

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

RUFINO URIOSTEGUI,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212087

APPENDIX

DAYNE C. PHILLIPS
Appellate Defender

ALAN WILSON
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South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

CASE NO. 09-GS-38-0724

versus

TRANSCRIPT OF RECORD

RUFINO URIOSTEGUI,

DATE:

DEFENDANT

APRIL 7, 2010

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE

APPEARANCES:

DONALD SORENSON, ESQUIRE
ASSISTANT SOLICITOR
FOR THE STATE

ROBERT HOOD, ESQUIRE
ATTORNEY AT LAW
FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

I N D E X

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E X H I B I T S

NONE

1 DATE:

2 APRIL 7, 2010

3 SOLICITOR SORENSON: MAY IT PLEASE THE
4 COURT, YOUR HONOR.

5 THE COURT: YES, SIR.

6 SOLICITOR SORENSON: BEFORE YOU IS RUFINO
7 URIOSTEGUI. HE'S HERE ON INDICTMENT 2009-GS-38-724,
8 PLEADING GUILTY TO ONE COUNT OF TRAFFICKING IN
9 COCAINE, TWENTY-EIGHT TO A HUNDRED GRAMS. IT'S BEEN
10 REDUCED FROM TRAFFICKING IN COCAINE, FOUR HUNDRED
11 GRAMS OR MORE. HE IS REPRESENTED BY ROBERT HOOD AND
12 KEITH STROM. AND YOUR HONOR, WE DO HAVE AN INTERPRETER
13 HERE, MR. WILMER AVILES -- IS THAT RIGHT?

14 MR. AVILES: GOOD AFTERNOON, YOUR HONOR.

15 THE COURT: GOOD AFTERNOON. YOUR NAME, SIR?

16 MR. AVILES: WILMER AVILES.

17 THE COURT: SPELL THAT FOR THE COURT
18 REPORTER.

19 MR. AVILES: W-I-L-M-E-R. LAST NAME, A-V,
20 AS IN VICTOR, I-L-E-S.

21 THE COURT: RAISE YOUR RIGHT HAND, PLEASE.
22 (Whereupon, Wilmer Aviles
23 is duly sworn.)

24 (NOTE: Blank lines on this page do not indicate any
25 part of record has been omitted.)

EXAM - WILMER AVILES BY THE COURT

4

EXAMINATION OF WILMER AVILES

BY THE COURT:

Q. ALRIGHT, SIR. HAVE YOU ALREADY COMMUNICATED WITH
THE DEFENDANT IN THIS CASE?

A. YES, SIR. YES, YOUR HONOR.

Q. AND DID YOU HAVE ANY PROBLEM?

A. NO, YOUR HONOR.

Q. AND SO, YOU CAN EFFECTIVELY COMMUNICATE WITH HIM?

A. YES, YOUR HONOR.

Q. ALRIGHT, NOW, I NOTICED AS THE SOLICITOR WAS
CALLING THE CASE YOU WERE TALKING TO THE
DEFENDANT.

A. YES, YOUR HONOR.

Q. AND IS THAT SUFFICIENT, CAN YOU DO IT IF WE DON'T
TALK TOO FAST, OR DO YOU NEED US TO STOP AND LET
YOU CATCH UP?

A. JUST HALF A SECOND UNDER THAT SPEED WOULD BE
FINE, YOUR HONOR.

Q. WELL, I'M GENERALLY A FAST TALKER, SO ALL YOU'VE
GOT TO DO IS LET ME KNOW AND I'LL SLOW DOWN.

A. THANK YOU, YOUR HONOR, I WILL.

THE COURT: WOULD YOU TELL THE DEFENDANT,
PLEASE, THAT IF AT ANYTIME HE HAS ANY QUESTIONS ABOUT
WHAT'S GOING ON OR DOES NOT UNDERSTAND THEM, PLEASE
LET YOU KNOW SO WE CAN STOP AND EXPLAIN IT TO HIM.

EXAM - WILMER AVILES BY THE COURT

5

1 (Whereupon, Mr. Aviles translates
2 Court's instructions to defendant.)

3 MR. AVILES: HE SAYS, "I UNDERSTAND. THAT'S
4 FINE."

5 (NOTE: Blank lines on this page do not indicate any
6 part of record has been omitted. Headers on testimony
7 pages and hard page breaks between testimony are now
8 required by the Court. See next ensuing page for
9 sequential continuation of record.)

EXAM - RUFINO URIOSTEGUI, THROUGH INTERPRETER
WILMER AVILES, BY THE COURT

6

EXAMINATION OF RUFINO URIOSTEGUI,
THROUGH INTERPRETER WILMER AVILES,
BY THE COURT:

Q. HOW OLD ARE YOU, SIR?

A. THIRTY-EIGHT.

Q. HOW FAR DID YOU GO IN SCHOOL?

A. I DIDN'T GO TO SCHOOL.

Q. HAVE YOU EVER BEEN TREATED FOR DRUG ABUSE, MENTAL
ILLNESS OR ALCOHOLISM?

A. NO, SIR.

Q. HAVE YOU HAD ANY DRUGS, ALCOHOL OR MEDICATION, OR
ANYTHING ELSE THAT WOULD KEEP YOU FROM
UNDERSTANDING WHAT'S GOING ON IN COURT?

A. NO, SIR.

THE COURT: WHO'S GOING TO SPEAK, MR. STROM
OR MR. HOOD?

MR. STROM: MR. HOOD.

(NOTE: Blank lines on this page do not indicate any
part of record has been omitted. Headers on testimony
pages and hard page breaks between testimony are now
required by the Court.)

EXAM - DEFENSE COUNSEL HOOD BY THE COURT

7

EXAMINATION OF DEFENSE COUNSEL HOOD

BY THE COURT:

Q. MR. HOOD, HAVE YOU EXPLAINED TO YOUR CLIENT THE CHARGES HE IS FACING, THE EVIDENCE THE STATE HAS AGAINST HIM, THE POSSIBLE PENALTY, AND HIS CONSTITUTIONAL RIGHTS?

A. YES, SIR, YOUR HONOR.

Q. AND, OF COURSE, THE PENALTY IS A MINIMUM OF SEVEN YEARS, WITH A MAXIMUM OF TWENTY-FIVE YEARS. IT IS A SERIOUS OFFENSE, A VIOLENT OFFENSE, AND A NO PAROLE OFFENSE. YOU'VE EXPLAINED ALL THAT TO HIM?

A. YES, SIR, YOUR HONOR.

Q. AND DO YOU BELIEVE HE UNDERSTANDS ALL OF THAT?

A. YES, SIR, YOUR HONOR.

Q. AND HOW HAS HE ADVISED YOU HE WISHES TO PLEAD?

A. GUILTY, YOUR HONOR.

Q. AFTER REVIEWING THE EVIDENCE IN THE CASE DO YOU CONCUR WITH HIS DECISION TO PLEAD GUILTY?

A. YES, SIR, YOUR HONOR.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

EXAM - RUFINO URIOSTEGUI, THROUGH INTERPRETER
WILMER AVILES, BY THE COURT

8

EXAMINATION OF RUFINO URIOSTEGUI,
THROUGH INTERPRETER, WILMER AVILES,
BY THE COURT CONTINUES:

Q. SIR, YOUR ATTORNEY TELLS ME THAT HE HAS EXPLAINED
TO YOU THE CHARGES YOU ARE FACING, THE EVIDENCE
THE STATE HAS AGAINST YOU, THE POSSIBLE PENALTY
YOU COULD RECEIVE AND YOUR CONSTITUTIONAL RIGHTS,
AND HE TELLS ME THAT YOU UNDERSTAND ALL OF THOSE
MATTERS AND THAT YOU WANT TO PLEAD GUILTY. IS
THAT CORRECT?

A. YES.

Q. NOW, IN ORDER TO PLEAD GUILTY YOU HAVE TO GIVE UP
CERTAIN RIGHTS THAT YOU HAVE. THE FIRST OF THESE
IS YOUR RIGHT TO REMAIN SILENT. YOU CANNOT BE
FORCED TO TESTIFY AGAINST YOURSELF. BUT IF YOU
PLEAD GUILTY YOU MUST GIVE UP THAT RIGHT AND
ADMIT THAT THE CHARGES AGAINST YOU ARE TRUE. YOU
ALSO HAVE A RIGHT TO A JURY TRIAL. IN A JURY
TRIAL THE JURY WOULD BASE ITS DECISION ON THE
TESTIMONY PUT UP BY THE STATE'S WITNESSES. YOUR
ATTORNEYS COULD CROSS-EXAMINE THOSE WITNESSES,
THEY COULD CALL WITNESSES ON YOUR OWN BEHALF AND
PUT UP ANY DEFENSE THAT YOU HAD TO THE CHARGES.
YOU WOULD BE PRESUMED TO BE INNOCENT. THE STATE
WOULD HAVE TO CONVINCE ALL TWELVE JURORS OF YOUR

EXAM - RUFINO URIOSTEGUI, THROUGH INTERPRETER
WILMER AVILES, BY THE COURT.

9

1 GUILT BEYOND A REASONABLE DOUBT. YOU COULD
2 TESTIFY YOURSELF IF YOU HAD A TRIAL IF YOU WANTED
3 TO BUT YOU WOULD NOT HAVE TO TESTIFY, THE BURDEN
4 WOULD BE ON THE STATE TO PROVE YOU GUILTY. DO
5 YOU UNDERSTAND BOTH YOUR RIGHT TO REMAIN SILENT
6 AND YOUR RIGHT TO HAVE A JURY TRIAL?

7 A. YES.

8 Q. AND DO YOU UNDERSTAND THAT IN ORDER TO PLEAD
9 GUILTY YOU HAVE TO GIVE UP BOTH RIGHTS?

10 A. YES.

11 Q. AND THAT'S WHAT YOU WANT TO DO?

12 A. YES.

13 Q. YOU DO NOT WANT A JURY TRIAL?

14 A. NO.

15 Q. THE CHARGES ARE THAT ON APRIL THE EIGHTH, TWO
16 THOUSAND NINE, THAT YOU BROUGHT INTO ORANGEBURG
17 COUNTY AND WERE IN POSSESSION OF BETWEEN TWENTY-
18 EIGHT AND ONE HUNDRED GRAMS OF COCAINE. AND THE
19 CHARGE IS TRAFFICKING IN COCAINE. IT IS REDUCED
20 FROM TRAFFICKING IN FOUR HUNDRED GRAMS OR MORE.

21 DO YOU UNDERSTAND THIS CHARGE?

22 A. YES.

23 Q. AND HOW DO YOU PLEAD TO THIS CHARGE, GUILTY OR
24 NOT GUILTY?

25 A. GUILTY.

EXAM - RUFINO URIOSTEGUI, THROUGH INTERPRETER
WILMER AVILES, BY THE COURT

10

1 Q. THE STATE HAS MADE NO RECOMMENDATION. HAS
2 ANYBODY PROMISED YOU ANYTHING OR THREATENED YOU
3 TO GET YOU TO PLEAD GUILTY?

4 A. NO.

5 Q. ARE YOU SATISFIED WITH YOUR ATTORNEYS?

6 A. YES.

7 Q. DID YOU TELL THEM EVERYTHING ABOUT THIS CASE SO
8 THAT THEY COULD GIVE YOU CORRECT ADVICE?

9 A. YES.

10 Q. HAVE THEY FAILED TO DO ANYTHING WHICH YOU THINK
11 THEY NEED TO DO TO HELP YOU?

12 A. NO.

13 Q. HAVE YOU UNDERSTOOD ALL OF MY QUESTIONS?

14 A. YES.

15 Q. HAVE YOU ANSWERED BY QUESTIONS TRUTHFULLY?

16 A. YES.

17 Q. DO YOU UNDERSTAND THAT IF YOU WANTED TO FILE AN
18 APPEAL YOU WOULD HAVE TO DO THAT WITHIN TEN DAYS?

19 A. YES.

20 THE COURT: I WILL ACCEPT HIS PLEA. I FIND A
21 SUBSTANTIAL FACTUAL BASIS FOR HIS PLEA. HIS DECISION
22 TO PLEAD GUILTY IS FREELY AND VOLUNTARILY MADE. HE HAS
23 KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHT TO A JURY
24 TRIAL, AND HE'S HAD THE SERVICES OF AN ATTORNEY WITH
25 WHOM HE SAYS HE'S SATISFIED. THERE'S ONE OTHER THING

EXAM - RUFINO URIOSTEGUI, THROUGH INTERPRETER
WILMER AVILES, BY THE COURT

11

1 I NEED TO MENTION, SIR. I UNDERSTAND THAT THE
2 IMMIGRATION AUTHORITIES HAVE PLACED A HOLD ON YOU, AND
3 THAT WHEN YOU ARE RELEASED FROM PRISON YOU WILL BE
4 DEPORTED. DO YOU UNDERSTAND THAT?

5 A. YES, SIR.

6 THE COURT: ALRIGHT, COUNSELOR.

7 SOLICITOR SORENSON: THANK YOU, MAY IT
8 PLEASE THE COURT.

9 THE COURT: YES, SIR.

10 SOLICITOR SORENSON: THIS OFFENSE OCCURRED
11 BACK ON APRIL THE EIGHTH, TWO THOUSAND NINE. STATE
12 LAW ENFORCEMENT DIVISION, AND ORANGEBURG COUNTY
13 SHERIFF'S OFFICE HAD BEEN LOOKING INTO COCAINE
14 ACTIVITY AT TWENTY-FOUR FORTY-SEVEN CHARLESTON HIGHWAY
15 HERE IN ORANGEBURG COUNTY. THAT DAY THEY HAD SENT,
16 THEY HAD A CONFIDENTIAL INFORMANT THAT THEY WERE USING
17 THAT THEY HAD SENT INTO THAT RESIDENCE ON SEVERAL
18 OCCASIONS, ON TWO OCCASIONS THAT DAY FOR THE PURPOSE
19 OF SETTING UP PURCHASING SOME COCAINE. THEY HAD VIDEO
20 AND AUDIO SURVEILLANCE WHERE THE CONFIDENTIAL
21 INFORMANT OBSERVED SEVERAL KILOS OF COCAINE INSIDE THE
22 RESIDENCE. THIS DEFENDANT IS ONE OF THE INDIVIDUALS
23 THAT HE WAS DEALING WITH INSIDE THE RESIDENCE THAT
24 DAY. ARRANGEMENTS WERE MADE FOR HIM TO PURCHASE THREE
25 KILOS OF COCAINE FOR NINETY-ONE THOUSAND DOLLARS FROM

1 THE DEFENDANTS INSIDE THE RESIDENCE. HE WAS TO RETURN
2 WITH THE MONEY. AT THAT POINT IN TIME STATE LAW
3 ENFORCEMENT DIVISION AND ORANGEBURG EXECUTED A SEARCH
4 WARRANT ON THAT RESIDENCE. THERE WERE SIX INDIVIDUALS
5 INSIDE AT THAT POINT IN TIME, THIS DEFENDANT BEING ONE
6 OF THEM. ONE OF THOSE INDIVIDUALS FLED AND WAS ABLE
7 TO GET AWAY THAT DAY. ULTIMATELY A SEARCH OF THAT
8 RESIDENCE FOUND JUST UNDER FOUR KILOS OF COCAINE,
9 THREE RIFLES, THREE PISTOLS AND AMMUNITION FOR ALL OF
10 THOSE WEAPONS, ALONG WITH SEVERAL OTHER ITEMS
11 INVOLVING THE PACKAGING OF THE NARCOTICS. AND
12 ADDITIONALLY, IN A VEHICLE ON THE PREMISES THERE WAS A
13 LITTLE OVER THIRTY-SEVEN THOUSAND DOLLARS IN CASH THAT
14 WAS FOUND IN A HIDDEN COMPARTMENT IN THAT VEHICLE.
15 SUBSEQUENT TO THE INVESTIGATION IT IS STATE LAW
16 ENFORCEMENT'S BELIEF, THE STATE'S BELIEF THAT THIS
17 DEFENDANT WAS ESSENTIALLY THE LEADER OF THE GROUP THAT
18 WAS WORKING HERE IN ORANGEBURG BRINGING IN COCAINE
19 FROM OUT OF STATE AND SELLING IT IN ORANGEBURG.

