

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

RENE MIGUEL RODRIGUEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000410

APPENDIX

TAYLOR D. GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

KAREN RATIGAN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2011GS2305259
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
René M. Rodriguez,	)	
	)	
Defendant.	)	
	)	

November 12-13, 2013
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

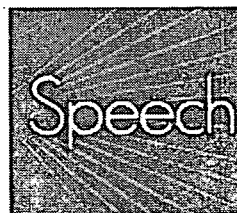
A P P E A R A N C E S:

JOYCE L. MONTS, Esquire
Attorney for the Plaintiff

RICHARD WARDER, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

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DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 12th day of November, 2013 at approximately 1:51 p.m.)

THE COURT: We've got one juror who is saying -- in the whole pool who is now telling us that she's got a young child and has to be home by 2:30. I don't know what they are going to ultimately do with her, but I just had her excluded from our pool because that's just not going to work. (Pause.)

Will the attorneys approach for just a moment?

(WHEREUPON, a bench conference is held off the record.)

(WHEREUPON, the jury enters at approximately 2:03 p.m.)

THE COURT: Good afternoon, Ladies and Gentlemen. My name is Letitia Verdin. I'm a circuit judge here in Greenville county. You met Judge Miller, I believe, this morning. And he qualified you to serve generally as jurors this week in Greenville county. Now, I need to find out if you are qualified to serve on the trial of this particular case.

Now, I don't know what method Judge Miller employed this morning when he was asking you some

1 questions. But for our purposes here today, if you
2 need to respond to a question, then if you will,
3 stand and I will call on you. Give me your name and
4 juror number. And then we can discuss whatever it is
5 you need to talk with me about. Most of my questions
6 are going to be today whether you know anything
7 about this particular case or whether you know any
8 person involved in this case. That's what most of my
9 questions will be about. So again, if you think you
10 need to respond to any of my questions, if you will,
11 please stand and I will call on you.

12 This case is entitled the State of South
13 Carolina versus René M. Rodriguez. We are fortunate
14 here today to have two excellent attorneys trying
15 this case. I'm going to begin by asking Ms. Monts to
16 introduce herself to the jury.

17 **MS. MONTS:** May it please the Court, Your
18 Honor?

19 **THE COURT:** Yes, ma'am.

20 **MS. MONTS:** Ladies and Gentlemen, my name
21 is Joyce Monts. I'm an Assistant Solicitor with
22 the 13th Circuit Solicitor's Office.

23 **MR. WARDER:** I'm Richard Warder. I
24 practice law here in Greenville. It is my
25 privilege to represent Mr. Rodriguez here today.

1 **THE COURT:** Thank you. Ladies and
2 Gentlemen of the jury pool, is any member of the
3 jury pool here today related by blood or
4 marriage or otherwise acquainted with Joyce
5 Monts of the 13th Circuit Solicitor's Office? If
6 so, please stand. (No response.)

7 And none are standing.

8 The 13th circuit is Pickens and Greenville
9 county, uh, counties and the solicitor's office
10 is the prosecutor's office. If you came from
11 another state, you might have heard it called
12 the district attorney or the DA's office. Any
13 member of the jury panel related by blood or
14 marriage or otherwise acquainted with anyone
15 who is employed by the 13th Circuit Solicitor's
16 Office? If so, please stand. (No response.)

17 And none are standing.

18 You also met Mr. Warder who is representing
19 Mr. Rodriguez. Any member of the jury panel
20 related by blood or marriage or acquainted in
21 any way with Mr. Warder? And if so, please
22 stand. (No response.)

23 And none are standing.

24 Let me ask that question just a little more
25 specifically. Any member of the jury panel ever

1 been represented by Mr. Warder, ever had a case
2 involving Mr. Warder, ever been on the other
3 side of any case with Mr. Warder? If so, please
4 stand. (No response.)

5 And none are standing.

6 Mr. Rodriguez, would you stand please and
7 face the jury panel for me. (Pause.) All right.
8 Thank you, sir. You can have a seat.

9 This -- that is -- was Mr. René M.
10 Rodriguez. Any member of the jury panel related
11 by blood or marriage or otherwise acquainted
12 with in any way René M. Rodriguez. If so, please
13 stand. (No response.)

14 And none are standing.

15 I have a list of potential witnesses in
16 this case. I do not know if all of these
17 witnesses will testify in this case. But these
18 are two excellent attorneys and if they think
19 there is even the remotest possibility that --
20 excuse me. My allergies are bothering me today.
21 If they think there is even the remotest
22 possibility that a witness might testify, they
23 put their name on this list for me to ask you
24 about.

25 I'm going to go through this list of names.

1 Some of these names are a little bit common. If
2 you think you know someone by that same name, if
3 you would, please stand. You might think, hey,
4 what in the world would that have to do with
5 this case. But it's better for you to stand and
6 let's talk about it. So even if you think you
7 might know someone. All right.

8 Any member of the jury panel related by
9 blood or marriage or otherwise acquainted with
10 in any way these potential witnesses: Chad Ayers
11 of the Greenville County Sheriff's Office, Kurt
12 H. Jacobsen of the Greenville County Sheriff's
13 Office, Brandon Lackey of the Greenville County
14 Sheriff's Office, Brian L. Osborne of the
15 Greenville County Sheriff's Office, Jason Owens
16 of the Greenville County Sheriff's Office,
17 Joseph Parrish of the Greenville County
18 Sheriff's Office, Dale Silver of the Greenville
19 County Sheriff's Office, Claude Todd of the
20 Greenville County Sheriff's Office, Douglas
21 Wannamacher of the Greenville County Sheriff's
22 Office, Dustin Woodall of the Greenville County
23 Sheriff's Office, Ross Brown of the DEA, Jay
24 Rajaei of the DEA, Nate Cantrell of the DEA,
25 Randy Smith of the DEA, D.L. Shaw of Greenville

1 County Department of Public Safety, Christopher
2 Gary of the Greenville County Department of
3 Public Safety, Tabitha Fricks of the Greenville
4 County Department of Public Safety, Kara Bennick
5 of the Greenville County Department of Public
6 Safety, James Armstrong of the Greenville County
7 Department of Public Safety and Saul Isaias
8 Carranza or Alicia Luna. Any member of the jury
9 panel believes you are related in any way or
10 acquainted with in any way any of these
11 potential witnesses? If you would, please stand.
12 (No response.)

13 And none are standing.

14 If you serve as jurors on this particular
15 case or on any case tried in General Sessions
16 Court, you will hear a lot about what an
17 indictment is and what an indictment is not. Let
18 me begin by saying an indictment is in no way
19 evidence, in any form, of anyone's guilt. It is
20 simply the document by which someone is charged
21 and brought into court. That's it. For our
22 purposes here today, the indictment will serve
23 one purpose. That is -- I'm going to read to you
24 the body of the indictment for one purpose and
25 one purpose only, that is, to find out if you

1 know anything about the facts of this particular
2 case.

3 The indictment alleges that René Miguel
4 Rodriguez did in Greenville county on or about
5 the third day of February, 2011, knowingly sell,
6 manufacture, deliver or bring into the state of
7 South Carolina or did knowingly provide
8 financial assistance or otherwise aid, abet,
9 attempt or conspire to sell, manufacture,
10 deliver or bring into this state or was
11 knowingly in actual or constructive possession
12 of more than 400 grams of cocaine. This in
13 violation of the code of laws of South Carolina.

14 Those are the allegations that the state is
15 making against the defendant. As I said, this
16 indictment can not be used for any purpose at
17 this point other than, uh, my telling you a
18 little bit about the allegations the state is
19 making in this case. Any member of the jury
20 panel believe he or she knows anything about the
21 facts of this particular case? If so, please
22 stand.

23 Yes, ma'am. Will you stand for me please.
24 Tell me your name and juror number.

25 **THE JUROR:** Nancy Hunt. I'm number 86.

1 **THE COURT:** Yes, ma'am.

2 **THE JUROR:** I think I received the name
3 as being someone who was stopped on I-85 ---

4 **THE COURT:** All right.

5 **THE JUROR:** --- in a drug thing.

6 **THE COURT:** Hold on just one second. All
7 right. I'll tell you what, will you approach
8 with the attorneys?

9 (WHEREUPON, a bench conference is held off the
10 record.)

11 **THE COURT:** All right. Anyone else in the
12 jury pool believe he or she knows anything about
13 the alleged facts in this case? If so, please
14 stand. (No response.)

15 No further are standing.

16 All right. Ladies and Gentlemen, Mr.
17 Rodriguez is charged with the crime of
18 Trafficking Cocaine. Is there anyone in the jury
19 pool who believes for any reason whatsoever --
20 and ma'am, you don't need to respond -- but any
21 reason whatsoever that he or she can not be a
22 fair and impartial juror in the trial of this
23 case? By fair and impartial juror, I mean give
24 the state a fair trial and give the defendant a
25 fair trial. If so, please stand.

1 Yes, sir. Okay. I'll tell you what, I'm
2 going to ask you to approach if you would
3 please.

4 And, ma'am, you too.

5 (WHEREUPON, bench conferences are held off the
6 record.)

7 **THE COURT:** Anyone else? You've heard the
8 potential witnesses in this case, heard the
9 allegations in this case. You know the nature of
10 the charges in this case. Any other juror for
11 any reason believe he or she can not be a fair
12 and impartial juror in the trial of this case?
13 And if so, please stand. (No response.)

14 And no further are standing.

15 All right, Ladies and Gentlemen. We are now
16 going to move to jury selection. Jury selection
17 moves pretty quickly in our state. What's going
18 to happen is you will come forward if your name
19 and juror number is called. You will turn and
20 the bailiffs will show you exactly where to
21 stand. But you will turn and face your fellow
22 jurors. Don't face me.

23 You will hear the state say something like
24 -- well, first, you will hear the clerk ask a
25 question of the state. Then the state will say

1 either excuse the juror or present the juror.
2 Then, if the juror is presented, the defense
3 will say something like please excuse the juror
4 or please seat the juror or swear the juror. If
5 you are sworn or seated, you will be directed to
6 come over here and sit in the jury box and you
7 will serve on the trial of this case. If you are
8 not selected, you will just return to your seat.
9 You will go back downstairs for further
10 instructions and probably you will be called to
11 be on a different case.

12 A couple of things. Two things. When you
13 come up here, if you've got any personal
14 belongings with you, go ahead and bring them
15 with you so that if you are selected, you don't
16 have to go back and get them. Then the next
17 thing is I practiced law for a long time before
18 I started doing this job. I can tell you that
19 jurors are excused for a whole host of reasons.
20 Almost none of them are ever personal. Not that
21 you would, but please don't take it personally
22 if you are not selected for the trial of this
23 particular case. All right.

24 All right. Any matters we need to take up
25 from either side before we proceed? Anything

1 from the State?

2 MS. MONTS: No, Your Honor.

3 THE COURT: All right. Anything from the
4 defense?

5 MR. WARDER: No, Your Honor.

6 THE COURT: All right. Thank you. All
7 right.

8 THE CLERK: Juror number 180, Deborah
9 Griffin. Would you please come forward?

10 THE COURT: If she will, come on up here
11 just a little -- come on up. Maybe take a few
12 more steps up here. Keep coming. Now, turn and
13 face your fellow jurors. You did great. Perfect.
14 There you go.

15 THE CLERK: What says the state?

16 MS. MONTS: Please excuse the juror from
17 this case.

18 THE CLERK: You may have a seat.

19 Juror number 25, Keith Chadwell.

20 THE COURT: We pick from the ends. No, I'm
21 just picking. I'm just picking.

22 THE CLERK: What says the state?

23 MS. MONTS: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. WARDER: Please excuse the juror from

1 the trial of this matter.

2 **THE CLERK:** You may have a seat.

3 Juror number 138, Tracy Pichierre.

4 What says the state?

5 **MS. MONTES:** Please present the juror.

6 **THE CLERK:** What says the defendant?

7 **MR. WARDER:** Please swear the juror.

8 **THE CLERK:** You may have a seat in the
9 juror box.

10 Juror number 38, Kathryn Crowell.

11 What says the state?

12 **MS. MONTES:** Please present the juror.

13 **THE CLERK:** What says the defendant?

14 **MR. WARDER:** Please swear the juror.

15 **THE CLERK:** Please have a seat in the
16 juror box.

17 Juror number 133, Andrew Olson.

18 What says the state?

19 **MS. MONTES:** Please present the juror.

20 **THE CLERK:** What says the defendant?

21 **MR. WARDER:** Please swear the juror.

22 **THE CLERK:** You may have a seat in the
23 juror box.

24 Juror number 143, Patricia Riordan.

25 What says the state?

1 **MS. MONTES:** Please present the juror.
2 **THE CLERK:** What says the defendant?
3 **MR. WARDER:** Please excuse the juror from
4 the trial of this matter.
5 **THE CLERK:** You may have a seat.
6 Juror number 169, Nancy Theys.
7 What says the state?
8 **MS. MONTES:** Please present the juror.
9 **THE CLERK:** What says the defendant?
10 **MR. WARDER:** Please swear the juror.
11 **THE CLERK:** You may have a seat in the
12 juror box.
13 Juror number 43, Meketia Dendy.
14 What says the state?
15 **MS. MONTES:** Please excuse the juror from
16 this case.
17 **THE CLERK:** You may have a seat.
18 Juror number 164, Pamela Suber.
19 What says the state?
20 **MS. MONTES:** Please present the juror.
21 **THE CLERK:** What says the defendant?
22 **MR. WARDER:** Please swear the juror.
23 **THE CLERK:** You may have a seat in the
24 juror box.
25 Juror number 65, Angela Golaski.

1 What says the state?

2 **MS. MONTES:** Please present the juror.

3 **THE CLERK:** What says the defendant?

4 **MR. WARDER:** Please swear the juror.

5 **THE CLERK:** You may have a seat in the

6 juror box.

7 Juror number 155, Robert Sims.

8 **THE CLERK:** What says the state?

9 **MS. MONTES:** Please present the juror.

10 **THE CLERK:** What says the defendant?

11 **MR. WARDER:** Please excuse the juror from

12 the trial of this matter.

13 **THE CLERK:** You may have a seat.

14 Juror number 165, Sandra Sullivan.

15 What says the state?

16 **MS. MONTES:** Please present the juror.

17 **THE CLERK:** What says the defendant?

18 **MR. WARDER:** Please swear the juror.

19 **THE CLERK:** You may have a seat in the

20 juror box.

21 Juror number 126, Georgia Moore.

22 What says the state?

23 **MS. MONTES:** Please present the juror.

24 **THE CLERK:** What says the defendant?

25 **MR. WARDER:** Please swear the juror.

1 **THE CLERK:** You may have a seat in the
2 juror box.
3 Juror number 73, Frederick Harris.
4 What says the state?
5 **MS. MONTS:** Please present the juror.
6 **THE CLERK:** What says the defendant?
7 **MR. WARDER:** Please swear the juror.
8 **THE CLERK:** You may have a seat in the
9 juror box.
10 Juror number 136, Mayte Pennington.
11 What says the state?
12 **MS. MONTS:** Please present the juror.
13 **THE CLERK:** What says the defendant?
14 **MR. WARDER:** Please swear the juror.
15 **THE CLERK:** You may have a seat in the
16 juror box.
17 Juror number 6, Ted Bailey.
18 **THE CLERK:** What says the state?
19 **MS. MONTS:** Please present the juror.
20 **THE CLERK:** What says the defendant?
21 **MR. WARDER:** Please excuse the juror from
22 the trial of this matter.
23 **THE CLERK:** You may have a seat.
24 Juror number 84, Michael Hume.
25 **THE CLERK:** Juror number 19, Brittany

1 Bridges.

2 What says the state?

3 **MS. MONTES:** Please excuse the juror from
4 this case.

5 **THE CLERK:** You may have a seat.

6 Juror number 81, Mark Holmesley.

7 What says the state?

8 **MS. MONTES:** Please present the juror.

9 **THE CLERK:** What says the defendant?

10 **MR. WARDER:** Please swear the juror.

11 **THE COURT:** All right. And then one and two
12 on the alternate. One and two.

13 **THE CLERK:** Juror number 183, Kenneth
14 Williams.

15 What says the state?

16 **MS. MONTES:** Please excuse the juror from this
17 case.

18 **THE CLERK:** Juror number 67, Donald Grant.

19 What says the state?

20 **MS. MONTES:** Please present the juror.

21 **THE CLERK:** What says the defendant?

