

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2016-000775

RECEIVED

SEP 02 2016

S.C. SUPREME COURT

Rudis Arnold Ventura, ... Petitioner,

v.

State of South Carolina, ... Respondent.

APPENDIX OF PETITIONER

J. Bradley Bennett, Esq.
SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888
ATTORNEY FOR PETITIONER

Other Counsel of Record:

Alicia A. Olive, Esq.
Assistant Attorney General
S. C. ATTORNEY GENERAL'S OFFICE
P.O. Box 11549
Columbia, SC 29211
Telephone No. (803) 734-4127
ATTORNEY FOR RESPONDENT

INDEX OF CONTENTS FOR APPENDIX OF PETITIONER

	Page
Order for Bail filed on July 2, 2009.....	1
Order Substituting Counsel for Petitioner filed June 11, 2015.....	2
Order of Dismissal filed on April 14, 2016.....	3
Sentence Sheet (Indictment/Case Number: 2010GS4203025).....	16
Sentence Sheet (Indictment/Case Number: 2009GS4202371).....	18
Notice of General Appearance filed July 9, 2009.....	20
Notice of Motion and Motion for Bond filed May 13, 2009.....	21
Notice of Brady Motion and Criminal Practice Rule 8 and Criminal Procedure Rule 5 Request for Disclosure filed July 9, 2009.....	22
Requests for Disclosure filed July 14, 2009.....	26
Application for Post-Conviction Relief filed September 19, 2013.....	27
Notice of Representation filed March 20, 2015.....	53
Transcript of February 3, 2011 Plea Hearing.....	54
Transcript of May 23, 2012 Sentencing Hearing.....	83
Transcript of November 10, 2015 Post Conviction Relief Hearing.....	116
Testimony of Rudis Ventura	
i. Direct Examination by Mr. Bennett.....	119
ii. Cross-Examination by Ms. Olive.....	129
Testimony of Scott Davis	
i. Direct Examination by Ms. Olive.....	131
ii. Cross-Examination by Mr. Bennett.....	137
iii. Redirect Examination by Ms. Olive.....	149
Indictment (Burglary, First Degree).....	158
Modified Indictment (Burglary, First Degree).....	159

Indictment (Murder).....	160
Affidavit (Murder).....	161
Affidavit filed April 7, 2009.....	162
Affidavit filed April 24, 2009.....	164
Affidavit filed May 11, 2009.....	165
Affidavit filed May 15, 2009.....	166
Affidavit filed May 20, 2009.....	167
Affidavit filed June 4, 2009.....	169
Affidavit of Discovery filed May 10, 2010.....	170
Certificate of Counsel.....	171

IN THE COURT OF GENERAL SESSIONS

ORDER FOR BAIL

-VS-

Warrant/Indictment Number(s)

M-086204 and M-086205

Defendant.

It appears that the defendant is being held in the County Detention Facility, where he has been for one year having been charged with the crime(s) of **Murder** (two counts).

Having considered the nature and circumstances of the offense(s) charged, the defendant's character and mental condition, family ties and length of residence in the community, employment and financial resources, prior criminal history, any record of flight to avoid prosecution and any failure to appear at other court proceedings, this Court finds that the defendant's **motion** for release on bail pending trial should be and is therefore **granted**.

IT IS ORDERED THAT the defendant's release shall, in addition to the usual and ordinary conditions of release, be subject to the following additional **special conditions:**

HOME DETENTION pursuant to the Spartanburg County Home Detention program; **NO CHANGE OF ADDRESS** without prior court approval; **NO FIREARMS** in actual or constructive possession; **NO CONTACT** with any named victim or his/ her family member or co-defendant or potential prosecution witness without prior court approval; **SURRENDER** of passport.

IT IS SO ORDERED!
MARC KITCHENS

2009 JUL -2 AM 10:44

FILED
CLERK OF COURT
SPARTANBURG COUNTY

J. DERHAM COLE, Presiding Judge
THE SEVENTH JUDICIAL CIRCUIT COURT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Rudis Ventura,

Petitioner,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-42-4095

ORDER SUBSTITUTING COUNSEL
FOR PETITIONER

CLERK OF COURT
SPARTANBURG COUNTY
JUN 11 PM 3:57
M. ROE BLACKLEY

This is a matter before me upon the Motion of the Petitioner, seeking an ORDER of this Court substituting J. Bradley Bennett, Esq. as his counsel of record in the above referenced matter(s). This Motion is based upon Petitioner terminating Ms. Leah B. Moody, Esq.'s representation of him therein. Consequently, it appears that the Motion should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that:

- J. Bradley Bennett, Esq. is hereby substituted as Counsel of Record for the Petitioner in this action; and
- Ms. Leah B. Moody's representation of the Petitioner is hereby terminated.

Sir R. Keith Kelly
Presiding Judge, Seventh Circuit

Spartanburg, SC

Date: 11 June 15

WE SO MOVE/CONSENT:

J. Bradley Bennett
J. Bradley Bennett, Esq.

Leah B. Moody
Leah B. Moody, Esq.

[Signature]
Respondent

A CERTIFIED COPY

M. Roe Blackley

CLERK OF COURT
SPARTANBURG COUNTY
BY: *[Signature]*
DATED: 6-22-15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Rudis Arnold Ventura, #351029,	)	Case No.: 2013-CP-42-4095
	)	
Applicant,	)	ORDER OF DISMISSAL
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 19, 2013. An evidentiary hearing into the matter was convened on November 10, 2015, at the Spartanburg County Courthouse before the undersigned. Applicant was present at the hearing and was represented by J. Bradley Bennett, Esquire. Alicia Olive, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from R. Scott Davis, Esquire. Applicant's PCR counsel also engaged the use of a Spanish translator for Applicant at the hearing.

This Court also had before it the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the sentencing transcript, and the pleadings.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the May 2009 term of the Spartanburg County Grand Jury for two counts of murder (2009-GS-42-2370, count 1); (2009-GS-42-2371, count 1). He was then indicted at the May 2010 term of

the Spartanburg County Grand Jury for burglary, first degree (2010-GS-42-3025). Both charges arose from the same set of circumstances. Applicant was represented by R. Scott Davis, Esquire ("Counsel"). On February 3, 2011, pursuant to negotiations with the State, the Applicant appeared before the Honorable J. Derham Cole and pleaded guilty to burglary, first degree, as indicted, and to two counts of accessory after the fact to murder (2009-GS-42-2370, count 2); (2009-GS-42-2371, count 2), after waiving presentment to the Grand Jury on those charges. He also agreed to testify truthfully against his codefendants. As a result, the State dismissed the charges for murder and Applicant's sentencing was deferred.

On May 23, 2012, the Honorable J. Mark Hayes II sentenced the Applicant to concurrent sentences of life for burglary, first degree, and fifteen years for each account of accessory after the fact to murder. Through his attorney, Applicant filed a Motion to Reconsider the terms of his sentence on May 24, 2012. In an Order issued on January 28, 2013, Judge Hayes reduced Applicant's sentence for burglary, first degree, from life to 40 years of incarceration, to be served concurrently. Applicant did not appeal his conviction or sentence.

A. Allegations

Applicant alleges that he is being held in custody unlawfully for the following reasons:

- a. Ineffective assistance of counsel, in that;
 - a. Counsel failed to investigate,
 - b. Counsel failed to function as an advocate,
 - c. Counsel intentionally misled the Applicant,
 - d. Counsel failed to object to prosecutorial misconduct,
 - e. Counsel failed to file notice of appeal;
- b. Involuntary guilty plea.

B. Guilty Plea Hearing

According to the facts as presented at Applicant's plea, Applicant's charges arose out of a scheme in which an individual organized a group of people to go to the victims' home and take

2016 MAR 14 AM 10:52
M. HOPE BLACKLEY

back some items that the victims had supposedly stolen from that person. The group broke into the home and found the two victims there. At first, Applicant was outside acting as a look out. Then, the others called him into the house and told him to go upstairs to look around. While upstairs, he heard gunshots go off downstairs. The victims died as a result of several gunshot wounds.

In total, eight individuals were charged with the killings. At the time of Applicant's plea, two other individuals had already pleaded guilty. One of those individuals pleaded to accessory after the fact, burglary first, and two counts of murder. The other individual pleaded guilty to the same charges that Applicant faced.

Prior to the plea, Applicant gave oral statements regarding the murders and the burglary. Applicant agreed to assist in the investigation and prosecution of the other individuals. He also attempted to help the authorities locate two individuals who had absconded. Applicant's plea was contingent upon his cooperation with the State's investigation into the killings.

At Applicant's sentencing, Counsel informed the court that Applicant was the first to cooperate with the investigation, that he expressed remorse over the incident, and that the first two individuals to plead guilty did so because he made statements implicating them. Counsel asked the sentencing judge to sentence him to a minimum sentence.

II. SUMMARY OF TESTIMONY PRESENTED

Applicant testified he is a natural-born U.S. citizen and that he was born and raised in California. Applicant further testified he attended college in Georgia for a period of time.

Applicant testified that he cooperated with law enforcement by meeting with the solicitor and several investigators and that he told them what he knew. Applicant testified he was taken to the sheriff's office and was given a polygraph test without his lawyer present. Counsel testified

he did not recall whether he was present when the polygraph was taken. Applicant testified that as a result of the polygraph he was charged with burglary. Applicant testified that Counsel told him that the murder charges would be dropped and that the burglary charge would "run together." Applicant testified Counsel assured him he "would go home."

Applicant agreed he was initially charged with two counts of murder. Applicant agreed that the State dismissed those charges in exchange for his agreement to plead guilty to accessory after the fact of murder and to cooperate with their investigation. Applicant testified he told authorities the truth about the events. Applicant testified he had already been charged with two counts of murder when he decided to cooperate with law enforcement.

Counsel testified that he was retained to represent Applicant. Counsel testified he expected Applicant's co-defendants to testify against him if he had gone to trial. Counsel testified that he made a motion to reconsider the sentence and that Applicant's sentence for burglary was changed from life to 40 years. Counsel testified he never promised Applicant he would get to go home; rather, Counsel testified he told him he would get credit toward his sentence for the time he had been in jail. Counsel testified that Applicant's other co-defendants had also been talking to the authorities. Counsel testified that Applicant first denied being inside the home, but that another co-defendant's statement placed him inside. Thereafter, in another meeting with the solicitor, Applicant "told them the whole story" and admitted that he had been in the home.

Counsel testified that if Applicant had gone to trial, the State could have convicted Applicant of both counts of murder based on the theory of "hand-of-one, hand-of-all." He testified he explained this concept to Applicant. He testified it was Applicant's decision to plead guilty. He testified that he would not have advised Applicant differently even if he had known he

2016 MAR 14 AM 10:52
HOPE BLACKLEY

would be charged with burglary. Counsel testified he was focused on getting the murder charges dropped because they were more serious.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Counsel's testimony to be more credible than Applicant's testimony.

A. Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his 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, 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, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant “must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice.” Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014). “The two-part test adopted in Strickland also applies to challenges

2016 MAR 14 AM 10:52
HOPE BLACKLEY

to guilty pleas based on ineffective assistance of counsel.” Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011).

First, the applicant must show that counsel’s performance “fell below an objective standard of reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial.” Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

1. Failure to investigate

Applicant alleges Counsel was ineffective because he failed to investigate evidence and potential defenses. This Court finds Applicant's allegation that he received ineffective assistance of counsel for failure to investigate is meritless. This Court finds that Counsel was not ineffective for failing to adequately investigate. Applicant has produced no evidence, through testimony or otherwise, that Counsel failed to adequately investigate the case.

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 1010, 1011 (2013).

2016 APR 14 AM 10:52
M. HOPE BLACKLEY

615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Counsel testified he filed for discovery, received full discovery, and reviewed all discovery with Applicant both before and after Applicant began cooperating with law enforcement. Counsel testified he discussed with Applicant the charges he was faced with, including the elements of each charge and the potential punishments. Counsel also testified Applicant gave him his version of events and that they discussed potential defenses. Counsel testified that Applicant did not tell him about any witnesses that might be able to testify in his defense.

This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). See also Strickland, 466 U.S. at 688 ("The proper measure of attorney performance remains simply reasonableness under prevailing professional norms."). This Court finds Applicant has failed to produce any testimony or evidence to show what additional investigation Counsel could have done or what facts such investigation would have revealed. This Court finds Applicant has failed to show any deficient performance or resulting prejudice with respect to this allegation. Accordingly, this allegation is denied and dismissed.

2016 MAR 14 AM 10:52
HOPE BLACKLEY

2. Counsel ineffective for advising Applicant to cooperate with law enforcement

Applicant argues that Counsel was ineffective for advising him to cooperate with law enforcement because he should have protected Applicant from disclosing self-incriminating information. In other words, Applicant argues that Counsel should have anticipated Applicant would be charged with first degree burglary.

Counsel testified he reviewed all discovery material with Applicant both before and after Applicant began cooperating with law enforcement. Counsel testified he discussed with Applicant the charges he was faced with, including the elements of each charge and the potential punishments. Counsel testified the only potential defense he thought Applicant might have to murder was mere presence. However, Counsel testified that based on his review of the discovery in Applicant's case, if Applicant had gone to trial on the murder charges, the State would have had a strong case against him. Counsel also testified that before Applicant decided to cooperate with authorities, other co-defendants had placed Applicant at the scene and inside the house. Counsel further testified that Applicant's co-defendants would have testified against him.

Applicant was first indicted for two counts of murder. Counsel testified he was trying to help Applicant get rid of the murder charges. Due to Applicant's cooperation in prosecuting his co-defendants, his charges were reduced to accessory after the fact and first degree burglary. Though Applicant was initially sentenced to life for first degree burglary, Counsel made a motion to reconsider, which was successful, and Applicant is now only serving a 40 year sentence as opposed to life. Counsel effectively advocated for Applicant at the sentencing hearing and impressed upon the judge the extent of Applicant's cooperation with the investigation and prosecution of his co-defendants.

SEARCHED
SERIALIZED
2016 MAR 14 AM 10:52
M. HOPE BLACKLEY

This Court finds that Applicant's allegation that Counsel was ineffective is without merit and Applicant has failed to satisfy his burden of proving the first prong of the Strickland test—that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions while representing the Applicant. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court further finds that Counsel's decision to encourage Applicant to cooperate with authorities was reasonable. Therefore, Applicant has failed to satisfy his burden of proving the first prong of Strickland.

Likewise, this Court finds that Applicant failed to show there is a reasonable probability that but for Counsel's alleged deficient performance, he would not have pleaded guilty but would have insisted on going to trial. Accordingly, Applicant's allegations of ineffective assistance of counsel are without merit and are denied and dismissed with prejudice.

B. Involuntary Guilty Plea

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 466 (2000)).

2016 MAR 14 AM 10:52
J. H. BLACKEY

Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. 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 v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. 668)). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant]

2016 APR 14 AM 10:52
J. H. BLACKLEY

presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

This Court finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant has presented no evidence or valid reasons why he should be allowed to depart from his statements made at the guilty plea hearing.

This Court notes that during the PCR hearing, though Applicant employed the use of a translator, he often answered questions without the use of a translator and did not appear to have problems communicating in or understanding English. Furthermore, Counsel testified that during his representation of Applicant he and Applicant communicated in English and he never had problems communicating with Applicant. He further testified that during the course of his representation of Applicant, he never felt Applicant did not understand his advice due to a language barrier. Counsel testified Applicant never requested an interpreter.

This Court found above that Applicant failed to show either that Counsel rendered deficient performance or that he was prejudiced by any alleged deficient performance. Accordingly, this Court hereby denies and dismisses Applicant's allegation that his guilty plea was involuntary.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

2016 MAR 14 AM 10:52
M. HOPE BLACKLEY
CLERK OF COURT

IV. CONCLUSION

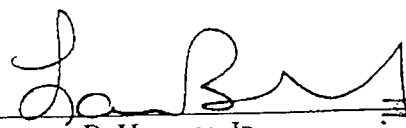
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 8 day of MARCH, 2016.


LARRY B. HYMAN, JR.
Presiding Judge
Seventh Judicial Circuit

Cowley, South Carolina

CLERK
SEVENTH JUDICIAL CIRCUIT
2016 MAR 14 AM 10:52
MICHOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

March 14, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Rudis Edward Kerkula
Applicant # *351029*

CASE # *2013042-4095*

CERTIFICATE OF SERVICE

VS
Steele
Respondent

I certify that, on this date, I served a copy of the *Order of Dismissal*
In this action dated *March 8, 2016* on *March 14, 2016*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Adley Hancock
Joseph Bennett

March 14, 2016
(Date)

Corrie Saly
(Signature)

SPARTANBURG COUNTY

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

Computer

JIM

SPARTANBURG

VS.

Rudis Arnoldo Ventura

DOB: 11-13-1982 SS#: Sex: M Age: 28
Address: 2706 Chelwick Dr Sw
City, State, Zip: Marietta, GA 30008
DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

INDICTMENT/CASE#: 2010GS4203025
A/W#: 2010GS4203025
Date of Offense: 1/24/2009
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The pleas is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Barnette Barry 13039 Rudis Ventura Defendant R. Scott Dab Attorney for Defendant SC Bar# 001588

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ none; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____
*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00
§ 44-53-450(C) (Conditional Discharge) \$350 \$
3% to County (if paid in installments) \$3.90
TOTAL \$133.90

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk K. McKinnon
Court Reporter: Linda Moffitt
SCCA/217 (06/2010)

Presiding Judge [Signature]
Judge Code: 2132
Sentence Date: 5-23-12
[Signature] Alex accepted 2/3/11

WITNESSES

Spartanburg County Sheriff's Office

2. REPORT ENDED **Computer**

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS **True Bill**

6. CHECKED SIGNATURE ☒

7. ASSESSMENT AND FINE CARD MADE **Computer**

8. TECHNICAL VIOLATION COPY ☒

ARREST WARRANT NUMBER

Direct Indictment

17

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

10-GS-42-3025

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 1 / 2010

TERM

THE STATE

vs.

