER: And, when he — or when we were about to go and
14 plead guilty, he never explained to me or told me anything about the charges,
15 the new charges, the accessory before and after murder.

16 I didn't know what those terms meant. I had never heard them before.

17 (Interpreter converses with Defendant in Spanish.)

18 INTERPRETER: So, when he went and asked that I plead guilty, he
19 was — he wanted me to plead guilty. He even pounded (phonetic) on the
20 table so I would plead guilty.

21 Q. Do you feel like you were pressured into pleading guilty?

22 (Interpreter converses with Defendant in Spanish.)

23 INTERPRETER: Of course.

24 (Interpreter converses with Defendant in Spanish.)

25 INTERPRETER: Of course, because I asked him for time and I also

1 asked him to see the discovery so that I could prepare for the case.

2 Q. Okay. Have we covered — I'm sorry.

3 (Interpreter converses with Defendant in Spanish.)

4 INTERPRETER: Or that he explain to me about what the
5 consequences of the new charges were.

6 (Interpreter converses with Defendant in Spanish.)

7 INTERPRETER: And that he explained to me all the work that he
8 had done for me.

9 (Interpreter converses with Defendant in Spanish.)

10 INTERPRETER: He never gave me a full explanation of what his
11 work in my case was doing for me.

12 (Interpreter converses with Defendant in Spanish.)

13 INTERPRETER: And, since my case was so serious, I felt like he
14 needed to tell me what he was working on and what my charges were.

15 Q. Carlos, are there any other additional grounds that you believe led you
16 to plead guilty when you should have not?

17 (Interpreter converses with Defendant in Spanish.)

18 INTERPRETER: I think that's it.

19 Q. Okay.

20 MR. RUCKER: No further questions, Your Honor.

21 THE COURT: Yes, ma'am?

22 MS. WHITE: Thank you, Your Honor.

23 Cross Examination by Ms. White:

24 Q. Mr. Vasquez, do you recall your guilty plea?

25 (Interpreter converses with Defendant in Spanish.)

1 INTERPRETER: July 12th, 2010.

2 Q. Yes. Do you recall going before Judge Cole that day?

3 (Interpreter converses with Defendant in Spanish.)

4 INTERPRETER: Yes.

5 Q. Do you recall Judge Cole asking you if you had plenty of time to talk
6 with Mr. Harbin about the case and about your decision to plead guilty?

7 (Interpreter converses with Defendant in Spanish.)

8 INTERPRETER: Yes. Yes, I remember the judge said that.

9 Q. And do you recall that you informed the Court you had, had enough
10 time?

11 (Interpreter converses with Defendant in Spanish.)

12 INTERPRETER: What happened that day was that Mr. Harbin took
13 me to the room, like we went this morning, and he told me that I didn't have to
14 give any explanations to the judge, just to say "yes" and to plead guilty since I
15 wanted to plead guilty.

16 Q. So your explanation is that you only said yes, that you had enough
17 time? And you said yes, that Mr. Harbin had explained the indictments and the
18 charges because you were told to say "yes"?

19 (Interpreter converses with Defendant in Spanish.)

20 INTERPRETER: Attorney Harbin told me that.

21 (Interpreter converses with Defendant in Spanish.)

22 INTERPRETER: But I didn't have —

23 (Interpreter converses with Defendant in Spanish.)

24 INTERPRETER: That I didn't have to give any explanations to the
25 judge about anything, just to convince him that I was guilty because I was

1 guilty.

2 Q. Okay. And, in fact, you acknowledged that you agreed with the facts as
3 the State presented them at your plea, didn't you?

4 (Interpreter converses with Defendant in Spanish.)

5 INTERPRETER: Yes, I remember.

6 Q. Okay. And do you recall also the judge explaining to you that you could
7 receive up to a sentence of life on the accessory charges?

8 (Interpreter converses with Defendant in Spanish.)

9 INTERPRETER: Yes, I understood that. That's ----

10 (Interpreter converses with Defendant in Spanish.)

11 INTERPRETER: That's the first time that I was hearing that. The
12 attorney never told me about it.

13 Q. When the judge asked you, if Mr. Harbin had explained to you the rights
14 that you had to give up, if you wanted to plea guilty, and you said you understood
15 that?

16 (Interpreter converses with Defendant in Spanish.)

17 INTERPRETER: Yes.

18 (Interpreter converses with Defendant in Spanish.)

19 INTERPRETER: Yes. He had explained to me that we were going to
20 waive all of our rights because I was pleading guilty. We had to make the
21 judge understand that I was pleading guilty. And that's why I had to waive the
22 rights and say that I did understand them.

23 Q. Okay. So you acknowledge, though, the judge told you several times
24 and asked if you wanted to continue with pleading guilty knowing that you could get a
25 life sentence?

1 (Interpreter converses with Defendant in Spanish.)

2 INTERPRETER: Yes, because — because Attorney Harbin told me
3 that we had to convince the judge at that moment.

4 (Interpreter converses with Defendant in Spanish.)

5 INTERPRETER: Because, if I didn't convince him at that moment,
6 then, we were going to go to trial and, then, I was going to receive a life
7 sentence.

8 Q. So you chose to plead instead of going to trial because you wanted to
9 receive a lesser sentence than life?

10 (Interpreter converses with Defendant in Spanish.)

11 INTERPRETER: No, I asked Mr. Harbin to go to trial.

12 (Interpreter converses with Defendant in Spanish.)

13 INTERPRETER: I asked him ---

14 (Interpreter converses with Defendant in Spanish.)

15 INTERPRETER: I asked him that I wanted to go to — to go and have
16 a trial, but he didn't want to. He said that, "No, we had to plead guilty."

17 Q. Okay. So, when the judge asked if anybody had threatened you to
18 make this decision, or put any kind of pressure on you, and you said, no, it was your
19 own decision, was that a lie?

20 (Interpreter converses with Defendant in Spanish.)

21 INTERPRETER: That was a lie because the attorney told me what I
22 had to say.

23 Q. And you recall being sworn to tell the truth at the plea?

24 (Interpreter converses with Defendant in Spanish.)

25 INTERPRETER: Yes, I remember.

1 Q. But you acknowledge that you weren't truthful to the Court that day?

2 (Interpreter converses with Defendant in Spanish.)

3 INTERPRETER: What happened was that the attorney told me that I
4 had to plead guilty.

5 (Interpreter converses with Defendant in Spanish.)

6 INTERPRETER: So I didn't know what his purpose was because I
7 asked him to go to trial.

8 (Interpreter converses with Defendant in Spanish.)

9 INTERPRETER: The only thing that he told me was to believe him
10 and that he was working for me.

11 Q. So all the times the judge asked you direct questions, and you
12 answered "yes" or "no," you're testifying today that, that was all from the attorney
13 telling you what to say?

14 (Interpreter converses with Defendant in Spanish.)

15 INTERPRETER: The attorney told me that I had to say "yes" and not
16 to give explanation for anything.

17 Q. So he told you to say "yes" to everything, but you answered that nobody
18 had promised you anything, right?

19 (Interpreter converses with Defendant in Spanish.)

20 INTERPRETER: I'm sorry?

21 Q. You answered "no" to a lot of the questions, so, obviously, his — his
22 advice to answer "yes" to everything, you understood what the judge was asking and
23 answered appropriately?

24 (Interpreter converses with Defendant in Spanish.)