22 **MR. WARDER:** Please swear the juror.

23 **THE CLERK:** Please have a seat in the
24 juror box.

25 **THE COURT:** All right. Any objection to

1 the manner in which the jury was selected from
2 the State?

3 **MS. MONTES:** No, Your Honor.

4 **THE COURT:** Any from the defense?

5 **MR. WARDER:** No, Your Honor.

6 **THE COURT:** All right. Ladies and
7 Gentlemen who were not selected to serve on this
8 particular case, I will ask you to step to your
9 jury assembly room for further instructions.
10 Thank you.

11 **(WHEREUPON, the jury exits at approximately**
12 **2:42 p.m.)**

13 **THE COURT:** All right. Ladies and
14 Gentlemen, what I'm going to say to you now is
15 not intended to be a charge on the law. I'm
16 going to charge you on the law in this case at
17 the end of this trial. What I'm going to say to
18 you now is merely an introduction to this case
19 so that you will know the procedures that we are
20 going to follow throughout this trial.

21 The defendant is charged in an indictment
22 found in this court with the crime of
23 Trafficking Cocaine, the elements of which will
24 be explained to you later. As I told you
25 earlier, the indictment is simply the document

1 by which someone is charged with a crime and is
2 not in any sense evidence in this case and
3 should not be taken by you to be evidence in
4 this case. The defendant has pled not guilty to
5 this indictment and therefore the state has the
6 burden of proving each of the elements of the
7 indictment beyond a reasonable doubt. It will
8 be your duty, Ladies and Gentlemen, to determine
9 whether or not the state has met its burden.

10 Your purpose as jurors is to find and
11 determine the facts. You are the sole judge of
12 the facts. If, at any time, I make any comment
13 about the facts in this case, you are to
14 disregard it. The law does not allow me to have
15 an opinion of the facts in this case and I do
16 not. You want to determine the facts from the
17 testimony you hear from this witness stand and
18 other evidence that is introduced in court. It
19 is up to you to determine what inferences should
20 be drawn from the evidence. It is especially
21 important that you perform your duty of
22 determining the facts diligently and
23 conscientiously. Ordinarily, there is no way to
24 correct an erroneous determination of the facts
25 of a jury.

1 On the other hand, the same law that makes
2 you the judge of the facts makes me the judge on
3 the law. The law as given by the court is the
4 only law that you may consider. You must accept
5 and follow it even though you may disagree with
6 that. Your job is to take the law as I give it
7 to you, apply it to the facts in this case as
8 you find it from the testimony and evidence
9 introduced. And after doing that, you will
10 render your verdict.

11 Until I advise you to begin your
12 deliberations, you must not discuss this case
13 with anyone. Some jurors are surprised to find
14 out you cannot even discuss it with your fellow
15 jurors until you have heard all the testimony
16 and all the evidence in this case. We want you
17 to get a full picture of the case before you
18 make any decisions in and discussing it with
19 someone might cause you to begin to draw certain
20 conclusions.

21 You will have this case overnight. In
22 other words, we will go home tonight and return
23 tomorrow to finish this trial. These are
24 excellent attorneys as I told you beforehand.
25 They are pretty good at judging how long the

1 trial will be. We think that we will definitely,
2 go into tomorrow but only into tomorrow.
3 Although that is not an exact science and
4 certain things can happen from time to time.

5 Overnight, you're going to go home and your
6 family members are going to say you were picked
7 to serve on a jury. You are going to tell them
8 yes. If they ask you what kind of a case, under
9 your oath that you are about to take as jurors,
10 you cannot answer them. Don't tell them
11 anything about this case whatsoever. It might
12 naturally cause them to blurt something out or
13 to say something that might influence you in any
14 way.

15 I don't believe there has been any media
16 attention about this case. But if there were, I
17 ask you to avoid any newspaper articles or any
18 television reports or anything about this case.
19 I guess in this day and age, I do have to tell
20 you you can't put anything on your Facebook
21 about this case while the case is ongoing. You
22 also cannot tweet, although I'm not entirely
23 sure what that is. You can't post anything on a
24 blog about it because that would be the same as
25 discussing it with people.

1 The jurors -- the attorneys in this case
2 are of the highest quality and will not try to
3 speak to you in any way. If you see them while
4 you are here in the courthouse and they don't
5 speak to you, no, they are not being rude. They
6 are just following my instructions not to have
7 any contact with you.

8 I can't imagine that any witness in this
9 case will try to have any contact with you or
10 anyone associated with this case will try to
11 have any contact with you. If that person does,
12 you are to immediately identify yourself as a
13 juror. If that person does not quit talking to
14 you immediately, please let the bailiff know
15 about that. He will let me know about it and I
16 promise that I will take care of it.

17 It is important that you keep an open mind,
18 not decide any issue, as I said, until all the
19 evidence has been presented and the parties have
20 made their closing arguments and I have
21 instructed you on the law. It is your
22 responsibility to determine the guilt or
23 innocence of the defendant. Your verdict must
24 be based solely on the evidence as presented to
25 you in trial and the law that I instruct you on.

1 In just a moment, the solicitor is going to
2 make what is called an opening statement. It is
3 not evidence in this case in any way. It would
4 be just her contention as to what the issues in
5 this case are. The attorney for the defendant,
6 Mr. Warder, may also make an opening statement
7 although he is not required to do so. What the
8 attorneys tell you during the opening statement
9 is not evidence in this case. Again, it is only
10 their contention as to what the issues in this
11 case are.

12 From time to time during the trial, you may
13 hear lawyers say something like they need to
14 approach on a matter of law or they ask that the
15 jury be excused for a moment while we take up a
16 matter of law. I don't want you to feel like we
17 are hiding the ball from you in any way. Just a
18 moment ago, you heard me tell you that I cannot
19 have an opinion on the facts of this case. I do
20 not. Sometimes in ruling on a matter of the
21 law, I have to make a comment about the facts of
22 the case. I don't want to influence you in any
23 way. Therefore, if it is something we can take
24 up quickly, we would do it at the bench.

25 If it is something that might take a moment

1 more, we will excuse you to your jury
2 deliberation room, which will be shown later
3 this afternoon, we will excuse you there for a
4 moment while we take up this matter of law. I
5 will make you this guarantee that if I have to
6 excuse you, we will keep you in there not one
7 minute more than we have to do, than we have to
8 to take up this moment of law.

9 In determining what the true facts in the
10 case are, you must decide whether or not the
11 testimony of witnesses in this case are
12 credible. Credibility means believability. You
13 would determine the believability of witnesses
14 in the same way that you do in your daily lives.
15 You will look at how a person acts while they
16 are on the witness stand. You will think about
17 whether a person has any bias under oath to lie
18 in this case. You will take in consideration
19 what all the witnesses have said and look at the
20 evidence and testimony and see how that matches
21 up with the testimony of one witness.

22 You can believe one witness over several
23 witnesses. You can believe several witnesses
24 over one witness. You can believe part of the
25 testimony of a particular witness and reject the

1 remaining part of that witness's testimony. You
2 can discount it in its entirety. You can believe
3 it in its entirety. It is up to you to make
4 that determination. It is also up to you to use
5 anything that is in the record, any other
6 evidence or testimony that is in the record to
7 make that determination.

8 All right. I am going to mess this name up.
9 Is it Ms. Theys?

10 **THE JUROR:** Theys.

11 **THE COURT:** Okay. Thank you so much. Ms.
12 Theys, I am going to ask you to serve as our
13 foreperson in this case. You will hear more
14 about this later on but your verdict must be a
15 unanimous one. That means absolutely no one's
16 opinion is any more important than another. I
17 just need someone to simply guide the talks
18 while you were in the jury deliberation room.
19 Ultimately, I need someone to sign with your
20 verdict on the indictment. Those would be your
21 two duties as foreperson. I ask you to please
22 serve in that capacity.

23 If you will, I'm going to ask you when you
24 come back from a break -- you don't need to do
25 it now. But when you come back from break, if

1 you will, sit where this gentleman is sitting
2 right here on the end and if you will stay there
3 for the balance of the trial. Thank you so much
4 for agreeing to do that.

5 Let's see here. Mr. Grant, you are our
6 alternate in this case. You probably already
7 know what an alternate juror does. But just so
8 that I have said it to you, you will stay with
9 us throughout the trial. If I had to remove a
10 juror for some reason or if a juror had an
11 emergency, you will have already heard all the
12 testimony and evidence as we are going along so
13 you can just step in their shoes just as if you
14 have been one of the 12 jurors all along. If we
15 get to the end of the trial and your services
16 are not needed, I will excuse you before the
17 jury retires to deliberate. Thank you so much
18 for your service.

19 All right. Ladies and Gentlemen, if I
20 forget to say this to you throughout the trial,
21 thank you so much for your service in this case.
22 I know that it is a great imposition on you
23 although I am surprised time and time again when
24 I hear jurors tell me that serving on jury duty
25 is one of the most interesting experiences that

1 they've had. I am very surprised about it.

2 Folks come in on Monday, in our case, on
3 Tuesday morning, probably not very excited about
4 having then called to be jurors. But once they
5 hear the cases, they know how important the case
6 is to both sides and they understand that they
7 are tasked with that responsibility in making
8 those determinations. They find it to be a very
9 rewarding and interesting experience. I hope
10 that it will be the same for you. It will not
11 be for lack of excellent attorneys in this case.
12 I'm familiar with both of these attorneys. They
13 are both excellent.

14 I want to tell you who a few people are
15 around here. You are going to meet our
16 bailiffs. They are going to take care of you
17 like none other. They are wonderful and will
18 look out for you.

19 This lady right here is taking down
20 everything we're saying. She is our court
21 reporter, Teresa Johnson. She is taking down
22 everything that is being said. It is a
23 difficult task but she is the best in the
24 business.

25 We have got not one but two folks from the

1 clerk's office. We have got somebody here
2 observing in training. The clerk's office helps
3 make things run smoothly so that we can operate
4 in court.

5 And this lady right here is my law clerk.
6 She is a lawyer, a licensed lawyer. She is
7 working with me for this year. You might hear
8 us discussing -- you might see us discussing
9 something from time to time. She is helping me
10 to prepare my final charge, excuse me, my final
11 charge on the law to give to you at the end of
12 this trial. So if we are discussing, we're not
13 talking about her favorite topic, which is
14 Clemson Tigers scores.

15 Any objection to my initial charge on the
16 law in the state?

17 **MS. MONTS:** No, Your Honor.

18 **THE COURT:** Any from the defense?

19 **MR. WARDER:** No, Your Honor.

20 **THE COURT:** Does anybody need a break
21 before we begin with opening statements in this
22 case? Anybody at all? Need a break? Ladies
23 and Gentlemen, let me tell you a couple of rules
24 that I have. Number one, if you need a break at
25 any time, you signal me or you signal this

1 handsome man in the red coat. We will break
2 right away. I am not going to say third person
3 on the end need a break. We will break right
4 away. Secondly, as we're changing up witnesses
5 -- we're not going to have a real long day
6 today. But as we're changing up witnesses,
7 don't feel like you are chained to that chair.
8 Stand, stretch, I might even do it too if it
9 makes you feel any better. Stand and stretch if
10 you need to as we're changing witnesses on the
11 witness stand. All right.

12 Are you ready to begin?

13 **MS. MONTS:** Yes, Your Honor.

14 **THE COURT:** Oh, I'm sorry, I forgot one of
15 the most important things. I had it written in
16 big letters in my book. Go ahead. Please swear
17 the jury.

18 **THE CLERK:** Okay. Will you please stand
19 and raise your right hand. The correct response
20 to the oath is, "I will". You shall well and
21 truly try the case 2011-GS-23-5259, René Miguel
22 Rodriguez indicted for Trafficking Cocaine and a
23 true verdict render according to the law and the
24 evidence so help you God?

25 **(WHEREUPON, each juror responds.)**

1 **THE CLERK:** Thank you. You may have a
2 seat.

3 **THE COURT:** If any of you can read this, I
4 forget it so many times I wrote it in big
5 letters swear the jury. There are forgot it
6 once again.

7 Ms. Monts?

8 **MS. MONTs:** May it please the court?

9 **THE COURT:** Yes, ma'am.

10 **MS. MONTs:** Ladies and Gentlemen of the
11 jury, again my name is Joyce Monts. I am a
12 prosecutor with the circuit Solicitor's office.
13 It is my job to prove to you beyond a reasonable
14 doubt that the defendant, René Rodriguez is
15 guilty of the charge that is currently pending
16 against him. That charge is trafficking in
17 cocaine. In that charge, there are different
18 -- the largest amounts the state legislator
19 passed is over 400 grams. That is what the
20 defendant is charged with, Trafficking Cocaine
21 over 400 grams.

22 It is my duty to put up witnesses on the
23 witness stand. You will hear from officers with
24 the Greenville County Sheriff's office, with the
25 Drug Enforcement Administration, federal

1 government officers who are involved in this
2 undercover operation and what transpired on
3 February 3, 2011 when the drug deal was taking
4 place at 4701 White Horse Road here in
5 Greenville county and the defendant, Mr.
6 Rodriguez, was the person who delivered two
7 kilos of cocaine to that residence to sell to
8 the person that they obviously did not know was
9 an undercover drug enforcement agency officer.

10 Right now, the defendant is cloaked in a
11 robe of innocence. But once you have heard all
12 the testimony from the witness stand and seen
13 the physical evidence that will be presented,
14 the state believes that once the judge tells you
15 you are allowed to go back and talk about it and
16 once you remember what the testimony was, look
17 at the physical evidence and decide what truly
18 happened because you are the judges of the
19 facts, the finders of the facts, when you 12 go
20 back and deliberate what you decide happen, you
21 will decide that the defendant is guilty of
22 trafficking cocaine.

23 The word "trafficking" will be described to
24 you at the end when the judge gets a little bit
25 deeper discussion. It includes many different

1 things. It could include just simply possessing
2 that much amount. It could mean delivering that
3 amount. It could be conspiring with another
4 person to deliver that much amount. There are
5 many ways that you could be guilty of
6 trafficking. And again that the weight is over
7 400 grams.

8 The state believes that we will meet our
9 burden and prove to you that the defendant did
10 deliver the two kilos, over 400 grams, of
11 cocaine here in Greenville county on February 3,
12 2011 and that your duty at that time will be to
13 find the defendant guilty. Thank you.

14 **THE COURT:** Thank you, ma'am.

15 Mr. Warder?

16 **MR. WARDER:** Thank you, Your Honor.

17 Madam Forelady, Ladies and Gentlemen of the
18 jury, there are a lot of facts in this case that
19 are not in controversy. Certainly, there is no
20 controversy that the government, the DEA
21 arranged to buy cocaine from the individual
22 named Saul Carranza in the amount of
23 approximately two kilos.

24 I say to you my client is a victim of being
25 in the wrong place at the wrong time. We hear

1 that all the time. Most of the time, it doesn't
2 mean anything. In other words, people say they
3 were in the wrong place and the wrong time if
4 they beat up with an old friend who just happens
5 to be someplace and they go off and get drunk.
6 They didn't get drunk because they were in the
7 wrong place in the wrong time. My client was in
8 the wrong place, at the wrong time.

9 There is a business out on White Horse Road
10 at the intersection of a small side street that
11 is an auto body repair place and a car sales
12 lot. They sell cars. They fix cars. They work
13 on cars. My client came to that place which is
14 right next to a pawn shop at the exact same time
15 that the police were raiding the car lot. In
16 fact, he comes over to the car lot. And, shortly
17 thereafter, the raid starts. There is no
18 question there was cocaine. The people who own
19 the car lot were running around throwing over
20 the fence and all kinds of activities not
21 related to my client.

22 The state has decided to charge my client
23 and the burden then becomes upon them to prove
24 that he had some involvement beyond a reasonable
25 doubt. Her Honor will tell you at the end of

1 this case that if the state's case is so weak
2 that there exists just a real possibility that
3 my client was not guilty, then you have to find
4 him not guilty.

5 What a jury does not do is solve a mystery.
6 In other words, many cases are tried and the
7 ultimate mystery is not solved. In other words,
8 if the DEA is wanted to have a trial about how
9 the cocaine got there, you may never know how
10 the cocaine got there. There are literally
11 hundreds of possibilities. You will see it as
12 it unfolds. But my client is not implicated
13 beyond all reasonable doubt or even implicated
14 at all. He was one of the people that were
15 there that had done something that the DEA said
16 that is suspicious.