Rudis Ventura

Indictment for

BURGLARY, FIRST DEGREE

(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

SPARTANBURG

VS.

Rudis Arnoldo Ventura

Sex: M

Age: 28

11-13-1982

SS#:

Address: 2706 Chelwick Dr Sw

City, State, Zip: Marietta, GA 30008

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Accessory / Accessory after the fact to Felony A, B, C or Murder - COUNT TWO

INDICTMENT/CASE#:

2009GS4202371(A)

A/W#:

1086204 DI

Date of Offense: 1/24/2009

S.C. Code §: 16-01-0055

CDR Code #: 2413

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-01-0055 of the S.C. Code of Laws, bearing CDR Code # 2413

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

ATTEST:

BARNETTE, BARRY

13039

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or paymentof \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 40 months☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$100	\$ 100.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$12	\$
§ 56-5-2995 (DUI Assessment)	\$25	\$
§ 56-1-286 (DUI Breath Test)	\$500	\$
Proviso 47.9 (Public Def/Prob)	\$25	\$ 25.00
§ 14-1-212 (Law Enforce. Funding)	\$150	\$
§ 14-1-213 (Drug Court Surcharge)	\$50	\$
§ 50-21-114 (BUI Breath Test Fee)	\$40/ea	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$5	\$ 5.00
Proviso 90.5 (SCCA Surcharge)	\$350	\$ 350.00
§ 44-53-450(C) (Conditional Discharge)	\$	\$ 3.90
3% to County (if paid in installments)		\$ 133.90
TOTAL		

Clerk of Court/ Deputy Clerk

Court Reporter: Linda Moffitt

SCCA/217 (06/2010)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code

Sentence Date

2132
Sentence Date
plea accepted 2/3/11

DO NOT WRITE IN THESE SPACES
09-GS-42-2371(A)

WITNESSES

Spartanburg County Sheriff's Office

- 1. SENTENCE MADE ☒
- 2. REPORT ENTERED ☒
- 3. CARD PULLED ☒
- 4. INDEXED ☒
- 5. CHECKED WARRANTS ☒
- 6. CHECKED SIGNATURE ☒
- 7. ASSESSMENT OF FINE CARD MADE ☒
- 8. TRAFFIC VIOLATION COPY ☒

Computer

M086204

COUNT II (D/I)

19

ACTION OF GRAND JURY

True Bill
[Signature]
Foreperson of Grand Jury
Date: 5-7-09

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2009

TERM

THE STATE

VS.

Rudis Arnaldo Ventura

NP - dismissed (#6 and #22) - the charge was duplicate and the Defendant was guilty of other charges, the Defendant pled guilty to Recovery Burglary First (1st) Degree on Ind. No. 10-GS-42-3025 Indictment for and two counts of Acc. after the fact to Murder on Ind. Nos. 09-GS-42-2370 and 2371 in

MURDER

SC Code 16-03-0010, 0020
CDR Code 116
Class FEL-EXM

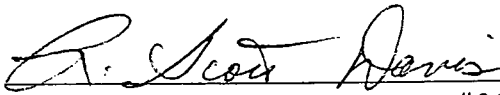
Indictment for and two counts of Acc. after the fact to Murder on Ind. Nos. 09-GS-42-2370 and 2371 in front of Judge Durham Cole on 2/3/2011. He was sentenced on 5/23/2012 by Judge Mark Hayes and received a life sentence on the Burglary 1st and 15 years on each count of Acc. after the fact to Murder to run concurrent, - Larry Farnett - 5/25/2012.

(S)

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

State of South Carolina,)
)
vs.) NOTICE OF GENERAL APPEARANCE
) Warrant Nos.: M086204, M086205
Rudis Arnolando Ventura,) Charges: Murder - 2 Counts
)
Defendant.)
_____)

YOU WILL PLEASE TAKE NOTICE, that the undersigned counsel represents the above-named Defendant in matters relating to the above-stated charges. Please direct all further communications relating to the Defendant and the charges to me or to my office.


R. SCOTT DAVIS SC Bar #001588
Attorney for Defendant
184 North Daniel Morgan Avenue
Post Office Box 5004
Spartanburg, S. C. 29304
Office: (864) 582-6015
Fax: (864) 585-0068

May 13, 2009

2009 JUL -9 AM 10:42
MARCO MICHENS

(S)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE GENERAL SESSIONS COURT

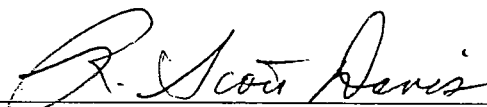
The State,)
)
Plaintiff,)
)
vs.)
)
Rudis Arnoldo Ventura,)
)
Defendant.)
_____)

NOTICE OF MOTION
AND MOTION FOR BOND

Charges: Murder M086204
Murder M086205

TO: TREY GOWDY, SOLICITOR
SEVENTH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that as soon as this matter can be heard, Defendant will move before the Presiding Judge of the Seventh Judicial Circuit, located in the Spartanburg County Courthouse, Spartanburg, South Carolina, for an Order granting the Defendant a bond in the above matter.



R. SCOTT DAVIS
Attorney for Defendant
184 North Daniel Morgan Avenue
Post Office Box 5004
Spartanburg, S. C. 29304
Office: (864) 582-6015
Fax: (864) 585-0068

May 13, 2009

FILED
MAY 13 2009
MARC KITCHENS
AM 11:14

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

The State,)
) NOTICE OF BRADY MOTION AND
) CRIMINAL PRACTICE RULE 8
Plaintiff,) AND CRIMINAL PROCEDURE RULE 5
) REQUEST FOR DISCLOSURE
vs.) WARRANT NOS.: M086204, M086205
)
Rudis Arnolando Ventura,)
)
Defendant.)
_____)

TO: Trey Gowdy, Seventh Circuit Solicitor

YOU WILL PLEASE TAKE NOTICE that the Defendant, above-named, by his undersigned attorney, will move before the presiding judge, General Sessions Court, ten (10) days prior to the time and date set for trial; for information pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and information pursuant to General Sessions Court Criminal Practice Rule 8 and Criminal Procedure Rule 5, on the belief of the attorney for the defense that such information is important to the Defendant's defense. Specifically requested are the following:

1. Disclosure to the defense of any and all exculpatory information that is now or has been or may come to the attention of

the prosecution or police or any person or agency associated with the prosecution, in the subject matter, until the conclusion of this matter by trial and appeal; as required under the mandate of Brady v. Maryland, 373 U.S. 83 (1963).

2. Any relevant written or recorded statements made by the Defendant, or copies thereof, with the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the Defendant whether before or after arrest in response to interrogation by any person known to the Defendant to be a prosecution agent.

3. A copy of the Defendant's prior criminal record, if any, as is within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

4. All books, papers, documents, photographs, tangible objects, building or places, or copies or portions thereof, which are in the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are

FILED
JUL -9 AM 10:42
MAAC KITCHENS

intended for use by the prosecution as evidence in chief at the trial, or where obtained from or belong to the Defendant.

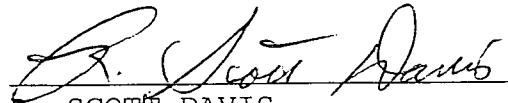
5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

6. All statements, oral or written, made by prosecution witnesses or prospective witnesses.

7. A copy of the SLED analysis from the urine or blood sample which was collected from the Defendant, along with the chain of custody related thereto.

8. A certification from the State that the within Motion and Request has been complied with; and further a certification that any Court Order pertinent to the within Motion and Request has been complied with; and further that there is no information, either "material to the defense", or otherwise that has been kept from the defense; and further that the prosecution has not seen or known of any such information either in the custody of the prosecution or in

the possession of any agent of the prosecution, police, or
investigative agency.



R. SCOTT DAVIS

ATTORNEY FOR DEFENDANT

184 North Daniel Morgan Avenue

Post Office Box 5004

Spartanburg, SC 29304

OFFICE: (864) 582-6015

FAX: (864) 585-0068

May 13, 2009

FILED
2009 JUL -9 AM 10:42
MARCO NITENS

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA)

VS.

RUDIS VENTURA)

IN THE COURT OF GENERAL SESSIONS
2009 JUL 14

MARC KITCHENS

Indictment No(s):

Warrant No(s): M086204-05

REQUESTS FOR DISCLOSURE

(Recip. Rule 5)

TO: DEFENDANT AND HIS ATTORNEY SCOTT DAVIS:

Pursuant to Rule 5, Rules of Criminal Procedure, the State in the above captioned matter requests the disclosure of the following evidence to the State by the Defendant:

1) That the Defendant permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the Defendant and which the Defendant intends to introduce as evidence in chief at the trial;

2) That the Defendant permit the prosecution to inspect and copy any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the Defendant, which the Defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the Defendant intends to call at trial when the results or reports related to his testimony.

3) The prosecution requests that the Defendant serve upon the prosecution a written notice if he intends to offer an alibi defense, stating the specific place or places at which the Defendant claims to have been on January 24, 2009 the names, address, and birthdays of the witnesses upon whom he intends to rely to establish such alibi.

The State further requests that the Defendant notify the State of the Defendant's intention to rely upon the defense of insanity or plea of guilty but mentally ill at the time of the crime.

These requests are continuing requests for disclosure and any relevant matters arising subsequent to the date hereof should be regarded as included in this request.



Barry Barnette

Deputy Solicitor

Seventh Judicial Circuit

Spartanburg, South Carolina

Dated: July 14, 2009

STATE OF SOUTH CAROLINA

County of Spartanburg

IN THE COURT OF COMMON PLEAS

Case No.: _____

2013-CP-42-

4095

Rudis Arnoldo Ventura, #351029

Applicant,

vs.

The State of South Carolina,

Respondent.

**APPLICATION FOR
POST-CONVICTION RELIEF**

APPLICATION

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:26
M. HOPE BLACKLEY

1. Place of detention:

South Carolina Department of Corrections
Perry Correctional Institute
430 Oaklawn Road
Pelzer, South Carolina 29669

2. Name and location of Court which imposed sentence:

Spartanburg County Court of General Sessions
180 Magnolia Street
Spartanburg, South Carolina 29306

3. Name(s) of co-defendant(s):

Juan Carlos Estrada Vazquez,
Yessenia Cortez Ramirez,
Miguel Lopez,
Edgar Pineda,
Jose Reyes Arevalus.

4. The indictment number(s) upon which and the offenses for which sentence(s) was imposed:

2009-GS-42-2370 (Count Two)
"Accessory After The Fact To A Felony,"

2009-GS-42-2371 (Count Two)
"Accessory After The Fact To A Felony,"

2010-GS-42-3025
Burglary First Degree (Dwelling)

5. The date upon which sentences were imposed and the terms of the sentences:

Initial Sentence date: May 23, 2012.
Modified Sentence date: January 28, 2013.

Initial Sentences Terms:

2009-GS-42-2370 - (15) Years Imprisonment,
2009-GS-42-2371 - (15) Years Imprisonment,
(Concurrent to 2370)
2010-GS-42-3025 - Life Imprisonment.

Modified Sentence Terms:

2009-GS-42-2370, 2371 - Same,
2010-GS-42-3025 - (40) Years Imprisonment,
(Concurrent to all others).

6. A finding of guilt was made after:

Guilty Plea

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

No

8. If you answered "Yes" to (7), list the following:

Answered "No" to (7).

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

Trial counsel did not inform the Applicant of his right to direct Appeal.

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

(a) Guilty Plea Is Invalid Due To It's Involuntary and Unknowing Nature.

(b) Involuntary And Unknowing Loss Of Right To Direct Appeal.

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

(a) See Attached Memorandum at page 10 through 23.

(b) See Attached Memorandum at page 24 through 25.

FILED
CLERK OF COURT
SPRINTING COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLACKLEY

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-conviction relief?

No

(c) any petition in the United States Supreme Court for certiorari other than the 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 "Yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

Post-trial Motion for Sentence Reconsideration.

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

Spartanburg County Court of General Sessions
180 Magnolia Street
Spartanburg, South Carolina 29306

(d) the disposition thereof:

Sentence modified and reduced for "Life" to a total of (40) Years imprisonment.

(d) the date of each such disposition:

January 28, 2013.

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

Unknown (pending transcript of hearing).

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

No

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLACKLEY

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

Answered "No" to (14).

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

Ground (a) and (b) set forth in (10) are both classified by South Carolina procedural mandates as "collateral issues". As such, both those grounds may only be raised for the first time in a post-conviction relief forum despite their being of a fundamental Constitutional nature.

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

(a) Your arraignment and plea?

Yes.

(b) Your trial, if any?

Yes at Guilty Plea.

(c) Your sentencing?

Yes

(d) Your appeal, if any?

No appeal taken.

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

Yes.

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

(a) The name and address of each attorney who represented you, and (b) the proceedings at which each such attorney represented you:

R. Scott Davis, Attorney at Law
P.O. Box 5004
Spartanburg, South Carolina 29304

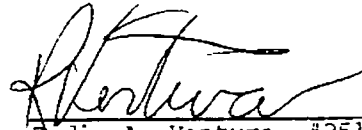
The attorney set forth above represented the Applicant at his guilty plea, sentencing, and post-trial motion for sentence reconsideration.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLACKLEY

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

I Rudis Arnoldo Ventura, #351029, 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 the 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.


Rudis A. Ventura, #351029
Applicant

Sworn to and subscribed before me

this 16th day of September, 2013.


Notary public for South Carolina

My Commission Expires: 1-23-2023

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLACKLEY

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

The Applicant seeks the vacation of his guilty plea and sentences.

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

No.

STATE OF SOUTH CAROLINA

VERIFICATION

County of Spartanburg

I, Rudis Arnoldo Ventura, 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, at this time, 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 to the best of my knowledge and belief.

R. Ventura

Rudis A. Ventura, #351029
Applicant

Sworn to and subscribed before me
this 16th day of September, 2013.

Dan C. Merchant
Notary Public For South Carolina.

My Commission Expires: 1-23-2022

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLACKLEY

A T T A C H M E N T

MEMORANDUM OF LAW
IN SUPPORT OF APPLICATION FOR
POST-CONVICTION RELIEF

Rudis Arnoldo Ventura, #351029
Applicant

I N D E X T O M E M O R A N D U M

<u>Issues Presented</u>	<u>Pages</u>
<u>Ground 10(a):</u>	
[A] Trial counsel failed to investigate	10 - 14
[B] Trial counsel abandoned basic Constitutional functions as an advocate	14 - 16
[C] Trial counsel intentionally mislead the Applicant	17 - 21
[D] Guilty plea is invalid based upon prosecutorial misconduct	21 - 23
<u>Ground 10(b):</u>	
Involuntary loss of Direct Appeal	24 - 25

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLACKLEY

GROUND 10(a). Guilty Plea Is Invalid Due To Its Involuntary And Unknowing Nature.

I. Relevant Factual Background:

The Applicant is a 31 year old Hispanic male with no significant criminal history. He has a minimal 8th grade education and was raised in predominantly Spanish speaking family and neighborhood. As a result, the Applicant has difficulty with comprehension of the English language, and has tremendous difficulty understanding basic legal terms and principles conveyed in English.

The Applicant was initially charged, along with several others, with the murders of two people that occurred on January 24, 2009. Two multi-count indictments were returned against the Applicant on May 7, 2009, each indictment conveying the primary offense of "Murder" as Count 1, and "Accessory After The Fact To A Felony" as Count 2.

The Applicant's family retained the services of an attorney, R. Scott Davis, to represent the Applicant. Attorney Davis was confronted with the Applicant's innocence to the "Murder" offenses, and so, trial counsel advised the Applicant that, if he cooperated fully with the State toward the prosecution of others, and by, pleading guilty to the "Accessory" offenses and thereby save the State the time and expense of a trial, he would be going home at his sentencing. The Applicant's family was provided the same information by counsel. The Applicant decided to follow his attorney's recommendations and proceeded to cooperate fully with the State.

Prior to pleading guilty, the Applicant was compelled to attend meetings with the prosecuting Solicitor. Most disturbing, the Applicant was picked-up at the Detention Center where he was being detained by police detectives and transported another location to be polygraphed. In order to ease the Applicant's

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLACKLEY

concerns, the police told the Applicant that his attorney was aware and approved of the fact that they were taking him for a polygraph examination.

On May 6, 2010, (one-year after the criminal incident date), while awaiting a court appearance to plead guilty, the Applicant was indicted upon an additional offense of "Burglary First Degree". The Applicant informed his attorney that he would not plead guilty to this additional charge because he was innocent. In response, attorney Davis advised the Applicant and his family that, if he did not plead guilty to the "Burglary" along with the "Accessory" offenses, that the State would prosecute the "Murder" offense under South Carolina's "accomplice liability doctrine" and possibly seek the death penalty! Attorney Davis continued to explain that, if the Applicant continued to cooperate and follow through with the original plan to plead guilty, that he would receive the minimum sentence on the "Burglary" which would be served concurrent to any sentence on the "Accessory" offenses.

On February 3, 2011, the Applicant was brought before Judge Derham Cole for the purpose of entering his guilty plea. Sentencing was deferred by Judge Cole pending the Applicant's continued cooperation with the State toward the prosecutions of the other principle actors who actually committed the "Murders".

On May 23, 2012, (15) months after the guilty plea, the Applicant was brought before a different Judge (Mark Hayes) for sentencing on the original guilty plea heard by Judge Cole. Judge Hayes sentenced the Applicant to (15) years imprisonment (concurrent) upon each of the "Accessory" pleas, and "Life" imprisonment upon the "Burglary" offense to be served concurrent to the sentences. Judge Hayes also gave the Applicant credit for (40) months. The Applicant's attorney filed a Motion for the Court to reconsider sentence.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLACKLEY

On January 28, 2013, Judge Hayes heard the Applicant's Motion and reduced the "Life" sentence imposed on the "Burglary" offense to (40) years imprisonment. Judge Hayes expressed that his reasoning for the reduction of sentence was based on the fact of his unfamiliarity with the facts of the Applicant's case and guilty plea because Judge Cole took the guilty plea.