25 INTERPRETER: He told me that I had to listen to the question and

1 say "yes" or "no." That was it.

2 Q. Okay. So, when you answered "yes" or "no," you were answering
3 honestly, responding to what the judge asked?

4 (Interpreter converses with Defendant in Spanish.)

5 INTERPRETER: I was probably only following what the attorney had
6 told me so that I could plead guilty in front of the judge.

7 Q. Okay. And, again, when the judge, at the very end of the plea, told you
8 that he could still give you a life sentence and asked if you wanted to continue with
9 the plea, you said "yes"?

10 (Interpreter converses with Defendant in Spanish.)

11 INTERPRETER: Yes, I understood that, that's what he was telling
12 me.

13 (Interpreter converses with Defendant in Spanish.)

14 INTERPRETER: The attorney always told me that I had to answer
15 perfectly so that I could plead guilty in front of the judge.

16 Q. Okay. And, if you didn't want to plead guilty, why didn't you not tell the
17 Court, when you were there, that you wanted to go to trial when they asked you?

18 (Interpreter converses with Defendant in Spanish.)

19 INTERPRETER: It was the first —

20 (Interpreter converses with Defendant in Spanish.)

21 INTERPRETER: It was the time that I had appeared in court. I — I
22 didn't know about law or anything. And I was just being guided by the
23 attorney.

24 Q. Okay. Thank you.

25 MS. WHITE: That's all have, Your Honor.

1 THE COURT: Anything?

2 MR. RUCKER: No further questions, Your Honor.

3 THE COURT: I have — I have one. Let's put this on the record.

4 Sir, have you had any problem understanding the questions and giving

5 answers from this interpreter?

6 (Interpreter converses with Defendant in Spanish.)

7 INTERPRETER: Everything's fine.

8 THE COURT: Okay. You're perfectly clear with the interpretations
9 she's made for you?

10 (Interpreter converses with Defendant in Spanish.)

11 INTERPRETER: Yes, it's fine.

12 THE COURT: Thank you. Anything further?

13 MR. RUCKER: That's our case, Your Honor.

14 THE COURT: Okay. You may step down.

15 (Witness complied with the Court's request.)

16 THE COURT: Yes, ma'am?

17 MS. WHITE: Thank you, Your Honor. The State would call Mr.
18 Chase Harbin.

19 THE COURT: Mr. Harbin, come up and be sworn, please.

20 (The witness complied with the request.)

21 (Off-the-Record Comments)

22 (Whereupon,

23 Chase Harbin, Esquire

24 having been duly sworn, testified as follows:)

25 THE COURT: Please tell us your name on the record.

1 THE WITNESS: Hunter (phonetic) Chase Harbin.

2 THE COURT: Yes, ma'am?

3 MS. WHITE: Thank you, Your Honor.

4 Direct Examination by Ms. White:

11:22 A.m.

5 Q. Mr. Harbin, do you recall being retained to represent Mr. Vasquez?

6 A. Yes, ma'am.

7 Q. And is it accurate that you represented him, for about a year and a half,
8 prior to his plea?

9 A. That sounds about right, yes, ma'am.

10 Q. Okay. You've heard him talking. Do you recall meeting with him prior
11 to the plea?

12 A. Yes, ma'am.

13 Q. Do you recall how many times?

14 A. I — not specifically. He — he might be accurate of a handful, five —
15 four or five, something like that.

16 Q. And did you always have an interpreter with you when you visited with
17 him?

18 A. I — I recall — I seem to recall one time where I did not because I
19 happened to be in Spartanburg and just stopped by to see him. We had kind of a
20 tortured conversation.

21 He can speak some English, but just kind of it was just a, "Hey, I'm
22 here, I'm still here," kind of meeting.

23 Q. Did he ever express to you that he was having any concerns with the
24 interpreters that you brought with you to meetings?

25 A. Not my interpreters he didn't. We did talk about the interpreters used at

1 the sheriff's office.

2 Q. So he never indicated that he couldn't understand you through the
3 interpreters in your meetings?

4 A. No, ma'am.

5 Q. And speaking of, you said you — he talked about the sheriff's office, I
6 guess, interpreters or the officer that took his statement. Is that something that he
7 had done prior to you being retained?

8 A. That's correct. He had given a fairly lengthy statement before.

9 Q. And did you talk with him about the possibility of attacking the
10 voluntariness of that statement if you went to trial?

11 A. I — I did, and kind of what it would take to — to do that. You know, you
12 kind of give up some things to be able to attack things like that. Also, the — the
13 substance of his statement seems to be the same as what his explanations were to
14 me.

15 So any misinterpretation was — was probably not substantive as I
16 understood it. I was more concerned with *Miranda*. He did — he did mention that he
17 had asked for an attorney, but — but, as — as I figured out, you know, we — we
18 would have to go to trial to challenge that.

19 He didn't say — he did acknowledge that he waived his *Miranda* rights.
20 At some point during that conversation, he did ask for an attorney. And that would
21 be an issue certainly we could have brought up at trial.

22 But in the — in the due course of consideration of all the facts and —
23 and evidence as it was, it was my advice to — to eventually to plead guilty certainly.

24 Q. And explain to me a little bit, if you can to the Court, about the facts in
25 this case. It was a pretty involved situation, wasn't it?

1 A. Well, Mr. Vasquez was, as I understand it, business partners and —
2 and friends, as he described it, with the victim and his wife, or — or the two victims.
3 They were in a drug business together, a fairly — a fairly good sized drug business.

4 At some point or another, \$50,000, or its drug equivalent, had gone
5 missing. The victim wasn't going to get that money back or was denying that — that
6 he took it. I believe his story was that he — that he had gotten robbed himself.
7 The — and I need to kind of make sure I tell you what the allegations were as they
8 were known or what his explanations were I guess.

9 The allegation essentially was that he hired hit men to come from out of
10 state to take care of his — his friend. His explanation was — was different,
11 interestingly different, in that he said I — I knew that — well, I'm --- I'm — I'm
12 interpreting that he knew that, that's where the drugs were or the money was that
13 had been taken from him.

14 He was very close friends with them. He described them almost where
15 they were actually — you know, they'd grill out and hang out and drink beer; you
16 know, close.

17 And so that he was unable personally to confront him, at least to the
18 extent that he thought would be effective, in procuring his money back. And, as the
19 statement details, he visits someone that — that I would understand to be a
20 fortuneteller. This is the Latia (phonetic), the — the co-defendant.

21 And, during the course of this meeting, some how or another they come
22 to an agreement; she's going help him get the money back. She confirms that —
23 that the victim was the one that took the money. And so she arranges this effort to
24 get the money back.

25 The — the major difference in what the State had heretofore believed

1 and what was the stance was that yeah, I — I — I hired these folks or had an
2 agreement with these folks to go get my money back, but I didn't want them to kill
3 him because he was my buddy. You know, I didn't want this — this to go down like
4 that.

5 And so his testimony at trial could have been certainly that, although it
6 happened during the course of the commission of a crime, in which he was a part, he
7 did not specifically intend the result of the — of the murder and certainly not the
8 torturous manner in which that was affected.

9 I'm not sure how far down the line you need me to get.

10 Q. And that's fine. That's --- I guess — you, obviously, had discussions
11 with him about his side of the story?

12 A. Yes, ma'am. And he was — he was very concerned — I think
13 personally concerned about not — not just what happened but what was intended
14 prior to that happening.