17 That is what this case is about. It is
18 about an unprovable suspicion that my client is
19 involved in something there is no evidence
20 about. So I ask you to listen carefully to the
21 evidence because I am going to talk to you at
22 the end of the case and I'm going to talk to you
23 about the concept of whether there is a real
24 possibility that my client is innocent. Because
25 Her Honor will charge you if there is a real

1 possibility then the correct verdict is a
2 verdict of an unproven case or the verdict of
3 not guilty. Thank you very much.

4 **THE COURT:** Thank you, Mr. Warder. Tell
5 you what, let's stop -- Ladies and Gentlemen,
6 I'm going to let you step to the jury room and
7 take our afternoon break now. We will take
8 about a 10-minute break. Please don't discuss
9 the case with anyone.

10 (WHEREUPON, the jury exits at approximately
11 3:02 p.m.)

12 **THE COURT:** I thank everyone for remaining
13 seated while the jury was leaving. Do you mind
14 reminding Mr. Ayers about that?

15 **MS. MONTS:** Yes, Your Honor.

16 **THE COURT:** I think he just forgot. The
17 jury was not quite out when he left.

18 All right. We'll be in recess for 10
19 minutes.

20 (WHEREUPON, a short recess is taken.)

21 **THE COURT:** All right. Are we ready to
22 bring the jury back in ---

23 **MS. MONTS:** Yes, Your Honor.

24 **THE COURT:** --- from the State?
25 From the defense?

1 **MR. WARDER:** Yes, Your Honor.

2 **THE COURT:** All right.

3 **MS. MONTs:** Your Honor, may we approach?

4 **THE COURT:** Sure.

5 **(WHEREUPON,** the jury enters at approximately
6 3:23 p.m.)

7 **THE COURT:** All right. Ms. Monts, you
8 ready to call your first witness?

9 **MS. MONTs:** Yes, Your Honor. Your Honor,
10 the State calls Investigator Chad Ayers.

11 **THE COURT:** All right.

12 **THE CLERK:** Will you please come forward
13 and place your left hand on the Bible and raise
14 your right?

15 **CHAD AYERS**

16 having first been duly sworn, testifies as follows:

17 **THE CLERK:** Please state your full name
18 for the record.

19 **THE WITNESS:** Chad Ayers.

20 **THE CLERK:** Thank you.

21 **DIRECT EXAMINATION**

22 **BY MS. MONTs:**

23 **Q** Investigator, please tell the jury where
24 you are employed.

25 **A** The Greenville County Sheriff's Office.

1 **Q** Can you describe how long you've worked
2 there and your training and experience in law
3 enforcement?

4 **A** I've been there almost eight years. In
5 those eight years, I've worked street level narcotics
6 units. I also worked an extended time for the Vice
7 and Narcotics unit. I was assigned to the Drug
8 Enforcement Administration Task Force and also to the
9 Bureau of Alcohol, Tobacco and Firearms as the
10 liaison for them. I'm working state and federal
11 narcotics investigations.

12 **Q** And what were your duties in this
13 investigation? What were your roles?

14 **A** I was assisting the DEA as a cold case
15 agent in this case.

16 **Q** And in your experience, which roles in the
17 Drug Enforcement did you play?

18 **A** I was task force officer at the DEA. So I
19 was assisting making cases with them.

20 **Q** Did you ever act as a surveillance and/or
21 undercover or any other roles like that?

22 **A** Multiple assignments. For the Vice and
23 Narcotics unit, I worked in an undercover capacity
24 along with the ATF on federal investigations working
25 in an undercover capacity. I've been assigned to

1 surveillance teams, takedown teams, case agents, cold
2 case agents, numerous roles in both state and federal
3 law.

4 Q Any idea personally how many cases you've
5 worked on state and federal combined?

6 A Narcotics cases?

7 Q Yes, sir.

8 A 200. 300.

9 Q On February 3rd of 2011, what was your
10 assignment? What were you working on?

11 A I had been contacted by Special Agent Ramus
12 with the Drug Enforcement Administration to assist
13 him in working on a narcotics investigation where a
14 confidential informant had introduced or was going to
15 introduce a DEA agent as an undercover to purchase
16 two kilos of cocaine.

17 Q And who was this DEA agent?

18 A Special Agent Jay Rajae.

19 Q And was this an ongoing investigation
20 between the state and the federal government?

21 A It was.

22 Q And at the point on February 3rd, 2011, who
23 was involved in the actions on that date?

24 A That day, Special Agent Rajae was acting
25 as an undercover and he was purchasing two kilos from

1 Saul Carranza at a location on White Horse Road.
2 Myself, other members of the Vice and Narcotics,
3 Greenville County Sheriff's Office Vice and Narcotics
4 unit along with other DEA agents and task force
5 officers were split up into various roles, whether it
6 be surveillance units, takedown teams, undercover
7 rescue teams.

8 Q And describe why you would need so many
9 officers for this.

10 A Through my experience, taking down --

11 MR. WARDER: Objection to what his
12 experience is on what's needed. It doesn't have
13 any relevance.

14 THE COURT: Sustained. Go ahead.

15 BY MS. MONTS:

16 Q In this case, describe how many officers
17 you had and what the plan was.

18 A There was approximately 20 officers at
19 various assignments. We had assignments for a
20 takedown team that was going to go to the actual
21 incident location and execute the search warrant. You
22 had officers that were assigned to monitoring the
23 undercover's wire. He was out there with an
24 electronic wire that we could hear a live feed from
25 him. We had agents that were assigned to a

1 surveillance van, surveillance truck that were
2 videoing the target location and anyone that came to
3 that target location and left that target location.

4 Q And why is that?

5 A Just through my experience and my
6 training --

7 MR. WARDER: I object to his experience
8 and training. The question was when did he have
9 people in the van. He went so far as experience
10 and training.

11 THE COURT: All right. Sustained.

12 BY MS. MONTs:

13 Q Just describe the purpose of that, having
14 that many officers and the different roles that they
15 played. What is the purpose of having this many
16 officers?

17 A Most high level narcotics dealers will
18 deliver --

19 MR. WARDER: Objection.

20 THE COURT: I think we've established that
21 he has reasons for taking that many officers. Do
22 we need to go any further? If we do, you can
23 approach.

24 MS. MONTs: That's fine, Your Honor.

25 THE COURT: All right.

1 **BY MS. MONTS:**

2 **Q** What is the purpose of having the
3 undercover -- the DEA agents wire-monitored? And
4 describe what the wire is. How does the surveillance
5 team hear that wire?

6 **A** First of all, it's for safety. There's
7 different types of wires that are used. They are
8 hidden on their person. It is then transmitted to a
9 receiver to where we can hear his conversation,
10 what's taking place. So it's different ones. Some
11 record. Most record and transmit both at the same
12 time. So we're hearing a live audio of what's taking
13 place, what the undercover is talking about and
14 primarily for his safety and to know that his safety
15 is alright and also to obtain the evidence in the
16 conversation.

17 **Q** And what location did you go to on this day
18 on White Horse Road?

19 **A** It's [REDACTED] White Horse Road.

20 **Q** And what did it look like?

21 **A** Described as like a mechanics shop. Small.
22 Has several, what I would say is, junk cars on the
23 side. There's cars being worked on. Had a fence
24 around it.

25 **Q** And who was assigned to do the videoing in

1 this case?

2 **A** Investigator Jacobsen and Investigator
3 Rogers.

4 **Q** And how, uh, how close at this time were
5 you when this deal was taking place?

6 **A** I was assigned to monitoring the wire. I
7 was approximately less than a quarter mile down the
8 street in a vehicle with several other agents.

9 **Q** And is this location on White Horse Road in
10 Greenville county?

11 **A** It was.

12 **Q** Were you involved with telephone or any
13 other communication with DEA Agent Jay Rajae while
14 he was going to this location?

15 **A** Prior -- phone calls had been made prior to
16 us actually going to [REDACTED] White Horse Road. Mr.
17 Carranza stated that he would be ready around 3:00,
18 around 3:10.

19 **MR. WARDER:** Objection. Hearsay.

20 **THE COURT:** Overruled.

21 **MR. WARDER:** Your Honor, can I be heard on
22 it?

23 **THE COURT:** Y'all can approach.

24 **(WHEREUPON, a bench conference is taken off the**
25 **record.)**

1 **THE COURT:** Yes, ma'am.

2 **BY MS. MONTS:**

3 **Q** Investigator, what time were you involved
4 in this operation approximately?

5 **A** Starting at about three o'clock.

6 **Q** And at that time, you were listening to the
7 wire, is that correct?

8 **A** Correct.

9 **Q** And did you have conversations with Agent
10 Jay Rajae or could you hear what he was saying?

11 **A** I could hear his conversation. When he
12 pulled up to the target location, he went inside the
13 shop. I could hear him having conversations and using
14 narcotics terms, terms that I know are commonly used
15 when you deal with drugs. A lot of times, it won't --
16 they won't come right out and say specific terms.
17 There are slang terms that on the street are commonly
18 used.

19 **Q** Approximately how long did this take place
20 at this White Horse Road address?

21 **A** Special Agent Rajae was in there a short
22 amount of time to see -- he went in and observed
23 kilos of cocaine. He stated across the wire that he
24 would return in 10 minutes, that he was going to go
25 pick up the money. It was supposed to be \$60,000 for

1 the two kilos of cocaine and he was going to return
2 with the money. That was the agreement that was
3 originally made.

4 Q Did Agent Rajae then leave that location
5 [REDACTED] White Horse Road?

6 A He did.

7 Q That day, did he ever return back with the
8 money?

9 A He did not.

10 Q And what is the purpose in this case that
11 you were running? Why did he not go back?

12 MR. WARDER: I object to that on
13 relevance, Your Honor.

14 THE COURT: You want to approach?

15 (WHEREUPON, a bench conference is held off the
16 record.)

17 THE COURT: Overruled.

18 BY MS. MONTS:

19 Q Did Agent Jay Rajae go back at that time
20 after he left? Did he take the money back?

21 A There was no money.

22 Q Okay. And did he go back?

23 A No, ma'am.

24 Q Uh, and this is your case. You set this up,
25 correct?

1 **A** Correct.

2 **Q** And so what -- as part of the case and you
3 being the case agent, what was the plan once Mr. --
4 excuse me -- Agent Rajae left to supposedly get the
5 money?

6 **A** That is when Agent Rajae contacted us on
7 the phone once he pulled off and stated that he did
8 observe --

9 **MR. WARDER:** Objection to what he said.

10 **THE COURT:** Sustained.

11 **MS. MONTS:** Your Honor, it's why the
12 officers responded in the manner that they
13 responded.

14 **THE COURT:** All right. I'll listen to the
15 answer and then -- I'll listen to the answer and
16 then I'll make that determination.

17 **THE WITNESS:** Special Agent Rajae
18 contacted us on the phone to advise us that he
19 did, in fact, observe two kilos of cocaine in
20 the back bedroom. At that point, the
21 determination was made that the narcotics were,
22 in fact, there and the takedown units would move
23 in.

24 **THE COURT:** All right. All right. I'm
25 going to overrule your objection. Go ahead.

1 **BY MS. MONTs:**

2 **Q** Once the signal that y'all are go forward
3 with the takedown, please describe what takes place.

4 **A** We gave the takedown sign. Our takedown van
5 was pulling into the parking lot. As it did so,
6 Investigator Jacobsen over our radio stated that Mr.
7 Carranza --

8 **MR. WARDER:** Objection to what some other
9 agent said.

10 **THE COURT:** Ms. Monts, any response?

11 **MS. MONTs:** Your Honor, only as to the
12 timeframe of where the officers are going.

13 **THE COURT:** All right. I'll allow it just
14 as to the time frame.

15 **THE WITNESS:** As the officers are pulling
16 up, Mr. Carranza is observed running from his
17 autobody shop and jumping a fence. At which
18 time, there's multiple --

19 **MR. WARDER:** Objection to what other
20 officers observed, Your Honor. He's saying the
21 officers observed this.

22 **THE COURT:** Just testify as to what you
23 observed.

24 **BY MS. MONTs:**

25 **Q** At what point did you arrive?

1 **A** I'm pulling up and I observe other officers
2 running towards the fence, fence line yelling to me
3 that he's running, he's running. I then encountered
4 several subjects in this garage and they are taken
5 into custody or detained at that time. I then
6 assisted in searching for Mr. Carranza who had fled
7 and was running northbound up White Horse Road in an
8 adjacent parking lot parallel to them. I then
9 assisted with the canines in tracking with the
10 canines where Mr. Carranza was later found in a lot
11 behind where his location is.

12 **Q** At this point, do you know where the
13 cocaine came from?

14 **A** Not at this time.

15 **Q** And once you had -- know that Mr. Carranza,
16 the person that the deal was set with is in custody,
17 what is your role?

18 **A** I think I walked over. Investigator Owens
19 had secured the two kilos that had been located at
20 the corner of White Horse Road and where this shop
21 is. He had secured those. Those had been
22 photographed. He then turned those over to me in TFO
23 Brown's truck.

24 **Q** And explain what a TFO means.

25 **A** He's a task force officer for the DEA. I

1 then took possession of that cocaine.

2 Q Were you riding with Task Force Officer
3 Brown?

4 A I was.

5 Q Okay. So you and Task Force Officer Brown
6 are in the same pickup truck. That's where the drugs
7 are placed?

8 A Correct.

9 Q Okay. Please continue with your role.

10 A I then get in the truck with the suspected
11 two kilos of cocaine and go to the DEA office. Once
12 there, I take these suspected kilos of cocaine inside
13 where they are field tested which means there's a
14 swab where we can swab the suspected kilos and they
15 did field test positive for cocaine. I then bagged
16 these into evidence bags. I, myself, transported them
17 to the Greenville County Sheriff's Office Property
18 and Evidence where I logged those in and placed them
19 into a lock box where they were -- the next morning,
20 a Property and Evidence worker would come in and take
21 possession of them.

22 Q Is that Property and Evidence room with the
23 lock box, is that a secured area?

24 A It is.

25 Q Who has access to it?

1 **A** Just the people working at the Property and
2 Evidence.

3 **Q** And when you sealed these two suspected
4 kilos of cocaine, describe what you do. Do you make
5 any markings on it?

6 **A** Right. Uh, they will go into a large clear
7 envelope. I will put the case number inside of it. I
8 will put the date and also my initials and I will
9 heat-seal those so they can't be tampered with or if
10 they are attempted to be tampered with, you can tell
11 that they had been cut.

12 **Q** And did you go to Property and Evidence
13 today?

14 **A** I did.

15 **Q** Did you bring those items to court today?

16 **A** Yes, ma'am.

17 **(WHEREUPON, State's Exhibits 1 and 2 are marked**
18 **for identification purposes.)**

19 **BY MS. MONTS:**

20 **Q** Investigator, I'm going to hand you State's
21 Exhibits 1 and 2. Can you identify these?

22 **A** Yes, ma'am.

23 **Q** And describe how you can identify those and
24 what they are.

25 **A** By my initials on the insides of the

1 package and the two kilos of cocaine that were seized
2 that day.

3 Q And what are your initials and what did you
4 write on there?

5 A CA1 and the date is on the inside.

6 Q And when you originally took custody of
7 these items, was there additional wrapping or
8 describe how they were.

9 A There was cellophane, tight cellophane
10 wrapping around them. Then on the inside of that,
11 there was like duck tape on the inside of the
12 cellophane wrapping. They were like a square shape
13 like they are now. They were wrapped differently. But
14 that wrapping has to come off, one, for testing and
15 also to obtain latent prints.

16 Q Do you request a drug analysis be done on
17 these items?

18 A We do on any narcotics that are seized. I
19 submit those to the lab for them to further test.

20 Q Who takes the outside wrappings off? Do you
21 do that or someone else?

22 A No, someone else would do that. A lab.

23 Q Uh, are those wrappings kept?

24 A Yes. Those are also heat sealed.

25 (WHEREUPON, State's Exhibits 3 through 6 are

1 marked for identification purposes.)

2 **BY MS. MONTS:**

3 **Q** Investigator, I am going to -- I'm going to
4 hand you what has been marked for identification
5 State's Exhibits 3, 4, 5, 6 if you can identify them.
6 If you can't, just say so please.

7 **A** Yes, ma'am. Correction, these were
8 actually removed. We wore gloves and removed the
9 wrapping and packaging prior to putting these in
10 evidence. I believe I said before that the lab took
11 these off. In fact, we have taken -- we took the
12 wrapping off. The lab, in order to obtain prints,
13 the lab wants us to remove them from the narcotics
14 for them to do the printing. But my initials are
15 here where I heat sealed it and did the exact same
16 thing as heat sealed the narcotics.