20 WITH ME IN COURT TODAY IS AGENT TEDDY CONE
21 WITH THE STATE LAW ENFORCEMENT DIVISION, I WOULD POINT
22 HIM OUT FOR YOUR HONOR.

23 ESSENTIALLY, AS I INDICATED, THERE WERE FIVE
24 INDIVIDUALS THAT WERE THERE THAT WERE APPREHENDED.
25 THEY WERE ALL CHARGED WITH TRAFFICKING OVER FOUR

1 HUNDRED GRAMS OF COCAINE. ONE OF THOSE INDIVIDUALS HAS
2 BEEN, HAS PLED GUILTY TO THE SAME CHARGE THAT THIS
3 DEFENDANT IS PLEADING GUILTY TO TODAY, AND HE RECEIVED
4 A SIXTEEN YEAR SENTENCE. IT WAS OSCAR HERNANDEZ.
5 BASICALLY, HIS INVOLVEMENT WAS BASICALLY, AS BEST WE
6 COULD TELL, SORT OF A SECURITY THERE. SO, WHILE WE
7 HAVE NOT MADE ANY RECOMMENDATION WE WOULD, YOUR HONOR,
8 ASK YOU TO, I MEAN, GIVE THIS DEFENDANT, I MEAN, HE'S
9 AT LEAST IF NOT MORE CULPABLE THAN MR. HERNANDEZ, SO
10 WE FELT THAT HE DOES DESERVE AT LEAST THE SIXTEEN
11 YEARS THAT MR. HERNANDEZ GOT.

12 MR. URIOSTEGUI DOES NOT HAVE ANY OTHER PRIOR
13 GENERAL SESSIONS RECORD OR ANYTHING OF THAT NATURE.

14 THE COURT: HAS THERE BEEN ANY FORFEITURE
15 PROCEEDINGS?

16 SOLICITOR SORENSON: THEY ARE IN -- WE HAVE
17 A LAWYER IN COLUMBIA THAT'S HANDLING THAT FOR US, AND
18 I KNOW THEY HAVE BEEN IN DISCUSSION WITH MR. HOOD'S
19 OFFICE ABOUT THAT, AND THAT'S REALLY ABOUT ALL I KNOW
20 ABOUT THAT. I MEAN, I KNOW THAT THEY HAVE HAD SOME
21 DISCUSSIONS, AND IF SOMETHING IS NOT WORKED OUT THAT
22 WE WILL BE FILING THE ACTION IN THAT REGARD.

23 THE COURT: MR. CONE, ANYTHING YOU WANT TO
24 SAY?

25 MR. CONE: NO, SIR, YOUR HONOR.

1 THE COURT: THANK YOU, SIR, THANK YOU FOR
2 COMING.

3 ALRIGHT, MR. HOOD AND MR. STROM.

4 MR. HOOD: MAY IT PLEASE THE COURT, YOUR
5 HONOR.

6 THE COURT: YES, SIR.

7 MR. HOOD: THANK YOU, JUDGE. MR. URIOSTEGUI
8 IS THIRTY-NINE YEARS OLD. WE'RE ALMOST A YEAR TO THE,
9 FROM THE INCIDENT DATE, YOU KNOW, TOMORROW. THAT
10 ENTIRE TIME HE HAS BEEN IN THE ORANGEBURG COUNTY JAIL.
11 HIS ORIGINAL BOND WAS VERY HIGH, SEVEN HUNDRED AND
12 FIFTY THOUSAND DOLLARS. WE DID A BOND REDUCTION
13 HEARING A FEW MONTHS INTO THE CASE AND A CIRCUIT COURT
14 JUDGE REDUCED THAT DOWN TO FOUR HUNDRED, BUT HE'S
15 STAYED IN JAIL THIS ENTIRE TIME.

16 JUDGE, HIS WIFE IS PRESENT HERE. SHE'S
17 BEHIND THE POLE, BUT SHE'S GOING TO WANT TO ADDRESS
18 YOU IN JUST A MOMENT, AT THE COURT'S DISCRETION.

19 THE COURT: ALRIGHT.

20 MR. HOOD: HE'S BEEN IN THE SOUTH CAROLINA
21 AREA FOR FIFTEEN YEARS. FOR THE PAST SEVEN AND A HALF
22 YEARS HE'S BEEN WORKING AT CAROLINA LUMBER IN CAMERON,
23 SOUTH CAROLINA. HE HAD TO STOP THAT JOB FOR HEALTH
24 REASONS. HE ACTUALLY HAD TO GO TO ATLANTA TO HAVE
25 SURGERY BECAUSE OF ALL THE DUST THAT HE ENCOUNTERED AT

1 THAT JOB.

2 HE DOESN'T HAVE ANY RECORD. HE HAS, I
3 WOULDN'T SAY ANY RECORD, HE HAS AN OPEN CONTAINER FROM
4 BOWMAN, BUT HE HAS NO SIGNIFICANT PRIOR RECORD IN ANY
5 WAY, SHAPE OR FORM. HE'S NEVER BEEN TO COURT ON
6 ANYTHING THIS SERIOUS. HE'S NEVER BEEN ON PROBATION.
7 THIS ISN'T SOMEBODY THAT WE OFTEN, -- WHO COMES INTO
8 COURTROOMS EVERY DAY THAT'S JUST REPEATEDLY VIOLATED
9 THE DRUG LAWS AND HAS GOTTEN SLAPPED ON THE WRIST TIME
10 AND TIME AGAIN AND THEN FINALLY REALLY GETS INTO
11 TROUBLE.

12 THROUGHOUT THIS CASE WE'VE SPENT A LOT OF
13 TIME WITH RUFINO AT THE JAIL. AND THE WAY YOU'RE
14 SEEING HIM RIGHT NOW, VERY UPSET AND EMOTIONAL ABOUT
15 THE CASE, IS HOW HE'S BEEN A LOT WITH US. THIS ISN'T
16 SOMEBODY THAT ARGUES WITH ME, THAT IS VERY DIFFICULT
17 TO GET ALONG WITH. WE HAVE GOOD CONVERSATIONS ABOUT
18 HIS CASE AND ABOUT THE EVIDENCE AGAINST HIM.

19 ONE OF THE THINGS THAT HE WANTS TO MAKE
20 SURE, AND I WANT TO MAKE SURE THAT YOU UNDERSTAND IS,
21 WE UNDERSTAND THAT THE CRIME, ITSELF, IS CATEGORIZED
22 AS VIOLENT, AND THERE'S NOTHING THAT ANY OF US CAN DO
23 TO CHANGE THAT. THAT'S THE WAY THE LEGISLATURE HAS
24 MADE IT. BUT HE, IN AND OF HIMSELF, IS NOT A VIOLENT
25 PERSON, AND I DON'T BELIEVE THAT THE SLED AGENTS KNOW

1 OF HIM BEING VIOLENT OR BEING, RESISTING WITH THEM OR
2 FIGHTING WITH THEM, OR TRYING TO RUN, OR ANYTHING LIKE
3 THAT, BUT HE WANTS ME TO MAKE SURE THAT YOU KNOW THAT
4 HE DID NOT DO ANYTHING VIOLENT THAT DAY. WE'VE HAD AN
5 ISSUE WITH THAT, AND I'VE TRIED TO EXPLAIN TO HIM
6 REPEATEDLY THAT THAT'S NOT SOMETHING THAT ANY OF US IN
7 THIS ROOM CAN CHANGE. BUT HE WANTS TO MAKE SURE THAT
8 YOU KNOW - - -

9 THE COURT: ALRIGHT.

10 MR. HOOD: --- THAT YOU KNOW HE DIDN'T DO
11 ANYTHING VIOLENT THAT DAY.

12 THE COURT: I UNDERSTAND.

13 MR. HOOD: THANK YOU, JUDGE.

14 THE OTHER MEMBERS OF HIS FAMILY ARE HERE,
15 JUDGE. WE'VE BEEN MEETING WITH THEM OVER THE YEAR
16 ABOUT THE CASE AND EXPLAINING TO THEM THE DIFFICULTY
17 IN THE CASE. AND THE DIFFICULTY REALLY STEMS FROM THE
18 WEIGHT OF DRUGS INVOLVED, AND WE UNDERSTAND THAT AND
19 RESPECT THAT.

20 JUDGE, RUFINO HAS A DRUG USE PROBLEM. HE HAS
21 ADMITTED TO ME THAT FOR THE MAJORITY OF HIS LIFE HE
22 HAS USED MARIJUANA AND COCAINE AND HAS HAD A DRUG USE
23 PROBLEM. AND UNFORTUNATELY, THE WAY THE LEGISLATURE
24 SET UP THE CODE, WITH THE DRUG WEIGHT OF THIS AMOUNT
25 HE'S FACING THIS MANDATORY MINIMUM TIME. AND HE

1 UNDERSTANDS THAT.

2 JUDGE, WE JUST RESPECTFULLY REQUEST THAT YOU
3 GIVE HIM THE MINIMUM SENTENCE. THAT WOULD BE A SEVEN
4 YEAR SENTENCE. HE WOULD HAVE TO SERVE EIGHTY-FIVE PER
5 CENT OF IT. AND WE THINK THAT THAT IS SUFFICIENT FOR
6 WHAT HAS HAPPENED UNDER THE CIRCUMSTANCES.

7 HE HAS TWO CHILDREN, A SIX YEAR OLD AND A
8 SIXTEEN MONTH OLD, THAT HE'S READY TO GET HOME TO, AND
9 UNDERSTANDS IT'S GOING TO BE A WHILE BEFORE HE DOES.

10 WITH THE COURT'S PERMISSION, MAY HIS WIFE
11 ADDRESS YOU?

12 THE COURT: YES, MA'AM. COME FORWARD,
13 PLEASE, MA'AM.

14 MR. HOOD: JUST STATE YOUR NAME.

15 WIFE OF DEFENDANT: QIANA.

16 MR. HOOD: AND WHAT'S YOUR LAST NAME?

17 WIFE OF DEFENDANT: URIOSTEGUI.

18 THE COURT: OKAY.

19 MR. HOOD: GO AHEAD.

20 WIFE OF DEFENDANT: (THROUGH INTERPRETER)

21 ALL I WANTED TO ASK IS THAT YOU PLEASE HAVE MERCY ON
22 US. HE IS THE FATHER OF MY TWO CHILDREN AND THEY ARE
23 VERY SMALL. I'M NOT WORKING. I LIVE OFF WHAT MY FAMILY
24 HELPS ME WITH. HE HAS BEEN A GOOD FATHER, A GOOD
25 HUSBAND. I'VE NEVER HAD PROBLEMS WITH HIM. HE'S

1 ALWAYS BEEN THERE WITH US. ALSO FOR HIS MOTHER. HIS
2 MOTHER IS SICK. WE NEED HELP. THANK YOU.

3 THE COURT: THANK YOU, MA'AM.

4 MR. HOOD: THANK YOU, YOUR HONOR.

5 DEFENDANT: (THROUGH INTERPRETER) ALL I
6 WISH IS FOR YOUR FORGIVENESS FOR HAVING COMMITTED THIS
7 CRIME.

8 MR. HOOD: THANK YOU, YOUR HONOR. AND WE
9 WOULD ASK THAT HE RECEIVE CREDIT FOR THE TIME THAT HE
10 HAS BEEN IN JAIL.

11 THE COURT: CERTAINLY. ANYTHING ELSE FROM
12 THE STATE?

13 MR. HOOD: THE OTHER CHARGE WILL BE NOL-
14 PROSSED. THANK YOU, YOUR HONOR.

15 SOLICITOR SORENSON: YEAH. NOTHING ELSE,
16 YOUR HONOR.

17 COURT REPORTER: DID YOU SAY, YES, THE OTHER
18 CHARGE WILL BE NOL-PROSSED?

19 SOLICITOR SORENSON: YES, YEAH. THEY HAD
20 CHARGED HIM WITH THE CONSPIRACY STATUTE ALSO, AND I'LL
21 BE DISMISSING THAT.

22 THE COURT: AND HE WAS ARRESTED ON THE
23 EIGHTH?

24 MR. HOOD: YES, SIR, YOUR HONOR.

25 THE COURT: WELL, IT'S CERTAINLY A VERY

1 TRAGIC CASE, BUT IT'S A HUGE AMOUNT OF DRUGS, AND YOUR
2 ATTORNEYS HAVE DONE YOU A VERY GOOD JOB IN GETTING
3 THIS REDUCED FROM THE ORIGINAL CHARGE WHICH WOULD
4 HAVE CARRIED A MINIMUM OF TWENTY-FIVE YEARS, I THINK.

5 SENTENCE OF THE COURT

6 THE SENTENCE OF THE COURT IS THAT YOU BE
7 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
8 PERIOD OF SIXTEEN YEARS.

9 GOOD LUCK TO YOU.

10 MR. HOOD: THANK YOU, YOUR HONOR.

11 SOLICITOR SORENSON: THANK YOU, YOUR HONOR.

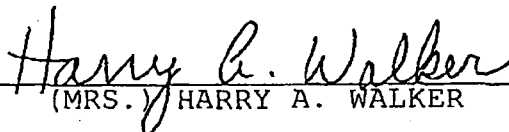
12 THE COURT: HE'LL GET CREDIT FOR THE ONE
13 YEAR THAT HE'S SERVED.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST 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 CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE SEVENTH DAY OF APRIL, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: NOVEMBER 17, 2010


(MRS.) HARRY A. WALKER

The South Carolina Court of Appeals

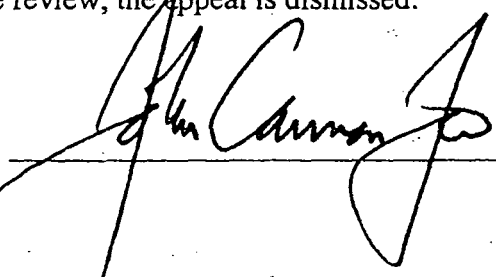
The State, Respondent
v.
Rufino Uriostegui, Appellant.

The Honorable James C. Williams, Jr.
Orangeburg County
Trial Court Case No. 2009-GS-38-00724

2009 AUG 25 A 11:24
RECORD
CLERK OF COURT
JAMES C. WILLIAMS, JR.
ORANGEBURG COUNTY

ORDER

Appellant appeals his guilty plea and sentence imposed by Judge James C. Williams, Jr. Rule 203 (d)(1)(B)(iv), SCACR, requires "a written explanation showing that there is an issue(s) which can be reviewed on appeal....including how the issue(s) was raised below and the ruling of the lower court on that issue(s)." After careful review, we find Appellant failed to show how any issue was preserved for our review. Therefore, due to Appellant's failure to establish any preserved issues for appellate review, the appeal is dismissed.