15 Q. Do you recall his claim that he never received any discovery? He never
16 was told about the charges accessory before the fact? Do you recall speaking with
17 him about that?

18 A. I do. I didn't give him you a copy, a physical copy, of his discovery
19 while at the jail. I encourage all of my clients, who have a conspiracy type, you
20 know, thing where people would be snooping and whatnot, that, if they're
21 comfortable with trusting me to go over the discovery with them, that they not retain a
22 physical copy of it.

23 The first request I had for a physical copy was after his sentencing. So
24 I — I don't know that we had a problem with that at the time.

25 The explanation that he gave me about what occurred to lead up to ---

1 to these murders, in my mind, it was substituting one life sentence crime for another.
2 He was essentially conspiring to commit burglary or being an accessory before the
3 fact of burglary.

4 I certainly think there may have been an interesting argument to make
5 whether he was an accessory before the fact to murder, but that's somewhat of a win
6 the battle/lose the war type of situation to be put in.

7 So, when we got — well, one of the things I was nodding along, when
8 he was up here earlier, was that, when he understood the accessory charges to the
9 lesser charges, in a manner of speaking, I think he's right.

10 And that's certainly what we were going for is, if you're an accessory
11 beforehand, it's obviously some way, shape, or form kind of less than being the
12 principal in that he wasn't the person in the house; wasn't the person that made
13 those specific decisions.

14 And that was certainly our goal in sentencing was to highlight to the
15 judge that there's a difference in being the person that's in the house and doing this
16 awful thing and being somebody that started out with an entirely different objective.

17 Q. And the hope was that, by pleading guilty and acknowledging his
18 participation, that he would receive a lesser sentence than life; is that right?

19 A. That's correct. And, you know, every client wants you to predict what
20 they're going to get, and you do your best to tell them based on your experience
21 what we might hope for.

22 And going — you know, sitting in that room right before we go in front of
23 Judge Hayes, I — I said, "You know, I would think it's a day if we could get 40 or
24 under." And — and I — and I was disappointed that he — that he got life because
25 he did, in fact, plead and not go to trial.

1 Q. And, in fact, didn't most of the co-defendants plead and get pretty
2 substantial sentences?

3 A. I — I believe — I don't know that I remember that anybody got less than
4 40, but I may be wrong about that.

5 Q. Okay. Do you ever recall having any conversation with him about
6 whether or not he had the possibility of being deported?

7 A. I — I — I — I don't mean to make light of this, but I think that we joked,
8 at some point that he would be, which would have meant that he would have gotten
9 out of prison.

10 But, yeah, I — I don't know that I spent a whole lot of time on that
11 because obviously we had bigger fish to fry, but — but, yes, ma'am, I think we
12 touched on that.

13 Q. And, obviously, he testified he was charged with trafficking as well, but
14 in the grand scheme of things, was that the — the main issue?

15 A. The — the — the trafficking charge was based upon drugs found in his
16 house that I — that we just — just didn't have a — a way to challenge. So that was
17 just a — if the — if the best case scenario for a 30 to life sentence is 30 and the
18 trafficking caps out at 30, that certainly wasn't the focus of most of our discussions.

19 Q. At the plea, did you tell him how to answer questions?

20 A. I told him that he's going to have say "yes" and "no," and to listen
21 carefully and respond accordingly.

22 Q. Okay. And, from your conversations with him and an interpreter, did
23 you feel comfortable with the fact that he was pleading freely and voluntarily?

24 A. I was — I was very comfortable. In fact, I — I mentioned to you earlier,
25 he was a — he was a good client to work with. He did not, you know, question things

1 unnecessarily.

2 He — he did put his trust in me. I — you know, for — for a person, for
3 what it's worth, I'm — I'm disappointed that I wasn't able to kind of bring to fruition
4 what our goal was. But that's, you know, obviously, the judge's decision.

5 **MS. WHITE:** Okay. Thank you, Mr. Harbin.

6 **THE COURT:** Mr. Rucker?

7 **MR. RUCKER:** May it please the Court?

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

9 **Cross Examination By Mr. Rucker:**

10 **Q.** Mr. Harbin, let me ask you specifically about your policy of not sending
11 paper copies of the discovery. Is that because the clients are in jail?

12 **A.** Yeah, because they're in jail and — and snitches kind of appear out of
13 nowhere. And, you know, if you have to leave your cell, your papers are unguarded
14 and I've — I've had run-ins with that in the past and that's just — it — it avoids that
15 possibility.

16 **Q.** Okay. So ----

17 **A.** I explain that to my people (phonetic).

18 **Q.** ---- your testimony, though, is that you took these statements to him to
19 review the statement with the interpreters?

20 **A.** That's correct.

21 **Q.** All right. And your testimony is he did not challenge what was said
22 inside those statements?

23 **A.** No — well, now, to the extent that a statement disagreed with the way
24 that he explained it to me that I hopefully successfully tried to explain it to you all just
25 now, that we — we went over what his — what his story to me at the time, you know,

1 sitting face-to-face was, as opposed to how it may have sounded different in those
2 statements. But substantively his statement I believed to be the same as far as
3 levels of culpability.

4 Q. Okay. Did you review the statements of the co-defendants in this
5 case?

6 A. Yes.

7 Q. All right. Did you deliver to him or at least go over with him statements
8 of Ms. Cortez (phonetic) or Mr. Arbarros (phonetic)?

9 A. La — Latia, yes. Yeah, I — I remember doing that.

10 Q. All right. But, we had a conversation earlier where you said you did not
11 send him hard copies until later when that was requested; is that true?

12 A. Well, the — yes and no. He didn't request it at the time. He — he kind
13 of took my word, took my faith that the smart thing to do would not be to receive the
14 hard copies while he was incarcerated in the detention center here in Spartanburg.

15 He sent me a — a request after sentencing, after he was in SCDC, for
16 discovery. We complied with that. I even have a letter in my file that what he said
17 was true; we sent him a letter saying, you know, "This is what we have."

18 We were having trouble trying to figure out what to do with a DVD,
19 which had a lot of pictures on it, specifically, very graphic pictures.

20 And — and I believe that, for some reason or another, I thought that I
21 had a — another DVD or a different formatted DVD because Christine (phonetic)
22 was having trouble with the DVD, with copying the DVD.

23 The letter he received, then, would have told him, "Yeah, you're getting
24 some discovery in a little bit." I don't know that we followed up to explain why we
25 didn't send that additional discovery, but that — what was referred to in the letter was

1 the pictures, which I later — and this was not certainly on the record admittedly
2 (phonetic) — did not send him the DVD because of the content of the DVD as it
3 related to the victims and the — the state of the pictures that I don't know that SCDC
4 would have been real happy to have ----

5 Q. Sure. So you were worried about SCDC policy. But there's no policy
6 against getting statements from co-defendants?

7 A. No, no, no, no.

8 Q. All right. And you recall independently sending Ms. Cortez's statement
9 or Mr. Arbarros' statement?

10 A. I don't, but in fact, I didn't make copies. It would have been my
11 paralegal at the time. Certainly I — I have every reason to believe she would have
12 simply just copied the file as it existed.

13 Q. Okay. Do you — was it separated? Was it in a separate file? Were
14 those two statements in a separate file?

15 A. I — I do not believe they would have been, no.

16 Q. Okay. So she would have taken ---- I mean, you're — you're in charge
17 of her and you're responsible for what she does; is that true?