17 **Q** And that was prior to fingerprint analysis
18 being done?

19 **A** Correct.

20 **Q** And that is what -- what you are talking
21 about is inside the currently heat-sealed pack, is
22 that correct?

23 **A** Correct. This is the wrapping and the duck
24 tape that wrapped the two kilos. What the lab
25 requires is that it be separate. If they are going

1 to obtain prints, they want it separate from the
2 narcotics. We will wear latex gloves and remove the
3 packaging and place it into evidence bags and heat
4 seal the evidence bags for the lab to then go and
5 process for latent prints.

6 Q And when you brought in these items -- did
7 you bring -- did you also bring State's Exhibits 3,
8 4, 5, and 6 to court here today?

9 A I did.

10 Q Describe what you had to do to get all six
11 of these exhibits out from Property and Evidence.

12 A They scan -- each item has a barcode. They
13 scan this barcode and then I sign like an electronic
14 signature pad that I am taking these from the
15 Property and Evidence which puts them into my
16 custody. They stay with me the entire day.

17 Q And is this a secured area? Can anyone
18 walk in there and do this or do you have to have
19 credentials?

20 A No, only law enforcement. It is checked
21 out for court purposes. They know that I am taking
22 this to court for today's date.

23 Q Please describe -- let's continue with your
24 investigation on this case. What did you do to
25 further investigate after Mr. Carranza was arrested.

1 What did you do to investigate this case?

2 **A** I reviewed -- initially when we got back, I
3 reviewed the surveillance video that have been
4 obtained from our surveillance van. I observed a
5 green vehicle, Ford Expedition, pull into the lot on
6 the right side. While reviewing it, -- it was
7 occupied by three individuals -- you see an
8 individual in the back laying down underneath the
9 back seat and pull something up and hand it to
10 someone, hand it to the driver. Leans down a second
11 time, comes up and hand something to the driver a
12 second time. You then see the driver moving around
13 in the front seat and then exit the vehicle.

14 The tag on the vehicle was G -- South
15 Carolina plate [REDACTED] 493. I ran that tag and it came
16 back to René Rodriguez. When the individual gets out
17 of the driver's seat wearing a black leather jacket.
18 He has got his hands in his pockets. You can clearly
19 see the impression of two square-like objects, block
20 objects -- block-like objects in his leather jacket.

21 He then walks into the store, into the
22 mechanics shop. I can't advise when he comes back
23 out. When the takedown is done, Mr. Rodriguez is not
24 inside the store. What I did then was took the tag
25 and ran the tag. It comes out to Mr. Rodriguez and a

1 location on Avery Street. We then went to [REDACTED] Avery
2 Street at a later date and observed the same green
3 Expedition with the same license plate parked at this
4 residence. I then obtained a six-person photo
5 lineup --

6 **THE COURT:** All right. Before we go into
7 that, will the attorneys approach for just a
8 moment?

9 **(WHEREUPON, a bench conference is held off the**
10 **record.)**

11 **THE COURT:** Yes, ma'am. You can continue.

12 **BY MS. MONTS:**

13 **Q** Did you -- other investigative tools that
14 you use, did that include checking the phone number
15 that was called?

16 **A** I did.

17 **Q** And what type of phone was it?

18 **A** What I would refer to as a burner phone.
19 It is a prepaid phone that you purchase out of
20 Walmart and buy minutes to go on to the phone. It is
21 not attached to a name. It just comes back to a
22 company. I believe this one came back to -- out of
23 New Jersey maybe. It is not attached to anyone's
24 name.

25 **Q** And back at the scene, while you were

1 there, did another green Ford Expedition pull up at
2 the address on White Horse Road?

3 A It did.

4 Q Did it have a similar tag?

5 A Yes, but it was not the same vehicle. It
6 was a totally different tag on the vehicle.

7 Q And was Mr. Rodriguez arrested on February
8 3, 2011 when this actual deal and y'all finding the
9 two kilos of cocaine take place, was he arrested on
10 that day?

11 A No, ma'am.

12 Q The day of -- a few days later, you went to
13 the Avery Street address?

14 A Correct.

15 Q Okay. Jumping forward to that, were there
16 any vehicles there?

17 A Yes, ma'am. The same green Ford
18 Expedition, South Carolina tag [REDACTED] 493, which is
19 registered to René Rodriguez. That vehicle left [REDACTED]
20 White Horse Road. It is not common in dealing with
21 this much narcotics for --

22 MR. WARDER: Objection.

23 THE COURT: All right. Sustained. Let's
24 move on from that.

25 BY MS. MONTs:

1 **Q** Without saying what, but did you speak with
2 Saul Carranza about this incident?

3 **A** I did.

4 **Q** Approximately what date was Mr. Rodriguez
5 arrested and where was he?

6 **A** He was arrested at his residence, [REDACTED] Avery
7 Street. This was on, I believe, the 8th. I'm sorry.
8 The 9th.

9 **Q** And that could have been the 8th going over
10 into the 9th?

11 **A** Going into the next day, correct.

12 **Q** Is the person that you arrested on that day
13 in the courtroom?

14 **A** He is.

15 **Q** Who is it?

16 **A** This gentleman with the white shirt and
17 glasses, Hispanic male, with yellow tie on.

18 **MS. MONTS:** Your Honor, we would ask to
19 recall this witness regarding other issues.

20 **THE COURT:** All right. Ladies and
21 Gentlemen, we normally would not break at this
22 hour of the day. However, I need to take up a
23 legal issue that might be lengthier outside of
24 your presence. So that we don't hold you for
25 any time unnecessarily, I'm going to allow you

1 to go for the evening. If you will, be back in
2 the jury deliberation room tomorrow morning at 9
3 a.m. As we discussed, please don't discuss this
4 case with anyone. Thank you.

5 (WHEREUPON, the jury exits at approximately
6 3:56 p.m.)

7 THE COURT: All right. Just to put our
8 conversation at the bench on the record, we are
9 about to go - it looks like the testimony was
10 about to take us into an out-of-court
11 identification of the defendant. Therefore, we
12 need to have a hearing on the reliability of
13 this identification. Ms. Monts, do you want to
14 proceed with this witness or do you need to call
15 another witness?

16 MS. MONTs: Your Honor, I can go ahead and
17 set it up with this witness. The other witness,
18 I don't know if his attorney is here or not.

19 THE COURT: Is his attorney by any chance
20 Matthew Pinckney?

21 MS. MONTs: Yes, it is.

22 THE COURT: I just saw him put his head
23 through the window. I just wondered. Okay.
24 Yeah, it looks like he is somewhere out in the
25 hall. All right, Mr. Warder?

1 **MR. WARDER:** Your Honor, housekeeping
2 matter.

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

4 **MR. WARDER:** The reason at the bench I
5 look like I am stupid a lot of times is because
6 I've loss hearing in the frequency that people
7 whisper. I can hear -- if we talk, I can hear
8 fine. But when we make our voices soft, that is
9 the frequency I have loss in.

10 **THE COURT:** Absolutely. Let me tell you,
11 I understand that. I do understand and did know
12 about that. If, at any time, you would just
13 prefer us to send the jury out, I will be happy
14 to do that.

15 **MR. WARDER:** Maybe could I suggest -- I
16 don't mean, could we talk a little bit more to
17 the side of the bench where your clerk is at?

18 **THE COURT:** Certainly.

19 **MR. WARDER:** That will get us a little way
20 from them.

21 **THE COURT:** I think that is a good
22 suggestion. Let's do that. From now on, we
23 will talk over on the side of the bench so that
24 we can talk maybe a little bit louder or not in
25 whisper tones. How about that? All right.

1 **MS. MONTs:** And Your Honor, if I may have
2 just a moment.

3 **THE COURT:** Sure.

4 **(WHEREUPON, there is a pause.)**

5 **THE COURT:** I'll tell you what, since I
6 think Ms. Monts is going to be more than just a
7 minute, let's break for about five minutes.

8 **(WHEREUPON, a short recess is taken.)**

9 **THE COURT:** All right. Yes, ma'am.

10 **MS. MONTs:** Your Honor, Mr. Pinckney is in
11 the side room talking with his client. He would
12 be our next witness so I will go ahead and set
13 us up with investigator Ayers.

14 **THE COURT:** All right.

15 **BY MS. MONTs:**

16 **Q** Investigator Ayers, what was your purpose
17 when you met with Mr. Carranza after he was arrested
18 for trafficking in those kilos of cocaine?

19 **A** I obtained a six-person lineup. That
20 evening before he went to jail, he stated Carranza
21 was read his Miranda rights and signed waiver of
22 rights. He stated that he sells cocaine for a
23 Hispanic male name René who drives a green colored
24 Expedition. Carranza stated on that date René
25 arrived wearing a black coat and walked inside and

1 placed two kilos on the bed. He said René walked
2 outside and across the street until the deal was
3 complete.

4 I then, based on his statement and the tag
5 that I had obtained, that we obtained from the
6 surveillance video that came back to René Rodriguez,
7 I obtained a six-person photo lineup which one of the
8 photos included Mr. Rodriguez photo. I went to the
9 detention center and provided an affidavit and photo
10 lineup. Mr. Carranza agreed and picked out Mr. -- to
11 look at the lineup and picked out Mr. Rodriguez as
12 the René that delivered him two kilos of cocaine that
13 day.

14 **MR. WARDER:** Your Honor, of course, in the
15 trial I would object to all of this testimony of
16 him saying especially what Saul told him.

17 **THE COURT:** Certainly. All right. All
18 right. But for purposes of this hearing and you
19 are certainly not waiving any objection by not
20 objecting to it in this hearing.

21 **(WHEREUPON, State's Exhibits 7 and 8 are marked**
22 **for identification purposes.)**

23 **BY MS. MONTS:**

24 **Q** Investigator, I am handing you State's
25 Exhibits 7 and 8. Can you identify these please?

1 **A** Yes. That is the photo lineup that I
2 obtained and also the affidavit of photo lineup also.
3 I want to make it known that this was produced after
4 I observed the video, reviewed the video where I
5 observed Mr. Rodriguez exit the vehicle so I could
6 see his face.

7 **Q** And did you pick out the six photos for
8 this?

9 **A** I did.

10 **Q** Describe what you were looking for when you
11 put the six-photo lineup together.

12 **A** The way the system works, you type in like
13 the age, the sex, the race and that's when I tried to
14 look, obtain six photos that looks similar to each
15 other as best as possible. I randomly place Mr.
16 Rodriguez's photo just randomly in any spot. Mr.
17 Carranza was not coerced or shown. I did not
18 indicate which position Mr. Rodriguez would be in. I
19 just stated can you identify anybody in this photo
20 lineup.

21 **Q** And was anybody else present when you did
22 this?

23 **A** Special Agent Ramus with the Drug
24 Enforcement Administration.

25 **Q** And where is he currently?

1 **A** He has been stationed overseas. I don't
2 know where but it's not in the United States.

3 **Q** When you went, did you go over Mr.
4 Carranza's rights prior to having him look at the
5 photo lineup?

6 **A** I did.

7 **Q** Did he sign the waiver of rights form?

8 **A** I did. He also gave a written statement.

9 **Q** And out of the six photos, which one did
10 Mr. Carranza select as being René Rodriguez?

11 **A** Photo Number 5. He circled it and placed
12 his initials. He also in his affidavit states that
13 photo number 5 is the person who gave to me two kilos
14 of cocaine on 2/3/11. His name is René. He didn't
15 know his last name.

16 **Q** At this time, had you run the car tag?

17 **A** Yes, ma'am.

18 **Q** Okay. And did you have Mr. Carranza write
19 anything on this photo lineup?

20 **A** He circled it and then wrote his initials,
21 SC underneath it.

22 **Q** Had you had any discussions with Mr.
23 Carranza about how long he had known Mr. Rodriguez or
24 did any of your prior dealings with him show how much
25 time?

1 **A** I don't believe so. I believe that his
2 post-Miranda statement after he was, his verbal
3 statement after he was arrested that evening just
4 stated that he sells cocaine for a Hispanic male name
5 René but it didn't give a length of time.

6 **Q** And he knew his phone number, is that
7 correct?

8 **A** Correct.

9 **Q** He knew an amount of time that it would
10 take René to get to him delivering cocaine?

11 **A** Correct.

12 **Q** He knew what type of vehicle the person
13 drove?

14 **A** Correct. He told us.

15 **MS. MONTS:** Your Honor, that would be my
16 questions for the investigator.

17 **THE COURT:** All right, Mr. Warner?

18 **CROSS-EXAMINATION**

19 **BY MR. WARDER:**

20 **Q** This statement is taken at the station
21 house somewhere or law enforcement facility?

22 **A** It was at the detention center.

23 **Q** Was it videotaped?

24 **A** No, sir. They have surveillance. I'm not
25 sure the room that we were in has surveillance. Us

1 ourselves, we did not videotape it.

2 Q You did not decide to preserve this with
3 the videotape?

4 A I'm sorry?

5 Q You didn't decide to preserve this with a
6 videotape?

7 A No, sir.

8 Q And the same with an audio tape. You did
9 not tape it or record it?

10 A No, sir, we didn't.

11 Q And you said no promises were made?

12 A Correct.

13 Q Did you tell him in general terms that you
14 were going to help him out or anything?

15 A No, sir.

16 MR. WARDER: That will be all the
17 questions I have.

18 THE COURT: All right. Any redirect?

19 MS. MONTES: Not on this issue, Your Honor.

20 THE COURT: All right. You can step down.
21 Thank you.

22 MS. MONTES: Your Honor, again, I need to
23 ask Mr. Pinckney if he is ready.

24 THE COURT: Okay.

25 (WHEREUPON, there is a pause.)

1 **(WHEREUPON,** the interpreter, Teresa Sampson, is
2 duly sworn.)

3 **THE COURT:** Sir, if you would, come and
4 have a seat on the witness stand.

5 **SAUL CARRANZA**
6 having first been duly sworn, testifies as follows:

7 **THE CLERK:** Can you state your full name
8 for the record?

9 **THE WITNESS:** Saul Isaias Carranza.

10 **DIRECT EXAMINATION**

11 **BY MS. MONTS:**

12 **Q** Mr. Carranza, are you -- were you arrested
13 on February 3, 2011 for trafficking cocaine at your
14 place of business on White Horse Road?

15 **A** Yes.

16 **Q** Have you pled guilty to that charge or to a
17 reduction of that charge?

18 **A** Yes.

19 **Q** And after you were arrested, did you give a
20 statement to law enforcement?

21 **A** If I gave a statement?

22 **Q** Pardon me?

23 **A** Are you asking if I gave a statement?

24 **Q** Yes.

25 **A** Yes.

1 Q Were you read your rights, that you have
2 the right to an attorney, that you had the right to
3 go to trial?

4 A No.

5 (WHEREUPON, State's Exhibit 9 is marked for
6 identification purposes.)

7 BY MS. MONTS:

8 Q Mr. Carranza, I'm going to hand you State's
9 Exhibit 9. Would you see if that is your signature
10 on this form?

11 A Yes.

12 Q And this is a Your Rights form?

13 A I have never read this before.

14 Q Did you put your initials at the end of
15 each line?

16 A I think so but I don't understand English.
17 I don't know how to read English.

18 Q Were you shown a -- pictures of individuals
19 of who delivered the drugs on February 3, 2011?

20 A Who delivered the drugs?

21 Q Yes, on February 3, 2011 at [REDACTED] White
22 Horse Road when you had drugs, two kilos and you came
23 out and threw them and jumped over a fence and
24 someone had delivered them and you were arrested.

25 A Do I have to testify to that or what?

1 **THE COURT:** Sir, you need to answer the
2 question.

3 **THE WITNESS:** Can I take the Fifth?

4 **THE COURT:** Ms. Monts, did you hear what
5 he asked?

6 **MS. MONTs:** No, Your Honor.

7 **THE COURT:** He asked could he take the
8 Fifth.

9 **MS. MONTs:** And Your Honor, the state
10 would say no.

11 **THE COURT:** He has entered a guilty plea
12 as to this, hasn't he?

13 **MS. MONTs:** Yes, Your Honor. Yes, Your
14 Honor. There is no threat hanging over him at
15 this time.