II. Specific Issues Discussed and Argued:

In South Carolina, When a convicted Defendant is challenging the validity of his guilty plea, our State Courts have held that, "A Defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing; 1) that counsel's representation fell below an objective standard of reasonableness, and 2) that there is a reasonable probability that, but for, counsel's errors, the Defendant would not have pleaded guilty but would have insisted on going to trial. Wolfe v. State, 326 S.C. 158, 458 S.E.2d 367 (1997); accord Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985); Rosco v. State, 345 U.S. 16, 546 S.E.2d 417 (2001). Based on those requirements that Applicant would show the following issues framed within the context of "ineffective assistance of trial counsel," to wit:

- [A] Trial counsel failed to investigate, research, and/or explore the facts, evidence and potential defenses associated with the Applicant's case before advising the Applicant to cooperate with the State prosecution of others and to plead guilty.

Trial counsel received discovery materials provided by the State. Counsel was confronted with the Applicant's innocence on the Murder offenses contrasting with his guilty upon the "Accessory After The Facts" offenses. Based upon counsel's training and experience, the Applicant logically infers in "hindsight" that defense counsel recognized the contradicting nature of a two count

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLACKLEY

indictment charging "Murder" as Count 1, and "Accessory After The Fact" to the same Murder. The Applicant believes that defense counsel was informed by the State of it's desire to compel (scare) the Applicant into providing testimony and information relative to the prosecution of the others who actually planned and committed the Murders. The Applicant believes his attorney recognized an opportunity to conclude his representation contract of the Applicant with bare-minimal effort on his part beyond advising and pushing the Applicant to cooperate with the police investigators and plead guilty to the Accessory offenses. Counsel advised the Applicant that, as a reward for his cooperation and guilty plea, the State would dismiss the Murder offenses and at sentencing he would be going home.

The Applicant agreed to counsel's advise and cooperated fully with the police and prosecutor. However, after cooperating through meetings with investigators and the prosecutor, and after, at least, one un-counseled encounter between the police and the Applicant through a surprise polygraph examination, the State rewarded the Applicant with an additional indictment of "Burglary First Degree" associated with the Murder incident.

It is a common sense fact that, a criminal defense attorney cannot provided adequate information for a criminal Defendant to make informed choices or decisions relative to pleading guilty unless the attorney performs some meaningful investigation into the facts and evidence of his Client's case. The most disturbing facet of the failure of counsel, is that a minimal exploration of the facts of the case relative to discussions with his Client (the Applicant) would have prevented his Client being exposed to a Burglary First Degree indictment. Because the State received information from the Applicant during his period of cooperation that was the basis for the Purglary indictment, had counsel performed minimal investigation, he would have guarded the Applicant

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 SEP 19 PM 2:27
M. HOPE BLACKLEY

from giving any information that the State could construe as incriminating without first acquiring immunity.

The Applicant's case is a perfect example of why Courts have long insisted that "effective assistance of counsel" requires that counsel conduct a reasonable pretrial investigation into the facts and evidence associated with the criminal case, not just obtaining what the prosecution offers through discovery. Davis v. Alabama, 596 F.2d 1214 (1979); Rumel v. Estell, 455 U.S. 284, 285 (1980).

Despite the Applicant expressing his desire to stand trial, his attorney explained that his only defense to the indictments was to cooperate and plead guilty. And, after cooperating as advised by counsel, one year after the criminal incident, the State provided an indictment for Burglary First Degree which changed everything.

As stated earlier, defense counsel did not anticipate the possibility of a futuristic indictment for Burglary First Degree because counsel did not research, explore, or even discuss the facts of the case sufficiently with the Applicant to uncover the possibility of such a charge. In the case of Mathews v. Evatt, 105 F.3d 907 (4th Cir. 1997), it was held that, a trial counsel's performance is deficient if he fails to make a reasonable investigation. From Demarest v. Price, 905 F.Supp. 1432 (1995) it was held explained that: "Defense counsel's failure to investigate the State's case against the defendant or to consider more than one defense theory, rendered his representation deficient..." It is widely accepted that a criminal defense attorney has a duty to make a reasonable investigation into the prosecution's case or to make a reasonable decision that makes a particular investigation unnecessary. See Kimmelman v. Morrison, 477 U.S. 365, 584, 106 S.Ct. 2574, 2588 (1986). "The duty to investigate is a Sixth Amendment duty." Romero v. Tansy, 46 F.3d 1024, 1029 (1995).

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 SEP 19 PM 2:27
M. HOPE BLANCHET

In the case at bar, because counsel's failure to minimally investigate, his Client (the Applicant) wound-up with initially a "Life" sentence that was later reduced to (40) years imprisonment with no parole eligibility, and so, defense counsel cannot shield against the Applicant's "ineffective assistance" claim by expressing a "reasonable decision that would make a reasonable investigation unnecessary" even though, on the surface, the avoidance of "Murder" prosecutions seems to be a good reason.

It is universal fact that, although the fate of a criminal defendant is determined through the course of a trial, that course (good or bad) can be decisively affected by the actions or inactions of defense counsel in preparing the case. E.G. Moore v. United States, 432 F.2d 730, 739 (1970). How much more so can the actions or inactions of a defense counsel affect the defendant's ability to make decisions and choices between pleading guilty and going to trial. And so, as in the case at bar, defense counsel's pretrial (pre-plea) investigative actions are imperative so that the Defendant is best able to make informed choices and decisions relative to the loss of Constitutional rights and safeguards if a guilty plea is chosen over a trial.

Summary and Conclusion on this Issue:

Defense counsel was well aware of the Applicant's limited education and difficulty with the English language. Counsel relied on the Applicant's willingness to plead guilty to the "Accessory After The facts" offense, and so counsel chose not make the effort or take the time to explore and/or investigate the facts and evidence of the case underlying his Client's dilemma. Moreover, counsel made no effort to explain and ensure the Applicant understood the critical elements of his offenses that the State would have to prove if a trial ensued, but rather, counsel gave the Applicant and his family information and explanations designed to keep them frightened of trial.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLANKLEY

After cooperating fully with the State, the Applicant was rewarded with an additional indictment for Burglary First Degree. Had counsel investigated the facts of the case before advising the Applicant to provide such complete cooperation, counsel would have been able to prevent his Client from divulging any information that could have been construed as incrimination without immunity from prosecution being granted by the State. Such immunity would have precluded the Burglary indictment. However, by the time the Burglary indictment was rendered, defense counsel had squandered any negotiation ability he had with the State.

The Applicant did not want to plead guilty to the Burglary offense and contends that, but for, defense counsel's below standard pre-plea performance, he would not have faced a Burglary First Degree indictment.

[B] Trial counsel abandoned his basic Constitutional function as the Applicant's advocate.

As presented previously, Defense counsel advised the Applicant to cooperate fully with the police and prosecuting Solicitor in conjunction with also pleading guilty to the "Accessory After The Fact" offenses. Counsel explained that, as a reward for such cooperation, the State would dismiss the "Murder" charges against the Applicant and he would be going home at sentencing on the "Accessory After The Fact" offenses. The Applicant agreed to those terms and decided to follow counsel's advise.

While in jail awaiting the guilty plea, police investigators picked up Applicant and transported him to be polygraphed. The Applicant had no prior knowledge that the police would be coming to pick him up for a polygraph, and expressed his concerns and fears to them, to which they responded that his attorney was aware of the polygraph and gave his permission for the police to conduct the polygraph without his presence. No one informed the Applicant that he could refuse to be polygraphed.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:27
M. HOPE BLACKLEY

After the polygraph, the Applicant complained to his attorney, and counsel told him not to worry about it, it was just part of his deal to cooperate with the police and prosecutor.

The Applicant submits that, at the time of the polygraph, since he had not entered his guilty plea, that the "Murder" offenses were still on the table having a most severe punishment range. And so, without some assurance of "sentence cap" recommendation agreement from the State, and some form of immunity from prosecution relative to any information provided by the Applicant that, it is beyond the parameters of reasonable conduct for a lawyer defendant facing a life sentence to allow his Client to be questioned, examined, polygraphed, ect., by the State (police) when the Client has not requested the lawyers absence or otherwise waived his right to have the lawyer present. Just because the lawyer believed the encounter between the police and his Client would not be harmful does not justify the lawyer's absence when the police are questioning or examining the Client when the Client has not waived his right to have his lawyer present. The necessity of basic constitutional functions of legal representation was further heightened here, due to the non-existence of an agreement from the State to recommend some sentence less than the maximum, or the offer of immunity for anything stated outside the lawyers presence. These circumstances reflect that defense counsel abandonment his basic constitutional functions as an advocate for his Client's rights.

There is no question that the Sixth Amendment's relevance to the principles of "effective assistance of counsel" makes clear the duty of lawyers to be present during any police or State initiated questioning and examinations of their Clients. Or in the alternative, a lawyer has a duty to secure a signed waiver of the right to have counsel present during such police (State) initiate encounters with his Client. To do anything less is an abandonment of counsel's

FILED
CLERK OF COURT
Spartanburg County
2013 SEP 19 PM 2:48
M. HOPE BLACKLEY

basic Constitutional functions and falls well below prevailing professional standards required by lawyers in South Carolina.

It is indisputable that the Applicant was represented by counsel long before the (un-counseled) police initiated encounter with him. Such an encounter must be construed as a "custodial interrogation" wherefore, the Applicant has an absolute and fundamental right to have counsel present. See Edwards v. Arizona, 451 U.S. 477 (1981). Further, such a right demands a voluntary, knowing and intelligent waiver before the protections can be removed. See Johnson v. Zerbst, 304 U.S. 458, 464 (1938); Faretta v. California, 422 U.S. 806, 835 (1975); North Carolina v. Butler, 441 U.S. 369, 374-375 (1979); et. al.

The Applicant submits that, being transported by the police for an examination of any type without his lawyer being present or without signing a waiver releasing his lawyer of the duty to be present is another glaring issue of being taken advantage of. However, the taking advantage of the Applicant under the circumstances presented are cause for the vacation of his guilty plea and sentences. Quite simply, the Applicant's retained lawyer performed so poorly that a Sixth Amendment analysis of counsel's failure easily meets the test for "ineffective assistance,". See Strickland v. Washington, 104 (1984). Moreover, counsel's ineffective assistance also easily meets the prejudice test of Strickland simply due to the indisputable fact that counsel's failure to be personally present during all encounters between prosecuting agents and his Client, [or] otherwise securing immunity from prosecution relative to any information obtained outside counsel's presence and acquiring a signed waiver from his Client, the result of the Applicant's convictions and sentences would have been far more favorable to the Applicant, because the Burglary offense would not have existed.

FILED
CLERK OF COURT
SEP 19 PM 2:28
2006
MAYOR BEACLEY

[C] Counsel mislead the Applicant relative to a sentence inducement in order to keep the Applicant on track to plead guilty.

As previously presented, the Applicant agreed to his lawyer's advice that he cooperate fully with the police and Solicitor toward the prosecution of the principle individuals responsible for the "Murder" offenses to which the State had charged him. Further, the Applicant's lawyer explained that, based on his cooperation with the prosecution of others if the Applicant also agreed to plead guilty to the "Accessory After The Fact" offenses that the State would dismiss the "Murder" charges against him, and at sentencing for the "Accessory" offenses he would be going home with time-served and possibly probation.

However, after assisting the State with significant information to resolve the primary "Murder" offenses, while awaiting a Court date for the guilty plea, the Applicant was served with an additional indictment for Burglary First Degree.

The Applicant was highly upset over this new indictment, but, the Applicant's lawyer explained that he should feel lucky that the State was dismissing the "Murder" offenses against him, and he should continue with his decision to plead guilty, and not "rock-the-boat". The Applicant assured him that he would still be going home if he continued to cooperate and follow through with the guilty plea even though the Burglary First Degree offense was now a part of the equation.

Despite the Applicant's stance that he was as innocent of the Burglary as he was the "Murders," his lawyer conveyed a total lack of interest in defending the Applicant's innocence at trial. Counsel informed the Applicant that he had everything under control, that he would be going home at sentencing because he had helped the State. Counsel also informed the Applicant that if he didn't stay the course and plead guilty, that the game was over and he would be lucky to get

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2003 SEP 19 PM 2:28
M. HOPE BLACKLEY

a "Life Sentence". After more than three (3) years in jail, the Applicant's will to resist the overwhelming dilemma he faced was completely undermined. And so he decided to trust his lawyer and follow his advise.

The Applicant was subsequently, brought before Judge Cole for a "Group-plea," whereas several others also entered their guilty pleas. The Applicant was so overwhelmed by the unexpected nature of the "Group-plea" that his mind literally went blank through most of the process. The Applicant did not understand much of what the Judge stated, because again, his grasp of the English language is very meager. The Applicant simply followed his instincts and maintained an air of compliance and agreement. Sentencing was deferred pending the location and arrest of others that the prosecution was depending upon the Applicant to provide testimonial evidence against.

Several months later, the Applicant was brought before a different Judge for sentencing and the Applicant received a "Life" sentence upon the Burglary offense and the maximum sentence allowed upon the "Accessory After The Fact" offenses. (The "Murder" offenses were dismissed.) Needless to say, the Applicant was in total shock. The Applicant's lawyer filed a Motion for Sentence reconsideration, to which Judge Hayes reduced that Applicant's "Life" sentence to Forty (40) years imprisonment upon the Burglary. When the Applicant and his family confronted the lawyer they retained concerning such a harsh sentence in comparison to what the lawyer had lead them to believe (time-served), the lawyer responded that the Applicant was lucky the State dismissed the "Murder" offenses, and if not for him, the Applicant would have been prosecuted for "Murders."

The Applicant now submits that his lawyer intentionally used the coercive nature of prolonged "time-in-jail," combined with the natural fear that underlies the serious nature of the charges against him, and the lawyer

FILED
CLERK OF COURT
SPRINGFIELD COUNTY
2003 SEP 19 PM 2:28
M. HOPE BLACKLEY

capitalized on the Applicant's limited understanding of the English language, as a combined manipulative means to compel the Applicant to relinquish his will to stand trial. Further, the lawyer used the (time-served) sentence expectation as an inducement to encourage the Applicant to cooperate fully with the State in two distinct ways; first, by providing very substantial assistance toward the prosecution of the principle persons responsible for the "Murders" and second, by pleading guilty and saving the State the time and expense of a trial.

The Applicant further submits that his lawyer never explained the nature of the offenses nor the critical offense elements that composed the criminal acts that the State would have to prove at trial. Defense counsel only presented the option of cooperation and guilty plea as a means of walking away from the offenses as indicted. Then, following the Burglary indictment, defense counsel back-peddled and assured the Applicant that the State would prosecute him on the "Murders" if he did not agree to plead guilty to the Burglary along with the "Accessory After The fact" offenses. Nevertheless, defense counsel reassured the Applicant that he would still be going home at his guilty plea because of his cooperation, and because of all the work counsel had performed.

It is interesting to note that, forty-four (44) years ago the United States Supreme Court issued an opinion from the case of Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969) that conveyed the well known fact that, "incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." Id. at 395 U.S. 243. The Court in Boykin also explained that, "A defendant who enters a plea simultaneously waives several constitutional rights ... For this waiver to be valid under the Due Process Clause, it must be 'an intentional relinquishment or abandonment of a known right or privilege.'" Johnson v. Zerbst, 304 U.S. 458, 464 (1938). Consequently, if a defendant's guilty plea is not equally voluntary and knowing,

FILED
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA
2013 SEP 19 PM 2:38
M. HOPE BLANKLEY

it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." *Id.* at 466, 89 S.Ct., at 1171.

Defense counsel in the case at bar made absolutely no effort to explain the law to the Applicant as it related to the facts of the case. Counsel did not know the facts of the case or he would have guarded the Applicant against giving potentially incrimination information to agents of the State during times when the Applicant was providing informative assistance to the State's investigators and prosecutors. Defense counsel not once brought an English/Spanish interpreter to ensure accurate communication and comprehension between himself and the Applicant. As stated previously, defense counsel only conveyed information relative to pleading guilty and that information was misleading, manipulative, and mostly false. Wherefore, the Applicant submits that his retained attorney intentionally used wrongful coercion based on false information and an unconstitutional inducement based on misleading and false sentence expectations.

Moreover, the record of the guilty plea will reveal that the Judge failed to review the underlying factual basis for the guilty plea with the Applicant otherwise explain the elements of the offenses sufficiently to ensure the Applicant understood the true nature of the charges. See Henderson, 425 U.S. 637, 644 (1976) holding that a rote recitation of the elements of an offense as composed within the indictments is not sufficient to satisfy judicial duties during a guilty plea.

Wherefore, the Applicant contends that a review of the facts and circumstances unique to his case at guilty plea will clearly reveal that his guilty plea was entered unknowingly and involuntarily in violation of the

FILED
CLERK OF COURT
SPANISH
AND
ENGLISH
2013 SEP 19 PM 2:28
M. HOPE BLANKLEY

Fourteenth Amendment's Due process Clause. Because the Applicant's guilty plea was acquired based upon "ineffective assistance of counsel," and because the plea court failed to ensure on-the-record that the Applicant sufficiently understood the true nature of the charges against him and the law as it related thereon. The Applicant submits the case of Boykin v. Alabama, 395 U.S. 238 (1969) and Pittman v. State, 524 S.E.2d 623 (1999), et. al., to support his contentions.

[D] The Applicant's guilty plea is invalid based upon prosecutorial misconduct.

In the Applicant's case it is obvious that the State participated in the denial of a fundamental right protected by the Fourteenth Amendment. (The right to counsel guaranteed by the Sixth Amendment is a fundamental right protected by the due process clause of the Fourteenth Amendment.)