18 A. Sure.

19 Q. All right. She would take the file as is and, then, send it to my client
20 based on the request; is that fair?

21 A. True.

22 Q. But the statements of these two co-defendants didn't make it.

23 A. I'm — I'm taking your word for it. But ----

24 Q. But you don't know if they made it or not?

25 A. I — I — I do not.

1 Q. So, when did you review the statements of Mr. Arbarros and Ms.
2 Cortez?

3 A. Way before he had requested them, when he was still a resident of the
4 detention center prior to his plea and prior --- certainly prior to sentencing and prior to
5 his plea.

6 Q. Did you take those statements with you to Spartanburg County to
7 review them with him?

8 A. I did.

9 Q. Okay. And what were --- what did Ms. Cortez say basically happened
10 in this case?

11 A. It's --- it's been quite a long time ago and --- and I don't know that I
12 have --- I don't know that I have the ability to recount it exactly. She certainly did not
13 admit to exactly what he was telling me was the case.

14 Q. Okay.

15 A. I'm really struggling to be able to tell you ---

16 Q. Sure.

17 A. --- substantively what she said. I --- I remember that, you know, much
18 like many defendant's statement, they exonerate themselves and culpate (phonetic)
19 other people.

20 Q. Sure.

21 A. But ---

22 Q. And I understand it's been a --- been --- been awhile, but did you bring
23 your case file today?

24 A. I've --- I've got it here.

25 Q. All right. To your knowledge, is Ms. Cortez's statement, or the other

1 defendant's, Mr. Arbarros's statement in there?

2 A. I — I probably should have looked through it earlier, but I — I can try to
3 look through it now to see if it's there, but I do not know.

4 MR. RUCKER: Your Honor, if — if there is no objection from the
5 State, I wouldn't mind him pulling those two statements.

6 THE COURT: Sure.

7 (Brief pause while the witness examines documents.)

8 A. And, Brandt, you're looking for Latia's and Mr. Reyes (phonetic)?

9 Q. That's correct. And — and just for clarification for the Court, who is —
10 Miss — who is Latia? What's her other name?

11 A. Ah ---

12 Q. Is that Ms. Cortez?

13 A. I — I believe it to be, yes, yeah.

14 (Brief pause while the witness continues examining documents.)

15 A. I apologize for taking this long. I just want to be —

16 THE COURT: Take your time.

17 A. --- thorough.

18 (Brief pause while the witness continues examining documents.)

19 A. It does not appear to be in my file, either — either one of the
20 statements that you asked for. And I'm pretty sure that I've — I've gone through
21 what I have here.

22 Q. All right. In fairness, Mr. Harbin, were you subpoenaed to bring these
23 documents by the State today?

24 A. Yes, sir.

25 Q. All right. So what proof do we have you actually went over those

1 documents with my client? If — if you don't have them in your file, and you're
2 testifying that you went over the documents with my client, what --- what evidence do
3 we have of that?

4 A. Other than my testimony, I — I can't offer you any extrinsic (phonetic)
5 proof of that.

6 Q. Okay. And your earlier testimony was you're hazy on the details; you
7 don't remember exactly what she said. You would have to refer to your file, but it's
8 simply not in your file; is that fair?

9 A. Her statement is not in my file; that's correct.

10 Q. Okay. Do you — do you recall going over the — the University of
11 Kentucky issue regarding his status in the United States (phonetic)?

12 A. I — I recall. Again, it was — that would have been a brief portion of our
13 conversation. But, yeah, I remember just letting him know that I — I think what I've
14 gotten to tell most my clients that — that have deportation worries is that anything
15 above spitting on the sidewalk you have to worry. And certainly these would be well
16 within that.

17 Q. Okay. And did you put that on the record in front of Judge Cole?

18 A. I don't recall if I did that.

19 Q. Okay. All right. Now, there was — my client — again, you admitted
20 previously that you met with him four — at least four or five times; is that fair?

21 A. I — that — that seems to be accurate.

22 Q. Okay. And how long would you meet when you would actually meet
23 with him?

24 A. I — I don't recall specifically. I know the time I didn't have an interpreter
25 that it was very quick. Obviously, there wasn't — he can communicate, but — but

1 not certainly anything you want to spend a lot of time with.

2 I would say that, when we went over the — the — the time that sticks
3 out in my mind, it would have been, you know, an hour and a half or so just because
4 of the length of statements.

5 And — and, I believe, to my recollection, the only thing that I read —
6 because certainly it takes quite a while to do this, read verbatim to him were the —
7 were the statements; the what I would call Code 5, just kind of police reports and just
8 more circumstantial type stuff.

9 I just described to him in — in substance what they said rather than
10 going over it verbatim.

11 Q. Okay. And that was — and I believe you testified earlier you had a
12 conversation with him with that interpreter, but it didn't really go well?

13 A. That's — that's right. It was — it was really just more of a "Hey, I
14 happened to be in Spartanburg and I wanted to let you know that I — you know, I'm
15 — I'm here." And it was really more of a customer service visit than anything else.

16 Q. Okay. And I don't mean any offense by this, but do you speak Spanish
17 well?

18 A. No, not at all.

19 Q. Okay. And your testimony is he does not speak English well?

20 A. Yeah, he speaks it. I mean, he can tell me there's a fire; he can order a
21 hamburger, but, I don't think he could — certainly couldn't survive court.

22 Q. And could he go over legal issues with you, any motions?

23 A. I — I wouldn't have attempted to do so.

24 Q. It is fair to say you were wholly dependent on the interpreters you had
25 to make sure he understood what was happening?

1 A. I was like — I wouldn't know if they were speaking another language
2 honestly.

3 Q. Okay. And, if you looked at the discovery file that had statements in
4 Spanish, you wouldn't know what they mean?

5 A. That's correct.

6 Q. All right. So you would have to use the interpreter at the sheriff's office,
7 or at least depend on the sheriff's office, to accurately depict what he said in the
8 discovery?

9 A. You're — you're talking about what they transcribed?

10 Q. Yes.

11 A. That's correct.

12 Q. And do you — you dispute that there were sheriff's employees or
13 sheriff's deputies taking his statements before he got to you?

14 A. Yeah. My --- my understanding is that it was — it was some employee
15 of law enforcement that took the statement for him originally, yeah.

16 Q. Okay. Did you ever question those witnesses; try to make contact with
17 them and talk to them about the statements?

18 A. No, I — I didn't. I certainly understood and believed that, just based
19 upon what — what he was telling me and — and based upon the conversations that
20 he was having with the interpreter about that issue, and, then, the interpreter kind of
21 reporting back to me.

22 I don't remember the specifics, but he gave a couple of examples of
23 how that interpreter had just mis-interpreted. He simply did not understand a
24 particular word or phrase. I don't know if it was a dialect issue or not.

25 But, by the time we got back around to kind of the statement and

1 substance, there — there wasn't an issue I was — I was specifically concerned
2 about.

3 Q. Okay. Is it — it's true, isn't it, that my client had a problem with your
4 first interpreter because of drug charges or his belief that the interpreter had drug
5 charges?