16 **THE COURT:** Sir, when you pled guilty, you
17 were told that you were giving up your right to
18 remain silent in connection with your plea. So
19 you have given up your right to remain silent.
20 In other words, your right to assert the Fifth
21 Amendment.

22 Mr. Warder?

23 **MR. WARDER:** Your Honor, I don't know what
24 stand that I have over all of this. But what
25 strikes me is he told -- if believed by the

1 state that he sold for my client in some ongoing
2 relationship, I would think that he would have
3 jeopardy out of every -- all kinds of things in
4 that relationship if he continues to answer
5 questions.

6 **THE COURT:** Out of this particular -- and
7 Mr. Pinckney can object on his behalf if he
8 would like to. Mr. Pinckney, my understanding
9 is that he has waived his right to remain silent
10 as to this particular incident. Is there
11 anything you would like to say?

12 **MR. PINCKNEY:** Your Honor, I don't remember
13 all the -- I don't remember all the details. I
14 do know that my client has expressed some
15 concern about his conversations with police, his
16 testimony going forward, statements that he may
17 have given to police in the past. He expressed
18 some concerns about potential criminal
19 implications for that. I discussed the
20 possibility of immunity with Ms. Monts. I think
21 that would clear that problem up. I believe
22 that is why he is taking the Fifth. As a matter
23 of fact, I can tell you for sure it doesn't have
24 anything to do with the actual crime that he was
25 charged with. He understands he gave up his

1 right to remain silent.

2 **THE COURT:** But as to -- you are giving up
3 your right to remain silent as to this
4 particular transaction.

5 Ms. Monts, you don't anticipate any further
6 charges as a result of this transaction against
7 this man, do you?

8 **MS. MONTs:** No, Your Honor.

9 **THE COURT:** The state has said they do not
10 intend to charge you with anything else as a
11 result of this transaction.

12 **THE WITNESS:** Oh, okay.

13 **MR. PINCKNEY:** Your Honor, would it be fair
14 to say that at this point he does have immunity?
15 Is that what the state is saying?

16 **THE COURT:** I don't know if it would be
17 called immunity because he has pled guilty to
18 this particular -- he has pled guilty to this
19 particular charge. In this particular
20 transaction, the state doesn't intend to pursue
21 anything else against him. So to that extent,
22 yes. But he has been obviously -- he has pled
23 guilty to this transaction. I don't know if it
24 would be accurate to say that he has been
25 granted immunity as to this transaction.

1 **MR. PINCKNEY:** Your Honor, I think beyond
2 the trafficking itself, I think what we're
3 really looking at is the circumstances
4 surrounding his interrogation and the statements
5 to the police. I think that is what he is
6 concerned with. He has expressed to me he does
7 not want to create any more problems for
8 himself. That is my impression that he is
9 concerned that if he gets up there and he
10 testifies a certain way that somehow he can get
11 tangled up into I guess false information,
12 perjury, something like that.

13 **MS. MONTS:** Your Honor, the states only
14 question would regard the statement, written
15 statement that he had already given the state
16 through Officer Chad Ayers that has been
17 provided to the defense already and his waiver
18 of rights and his selection on the photo lineup
19 as well as the affidavit of photograph
20 identification. All of which have been provided
21 to the defense.

22 **MR. WARDER:** Your Honor, at this point, it
23 looks to me like he has given false statements
24 to the police.

25 **THE COURT:** We're going to investigate

1 that. We're going to investigate that right
2 now. I'm going to ask him about this.

3 Sir, you must testify as to, as to the
4 events surrounding this transaction that you
5 pled guilty to. And let me explain to you that
6 the penalty for perjury, lying here today is far
7 more than the penalty for false information to
8 police. You just took an oath to tell the truth
9 and you must tell the truth right now. All
10 right?

11 **THE WITNESS:** Okay.

12 **BY MS. MONTS:**

13 **Q** Mr. Carranza, when you spoke with Chad
14 Ayers, didn't you speak in English to him? Isn't
15 that true?

16 **A** Yes.

17 **Q** And you told Mr. Ayers that you understood
18 your rights and you signed the waiver.

19 **A** To tell you the truth, I was nervous. I
20 don't know how to read. I don't know anything about
21 -- I wasn't able to read it. I was nervous. I can't
22 remember. I can't remember precisely. I'm assuming
23 he explained it to me.

24 **Q** Can you repeat that?

25 **A** I don't remember precisely but I am

1 assuming that he did explain the document to me.

2 Q Did you initial at the end of each line?

3 A Yes.

4 Q Regarding the photo lineup, State's Exhibit
5 7, did Deputy Ayers show you the six photo -- this is
6 a six photo lineup. State's Exhibit 7, did he show
7 that to you?

8 A Yes.

9 Q Did you mark on that the person that
10 delivered the cocaine to you on February 3, 2011?

11 A Yes.

12 Q Did you circle it and put your initials on
13 there?

14 A Yes.

15 Q And regarding State's Exhibit 8, regarding
16 the selection of this picture here, Number 5 on the
17 photo lineup, did you also sign this affidavit of
18 photograph identification on February 7, 2011?

19 A Yes.

20 Q And in that sheet on Exhibit 8, did you
21 select photograph Number 5?

22 A Yes.

23 MS. MONTS: Your Honor, that will be our
24 testimony regarding the photo lineup. I was
25 also going to going to the statement. But if

1 you want me to do that later.

2 **THE COURT:** You can go into that.

3 **BY MS. MONTS:**

4 **Q** Regarding the written statement that you
5 gave to Investigator Ayers, after you signed the
6 waiver of rights, did you give Investigator Ayers
7 information regarding René and how he would deliver
8 drugs to you, how he did deliver drugs to you on
9 February 3rd of 2011?

10 **A** Yes.

11 **Q** And after that information, did you sign
12 the bottom of the sheet?

13 **A** Yes.

14 **(WHEREUPON, State's Exhibit 10 is marked for**
15 **identification purposes.)**

16 **MS. MONTS:** The information -- Your Honor,
17 this is State's Exhibit 10 the statement by Saul
18 Carranza.

19 **BY MS. MONTS:**

20 **Q** Did you tell -- after being read your
21 rights and signing the waiver of rights, did you tell
22 the officer who wrote it down on today's date I was
23 supposed to sell a white guy two kilos of cocaine. I
24 called a Hispanic male I know as René. His phone
25 number is [REDACTED]-6873 and ordered the two kilos. It

1 usually takes about four hours for René to bring it
2 after I ordered it. Today René came in a green Ford
3 Expedition and walked inside of my shop.

4 A Yes.

5 Q He had the two kilos in his jacket and put
6 them under the mattress when he walked in.

7 A Yes.

8 Q He then left and waited for the white guy
9 to bring me the money. The white guy -- the white
10 guy then came in and looked at the kilos. Did you
11 say all of this?

12 A Yes.

13 Q He then left and I carried the kilos
14 outside to the back of my shop. I then saw a white
15 van with police jump out.

16 A Yes.

17 Q I've then threw the two kilos over the
18 fence and ran. I hid behind the fence until the
19 police found me. I am claiming the two kilos that I
20 threw today.

21 A Yes.

22 Q Is this information what you told law
23 enforcement?

24 A Yes.

25 Q Did you understand what law enforcement was

1 telling you when they read you your rights at the top
2 of this form? It says I, Saul Carranza, do hereby
3 give freely and voluntarily this statement to C.
4 Ayers and Ann Ramus who have identified themselves to
5 be deputies of the Greenville County Sheriff's
6 Office. I have been advised that I do not have to
7 make this or any other statement and that what I say
8 can be used against me in a court of law. I have
9 been advised I have the right to counsel with an
10 attorney of my choice that if I am financially unable
11 to obtain an attorney, the court will appoint an
12 attorney. I have not been threatened or promised
13 anything to make the statement. Do you recall
14 hearing those and waiving those rights?

15 **A** Yes.

16 **MS. MONTS:** Your Honor, that would be the
17 State's questioning.

18 **THE COURT:** Mr. Warder?

19 **MR. WARDER:** Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 **BY MR. WARDER:**

22 **Q** Saul, you understand and they went over
23 that your statement you gave that night with you?
24 You understand that the Solicitor's went over the
25 statement you made that night with you?

1 **A** Yes.

2 **Q** Do you also understand that the issue is
3 not what you said that night as much as what the
4 truth is?

5 **A** Yes.

6 **Q** In other words, you don't have to be
7 consistent. You just have to be truthful.

8 **A** Yes.

9 **Q** And, of course, the question is did René
10 bring you the cocaine.

11 **MS. MONTES:** Your Honor, the State's
12 position is this is a hearing as to the
13 voluntariness of that statement. That's the
14 purpose of this hearing.

15 **THE COURT:** I'm going to allow him to
16 going to this. I think we may as well cross
17 this bridge while we're at it.

18 **BY MR. WARDER:**

19 **Q** Okay. So the answer to your question, did
20 René bring you that cocaine for you to sell that day
21 or did you get it from someone else?

22 **A** René bought it to me.

23 **Q** Okay. You are saying the statement you
24 made is completely truthful?

25 **A** Yes.

1 **Q** And today, did they promise you something
2 if you would change her testimony or if you would say
3 this today? Did they tell you they would reduce your
4 sentence?

5 **A** No.

6 **Q** Did she tell you they would make some
7 motion to reduce your sentence or they might consider
8 it?

9 **A** No, they haven't. I have not been told
10 that.

11 **MR. WARDER:** That's all the questions I
12 have.

13 **THE COURT:** Okay. All right.

14 Mr. Pinckney, is there anything you would
15 like to ask your client while he is on the
16 stand?

17 **MR. PINCKNEY:** Your Honor, just to clarify,
18 I would like to ask him a couple of things.

19 **THE COURT:** All right.

20 **CROSS EXAMINATION**

21 **BY MR. PINCKNEY:**

22 **Q** You said that you wanted to take the Fifth
23 Amendment.

24 **A** Yes, but it is too late now.

25 **Q** Right. But when you said you wanted to do

1 that, you said you wanted to do that because there
2 were some things that you had provided in your
3 statement that you felt might be inconsistent, right?

4 A Yes.

5 Q The only other question I'm going to ask
6 you is you have told the truth so far?

7 A Yes.

8 Q And you plan to continue telling the truth
9 to whatever questions are asked of you?

10 A Yes.

11 Q And that your fears weren't based on what
12 happened that day with the cocaine but they were
13 based on other things that took place afterwards,
14 correct?

15 A Ask --

16 Q Let me ask this and then that's it. You
17 understand as long as you told the truth here, you
18 feel reasonably certain that you have no further
19 reason to plead the Fifth?

20 A No.

21 Q That was your primary concern, right?

22 A Yes.

23 Q That's all I have, Your Honor. I just
24 wanted to clear that up.

25 THE COURT: I appreciate it. I appreciate

1 it. I know we all appreciate it.

2 Ms. Monts, any redirect?

3 **MS. MONTs:** No, Your Honor.

4 **THE COURT:** All right. Mr. Warder,
5 anything after Mr. Pinckney's questions?

6 **MR. WARDER:** No.

7 **THE COURT:** All right. Thank you, Sir.

8 **MS. MONTs:** Your Honor, they're asking if
9 they can take him back.

10 **THE COURT:** I would not think that we need
11 to talk to him. Mr. Pinckney, do you need to
12 talk with him any further?

13 **MR. PINCKNEY:** No, Your Honor.

14 **THE COURT:** I think it is fine to take him
15 back. We would just bring him back for trial
16 tomorrow morning. All right, thank you.

17 All right. Yes, ma'am.

18 **MS. MONTs:** Your Honor, regarding the
19 validity and the voluntariness of the -- and the
20 sufficiency of the photo lineup, the state
21 believes the officer's testimony and the person
22 who Mr. Carranza selected in the photo and we
23 believe that the photo lineup is appropriate to
24 be presented to the jury.

25 **THE COURT:** All right. Mr. Warder,

1 anything you want to say in response?

2 **MR. WARDER:** There might be. It certainly
3 would have to be after this witness. The
4 witness said, testified the information. You
5 would have to lay the foundation for any of the
6 information.

7 **THE COURT:** You wouldn't, of course, be
8 wanting any of the results of this photo lineup
9 to be introduced before this witness testified
10 again, correct, in trial?

11 **MS. MONTS:** Correct.

12 **THE COURT:** All right. I find that the
13 identification was not unnecessarily suggestive
14 in any manner. In fact, I think the photos were
15 chosen of folks who looked very similar to me
16 and was done in accordance with normal police
17 procedure and that there was -- does not appear
18 to be any suggestion whatsoever. This witness
19 seemed to be well familiar with the person he
20 identified as René, the defendant, new his phone
21 number, dealt with him and had ample time to
22 have seen him and evidently knew him outside of
23 this transaction. So I'm going to allow you --
24 subject to, of course, laying the proper
25 foundation, I'm going to allow the

1 identification be considered by the jury. All
2 right. Anything else we can take up today?

3 **MS. MONTS:** I don't know of any other
4 questions. Do you have anything else?

5 **MR. WARDER:** At this time, I don't.

6 **THE COURT:** All right. Well, very good.
7 Let's -- we will reconvene tomorrow morning at 9
8 a.m.

9 **(WHEREUPON,** the Court recessed for the day at
10 approximately 4:57 p.m.)

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 13th day of November, 2013 at approximately 9:37 a.m.)

THE COURT: Yes, ma'am.

MS. MONTS: Your Honor, Mr. Rodriguez has decided to plead.

THE COURT: All right. Let's go ahead.

THE CLERK: Your Honor, this is indictment 2011-GS-23-5259, René Miguel Rodriguez indicted for trafficking cocaine pleading to trafficking in cocaine 28 grams or more. It is true billed.

Raise your right hand.

(WHEREUPON, the defendant is first duly sworn.)

THE COURT: Mr. Rodriguez, you are pleading today to trafficking cocaine 28 grams or more that carries seven years up to 25 years. Is that your understanding?

MR. RODRIGUEZ: Yes, ma'am.

THE COURT: That's a significant reduction from what you were going to trial on, which was Trafficking Cocaine. I don't know the amount but it carried 25 to 30 years. Is that your understanding?

MR. RODRIGUEZ: Yes, ma'am.

THE COURT: This is still a violent

1 offense. Any active jail time you received will
2 serve a greater percentage than if it were a
3 nonviolent offense. You understand that?

4 **MR. RODRIGUEZ:** Yes, ma'am.

5 **THE COURT:** It is also a serious offense
6 meaning if you were to get two other serious or
7 most serious offenses, on the third, the state
8 could seek life without the possibility of
9 parole against you. Do you know that?

10 **MR. RODRIGUEZ:** Yes, ma'am.

11 **THE COURT:** Have you discussed these
12 charges -- this charge with your attorney?

13 **MR. RODRIGUEZ:** Yes, ma'am.

14 **THE COURT:** Are you happy with what your
15 attorney has done for you?

16 **MR. RODRIGUEZ:** Yes, ma'am.

17 **THE COURT:** Do you have any complaint to
18 make against law enforcement, the solicitor's
19 office or your attorney as a result of this
20 charge whatsoever?

21 **MR. RODRIGUEZ:** No, ma'am.

22 **THE COURT:** Are you under the influence
23 of drugs or alcohol here today?

24 **MR. RODRIGUEZ:** No, ma'am.

25 **THE COURT:** Has anyone forced you to plead

1 guilty?

2 MR. RODRIGUEZ: No, ma'am.

3 THE COURT: Has anybody promised to do
4 anything to get you to plead guilty?

5 MR. RODRIGUEZ: No, ma'am.

6 THE COURT: Okay. The sentencing sheet
7 says you are 37 years old, is that right?

8 MR. RODRIGUEZ: Yes, ma'am.

9 THE COURT: And where have you worked
10 before this?

11 MR. RODRIGUEZ: I have construction
12 company. I do framing houses. I do roofings. I
13 do construction. I did construction all my
14 life.

15 THE COURT: Okay.

16 MR. RODRIGUEZ: But I was a subcontractor.

17 THE COURT: All right. All right. Good.
18 When you plead guilty, you give up your right to
19 remain silent about these charges, do you know
20 that?

21 MR. RODRIGUEZ: Yes, ma'am.

22 THE COURT: You also give up your right
23 to a jury trial. We were in a jury trial. At
24 the trial, of course, your attorney could call
25 witnesses on your behalf and cross-examine

1 witnesses against you and the State would have
2 to prove your guilt beyond a reasonable doubt.
3 But when you plead guilty, you give up your
4 right to a jury trial. Do you know that?