Being specific, the State, acting through the prosecuting Solicitor and police acted to interrogate the Applicant through a polygraph examination and dialog without the Applicant's lawyer being present. This encounter between agents of the State and the Applicant occurred before the guilty plea and sentencing, [and] resulted in the Applicant receiving an additional criminal indictment for Burglary First Degree.

This is a matter that goes beyond the fact that the Applicant's lawyer may have given agents of the State verbal permission to interrogate and polygraph the Applicant. (See Issue [B] previous.) This issue complaint deals solely with agents of the State being fully aware that the Applicant was represented by counsel in a criminal proceeding where, based on the nature of the charge, carried the potential consequences of Capital punishment (death by execution).

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:28
M. HOPE BLANKLEY

Nonetheless, the prosecuting Solicitor and investigating police officers were professionally aware that they should never have met with the Applicant under any circumstances without his lawyer present, unless of course, the Applicant initiated contact or the Applicant had signed a written waiver of his right to have his lawyer present. Either of those two conditions would have fulfilled the constitutional necessity that the Applicant had knowingly and voluntarily waived his right to have his lawyer present.

In the United States, Courts universally recognize that a State criminal trial is a proceeding initiated by the State itself, and is an action of the State within the principles and meaning of the Fourteenth Amendment. A guilty plea is an alternative to a trial but is composed of the same Constitutional characteristics as a trial, whereas, in fact, even more safeguards are scrutinized through guilty pleas because such constitutes a waiver of all trial rights and protections. In other words, a guilty plea is also a proceeding initiated by the State itself, and is also an action of the State within the principles and meaning of the Fourteenth Amendment. In the case at bar, the Applicant's guilty plea was still pending, and so, the State's responsibility was to avoid all contact with the Applicant unless his lawyer was present to protect and safeguard his rights, unless of course, there was some form of legitimate waiver by the Applicant giving-up the right to have counsel present.

See Gideon v. Wainwright, 372 U.S. 335, 344 (1963) holding that,

"Unless a defendant charged with a serious offense has counsel able to invoke the procedural and substantive due process safeguards that distinguish our system of justice, a serious risk of injustice infects the trial itself."

Also see Argersinger v. Hamlin, 407 U.S. 25, 29-33 (1972) acknowledging that, "When a State obtains a criminal conviction through such a trial, it is the State that unconstitutionally deprives the defendant of his liberty."

FILED
CLERK OF COURT
ST. LOUIS COUNTY
2013 SEP 19 PM 2:28
M. HOPE BLACKLEY

Any agent of the State who wanted to initiate any contact with the Applicant without his lawyer being present and while criminal proceedings were pending against him was required to ensure that the Applicant had knowingly and voluntarily waived his right to have his lawyer present. No one can waive that right for him not even his lawyer. Such contact between agents of the State and the Applicant, for all intents and purposes, was a "custodial interrogation". See Edwards v. Arizona, 451 U.S. 477 (1981).

The Applicant at bar submits his belief that he does not need to show prejudice as a consequence of the State's participation in the denial of his fundamental constitutional right outlined in this issue. However, being prudent, the Applicant presents that the additional indictment for Burglary First Degree was lodged against the Applicant as a direct or collateral result of the State initiated contact between agents of the State and the Applicant without his lawyer present. Since the Applicant never waived his right to have his lawyer present, the existence of prejudice from this un-counseled contact must be presumed. Even so, without a gratuitous presumption of prejudice, the fact that the Applicant received at first a "Life" sentence for his guilty plea to the Burglary indictment, and then later, he received a modified sentence of forty (40) years imprisonment for the Burglary offense, sets forth a crystal clear demonstration of prejudice because the Burglary charge itself would not have existed, but for, the State initiated contact with the Applicant without his lawyer present.

Conclusion:

Therefore, for the facts, reasons, and circumstances presented in the foregoing issues, the Applicant declares that his guilty plea was entered unknowingly, unintelligently, and involuntarily and in violation of the Fourteenth Amendment's Due Process Clause.

FILED
CLERK OF COURT
SPRINGFIELD
BURGESS COUNTY
2013 SEP 19 PM 2:28
M. HOPE BLACKLEY

Ground 10(b). Involuntary and Unknowing Loss of Right to Direct Appeal.

In the case at bar, the applicant initially informed his attorney that he wanted to appeal his guilty plea conviction and sentence that resulted in a "Life" sentence. Counsel informed the Applicant that he was petitioning the Court to reconsider the sentence, and therefore, could not file an appeal until that petition was heard.

Following a hearing to reconsider the initial sentence, the Applicant was not informed that he could, at that time, file a notice of intent to appeal challenging his convictions and sentences.

Following the sentence reconsidering hearing and the Applicant return to prison where he was being housed by the Department of Corrections, he learned that he could still seek a direct appeal of his guilty plea and sentence. With that information, the Applicant immediately wrote his lawyer and asked that he file a direct appeal for him, and the Applicant contacted his family and asked them to contact his lawyer and ask him to file the notice of appeal in his behalf.

By the time his lawyer responded, the ten (10) day rule to file a notice of appeal had expired and the lawyer brushed off the issue by stating the Applicant should be satisfied with the forty (40) year sentence he had and that he no longer had the "Life" sentence originally imposed.

And so, relative to those facts, the Applicant declares that he did not knowingly, voluntarily, and intelligently waive his right to direct appeal his conviction and sentence. The Applicant submits that his guilty plea lawyer made an intentional decision not to inform the Applicant of his right to appeal at the end of the Sentence Reconsideration Hearing.

FILED
CLERK OF COURT
2013 SEP 19 PM 2:28
M. HOPE BLACKLEY
PENNSYLVANIA COUNTY

Wherefore, the Applicant contends that he should be afforded an opportunity to have his Direct Appeal issues heard as they relate to the guilty plea convictions and sentences in the form of a belated Direct Appeal. See Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986); Mathews v. State, 387 S.E.2d 258 (1990); Casey v. State, 409 S.E.2d 391 (1991).

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:28
M. HOPE BLACKLEY

2013-CP-42- 4095

Rudis A. Ventura, #351029
Perry Corr. Inst., OIA
430 Oaklawn Road
Pelzer, S.C. 29669

To: The Honorable Clerk for
Spartanburg County Court of Common Pleas
180 Magnolia Street
Spartanburg, S.C. 29306

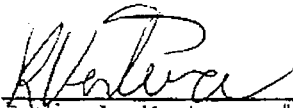
Re: Enclosed Application for Post-Conviction Relief
and Attached Memorandum Of Law in Support Thereof.

Dear Clerk:

Enclosed you should find my application for Post-Conviction Relief and associated documents. Please assign a case number to this pleading and date stamp the document before filing it and docketing the matter. This is a time sensitive pleading.

I thank you sincerely for your time and assistance in this matter.

Respectfully,


Rudis A. Ventura, #351029
Applicant.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 2:26
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Rudis Ventura,

Petitioner,

vs.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

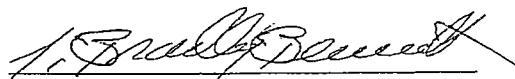
) SEVENTH JUDICIAL CIRCUIT

) CASE NO.: 2013-CP-42-4095

) NOTICE OF REPRESENTATION

COMES NOW undersigned counsel who, being retained by Petitioner, Rudis Ventura, to represent him in the above captioned matter, requests this Court enter his appearance on behalf of Petitioner in this matter.

Respectfully submitted,



J. Bradley Bennett, Esq.

SALVINI & BENNETT, LLC

101 W. Park Avenue

Greenville, SC 29601

Telephone No.: (864) 232-5800

Facsimile No.: (864) 232-5888

Greenville, SC
March 17, 2015

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 20 PM 3:41
M. HOPE BLACKLEY

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

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Rudis Arnoldo Ventura,) 2009-GS-42-2370;2371
6 Defendant.) 2010-GS-42-3025
7) February 3, 2011
8) Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE
12
13

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

15 BARRY JOE BARNETTE, ESQUIRE
16 Attorney for the State

17 SCOTT DAVIS, ESQUIRE
18 Attorney for the Defendant
19
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

INDEX

Guilty plea -- page 3.

No sworn testimony; no exhibits entered into evidence.

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

2 This is the case of State vs. Rudis Arnoldo Ventura.

3 Your Honor, he's pleading guilty to three indictments.

4 Your Honor, the first one is 09-GS-42-2370. Your
5 Honor, it was originally for murder, count one was. He's
6 pleading to count two, and he is waiving presentment on it
7 to accessory after the fact to murder, Your Honor.

8 And then 09-GS-42-2371 was also for murder, true
9 billed, Your Honor, however he's pleading to count two on
10 the indictment, which is accessory after the fact to
11 murder, Your Honor.

12 He's indicated by his signature he's waiving his right
13 to the grand jury on that charge.

14 And then he's also pleading to Indictment No.
15 10-GS-42-3025, which is burglary in the first degree. Your
16 Honor, that one is true billed. He's pleading to that.

17 All of these are straight-up pleas, Your Honor. We'd
18 ask to withhold sentencing to a later date. He possibly
19 will be testifying in future hearings, Your Honor. And
20 he's represented by Mr. Scott Davis.

21 May I approach the bench, Your Honor?

22 THE COURT: All right. You are Rudis Arnoldo Ventura.

23 THE DEFENDANT: Yes.

24 THE COURT: Mr. Davis is your lawyer.

25 THE DEFENDANT: Yes.

1 THE COURT: How long has he been representing you on
2 these charges?

3 THE DEFENDANT: Over a year and a half.

4 THE COURT: Have you had plenty of time to talk with
5 him about your cases as well as your apparent decision to
6 plead guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did he go over each of these indictments
9 with you and explain to you what the state claims that you
10 did?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did he explain to you what the state would
13 have to prove in court before you could be convicted or
14 found guilty?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you tell him everything you know about
17 the facts and circumstances that relate to these
18 allegations, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And did you and he discuss whether or not
21 you have a defense to any of these charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you know of any defense that you have?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What is it?

1 THE DEFENDANT: I can waive it.

2 MR. DAVIS: He's asking you if you -- if you and I
3 have talked about whether you have a defense to these
4 charges. And we talked about that. You do not have.

5 THE COURT: Do you know any defense that you have to
6 any of these charges?

7 THE DEFENDANT: No.

8 THE COURT: And did Mr. Davis explain to you what type
9 of sentence could be imposed if you were convicted or pled
10 guilty?

11 THE DEFENDANT: Yes.

12 THE COURT: I've got a number of questions to ask you.
13 The purpose of the questions is for me to determine whether
14 or not your decision to plead guilty was freely and
15 voluntarily made, that you were not forced, coerced or
16 pressured into that decision, and that you understand the
17 consequences of that decision.

18 So as these questions are asked if you don't
19 understand my question, you let me know, and I'll rephrase
20 it, because obviously I need to have an answer from you
21 based upon your understanding the question that I'm asking
22 you, what information I'm trying to obtain.

23 If at any time you need to stop and spend more time
24 with your lawyer to discuss anything, let me know. We'll
25 stop and provide you with that opportunity.

1 Indictment 2009-2370 charges you with the crime of
2 murder and in count two with accessory after the fact to a
3 felony.

4 Count one alleges that you did here in Spartanburg
5 County on or about January the 24th of 2009 wilfully and
6 with malice aforethought kill Teresa De Jesus
7 Avilla-Martinez by shooting her with a firearm and that she
8 died as a approximate result of that gunshot wound. And
9 they're alleging that you did those things yourself or you
10 acted in concert with others.

11 If you were found guilty of the crime of murder you
12 could receive a sentence of life imprisonment. It requires
13 a mandatory minimum sentence of not less than 30 years.

14 Count two of the indictment alleges accessory after
15 the fact to a felony, and that count alleges that you did
16 here in Spartanburg County on or about January the 24th of
17 2009 after knowing that someone had committed and completed
18 the crime of murder of Teresa De Jesus Avilla-Martinez,
19 that you did assist those persons involved in her murder to
20 escape detection or arrest or otherwise avoid the
21 consequences of that crime.

22 And they specifically allege that you did aid and
23 assist Edgar Pineda and/or Yesenia Cortez Ramirez and/or
24 Miguel Lopez and/or Juan Carlos Estrada Vazquez and/or Jose
25 Reyes Arevalos.

1 If you are convicted of the crime of accessory after
2 the fact to a felony, in this case murder, you could
3 receive a sentence of up to 15 years in jail.

4 Now, do you understand the charge of murder?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand the charge of accessory
7 after the fact to the crime of murder?

8 THE DEFENDANT: Yes.

9 THE COURT: And as I understand it you are pleading
10 guilty to count two of the indictment, which is the
11 accessory after the fact to the crime of murder.

12 And upon my acceptance of your plea of guilty to the
13 crime of accessory after the fact to the crime of murder
14 and upon your successful completion of your obligations
15 pursuant to any plea agreement with the state, then they
16 will agree to dismiss the charge of murder.

17 Is that what you understood?

18 THE DEFENDANT: Yes.

19 THE COURT: Is that what you wish to do?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, this lady over here, as you can see,
22 she's taking down everything we say. And in order for her
23 to be able to take it down she has to hear it, and in order
24 for me to understand your responses to my questions I've
25 got to hear it too. So I'm going to ask you to speak up,

1 because you're barely audible from where I am, and I'm
2 almost next to you. Okay?

3 THE DEFENDANT: Okay.

4 MR. DAVIS: Your Honor, he was also waiving
5 presentment to the grand jury on that charge.

6 THE COURT: All right. And the charge of murder has
7 been considered by the Spartanburg County Grand Jury. And
8 they have returned a true bill, which means the state can
9 call this case for trial without further authorization.

10 The charge of accessory after the fact to murder which
11 is contained in count two of the indictment has not been
12 considered by the Spartanburg County Grand Jury, and that's
13 because the state intended to pursue the charge of murder.
14 But y'all have entered into some plea negotiations wherein
15 the state has agreed to let you plead guilty to a lesser
16 offense, that being the crime of accessory after the fact
17 to murder, which we've already discussed. But that charge
18 has not been considered by the grand jury.

19 So in order for us to continue with the presentation
20 and your guilty plea as to accessory after the fact to
21 murder either the grand jury has to act on that charge and
22 return an indictment or you have to give up your right to
23 have the grand jury consider that other charge.

24 Now, you have signed or initialed a form indicating
25 that you wish to waive presentment of that charge to the

1 grand jury. Were those your initials on the form?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And when you initialed that form did
4 Mr. Davis -- had he explained to you the -- your right to
5 have the grand jury consider this indictment?

6 THE DEFENDANT: Yes.

7 THE COURT: And do you understand the grand jury
8 process?

9 THE DEFENDANT: Yes.

10 THE COURT: And do you wish to give up your right for
11 them to consider the charge of accessory after the fact?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: Indictment 2009-2371 also charges you with
14 the crimes of murder and with the crime of accessory after
15 the fact to a felony.

16 And the state alleges in count one of this indictment
17 that you did here in Spartanburg County on or about January
18 the 24th of 2009 wilfully and with malice aforethought kill
19 Hugo del Carm Lugo-Hernandez by shooting him with a firearm
20 and that he died as a proximate result of that gunshot
21 wound.

22 Again, the state is alleging that you either committed
23 those acts yourself or acted in concert with others
24 according to a common scheme or plan.

25 If you are convicted of that crime you could again

1 receive a sentence of up to life imprisonment. It would
2 require a mandatory minimum sentence of not less than 30
3 years in jail.

4 Count two of the indictment alleges that you did here
5 in Spartanburg County on or about January 24th of 2009
6 after knowing of the commission and the completion of the
7 felony of murder in the death of Hugo del Carm
8 Lugo-Hernandez, that you did aid and assist those persons
9 who committed that murder to escape detection or arrest or
10 otherwise avoid the consequences of that crime.

11 And they allege that you did aid and assist the
12 persons committing the crime of murder of Mr.
13 Lugo-Hernandez and that you did assist Edgar Pineda and/or
14 Yesenia Cortez Ramirez and/or Miguel Lopez and/or Juan
15 Carlos Estrada-Vazquez and/or Jose Reyes Arevalos.

16 And as in the other indictment, if you were convicted
17 of that crime or if I accept your plea of guilty you could
18 receive a sentence of up to 15 years in jail.

19 And also as I understand it if I accept your plea of
20 guilty to accessory after the fact of murder in this
21 indictment and you fully and successfully complete your
22 obligations imposed upon you pursuant to a plea agreement
23 with the state, then the crime of murder will be dismissed
24 against you.

25 Is that what you understood?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And do you still wish to plead guilty to
3 count two of this indictment, accessory after the fact to
4 the crime of murder?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And, again, count two of the indictment
7 has not been presented to the grand jury.

8 I see again your initials appearing on the form
9 indicating that you wanted to waive your right to the grand
10 jury. And you do understand your right to have that charge
11 of accessory after the fact set forth in count two of the
12 indictment considered by the grand jury?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And are these your initials indicating you
15 wish to waive that right?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Davis fully explained that right to
18 you?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand it?

21 THE DEFENDANT: Yes.

22 THE COURT: And is it your wish to give that right up
23 in order to enter your plea of guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Indictment 2010-3025 charges you with the

1 crime of burglary in the first degree.

2 The state alleges that on or about January the 24th of
3 2009 that you did wilfully and intentionally enter the
4 dwelling of Hugo del Carm Lugo-Hernandez and/or Teresa De
5 Jesus Avilla-Martinez located on Highway 101 in Woodruff in
6 Spartanburg County without consent of the owners or persons
7 in possession of the property, and that you did so with the
8 intent to commit a crime therein.

9 And they further allege that in addition to those acts
10 and facts that you did either enter the dwelling in the
11 nighttime, or you were armed with a deadly weapon, or you
12 caused physical injury to a person who was not a
13 participant in the crime, or you did use or threaten the
14 use of a dangerous instrument, or you did display what
15 appeared to be a knife, a pistol, revolver, rifle, shotgun
16 machinegun or any other firearm during the course of that
17 burglary.

18 If convicted of burglary in the first degree you could
19 receive a sentence of up to life in prison. And it
20 requires a minimum sentence of not less than 15 years in
21 jail.