_____, C. J.

Columbia, South Carolina
8/23/2010

cc: Chief Appellate Defender Robert M. Dudek
Robert E. Hood, Esquire
Rufino Uriostegui #340216
Assistant Deputy Attorney General Salley W. Elliott
The Honorable Winnifa Brown-Clark

FILED

8/24/10

FORM 5

2010-CP-38-1395

STATE OF SOUTH CAROLINA

County of OrangeburgRufino Uriostegui #340216

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution,
4344 Broad River Rd, Columbia, SC 29210
2. Name and location of Court which imposed sentence Orangeburg County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-38-00724 ; 2010 Trafficking Cocaine 28-100g
 - (b) _____

- (c) _____
- 5.. The date upon which sentence was imposed and the terms of the sentence:
- (a) April, 7, 2010 ; 16 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 23, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing: N/A
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachment's
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment's
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

15. If you answered "yes" to (14) identify: **N/A**

(a) which grounds have been presented:

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

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

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

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (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:
 - i. Robert E. Hood; 2110 Beltline Boulevard, Suite A
Columbia, SC 29204
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Pre-Sentencing; Sentencing
 - ii. _____
 - iii. _____

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

Applicant Seeks Relief from his Convictions
and Sentences.

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

N/A

STATE OF SOUTH CAROLINA)

County of Orangeburg)

VERIFICATION

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

X RUFINO Uriostequiv

SWORN to and subscribed before me this 20th
day of September, 2010.

L. J. W. W. W. W. W. (L.S.)
Notary Public

My Commission Expires: 10/8/2014

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

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

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

X Rufino Uriostegui
Applicant

SWORN or affirmed to and subscribed before me this
26th day of September, 2010.

D. J. Wrenley
Notary Public

My Commission Expires: 10/8/2014

FILED FOR RECORD
WINNIEA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2010 SEP 23 PM 12:43

10 + 11 Grounds For Relief with Supporting Facts

10(a): Applicant was denied the effective assistance of Counsel in violation of the Sixth and Fourteenth amendments to the United States Constitution and South Carolina law.

11(a): Applicant's Counsel was ineffective for the following reasons:

(a1): Attorney failed to refer applicant to the the office of Appellate Defence help perfect his Direct Appeal.

FILED FOR RECORD
JANIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2011 SEP 23 P 12:43

(a2): Attorney did not adequately Consult with the applicant before entering plea.

(a3): Attorney failed to investigate, develop, and present all available relevant, and admissible mitigating evidence.

(a4): Attorney failed to explain the matter to the extent reasonably necessary to permit the applicant to make an informed decision regarding the plea.

(A5): Attorney failed to ensure that there was not a break-down in Communication because of the language barrier (the applicant only speaks Spanish).

Counsel's representation fell below an objective Standard of reasonableness and there is a reasonable probability that, but for Counsel's errors, the applicant would not have pled guilty but would have insisted on going to trial.

Applicant does not have post-Conviction Counsel at this time. Further, I do not yet have a Copy of Counsel's file, access to discovery, access to funds for expert and investigative Services, or any ability to Conduct an investigation. Given these limitations, I Cannot provide further information regarding additional Claims that might be available to me.

2000 SEP 23 P 12:43
FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2010-CP-38-1395
	)	
Rufino Uriostegui, #340216,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 23, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for Trafficking in Cocaine (400 Grams or More) (2009-GS-38-0724). Applicant was represented by Robert Hood, Esquire. On April 7, 2010, the Applicant pled guilty before the Honorable James C. Williams, Jr. to the lesser offense of Trafficking in Cocaine (28-100 Grams). Applicant was sentenced to sixteen (16) years incarceration.

A notice of appeal was filed. The appeal was dismissed on August 23, 2010, pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was sent on September 9, 2010.

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

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

II.

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

1. Ineffective assistance of counsel.
 - a. "...failed to refer applicant to the Office of Appellate Defense to help perfect his direct appeal."
 - b. "...did not adequately consult with the applicant prior to entering plea."
 - c. "...failed to investigate, develop, and present all available relevant and admissible mitigating evidence."
 - d. "...failed to explain the matter to the extent reasonably necessary to permit the applicant to make an informed decision regarding the plea."
 - e. "...failed to ensure that there was not a breakdown in communication because of the language barrier (the applicant only speaks Spanish)."

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

III.

In a post-conviction relief action, the 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, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

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

Feb. 7, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2010-CP-38-1395
	)	
RUFINO URIOSTEGUI, 340216 ,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

**Russell Allen Blanchard, Esquire
Williams & Williams
Post Office Box 1084
Orangeburg, SC 29115**

DATED this 7th day of February, 2011.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT
2010-CP-38-01395

2 COUNTY OF ORANGEBURG

5 RUFINO URIOSTEGUI,
Plaintiff,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Defendant.

10 Heard on Wednesday, November 30, 2011
11 Saint George, South Carolina

12 BEFORE:

13 THE HONORABLE DIANE S. GOODSTEIN
14

15 APPEARANCES:

16 Counsel on Behalf of the State:
17 Rob D. Corney, Esq.
Mary Shannon Williams, Esq.

18 Counsel on Behalf of the Defendant:
19 J. Falkner Wilkes, Esq.
20 Nathalie M. Morgan, Esq.

21 Interpreter: Lydia Lester

22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 1154
Aiken, SC 29802-1154
25

EXAMINATION INDEX

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EXHIBIT INDEX

(NO EXIBITS IDENTIFIED/INTRODUCED.)

1 ON WEDNESDAY, NOVEMBER 30, 2011 AT 2:25 P.M.:

2 THE COURT: All right. I think the way that we're
3 going to begin is that I would like to swear in our
4 translator first. And if you will state your full name
5 for our record, please.

6 THE INTERPRETER: My name is Lydia Lester.

7 THE COURT: All right. Ms. Lester, raise your right
8 hand.

9 (Interpreter placed under oath.)

10 THE COURT: Thank you so much.

11 Now, are there any other preliminary matters
12 regarding Mr. Uriostegui's application before I call on
13 the Attorney General just to give me the procedural
14 background?

15 MR. WILKES: No, Your Honor.

16 THE COURT: Very well.

17 MR. CORNEY: May it please the Court, Your Honor.

18 THE COURT: Yes, sir. Mr. Corney.

19 MR. CORNEY: This is Rufino Uriostegui. And I still
20 may be saying that wrong, but this is docket number 2010-
21 CP-38-1395.

22 Mr. Uriostegui was true-bill indicted the May 2009
23 term of the Orangeburg County Grand Jury for trafficking
24 in cocaine 400 grams or more. He pled guilty April 7,
25 2010, before Judge Williams to the lesser-included

RUFINO URIOSTEGUI - DIRECT

1 trafficking in cocaine 28 to 100 grams and was sentenced
2 to 16 years imprisonment.

3 As part -- pursuant to that plea, there was a
4 conspiracy charge that was nolle prossed. Timely notice
5 of appeal was filed but dismissed under Rule 203-D-1-B-4
6 and a timely PCR application was filed September 23rd,
7 2010.

8 And he is represented today by Mr. Jeff Wilkes.

9 THE COURT: All right. Mr. Wilkes, do you need to
10 add anything to that or take anything -- change anything?

11 MR. WILKES: No, ma'am. Other than I have Nathalie
12 Morgan with me, also an attorney from Greenville. And
13 we'll be representing Mr. Uriostegui today.

14 We're ready.

15 THE COURT: And I am listening to you. Call your
16 first witness.

17 MR. WILKES: Thank you, Your Honor. Mr. Uriostegui,
18 take the witness stand.

19 RUFINO URIOSTEGUI, having been duly sworn, was
20 examined and testified as follows:

21 THE COURT: Ms. Lester, if you change your mind and
22 you want a seat, we got plenty of chairs for you.

23 THE INTERPRETER: Thank you, Your Honor.

24 THE COURT: Now, is it better for you to do a
25 continuing translation or to say a little bit, let you

RUFINO URIOSTEGUI - DIRECT

1 translate and then a little more?

2 THE INTERPRETER: In the case of witness testimony, I
3 would prefer to do it consecutively. So have the question
4 asked, and then I would convert it into Spanish, have
5 Mr. Uriostegui answer in Spanish, and then I will
6 interpret it back into English.

7 THE COURT: Everybody got That? Wonderful. Your
8 witness.

9 MR. WILKES: Use the podium, Your Honor? It feels
10 like I'm half-a-mile away at counsel table. You don't
11 mind if I use the podium; do you?

12 THE COURT: Absolutely not.

13 MR. WILKES: Thank you.

14 THE COURT: And you can move the podium around if you
15 want to.

16 MR. WILKES: It's fine here. It's so far away from
17 the table.

18 THE COURT: Absolutely.

19 DIRECT EXAMINATION

20 *** COURT REPORTER NOTE: ALL ANSWERS ARE AS TRANSLATED BY
21 THE INTERPRETER. SEVERAL TIMES THE TRANSLATOR REQUESTED
22 CLARIFICATION WHICH IS NOTED IN COLLOQUY FORM. ***

23 BY MR. WILKES:

24 Q. Mr. Uriostegui, tell me how old you are, sir.

25 A. Forty-one.

RUFINO URIOSTEGUI - DIRECT

1 Q. And where are you from?

2 A. From Mexico.

3 Q. And tell me, did you go to school in Mexico?

4 A. No, I never went to school.

5 Q. Okay. Do you read or write English?

6 A. No.

7 Q. And do you speak English?

8 A. Very little.

9 Q. Okay. Now, do you recall when you were arrested in
10 this case?

11 A. I don't remember but, I mean, I remember that I was
12 arrested.

13 Q. Okay. When you were arrested, did you have an
14 attorney?

15 A. When I was arrested, no. And then I was with a public
16 defender.

17 Q. Okay. Did you ultimately hire Mr. Hood to represent
18 you?

19 A. Yes. The woman who got him for me, the woman who was
20 going to interpret for me, Deanna.

21 Q. Now how long had you been in jail at the time that
22 Mr. Hood began representing you?

23 A. A week, a week.

24 Q. Okay. Tell me about your first meeting with
25 Mr. Hood.

RUFINO URIOSTEGUI - DIRECT

1 A. The first time he came to see me -- well, the first
2 time he said that he was going to see about the case.

3 Q. Uh-huh.

4 A. And I said that I should talk to my family about it.
5 And then he left, and it was said that he had been taken
6 on as my lawyer. But I never accepted that, I never said
7 that.

8 Q. Okay. But did you meet with him after that time?

9 A. Yes, after that time I met with him. It was two,
10 three weeks that -- when he came back.

11 Q. Now when he came back, did he bring somebody to
12 interpret for him?

13 A. Yes, but I didn't understand well the things that were
14 going on.

15 Q. Did Mr. Hood ever -- did Mr. Hood speak Spanish with
16 you?

17 A. No, no.

18 Q. Okay. When you met the next time with the
19 interpreter, did you agree then that Mr. Hood would
20 represent you in your case?

21 A. Yes, I accepted it.

22 Q. Now, how long did you stay in jail before the last
23 time you went to court?

24 A. You mean the last time when they sentenced me?

25 Q. Yes.

RUFINO URIOSTEGUI - DIRECT

1 A. Well, there were two more court dates and he was never
2 there.

3 Q. I understand. I'm asking: How long total were you in
4 jail before that last time?

5 A. A year.

6 Q. Over the course of the year that you were in jail, how
7 many times did Mr. Hood come to see you?

8 A. Like about 10 times.

9 Q. And for those times, did he always have a translator
10 with him?

11 A. There was always an interpreter, but I didn't always
12 understand. The, that person spoke Spanish but sometimes
13 not that good English.

14 Q. The -- was it the same interpreter every time? Were
15 there -- how many interpreters were there over the one
16 year?

17 A. The first time it was a woman. The second time it was
18 that woman's husband.

19 And there was one that came for a while and then there
20 was another, another interpreter that would explain things
21 to me.

22 Q. When Mr. Hood would come to see you with the
23 interpreter, what type of things did they explain to you?

24 THE INTERPRETER: The interpreter would like to ask
25 clarification of the witness. She missed something.

RUFINO URIOSTEGUI - DIRECT

1 (Pause.)

2 A. Well, the first time he said that he was going to try
3 for three, seven, 10 years. He would say different
4 things.

5 Q. When you say, he would say different things, he, who
6 are you talking about when you say, he?

7 A. My lawyer. After that he would say that I would get
8 more time. Like to my family, he said seven years and
9 then later he would change it to more time, 16 years.

10 Q. Okay. Did the lawyer ever discuss with you what he
11 believed the testimony might be at trial?

12 A. He said -- well, that last time we went to court he
13 said we could go to trial but that I would get more, more
14 years than the time they were giving me.

15 Q. Okay. But did he go over what he thought the evidence
16 the State would use at trial was going to be?

17 A. Evidence like, what?

18 Q. What the State would introduce.

19 A. No, no.

20 Q. Did they explain to you or did you understand what it
21 took for you to be convicted?

22 A. Well, I -- well, I really didn't understand it. I
23 mean, I was thinking different things.

24 Q. Did you ever tell the attorney or the interpreter that
25 you were having difficulty understanding what they were

RUFINO URIOSTEGUI - DIRECT

1 telling you?

2 A. No, I didn't say anything. One time I said it,
3 but...

4 Q. Well, when you said it, what did you say? Who did you
5 tell it to?

6 A. Well, I told the interpreter that I didn't understand
7 what was being said. He was talking in English to the
8 lawyer and I didn't understand.

9 Q. Did the same interpreter come back the next time?

10 A. Yes, it was the same. It was always the same guy or
11 the same woman.

12 Q. And could you describe how much difficulty you had
13 with their Spanish?

14 A. Well, the thing is, he would say things in Spanish and
15 I would say things in Spanish to him to say back to the
16 lawyer, and he wouldn't say all of that back to the
17 lawyer.

18 Q. Okay. How would you know what's being said back to
19 the lawyer and whether or not he's translating accurately
20 in English?

21 A. Well, because every time it was like he tripped up on
22 the words, like he didn't know what he was saying.

23 Q. Okay. Tell me -- did you ever tell Mr. Hood that you
24 were guilty of the crime?

25 A. No, I always told him that I wasn't guilty, that the

RUFINO URIOSTEGUI - DIRECT

1 drugs wasn't mine.

2 Q. What did you explain to Mr. Hood about your connection
3 as far as being at the scene when the search warrant was
4 executed?

5 THE INTERPRETER: The interpreter would like to
6 clarify one word with the witness.

7 MR. WILKES: Uh-huh, please.

8 A. No -- well, that I was there fixing my car at
9 Firestone, that I was there. I had gone to pick it up at
10 Firestone.

11 Q. Okay. Did Mr. Hood explain to you -- have you heard
12 the term before, mere presence; has that been explained to
13 you?

14 A. Well, I don't understand that. What did you say?

15 Q. That probably answers that question.

16 Were you told about what Mercado would testify to?
17 Were you told that Mer -- I believe it's Mercado would
18 testify against you?

19 A. No, he didn't tell me what he would say. He told me
20 what the dark one, Moreno, what the other guy, the one who
21 had the camera.

22 Q. Okay. And at any time before you pled guilty, had you
23 told the interpreter that you had something to do with
24 those drugs?

25 A. No, I didn't say anything like that.

RUFINO URIOSTEGUI - DIRECT

1 Q. How many times did they take you to court before that
2 last time where you pled guilty?

3 A. Well, the first time was with the bonds and then the
4 two other times he wasn't there. I was there, but he
5 wasn't.

6 Q. Okay. What do you mean that he wasn't there? What --
7 tell me what happened those times.

8 A. Well, he didn't go. He wasn't in the courtroom. He
9 didn't go.

10 Q. Were you told -- before they took you to court, did
11 you know why you would be going to court those two times?

12 A. In the two court times when he wasn't there?

13 Q. Correct.

14 A. No, I wasn't told anything about what it was for.

15 Q. Had you told your attorney -- before those two times,
16 had you told your attorney that you wanted to go up and
17 plead guilty?