6 A. I — I honestly don't — if he did, I don't — I don't think he told me
7 anything about it.

8 Q. Okay. Did my client ask you if he could hire a separate interpreter?

9 A. No.

10 Q. I mean, you understood that he had sufficient money to hire the best
11 one in South Carolina?

12 A. He — he — he did through me. I — I paid for the interpreters and —
13 well, you know, it came out of the fees that he paid me. And I — he did pay for
14 interpreters.

15 Q. Okay. Why did you — why did you believe it was in his best interest to
16 plead guilty in this case?

17 A. Because his defense would have been to admit guilt. You know, his —
18 his defense was hiring folks to come shake his friend down, at the — at the — if — if
19 — if you believed him — and, quite frankly back then, I — I certainly did and still do
20 — that he wanted money back from — from a drug transaction that he didn't get.
21 He was willing to have somebody else go shake him down to do that.

22 The evidence I believe showed that there was plenty of knowledge that
23 they were willing to quote/unquote "Do whatever it takes to, you know, physically
24 harm him, threaten him," during the course of the commission of that getting the
25 money.

1 I believe he would have ended up being legally held responsible for
2 actions they did over and above what he had intended originally to do. So it would
3 have been a win a battle/lose a war situation had we taken it and gone to trial.

4 Q. I understand. Now, what evidence did they specifically — I — I mean,
5 I'm not getting into the graphic details of the whole — but what evidence did they
6 have that my client was actually involved in this at all?

7 A. Well, they — they — they had a considerable amount of telephone
8 records bouncing — you know, telephone calls bouncing off particular towers at
9 particular times from particular numbers.

10 His friend, Mr. Reyes — and I understand them to have been friends,
11 although I believe Mr. Reyes kind of worked directly under him, he actually rode with
12 the — the crew, the hitmen crew or whatever it was, although I don't believe that he
13 went into the home.

14 I believe they certainly would have tied him back into that because it
15 was the subject of the — the burglary or the whatever you want to call that trip to the
16 home. That would have been involving his money and his — his dealings.

17 I think they could have easily tied him back through that. And, then, of
18 course, the initial arrangement for — for the arrangement for the — for the object of
19 the visit was him, was — was his orchestration, whether or not it kind of went haywire
20 once it got there.

21 Q. I understand, but where would they get — and let's start with the
22 telephones. Did they have any substantive recordings of what was said in the phone
23 calls or just registries?

24 A. Just registries.

25 Q. Okay. And who were the witnesses that would have testified against

1 him about his involvement in this?

2 A. Well, the sheriff's office, through his statement, Mr. Reyes certainly.
3 And, then, he probably unwittingly would have been their probably best witness
4 because he was there when people jumped out of the car and went into the house
5 and — and all of that.

6 So they also were able to — I don't recall if this is a video or just freeze-
7 frames from — from a convenience store, but they were — I think — I think the
8 convenience store — but they were buying gloves. And, then, this is within minutes
9 or so of the — of the ride over there, buying gloves and — and what police would
10 certainly color as implements of — of burglaries and — and ill intentions; you know,
11 hiding their identities and such.

12 Q. Right. And that's just speculation; is that fair?

13 A. Well, I — I don't — speculation sounds a little bit — it's — it's fair to say
14 speculation, yeah, I mean, but that's what would have happened at the trial.

15 Q. Okay. But you don't know for sure or we don't have evidence that you
16 actually reviewed the statements of Mr. Arbarros or Ms. Cortez, do we?

17 A. I — I went over the statements with him, so...

18 Q. Okay. But we don't have a hard copy of what you actually went over
19 with my client; is that fair?

20 A. I don't.

21 Q. Okay. My point is, who were — the witnesses specifically non-police
22 witnesses, co-defendants, that were going to testify at the trial you assume?

23 A. I — the — the name that I readily remember is Mr. Reyes because that
24 was I — I believe I actually had a concern about Mr. Reyes personally. Mr. Reyes
25 was the — the major tie to it. I — I — I don't recall the other names.

1 Q. And you were ----

2 A. And I — I don't necessarily recall that I had a belief that, outside of Mr.
3 Reyes' testimony, that — that we would have been looking for somebody else not to
4 testify so that we could have a really good shot at winning at trial.

5 Q. Well, what is it — well, the two statements, Ms. Cortez's statement and
6 Mr. Arbarros' statements, are crucial then?

7 A. I believe so.

8 Q. Okay. And Mr. Arbarros, do you recall what his statement actually —
9 what the content of it was?

10 A. It — it would have, in time chronologically any way, proven the State's
11 case. But, again, I — I believe he just claimed knowledge that harm was to come —
12 is it Mr. Luco — the victims purposely; that it was just a money matter I believe.

13 Q. Well, in addition to disclaiming, didn't he say that he didn't realize
14 exactly what they were going over there to do?

15 A. I believe that — yeah, I believe that he — he tried to kind of say that he
16 didn't really know what in the world was going on.

17 Q. Okay. And Mr. Arbarros — the — the phone calls were between Mr.
18 Arbarros and Mister — my client, Mr. Vasquez; is that right?

19 A. I believe so.

20 Q. And there was no evidence of any set — set of phone calls to the
21 woman named Retia (phonetic), the aunt, Ms. Cortez?

22 A. I — I actually — I just — I don't recall. I — I believe you're right, but I —
23 I don't recall.

24 Q. Okay. And so just — just to summarize, then, Mister — Mister
25 Arbarros' statement, "We didn't know what we were doing — I didn't know what was

1 going to happen when I went over there," and the link between Mr. Vasquez and Mr.
2 Arbarros is simply phone calls between the two?

3 A. Yes.

4 Q. All right. And where is the evidence that there was an intended
5 burglary in Mr. Vasquez's statement?

6 A. The — well, I think there's two separate questions at least that I heard.

7 Q. Well, the answer — sure.

8 A. The evidence that Mr. Reyes or — I think I'm using a different name
9 than you, but ----

10 Q. Let's — let's clear that up. Is Mr. Arbarros the same as Mr. Reyes?

11 A. I — I believe we're talking about the same guy.

12 Q. Okay.

13 A. Excuse me, when you say Reyes — Mister — Mr. Reyes, I believe that
14 he would not have been believable; that he knew what they were doing because he
15 was with them when they were buying the things that kind of clearly cover your
16 identity, conceal what you're doing. I — I can't remember if it was latex gloves or just
17 gloves; things like that.

18 But I — I — I don't necessarily think that it would be viewed as anything
19 other than a self-serving disclaimer. And, then, the rest of it would have been
20 confirmation of the police's time line essentially.

21 As far as my client's explanation, if he were to have not gotten on the
22 stand to explain how things went south, I'm not really sure how the jury would have
23 had any — any ability to find him not guilty of at least what I said — and, again, at
24 least the conspiracy to conduct burglary for a lack of a better -- or more sophisticated
25 term, accessory before the fact certainly, the same --- I believe legally the same

1 thing.

2 Again, I do think that maybe we would've had a fighting chance at
3 accessory before the fact to murder just by making it a nuance argument as to
4 whether or not you can be an accessory to something that your only responsible by
5 virtue of — of an appellant felony (phonetic) rule. But I don't know that, that would've
6 gotten any further — closer — closer to a — a better guaranteed sentence or a
7 better —

8 Q. Sure.

9 A. --- a better outcome.

10 Q. You don't remember whether Ms. Cortez was implicated by Mr. Reyes
11 as being the ringleader of this, do you?

12 A. I — I actually don't.

13 Q. Could — could it be fair she was the ringleader?

14 A. Oh, yeah, I — I — I believe she either had — it — it was my theory of
15 the case that if, had we gone through trial, that, if it was our goal to exonerate Mr.
16 Vasquez completely, then, he would have had to have been a sucker, you know, kind
17 of played for the fool, by Ms. Latia and — and I guess for her to make a lot of money.