5 **MR. RODRIGUEZ:** Yes, ma'am.

6 **THE COURT:** And how do you plead to this
7 charge? Guilty or not guilty?

8 **MR. RODRIGUEZ:** Guilty.

9 **THE COURT:** You have 10 days from today's
10 date to appeal this plea if you so choose but
11 you must do so in writing to this court. All
12 right.

13 **MR. RODRIGUEZ:** Yes, ma'am.

14 **THE COURT:** You understand that?

15 **MR. RODRIGUEZ:** Yes, ma'am.

16 **THE COURT:** All right.

17 **MS. MONTS:** May it please the court, Your
18 Honor?

19 **THE COURT:** Yes, ma'am.

20 **MS. MONTS:** Your Honor, this incident
21 occurred on February 3rd, 2011. You have heard
22 a lot of the testimony from yesterday. Officers
23 with the Drug Enforcement Administration and the
24 Greenville County Sheriff's office were working
25 on an undercover drug operation. They had been

1 working on this for some time.

2 On this particular date, the co-defendant,
3 Saul Carranza, had set up a deal with the DEA
4 agent that was acting undercover for the
5 purchase of two kilos of cocaine for the price
6 of \$60,000. The person at that time who was
7 delivering the dope and the supplier was not
8 known. Officers with the Sheriff's office and
9 DEA did set a perimeter around the buy location
10 which was [REDACTED] White Horse Road here in
11 Greenville county.

12 They did record what took place and the
13 audio, setting up the transaction was recorded
14 with Mr. Carranza. Audio from the Sheriff's
15 office and video did show someone riding up in a
16 vehicle, a Ford green Expedition. The tag did
17 come back to Mr. René Rodriguez.

18 A person was videoed getting out of that
19 vehicle. There are still shots from the video
20 of two square packages about 12 inches long in
21 his jacket. The person that goes inside the
22 store, inside the, uh, auto store which is what
23 this is, a repair kind of place, car repair
24 place. He did come back out. He has two people
25 with him in his car.

1 The car then is videoed going across the
2 street to a pawn shop where the people get out
3 and go -- Mr. Rodriguez and the other two
4 individuals go inside the pawn shop and kind of
5 just hang out. Once the undercover officer
6 comes back and does see the two kilos inside the
7 store and does tell Mr. Carranza that he has to
8 go back and get the money and will be back in 10
9 minutes, the takedown sign is given.

10 Sheriff's deputies come in as well as DEA
11 agents. Mr. Carranza runs. They do follow him
12 and has videoed him running and jumping a fence
13 where he drops two kilos of cocaine beside the
14 fence. Those two kilos are recovered. When the
15 police come in, it is on video from the
16 Sheriff's office that Mr. Rodriguez comes out
17 and has two people watching the police across
18 the street. They then to get into the same Ford
19 Expedition and leave the site. Investigation
20 and statement from Mr. Carranza leads them to
21 Mr. Rodriguez based on the video and his car
22 tag. He is then arrested at his house a few
23 days later in that same vehicle is at the same
24 location.

25 Your Honor, the two kilos of cocaine were

1 weighed as 1005 grams each. We didn't have the
2 sworn testimony yesterday from the co-defendant
3 that -- and he did it give a statement and pick
4 the defendant out of a photo lineup stating that
5 Mr. Rodriguez was the person who bought the
6 drugs to him and delivered them in this case,
7 Your Honor.

8 **THE COURT:** All right. All right. And he
9 has no prior record?

10 **MS. MONTES:** He has a prior record, Your
11 Honor.

12 **THE COURT:** Oh, I'm sorry.

13 **MS. MONTES:** Your Honor, 1999, Operating
14 Uninsured Vehicle; 2000, False Information to
15 Police Officers; 2000, Unlawfully Carrying a
16 Weapon; 2001, Criminal Domestic Violence; 2006
17 Assault and Battery. And that would be it, Your
18 Honor.

19 **THE COURT:** Okay. All right. Anything
20 else from the state?

21 **SPEAKER:** No, ma'am.

22 **THE COURT:** All right. Mr. Warder, sounds
23 like his record by comparison to most people we
24 see is what I might call limited.

25 **MR. WARDER:** Yes, ma'am. Most of them are

1 in magistrate's court. Your Honor, I got to
2 know Mr. Rodriguez a good bit. He doesn't want
3 to talk about his case as much as he wants to
4 talk about his family. He is the kind of man
5 that would make a good member. He is religious
6 -- religious-oriented. He worries about how
7 other members are struggling. He has had two
8 letters from his children. He wanted to talk
9 and I would like for you to hear from him.

10 **THE COURT:** Certainly. I certainly -- I
11 told you, Mr. Rodriguez, that I will be happy to
12 hear from you. I will be happy to take into
13 consideration anything you say.

14 **MR. RODRIGUEZ:** Yes, ma'am. First of all,
15 I want to apologize to all here. I am over here
16 asking Your Honor to have mercy for my life to
17 whoever decides what is going to happen to me,
18 let him let the Lord touch their hearts. I
19 don't only come in here asking the Lord for
20 mercy for my life, for my family. I didn't come
21 over here to lie. The Lord is not going to heal
22 me if I'm over here lying.

23 I got three kids. I got 14 years old.
24 He's no walk. He's no talk. He is unable
25 child. I got 13 years old little girl. She is

1 going to be 13 in a couple of weeks. I have got
2 a 10 years old little boy. I really got no --
3 I'm not the kind of person that I was a drug
4 dealer. Somehow, I got hooked up in the fake
5 life. Sometimes it was not about the money
6 because on my job, I can make sometimes I can
7 make \$5000 a week, sometimes I could make \$8000
8 a week.

9 **THE COURT:** You mean by framing houses?

10 **MR. RODRIGUEZ:** Yes, ma'am.

11 **THE COURT:** Okay. I just want to be
12 clear.

13 **MR. RODRIGUEZ:** Yes, ma'am. I normally
14 charge like \$15-18,000 on a house. From then, I
15 make -- in three weeks, I can make \$10,000. But
16 on top of that, I'm still getting other
17 contracts to do roofing that I can make \$1500
18 sometimes in one day and then I still do another
19 contract like sheet rock and all of that stuff.
20 So when I run all of my money together, on a
21 good week I can perform \$10,000.

22 **THE COURT:** Okay. Okay. I got you on
23 that.

24 **MR. RODRIGUEZ:** It was not a -- I just got
25 more on that kind of life for maybe a year.

1 There was more to being families. They are fake
2 families. I got mixed up. I got mixed up. I
3 was also hurting more my family that I was doing
4 it because I was taking, given them all the fake
5 life that made me happy. But really I was
6 pulling away from my kids. I was pulling away
7 from my wife. I've got a beautiful wife that I
8 don't think she -- she -- we've been together
9 for 17 years but I messed her life up too.
10 because I was out in the streets doing these
11 things.

12 All this time for the last two years that
13 I've been sitting here, I realized how that I
14 was doing my family, how I was tearing my family
15 apart. When my kids come to see me and they
16 say, daddy, when you come home. I say, baby, I
17 will be home soon. I was -- God know it was my
18 last chance this time to do the right thing.

19 **THE COURT:** Uh-huh.

20 **MR. RODRIGUEZ:** Even if I got to go spend a
21 few years down the road, I still can be good for
22 my life to prepare what I want to do for my
23 kids. I'm thinking -- I'm thinking my wife, she
24 going to forgive me. I was telling her every
25 day that whatever happened, she still, she is

1 still the love of my life because when I was
2 over there, I no proud of it.

3 **THE COURT:** You no what?

4 **MR. RODRIGUEZ:** I'm not proud of what I was
5 doing.

6 **THE COURT:** I didn't get that word.

7 **COURT REPORTER:** He's not proud.

8 **THE COURT:** Not proud.

9 **COURT REPORTER:** Not proud of what he was
10 doing.

11 **THE COURT:** Proud.

12 **MR. RODRIGUEZ:** Yes, ma'am.

13 **THE COURT:** I'm sorry.

14 **MR. RODRIGUEZ:** I was not proud of it
15 because I was messing with a lot of womens, all
16 the street life that when I come over here and I
17 gave my life to the Lord. For the last year, I
18 lost contact of her, of my babies. The last
19 couple of months, they've been coming back again
20 to my life so now I talked to my babies. I tell
21 her what I do is in the past. There is nothing
22 I can do but I know if I stay focused on what I
23 want to do, we can do better. I just got this
24 letter from my kids a couple of days ago. I
25 don't know if you be like to read it.

1 **THE COURT:** I'll tell you what, it might
2 be easier if you don't mind if you just give it
3 to me.

4 **MR. RODRIGUEZ:** Yes, ma'am. Yes, ma'am.
5 Thank you. I was telling my babies that I will
6 be home. I am like, God, I am doing right. I
7 can sit over here and talk all day. My first
8 language is Spanish. When I start learn
9 English, my first words were all curse words.
10 That is how I started learning English, all bad
11 words. God has been helping me. I can sit over
12 here and talk to all day and thank God all those
13 things. God has changed a lot of things from my
14 mind on the way I think.

15 So I was like, well, I tried to do right.
16 God is going to do miracle. But I did it wrong.
17 So even in his word he say God punish who he
18 loves. I think this is my punish to make my
19 life better, to make -- I can go home one day.
20 And my little boy, he drew a little guy right
21 there. He's fishing. He's on one side and I'm
22 on the other one. The way I was doing it, I was
23 not going to do nothing for him. But now, when
24 I come home, I know what I want to do.

25 Even if I'm not at home, wherever I'm going

1 right now, I'm still going to do my praise. I'm
2 going to go to school. I want to go to school
3 and do better for myself. If I can't do better
4 for myself, I can do nothing for my kids. I can
5 do nothing for the peoples that I love.

6 **THE COURT:** Any last statements in just
7 wrapping it up?

8 **MR. RODRIGUEZ:** Yes, ma'am. I just want you
9 to, whatever you have to do, just do from your
10 heart. I'm over here. I am guilty of it. I am
11 over here ready to pay my mistake and move on
12 with my life.

13 **MS. MONTS:** Your Honor, I would like to
14 say something.

15 **THE COURT:** Yeah, sure. Go ahead.

16 **MS. MONTS:** He has done 1008 days in jail.
17 The state's last offer when we were trying to
18 work this out was 22 years. So we are asking
19 for a substantial sentence.

20 **THE COURT:** There had been another offer
21 at one time that he had let expire, is that
22 right, or that y'all had rejected?

23 **MS. MONTS:** Yes, Your Honor.

24 **THE COURT:** All right.

25 **MR. WARDER:** Your Honor, before coming

1 down here today, I received a fax from the
2 Solicitor's office. They were offering a
3 special day for anybody to have possession of
4 any drugs to just a fine. People that had PWID
5 drugs, they were given a short probation. They
6 said because of the number of cases, this is a
7 special day, special term and they set up a
8 special judge.

9 It kind of highlighted for me where society
10 is going as a whole with drugs. We're spending
11 thousands and thousands and millions of dollars
12 on incarcerating people for lengthy, lengthy
13 sentences. Nobody is more worried than Your
14 Honor about the amount of time these crimes
15 carry and the penalties. And I don't know.
16 With my working with Mr. Rodriguez, I think
17 there is a chance that when we get him through
18 the system, whenever, whatever he has to do is
19 done, he can be a responsible hard-working man.
20 I think he has learned and benefitted and has
21 changed in the two years he has been at the
22 present.

23 **THE COURT:** You seem genuinely sorry. You
24 seem genuinely sorry for what you did. I would
25 agree with that. These are the things that take

1 into consideration. I take into consideration
2 the seriousness of the offense, as we know very
3 serious. You might not have intended the
4 consequences of what you did but those have
5 consequences that went out in our community far
6 and wide. I take into consideration your age.
7 You're relatively still young but you have gone
8 a long time without too much on your record. I
9 take your record into consideration. I take
10 into consideration that you have taken
11 responsibility, albeit maybe a little later than
12 the system would have liked, but you have taken
13 responsibility. I take all of those things into
14 consideration.

15 I take into consideration that you seem
16 genuinely sorry for what you have done. I am
17 glad that this worked out in a way that I do not
18 have to give you 25, 28, 30 years. Frankly, I
19 am glad about that. The sentence of the Court
20 is 18 years credit for the 1008 days you have
21 served. Good luck to you.

22 **MR. RODRIGUEZ:** Thank you.

23 **(WHEREUPON,** the proceedings conclude at
24 approximately 9:56 a.m.)

25

FORM 5

STATE OF SOUTH CAROLINA)

County of Richland)Rene Miguel Rodriguez 357840)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-23- 05981

APPLICATION FOR

POST-CONVICTION RELIEF

2014 NOV

AM 9 42

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENHOFER**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
2. Name and location of Court which imposed sentence Greenville County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011 GS 2305259
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 11/13/13 - 18 years w/ 1,008 days credit
- (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?
- No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) No grounds for appeal
- (b) _____

(c) _____

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

(a) My lawyer convinced me to reject a plea deal to
 (b) 12 years b/c my co-defendant, who had already
 (c) pled, "could not testify against me". (see reverse)

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

(a) I was offered a plea to 12 years, I rejected it on
 (b) advice of counsel. At trial, my lawyer changed
 (c) his advice, but the deal offered was now 18 years.

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

(a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

(a) This has been my first opportunity
 (b) to present these claims
 (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? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

(a) the name and address of each attorney who represented you:
 i. Richard Water, Greenville, SC
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial, Plea and Sentencing
 ii. _____
 iii. _____

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

I would like to be resentenced in accordance
with the agreement to 12 years my attorney
rejected.

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

No

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, Rene Miguel Rodriguez, 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 Rene Rodriguez

SWORN to and subscribed before me this 24TH
 day of OCT, 2014.

Albert W. Carter (L.S.)
 Notary Public

My Commission Expires: Sept 11, 2021

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

I, Rene Miguel Rodriguez, 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 Rene Rodriguez
Applicant

SWORN or affirmed to and subscribed before me this
24th day of OCT, 2014.

Alvin W. Carter
Notary Public

My Commission Expires: Sept 11, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-5981
COUNTY OF GREENVILLE	)	
	)	
Rene Miguel Rodriguez,	)	
S.C.D.C. No. 357840,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed November 3, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the September 2011 term of General Sessions for trafficking cocaine (2011-GS-23-5259). Richard H. Warder, Esquire represented the Applicant.

On November 13, 2013, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to 18 years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in

custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. "My lawyer convinced me to reject a plea deal to 12 years b/c my co-defendant, who had already pled 'could not testify against me.'"

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at

2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

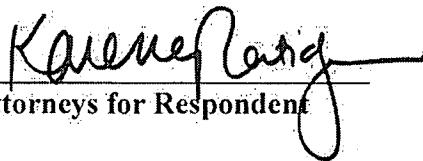
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

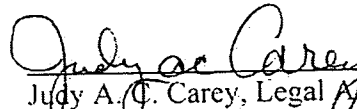
March 31, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2014-CP-23-5981
	)	
RENE MIGUEL RODRIGUEZ, 357840	)	
	)	
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:

**Rene Miguel Rodriguez, 357840
Kirkland Correctional Institution
4344 Broad River Road
Columbia SC 29210**

DATED this 31st day of March, 2015.


Judy A. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Rene M. Rodriquez,	)	
	)	
Applicant,	)	
v.	)	Case No. 14-CP-23-5981
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held on December 18, 2015, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

Caroline Horlbeck, Esq.
... appearing for Applicant

Karen Ratigan, Esq.
Assistant Attorney General
... appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616-7145
dgarrison@sccourts.org

Rene M. Rodriquez v. State of South Carolina
Case No. 14-CP-23-5981
Hearing of December 18, 2015
Before The Honorable Perry H. Gravely

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*No Exhibits Entered

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Before The Honorable Perry H. Gravely

1 MS. RATIGAN: May it please the Court,
2 Your Honor?

3 THE COURT: Yes.

4 MS. RATIGAN: This is the case of
5 Rene Miguel Rodriguez versus the State of
6 South Carolina.

7 Docket number is 2014-CP-23-5981.
8 Mr. Rodriguez was indicted for trafficking
9 cocaine. He was represented on this charge
10 by Mr. Warder.

11 The case was actually brought to
12 trial, Your Honor, in November of 2013 after,
13 I believe, the State's third witness Mr.
14 Rodriguez decided to plead guilty. The
15 guilty plea starts on Page 84 of the
16 transcript. He pled guilty to a reduced
17 charge of trafficking twenty-eight to one
18 hundred grams.