18 A. No, because he said -- no, because they said he would
19 give me more time. He said if I didn't plead guilty they
20 would give me more time.

21 Q. Okay. Did you plan on pleading guilty those two times
22 that you went up there and he was not there?

23 A. No -- well, I didn't have plans to plead guilty
24 because none of it was mine.

25 Q. Then the third time when you went up, and tell me what

RUFINO URIOSTEGUI - DIRECT

1 happened that third time when you pled guilty. Tell me
2 how you ended up pleading guilty.

3 A. Well, I got to the court early because I was told that
4 the court was at 12 during the day. And I was there all
5 day, and he got there at four and no one was there.

6 Q. What happened after that? How is it you came to plead
7 guilty?

8 A. Well, it was five o'clock and the Judge wanted to go.
9 And he told me to go ahead and affirm -- excuse me -- to
10 go ahead and sign. That it was late, that the Judge
11 wanted to go.

12 Q. Now, had you met with Mr. Hood the day before that?

13 A. He went to see me there in the county where I was.

14 Q. The day before the plea?

15 A. Two days before.

16 Q. Okay. Did he bring somebody with him?

17 A. Yes, another person. A guero, a white person.

18 Q. And did that person translate for Mr. Hood?

19 A. Well, they were both there. The person who had
20 interpreted for me and the other person who came, the
21 white guy, and I didn't know which one to pay attention
22 to, the white person or the other one.

23 Q. Okay. What did they tell you that that -- the two
24 days before the plea, what did they tell you?

25 A. Well, he said, he told me, the lawyer said that I

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1 should plead guilty and I said, why. And he said, well,
2 because maybe they'll give me less than the 16 --

3 (conferring with Applicant) -- but if the Judge had
4 sympathy on me that they would give me less than that.

5 Q. Okay. Now, two days later you went to court again.
6 Tell me what happened.

7 A. Well, like I said, it was late and I felt pressured.
8 It was getting late and I felt pressured. He said I
9 should plead guilty.

10 Q. When you were in Orangeburg County Jail, were any
11 other co-defendants in the jail with you?

12 A. Yes. Well, Pedro Mercado was in the room with me.

13 Q. Did Mr. Mercado either threaten you or convey any
14 threats to you while y'all were in the Orangeburg County
15 Jail?

16 A. Yes. He said that if I didn't plead guilty that he
17 would talk to someone who would come kill my family.

18 MR. CORNEY: Your Honor, I'd like to just object to
19 any other testimony that's going to be hearsay of what
20 Mr. Mercado said.

21 MR. WILKES: That does not go to the truth of the
22 matter, sir. That goes to my client's state of mind and
23 then to whatever information he conveyed to his attorney
24 and what actions his attorney took based on that
25 information.

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1 THE COURT: I'll consider it as state of mind and not
2 admitted for the truth of the matter asserted.

3 MR. WILKES: Thank you, Your Honor.

4 THE COURT: All right.

5 BY MR. WILKES:

6 Q. Did you believe that threat?

7 A. Yes, I really did because he got a letter from his
8 wife that his boss, the one who gave him the drugs, said
9 that they should blame, put all the blame on me.

10 Q. Did you inform Mr. Hood of that?

11 A. Yes, I showed him the letter.

12 Q. And what did he advise you?

13 A. That the card -- that the letter wasn't good for
14 anything.

15 Q. Did you ever discuss that further after that first
16 time you told him that?

17 A. No. Just -- just that time that I showed him the
18 letter and he said it wasn't valid, that it wasn't good
19 for anything.

20 Q. If you had been informed that just being around drugs
21 is not necessarily enough to convict you, if you knew
22 that, would that have changed your mind about pleading
23 guilty?

24 A. Well, if I had known that there was drugs there I
25 wouldn't have gone to that house.

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1 Q. If you had not believed the threat against your
2 family, would you have pled guilty?

3 A. No. I mean, I wouldn't have pled guilty but I was
4 thinking about it. I was thinking about my family.

5 Q. At the time that you pled guilty, did you have
6 confidence in your lawyer?

7 A. Well, yes, because he said they would give me seven
8 years and I thought, well, seven years, that was okay
9 because I was at that house.

10 MR. WILKES: Very good. That's all the questions I
11 have, Your Honor.

12 THE COURT: I want you to ask him one more question.

13 MR. WILKES: Yes, ma'am.

14 THE COURT: I want to be sure he understood the
15 questions that you asked.

16 MR. WILKES: Yes, ma'am.

17 THE COURT: And the reason that I want you to inquire
18 of that is because there were some questions that you
19 would ask and he would answer something else.

20 MR. WILKES: Yes, ma'am.

21 Q. Have you understood -- do you feel that you're able to
22 understand the translation today?

23 A. Yes, you explain it very well.

24 Q. Do you believe that your translators with Mr. Hood,
25 were they translating as well as you're getting today?

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1 A. No. Really, no.

2 MR. WILKES: Thank you, Your Honor.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. CORNEY:

6 Q. Okay. There was an interpreter present at your plea
7 hearing; right?

8 A. Yes. Yes.

9 Q. Okay. Do you remember Judge Williams telling you at
10 the plea that if there is anything you didn't understand
11 to let the interpreter know so they could stop and explain
12 it to you?

13 A. Yes, but the truth is -- I mean, I felt, you know, I
14 wasn't thinking right about that.

15 Q. Okay. So you never told the Judge that there was
16 something you didn't understand during that plea?

17 A. No. I didn't really say anything. I, I barely
18 talked.

19 Q. Okay. At the end of the plea you told Judge Williams
20 that you had understood everything that he had said during
21 your conversation with him; right?

22 A. Yes, I told him that I understood but I was thinking
23 about other things.

24 Q. Did you fill out the PCR application that brought you
25 here today by yourself?

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1 A. A person there where I am helped me.

2 Q. Okay. Did Mr. Hood ever before your plea, ever talk
3 to you about any of the witnesses that might testify
4 against you?

5 A. He said something to me about the dark-skinned one,
6 but about the others he didn't say anything.

7 Q. Did you ever see a statement from any of your
8 co-defendants that Mr. Hood gave you?

9 A. Yes. He gave me six or seven months, a statement from
10 Pedro Mercado.

11 Q. Okay. And that statement was in Spanish?

12 A. Yes.

13 Q. Okay. And I think a minute ago you said something
14 about Mr. Mercado threatening you. Do you remember when
15 that was?

16 A. Well, when we were there in the room because he was
17 moved later.

18 Q. And that was at the Orangeburg Jail?

19 A. Yes.

20 Q. And was that pretty close to when you pled or long
21 before; do you remember?

22 A. Well, before -- long before the -- they moved him,
23 before he was moved to another place.

24 Q. I beg the Court's indulgence

25 THE COURT: That wasn't responsive.

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1 MR. CORNEY: Of the question?

2 THE COURT: Yeah.

3 MR. CORNEY: Would you prefer me to repose the
4 question?

5 THE COURT: (Nods head.)

6 BY MR. CORNEY:

7 Q. I will. Does he know if it was months before his
8 plea? Does he have any recollection of when that was?

9 A. Well, it was months before that they moved him. I
10 don't remember if it was a month, two months from then.

11 Q. Okay. Beg the Court's indulgence for one moment.

12 THE COURT: I want you to ask him if he understood
13 your questions.

14 MR. CORNEY: Okay. Yes, ma'am.

15 BY MR. CORNEY:

16 Q. I just want to make sure. Did you understand all the
17 questions that I've asked you today?

18 A. Yes.

19 Q. And you've understood everything the interpreter has
20 interpreted to you as well; correct?

21 A. Yes.

22 MR. CORNEY: Okay. That's all the questions I have,
23 Your Honor.

24 THE COURT: Redirect?

25 MR. WILKES: No redirect, Your Honor.

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1 THE COURT: Very well. Call your next witness,
2 please.

3 MR. WILKES: That will be our case, Your Honor.

4 THE COURT: Very well. All right.

5 MR. CORNEY: Your Honor, at this time the State would
6 call Robert Hood, please.

7 THE COURT: All right. Mr. Hood, if you'd come
8 along, please, and be sworn.

9 ROBERT ELDON HOOD, having been duly sworn, was
10 examined and testified as follows:

11 THE COURT: Thank you, Mr. Hood. And when you're
12 seated and situated, I'm going to ask you to state your
13 full name for the record.

14 THE WITNESS: My name is Robert Eldon Hood, H-O-O-D.

15 THE COURT: Thank you so much. Your witness.

16 MR. CORNEY: May it please the Court, Your Honor.

17 THE COURT: Yes.

18 MR. CORNEY: And I'll try to go slowly enough to
19 allow for the translation in between.

20 THE COURT: You don't be shy. If it's going a little
21 too fast, you just let us know.

22 THE INTERPRETER: Thank you, Your Honor.

23 THE COURT: Thank you.

24 DIRECT EXAMINATION

25 BY MR. CORNEY:

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1 Q. Good afternoon, Mr. Hood. How are you doing?

2 A. Fine, sir. Thank you.

3 Q. Mr. Hood, do you recall becoming involved in
4 Mr. Uriostegui's case?

5 A. Yes, sir.

6 Q. Have you had an opportunity to review your file from
7 the representation of him?

8 A. Yes, sir. I have.

9 Q. And have you had the opportunity to look over that
10 file before coming in here today?

11 A. Yes, sir. I have.

12 Q. Okay. Do you recall meeting with Mr. Uriostegui to
13 discuss the charges that he was facing?

14 A. Absolutely.

15 Q. By any chance, do you remember roughly how many times
16 you might have met with him?

17 A. I met with him 14 times prior to court, and I met with
18 him one time after his sentencing date at Kirkland
19 Correctional Institution, at R&E.

20 Q. Okay. And during those meetings, were you able to go
21 over the charges he was facing in the indictments that
22 were brought against him?

23 A. Absolutely.

24 Q. If you would, just tell us a little bit about your
25 ability to communicate with Mr. Uriostegui during your

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1 meetings with him.

2 A. We handle, our firm handles a lot of Hispanic
3 clients. For a number of years now we've had an Hispanic
4 Spanish-speaking paralegal on staff. Her name's Alisha
5 Nick. She's been with us for a number of years.

6 The first time that I actually met Mr. Uriostegui was
7 at the Orangeburg-Calhoun Regional Detention Center. And
8 at that point in time we actually used one of his family
9 friends to communicate with him because it was very close
10 to his arrest date. I believe we met with him within a
11 week, maybe 10 days at most, of his arrest and we used a
12 family friend to communicate.

13 From that point forward, we used Ms. Nick to
14 communicate with him. Sometime during those couple of
15 months and couple of meetings, we received a report back
16 from Mr. Uriostegui's family that we were talking to
17 almost on a weekly basis, sometime multiple times a week,
18 that he was having trouble understanding Mrs. Nick.

19 And so we switched interpreters to Mrs. Nick's husband
20 who's name is Tito and Tito started interpreting for us.

21 During that time Mr. Uriostegui actually signed a
22 statement in Spanish stating that he had understood fully
23 all his conversations with Tito Guerva is his last name.

24 G-U-E-R-V-A. That's as close as I can get. That he
25 actually signed a statement on Strom Law Firm letterhead

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1 in Spanish stating that he understood all his
2 conversations with Tito.

3 As we got closer to the case coming to the point of
4 where a decision had to be made, Tito and I met with
5 Mr. Uriostegui again. He had informed us that he wished
6 to plead guilty. He understood the plea negotiations at
7 that point and he wanted to plea.

8 We then had an, what I would call an in-house
9 conference with me, Pete Strom and Alisha Nick about
10 making sure that there were no language issues.

11 So, we hired, at our own expense, an interpreter from
12 Gerber or Garber Language Services that we took back to
13 the Orangeburg County Jail along with Tito to interpret
14 everything once more.

15 And at that point in time we had him sign a statement
16 or he chose to sign a statement in Spanish laying out
17 specifically what his plea negotiations were, what his
18 rights were, and what he was doing. So that was the third
19 interpreter that we used.

20 The fourth interpreter that we used was actually the
21 interpreter that was present on the day of his plea. And
22 that interpreter, with the Court's permission, actually
23 went back -- I don't know if you're familiar with the
24 Orangeburg County Courthouse, but in the main courtroom,
25 the room back around to the right is the jury room.

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1 That's often used for client/attorney meetings. So we
2 went back into that room with the Court-appointed counsel,
3 and discussed all plea negotiations with him again.
4 Again, he told us he wanted to plead guilty. And we had
5 his permission to go and tell his family that that was his
6 final decision.

7 So we used four interpreters to establish all
8 relations to make sure that he understood. We provided
9 his discovery materials to him in Spanish. And when we
10 went over his appellate rights, he chose to file an appeal
11 and I actually had him sign his decision to file a notice
12 of intent to appeal in Spanish.

13 Q. During your discussions and preparation in this trial,
14 were you able to discuss the facts leading to these
15 charges with him?

16 A. Absolutely. Actually we had very good conversations
17 about the facts of this case.

18 He had a very complicated, what I would call a high-
19 end drug trafficking case. There was over four kilos of
20 cocaine involved in this case, \$35,000 in cash, multiple
21 drugs, a SLED search warrant signed by a Circuit Court
22 Judge, multiple people at one house, there was a
23 confidential informant.

24 And all of these were issues that were fully discussed
25 with him. There were tape-recorded phone calls between

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1 the confidential informant and Mr. Uriostegui. There was
2 a video of the evidence that was collected prior to the
3 search warrant being executed. That was gone over with
4 him. There was pictures of the crime scene gone over with
5 him in great detail.

6 And the reason that I felt so comfortable that he was
7 understanding our conversations is because we would
8 literally be discussing the evidence that was against him.
9 And we would be having a conversation. And I would say,
10 you know, Rufino, the SLED agents, the police, are saying
11 you are the leader of this drug trafficking
12 organization in Orangeburg. And we would be having, I
13 mean, he would be literally, I wouldn't say arguing, but
14 we would be having a fairly solid discussion about whether
15 or not he was the leader. And in fact, being the leader
16 wasn't an element of the crime.

17 So we were having all of these discussions in his
18 place with each other about that issue. I remember one
19 very specifically when he had decided, in one of the last
20 meetings, he decided he wanted to plead guilty. And so I
21 was going over all the collateral consequences of pleading
22 to a trafficking cocaine 28 to 100 grams; that it's a
23 violent offense; and that it's a serious offense.

24 So I was explaining this, like I do with every client,
25 saying, now you need to understand this is a violent

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1 offense, it is a serious offense, and that under our
2 strikes laws if you had another violent, another serious
3 offense, and going through that whole conversation.

4 And here is this man having a conversation with me
5 saying, I'm not violent, I'm not violent, I'm not violent,
6 I didn't do anything violent in this case.

7 If you go back and you look at the plea transcript, I
8 actually said to Judge Williams, Judge, I understand this
9 is a serious offense. I mean, and it's a violent offense
10 and those are statutory categorical designations, you
11 know, but Mr. Uriostegui wants me to make sure you
12 understand and that all the SLED agents agree, no one ever
13 said that he did anything violent, that he resisted
14 arrest, that he grabbed a gun. There wasn't any true
15 violence involved in this case but this is a statutory
16 designation.

17 So Mr. Uriostegui and I through the interpreter had a
18 lengthy conversation because, about this issue of it being
19 a violent offense and he didn't do anything violent.