18 Q. Okay. Was — was Ms. Cortez Latia getting money out of this process?

19 A. I think that their --- their agreement was to — to share in the monies
20 that were recovered.

21 Q. Okay. Was that included in Mr, Vasquez's statement?

22 A. I believe that it was.

23 Q. All right. And there was talk about witchcraft and a lot of cultural
24 issues. Do you recall that?

25 A. I do.

1 Q. Do you recall on the record you actually went into some of the cultural
2 misunderstanding the Court may be having, at the time of guilty plea, of what they
3 were actually talking about?

4 A. I — I — vaguely, yes, sir, I do.

5 Q. Okay. So is it fair to say some cultural context could have explained
6 some of the situations that were happening in the underlying facts?

7 A. I — I believe that's certainly a possibility, yes.

8 Q. Okay. Did Ms. Cortez admit fully to her involvement in this case?

9 A. I — I don't think she ever really came all the way clean. I don't think
10 she ever admitted to what I think that Carlos Santos (phonetic) talked about.

11 Q. Okay. How many people allegedly went into the house to get the
12 money?

13 A. I — I want to say — I want to say it was three (3).

14 Q. Is there any link between Mr. Vasquez, as far as phone records, letters,
15 any substantive link, between him and the people that went inside the house?

16 A. I can't recall that the link was anything past Latia herself.

17 Q. Okay. And you recall that — from the discovery that Ms. Cortez Latia is
18 the person who arranged everything with those people?

19 A. I believe she was fully the ringleader in that — in that part of the — in
20 the — to --- to get that group of guys together to go do what they did, yeah, I — I
21 think she was ---

22 Q. Okay.

23 A. She was the one that organized the whole thing.

24 Q. And earlier you testified that Mr. Ar --- Reyes — Mr. Arbarros was
25 actually a — a worker for Mr. Vasquez?

1 A. Correct.

2 Q. How many phone calls were there between Mr. Vasquez and Mr. Reyes
3 Arbarros that day, that afternoon?

4 A. I — I — I have no idea.

5 Q. Did Mr. Vasquez inform you he — he consistently talked to him about
6 what they would do the next day and what they would have to do for work? Even at
7 nights sometimes have to work together?

8 A. They were — I — I understood them to be very close and in
9 communication all the time.

10 Q. Okay.

11 MR. RUCKER: One second, Your Honor.

12 THE COURT: Yes, sir.

13 (Off-the-Record Discussion)

14 MR. RUCKER: Just a — a few more questions, Your Honor. I
15 apologize.

16 Q. (By Mr. Rucker) What would your defense have been going to trial?

17 A. I — well, first of all, I wouldn't have recommended us doing that
18 because I believe my defense would have been a slow guilty plea to something else.

19 And Mr. Barnette and I had this — these discussions prior — prior to it
20 in trying to figure out what he could possibly do. I mean, he was in the position of
21 being a prosecutor where there was a violent murder, so he wasn't going to help me
22 out much.

23 But I believe that, had he gone to trial,
24 that the accessory before the fact of burglary was his defense.

1 Q. Okay. Now, just to get back and make sure I — I didn't miss something
2 pretty important. Was there ever talk of the death penalty for people that went inside
3 or the alleged co-conspirators?

4 A. Back between me and Mr. Vasquez or ----

5 Q. Let's start with Mr. Barnette first.

6 A. No.

7 Q. So that was never really on the table to your knowledge?

8 A. The death penalty was — specifically to Mr. Vasquez, he never said. It
9 was not on the table, no.

10 Q. Okay. And — and Mr. Vasquez went forward with the guilty plea based
11 on the exact — the most time he could get, if he even went to trial; is that fair?

12 A. That's exactly right.

13 Q. Okay. So did you — did you talk to him about that issue? That he was
14 basically guaranteeing that he was within the range by pleading guilty
15 that he would be — even if he actually — even if he exercised his constitutional
16 rights?

17 A. I — what I told him was that it was my informed guess that, if he went to
18 trial and did not admit what culpability even — even his version of events had him
19 culpable of, that I would not be surprised whatsoever that he got life. And that the
20 only reasonable shot that he had was not to do that, in my belief, was to plead guilty.

21 Q. Okay. Why did you believe he would get life?

22 A. Because of the nature of the — the crime that occurred.

23 Q. Okay. But, in fairness, it actually was offered at —
24 at the guilty plea. The exhibits were introduced.

25 Do you recall the pictures, for example, being introduced

1 to the — to the sentencing judge and to the — the plea judge?

2 A. Yes.

3 Q. Okay. And, so, what would the difference had really been?

4 A. Well, the — the difference is the same as — as the plea experience
5 with every client is that the — you get, at — at least in most circumstances, you get
6 some amount of credit, however small, for saving the time and effort of a trial. And
7 — and having a neo colonial (phonetic) moment.

8 Q. Now, this may be an uncomfortable question, but are judges allowed,
9 under our state system, to punish people for exercising their constitutional rights and
10 going forward to trial?

11 A. They are not.

12 MR. RUCKER: Okay. No further questions.

13 THE COURT: Yes, ma'am?

14 MS. WHITE: Briefly, Your Honor.

15 Redirect Examination by Ms. White:

16 Q. Mr. Harbin, do you recall at the sentencing explaining to the Court what
17 Mr. Vasquez's take on the facts were?

18 A. I do.

19 Q. Okay. And do you recall if the judge asked Mr. Vasquez if he agreed
20 with everything you said?

21 A. I — I think I recall that, yes, ma'am.

22 Q. Okay. And, then, was Mr. Vasquez allowed to speak; do you recall?

23 A. I believe he was.

24 Q. And, in fact, he — he kind of said he — well, he kind of
25 agreed I guess it was never his intention for anyone to get murdered;

1 he just wanted to somebody to talk to them to get money; is that right?

2 A. Correct.

3 Q. Okay. And, in fact, you also informed the Court, attempted to point out
4 that he and Mr. Reyes were the first ones to plead that kind of started the effect of all
5 the other co-defendants?

6 A. Correct.

7 Q. Okay.

8 (Brief Pause)

9 MS. WHITE: Your Honor — one more question. I'm sorry.

10 Q. (By Ms. White) In regards to reviewing the discovery, on Page 30 of
11 the plea transcript, you informed the Court that you had received two disks from Mr.
12 Barnette with doc — documents and discovery and that you had reviewed all of that
13 with Mr. Vasquez; is that right?

14 A. That — that is correct.

15 Q. Okay. So that is consistent with your testimony today that you did
16 review statements and discovery with him?

17 A. Yes, ma'am.

18 Q. Okay. Thank you.

19 MS. WHITE: That's all I have, Your Honor.

20 THE COURT: Anything?

21 MR. RUCKER: No, sir, nothing.

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

23 THE WITNESS: Thank you, Judge.

24 (The witness complied with the request.)

25 MS. WHITE: The State has no other witnesses, Your Honor.

1 THE COURT: Anything further?

2 MR. RUCKER: No, sir.

3 THE COURT: Okay. That will conclude this hearing. Sir, there is
4 quite a lot of documents for me to review. So it'll be some time before I can
5 get a decision, but I'll do so as quickly as possible.