22 Do you understand that charge and the potential
23 punishment?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you still wish to enter your plea of

1 guilty as to burglary in the first degree?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Has Mr. Davis explained to you each of the
4 constitutional rights that you must give up if you wish to
5 enter a plea of guilty?

6 THE DEFENDANT: Yes.

7 THE COURT: Did he explain to you that you have the
8 right to remain silent?

9 THE DEFENDANT: Yes.

10 THE COURT: And that means that you don't have to say
11 anything. You don't have to testify in court about these
12 cases. You don't have to provide anyone a statement about
13 these cases. You don't have to answer any questions about
14 these allegations.

15 You don't have to answer my questions that I'm asking
16 you right now unless you want to plead guilty. But as I
17 told you, if you want to plead guilty you have to answer my
18 questions because I use those answers in making my own
19 determination as to whether or not your decision to plead
20 guilty is freely and voluntarily made and that you
21 understand the consequences of that decision.

22 But you do have the right to remain silent. It's your
23 choice as to whether or not you will give that right up and
24 answer any questions by the Court.

25 Do you understand your right to remain silent?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Mr. Davis has explained it to you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to give that right up in order
5 to enter your plea of guilty?

6 (Pause for the defendant to speak with Mr. Davis.)

7 THE DEFENDANT: Yes.

8 THE COURT: So you want to waive your right, give up
9 your right, to remain silent?

10 THE DEFENDANT: Yes.

11 THE COURT: You also have the right to confront any
12 witness that would offer evidence against you. And that
13 just simply means that you have a right to require the
14 state to bring their witnesses into court.

15 Anybody that would offer testimony or other evidence
16 tending to prove your guilt would have to come into court
17 and take the witness stand and testify under oath in your
18 presence.

19 You could see who those witnesses are; you could hear
20 what they have to say; and Mr. Davis would be able to
21 examine those witnesses on their testimony. In other
22 words, he could ask them questions in order to test their
23 reliability and the credibility of the information that's
24 being provided by the witness.

25 Now, when you plead guilty the witnesses don't

1 necessarily come to court. But even if they do, they don't
2 take the witness stand and they don't testify. And they're
3 not subjected to any type of examination by the Court or by
4 your lawyer.

5 Do you understand your right to confront witnesses
6 that would offer testimony against you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that when you plead
9 guilty you necessarily give that right up because that will
10 not occur?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And do you wish to give up your right to
13 confront the witnesses in order to plead guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: You also have a right to have a jury trial
16 and to have a jury of 12 people determine whether or not
17 you are guilty of any crime the state claims you committed.

18 And if you elect to have a jury decide whether or not
19 you're guilty of any crime you would participate in the
20 selection of 12 persons that would be chosen from a larger
21 panel of jurors.

22 Once those 12 are selected they would sit over there
23 in the jury box. They would listen to all of the testimony
24 in the case. They would consider all of the evidence in
25 the case. They would decide what the facts are in the

1 case. In other words, they would determine what they
2 believe occurred back on January the 24th of 2009 as it
3 relates to these charges that have been brought against
4 you.

5 Once they decided what they thought occurred on that
6 date as it relates to you, they would apply the law that I
7 would provide them. And they would decide whether or not
8 you're guilty of any crime the state claims that you have
9 committed.

10 Before a jury could find you guilty of any crime the
11 state would have to convince the jury by presenting
12 evidence that you were guilty of a crime beyond a
13 reasonable doubt before they could find you guilty.

14 It takes all 12 jurors to render a decision. And
15 whatever decision a jury renders, it has to be unanimous.
16 All 12 have to be in agreement.

17 And so you can have a jury trial, but you still don't
18 have to testify or answer any questions. You still don't
19 have to call any witnesses or produce any evidence.

20 The state would have the burden of presenting
21 witnesses and producing evidence in order to establish your
22 guilt. And your lawyer would have the opportunity to
23 examine all of those witnesses.

24 But you could still remain silent if you wanted to, or
25 you could testify if you wanted to. That would be your

1 choice.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: But the jury would make the ultimate
5 decision as to whether or not you are guilty of any crime.

6 Now, when you plead guilty you give up your right to
7 have a jury decide whether or not you are guilty.

8 Did Mr. Davis explain that to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand your right to have a
11 jury trial?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that when you plead
14 guilty you give up your right to have it? There will be no
15 jury trial.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And is that what you wish to do, is to
18 give up that right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, as I understand it, the state has
21 agreed to allow you to plead guilty to two counts of
22 accessory after the fact to the crime of murder and to one
23 count of burglary in the first degree.

24 And if you accept that offer and you plead guilty to
25 those charges and I accept your pleas, after you have

1 complied with your obligations under the plea agreement the
2 two charges of murder will be dismissed.

3 Is that what you understood was to happen in your
4 cases?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Did anybody promise you anything else that
7 caused you to make your decision to plead guilty?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: All right. Now, I'm going to ask the
10 solicitor to tell me about what your obligations are as a
11 condition of this plea agreement. So you listen to what he
12 tells me.

13 And once he's concluded I'll ask you if you agree with
14 his version, or you don't. Or if you think there's
15 something else that was included, you let me know.

16 All right. Mr. Barnette.

17 MR. BARNETTE: Thank you, Your Honor.

18 He is to testify. There's five other -- there's
19 actually eight defendants in this case total. He'll be the
20 third defendant that has pled guilty. There's five other
21 defendants that still have not been tried. His obligation
22 will be to testify truthfully against them.

23 He has given statements. His attorney, Mr. Davis, was
24 present. He has given statements to two investigators --
25 Investigator Bryant and Investigator Taylor from the

1 sheriff's department -- as well as Investigator Rick
2 Gregory from our office.

3 Once he testifies against those individuals we'd bring
4 back in front of the Court. The two murder counts would be
5 dismissed.

6 It's a straight-up plea. It'd be left to the Court's
7 discretion what the sentence would be, but he would be
8 sentenced on two accessory after the facts to murder, as
9 well as to burglary in the first degree, Your Honor.

10 THE COURT: All right. Mr. Barnette says that he's
11 agreed to dismiss the two murder charges in return for your
12 pleading guilty to burglary and two counts of accessory
13 after the fact to the crime of murder, and you agree to
14 plead guilty to those charges, and you agree to testify
15 truthfully as to your knowledge about the crimes that are
16 alleged in these indictments, and that you have agreed to
17 testify against any other person charged with the
18 commission of these crimes, specifically these two murders
19 and the burglary. Is that true?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And he also says that you have already
22 provided to law enforcement written statements about the
23 knowledge that you have about these two murders and the
24 burglary. Is that true?

25 MR. BARNETTE: Your Honor, they're not written. He

1 gave oral statements, and we took notes off those, Your
2 Honor, and we have provided those to the other defense
3 attorneys. But he has not given written statements. He
4 has given statements to us.

5 THE COURT: All right. So you have not provided any
6 written statement, but you have sat down with law
7 enforcement, police officers. And you've told them
8 everything you know about these cases?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And is everything you told them truthful
11 and accurate?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And did you tell them everything you know
14 about it?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, other than these plea negotiations
17 and the agreement you've reached with the state, was there
18 anything else promised you that caused you to make your
19 decision to plead guilty?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Has anybody threatened you in any way?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Has anybody coerced you in any fashion?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Has anyone put any pressure upon you of

1 any kind and from any source that caused you to make your
2 decision to plead guilty?

3 THE DEFENDANT: No, Your Honor.

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

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: And are you pleading guilty because you
8 did commit the acts and the crimes as they are described in
9 each of the indictments that allege that you committed the
10 crime of burglary in the first degree and accessory after
11 the fact to the two murders of Mr. Lugo (sic) Hernandez and
12 Ms. Jesus Avilla-Martinez?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. You are 28 years old?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And where are you originally from?

17 THE DEFENDANT: California.

18 THE COURT: And were you born and raised in
19 California?

20 THE DEFENDANT: Yes, Your Honor.

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

22 THE DEFENDANT: I went to college.

23 THE COURT: What college did you go to?

24 THE DEFENDANT: Chattahoochee -- Chattahoochee Tech,
25 Georgia.

1 THE COURT: In Georgia?

2 THE DEFENDANT: Yeah.

3 THE COURT: And are you married?

4 THE DEFENDANT: No.

5 THE COURT: Do you have any children?

6 THE DEFENDANT: Yes.

7 THE COURT: How many?

8 THE DEFENDANT: One.

9 THE COURT: And where is the mother of that child?

10 THE DEFENDANT: In Georgia.

11 THE COURT: Is that where the child lives with her?

12 THE DEFENDANT: Yes.

13 THE COURT: And do you also -- did you live in Georgia

14 with them before you were arrested on these charges?

15 THE DEFENDANT: Yes.

16 THE COURT: And were you employed at that time?

17 THE DEFENDANT: Yes.

18 THE COURT: What kind of work did you do?

19 THE DEFENDANT: Construction.

20 THE COURT: How long have you been doing construction

21 work in Georgia?

22 THE DEFENDANT: About ten years.

23 THE COURT: Have you ever been treated for any type of

24 substance abuse or addiction to any type of drug?

25 THE DEFENDANT: No, Your Honor.

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

2 THE DEFENDANT: No, Your Honor.

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

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: And do you suffer from any such condition
7 today?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Do you understand fully what you're doing
10 today in the entry of these guilty pleas?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. I'm going to ask the solicitor
13 to tell me about the facts that relate to the charges, that
14 is your participation in the burglary and the accessory
15 after the fact to the crime of murder.

16 So listen to what he tells me, because once he's
17 concluded I'm going to ask you if you agree with his
18 version of those facts. So pay attention, because if you
19 don't you're going to need to tell me. Okay?

20 MR. BARNETTE: Your Honor, one thing I need to bring
21 to the Court's attention on the burglary warrant, I noticed
22 when the address was read out, the address should have been
23 Greer, South Carolina, instead of Woodruff. It's closer to
24 Woodruff, but it's actually a Greer address. So we'd ask
25 to amend that part of the indictment with the consent of

1 the defense, Your Honor.

2 MR. DAVIS: No objection, Your Honor.

3 THE COURT: Do you agree with that, Mr. Ventura?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. Mr. Barnette.

6 MR. BARNETTE: Thank you, Your Honor.

7 This did occur on January the 24th of 2009, Your
8 Honor, at 3301 Highway 101 in Greer, South Carolina, which
9 is in Spartanburg County, Your Honor.

10 The sheriff's department was called there and found
11 the victim in this case, Teresa Martinez, and Hugo
12 Lugo-Hernandez, Your Honor. They were killed at the house.
13 They'd been shot several times.

14 Through their investigation, Your Honor, they found
15 Juan Carlos Estrada Vazquez had had prior dealings with
16 Mr. Hernandez -- through these connections where
17 Mr. Estrada Vazquez had contacted Yesenia Ramirez and asked
18 her to bring some folks up with her. The defendant was one
19 of those folks that came up with her, Your Honor, along
20 with Lopez and Pineda. There was two folks that's not been
21 captured yet -- Jose Gomez and Lewis Perez, Your Honor.

22 They met with Mr. Vazquez. He also had Jose Reyes --
23 I apologize. Some of these words I can't pronounce
24 correctly -- Ventura -- that was a partner of Mr. Backet
25 (sic), Your Honor, in this case.

1 They met at a trailer here in Spartanburg County, Your
2 Honor, off I-85. Originally, before that they had actually
3 met at a filling station, got together, went to the
4 trailer.

5 From the trailer Jose Reyes Arevalos drove this
6 defendant, Mr. Gomez and Ms. Perez over to the location.
7 Later on the rest of the folks was supposed to come that
8 was involved in this case.

9 Once they went into the house and found out there
10 wasn't nothing in it supposedly Estrada-Vazquez basically
11 said that Mr. Hernandez had stolen some items from them and
12 wanted to go in and find those items. Well, they went in,
13 broke into the house, and actually found the two victims in
14 the house.

15 At that point the defendant was standing outside,
16 basically a lookout at that point. He was out beside a dog
17 house in the yard.

18 He was called in. They were using Nextels to talk
19 among themselves. He was called in and he was told to go
20 look at the upstairs to see if can find out.

21 While he was upstairs they'd been ransacking the
22 house. He heard several shots, went downstairs. Mr. Gomez
23 and Ms. Perez had told him we need to get out of here.
24 Basically, they had took marijuana, and some other items
25 was taken.

1 They were taken back to the trailer. They met with
2 Ms. Ramirez as well as Mr. Vazquez. And Mr. Ramirez had
3 came and picked them back up to take back.

4 In this case the defense specially heard in a
5 conversation over a phone as they was coming up from
6 Atlanta, Your Honor, that Ms. Ramirez basically -- they'd
7 talked about \$10,000 to go do this job from that
8 standpoint, to go inside the house and so forth.

9 When they were at the trailer Carlos Vazquez had
10 brought several guns, given guns out to individuals there,
11 several of these individuals. And those guns were used in
12 this murder in this case.

13 Mr. Vazquez has already pled guilty. He's pled guilty
14 to accessory before the fact of murder as well as the
15 burglary, Your Honor. Jose Reyes, the one that drove them
16 over there, has pled guilty to burglary first and accessory
17 after the fact to two counts of murder in this case, Your
18 Honor.

19 We look to try these other individuals hopefully in
20 the next -- by probably May or June of this year in this
21 case. One of the individuals is represented by
22 Mr. Brannon. That's one of the reasons why we may have to
23 wait until June to try the case.

24 THE COURT: All right. Mr. Ventura, did you
25 understand what the solicitor just told me about the facts?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you agree or disagree with his version
3 of those facts?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Which is it?

6 THE DEFENDANT: I agree.

7 THE COURT: You agree. And you still want me to
8 accept your pleas of guilty?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And did you understand -- Mr. Davis
11 explain to you -- that while I'm accepting your pleas of
12 guilty today that any sentence to be imposed will be
13 deferred? In other words, it won't take place until the
14 other codefendants have been tried and you have fulfilled
15 your obligations under the plea agreement?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And you understand that if you fail to
18 fulfill your obligations under the plea agreement, then the
19 state can come back and charge you with or proceed to trial
20 on the charges of murder in these indictments?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. Do you still wish for me to
23 accept your pleas of guilty as you've indicated?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: All right. I'll accept your pleas, and

1 the sentence will be deferred until such time as the
2 codefendants' cases have been disposed of. Okay.

3 MR. BARNETTE: Thank you, Your Honor.

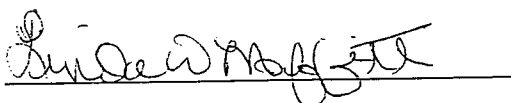
4 END OF REQUESTED TRANSCRIPT OF RECORD
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 3rd day of February 2011.

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 The State,) TRANSCRIPT OF RECORD
4) 2010-GS-42-3151; 2009-GS-42-2337,
-vs-) -2338, 2010-GS-42-3207;
5) 2010-GS-42-3083, -3885;
Edgar Pineda, Juan Carlos) 2010-GS-42-3025, 2009-GS-42-2371,
6 Vazquez, Jose Reyes) 2009-GS-42-2370
Arevalos and Rudis Arnoldo)
7 Ventura,)
8 Defendants.) May 23, 2012
Spartanburg, South Carolina

9
10
11
12 B E F O R E:

13 HONORABLE J. MARK HAYES, II, JUDGE
14
15

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

17 BARRY JOE BARNETTE, ESQUIRE
Seventh Judicial Circuit Solicitor

18 SCOTT D. ROBINSON, ESQUIRE
19 HUNTER CHASE HARBIN, ESQUIRE
PATRICK L. MANGRUM, ESQUIRE
20 RALPH SCOTT DAVIS, ESQUIRE
Attorneys for the Defendants
21
22
23

24 Margaret A. Woods
Circuit Court Reporter
25

COPY

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 Averas, 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
11 575 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 575 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 shoulda 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 I 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 1/17/14

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

State of South Carolina)
) Court of Common Pleas
County of Spartanburg)

 Post Conviction Relief

Rudis Arnold Ventura)
) Transcript of Record
)
State of South Carolina)
 DEFENDANT

November 10, 2015
Spartanburg, South Carolina

B E F O R E:

Honorable Larry B. Hyman, Jr., Judge

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

Alicia A. Olive, Assistant Attorney General
Attorney for the State

J. Bradley Bennett, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(AW) - Denotes Applicant's Witness
(SW) - Denotes State's Witness

(AW) Rudis Ventura

Direct examination by Mr. Bennett: 4

Cross-examination by Ms. Olive: 14

(SW) Scott Davis

Direct examination by Ms. Olive: 16

Cross-examination by Mr. Bennett: 22

Redirect examination by Ms. Olive: 34

Ruling of the Court 40

Certificate of Reporter 42

1 THE COURT: Ms. Olive.

2 MS. OLIVE: May it please the Court, Your Honor.

3 THE COURT: Yes.

4 MS. OLIVE: Your Honor this is the case of Rudis
5 Arnold Ventura v. State. 2013-CP-42-4095. Mr. Ventura
6 filed this application for PCR on September 19th, 2013.
7 He was indicted in May of 2009 for two counts of murder.
8 He was then indicted in May of 2010 for burglary first
9 degree. All of those charges arose from the same set of
10 events. He was represented on those charges by Scott
11 Davis. On February 3rd, 2011 pursuant to negotiations
12 with the State he appeared before Judge Cole and plead
13 guilty to two counts of accessory after the fact to murder
14 and waived presentment to a Grand Jury on burglary first
15 and plead to that as well. As part of that plea agreement
16 he agreed to testify truthfully against his codefendant
17 and as a result the State dismissed the charges for
18 murder. His sentencing was deferred, I believe, to allow
19 for the testimony on those other cases. On May 23rd, 2012
20 Judge Hayes sentenced him to concurrent terms of 15 years
21 for each count of accessory after the fact to murder. And
22 he sentenced him to life for burglary, I am sorry,
23 burglary first. His attorney then filed a motion to
24 reconsider the terms of the sentence. And Judge Hayes
25 ended up reducing the term on the first degree burglary

1 from life to 40 years to also be served concurrently. I
2 will turn it over to Mr. Bennett.