20 Q. And you said you had the opportunity to review his
21 discovery file with him?

22 A. Yes. There was recorded phone calls, a video,
23 pictures, a search warrant and investigative reports from
24 law enforcement. And there was a statement by a
25 co-defendant named Pedro Mercado that we gave him in

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1 Spanish actually.

2 Q. Okay. And were you able to review that statement with
3 him and kind of go over what implications that may have if
4 you went to trial?

5 A. Absolutely. We went over -- in one of the last
6 meetings we had when Mr. Strom was present, I was present
7 and we said, you know, and we do this often in these cases
8 that, you know, where people are facing significant prison
9 sentences, you know, we basically do a role play. And
10 Mr. Strom will say, now Mr. Hood is going to be the
11 prosecutor and this is the evidence they're going to
12 present against you if you go to trial, you know, who are
13 the witnesses that are going to be called, what's going to
14 be said against you.

15 So we would go through the confidential informant and
16 in this case, and I'm going off the top of my head, the
17 confidential informant, the search warrant, the SLED
18 agents, what was found at the house, what was on the
19 video, what was on the phone calls.

20 And then Mercado's statement. Mercado had cut some
21 form of a deal with the solicitor's office, was
22 transferred to a different jail. And we knew that he was
23 prepared to testify against Mr. Uriostegui in court. And
24 he had provided a written statement stating that
25 Mr. Uriostegui was the leader of this group of people that

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1 had a bunch of drugs, for lack of a better term.

2 So, yes, we went over all of that information with him
3 in detail, multiple times.

4 Q. Okay. Regarding Mr. Mercado, did Mr. Uriostegui ever
5 bring to your attention that he had been threatened in
6 some way?

7 A. He did. He did; yes. Absolutely. I don't remember
8 the small details of it, but there was some information
9 that he or his family had been threatened, and what I told
10 him was that that information could be used to cross-
11 examine Mr. Mercado if Mr. Uriostegui decided to go to
12 trial.

13 Q. And that would have been something you would have
14 pursued had you decided to go to trial?

15 A. Absolutely. It wasn't like I could reach out to
16 Mr. Mercado because Mr. Mercado had an attorney, a paid
17 attorney that was representing him. And I was hearing
18 from the solicitor's office that he was prepared to
19 testify against Mr. Uriostegui.

20 Q. Okay. Throughout your course of representation with
21 Mr. Uriostegui, did you stay in contact with his family?

22 A. Oh, yes. I mean, I can't -- it was almost a weekly
23 event.

24 Q. Okay. And his employer, too?

25 A. I don't know of -- I never spoke to his employer.

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1 Q. Okay.

2 A. I'm not saying he wasn't employed, but I have no
3 memory of speaking with an employer. There was a brother
4 named Roberto. There was a wife named Juana. And then
5 there was a family friend name Diana or Deanna and there
6 was a wife or a girlfriend of another co-defendant that
7 constantly came to meetings at the office. And we met
8 with them north of 10 times, probably more than that.

9 Q. You recall entering into plea negotiations with the
10 State on his behalf?

11 A. Yes. I had to go directly to Solicitor Pascoe due to
12 the drug weight involved.

13 Q. Do you recall any plea offers that were extended from
14 the solicitor?

15 A. The plea offer for the first 10 months of the case was
16 20 to 25 years.

17 Q. Okay. And ultimately somewhere along the line there
18 was a plea for the lesser-included offense of 20 to 100
19 grams?

20 A. 28 to 100.

21 Q. 28 to 100. I apologize.

22 A. Right.

23 Q. And on the charges indicted he was facing a minimum
24 of --

25 A. He was facing a mandatory 25.

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1 Q. Mandatory 25. And on the lesser included it was a
2 minimum seven?

3 A. Minimum seven, maximum 25, 85 percent, violent and
4 serious.

5 Q. And his wife was present at the plea hearing when he
6 entered this plea?

7 A. Yes. She actually spoke on his behalf to Judge
8 Williams.

9 Q. Okay. Based on your representation of him and your
10 discussions with him leading to the plea, do you feel that
11 he had a full understanding and made an intelligent and
12 knowing decision to enter this plea?

13 A. Absolutely.

14 Q. Okay. I beg the Court's indulgence for one moment,
15 Your Honor.

16 THE COURT: Sure.

17 (Pause.)

18 BY MR. CORNEY:

19 Q. Just briefly. In reviewing Mr. Mercado's statement,
20 what was your opinion of the strength of that in relation
21 to Mr. Uriostegui's case if he had proceeded to trial?

22 A. That would have been the corroboration that really
23 made the case.

24 Q. Okay.

25 A. The issue in this case was the search warrant. Okay.

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1 The issue in the case was the search warrant. It was an
2 anticipatory search warrant which is very rare in South
3 Carolina. And they had taken the search warrant not to a
4 local magistrate in Orangeburg County, but they had taken
5 it to a Circuit Court Judge, Judge Dickson, to get it
6 signed.

7 So the whole time that I'm processing through the
8 first three or four months of this case, I'm thinking the
9 case is going federal and that's why they took it to Judge
10 Dickson to get it signed. You got four kilos of cocaine,
11 you got 30-something thousand dollars in cash. You got
12 multiple guns in the house. That's all the signs of a
13 federal case.

14 There's actually federal task force officers assigned
15 to the SLED team that conducted the search warrant. And
16 I'm actually in communication with the US Attorney's
17 Office with Assistant JD Rowell and DEA Agent Barry Wilson
18 because they're wanting Mr. Uriostegui to cooperate
19 because they believe he's the controller of the cocaine in
20 Orangeburg County.

21 So that's going on in the background of this entire
22 case.

23 So, when Mercado -- you got to remember, the snitch,
24 the confidential informant, excuse me, Your Honor, the
25 confidential informant -- I'm sorry. The confidential

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1 informant had informed SLED that they had purchased
2 cocaine over 30 times from Mr. Uriostegui.

3 So you take that information and then Mr. Mercado's
4 statement comes in. Here's one of the co-defendants who's
5 actively present during this whole search thing that
6 essentially corroborates, you know, what the snitch is --
7 what the confidential informant is saying and what the
8 search warrant and the video shows, you know. That's a
9 big issue.

10 Now would I have cross-examined Mr. Mercado?
11 Absolutely. Would we have used the threat information
12 against him? Absolutely. Would I have used the
13 information that he was getting some form of a deal to a
14 lesser charge and was hoping to get a lower sentence?
15 Absolutely.

16 But that didn't play itself out, but I believe
17 Mercado's statement would have been crucial in this case.
18 Q. And at some point Mr. Mercado started cooperating with
19 law enforcement and was moved out of the Orangeburg County
20 Jail?

21 A. That's right.

22 Q. Do you have any idea of the date on that or when it
23 may have happened?

24 A. The date of his statement -- if you give me just a
25 moment, I'll find it. The date of his statement, the

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1 memorandum of interview was done May 13th, 2009. Stated
2 that he was interviewed on May 13th, 2009 with his
3 attorney, and shortly after that or sometime around that,
4 he was moved to a different detention facility.

5 MR. CORNEY: Okay. that's all the questions I have,
6 Your Honor.

7 THE COURT: Okay. Cross-examination?

8 MR. WILKES: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. WILKES:

11 Q. Mr. Hood, you'd agree that 14 times is a pretty good
12 number of times to visit a defendant to explain his
13 rights?

14 A. Yeah. We went every time they wanted us to go and
15 more.

16 Q. But would you agree that no matter how many times you
17 go, the key to the effectiveness still boils down to the
18 translation?

19 A. Sure. And that's why we switched translators.

20 Q. You had to go through four different ones?

21 A. No. I had to go through two different ones. I chose
22 to bring the third and fourth one in just to protect
23 things and make sure Mr. Uriostegui understood everything.

24 Q. And any consideration in that, that the difficulties
25 with communication might not be all translation, might

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1 have something to do with his never having any education?

2 A. Well, I actually did a full debriefing of
3 Mr. Uriostegui myself, so I knew about his limited
4 education. And based on my history with other Hispanic
5 clients, just the education system in general it's -- the
6 issue's not only education but so many clients I have are
7 just aware of and understand how the criminal justice
8 system works in general, kind of the nuts and bolts of
9 it. So there's a different playing field.

10 And with Mr. Uriostegui that wasn't present, so we
11 took the extra time to go through the little issues that,
12 you know, you could have gone over -- you could have
13 skipped over with some other people about how the court
14 proceedings would work, you know, what was going to
15 happen.

16 Like, when he mentioned the two times that I wasn't in
17 court, those were -- and, Your Honor, I know you're aware
18 of this -- the first and second appearances. You know, at
19 one I showed up at two with the solicitor's permission and
20 with the other one, I was at a circuit court judge's
21 funeral. And I had the solicitor's permission, you know,
22 not to be there. I knew there was nothing substantive
23 that was going to happen. There was no judge that was
24 going to be on the bench. Nothing major was going to
25 happen in either one of those.

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1 But sometimes in explaining that, when we're dealing
2 with a language barrier, we kind of baby stepped that to
3 make sure they understood it.

4 Q. Let me ask you this. Your recall is excellent and I'm
5 sure you'll recall the particulars as to mere presence.
6 Did you go over that with him?

7 A. I have no recollection of going over mere presence
8 with him, probably about because based on my review of
9 case I don't think mere presence is applicable.

10 I mean, Mr. Uriostegui is standing in a room on video
11 and a co-defendant is holding four kilos of cocaine in his
12 hand. The snitch asked -- the confidential informant
13 asked the co-defendant, I want the price lowered. The
14 price was \$91,000. The co-defendant looks at
15 Mr. Uriostegui and in Spanish asks him, can you lower the
16 price of the cocaine. And Mr. Uriostegui replies, no.

17 Further when the confidential informant showed up at
18 the house, he walked up to Mr. Uriostegui and gave him a
19 hug and they all went in the back room to do the deal.
20 And as they were leaving the house, Mr. Uriostegui said to
21 the confidential informant, next time you come back here
22 please don't bring any more black people around because
23 the police will think we're dealing drugs here.

24 So I wasn't really concerned with the mere presence
25 charge.

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1 Q. From your viewpoint.

2 A. Right.

3 Q. But from his, did he ever admit that he was dealing
4 drugs?

5 A. Yes.

6 Q. What would his testimony have been?

7 A. What would his testimony have been or what did he
8 admit to me?

9 Q. Did he discuss what his testimony at trial would be?

10 A. No.

11 Q. Okay.

12 A. But did he admit to me that he was involved in dealing
13 drugs? Absolutely.

14 Q. What did he tell you?

15 A. Would you like me to get my notes out?

16 Q. Yes.

17 A. Okay. He went through -- there was a point in time
18 when Mr. Uriostegui decided he wanted to consider
19 cooperating with the federal government. At that time I
20 started my normal process of debriefing clients to prepare
21 them to be able to cooperate with the federal government.

22 Here it is. November the 24th, 2009 at the
23 Orangeburg County Regional Detention Center. The
24 Defendant wants to cooperate. We are here for a
25 debriefing with just us. I began with his drug use. We

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1 went through marijuana, cocaine, crack cocaine,
2 methamphetamine, heroin, MDMA, and his use of all of those
3 drugs and which of those drugs he has sold and which of
4 those drugs he has not sold.

5 He admitted to me that he's been using marijuana for
6 14 years. He's a regular user. He sold marijuana. He
7 sold 15 pounds of marijuana at one time, at least three
8 different occasions. He told me that he's been using
9 cocaine since he was 26 years old up to the date of his
10 arrest once a week. He sold cocaine. The most cocaine
11 he's ever sold is four kilos at one time. He's done that
12 at least three times, and has seen more than seven kilos
13 of cocaine at one time being delivered to him. He had
14 nothing to do with crack cocaine, meth, heroin, MDMA, or
15 any other drugs.

16 Do you want me to keep going?

17 Q. No. That's good. Is that the basis of what you had
18 informed the Court as to his drug use?

19 A. Yes.

20 Q. That's where that came from?

21 A. Yes.

22 Q. Okay.

23 A. And we had decided -- we had made -- I'm sitting in a
24 situation where I'm pleading in front of Judge Williams.
25 And you have to understand the complexity of his case as

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1 it comes to the point of a plea.

2 There was four or five people in this case that were
3 all charged. There were at least one or two that were
4 never found. So as we come into really getting into heavy
5 plea negotiation, I believe, in 2010, and this is a case
6 that Solicitor Pascoe is making all the decisions on
7 because it's such a big case.

8 The head of SLED narcotics at that point is in charge
9 of the case. And one of the co-defendants who everybody
10 admits and everybody agrees was nothing more than a
11 lookout, was represented by a lawyer from Charleston who
12 none of us knew, and he pled in front of another circuit
13 court judge and got 16 years.

14 So, I walk into this situation where I'm trying to
15 negotiate, trying to negotiate. I'm trying to get in the
16 three to 10 range with cooperation or seven to 25 range
17 without it.

18 And this guy comes in and pleads guilty and gets 16
19 years. So, and our meeting with Judge Williams back in
20 chambers with Solicitor Pascoe, you know, Judge Williams
21 is going, you know, the lookout got 16, I'm going to give
22 him more.

23 So, you know, we're in a tactical decision of what are
24 we going to say --

25 Q. Right.

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1 A. -- about this client in this situation that's the
2 truth --

3 Q. Uh-huh.

4 A. -- that, you know, that we can reasonably believe is
5 true to try to get him as low a sentence as possible
6 because he ultimately decided not to cooperate. That's
7 why I went into the facts based on the information he had
8 provided me on November the 24th of 2009, that he was a
9 habitual cocaine user.

10 Q. At that plea -- go back to the threat letter.

11 A. Okay.

12 Q. Do you have that letter?

13 A. No. I went through the entire file and I, I do not
14 know that I have it.

15 Q. Okay.

16 A. I remember the threat letter. And threats are
17 extremely common in these types of cases. And I don't
18 doubt the validity of it in any way, shape or form. I
19 mean, these people have guns and money.

20 But my issue is, you know, what am I supposed to do
21 with this letter that somebody has written somebody about
22 somebody who's really, no one knows if anybody's names are
23 real or anything else.

24 You know, could I use it to cross-examine Mercado if
25 he takes the witness stand? Sure. But, you know, at that

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1 point -- and I had already gotten Mr. Uriostegui a bond
2 reduction. Mr. Uriostegui was sitting in the jail with a
3 \$750,000 bond. We went and had a bond hearing in front of
4 Judge Seals, and I got his bond reduced to \$400,000.

5 Q. But he never got out?

6 A. No, he never got out. But, I mean, I got his bond
7 almost cut in half.

8 Q. Right. Let me try to end with this. On the threat
9 letter, assuming that Mr. Uriostegui believed it and was
10 seriously concerned about it, is there any reason you
11 would have that he wouldn't be?

12 A. No, no.

13 Q. Okay. Assuming that that is a factor in his decision,
14 that never came up at the plea?

15 A. No.

16 Q. Would that have been appropriate as counsel when the
17 Judge asked the question, have you been threatened? Even
18 though he is saying no, if you know that that is a reality
19 or a potential reality, would it not have been better to
20 place it on the record and have that inquired about?

21 A. No, because I don't, I don't have enough recollection
22 of it to say that the threat was -- it wasn't -- we didn't
23 know who it was from or anything about it.

24 Q. I understand, but you do agree and you had said --

25 A. And the question --

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1 Q. -- those threats are real?

2 A. The question from the Judge is, has anyone threatened
3 you to plead guilty. And his answer to that was no.

4 Q. I understand that. But my question is: If you have
5 reasonable belief that that might not be the accurate
6 answer and you have independent knowledge of that letter,
7 should that not have been put on record and clarified
8 specifically?