6 (Interpreter converses with Defendant in Spanish.)

7 MR. RUCKER: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Whereupon, the hearing concluded.)

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REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 55, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

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

April 25, 2015

/s/ Pamela S. Faucette

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Juan Carlos Vazquez, #351021,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-0518

ORDER OF DISMISSAL

M. HOPE BLACKEY

2014 DEC -2 AM 8:36

CLERK OF COURT
SPARTANBURG COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 4, 2013. The Respondent made its Return on February 25, 2014. An evidentiary hearing was convened on November 4, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and represented by J. Brandt Rucker. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, testimony was provided by the Applicant and H. Chase Harbin, Esquire. A certified language interpreter was also present to provide interpretation for the Applicant. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the PCR Application, the Return, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the May 2009 term of the Spartanburg County Grand Jury for trafficking in cocaine more than 400 grams (2009-GS-42-2337) and possession with intent to distribute marijuana (2009-GS-42-2338). Applicant was then indicted at the May 2010 term for two counts of accessory before the fact to murder and one count of accessory before the fact to burglary -- 1st degree (2010-GS-42-

3207, counts 1-3, respectively). The Applicant was represented by H. Chase Harbin, Esquire. On July 12, 2010, the Applicant pled guilty before the Honorable J. Derham Cole to all charges as indicted. Sentencing in the case was delayed. The Honorable J. Mark Hayes II sentenced Applicant on May 23, 2012, to concurrent sentences of life for accessory before the fact to burglary – 1st degree and each count of accessory after the fact to murder, and concurrent sentences of thirty years for trafficking and five years for possession with intent to distribute. Upon information and belief, a motion for reconsideration was filed on Applicant's behalf on June 4, 2012, but was denied. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - i. Counsel failed to properly research and investigate the facts surrounding Applicant's case,
2. Involuntary guilty plea, in that;
 - i. Applicant would have insisted on proceeding to trial, but for the improper actions of Counsel and the prosecution,
3. Prosecutorial misconduct, in that;
 - i. Brady violation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court notes that the Applicant waived any potential issues with the interpreter present for this hearing and instructed the Court that he had no issues with the interpretation. This Court also denied the Applicant's motion to continue the case for additional time to locate witnesses and investigate, as Mr. Rucker had been appointed on the case for over a year and the application had been filed at the beginning of 2013,

enabling the Applicant to have sufficient time to communicate with his attorney as to any witnesses or issues he wished to present.

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

Ineffective Assistance of Counsel

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

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient

performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

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 Applicant testified that he had problems communicating with Counsel and felt that there had not been enough research done on his case. Applicant acknowledged that he cooperated with the State and provided statements to police before retaining Counsel to represent him. However, Applicant testified that he requested an attorney several times while giving his statements and explained that to Counsel. Additionally, Applicant informed Counsel that he had trouble with understanding the Officer who interpreted for the Sheriff's office. Applicant also testified that he has seen copies of his statements, but he does not believe that he signed that number of forms.

Applicant testified that he retained Counsel approximately one and a half years prior to the plea. Applicant testified that he met with Counsel four times for brief meetings lasting maybe 20 minutes each and Applicant wanted more time to review the case with Counsel. Applicant testified that Counsel had an interpreter with him each time they met, but Applicant felt that he needed a better interpreter. Applicant testified that Counsel never discussed how this plea may affect his residency in the United States.

Applicant testified that Counsel never explained any of the elements of the charges that Applicant was pleading guilty to or the potential sentences. Applicant testified that he did not understand the charge of accessory before the fact and wanted to go to trial. However, Applicant acknowledged that he believed he would get less time because the charge was not murder. Applicant testified that he never received any discovery materials before his plea, but did receive copies of materials following his plea in November 2012. However, Applicant testified that the statements from his co-defendants, Cortez and Lopez, were not included in the materials he received.

Counsel testified that he was retained one and a half years prior to the plea. Counsel testified that the case revolved around missing money that Applicant believed the victims had taken from him through drug transactions and the fact that Applicant had contacted someone to come get the money from the victims. The victims ended up being tortured and killed by several men who arrived from Atlanta. Counsel testified that the allegation was that the Applicant was the one who essentially hired hit men. Counsel testified that he talked with the Applicant about his Miranda rights and whether or not they could challenge Applicant's statements. Counsel testified that he also discussed the charges, elements of the charges, and potential sentences with the Applicant. Counsel testified that the Applicant always told him that he did not want the victims killed or know that they would be killed. However, Counsel testified that he believed Applicant would at least be found guilty of accessory to burglary – 1st degree, even based on Applicant's statements, which still was a potential life sentence. Counsel testified that he discussed with the Applicant that the best option of receiving less than a life sentence was to fully cooperate and plead guilty to those lesser charges in the hopes of consideration as to the sentence.

Counsel acknowledged that he did not give a copy of discovery materials to the Applicant while he was in the local detention center because Counsel's policy was to review it with client and not leave copy because of the risk of jail house snitches. Counsel testified that he reviewed all of the co-defendant's statements with the Applicant prior to the plea, as well as pictures and phone records showing phone calls between other co-defendants. Counsel acknowledged that the statements of Cortez and Arevalos were not in his file at the present, but Counsel testified that he specifically recalled reviewing each of the co-defendant's statements with the Applicant.

Counsel testified that he did discuss with Applicant the consequences of the plea as it related to potential deportation risks. Counsel testified that the Applicant never indicated to Counsel that he was having problems with the interpreters prior to the plea or at the plea. Applicant never asked Counsel to hire another interpreter. Counsel testified that he never had a question if the Applicant was pleading guilty freely and voluntarily and believed that Applicant was pleading guilty with the hope of receiving a lesser sentence.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. This Court finds no merit to the claim that Counsel was ineffective for failing to obtain another interpreter. There is no appearance of misunderstanding with the interpreter and as the record reflects, the Applicant answered appropriately to plea judge at his plea on July 12, 2010, as well as at the sentencing hearing on May 12, 2012. In fact, the Applicant was instructed to ask for the proceedings to stop if he ever had trouble understanding. (Plea Tr. p. 7; p. 10). The plea judge also asked Applicant if he had any difficulty with his interpreter and Applicant indicated he did not. (Plea Tr. p. 23). At the plea, Judge Cole explained each charge Applicant was pleading guilty to and the possible penalties he faced. (Plea Tr. p. 18-20). Applicant's own

testimony at the plea indicates that he discussed the charges and potential sentences. (Plea Tr. p. 15; p. 18; p. 20)

This Court also finds that the allegation that Counsel failed to properly research and investigate the case is without merit. Counsel's testimony was credible and the record reflects that Counsel investigated case as well as reviewed the facts and discovery materials with the Applicant. (Plea Tr. p. 30-1). Counsel's articulated strategy was reasonable under the circumstances and facts of this case. This Court finds that the Applicant has failed to meet his burden of proof as to this claim. Therefore, it is denied and dismissed.

Involuntary Guilty Plea

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

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective

standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

This Court finds that Applicant's claim of involuntary guilty plea is without merit. As indicated previously, the Applicant appeared not only at the guilty plea but also 22 months later at the sentencing before a different judge and answered appropriately to the Court's inquiry at each hearing. Further, the transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an Applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985). This Court finds that the Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea or sentencing hearing and finds Applicant knowingly, intelligently, and voluntarily accepted the plea. Therefore, this claim is denied and dismissed.