3 THE COURT: All right, sir.

4 MR. BENNETT: May it please the Court, Your Honor. I
5 am Bradley Bennett from the law firm of Salvini, Bennett
6 out of Greenville, South Carolina. It is a pleasure to be
7 before the Court for the first time. I call Mr. Rudy
8 Davis to the stand.

9 MS. OLIVE: Your Honor, I believe that the
10 interpreter needs to be sworn in as well.

11 THE COURT: She, she certainly does.

12 Rudy Ventura, being
13 first duly sworn, testified as follows:

14 Yanet Chavez, being
15 first duly sworn, testified as follows:

16 (Yanet Chavez, Interpreter, translated proceedings in this
17 case for Rudis Arnold Ventura)

18 DIRECT EXAMINATION

19 By Mr. Bennett:

20 Q Rudy, how are you doing?

21 A Good.

22 Q I have got a translator here. You and I have
23 communicated sometimes in English and sometimes in my old
24 broken Spanish, isn't that correct?

25 A Yes.

1 Q And you have actually requested that I have a
2 translator here because of some technicalities or legal
3 terms?

4 A Yes.

5 Q Sometimes we have a difficult time discussing and to
6 your benefit we have a translator here, correct?

7 A Yes.

8 Q And do you understand the translator that is here
9 today?

10 A Yes.

11 Q At any time you don't please let us know. Is that
12 okay?

13 A Yes.

14 Q All right, Rudy, you hired, Scott Davis represented
15 you, correct?

16 A Yes.

17 Q Please tell Judge Hyman a little bit about that, why
18 did you hire him?

19 A I wanted him to defend me on my case and so I hired
20 him.

21 Q And that was a criminal case, correct?

22 A Yes.

23 Q Do you remember what your charges were at that time?

24 A Two murders and that was it.

25 Q Wasn't there also an accessory after the fact for

1 each of those two murders?

2 A Yes.

3 Q And how much did you pay Mr. Davis?

4 A \$5,000.00.

5 Q And he started working on your case?

6 A Yes.

7 Q Tell me a little bit about that. What did Mr. Davis
8 do that you knew of in regards to working on your case?

9 A To cooperate with the law, as far as doing something
10 for me. At the time of my plea it was all about helping
11 the law.

12 Q In other words, did you and Mr. Davis talk about
13 whether you were going to go to trial or whether you were
14 going to plead guilty and cooperate?

15 A Never.

16 Q What did you discuss with Mr. Davis at the beginning
17 of your case with him?

18 A When he came, he told me to, that I was going to get
19 a lessor included offense. He told me the charges and I
20 told him I wasn't going to plea because I had helped the
21 law. If it wasn't for me these people would have never
22 got caught.

23 Q Let me take you back a little bit because what you
24 are talking about now is your actual plea, isn't that
25 correct?

1 A Yes.

2 Q At the beginning of your case, when you were being
3 charged with the two murders did you tell Mr. Davis that
4 you were guilty of those murders or that you were innocent
5 of those murders?

6 A I told him I was innocent.

7 Q And so were you willing to plead guilty to those
8 murders at that time?

9 A No.

10 Q And at some later time you, in fact, did plead guilty
11 though, didn't you?

12 A Guilty but not in the murders.

13 Q You were cooperating prior to being sentenced after
14 pleading guilty to those charges though, didn't you?

15 A Yes.

16 Q And was the government going to dismiss the murder
17 charge then?

18 A Yes.

19 Q So let's talk a little bit about that cooperation.
20 Did you, in fact, cooperate?

21 A Yes.

22 Q And over how long of a period of time did you, in
23 fact, cooperate?

24 A Two years.

25 Q And during that period of time you were doing what

1 kinds of things to cooperate with law enforcement? Madam,
2 please translate that for me.

3 A Meetings with the Solicitor.

4 Q Meetings with the Solicitor. Okay, what else?

5 A Everything I knew about the case and the way I helped
6 the police.

7 Q And you mentioned the Solicitors. Were there some
8 other folks that you have met with?

9 A Yes, one time they came and picked me up out of no
10 where and took me to the sheriffs department.

11 Q You say they, who is they, Rudy?

12 A The detective.

13 Q There were, in fact, three detectives on that case,
14 was there not, that you had dealt with?

15 A He was the one that I talked to.

16 Q But you remember multiple detectives that you talked
17 to, Rudy?

18 A Yes.

19 Q Was there an Investigator Bryant?

20 A Yes.

21 Q Investigator Taylor?

22 A Yes.

23 Q Investigator Rick Gregory?

24 A Yes.

25 Q And all of these investigators you had been

1 cooperating with for a very long period of time, correct?

2 A Yes.

3 Q In an effort to assist the law enforcement community
4 to find who were the actual murderers, correct?

5 A Yes.

6 Q Now you were talking about being picked up while you
7 were at the detention facility because you were in custody
8 this entire time, were you not?

9 A Yes.

10 Q And you were taken to the sheriffs office for a
11 polygraph test, is that correct?

12 A Yes.

13 Q Now, you didn't realize you were going to have a
14 polygraph test, did you or did you? In other words, no
15 one had told you, correct?

16 A No, never.

17 Q Was your lawyer present when you were picked up to go
18 take a polygraph test?

19 A No.

20 Q Was your lawyer present when you had the polygraph
21 test administered or given to you?

22 A No.

23 Q Do you know if your lawyer was ever working with the
24 law enforcement community at coming up with the questions
25 for the polygraph?

1 A No.

2 Q Do you know if your lawyer wanted you to take the
3 polygraph test when you took it?

4 A No.

5 Q When you took the polygraph test, that wasn't the
6 first time that you were being questioned by law
7 enforcement without your lawyer being present, was it?

8 A Other times he was present. What is the question?

9 Q I am talking about earlier that day before you were
10 taken over to the law enforcement for the polygraph test,
11 your lawyer was not meeting with you at the detention
12 facility when you were picked up and taken over there, was
13 he?

14 A No.

15 Q As a result of that polygraph test did anything else
16 happen to you in your case?

17 A I had, they gave me a new indictment.

18 Q And what was that new indictment for? Was it
19 burglary in the first degree by chance?

20 A Yes.

21 Q Was it based upon the same location at the house
22 where the murders took place?

23 A Yes.

24 Q And on that same day, and the murders took place on
25 January 24th, is that correct?

1 A Yes.

2 Q How did you feel when you found out that you were
3 being charged with burglary in the first degree? Did you
4 realize what was happening to you?

5 A Yes.

6 Q Well, I am sorry, I didn't phrase that quite
7 correctly. Did you understand that your assisting the law
8 enforcement community could hurt you by having additional
9 charges brought against you?

10 INTERPRETER: What was the question?

11 Q Sure, I am sorry, I will be glad to repeat it. Did
12 you know that by assisting the law enforcement community
13 that they would, in fact, give you an additional charge?

14 A No.

15 Q What was your belief as to what would happen if you
16 assisted the law enforcement community?

17 A That they would help me.

18 Q And how would they help you?

19 A By giving me a lower sentence.

20 Q I am sorry, will you repeat that just one more time.
21 I didn't hear you.

22 THE COURT: By giving him a lower sentence.

23 MR. BENNETT: Thank you, Your Honor, I appreciate
24 that.

25 Q How is that you came to that belief that you would

1 get a lower sentence for cooperating with the law
2 enforcement community?

3 A Because every time I talked to my lawyer he addressed
4 to me that everything was okay. And then time went by and
5 sometimes I talked to him and he told me everything was
6 okay. And I was going to go home.

7 Q Describe that a little bit more, please, about your
8 lawyer telling you you were going to go home?

9 A Because he say that they are going to put everything
10 on the main guy of that was involved in this case.

11 Q And what was going to happen to your charges. Did he
12 tell you anything about that?

13 A Yes, that he was going to help me.

14 Q How so, what did he tell you that he was going to do?

15 A I was going to go home. Because I was cooperating
16 with them, they were going to help me.

17 Q Did he specifically tell you anything about the
18 murder charges and what were going to happen to those?

19 A That they were going to drop those murder charges.

20 Q And what about the burglary first charge, did he tell
21 you anything about what was going to happen to those?

22 A He told me they was going to run together.

23 Q Run together?

24 A With me going home, on the way that the discussion
25 was, the discussion, it wasn't about the burglary. It was

1 about the way he told me, well, I can be okay. So I will
2 be, he was coming down and reassuring me that everything
3 was going to be fine.

4 Q And you had been in the detention facility for
5 several years at this time, correct?

6 A Yes.

7 Q And you said something, he assured you you would go
8 home, is that correct?

9 A Yes.

10 Q Now, you had a chance to go to trial, correct?

11 A Yes.

12 Q But you chose, instead, to plead guilty instead of
13 going to trial, is that right?

14 A I didn't choose that, he is the one that sent me.

15 Q I am sorry. So in other words it was your lawyer
16 that told you to plead guilty?

17 A Yes.

18 Q But you followed through with what he told you?

19 A Yes.

20 Q And that was because why?

21 A Because he was, believed in something and that is why
22 I plead. When I told him I wanted to go to trial, he came
23 up with a, telling me everything was okay and I was going
24 to go home. So never expected to be the outcome.

25 Q If you had known that that wasn't true what would you

1 have done instead?

2 A I would have definitely went to trial.

3 Q Thank you, I have no more questions at this time.

4 Rudy, if you will, answer questions of Ms. Olive, please.

5 CROSS-EXAMINATION

6 By Ms. Olive:

7 Q Good afternoon. You are a U.S. Citizen, correct?

8 A Yes.

9 Q And you were born in California?

10 A Yes.

11 Q So you are a natural born citizen?

12 A Yes.

13 Q And you went to college in Georgia?

14 A Yes.

15 Q At least for a little while?

16 A Yes.

17 Q And you were initially charged with two counts of
18 murder in this case, correct?

19 A Yes.

20 Q And the State dismissed those charges when you agreed
21 to plead guilty to accessory after the fact?

22 A Yes.

23 Q And you know that if the State had proceeded against
24 you on the murder charges you would have been facing 30
25 years to life?

1 A Yes.

2 Q And you cooperated with the authorities in the
3 investigation of this case, correct?

4 A Yes.

5 Q And you told them the truth?

6 A Yes.

7 Q And your lawyer explained to you the concept of hand
8 of one, hand of all. Is that correct?

9 A No, never.

10 Q Didn't he explain to you that even if you were
11 present and you weren't the one that fired the weapon that
12 you could still be charged and be convicted of murder?

13 A He never explained to me that, that part like that.

14 Q You had several codefendants in this case, correct?

15 A Yes.

16 Q And as part of the plea agreement you agreed to
17 testify against them, correct?

18 A Yes.

19 Q And when you decided to cooperate with law
20 enforcement you had already been charged with two counts
21 of murder, correct?

22 A Yes.

23 Q Thank you, that is all the questions that I have.

24 MR. BENNETT: No redirect, Your Honor. Your Honor, I
25 would just like to adopt the application. Thank you, Your

1 Honor.

2 THE COURT: Ms. Olive.

3 MS. OLIVE: Your Honor, the State would call Mr.
4 Scott Davis to the stand.

5 SCOTT DAVIS, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 By Ms. Olive:

9 Q Good afternoon, Mr. Davis.

10 A Good afternoon.

11 Q Thank you for being here with us. Were you appointed
12 or retained to this case?

13 A Retained.

14 Q Did you file a motion for discovery?

15 A I did.

16 Q And in your opinion did you receive full discovery?

17 A I have two very big folders over there in that
18 rolling suitcase that was discovery.

19 Q That would be it?

20 A That would be it.

21 Q And did you go over that discovery with Mr. Ventura?

22 A On several occasions.

23 Q And do you recall if that would have been before or
24 after he began cooperating with you?

25 A Both.

1 Q Did you discuss with him the charges he was faced
2 with including the elements of the charges and the
3 potential punishment?

4 A I did.

5 Q And did he discuss with you his version of the
6 events?

7 A He told me his version of the events. He did, yes
8 ma'am.

9 Q Did you discuss any potential defenses with him?

10 A We did.

11 Q And did he have any in your opinion?

12 A There was potential codefendant testimony that he was
13 present at the scene of the crime and I explained that to
14 him. And after conversing about that and having an offer
15 from the State as far as his cooperation or allowing him
16 to cooperate, we decided that it would be best in his
17 interest to cooperate with the State.

18 Q And based on your review of the discovery and in
19 discussions with Mr. Ventura, if he had decided to proceed
20 to trial do you feel the State would have had a strong
21 case against him?

22 A I feel the State could have proven beyond a
23 reasonable doubt that he was present at the scene of the
24 crime and as the hand of one is the hand of all, that he
25 could be convicted of two counts of murder.

1 Q Did you explain the hand of one, the hand of all to
2 him?

3 A I certainly did on numerous occasions.

4 Q Did he understand those conversations?

5 A Yes, ma'am. Rudy and I, I mean I never had an
6 interpreter to talk to him, he always conversed with me in
7 English and I conversed with him in English. There was no
8 problem with us having a conversation just like you and I
9 are having now.

10 Q You never felt like he was not understanding?

11 A No, ma'am. He always told me he understood and he
12 never asked me to get an interpreter to explain anything
13 to him that he did not understand.

14 Q Never asked for an interpreter. And did you advise
15 him to cooperate with the authorities?

16 A The Solicitor, upon my first meeting with him after
17 having the discovery, they were interested in having him
18 to cooperate. If he was one of the first one's to
19 cooperate, you know how that works. And he decided that
20 he wanted to avail himself of that opportunity.

21 Q And again he was originally charged with two counts
22 of murder, correct?

23 A Yes ma'am, that's correct.

24 Q There is no question that he was at the scene, that
25 he was inside the home?

1 A Initially he told them that he was not inside the
2 home and then later told them that he was. That there
3 was, part of his cooperation included meetings with me
4 present with the Solicitor's office and these
5 investigators that the Counsel has previously mentioned.

6 Q At some point, at some point did the State make a
7 plea offer in this case?

8 A They couldn't make a, well the plea offer included
9 dismissing the charges of murder and allowing him to plead
10 to accessory after the fact of the murder without making a
11 so called recommendation, because he agreed to testify
12 against the codefendants. And you know how the Solicitor
13 is in that regard, they don't want the person who
14 testified to say they are testifying because they have
15 been offered a deal. And so, as far as a sentence they
16 did not say that, but they said that they would let the
17 Judge know how much cooperation he had given and how
18 important his cooperation was to the conviction of the
19 other codefendants who plead guilty because he was willing
20 to testify against them.

21 Q Did you ever make any promises to Mr. Ventura
22 regarding the amount of time the Judge would sentence him
23 to?

24 A No, ma'am. But I did tell him that his, that he
25 would be given credit for the time that he spent in jail

1 up until the time that he plead guilty.

2 Q And you, in fact, made a motion to reconsider the
3 sentence?

4 A Yes ma'am, I made a motion to reconsider the sentence
5 and if I could make another one I would do that too. It
6 was my feeling and I know that you didn't ask me this,
7 that the sentence that he received was not indicative of
8 the amount of cooperation and value that the State
9 received from his cooperation.

10 Q Again, if he had gone to trial he would have been
11 facing the murder charges, correct?

12 A That's correct.

13 Q And if there a potential he might have been served
14 with an LWOP notice?

15 A I don't think that that was ever a point that the
16 Solicitor would have proceeded to.

17 THE COURT: On a murder he got life, it wouldn't be
18 LWOP anyway, would it?

19 A And he had two counts.

20 Q And ultimately whose decision was it to plead guilty?

21 A I told him what his options were and told him he had
22 to make the decision which way he wanted to go and he made
23 the decision to plead guilty.

24 Q During his guilty plea did he ever give you any
25 indication he wished to change his mind?

1 A No, ma'am.

2 Q Did he ever ask you to withdraw the plea?

3 A Well, after he was sentenced to life he wanted to
4 withdraw his plea. Yes ma'am, and I wanted to withdraw it
5 too because, like I said, I was shocked that that would
6 ever come about.

7 Q But again, you did file a motion to reconsider the
8 sentence?

9 A I filed the motion to reconsider and I felt that his,
10 with the amount of cooperation he had given the State and
11 the benefit to the State that he should have been on the
12 lower end of the spectrum as opposed to higher end.

13 Q And you made that argument to the Judge?

14 A Yes, ma'am.

15 Q And the Judge did end up reducing his sentence to 40
16 years?

17 A He reduced his sentence and he explained his
18 reasoning for the sentence that was given.

19 Q And, Mr. Davis, did you ever promise Mr. Ventura that
20 he was going to go home if he plead guilty?

21 A I think that is what he is referring to is that I
22 told him that he would be given credit for the time that
23 he served while he was in jail. Never promised he would
24 go home when he plead guilty.

25 Q No further questions.

1 THE COURT: Mr. Bennett.

2 CROSS-EXAMINATION

3 By Mr. Bennett:

4 Q Good afternoon, Mr. Davis.

5 A How are you, sir.

6 Q I am well, thank you, sir. I hope you are.

7 A Yes, sir.

8 Q You have been here a long time today. I appreciate
9 you being here, I know you are here under subpoena. You
10 don't have a lot of choice but you did choose to talk to
11 me yesterday. We talked on the telephone and I do
12 appreciate that.

13 A Yes, sir.

14 Q You have an excellent reputation. I have heard that
15 from other people. I never had the chance to meet you and
16 we just did speak for the first time yesterday. Isn't
17 that correct?

18 A That's correct.

19 Q And met for the first time here today?

20 A That's correct.

21 Q I want to kind of jump around, forgive me, just a
22 little bit. I would like to go back a little bit to the
23 beginning of the case when you were representing Rudy.
24 You did some investigative work, correct?