9 A. Well, let's say that it was, so Judge Williams says,
10 well, who threatened you. And he's going to say, I don't
11 know.

12 Q. Not my point. But his state of mind.

13 A. Right.

14 Q. To at least have the Judge inquire as to his state of
15 mind and if that had been brought up and he said yes, sir
16 as a matter of fact, I feel I need to plead guilty for my
17 family's sake. If that had happened, then the plea would
18 not have gone through; right?

19 A. Well, I wouldn't go that far.

20 Q. But possibly?

21 A. I mean, you got to remember the threat is more than 10
22 months before the plea.

23 Q. I understand that. But --

24 A. And the threat --

25 Q. We have not made this conversation on the --

ROBERT E HOOD - EXAM BY THE COURT

1 A. And the threat never comes up in conversation again
2 with the client.

3 Q. I understand that but it did come up, it did exist.
4 We agree they're real?

5 A. Sure.

6 Q. Should that conversation and should that inquiry not
7 have been on the record knowing that is a possibility?

8 A. I think it can go either way.

9 MR. WILKES: Thank you. Thank you, sir.

10 THE COURT: Redirect?

11 MR. CORNEY: No questions, Your Honor.

12 THE COURT: What do you mean it could have gone
13 either way? What does that mean?

14 THE WITNESS: Judge Williams is in the middle of a
15 colloquy, Your Honor. And he says, have you been
16 threatened. And say Mr. Uriostegui says, yes, I have, you
17 know, one of the co-defendants threatened me with pleading
18 guilty. Then Judge Williams would have more than likely,
19 in my opinion, fleshed that issue out.

20 I think when he fleshed that issue out as to any
21 substance to that threat or anything that anybody can
22 specifically put it on as to what would happen or when it
23 would happen or how it would happen or who said it or when
24 they said it or what they said or the substance of it or
25 if anything else has happened since that time then Judge

ROBERT E HOOD - EXAM BY THE COURT

1 Williams would have still taken the plea because he would
2 have said, well, do you still feel threatened today.

3 THE COURT: That's not the question. The question
4 isn't, has anybody ever threatened you. The question
5 is --

6 THE WITNESS: Because --

7 THE COURT: -- you know, are you pleading freely and
8 voluntarily. Has anyone -- has anyone forced or
9 threatened you to cause you to plead guilty.

10 THE WITNESS: Right. But, I mean, I would say in the
11 majority of my Hispanic drug cases, they all say they've
12 been threatened at some point by somebody to do
13 something. But, I mean, that doesn't mean that he
14 believes that if he doesn't plead guilty that something's
15 going to happen to him.

16 THE COURT: But who owns that information?

17 THE WITNESS: He does. The client does.

18 THE COURT: And you're saying that whatever had
19 occurred, it occurred 10 months earlier?

20 THE WITNESS: What I'm saying is Mr. Mercado is out
21 of -- Mr. Uriostegui gets arrested in April. Mercado's
22 out of the jail by May. We don't plead until the
23 following April. So we're -- significant time has
24 passed. And let's think about this threat. I mean,
25 allegedly this threat came from Mr. Mercado.

ROBERT E HOOD - EXAM BY THE COURT

1 THE COURT: Allegedly.

2 THE WITNESS: I don't know. I literally -- I mean, I
3 remember having a conversation about a threat but based on
4 Mr. Uriostegui's testimony earlier it was from Mercado or
5 somebody in Mercado's family. But then this is the same
6 Mercado who has fully cooperated with the police, given a
7 statement, has an attorney and who's going to plead
8 guilty. So, that doesn't make any sense if that's the
9 person threatening Mr. Uriostegui.

10 THE COURT: I thought he said they were in the same
11 room.

12 THE WITNESS: They were up until Mercado begins
13 cooperating. But as to the validity of the threat, it
14 doesn't make sense that the person who's threatened him is
15 now completely cooperating with the police 10 months
16 later.

17 THE COURT: Did you ever have -- was -- I understood
18 his testimony that he was in the same room and the guy
19 said something to him.

20 THE WITNESS: My memory is it's a letter to a family
21 member. Now, and I'm literally -- I cannot point to
22 anything specifically in any way, shape or form. My
23 memory is that it's a letter to a family member.

24 THE COURT: Well, that's not what he testified to.
25 What he said is they were in -- I thought -- I thought he

ROBERT E HOOD - EXAM BY THE COURT

1 said two things. I thought the first thing that he said
2 is that he's in court getting ready to plead. He's
3 sitting back in the room with Mercado and right before he
4 pleads, Mercado said, if you don't plead guilty somebody's
5 going to kill your family.

6 THE WITNESS: No.

7 THE COURT: Well, hold on. I thought that's what he
8 said the first time. And then it changes. And they're in
9 the same room. And that room, I think, then is the jail,
10 and there's some kind of threat but again I think it's a
11 whirl and shortly after that they moved.

12 THE WITNESS: Yeah.

13 THE COURT: So why do you say, why do you think
14 there's a letter in this instance?

15 THE WITNESS: I have some memory of a letter.

16 THE COURT: All right.

17 THE WITNESS: But I have no memory of Mercado and
18 Uriostegui being together in court on the day of the plea.

19 THE COURT: Okay.

20 MR. CORNEY: And, Your Honor --

21 THE COURT: I mean, I don't care if anybody asks him,
22 but I didn't think he was very clear about it.

23 MR. CORNEY: I don't have any questions on it, Your
24 Honor, but Mr. Mercado is another PCR applicant that we've
25 had recently. I'd be happy to look through his file and

RUFINO URIOSTEGUI - REBUTTAL

1 see whether he even pled on the same day, whether it was
2 even possible for them to be in the courtroom on the same
3 day, to see if that happened. I can pull his file and
4 kind of maybe shed some light on that at least.

5 MR. WILKES: No further questions. I think I've
6 asked enough. I could redirect on that. I think he's
7 explained what he understood the letter was to the best of
8 his recollection, but it won't do any good for me to ask
9 him any more questions about that.

10 THE COURT: Okay. I don't have any questions. Thank
11 you so much.

12 MR. WILKES: You're welcome.

13 THE COURT: Is Mr. Hood free to go? Yes, yes?
14 Bye-bye. Thank you, sir.

15 THE WITNESS: Thank you, Your Honor.

16 MR. CORNEY: No further witnesses for the State.

17 THE COURT: Reply?

18 MR. WILKES: May I have one second, Your Honor?

19 THE COURT: Sure.

20 (Pause.)

21 MR. WILKES: Your Honor, if I may recall
22 Mr. Uriostegui.

23 THE COURT: Sure.

24 MR. WILKES: And I'll ask him exactly.

25 RUFINO URIOSTEGUI, testified further under oath,

RUFINO URIOSTEGUI - REBUTTAL

1 through his interpreter, as follows:

2 FURTHER DIRECT EXAMINATION

3 BY MR. WILKES:

4 Q. Tell me about the threats you received and how you
5 received them.

6 A. In the letter it said that if I didn't plead guilty
7 that my family would be killed.

8 Q. Now, who was the letter to?

9 A. The letter was sent to Pedro's family. His boss sent
10 it to Pedro.

11 Q. And the boss would be where? Where did this letter
12 supposedly come from?

13 A. From Atlanta.

14 Q. Okay. And it's sent to Pedro's family; did you say
15 that?

16 A. Yes. Pedro's family sent it there to the county to
17 Pedro.

18 Q. And Pedro's last name is?

19 A. Pedro Mercado.

20 Q. That's the fellow that was in the cell with you;
21 right?

22 A. Yes.

23 Q. Okay. And how did you see the letter?

24 THE INTERPRETER: I'm sorry. Can I ask for a
25 repetition of that question?

RUFINO URIOSTEGUI - REBUTTAL

1 Q. How did you see that letter?

2 A. When he was moved from there he left everything. He
3 left photos, letters; everything.

4 Q. And that's how you got the letter?

5 A. Yes. That's when I saw it.

6 Q. I understand. Did Pedro Mercado make any threats
7 directly to you?

8 A. Yes, he told me there in the room that I should take
9 all the blame because if I didn't that my family would be
10 hurt.

11 Q. Did you believe that?

12 A. Well, yes, I really did.

13 MR. WILKES: No further questions. Thank you, Your
14 Honor.

15 THE COURT: Whoa, whoa, whoa.

16 MR. WILKES: I'll come back, Your Honor.

17 THE COURT: Here's my notes. I made notes.

18 MR. WILKES: Yes, ma'am.

19 THE COURT: In the letter it says if he doesn't plead
20 guilty his family's going to be killed. The letter is
21 sent to Pedro's family in Atlanta.

22 MR. WILKES: Who --

23 THE COURT: And Pedro is Pedro Mercado.

24 MR. WILKES: Yes, ma'am.

25 THE COURT: And he gets the letter by going through

RUFINO URIOSTEGUI - REBUTTAL

1 Pedro's stuff once Pedro leaves.

2 MR. WILKES: He, he comes in possession of it but I
3 think what he said, and I'll ask him again, is that Pedro
4 informed him of the letter but he got the letter -- I
5 think he got possession of it -- I can clarify that.

6 THE COURT: Do that.

7 MR. WILKES: I will.

8 THE COURT: And then ask him, was the letter sent
9 from Atlanta or to Atlanta.

10 MR. WILKES: I will.

11 MR. CORNEY: Your Honor, I think he's been prompted
12 as to the answer to give at this point.

13 THE COURT: I don't know. I don't know what it is.
14 They kind of change a little bit, too, but --

15 MR. CORNEY: Judge, I understood his testimony a
16 minute ago was that he got it when Pedro left the jail and
17 everything was left there. I think that was his statement
18 and I think that explains it right there that he got it --

19 THE COURT: Thank you. I've got to make those
20 decisions. Thank you.

21 MR. CORNEY: Yes, ma'am. I'm sorry.

22 MR. WILKES: He got it, I don't know how it's
23 translating but there may be a difference when I'm asking
24 him got it as in physical possession of it or when he
25 first learned of it. Let me ask that question.

RUFINO URIOSTEGUI - REBUTTAL

1 THE COURT: Use a different word. It works for me.

2 MR. WILKES: I'm sorry.

3 THE COURT: Use a couple different words.

4 MR. WILKES: I have no idea how this is translating.

5 Q. Mr. Uriostegui, when did you first see the letter?

6 A. When Pedro was moved he left it there. He left all of
7 his things.

8 Q. Okay. Pedro Mercado, did he ever tell you what was in
9 that letter before you found it in his stuff?

10 A. Yes. He had told me that his boss had, had been --
11 had said that and had sent someone to say that.

12 Q. Okay. So, Mercado told you before you found the
13 letter, okay, and you found the letter when he left?

14 A. Yes. I found it there and I gave it to the lawyer.

15 Q. Okay. I understand. Where -- and the letter was sent
16 to Pedro from somewhere in Atlanta. Is that what you're
17 saying?

18 A. His wife, I think it was, sent it to him there.

19 Q. Okay.

20 THE COURT: Help me.

21 MR. WILKES: I'm cutting off -- she speaks Spanish.
22 She told me I'm cutting off the interpreter from being
23 able to hear me and answer the whole question.

24 THE COURT: You can stay up here if you would.

25 MR. WILKES: I wish she would because it would be so

RUFINO URIOSTEGUI - REBUTTAL

1 much better. I was going too fast. I'm sorry.

2 Q. I made it more complicated than it is. Did you
3 receive -- were you threatened by Pedro before you saw the
4 letter?

5 A. Yes.

6 Q. Okay. And after that, he left, is when you found the
7 letter; is that correct?

8 A. Yes. All his stuff was there. There was letters and
9 I read it. That's what it said.

10 Q. Okay. Did I clarify that for the Court?

11 THE COURT: Huh-uh. Huh-uh.

12 MR. WILKES: I understand him to say that his
13 roommate told him, conveyed the threat and then it was in
14 essence confirmed once he got the letter.

15 THE COURT: Something about wife. Some wife did
16 something from something in Atlanta as opposed to the boss
17 sent someone.

18 MR. WILKES: The letter got routed to the wife who
19 routed it to Pedro.

20 MS. MORGAN: The boss sent the letter.

21 THE COURT: This is coming from the boss.

22 MR. WILKES: It's coming from someone through Pedro's
23 family.

24 MS. MORGAN: The boss sent the threat to Pedro's wife
25 who sent it to Pedro who threatened him.

RUFINO URIOSTEGUI - REBUTTAL

1 THE COURT: Ask him that.

2 MR. WILKES: Okay.

3 Q. Where did the letter come from? Who mailed the letter
4 to Pedro Mercallis -- Mercado.

5 A. His wife -- (Defendant still speaking) -- but they
6 live together. His boss and Pedro's wife are siblings.

7 Q. Oh, okay. Was the letter written by Pedro's wife --

8 A. Uh-huh.

9 Q. -- or was it written by someone else?

10 A. Between the both of them. Pedro's wife and her
11 brother, the -- his boss, they wrote it to Pedro.

12 Q. And it got mailed to Pedro?

13 A. It was sent to Pedro.

14 Q. Okay. Does that make sense? I figured it out now.

15 THE COURT: From?

16 MR. WILKES: It came from Atlanta.

17 MS. MORGAN: Wait. Wait. He didn't say that.

18 MR. WILKES: He didn't say that.

19 MS. MORGAN: Ask him where they lived.

20 BY MR. WILKES:

21 Q. Where do they live? Where does Pedro's wife and her
22 brother live?

23 A. In Atlanta.

24 MR. WILKES: They mailed -- the wife and the brother,
25 they mailed it and then that's how it came. Thank you,

RUFINO URIOSTEGUI - SURREBUTTAL

1 Your Honor. Sorry, I made that confusing.

2 THE COURT: Okay. Do you guys have any follow-up
3 questions?

4 MR. CORNEY: Thank you, Your Honor.

5 THE COURT: Sure.

6 MR. CORNEY: Just briefly.

7 THE COURT: Sure.

8 FURTHER CROSS-EXAMINATION

9 BY MR. CORNEY:

10 Q. Who was this letter written to; you or Pedro?

11 A. To Pedro.

12 Q. So this letter threatening was to Pedro, it was
13 threatening Pedro to plead guilty?

14 A. No, it was sent to him so that he --

15 THE COURT: Who's him?

16 THE WITNESS: So that he would tell me that I should
17 plead guilty.

18 THE COURT: Do me a favor. Whoa. If he gives -- I'm
19 going to ask you to stop him. I don't want any pronouns.
20 If he says, his, please feel free to stop him and say who
21 is his. I don't want any pronouns. Pronouns do not help
22 me.

23 THE WITNESS: Your Honor, I would respectfully
24 request that the attorney or the Judge stop -- the
25 interpreter, the interpreter can't direct the witness when

RUFINO URIOSTEGUI - SURREBUTTAL

1 to answer or not to answer. Does that make sense?

2 THE COURT: Sure, you can. If I say, whoa, stop.

3 You should say to him, stop. Okay. You're not directing
4 him. You're interpreting. I just stopped him because
5 pronouns in this case with an interpreter are maddening.

6 THE INTERPRETER: I understand.

7 THE COURT: So I'm asking you to ask him then, do not
8 use a pronoun.

9 THE INTERPRETER: Interpreter understands.

10 THE COURT: Use names.

11 THE INTERPRETER: Okay.

12 BY MR. CORNEY:

13 Q. So the letter was written to Pedro?

14 A. To Pedro.

15 Q. Telling Pedro to tell you, Rufino, to plead guilty?

16 A. Yes, that I take the blame.

17 Q. This was a letter that was written, that you saw
18 before -- or that Pedro told you about before he was
19 transported out of the Orangeburg Jail?