19 He pled guilty on November 13th,
20 2013 before Judge Verdin and received an
21 eighteen-year sentence.

22 He did not file an appeal.

23 The State is ready to proceed.

24 However, I've been advised that counsel has
25 an issue to bring before the Court.

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1 THE COURT: All right. Yes.

2 MS. HORLBECK: Judge, I have
3 spoken to Mr. Rodriguez a number of times and
4 have not had any difficulties communicating
5 with him. Now he feels differently, today.
6 After I talked with him for about a half hour
7 with no problems, he called me back in and
8 asked if there would be an interpreter
9 present. Not anticipating any translation
10 problems, I did not arrange that. So, no, I
11 don't have an interpreter present today.
12 Look, I'm not him, I don't know exactly what
13 he understands.

14 THE COURT: No, I understand.

15 MS. HORLBECK: I'm not trying to
16 say that he's making anything up at all. I
17 just -- I didn't think there were any
18 problems. Now there may be problems that I
19 just didn't know about. If Your Honor would
20 like to speak with him, that's fine.

21 THE COURT: Well, I mean, I'm not
22 sure that would help if he wants to -- let me
23 ask you this, though. I mean, I'm looking at
24 this transcript. There was not an
25 interpreter in the trial.

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1 MS. HORLBECK: No, Your Honor.

2 And during the plea between pages 91 and page
3 96, Mr. Rodriguez speaks at great length.

4 THE COURT: Oh, yeah. Yes, he
5 has. I'm looking at Page 91. He has, he
6 goes on for a page and looks like ---

7 MS. HORLBECK: And I'm certainly
8 prepared to proceed, Judge.

9 THE COURT: I'm going to deny the
10 request. I mean, there wasn't one then and I
11 -- you know, this was November of 2013. So
12 I'm going to deny the request.

13 MS. HORLBECK: All right, Judge.
14 We're prepared to proceed. (Sidebar with
15 client), he has something he'd like to say.

16 THE COURT: Yes. I'd be glad to
17 hear from you.

18 APPLICANT RODRIGUEZ: I just -- I
19 don't know nothing about no -- nothing like
20 that. And I just feel that she -- she just
21 tell me that if I win I lose, so there is no
22 winning for my case. She say if I win, I'm
23 facing twenty-five to thirty. If I lose, I
24 just got to do my time.

25 THE COURT: All right. And what

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1 this is, is what's called a Post-Conviction
2 Relief is what she's telling. What you're
3 saying is, that in your petition your
4 indicating that your attorney did something
5 wrong, which gave you a greater sentence than
6 you would have gotten. And so the relief is
7 either go back to square one and start over
8 with your plea or with your trial, or we deny
9 it and it just stays the way it is now.

10 MS. RATIGAN: Judge, I would note
11 that he was originally charged with two
12 kilos. And if he were to go back, he pled it
13 to twenty-eight or above. If he were to go
14 back at this point, he would face the two
15 kilos and not the twenty-eight or above.

16 MS. HORLBECK: And that is what I
17 -- what Mr. Rodriguez and I discussed
18 extensively in all of our conversations, in
19 particular today.

20 THE COURT: But, I mean, if you
21 feel like you have a position that you want
22 to present, we'll be glad to hear from you.
23 Now, we don't want to, you know -- it's
24 totally your decision as far as what you want
25 to do. If you need a few more minutes to

1 talk with your attorney, I'll be glad to give
2 you a few more minutes.

3 APPLICANT RODRIGUEZ: I just don't
4 know, you know, this the second time I been
5 on like this and I just don't know how to
6 explain myself. I can speak English. I can
7 understand English. I just don't -- I don't
8 know nothing about no law. And I don't know
9 -- I did some paperwork for, uh, and then
10 they didn't tell me in the letter. And they
11 send me, they wrote a letter that I was going
12 to come over here. And I'm only here for --
13 and she told me, you know -- when I talked
14 with her she said if I would win, that I can
15 try to get a bond or house arrest or
16 something. And then we was talking a while
17 ago and she said that if I win, I'm facing
18 twenty-five to thirty. And I said, I don't,
19 I don't want -- I don't need no more time.
20 I've got three kids over there with DSS right
21 now. I'm trying to see what I can do to be
22 home as soon as possible for my kids and my
23 family, you know. I don't want to make it
24 and face no thirty years.

25 THE COURT: All right. Well, I

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TESTIMONY OF APPLICANT

1 mean, do you want to present your case
2 and we can maybe after he presents his case -
3 - I mean, do you want to testify and tell me
4 what you think your attorney did wrong, I'll
5 be glad to hear from you. That's up to you.
6 I mean I realize you're not satisfied with
7 the sentence but most people that are in jail
8 are not.

9 APPLICANT RODRIGUEZ: Yes, sir.

10 THE COURT: But like I said, it's
11 up to you. It's your decision. I mean, you
12 can get advice from your counsel, Ms.
13 Horlbeck, who's a very experienced attorney.
14 But it's up to you to ultimately make the
15 decision.

16 APPLICANT RODRIGUEZ: Well, we're
17 going to go. We're going to go.

18 THE COURT: Okay.

19 APPLICANT RODRIGUEZ: Yes, sir.

20 MS. HORLBECK: All right. We
21 would call Mr. Rodriguez to the stand.

22 (WITNESS WAS DULY SWORN)

23 THE COURT: All right. Before we
24 start too, I would like for him to state his
25 full name

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TESTIMONY OF APPLICANT

1 CLERK: Please state your full name
2 for the record.

3 APPLICANT RODRIGUEZ: Rene
4 Rodriguez.

5 THE CLERK: Thank you. You may be
6 seated.

7 THE COURT: All right. And I
8 guess just making a formal finding. I mean,
9 there wasn't a request before the hearing for
10 an interpreter. In reviewing the transcripts
11 from November the 13th, I do note that there
12 was not an interpreter at that time. There's
13 no indication that he requested it at that.

14 And in my conversation with Mr.
15 Rodriguez, I understand he's a little
16 concerned with understanding the law. I
17 appreciate that. But it does appear that he
18 is able to communicate in English, did a good
19 job of that. I think he should be able to
20 proceed without an interpreter. I'm just
21 putting that on the record.

22 MS. HORLBECK: Yes, sir.

23 THE COURT: All right. Ms.
24 Horlbeck?

25 RENE RODRIGUEZ, having been duly sworn to

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1 tell the truth, and nothing but the truth,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. HORLBECK:

5 Q. All right. Mr. Rodriguez, you were
6 trafficking in two kilos of cocaine; is that
7 correct?

8 A. Yes, ma'am.

9 Q. Who represented you on that charge?

10 A. Mr. Richard Warder.

11 Q. All right. And did you retain Mr.
12 Warder or was he appointed?

13 A. I'm sorry?

14 Q. Did you hire Mr. Warder?

15 A. Yes, ma'am.

16 Q. Okay. How long did Mr. Warder
17 represent you?

18 A. For thirty-two, thirty-three months.

19 Q. Okay. Were you incarcerated? Were
20 you at the jail or were you -- had you made
21 bond?

22 A. No, ma'am. I was in jail. I never
23 made bond.

24 Q. All right. And while you were in
25 jail, did Mr. Warder come to the jail and

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TESTIMONY OF APPLICANT

1 discuss your case with you?

2 A. A couple of times.

3 Q. Okay. Did you and Mr. Warder review
4 discovery or the evidence in the case?

5 A. Yes, ma'am.

6 Q. All right. And did Mr. Warder talk
7 to you about what the State would need to
8 prove in order for you to be found guilty?

9 A. Yes, ma'am.

10 Q. All right. Did you and Mr. Warder
11 talk about any possible witnesses that would
12 testify against you?

13 A. Yes, ma'am.

14 Q. All right. And did you and Mr.
15 Warder -- you had a codefendant in this case;
16 is that correct?

17 A. Yes, ma'am.

18 Q. All right. Did you and Mr. Warder
19 talk about your codefendant?

20 A. Yes, ma'am.

21 Q. Did you and Mr. Warder talk about
22 the possibility of your codefendant testify-
23 ing against you?

24 A. Yes, ma'am.

25 Q. All right. And what was -- did Mr.

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TESTIMONY OF APPLICANT

1 Warder have any advice to give you or about
2 your codefendant? What was the plan? Was
3 your codefendant going to testify against
4 you?

5 A. Well, Mr. Richard say if the
6 codefendant sign his plea and they just take
7 his time then he don't have to -- reason to
8 come in and testify against me. So he say
9 that that's why we need my codefendant
10 testify. I mean, not testify. Take his plea
11 first ---

12 Q. Uh-huh?

13 A. --- and then after he take his plea,
14 he going to bring it to me.

15 Q. Okay. All right. So your
16 codefendant pled guilty?

17 A. Yes, ma'am.

18 Q. And your codefendant pled guilty
19 before your trial; is that right?

20 A. Yes, ma'am.

21 Q. All right. Did you believe your
22 codefendant would testify against you?

23 A. No, ma'am.

24 Q. All right. Did you believe that it
25 would help your trial if your codefendant was

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TESTIMONY OF APPLICANT

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1 not going to testify against you?

2 A. Well, and then I was just waiting
3 to, what Mr. Richard (Warder) told me.
4 Because like I say a little while ago, I
5 don't know nothing about no law.

6 Q. Right.

7 A. And I was waiting for Mr. Richard to
8 say he was going to testify against me when
9 we were going to trial.

10 Q. Okay. All right. Now, were there
11 any plea offers before your trial?

12 A. Yes, ma'am.

13 Q. What was the plea offer?

14 A. Twelve years.

15 Q. Did you review the plea offer with
16 Mr. Warder?

17 A. I'm sorry?

18 Q. Did you and Mr. Warder talk about
19 the plea offer?

20 A. Yes, ma'am.

21 Q. All right. And did you make a
22 decision about the plea offer?

23 A. About signing, signing?

24 Q. Of pleading or not pleading, yes?

25 A. I'm sorry. I didn't understand

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1 that.

2 Q. Well, when you say sign, you mean
3 sign the sentencing sheet and agree to plead.
4 Is that what you mean?

5 A. Yes, ma'am.

6 Q. All right. Did you and Mr. Warder
7 talk about whether or not to accept the
8 State's offer and plead?

9 A. Yes, ma'am.

10 Q. Okay. And what was the plea offer
11 again?

12 A. Twelve years.

13 Q. All right. And what was your
14 decision?

15 A. I mean, I would -- we would talk
16 about it. And he told me -- because I was
17 talking to my codefendant, like I say. And
18 he was telling me that he was not going to
19 testify against me. So Mr. Richard say we're
20 going to come to trial and we will win. Like
21 three weeks before we come to the trial, Mr.
22 Richard went and talk to me and he told me
23 'you ready going to go home?' And I said,
24 "yes, sir!" He said well, you're going to go
25 home in the next couple of weeks. That's all

1 he could say.

2 Q. Okay. And based on Mr. Warder's
3 advice, what did you decide to do with that
4 twelve-year plea offer?

5 A. Well, at that time we not even
6 talking about the plea no more. We was just
7 -- he just come and tell me that we was
8 coming to the court.

9 Q. All right.

10 A. We didn't talk about the plea no
11 more.

12 Q. Okay. Is it fair to say you
13 rejected the State's plea offer?

14 A. Yes, ma'am.

15 Q. Okay. All right. All right. So
16 your case was scheduled for trial. When you
17 arrived for your trial, at what point did you
18 understand that your codefendant would be
19 testifying against you?

20 A. When he was taking a seat in this
21 chair.

22 Q. Okay. Was that in the middle of the
23 trial or before y'all picked a jury?

24 A. No. I think it was -- we just
25 picked a jury that day.

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TESTIMONY OF APPLICANT

1 Q. All right. So before you picked the
2 jury or after?

3 A. It was after.

4 Q. All right. So after you picked the
5 jury was when you realized 'my codefendant is
6 here to testify against me'?

7 A. Yes, ma'am.

8 Q. All right. Did that change -- did
9 you talk about that, about your codefendant
10 with Mr. Warder at that point?

11 A. Not at that point.

12 Q. Okay. Did your codefendant's
13 presence, did that affect or change your
14 decision any to go to trial?

15 A. No, ma'am.

16 Q. Okay. All right. So you proceed
17 with trial and your codefendant testified
18 against you; correct?

19 A. Well, I don't believe that was the
20 trial already because we was picking the jury
21 out. And then we left. And when we left --
22 when Mr. Richard say that there was going to
23 be harm because he was over here. Then the
24 next morning Mr. Richard say that I have to
25 take a plea because my codefendant over here.

1 Q. Okay. And had your codefendant
2 testified when you and Mr. Warder talked
3 about a plea?

4 A. Yes, ma'am.

5 Q. All right. Did your codefendant's
6 testimony hurt you?

7 A. I guess, yes, ma'am.

8 Q. Well, you listened to it. Did it
9 help you or hurt you? Did it help your case
10 or hurt your case?

11 A. I mean, I was a little, you know,
12 waiting on Mr. Richard.

13 Q. Right. But you heard your
14 codefendant's testimony.

15 A. Yes, ma'am.

16 Q. Did your codefendant say things that
17 made you out to be guilty?

18 A. Like I say, I was over here for a
19 trial. I was not over here to plead guilty.
20 But Mr. Richard say that morning before we
21 come into the court, he say I have to take a
22 plea. And then from there it went on to a
23 plea.

24 Q. Okay. All right. So after your
25 codefendant testified is when Mr. Warder and

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1 you discussed a plea?

2 A. Yes, ma'am.

3 Q. All right. What was the name of
4 your codefendant?

5 A. Saul --- uh.

6 Q. Caranza (phonetic)?

7 A. Yes, ma'am.

8 Q. Okay. All right. And when you and
9 Mr. Warder talked about a plea, what was the
10 advice Mr. Warder gave you?

11 A. Well, we -- he say if I sign the
12 plea, I might get ten, twelve, fourteen,
13 fifteen. Of course, I think he say that I'm
14 looking at no more eighteen, no more than
15 eighteen years. That' he was going to -- I
16 think he say that I couldn't get no more than
17 that.

18 Q. Okay. So Mr. Warder told you you
19 would not get more than eighteen years?

20 A. Yes, ma'am.

21 Q. And you understood that?

22 A. Yes, ma'am.

23 Q. All right. And when you pled you
24 understood there was the potential of getting
25 up to at least eighteen years; right?

1 A. Yes, ma'am.

2 Q. Okay. All right. And what made you
3 decide to plead?

4 A. Me and Mr. Richard was standing over
5 there talking for probably fifteen, twenty
6 minutes. I didn't want to plead to no
7 fifteen years. I telling him let's go ahead
8 and finish the trial. If I lose the trial,
9 then I can come back.

10 Q. Uh-huh.

11 A. And he say, 'well, you know, if you
12 decide to plea and you sign the plea, you
13 still can come back.'

14 Q. Uh-huh.

15 A. You can come back any time.

16 Q. Okay. And based on that advice you
17 decided to plead?

18 A. Yes, ma'am.

19 Q. Okay. If you didn't want to plead,
20 if you wanted to continue on with your trial,
21 why did you plead?

22 A. Well, Mr. Richard at that point, he
23 was kind of upset -- not with me. He was, I
24 guess, upset that my codefendant was over
25 here. And he was just, you know, telling me,

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TESTIMONY OF APPLICANT

1 you got to sign. "You've got to sign it."

2 Q. Do you remember the judge, Judge
3 Verdin, asking you if anyone had forced you
4 to plead guilty?

5 A. Yes, ma'am.

6 Q. Do you remember -- do you remember
7 the court asking you if anyone had promised
8 you anything to get you to plead guilty?

9 A. Yes, ma'am.

10 Q. All right. And do you remember
11 telling the court 'no.' 'No one's promised
12 me anything. No one's forced me to plead.'
13 Do you remember those answers?

14 A. Yes, ma'am.

15 Q. Okay. Why didn't you tell the court
16 during your plea that you felt pressured or
17 forced or somebody had promised you
18 something. Why didn't you tell the court
19 those things?

20 A. I didn't think about it. I didn't
21 know I could say -- because I earlier talk to
22 Mr. Richard and I didn't know. I couldn't
23 say 'well, I'm over here with Mr. Richard and
24 he is kind of more pressure me to it, to sign
25 the plea because I told him I didn't want to

1 sign no eighteen.' I tell him that I'll sign
2 fifteen but on eighteen -- I didn't know at
3 that time I could say 'well, I feel like Mr.
4 Richard's pushing me to do the eighteen.' I
5 mean, to sign the plea saying the eighteen.