25 A Yes, sir. He started out being represented by the

1 public defender's office. And they already had his
2 discovery and I filed my discovery request and it ended up
3 all coming to me as opposed to the public defender who had
4 it prior to me.

5 Q Aside from that discovery that was provided to you by
6 either the public defender or from the Solicitors
7 themselves, did you do any meaningful independent
8 investigation?

9 A The independent investigation that I did involved
10 talking with the people that represented the other
11 codefendants, talking with the Solicitor's office and
12 trying to determine through the discovery material what
13 evidence they had to place Mr. Rudy at the scene or that
14 he, someone said he was there.

15 Q So basically it is codefendant attorneys that you
16 spoke with as well as the Solicitors and that was the
17 independent investigation that you concluded were the
18 case?

19 A That, I guess you could say that, yes.

20 Q And nobody can read tea leaves but you have been
21 doing this for a long time, haven't you?

22 A 32 years, yes sir.

23 Q You have seen it all, I am sure?

24 A Well no, I see something new every day.

25 Q But you would admit, wouldn't you, sir, that in a

1 conspiracy of codefendants, just because someone is a
2 codefendant attorney, they don't have the same goal that
3 you might have as an attorney for your client. Isn't that
4 correct?

5 A I wasn't referring to that, I was referring to
6 talking to the other attorneys who represented
7 codefendants to see where they were coming from, if it was
8 the same outlook that I had on the case.

9 Q Yes, sir. I understand and maybe I didn't ask the
10 question clearly. I apologize that I didn't. What I was
11 talking about is that you would agree with me, wouldn't
12 you sir, with someone with 32 years of experience in
13 litigation, criminal defense, that just because someone is
14 the attorney for a codefendant, that attorney might not
15 have the same goals that you have as an attorney for your
16 client. Is that correct?

17 A No, their goal should be to represent their client to
18 the best.

19 Q That is a ethical standard. I am not sure that is a
20 goal. Because like the Judge has said, first to squeal
21 gets the deal. So, don't you kind of have sometimes the
22 situation where one attorney is jockeying for position
23 against another attorney. So conceivably, just because
24 you are both criminal defense attorneys, you could have a
25 situation where one attorney is hoping that they get a

1 better deal that you or your client gets?

2 A I am sure they would, yes.

3 Q And the second group that you said you spoke to in
4 your meaningful investigation was the Solicitor's office.
5 You would agree with me too, sir, I believe, that the
6 goals of the Solicitor's office are not the same as the
7 goals as a criminal defense attorney?

8 A Yes, sir.

9 Q So in other words, sir, because your independent
10 investigation was limited to two groups--

11 A I didn't limit it to two groups. I said I talked to
12 them, I talked to them and I independently reviewed the
13 discovery material to determine what I could find out
14 independently from the discovery whether or not there was
15 any testimony or any evidence that had been presented to
16 the law enforcement that he was either present or knew
17 that this crime was taking place.

18 Q I understand. But that independent investigation you
19 have said was limited to that discovery that we talked
20 about that was provided either from the public defender or
21 from the Solicitor's office?

22 A Yes, sir.

23 Q And your independent investigation through the
24 codefendant attorneys or the Solicitor's office?

25 A Yes sir, that is correct.

1 Q And that's it, correct?

2 A Well, I am not saying that's it. That is all I can
3 tell you about right now.

4 Q But as you sit here right now you can't remember any
5 other independent investigation that you did and you would
6 agree that the independent investigation with two of those
7 parties, codefendant attorneys and the Solicitor's office,
8 those two groups have at least a potential motive to not
9 identify with your goal for Mr. Ventura?

10 A I don't know if they would have a motive not to
11 identify with it. I am saying that they may have
12 independent motives.

13 Q Or opposing motives?

14 A Or opposing motives. That's coerect.

15 Q Did you ever go out to the scene of the murders?

16 A Yes, sir. I actually live within a close distance
17 from it.

18 Q Did you ever go there with Mr. Ventura?

19 A No, he was in jail and was not allowed to go. And I
20 didn't make a motion for him to go.

21 Q He got out of jail at one time to go to take a
22 polygraph test, correct?

23 A Well, he went to the sheriffs department, I guess you
24 can say, I don't know that he got out, he was transported.

25 Q Too-shea, I would agree with that too. Let's talk a

1 little bit about that polygraph. Did you know that was
2 going to take place?

3 A Yes, sir.

4 Q Tell us a little bit about that. When did you first
5 realize that your client was going to be polygraphed?

6 A All right. The way the situation occurred. When
7 Rudy decided to cooperate with the State we went, we met
8 at the Solicitor's office with the Solicitor, the
9 detectives that were involved in the case and of course
10 the Solicitor's investigator. Okay. Of course they
11 brought him over there, I don't get to participate in
12 that, the transport. He and I talked individually prior
13 to the time of them coming back in the room after they had
14 introduced themselves and we talked about what he was
15 going to do. And when they came back in the room he gave
16 them a statement. And then the same procedure transpired
17 again after that because they had information from another
18 codefendant that part of what Mr. Ventura provided to them
19 they didn't think was true. So, they told me what that
20 was and that involved his presence at the scene. Okay.
21 So he and I talked about that. This is over a period of
22 weeks or maybe months. And there was a second meeting
23 that we had with the Solicitor and at that time Rudy told
24 them the whole story, that he never deviated from that
25 point.

1 Q So sorry to interrupt. I just want to make sure I am
2 clear to save some time. That deviation that you are
3 mentioning right there, was that deviation Rudy's presence
4 in the home?

5 A Presence in the home, that's correct.

6 Q Thank you, I just want to clear that up.

7 A That's right. And then that is when it was agreed
8 upon that he would take a polygraph to see if what he was
9 telling them was the truth. And we agreed on a time and a
10 date for that to be done.

11 Q Did you agree on who the polygrapher would be?

12 A The one from the sheriffs department.

13 Q Do you know who that individual is?

14 A No, sir. I know they used to have, I don't know who
15 it was at that present time, no sir.

16 Q Did you agree to the questions that would be asked?

17 A They were going to ask him about, the statement that
18 he gave them at that point was reduced to writing. And
19 they were going to ask him questions that he had related
20 to what the statement that he had made to them, whether or
21 not it was true.

22 Q And the time and place for that, did y'all agree to
23 that too?

24 A That it would be at the sheriffs office, yes sir.

25 Q But the date and the time?

1 A I can't testify to that.

2 Q Was it your intention to be present for that
3 polygraph test?

4 A I don't know that I was present or not present. I
5 don't remember specifically being present for it. If I
6 was not, you know, if he says I wasn't I am not going to
7 dispute that.

8 Q In hindsight, especial with the fact that this issue
9 of the burglary is actually what is driving the sentence
10 for Rudy--

11 A I know it is now. But the burglary charge was just
12 not imposed on Rudy. It was imposed on everybody that
13 they felt was there.

14 Q Yes, sir. If I can finish my question.

15 A I am sorry.

16 Q No, you are fine. I know it is getting close to
17 lunch time.

18 A No, I am fine.

19 Q In hindsight, as you sit here today, because you know
20 that the burglary sentence is what is truly driving the
21 size or the length of the sentence, do you believe that
22 you should have been present for that polygraph that ended
23 up being the catalyst?

24 A You are saying it was the catalyst for him being
25 charged, it was not. The charge was not related to that.

1 The charge, the Solicitor decided that he had initially
2 not charged everybody that he felt was present with
3 burglary. And he went back and did that and it wasn't
4 because of Rudy's statement or Rudy's polygraph test.

5 Q But the statement was about the burglary?

6 A The statement was about all of his involvement.

7 Q Sir, just a few minutes ago, I asked you about that
8 deviation and you said the deviation of that was about
9 Rudy's presence--

10 A He did not--

11 Q I am sorry, sir. Let me finish for the Court
12 Reporter's benefit.

13 A That is fine. And I am sorry, I just want to answer
14 your question fully.

15 Q I appreciate that and I believe you are.

16 A I am trying.

17 Q What I am trying to talk about is, that previously I
18 had questioned you about your term when you said
19 deviation?

20 A Right.

21 Q And I actually interrupted you which I rarely do and
22 I said, when you said deviation did you mean Rudy talking
23 about his presence in the house the night of the murder.
24 And you said, yes?

25 A That's correct.

1 Q So we then talked a little bit about that there was a
2 statement written after this meeting with the Solicitor,
3 the Solicitor's investigators, the sheriffs investigators,
4 yourself and Mr. Ventura, Rudy Ventura and that was
5 memorialized in writing?

6 A That's correct.

7 Q And that that writing would in fact become, you
8 believe even though you weren't, not sure that you were
9 there, into the questions on the polygraph test. Correct?

10 A That's correct.

11 Q And now looking back we see that it was literally
12 almost to the day one year since Rudy had begun
13 cooperating after being initially indicted to when the new
14 indictment came down on the burglary charge?

15 A I can't speak for that. If you say that is the time
16 period I wouldn't dispute it.

17 Q And in fact that polygraph dealt with the burglary
18 charge?

19 A It dealt with everything that he had told me prior to
20 that time which included the burglary charge or what could
21 have been considered burglary.

22 Q What ended up being what the sentence was based on?

23 A Yes, sir.

24 MR. BENNETT: Thank you. Just a few more quick ones,
25 Your Honor. Appreciate the Court's indulgence.

1 Q Did you have, sir, any of these plea agreements in
2 writing?

3 A No, sir.

4 Q In hindsight do you think that that would have been a
5 better standard of care in representing and advocating for
6 Rudy?

7 A Well, it might be a better, it will be better if you
8 get the Solicitor to do that.

9 THE COURT: Did the Solicitor deviate from what he
10 promised in dismissing the murder charges?

11 A No, sir.

12 THE COURT: So he did what he said he was going to
13 do?

14 A He did.

15 Q And at that time did you know that your client was
16 potentially facing burglary charges?

17 A Yes, sir.

18 Q At the beginning of your representation--

19 A No, he wasn't at that time.

20 Q I am sorry, sir. I didn't have a chance to finish my
21 question.

22 A I am sorry.

23 Q That's okay. At the beginning of your
24 representation, after you had interviewed him and
25 discussed the case fully with him did you know at that

1 time that he was having potential liability for burglary
2 in the first degree?

3 A At the beginning of my representation.

4 Q After you had gone over the discovery with him and he
5 had discussed it with you?

6 A He wasn't facing that until they charged all of them
7 with the burglary.

8 Q I understand but when you listen to a client tell you
9 a story as to what happened and what the evidence shows,
10 did you come to that determination yourself, oh my
11 goodness, my client could also be charged with burglary
12 because of all of this?

13 A Well, I knew that if he was there at the scene and
14 either knew what was going to happen or why they were
15 there or participated in going in that they all could be
16 charged for burglary.

17 Q And did you know that at that time?

18 A Yes, sir.

19 Q And did you still allow Mr. Ventura to then be
20 polygraphed without you being present or getting any kind
21 of immunity for that?

22 A Yes, sir.

23 Q Thank you. No more questions at this time.

24 THE COURT: Ms. Olive.

25 REDIRECT EXAMINATION

1 By Ms. Olive:

2 Q Mr. Davis, what does murder carry?

3 A It was my understanding it was life in prison.

4 Q 30 to life, in fact, right?

5 A Well, I think that's correct.

6 Q Would you have advised him differently knowing that
7 he could face a burglary charge. Would you have advised
8 him not to take the plea?

9 A No, ma'am. Like I said, I think he could have been
10 convicted of the original charges by the hand of one, hand
11 of all. And I was trying my best to help him get out from
12 under those charges which carry that penalty.

13 Q Thank you, no further questions.

14 MR. BENNETT: No recross, Your Honor.

15 THE COURT: All right, you may step down. Anything
16 further?

17 MS. OLIVE: That is all from the State, Your Honor.
18 Unless you would like to hear arguments.

19 THE COURT: I will hear arguments.

20 MR. BENNETT: Your Honor, first house keeping matter.
21 If the Court would be so kind as to go through the
22 admonition that you did for Mr. Davis when I was here in
23 court here earlier.

24 THE COURT: I thought I had, I am sorry. Mr.
25 Ventura, before I make a ruling on this I want to advise

1 you that I cannot dismiss your charges. Your charges will
2 not go away regardless of what I do here today. All I can
3 do is give you a, take away the plea and you go back to
4 square one, you will be facing two murder charges. All
5 deals will be undone and you will go back to your original
6 position and you may be tried for two murders and a
7 burglary. Do you understand that?

8 MR. VENTURA: Yes.

9 THE COURT: Do you want to risk that?

10 MR. VENTURA: Yes.

11 THE COURT: All right. You understand that is what
12 will happen if I rule in your favor?

13 MR. VENTURA: Yes.

14 THE COURT: All right. Very well, thank you.

15 MR. BENNETT: Thank you, Your Honor.

16 THE COURT: Let me hear from you, Counsel, I will
17 hear arguments.

18 MR. BENNETT: Thank you, Your Honor. Your Honor,
19 under South Carolina, I apologize, Your Honor, under
20 Fourth Circuit precedent under *Matthews v. Evatt*, 105 F.3d
21 907. It is head trial Counsel performance is deficient,
22 he fails to make reasonable investigation. Your Honor,
23 this case kind of hinges on whether or not during,
24 "reasonable investigation", confident lawyer--

25 THE COURT: Is this a reasonable investigation case

1 or is this a trial strategy case. Is it a strategic
2 decision to having been made to cooperate in order to
3 avoid the risk of murder trial?

4 MR. BENNETT: I believe it is both, Your Honor. I
5 believe one was successful and one wasn't. I would like
6 to focus the Court's attention to the last few questions
7 of Mr. Davis. When asked about his investigation with the
8 client, going over the discovery, having meetings, hearing
9 the story, engaging with the client and finding out, oh my
10 goodness, he could be charged with burglary. And then to
11 not do the requisite amount of preparatory work or even
12 attempt to do the requisite amount of preparatory work to
13 get--

14 THE COURT: What could he have done?

15 MR. BENNETT: Well, I don't know if he would be
16 successful, I am being candid, Your Honor.

17 THE COURT: This is a home invasion murder. Doesn't
18 everybody who even dabbles in law enforcement or in
19 criminal representation know that under those
20 circumstances the burglary first is coming just like the
21 kidnapping.

22 MR. BENNETT: Yes sir, Your Honor. And therefore
23 that leads credence to my argument even more. There is
24 even more of a necessity to attempt to either grant
25 immunity, to be able to conjure up some written type of

1 plea language that the State would agree to. Some other
2 avenue that Counsel could have availed himself to with the
3 Sixth Amendment protections under the law.

4 THE COURT: Do you have any evidence that the
5 Solicitor was willing to go any further than the reduction
6 of the murder charge. I mean, I haven't heard anything to
7 suggest that that was even, even on the table it could
8 have happened?

9 MR. BENNETT: I don't, Your Honor. But I don't
10 believe I have to have that. I believe it is incumbent
11 upon defense Counsel to exhaust the remedies, to do what
12 needs to be done in an effort to try to support the
13 constitutional rights of his client, to be able to fight
14 the good fight. I love my job, I have done this for 17
15 years. I get my nose bloodied literally every single
16 week. Mr. Davis is an excellent lawyer, I am not saying
17 personally anything bad about him. It is brutal sometimes
18 to go beat your head up against the wall against the
19 Solicitor gl, against the U.S. Attorney and against
20 anybody that can muster the power, the Government, State
21 or Federal against your client. But as a criminal defense
22 lawyer that is your creed, that is what you are obligated
23 to do. And to just say, I won't be successful so I won't
24 try and then have a young man who spends potentially life
25 in prison because of that, that is what post conviction

1 relief is designed to try to prevent. And that is the
2 situation we have here. I truly appreciate the Court's
3 indulgence. I will be glad to answer any questions.

4 THE COURT: I am sure you have had situations similar
5 to this and it is always the same. Your client is fully
6 briefed to answer all questions truthfully and in the end
7 it required to take a polygraph. I did 30 whatever years,
8 a long time and that is what happens. And it is just a
9 risk that is out there that your client may not have been
10 truthful with you, your client might not have indulged
11 something to you during his interview. And your client
12 knows what he has done, your client knows what he knows.
13 And when he agrees to be debriefed that is always that
14 risk. I see this purely as a case involving the
15 reasonableness of a strategic decision made by the
16 attorney. And the standard there is reasonable, is it
17 reasonable under the circumstances of this case for him to
18 have said, all right, my client will cooperate or told his
19 client, you need to cooperate. It was a double murder.
20 Let me hear from you, Ms. Olive.

21 MS. OLIVE: Your Honor, the allegations today are
22 ineffective assistance of Counsel and an involuntary
23 guilty plea. Involuntary guilty plea has to be framed as
24 ineffective assistance of Counsel as well. As you well
25 know, we are looking at strictly the standard, he has to

1 prove ineffective assistance and prejudice. It is our
2 position that he has done neither. He has failed to
3 satisfy his burden of proving ineffective assistance of
4 Counsel. Your Honor, I would direct you to the Strickland
5 case. In that case it says a fair assessment of
6 attorney's performance requires that every effort be made
7 to eliminate the distorting of that hindsight, to
8 reconstruct the circumstances of Counsel challenged
9 conduct.

10 THE COURT: I am familiar with Strickland.

11 MS. OLIVE: Yes, Your Honor. So, we have to look at
12 what Counsel, what he had before him at the time. He
13 testified he reviewed the discovery, he went over the
14 discovery with Mr. Ventura both before and after he agreed
15 to cooperate. Mr. Davis testified that he made the
16 decision to advise him that he should cooperate with the
17 authorities, he was facing two counts of murder. He felt
18 that the evidence was strong enough to convict him based
19 on the hand of one is the hand of all. He explained that
20 theory to his client. His client ultimately did go
21 forward with the plea and essentially waived all of the
22 usual right to a jury trial, right to remain silent. And,
23 Your Honor, with regards to a claim that Counsel failed to
24 investigate, no evidence was introduced to indicate as to
25 what he would have discovered had he done any additional

1 investigation.