20 A. Yes. He had said something -- Pedro had said
21 something to me before when the letter came.

22 Q. And that was almost a year before you entered this
23 guilty plea?

24 A. Yes. The time that I showed it to him, that was the
25 time.

RUFINO URIOSTEGUI - EXAM BY THE COURT

1 MR. CORNEY: No further questions, Your Honor.

2 THE COURT: Okay. He can come back down. Any
3 additional?

4 MR. WILKES: No, Your Honor.

5 MR. CORNEY: And, Your Honor, before he -- I know
6 he's walking away right now but I want to ask one more
7 time to make sure he understood all those conversations we
8 just had, all of the questions we just posed unless you
9 feel comfortable with the way we had done it before.
10 There was a lot of questions flying back and forth.

11 THE COURT: Hold on.

12 MR. CORNEY: Yes, ma'am.

13 THE COURT: Ms. Lester.

14 THE INTERPRETER: Yes, ma'am.

15 THE COURT: I'm going to ask you to please stand
16 right there with Mr. Uriostegui, please.

17 THE INTERPRETER: (The following answers are through
18 the interpreter.)

19 EXAMINATION

20 BY THE COURT:

21 Q. Mr. Uriostegui, you understand you are under oath?

22 A. Yes, I understand.

23 Q. Which means you ought to tell me the truth.

24 A. Yes, the truth.

25 Q. Have you understood each and every question that has

1 been asked of you this day in this proceeding?

2 A. Yes, yes.

3 Q. Are there any questions that have been asked of you
4 today that you did not understand?

5 A. No, I understand everything.

6 Q. Have you understood the translation by Ms. Lester?

7 A. Yes.

8 Q. Is her dialect a dialect that you understand?

9 A. Yes.

10 Q. Is her Spanish Spanish that you understand?

11 A. Yes, yes.

12 THE COURT: Okay. Thank you. All right.

13 Anything further from, first of all, from the
14 Applicant?

15 MR. WILKES: From the Applicant, no, Your Honor.

16 THE COURT: All right. From the State?

17 MR. CORNEY: Nothing further from the State, Your
18 Honor.

19 THE COURT: All right.

20 MR. WILKES: If Your Honor would allow me to say a
21 couple legal points, I would.

22 THE COURT: And I want to -- there are a number of
23 different items which have been listed as ineffective
24 assistance of counsel. And I want to know which ones I
25 should be concerned about.

1 MR. WILKES: Only those that raise his understanding,
2 conversations with his lawyer, his -- those, those issues
3 are important. He also raised the issue of, kind of a
4 global issue as far as mitigation or developing the
5 specific facts of the case.

6 To the extent that Mr. Hood's representation seems to
7 be thorough, he had information, I don't think the
8 question that is that Mr. Hood did not prepare the case or
9 do all the things he should.

10 The question is, did Mr. Hood properly ensure that he
11 was informed, that he understood, knew what was going on.

12 And, of course, the other issue is at the plea time
13 whether or not he fully understood the nature of the plea
14 and whether all of the plea proceedings were adequately
15 done.

16 And in this case the biggest issue I think is, and
17 there's obviously confusion on the letter, but there was
18 no question that Mr. Hood agreed there was a letter. The
19 letter conveyed a threat to the Applicant. The Applicant
20 believed it. And so it existed.

21 And the legal question that's presented is, is it
22 Mr. Hood's prerogative to make a decision as to whether or
23 not subjectively he is under the influence of this threat
24 that he's been told about.

25 And I think that part of the essential colloquy in

1 the plea is, have you been threatened. And that question
2 by the Court is always to test the voluntary nature of the
3 plea. And in this case I think that it was the Court's
4 determination that it's necessary to be on the record as a
5 result of the colloquy.

6 If it's not, in this case the plea is defective. And
7 Mr. Hood should have, and although he did tremendous
8 things throughout the case in preparing the defense and
9 evaluating it, there's no question about it, but he just
10 made a judgment that was not his prerogative to make. He
11 made a judgment as to the effect of the threat on this
12 man's family on the voluntariness of the plea and whether
13 or not he would inform the Court of that.

14 The Applicant, of course, said no, but the legal
15 question is: Effective representation, does it require
16 the attorney who knows that there's a threat, there is
17 definitely a threat. He agrees that these are made often
18 and that they can be very real because these are very
19 serious people that make these threats.

20 So our position is that, for effective assistance of
21 counsel, that was something that was required to be
22 conveyed to the Court, for the Court to make the inquiry
23 and to make a ruling on voluntariness of the plea.

24 That's, that's the essence of our case.

25 THE COURT: Tell me why, Mr. Wilkes, you believe that

1 the situation with the letter, and it is my understanding
2 that this letter was written 10 months earlier.

3 MR. WILKES: Yes, Your Honor.

4 THE COURT: And here are the questions. And I want
5 you to -- and then I want you to let me go through my
6 explanation and then I'll ask you the question.

7 Question: The State has made no recommendation. Has
8 anybody promised you anything or threatened you to get you
9 to plead guilty, no. Have you understood all of my
10 questions, yes. Have you answered my questions
11 truthfully, yes.

12 Now, tell me what is your position regarding whether
13 or not Mr. Hood is ineffective and how at this juncture in
14 this plea.

15 MR. WILKES: Yes, ma'am. At that point, the very
16 nature of a threat would take away the free and voluntary
17 nature of his response or his decision to plead guilty as
18 far as the Applicant goes. In other words, if he is
19 threatened his answer will always be no. If he's
20 threatened to plead guilty or something will happen to his
21 family and the Court says, well, have you been threatened
22 the answer will always be no because he has to plead
23 guilty or harm will come to his family. The question --

24 THE COURT: That's not the question.

25 MR. WILKES: I'm sorry. I'm just building up.

1 So, that much may be a given. The big question is:
2 What is Mr. Hood's duty at that point? Mr. Hood is aware
3 that there's a potential, I'm not even going to go to the
4 assumption that it is. But let me just say, the potential
5 that there is a letter that exists. It was a threat.
6 That threat was communicated to Mr. Hood. So it's not
7 nebulous. It was specifically communicated to him. And
8 he knows Mr. Hood is aware of the severity of such things
9 because he's dealt with them. So he knows they can be
10 very serious.

11 And so at that point what is the duty of a lawyer
12 allowing his client to plead guilty without -- if the
13 question is, does he have a duty to raise it to the Court
14 to say, Your Honor, he's answered no, but I will tell you
15 that there was an instance he raised to me that he was
16 threatened. And I think the Court needs to inquire, does
17 that threat influence his plea because that was the
18 purpose of colloquy.

19 THE COURT: But that was the question, though.

20 MR. WILKES: It was the question to him, the
21 Applicant.

22 THE COURT: Right.

23 MR. WILKES: But the question is if the Applicant is
24 being threatened and is therefore going to say no, no, I
25 have to plead guilty, should the attorney say, Your Honor,

1 there is an issue we need to address. If the person has
2 not taken his medication or he's under the influence and
3 he says no, I'm not under the influence today and the
4 attorney knows that he is absolutely just stinking drunk
5 but he carries it off well. Does the lawyer have an
6 obligation to say, Your Honor, this plea might not be
7 right today. I think my client might not should be making
8 a decision today or should he allow him to go ahead with
9 the plea.

10 It's the same sort of decision. The attorney has
11 knowledge that is being addressed, an issue is being
12 addressed, the voluntariness of the plea. And he has
13 knowledge that there could be an issue there and that
14 there has been a threat.

15 The whole purpose of the question from the Court is
16 to determine if there is, is there any influence on him.
17 And the whole nature of being threatened or coerced into
18 pleading guilty is going to force an applicant or a person
19 pleading guilty to actually deny the threat because that's
20 inherent in the whole situation.

21 The question is, if that is possible at that time
22 does the lawyer have a duty to address it. Even if he
23 doesn't subjectively, I guess we would say, believe that
24 it is influencing his client or maybe he's made some
25 decision, but should he raise that to the Court have the

1 Court address it because that's the Court's concern and
2 the Court's decision, not the lawyers.

3 THE COURT: Okay.

4 MR. CORNEY: Your Honor, regarding just Mr. Hood's
5 effectiveness overall, I think his testimony up there has
6 spoken for itself. I mean, as far as their
7 communications, Mr. Uriostegui, and I know I'm not saying
8 that right, Mr. Uriostegui, I apologize, his understanding
9 of the charges, the sentence that he's facing, the
10 indictments and his desire to enter this plea.

11 He testified that for months and months he didn't
12 want to enter a plea and then all of a sudden this threat
13 comes to the front of his mind, six, seven, eight months,
14 maybe even more, almost a year after it's made this
15 threats comes to the front of his mind and he says, oh,
16 never mind now. I want to enter the plea.

17 And I think it's important to note that if this
18 threat was such a significant factor and it's such a
19 thrust of their case, why is it not even pled in his
20 application? That's not even an allegation he made in his
21 PCR application.

22 And at this point I feel like this threat has become
23 this big issue and blown into this reason that he had to
24 enter this plea and he did it unknowingly. He didn't even
25 put it in his PCR application. It was the main crux of

1 the reason he entered this plea --

2 THE INTERPRETER: Your Honor, if I may the
3 interpreter is having a little trouble catching up. I
4 respectfully request --

5 MR. CORNEY: I'm getting fired up, Judge. I
6 apologize.

7 MR. WILKES: He's on a roll.

8 THE COURT: Thank you. And I'm so sorry for not
9 looking after you.

10 THE INTERPRETER: Yes, ma'am.

11 MR. CORNEY: And so I, I think if it was, if it fits
12 the crux that he wants to rely on this point, it should
13 have been something at least raised in his application. I
14 know you can consider these allegations that he brings on
15 the stand at this point, but I think that's worth taking
16 into consideration.

17 And, based on the testimony, this threat was given
18 nearly a year before he entered his plea. And Mr. Hood
19 was told about it in some way, shape or form but Mr. Hood
20 also testified he never heard about it again for months
21 and months leading up to this plea.

22 If this is in the front of his mind, making an
23 involuntary plea, surely he's going to say something going
24 into this plea hearing to his own attorney. And so I
25 think that there's been a lot of inconsistencies in the

1 testimony presented by the Applicant today. And I think
2 that the Court should look at his testimony with a little
3 bit of -- with that in mind. There has been some
4 inconsistencies with what's been testified to today. And
5 the State would just rest on that, Your Honor.

6 THE COURT: Okay. All right. Thanks.

7 MR. WILKES: Thank you, Your Honor.

8 THE COURT: With regards to this matter, I'll ask for
9 proposed orders, counsel, 60 days, please.

10 MR. WILKES: Your Honor?

11 THE COURT: Yes.

12 MR. WILKES: May we please have an order from the
13 Court, if necessary, for an expedited -- if that would not
14 impose a great burden, for a transcript?

15 THE COURT: I tell you what we're going to do.
16 Here's what we will do. You guys begin with -- I need to
17 be looking over here because I think I know who's going to
18 be working on this order, if you all need longer, get
19 together and agree and call Anna and let her know.

20 MR. WILKES: That will be great. I don't want to put
21 her out. I want to make sure -- if you want us to have an
22 accurate recitation of those facts, I know. So that would
23 be most beneficial and it would help Your Honor a lot, I
24 think.

25 THE COURT: Well, very well.

1 MR. WILKES: Thank you.

2 THE COURT: Okay.

3 MR. WILKES: Thank you, Your Honor.

4 END OF PROCEEDINGS: 4:18 P.M.

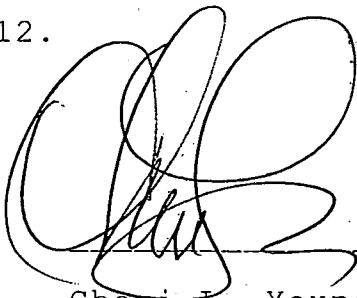
5 * * * *

6 CERTIFICATE OF REPORTER

7 I, Cheri L. Young, Registered Professional
8 Reporter, and Official Court Reporter for the State of
9 South Carolina, do hereby certify that the foregoing
10 transcript of proceedings heard on Wednesday, November
11 30th, 2011, in Saint George, South Carolina, was reported
12 by me using machine shorthand and realtime computer-aided
13 translation and is a true, accurate and complete
14 transcript of the proceedings had and evidence introduced
15 in the hearing of the matter.

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

18 I have hereunto set my hand this Friday, the 24th
19 day of February, 2012.

20
21
22  06/5/12
23 Cheri L. Young, RPR
24 Official Court Reporter
25

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2010-CP-38-1395

Rufino Uriostegui, # 340216.

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 23, 2010. The Respondent made its Return on August 10, 2010. An evidentiary hearing into the matter was convened on Wednesday, November 30, 2011, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by W. Jeff Wilkes, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf, communicated through Lydia Lester, an interpreter sworn and certified by this Court prior to the hearing. Also testifying was Applicant's trial counsel, Robert Hood, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Orangeburg County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for Trafficking in Cocaine (400 Grams or

ATTEST: TRUE COPY

Wingia B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

More) (2009-GS-38-0724). Applicant was represented by Robert Hood, Esquire. On April 7, 2010, the Applicant pled guilty before the Honorable James C. Williams, Jr. to the lesser offense of Trafficking in Cocaine (28-100 Grams). Applicant was sentenced to sixteen (16) years incarceration.

A notice of appeal was filed. The appeal was dismissed on August 23, 2010, pursuant to Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was sent on September 9, 2010.

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

1. Ineffective assistance of counsel.
 - a. "...failed to refer applicant to the Office of Appellate Defense to help perfect his direct appeal."
 - b. "...did not adequately consult with the applicant prior to entering plea."
 - c. "...failed to investigate, develop, and present all available relevant and admissible mitigating evidence."
 - d. "...failed to explain the matter to the extent reasonably necessary to permit the applicant to make an informed decision regarding the plea."
 - e. "...failed to ensure that there was not a breakdown in communication because of the language barrier (the applicant only speaks Spanish)."

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).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating 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, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by

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

Lack of Understanding Due to Counsel's Failure to Secure Proper Interpreter

Applicant alleges counsel was ineffective in failing to have an interpreter present during their meetings who he could fully understand and relay all communications through. Applicant, originally from Mexico, testified he never went to school, cannot read or write English, and speaks very little English. Applicant said he retained counsel to represent him upon referral from a family member/interpreter by the name of Dianna. He went on to say counsel met with him two or three weeks after being retained to discuss the matter, during which time counsel brought an interpreter with him. Applicant testified he could not understand this interpreter very well and had a hard time comprehending the discussion. Applicant stated he met with counsel roughly ten additional times leading up to the plea hearing, at each of which counsel had an interpreter present with him. Applicant said there were four (4) different interpreters who participated in his meetings with counsel, none of which he ever understood very well. Applicant also noted counsel never spoke to him in Spanish during their meetings. Applicant alleged he knew one of

the interpreters wasn't translating Applicant's statements properly to counsel during the course of their meetings because the interpreter was "stumbling over the words in English". After being examined by this Court at the close of the hearing, Applicant said he had no problems understanding the interpreter provided at the PCR hearing, saying she "explained very well" what was occurring at the hearing.