Prosecutorial Misconduct

In regards to the claim of prosecutorial misconduct, this Court finds that the Applicant failed to meet his burden of proof. Applicant failed to offer any evidence or testimony to prove

that the prosecutor suppressed evidence and that evidence would have been favorable to him. Therefore, this claim is denied and dismissed.

CONCLUSION

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

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the 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), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26 day of November, 2014.

Gaffney, South Carolina

R. Keith Kelly
R. KEITH KELLY
Presiding Judge

M. HOPE BLACKEY

2014 DEC -2 AM 8:36

CLERK OF COURT
PARTIAL COUNTY

P.O. Box 11549
Columbia, S.C. 29211

J. Turley
 WITNESSES

SPTG CO SHERIFF'S OFFICE

DOCKET NO.

09-GS-42-2337

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2009

TERM

ARREST WARRANT NUMBER

M085999

THE STATE
 vs.

ACTION OF GRAND JURY

JUAN CARLOS ESTRADA-VAZQUEZ

True Bill
J. Turley

Foreperson of Grand Jury
 Date: 5-7-09

Not accepted 7/12/10

VERDICT

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370

Foreperson of Petit Jury
 Date:

MARC KITCHENS

41:4 HJ 81 JUN 2007
 12:00 PM 6:13 PM 4:16
 A CERTIFIED COPY
M. Hope Blackley
 CLERK OF COURT
 SPARTANBURG COUNTY
 BY
 DATED 9-15-13 DC

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

MAY 07 2009

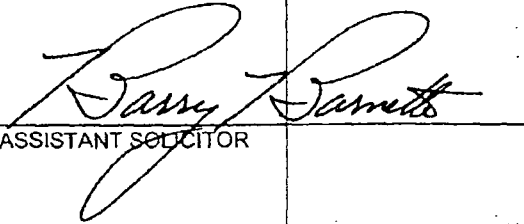
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN COCAINE

That Juan Carlos Estrada-Vazquez did in Spartanburg County on or about January 30, 2009, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (400) four hundred grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370 , *THE 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

WITNESSES

SPTG CO SHERIFF'S OFFICE

G. Lusk

1. SENTENCE MADE ☐

2. REPORT FILED ☐

3. CARD PULLED ☐

4. INDEXED ☐

5. CHECKED WARRANTS ☐

ARREST WARRANT NUMBER ☐

6. CHECKED SIGNATURE ☐

7. ASSESSMENT AND FINE CARD MADE ☐

M086000

8. TRAFFIC VIOLATION COPY ☒

ACTION OF GRAND JURY

True Bill
S. Lusk

Foreperson of Grand Jury
Date: 5-7-09

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

09-GS-42-2338

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2009

TERM

THE STATE
VS.

JUAN CARLOS ESTRADA-VAZQUEZ

Filed accepted 7/12/10

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA

SC Code: 44-53-370
CDR Code:
Class MIS/A

MARC KITCHENS

11:47 AM 13 MAY 2009

11:47 AM 13 MAY 2009

M. D. Blackley
CLERK OF COURT
SPARTANBURG COUNTY
BY _____ D.C.
DATED 4-15-13

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

MAY 07 2009

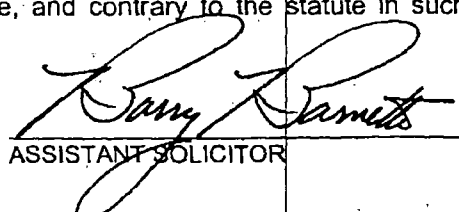
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

That Juan Carlos Estrada-Vazquez did in Spartanburg County on or about January 30, 2009, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance or controlled substance analogue, in violation of § 44-53-370, *THE 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

WITNESSES

SCSO

1. SENTENCE MADE ☒

2. REPORT ENTERED ☒

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. CHECKED SIGNATURE ☒

7. ASSESSMENT ☒

FINE CARD MADE

ARREST WARRANT NUMBER

Count one, two, and three- Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET #

10-GS-42-3207(A)(B)

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 17 2010

TERM

THE STATE

VS.

Juan Carlos Estrada Vazquez

Indictment for

ACCESSORY BEFORE THE FACT TO MURDER

(Count One)

ACCESSORY BEFORE THE FACT TO MURDER

(Count Two)

ACCESSORY BEFORE THE FACT TO
BURGLARY FIRST (1ST) DEGREE (Count Three)

SC Code: 16-1-40, 0050 & 16-1-10, 20 & 16-11-

311

CDR Code: 002, 0116 & 0079

Class UNC & FEL/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAY 10 PM 3:00

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

MAY 06 2010

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

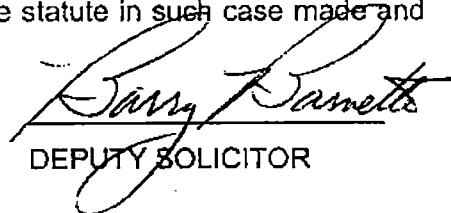
COUNT ONE- ACCESSORY BEFORE THE FACT TO FELONY-MURDER

That the defendant, Juan Carlos Estrada Vazquez, did in Spartanburg County on or about January 24, 2009, did aid, assist, procure, counsel, or command Rudis Ventura, Louis Perez, and/or Jose Del Angel Gomez to commit the crime of Murder of Hugo Del Carmen Lugo-Hernandez and conspiring with Rudis Ventura, Louis Perez, and/or Jose Del Angel Gomez, in violation of §16-3-10, 20 and Section 16-1-40, 50, CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

COUNT TWO- ACCESSORY BEFORE THE FACT TO FELONY-MURDER

That the defendant, Juan Carlos Estrada Vazquez, did in Spartanburg County on or about January 24, 2009, did aid, assist, procure, counsel, or command Rudis Ventura, Louis Perez, and/or Jose Del Angel Gomez to commit the crime of Murder of Teresa De Jesus Avilla-Martinez and conspiring with Rudis Ventura, Louis Perez, and/or Jose Del Angel Gomez, in violation of §16-3-10, 20 and Section 16-1-40, 50, CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

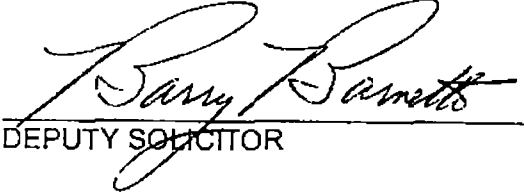
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

COURT THREE- ACCESSORY BEFORE THE FACT TO FELONY- BURGLARY
FIRST (1st) DEGREE

That the defendant, Juan Carlos Estrada Vazquez, did in Spartanburg County on or about January 24, 2009, did aid, assist, procure, counsel, or command Rudis Ventura, Louis Perez, and/or Jose Del Angel Gomez to commit the crime of Burglary First (1st) Degree at the residence of Hugo Del Carmen Lugo-Hernandez and/or Teresa De Jesus Avilla- Martinez at 3301 Highway 101 South, Greer, South Carolina and conspiring with Rudis Ventura, Louis Perez, and/or Jose Del Angel Gomez, in violation of §16-11-311 and Section 16-1-40, 50, *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.


DEPUTY SOLICITOR