2 THE COURT: I agree.

3 MS. OLIVE: Rollison v. State says that mere
4 speculation as to the result is insufficient to show a
5 failure to investigate, to show that Counsel was
6 ineffective to investigate. Moreover, Your Honor, there
7 is no prejudice, I just don't, counsel's conduct as his
8 testimony indicates was, there is not evidence that it was
9 not reasonable. Again, he was facing two counts of
10 murder, he was allowed to plead to the accessory after the
11 fact. The fact that he was charged with burglary, Counsel
12 had no control over that and regardless of whether he had
13 decided to cooperate with the authorities that charge
14 probably would have been coming. And that is basically
15 what Mr. Davis' testimony was. And, again, he failed to
16 show any prejudice in this case.

17 THE COURT: Well, the key here is simply this. If
18 you make a deal with the State you need to have it in
19 writing, you need to have all the particulars set out,
20 sentence and all. As Mr. Davis said, it ain't going to
21 happen, it will not happen. I have done it, I have had it
22 before me. It is just not going to happen because they
23 want that witness to be able to say, nope, I have no deal.
24 In this case Mr. Ventura unfortunately ended up with the
25 raw end of the deal. I am sure he would have never

1 cooperated had he known what was coming. I don't know the
2 circumstances of this case. I don't know how bad this
3 case was. I don't know what happened. But I must assume
4 that it was pretty bad for Judge Hayes to give him life.
5 I mean, why would he even cooperate, that he actually, the
6 cooperation of witnesses that were defendants,
7 codefendants in the future. I have no idea why he did
8 that but I am sure he had a reason to do it. And Mr.
9 Ventura had greater expectations and so did Mr. Scott, I
10 am sure. But that is what happens sometimes. I find that
11 there is no deviation of the standard of professional
12 performance and that the decision to cooperate was, one it
13 was reasonable under circumstances. And there has been no
14 showing that there would have been any prejudice created
15 by any failure in investigative purposes. I am going to
16 deny. Thank you. Ms. Olive, make me an order.

17 MS. OLIVE: Thank you, Your Honor.

18 MR. BENNETT: Thank you, Your Honor.

19 THE COURT: Thank you.

20 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

21

22

23

24

25

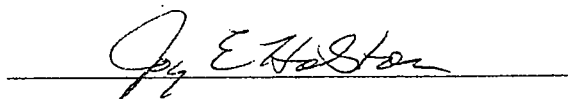
CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Spartanburg, South Carolina on the 10th day of November, 2015.

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

June 11, 2016



Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 06 2010, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

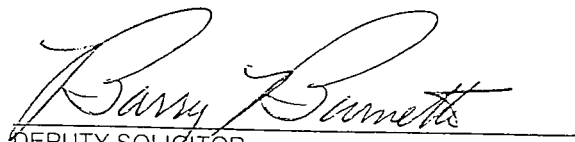
(DWELLING)

The Defendant, Rudis Ventura, did in Spartanburg County, on or about January 24, 2009, wilfully and intentionally enter the dwelling belonging to Hugo Del Carmen Lugo-Hernandez and/or Teresa De Jesus Avilla-Martinez located at 2201 Hwy 101 South, Woodruff, South Carolina without consent and with the intent to commit a crime therein, and either:

- (1) the Defendant did enter in the nighttime and/or
- (2) armed with a deadly weapon; and/or
- (3) caused physical injury to any person who is not a participant in the crime; and/or
- (4) uses or threatens the use of a dangerous instrument; and/or
- (5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms

In violation of Section 16-11-311, 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

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 06 2010, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

(DWELLING)

The Defendant, Rudis Ventura, did in Spartanburg County, on or about January 24, 2009, wilfully and intentionally enter the dwelling belonging to Hugo Del Carmen Lugo-Hernandez and/or Teresa De Jesus Avilla-Martinez located at 2201 Hwy 101 South, ^{Greer} Woodruff, South Carolina without consent and with the intent to commit a crime therein, and either:

- (1) the Defendant did enter in the nighttime and/or
(2) armed with a deadly weapon; and/or
(3) caused physical injury to any person who is not a participant in the crime; and/or
(4) uses or threatens the use of a dangerous instrument; and/or
(5) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms

In violation of Section 16-11-311, 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

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:

MURDER

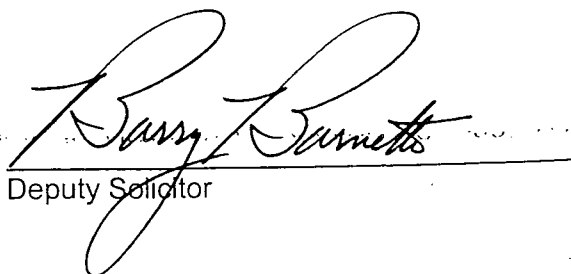
The Defendant, Rudis Arnoldo Ventura, did in Spartanburg County on or about January 24, 2009, feloniously, willfully, and with malice aforethought; kill Hugo del Carm Lugo-Hernandez, by shooting the victim with a firearm and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

COUNT II

ACCESSORY AFTER THE FACT TO A FELONY

That the Defendant, Rudis Arnoldo Ventura, did in Spartanburg County on or about January 24, 2009, knowing the commission and completion of the felony of Murder of Hugo del Carm Lugo-Hernandez, by the principal felon(s). Edgar Pineda and/or Yesenia Cortez Ramirez and/or Miguel Lopez and/or Juan Carlos Estrada Vazquez and/or Jose Reyes Arvalos, assist such felons to escape detection or arrest or otherwise avoid the consequences of the crime in violation of Section 16-1-55, THE CODE OF LAW OF SOUTH CAROLINA, (1976), as emended.

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


Deputy Solicitor

M-086204 **Completed**

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Spartanburg

THE STATE
against
Rudis Arnaldo Ventura

Address: Chelwick Dr Sw
Marietta, GA 30008-

Phone: _____
Sex: M Race: H Height: _____ Weight: _____
DL State: _____ ni #: _____

DOB: _____ Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff
Prosecuting Officer: Lorin Williams - 0773

Offense: Murder / Murder

Offense Code: 0116
Code/Ordinance Sec: 16-03-0010, 0020

This ant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

Date: _____
Signature of Judge

RETURN
A copy of this arrest warrant was delivered to
defendant Ventura
on 3/23/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL ORIGINAL ORIGINAL

BSB AFFIDAVIT
County/ ☐ Municipality of
Spartanburg

Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on or about 01/24/2009

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of
in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant
the crime set forth and that probable cause is based on the following facts:

That on January 24, 2009 in the county of Spartanburg, one Rudis Arnaldo Ventura did, with malice and aforethought, cause the
death of victim, Hugo del Carmen Lugo-Hernandez, by participating in the shooting death of the victim.

AFFIANTS BELIEF IS BASED ON POLICE INVESTIGATION, CO-DEFENDANTS STATEMENTS BOTH WRITTEN AND
VERBAL AS WELL AS THE DEFENDANT BEING IDENTIFIED THROUGH PHOTO LINEUPS/PHOTO ARRAYS

MAR 23 RECEIVED

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-
Affiant's Telephone

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 1/24/2009 defendant Rudis Arnaldo Ventura
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 02/12/2009

Signature of Issuing Judge
Dwight Smith
Judge Code: 7151

Signature of Judge (L.S.)
Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-
Judge's Telephone (864)596-2564
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL ORIGINAL ORIGINAL

NOTIFIED COPY
violate the criminal laws of the
Spartanburg County
BY: H. Williams
DATED: 3-20-09
CLERK OF COURT
SPARTANBURG COUNTY

BJB

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS:
WARRANT NOS: m086204-05

THE STATE OF SOUTH CAROLINA)

AFFIDAVIT

VS.

Rudis Ventura)

PERSONALLY APPEARED BEFORE ME the undersigned deponent who being duly sworn, says that he/she copied the following materials:

- ☒ Warrant or Ticket
- ☐ Investigation Report
- ☐ Voluntary Statement
- ☒ Sol. Rule 5 Request
- ☐ Sol. Rule 5 Request Mailed _____

- ☒ Incident Report
- ☒ Supplemental Reports
- ☐ Witnesses Written Statement
- ☒ Defendant's Rap Sheet (NCIC)
- ☐ Drug Report

everything checked
is on the CD

Other: ICP pictures

Copied Number of Pages:

I, McPherson, attorney for the defendant(s) or his/her designee, have reviewed copies of the above referenced documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed / Accepted this 6 day of APRIL, 2009

Donald E. [Signature]
Representative or designed for Attorney

William McPherson
Attorney-At-Law

Wendy Howell

Sworn to before me this
7 day of April, 2009

Heather Guerin
Notary Public for South Carolina

My Commission Expires: 11-9-17 162

FILED

CLERK OF COURT

SPARTANBURG COUNTY

2009 APR -7 PM 2:22

MARC KITCHENS

driver of extradition, law enforcement report, myspace photos,
forensic report, crime scene log, sketch measurements, property
ports, property receipt from POLE Georgia, SLED forensic
request, DNA analysis, coroner's investigative notes,
man + woman diagram, coroner's blood log, motor vehicle
reports, impounded vehicle report, Bill of Sale, video event
timeline, firearms trace summary, Jackson County 911,
raps, drug analysis lab worksheet, chain of custody

BJB^{ci}

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS:
WARRANT NOS:

M 086204-05

THE STATE OF SOUTH CAROLINA)

AFFIDAVIT

VS.

Rudis Ventura

PERSONALLY APPEARED BEFORE ME the undersigned deponent who being duly sworn, says that he/she copied the following materials:

- | | |
|---|--|
| ☒ Warrant or Ticket | ☒ Incident Report |
| ☒ Investigation Report | ☒ Supplemental Reports |
| ☒ Voluntary Statement | ☐ Witnesses Written Statement |
| ☐ Sol. Rule 5 Request | ☐ Defendant's Rap Sheet (NCIC) |
| ☐ Sol. Rule 5 Request Mailed _____ | ☐ Drug Report |

Other: 102 pgs 1-772, NCIC wanted person, booking reports, Dept of
Homeland security info, mugshot, 3yr driver record on Juan Estrada
finger print, miranda warning, lineup, prisoner transport data sheet,

over

Copied Number of Pages:

I, McPherson, attorney for the defendant(s) or his/her designee, have reviewed copies of the above referenced documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed / Accepted this 22 day of APRIL, 2009

Donald E. Steg
Representative or designee for Attorney
William McPherson
Attorney-At-Law
Wendy Howell

Sworn to before me this
23 day of April, 2009

Heather J. Durin
Notary Public for South Carolina
My Commission Expires: 11-9-17

MARC KITCHENS
2009 APR 24 AM 10:03
CLERK OF COURT
FILED

BJB

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 09.2370-71
WARRANT NOS:

MO86204-05

THE STATE OF SOUTH CAROLINA

AFFIDAVIT

VS.

Rudis Ventura

PERSONALLY APPEARED BEFORE ME the undersigned deponent who being duly sworn, says that he/she copied the following materials:

- | | |
|---|---|
| ☐ Warrant or Ticket | ☐ Incident Report |
| ☐ Investigation Report | ☐ Supplemental Reports |
| ☐ Voluntary Statement | ☐ Witnesses Written Statement |
| ☐ Sol. Rule 5 Request | ☐ Defendant's Rap Sheet (NCIC) |
| ☐ Sol. Rule 5 Request Mailed _____ | ☐ Drug Report |

Other: pgs 1-45 dated 5-8-09
tox reports, autopsy, coroner's notes + reports
on Martinez + Hernandez

Copied Number of Pages:

I, McPherson, attorney for the defendant(s) or his/her designee, have reviewed copies of the above referenced documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed / Accepted this 8 day of MAY, 2009

Donald E. Hogg
Representative or designee for Attorney
William McPherson
Attorney-At-Law
Wendy Howell

Sworn to before me this
8 day of May, 2009

Sally Jones
Notary Public for South Carolina

My Commission Expires: 4-23-19 165

MARC KITCHENS

2009 MAY 11 PM 12:09

FILED
COURT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 09.2370-71
WARRANT NOS:

m086204-205

THE STATE OF SOUTH CAROLINA

AFFIDAVIT

VS.

Rudis Ventura

PERSONALLY APPEARED BEFORE ME the undersigned deponent who being duly sworn, says that he/she copied the following materials:

- ☐ Warrant or Ticket
- ☐ Investigation Report
- ☐ Voluntary Statement
- ☐ Sol. Rule 5 Request
- ☐ Sol. Rule 5 Request Mailed

- ☐ Incident Report
- ☐ Supplemental Reports
- ☐ Witnesses Written Statement
- ☐ Defendant's Rap Sheet (NCIC)
- ☐ Drug Report

Other: pgs 1-218 dated 5-14-09
pictures from coroner's office

Copied Number of Pages:

I, McPherson, attorney for the defendant(s) or his/her designee, have reviewed copies of the above referenced documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed / Accepted this 14 day of MAY, 2009

Ronald E. Hays
Representative or designee for Attorney

William McPherson
Attorney-At-Law

Wendy Howell

Sworn to before me this
14 day of May, 2009

Galley Jones
Notary Public for South Carolina
My Commission Expires: 4-23-19

CLERK OF COURT
SPARTANBURG COUNTY
2009 MAY 15 AM 9:53
MARIE KITCHENS

aw

BJB

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS:
WARRANT NOS:

m086204-05

THE STATE OF SOUTH CAROLINA)

AFFIDAVIT

VS.

Rudis Ventura)

PERSONALLY APPEARED BEFORE ME the undersigned deponent who being duly sworn, says that he/she copied the following materials:

- | | |
|---|--|
| ☒ Warrant or Ticket | ☒ Incident Report |
| ☒ Investigation Report | ☒ Supplemental Reports |
| ☒ Voluntary Statement | ☐ Witnesses Written Statement |
| ☒ Sol. Rule 5 Request | ☒ Defendant's Rap Sheet (NCIC) |
| ☐ Sol. Rule 5 Request Mailed _____ | ☐ Drug Report |

Other: ICD- pictures, SED -DNA analysis, tox report on Hernandez & Martinez, autopsy reports, coroner's notes & reports, 1 DVD pgs 1-803 20090113le3, pgs 1-772 case file, pgs 1-1,377

Copied Number of Pages:

I, Davis, attorney for the defendant(s) or his/her designee, have reviewed copies of the above referenced documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

→ over

Signed / Accepted this 18 day of May, 2009

Scott Davis
Representative or designee for Attorney

Scott Davis
Attorney-At-Law

Wendy Howell

Sworn to before me this

18 day of May, 2009

[Signature]
Notary Public for South Carolina

My Commission Expires: 4-23-19 167

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAY 20 AM 11:36
M. HOPE BLACKLEY

STAT
C

booking reports, mugshots, driver records, fingerprints,
lineups, NCIC information, prisoner transport data,
myspace info, crime scene log, property reports, SCD
forensic services request, DNA analysis, vehicle tow
reports, Bill of Sale, 911 call info, Search Warrants, Sprint
Corporate security info, phone records

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 09.2370-2371
WARRANT NOS: m086204-20

THE STATE OF SOUTH CAROLINA

AFFIDAVIT

VS.

Rudis Ventura

PERSONALLY APPEARED BEFORE ME the undersigned deponent who being duly sworn, says that he/she copied the following materials:

- ☐ Warrant or Ticket
- ☒ Investigation Report
- ☐ Voluntary Statement
- ☐ Sol. Rule 5 Request
- ☐ Sol. Rule 5 Request Mailed _____

- ☒ Incident Report
- ☒ Supplemental Reports
- ☐ Witnesses Written Statement
- ☐ Defendant's Rap Sheet (NCIC)
- ☐ Drug Report

Greenville County

Other: 1 DVD pgs 1-1,377 search warrants
phone records, 3yr driver record on Andres Charon, 10yr
driver record on Eugenia Gomez, firearms / tool mark report,
tox report on Hernandez + Martinez

Copied Number of Pages:

I, McPherson, attorney for the defendant(s) or his/her designee, have reviewed copies of the above referenced documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed / Accepted this 2 day of JUNE, 2009

Donald E. Stegman
Representative or designee for Attorney
William McPherson
Attorney-At-Law
Wendy Harte
2009 JUN 15
FILED
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

Sworn to before me this
2 day of June, 2009

Della Jones

Notary Public for South Carolina
My Commission Expires 8-23-19

OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

BUR

The State of South Carolina,)
)
v.)
Rudis Ventura)
)
Defendant.)
)

AFFIDAVIT OF DISCOVERY

Indictment No(s): 10.3025v
Warrant No(s):

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:

☐ HARD COPY; ☒ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)			
☐ Defendant's NCIC (Rap)			
☐ Consent to Search Form(s)			
☐ Search Warrant and Return			
☐ Drug Report(s)			
☐ SLED Lab Report(s)			
☐ Hospital Lab Report(s)			
☐ Solicitor's Reciprocal Rule 5			

☒ Other

copy of direct indictment

TOTAL COPIED/NUMBERED: _____ DATED: 5-10-10

I, Ralph Davis, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this _____ day of _____, 20____.

Attorney or Designee

Wendy A Howell
SOLICITOR'S OFFICE

SWORN to before me this 10th day

of May, 2010
Maday M. Hall

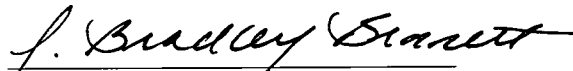
Notary Public for South Carolina

My commission expires: 12-9-2013

2010 MAY 10 PM 3:12
SPARTANBURG COUNTY
CLERK OF COURT
FILED

Certificate of Counsel

The undersigned hereby certifies that the Appendix of Petitioner contains all material proposed to be included by any of the parties and not any other material.


J. Bradley Bennett, Esq.

SALVINI & BENNETT, LLC
101 W. Park Ave.
Greenville, SC 29601
Telephone: (864) 232-5800
Facsimile: (864) 232-5888

Greenville, SC
Dated: August 11, 2016

ATTORNEY FOR PETITIONER