Counsel testified he met with Applicant fourteen (14) times over the course of his representation, during all of which an interpreter was present. Counsel stated he was aware Applicant had very limited education and knew very little about the American criminal system, so he took time to explain the entire process to Applicant. Counsel said he had received word from Applicant that he was having difficulty understanding the first interpreter, a paralegal in counsel's office, and he therefore brought in a second interpreter to accompany him to all of their meetings. From there, counsel stated, he brought in a third and fourth translator out of an abundance of caution to ensure Applicant understood all conversations. Counsel said he reviewed the facts giving rise to the charges, Applicant's role as the ring leader of the group, Applicant's history of drug use/drug trafficking, all evidence against Applicant, the search warrant executed, co-defendant statements/potential testimony at trial and the collateral consequences of the plea with Applicant during the course of their meetings. Counsel said Applicant signed a statement expressing his understanding of all of his discussions with counsel, as well as signed a plea sheet setting forth the details of the plea in Spanish. In addition, counsel said he convened an "in-house counsel" meeting with Applicant prior to the plea to make sure there were no language issues standing in the way of Applicant entering a voluntary and intelligent plea, as well as had the interpreter meet with Applicant prior to the hearing to explain all plea negotiations, all of which Applicant said he understood.

This Court finds Counsel's testimony to be credible and persuasive into the issue of whether Applicant actually understood the conversations and concepts he discussed with counsel during the course of counsel's representation. Conversely, I find Applicant's testimony to not be credible. Counsel advised Applicant of all relevant issues regarding the charges he was facing, including Applicant's educational history, Applicant's history of drug involvement, the facts giving rise to the charges, the potential sentences Applicant was facing, and all evidence the State had against Applicant. Counsel plainly testified he took numerous precautions to ensure Applicant understood all of those discussions, and this Court agrees with counsel in that regard. Counsel gave Applicant all the information and advice to make an intelligent and voluntary decision on whether to enter this plea, all of which Applicant was adequately advised of through an interpreter whom Applicant was able to fully understand. According to the plea transcript, Applicant never mentioned his lack of understanding during the plea hearing, and in fact even told the plea judge he fully understood the details of his plea. Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective in his representation, namely for failing to ensure Applicant understood the relevant information relating to the plea. Further, I find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

Failure to Introduce Threat Letter at Plea Hearing/Involuntary Plea

Applicant also contends counsel was ineffective for failing to bring to the plea judge's attention a threat letter against Applicant. Applicant testified that after Pedro Mercado ("Mercado"), one of his co-defendants, was transferred out of the Orangeburg County Detention Center, he found a letter that was left in Mercado's cell telling Mercado to plead guilty to the

charges or his family would be killed. Applicant went on to say the letter was from Atlanta and was addressed to Mercado, but Mercado had also told Applicant to plead guilty or his family would be hurt. Applicant said he believed his boss sent the letter to Mercado's family in Atlanta, who forwarded it to Mercado in order to threaten Applicant to "take all of the blame" through a guilty plea. Applicant contends his plea was entered involuntarily as a result of this letter and counsel was ineffective for not addressing the letter on the record at the plea.

Counsel testified Mercado entered a guilty plea to related charges prior to Applicant's plea and was thereafter scheduled to testify against Applicant at trial if Applicant proceeded. Counsel said he reviewed Mercado's statements to police with Applicant, as well as the testimony Mercado would likely present against Applicant at trial. Counsel stated he was aware of the alleged threat against Applicant and would have used such against Mercado during his testimony at trial had Applicant decided to proceed. Counsel said he did not believe it was an important matter to place on the record at the plea hearing as he did not have a copy of the letter, had no way to know who had written the letter, and ten (10) months had passed since the threat was uncovered during which time Applicant never mentioned it again. Counsel also testified that threatening letters are unfortunately fairly common in cases of this nature, but that he does not contest that such a letter may have been found by Applicant. Finally, counsel stated one of Applicant's co-defendants who had served merely as a lookout in the drug operation had pled guilty before Applicant and received sixteen (16) years imprisonment, which helped induce Applicant to take advantage of the plea under which counsel could try to mitigate Applicant's case to try to get the least possible sentence.

This Court finds Applicant has failed to carry his burden in proving both that his plea was rendered involuntary as a result of the threatening letter, or that counsel was ineffective in failing

to bring the letter to the plea court's attention. The letter of which Applicant complains was allegedly uncovered by Applicant in the litter left behind by Mercado after he was transferred corrections institutions. The letter was neither addressed nor sent to Applicant. The threat enclosed in the letter was allegedly relayed to Applicant verbally by Mercado, in addition to Applicant seeing the threat sometime thereafter when the letter was found. At the plea hearing, Applicant explicitly told the Court he was entering his plea voluntarily without any threats inducing the plea. While counsel credibly testified he was aware some sort of threat was made against Applicant, Applicant has failed to produce the letter or some relevant, credible testimony to show the contents of the letter or how they may have affected his decision to forgo a jury trial to enter this plea. This Court finds Applicant voluntarily and intelligently entered this plea to take advantage of an advantageous plea deal under which the Trafficking charge would be reduced from "Over 400 Grams" to "10 – 28 Grams", and a Conspiracy charge would be *nolle prossed* by the State. The testimony before this Court reveals Applicant intended to proceed to trial for some ten (10) months after allegedly receiving this threat, and Applicant has failed to show his plea entered nearly a year later was a result of receiving the threat. Further, Applicant has not produced the letter to allow this Court the opportunity to examine its contents, thereby failing to prove resulting prejudice. Therefore, this allegation must be denied and dismissed.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

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.

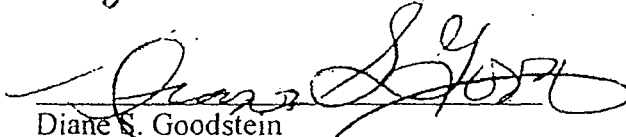
Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

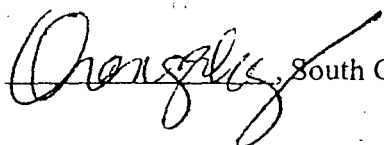
IT IS THEREFORE ORDERED:-

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

AND IT IS SO ORDERED this 28 day of March 2012



Diane S. Goodstein
Presiding Judge
First Judicial Circuit

 South Carolina.

M-195123

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Orangeburg

THE STATE
against

Rufino Brito Urioustegui

Address:

Phone: _____ SSN: none
Sex: M Race: H Height: 5 6 Weight: 180

DL State: _____ DL #: _____

DOB: 7/29/1971 Agency ORI #: SC0380000Prosecuting Agency: Orangeburg County SheriffProsecuting Officer: Martin Journey - 0771Offense: Drugs / Trafficking in cocaine, 400 g or moreOffense Code: 0281Code/Ordinance Sec: 44-53-0370(e)(2)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Rufino Urioustegui
on 4-10-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
190 Gibson Street
P. O. Box 9000
Orangeburg, SC 29116

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Orangeburg

Personally appeared before me the affiant Martin Journeybeing duly sworn deposes and says that defendant Rufino Brito Uriousteguidid within this county and state on or about 04/08/2009State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Orangeburg)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Trafficking in cocaine, 400 g or moreI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on 4/08/2009 at approximately 7:00 PM one, Rufino Brito Urioustegui did knowingly and intentionally possess more than
4000 grams of cocaine: A Schedule II controlled substance this violation took place at 2447 Charleston Highway Orangeburg, SC
29115. This Affiant knows this to be true because during an execution of a search warrant by law enforcement officers at this
residence for cocaine trafficking, This defendant was located at the residence and the investigation revealed the defendant to be
trafficking over 4000 grams of cocaine. This affiant is prepared to testify to these facts. This being in violation of the South
Carolina Code of Laws, 1976 as amended. This incident occurred in the County of Orangeburg, State of South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Orangeburg

Affiant's Address P. O. Box 9000
Orangeburg, SC 29116-
Affiant's Telephone (803)531-4647

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 4/8/2009 defendant Rufino Brito Urioustegui

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Orangeburg) as set forth below:DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 400 g or moreHaving 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 04/10/2009Signature of Issuing Judge Merce D. Williamson (L.S.)

Merce D. Williamson

Judge Code: 7008Judge's Address Post Office Box 387
Neeses, SC 29113-Judge's Telephone (803)247-2011Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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Notarized by
S.C. Attorney General
April 21, 2003
SACA 519

113
WITNESSES

J. Evans

State Law Enforcement Division

ARREST WARRANT NUMBER
M195123

Arrested: April 10, 2009

ACTION OF GRAND JURY

MAY 13 2009

Foreperson of Grand Jury

Date: May 13, 2009 *[Signature]*

VERDICT

Foreperson of Petit Jury

Date:

SECRET NO. 2009GS38-0724
The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

May 11, 2009 TERM

THE STATE
vs.

Rufino Brito Urioustegui

Indictment for

TRAFFICKING IN COCAINE, 400 G OR
MORE

SC Code: 44-53-370(e)(2)(e)

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

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2009 MAY 13 A 11:08

FILED
WINN
CLEW
ORA

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

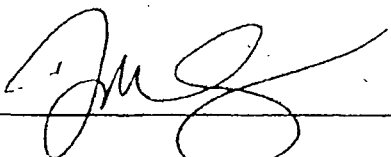
INDICTMENT
2009GS38-0724

At a Court of General Sessions, convened on May 13, 2009 the Grand Jurors of Orangeburg County present upon their oath:

TRAFFICKING IN COCAINE, 400 G OR MORE

That in Orangeburg County, South Carolina, on or about April 8, 2009, the Defendant, Rufino Brito Urioustegui, did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of more than 400 grams of Cocaine. This offense in violation of Section 44-53-370(e)(2)(e) of the South Carolina Code of Laws, as amended.

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


Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG
STATE

INDICTMENT/CASE#: 09 -GS- 38 - 724

VS.
RUFINO BRITO VRIIOUSTEGUI

AW#: M195123

AKA:
Race: H Sex: M Age: 38

Date of Offense: 4-8-09

DOB: SS#

S.C. Code §: 44-53-370(e)(6)(e)

Address:

CDR Code #: 0370

City, State, Zip:

SENTENCE SHEET

DL# SID#

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

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

☐ CONVICTED OF or ☒ PLEADS

TO: Trafficking Cocaine 28-100 grams 1st offense

In violation of § 44-53-370(e)(6)(e) of the S.C. Code of Laws, bearing CDR Code # 2359

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

The charge is: ☐ As indicted, ☒ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

9512
SC Bar #

Rufino Vrioustegui
Defendant

Attorney for Defendant

69405
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 16 months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ 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. since April 8, 2009

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

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$

 days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning
Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	<u> </u>
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ <u> </u>
\$56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
\$56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
\$47.12 (Public Def/Prob)	\$500	\$ <u> </u>
\$14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$14-1-213 (Drug Court Surcharge)	\$100	\$ <u>100.00</u>
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ <u> </u>
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
\$90.7(SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>6.90</u>
TOTAL	\$	\$ <u>236.90</u>

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning
\$ Paid to Public Defender Fund

Other:

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

Clerk of Court Deputy Clerk
Court Reporter: Marion S. Edgemond
Harry D. Walker

Presiding Judge

Judge Code: 0114

Sentence Date April 7, 2010

M-195124

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Orangeburg

THE STATE
against

Rufino Brito Urioustegui

Address:

Phone: SSN: None
Sex: M Race: H Height: 5 6 Weight: 180

DL State: DL #

DOB: Agency ORI # SC0380000

Prosecuting Agency: Orangeburg County Sheriff

Prosecuting Officer: Martin Journey - 0771

Offense: Drugs / Conspire to Traffic Cocaine

Offense Code: 0281

Code/Ordinance Sec. 44-53-0370(e)(2)

This warrant 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.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Rufino Urioustegui
on 4-10-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Bond Court
Law Enforcement Complex
1520 Ellis Avenue
Orangeburg, SC 29115

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Orangeburg

Personally appeared before me the affiant Martin Journey

being duly sworn deposes and says that defendant Rufino Brito Urioustegui

did within this county and state on or about 04/08/2009

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Orangeburg)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Conspire to Traffic Cocaine

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

That on 4/08/2009 at approximately 7:00 PM one, Rufino Brito Urioustegui did knowingly and intentionally possess more than
4000 grams of cocaine: A Schedule II controlled substance this violation took place at 2447 Charleston Highway Orangeburg, SC
29115. This Affiant knows this to be true because during an execution of a search warrant by law enforcement officers at this
residence for cocaine trafficking, This defendant was located at the residence and the investigation revealed the defendant to be
trafficking over 4000 grams of cocaine. This affiant is prepared to testify to these facts. This being in violation of the South
Carolina Code of Laws, 1976 as amended. This incident occurred in the County of Orangeburg, State of South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Orangeburg

Affiant's Address P.O. Box 9000
Orangeburg, SC 29116-
Affiant's Telephone (803)531-4647

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 4/8/2009 defendant Rufino Brito Urioustegui

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Orangeburg) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Conspire to Traffic Cocaine

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 04/10/2009

Meree D. Williamson (L.S.)
Signature of Notary Judge

Meree D. Williamson

Judge Code: 7008

Judge's Address Post Office Box 387
Neeses, SC 29113-

Judge's Telephone (803)247-2011

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

WITNESSES

JJ Evans

State Law Enforcement Division

ARREST WARRANT NUMBER
M195124

Arrested: April 10, 2009

ACTION OF GRAND JURY
TRUE BILL

MAY 13 2009

Date
Foreperson of Grand Jury

Date: May 13, 2009

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

May 11, 2009 TERM

THE STATE
vs.

Rufino Brito Urioustegui

Indictment for

ATTEMPT AND CONSPIRACY,
GENERAL PROVISIONS OF THE DRUG
LAWS

SC Code: 44-53-420

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

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2009 MAY 13 A 11:01

FILED
WINNIE
CLERK
ORANGE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2009GS38-0723

At a Court of General Sessions, convened on May 13, 2009 the Grand Jurors of Orangeburg County present upon their oath:

**ATTEMPT AND CONSPIRACY, GENERAL PROVISIONS OF THE DRUG
LAWS**

That in Orangeburg County, South Carolina, on or about April 8, 2009, the Defendant, Rufino Brito Urioustequi, did knowingly attempt or conspire to traffic more than 400 grams of cocaine. This offense is in violation of Section 44-53-420 of the South Carolina Code of Laws, as amended.

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


Donald N. Sorenson, Solicitor

General Sessions Tracking Sheet
Indictment # 0000GS38

2009 GS-723

Name: Urioustegui, Rufino Brito

Warrant/Ticket # M195124

AKA:

Date of Arrest: 04/10/2009

Addr:

Date of Offense: 04/08/2009

Date Rev by Clerk 04/23/2009

Magistrate: Williamson, Mere D.

SSN# 000-00-0000

Counts: Code: 0281/Drugs /Conspire to Traffic Cocaine

Sex: M Race: H

DOB:

DL# /

Indictment # 0000GS38

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

- Disposition
- ___ 1. Guilty plea
 - ___ 2. Trial -- guilty
 - ___ 3. Trial -- not guilty
 - ✓ 4. Dism/Not Pros/Pros Ended
 - ___ 5. Judicial Commitment
 - ___ 6. Judicial Dismissal
 - ___ 7. Remanded
 - ___ 8. Dismissed at Prelim
 - ___ 8. No Bill
 - ___ 9. Failure to Appear
 - ___ 10. Other

Explain: Pled guilty to other charge - 4/7/10

Explain: _____

Explain: _____

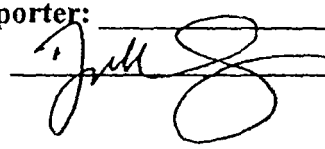
Explain: _____

Explain: _____

Judge: _____

Court Reporter: _____

Defense Atty: _____

Solicitor: 

Counts: _____ Code: _____

Sentence: _____