6 Q. Okay. And Mr. Warder also explained
7 to you that you could come back to court
8 anytime?

9 A. Yes, ma'am.

10 Q. All right. Do you recall the court
11 explaining to you during the plea that you
12 only had ten days from the date of the plea
13 to file your appeal?

14 A. No, ma'am.

15 Q. You don't remember that?

16 A. No, I don't remember that.

17 Q. So when Mr. Warder told you that you
18 could come back anytime, what did that mean
19 to you?

20 A. I don't know. I mean, I was --
21 because when my codefendant, he was over
22 here. He say he was no -- he didn't want to
23 testify against me. And then, then the
24 Judge -- she say, 'if you don't tell us what
25 you know, I'm going to give you four times

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TESTIMONY OF APPLICANT

1 what you've already got.' So that's why he
2 start answering the questions. Because he
3 said he was going to plea for something. I
4 don't know what they call that. But he sit
5 on the chair and he don't want to say
6 nothing, then the Judge say, 'well, when you
7 sign this paper you giving all your rights.
8 You don't got no rights. So if you don't
9 answer those questions, I'm going to give you
10 four times more than what you already got.'
11 So that's when my codefendant started
12 answering the questions.

13 Q. Okay.

14 A. So there's that thing I was saying
15 to Mr. Richard, if I sign the plea then I'm
16 going to give up my rights, my rights like
17 the judge says. Well, I didn't want to sign
18 the plea. And that's when Mr. Richard said
19 well, you know, 'you sign the plea and you
20 still can come back, you still got your
21 rights.'

22 Q. Okay. All right. And I see by
23 looking at the transcript there was some talk
24 about immunity and that kind of thing. And
25 do you remember there being talk, I think by

1 the prosecutor of investigating your co-
2 defendant for false statements?

3 A. (No response).

4 Q. Do you remember any of that during
5 the trial?

6 A. No, ma'am.

7 Q. No?

8 A. (Negative gesture).

9 Q. Okay. All right. Now, ultimately
10 the charges were reduced and you pled to
11 reduced charges; is that correct?

12 A. Like I said, I don't know nothing
13 about that. I sign the charging form.
14 Twenty-five years or thirty, I didn't want to
15 do.

16 Q. But when you pled, you didn't plead
17 to that offense. You pled to a reduced
18 offense. Do you remember that?

19 A. Yes, ma'am. I think it was from
20 seven to twenty-five.

21 Q. Right. Okay. You actually pled to
22 trafficking cocaine twenty-eight grams or
23 more; right?

24 A. (Affirmative nod).

25 Q. And you understood it carried seven

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1 to twenty-five; is that right?

2 A. Yes, ma'am.

3 Q. Okay. Were you happy with that
4 reduction or not?

5 A. No.

6 Q. You just wanted to go forward with
7 the trial?

8 A. Yes, ma'am.

9 Q. Okay. All right. Are there any
10 other mistakes that Mr. Warder made that I
11 have not covered?

12 A. No, ma'am.

13 Q. All right. Were there any witnesses
14 you wanted Mr. Warder to subpoena that he
15 failed to subpoena?

16 A. No, ma'am.

17 Q. All right. Please answer any
18 questions Ms. Ratigan may have.

19 MS. RATIGAN: I don't have any
20 cross, Judge.

21 THE COURT: All right. Thank you.
22 I'll hear from their side and then I'll make
23 my ruling. You may step down.

24 APPLICANT RODRIGUEZ: Yes, sir.

25 THE COURT: Thank you.

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25

1 (WITNESS STEPS DOWN)

2 THE COURT: Yes, ma'am.

3 MS. HORLBECK: That's all we
4 have, Judge.

5 THE COURT: All right. From the
6 State?

7 MS. RATIGAN: Thank you, Your Honor.
8 We'd call Mr. Warder.

9 (WITNESS TAKES STAND)

10 RICHARD WARDER, having been duly sworn to
11 tell the truth, and nothing but the truth,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MS. RATIGAN:

15 Q. Mr. Warder, do you recall represent-
16 ing Mr. Rodriguez on this charge?

17 A. Yes, I do.

18 Q. And did you file the usual discovery
19 motions in this case?

20 A. Yes, I did.

21 Q. Did you review that evidence with
22 Mr. Rodriguez?

23 A. Yes.

24 Q. And did the State make a twelve-year
25 plea offer in this case?

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1 A. I don't know -- I think that's
2 right. I think it was a twelve-year one.

3 Q. And did you discuss with Mr.
4 Rodriguez the pros and cons of that offer?

5 A. Yes, I did.

6 Q. And why did Mr. Rodriguez decide to
7 turn that down?

8 A. The case against Mr. Rodriguez
9 involved the delivery of cocaine to Saul, who
10 was then was going to sell it to an FBI
11 informant. I guess the State's theory was
12 that my guy was a kind of a distributor and
13 Saul was kind of a retailer.

14 And they set up surveillance of Saul's
15 automotive operation where he built and
16 repaired cars. They had videotape that they
17 had taken that showed Mr. Rodriguez coming to
18 the car lot and he had a coat on that
19 basically had big bulges in it. He went into
20 the office area of the car lot and then he
21 came back out and left and the bulges weren't
22 there when he left.

23 He leaves kind of as the raid truck
24 is coming, the truck with all the officers in
25 it. And they conduct a raid and he drives

TESTIMONY OF RICHARD WARDER - DIRECT EXAMINATION

1 away from the scene. In the raid, the raid
2 vehicle arrives and all the policemen get
3 out, Saul grabs the cocaine, runs out back
4 and tries to get away and eventually throws
5 it over the fence as he's running. They see
6 this and they recover the cocaine.

7 Later the investigation leads them
8 to the truck my client drove -- it was
9 registered in his wife's name -- and they
10 come to the house and they arrest him.

11 The weakness in the State's case,
12 the only weakness that we could find that
13 existed was that they couldn't actually put
14 the cocaine on him. The only person that can
15 really do that is the fellow Saul.

16 When they incarcerated everybody, my
17 client -- and I want to say they were in the
18 same cell, but they could communicate. And
19 Saul told my client he wasn't going to
20 testify against him. Without that testimony,
21 there would be some question of whether the
22 State could prevail on a prima facie case.
23 Based upon that analysis, he elected to go
24 ahead. Because Saul and him were good
25 friends and he really believed Saul would not

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1 testify against him.

2 Q. So Mr. Rodriguez said, 'Saul said
3 he's not going to testify. That's why I want
4 to turn down the deal.'

5 A. I think for months he assured my
6 client of that, yeah.

7 Q. Did you advise him to take down that
8 deal or was that his decision? I mean, to
9 turn down the deal or was that his decision?

10 A. That was his decision. We tried to
11 look at the pluses and the minuses of it.
12 You take the sure and you lose the chance of
13 a not guilty. And it had to be weighed and
14 the risks -- I tried to explain that, you
15 know, the risk is not good.

16 Q. And did you discuss the possibility
17 that Saul might change his mind and testify
18 against him later?

19 A. I told him, yeah, and about all the
20 pressure he'd be put under.

21 Q. Did you ever affirmatively tell Mr.
22 Rodriguez that Saul would not testify?

23 A. No. I relied exclusively on his
24 knowledge. It was his best friend he was in
25 contact with. He was the one assuring me

TESTIMONY OF RICHARD WARDER - CROSS EXAMINATION

1 that he wouldn't.

2 Q. After the trial started, what made
3 Mr. Rodriguez decide to go ahead and plead
4 guilty?

5 A. Well, Saul entered the plea and they
6 deferred sentencing, as I recall. His lawyer
7 was there. And faced with that dilemma, I'm
8 sure that Saul's lawyer encouraged him to
9 plead guilty -- I mean, to testify; Saul
10 testified.

11 Q. And after he testified, is that when
12 Mr. Rodriguez decided to plead guilty?

13 A. Yes. We talked and I told him that
14 with that testimony that he was probably
15 facing a conviction.

16 Q. At that point did Mr. Rodriguez tell
17 you he wanted to go ahead and finish the
18 trial or was he ---

19 A. No. He wanted the best -- I like
20 Mr. Rodriguez. He's a good man. He had a
21 good family, they were concerned. He worked
22 as a contractor. You know, he wanted the
23 least possible time in the situation.

24 Q. Do you recall him telling you that
25 he would plead guilty for fifteen years but

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1 not eighteen?

2 A. No. We never -- it was an open
3 plea. I kind of -- in my mind, I think he
4 wanted to get the twelve back on path.

5 MS. RATIGAN: That's all I have,
6 Your Honor.

7 THE COURT: Ms. Horlbeck.

8 CROSS-EXAMINATION

9 BY MS. HORLBECK:

10 Q. Mr. Warder, you said that the
11 codefendant was represented by counsel; is
12 that correct?

13 A. By who?

14 Q. The codefendant had an attorney;
15 right?

16 A. Yes.

17 Q. Okay. I know sometimes it can be
18 difficult to talk to codefendants. Did you
19 ever have the opportunity to interview the
20 codefendant prior to the trial and kind of
21 confirm his testimony or deny?

22 A. No. My client was talking to him
23 and I was talking to the lawyer.

24 Q. Okay. All right. Would the lawyer,
25 would Saul's lawyer allow you to speak to

1 Saul?

2 A. I don't know if I -- I might have
3 been able to press an issue but the lawyer
4 informed me that Saul didn't want to testify.

5 Q. Okay. All right. So you felt
6 comfortable with what Mr. Rodriguez was
7 saying when he said that Saul didn't want to
8 testify against him?

9 A. Because they were talking. It
10 wasn't just one conversation. This is a
11 conversation they had all over time.

12 Q. All right. All right. That's all I
13 have. Thank you.

14 THE COURT: Any redirect?

15 MS. RATIGAN: I have no redirect,
16 Judge. And the State would rests at this
17 time.

18 THE COURT: All right. Thank you.

19 THE WITNESS: Okay. Thank you.

20 (WITNESS STEPS DOWN)

21 THE COURT: Any rebuttal?

22 MS. HORLBECK: No, Judge. We
23 just rest on the record.

24

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CERTIFICATE OF COURT REPORTER

1 THE COURT: All right. And Mr.
2 Rodriguez, let me kind of explain to you. I
3 understand that at one time you may have been
4 offered twelve years and that's what you'd
5 like to do. But sometimes it's easier to
6 look with hindsight after the fact. You
7 know, I'm sure if you had known that Saul was
8 going to testify against you at your trial
9 and be such a strong witness against you,
10 then that twelve years would have looked
11 pretty good. But the problem was you didn't
12 know how that was going to play out until
13 after the trial. It sounds like y'all had
14 those type discussions with your attorney.
15 So I don't see any basis to change what's
16 already been done. I mean, based on the
17 procedure we have here. So based on that,
18 I'm going to deny your petition and leave it
19 the way it is now, okay?

20 APPLICANT RODRIGUEZ: Yes, sir.

21 THE COURT: And Ms. Ratigan do an
22 order. I wish you the best of luck.

23 MS. RATIGAN: Thank you, Your Honor.

24 MS. HORLBECK: Thank you, Judge.

25 (HEARING CONCLUDED)

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Hearing of December 18, 2015

CERTIFICATE OF COURT REPORTER

1

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the post-conviction relief hearing held in the within action heard on December 18, 2015, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.


Deborah Garrison

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Rene Miguel Rodriguez,)
S.C.D.C. No. 357840,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-5981

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMEN
2016 JAN 21 PM 4 11

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 3, 2014. The Respondent made its return on March 31, 2015. An evidentiary hearing was held on December 18, 2015 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Richard H. Warder, Esquire. The Court had before it the guilty plea transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the September 2011 term of the Greenville County Grand Jury for trafficking cocaine, 400 or more grams (2011-GS-23-5259). He was represented by Richard H. Warder, Esquire.

On November 12, 2013, the State called the case to trial, a jury was selected, and three

ph

witnesses testified. On November 13, 2013, however, the Applicant chose to plead guilty to trafficking cocaine, 28 or more grams. The Honorable Letitia H. Verdin sentenced the Applicant to 18 years imprisonment. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. "My lawyer convinced me to reject a plea deal to 12 years b/c my co-defendant, who had already pled 'could not testify against me.'"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v.

PHV

State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

The Applicant stated he and plea counsel reviewed the evidence in his case, what the State would have to prove at trial, and potential witnesses. The Applicant stated he did not think his co-defendant (who pled guilty before trial) would testify against him. The Applicant stated plea counsel said his co-defendant had no reason to testify against him. The Applicant stated he discussed a 12-year plea offer with plea counsel and decided to reject it after his co-defendant said he would not testify against him. The Applicant stated he learned his co-defendant would testify once the jury was chosen and that plea counsel said he would ask for a cap of 18 years if he pled guilty. The Applicant stated he wanted to plead guilty to 15 years, not 18 years.

Plea counsel testified he reviewed the discovery materials with the Applicant. Plea counsel testified he spoke to the co-defendant's attorney and that the Applicant spoke to the co-defendant while they were in jail. Plea counsel testified he did not tell the Applicant that the co-defendant would not testify at trial. Plea counsel confirmed they discussed a 12-year plea offer but that the Applicant rejected it because the co-defendant assured him that he would not testify against him at trial. Plea counsel testified he told the Applicant the advantages and disadvantages of the plea offer (and that the co-defendant could change his mind) but it was the Applicant's decision to reject the offer. Plea counsel testified the Applicant decided to plead guilty during the trial because the co-defendant's testimony was harmful. Plea counsel testified

he did not recall the Applicant stating he wanted a 15-year offer and noted that this plea was entered without a recommendation.

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the plea offer. Plea counsel testified they explained the risks and advantages of the 12-year plea offer and discussed that the co-defendant could change his mind and testify for the State at trial. Plea counsel testified the Applicant made the decision to reject this offer. This Court finds plea counsel's testimony is credible. This Court finds plea counsel properly advised the Applicant about the plea offer and that they discussed its advantages and disadvantages. This Court finds the Applicant – based upon representations from the co-defendant – chose to reject this plea offer even though plea counsel advised the co-defendant could change his mind. The plea judge advised the Applicant that he was pleading guilty to a charge with a sentence range of 7-25 years and that he faced a 25-30 year sentence if he continued with the trial and was convicted. (Plea transcript, p.84). The Applicant stated he understood. (Plea transcript, p.84). The Applicant told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.85-87). While the Applicant may have wanted a 15-year sentence in exchange for his guilty plea, there was no sentence recommendation and he was aware of the sentence range for his charge. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citation omitted) (“Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.”). This Court finds the Applicant was properly advised of the plea offer, rejected it, and subsequently decided to enter a guilty plea. The Applicant has not demonstrated either any error

by plea counsel or any prejudice suffered as a result.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules

for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14th day of June, 2016.



Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit

Jewell, South Carolina.

WITNESSES

Chad Ayers

Greenville County Sheriffs Office

2/9/2011

ARREST WARRANT NUMBER
I344609

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-23-

JLK

005259

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2011

THE STATE

vs.

RENE MIGUEL RODRIGUEZ

Indictment for

TRAFFICKING COCAINE

VIOLATION § 44-53-0370

RECEIVED

JUL 22 2011

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

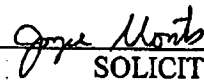
INDICTMENT FOR
TRAFFICKING COCAINE

At a Court of General Sessions, convened on **SEP 13 2011** the Grand Jurors of Greenville

County present upon their oath:

That RENE MIGUEL RODRIGUEZ did in Greenville County, on or about the 3rd day of February 2011, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 400 grams of Cocaine. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Rene Miguel Rodriguez

AKA:

Race: HISPANIC Sex: M Age: 37DOB: 1976 SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in cocaine, 28 g or more

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2305259A/W#: 1344609Date of Offense: 2/7/2011S.C. Code § : 44-53-0370(E)(2)(X)CDR Code #: 0281

SENTENCE SHEET

7-25

☐ CONVICTED OF or ☒ PLEADSin violation of § 44-53-0370(E)(2)(b) of the S.C. Code of Laws, bearing CDR Code # 2359☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)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:

Joyce K. Mons
Mons, Joyce K.65331
SC Bar#Rene Rodriguez
DefendantRichard W. Hader
Attorney for Defendant06827
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ 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. 1008 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

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

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: 11 Jones

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2162Sentence Date: 11/13/13