

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

MAR 22 2018

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Robert E. Hood, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2017-001742
Lower Court Case No. 2015-CP-32-1885

JUAN ARROYO, #354538,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JAMES CLAYTON MITCHELL, III
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT.

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 1834
Irmo, SC 29063
803-779-2555
803-753-9732 Fax
jeremyatlaw@yahoo.com

ATTORNEY FOR PETITIONER.

INDEX

Index.....	i
Status Conference Transcript dated February 17, 2011	1
Status Conference Transcript dated March 21, 2011	42
Mistrial Transcript dated November 10, 14-15, 2011.....	85
 Jack Youmans Rushing, III	
In Camera Direct.....	111
In Camera Cross.....	122
In Camera Redirect	123
Jury Selection.....	127
State's Opening Statement.....	220
Defense's Opening Statement.....	222
 Michael Burke	
Direct.....	224
 Adam Robert Hardin	
Direct.....	238
Colloquy on Motion for Mistrial.....	244
Bond Reconsideration Motion Transcript dated October 31, 2012.....	265
Trial Transcript dated March 4-5, 2013	273
Jury Selection.....	276
State's Opening Statement.....	355
Defense's Opening Statement.....	361
 Ryan Curtis Wood	
Direct.....	369
Cross	413
Redirect	422
 Sharon Todd Lilly	
Direct.....	425

Lisa Floyd	
Direct.....	432
Emigdio Penaloza	
Direct.....	446
Cross	472
Redirect	485
State's Closing Argument.....	499
Defense's Closing Argument.....	518
Charge to the Jury	528
Verdict	544
Sentencing.....	550
<u>Anders</u> Brief of Appellant.....	559
<i>Pro Se</i> <u>Anders</u> Brief of Appellant.....	571
Court of Appeals Opinion	583
Remittitur	585
Application for Post-Conviction Relief filed May 22, 2015.....	586
Clerk of Court Records	593
SCDC Records.....	599
State's Return dated September 26, 2016	603
Amended Application for Post-Conviction Relief dated March 22, 2017.....	608
PCR Hearing Transcript dated April 18, 2017.....	611
Debra Y. Chapman	
Direct.....	620
Cross	646
Redirect	655
By the Court	656
Redirect	658
Recross	659

Juan A. Arroyo

Direct.....	660
Cross	692
Redirect	705

Bradley Kirland

Direct.....	710
Cross	720

Applicant's Exhibit #1	735
Applicant's Exhibit #2	739
Applicant's Exhibit #3	744
Respondent's Exhibit #1	745
Respondent's Exhibit #2	748
Order of Dismissal filed June 2, 2017.....	749
Rule 59(e), SCRCF, Motion filed June 29, 2017	762
Form 4 Order Denying Rule 59(e) Motion filed July 14, 2017.....	767
Notice of Appeal dated August 17, 2017	769

CLOSING ARGUMENT

1
2 **MR. GOINGS:** Good afternoon, ladies and
3 gentlemen. At the beginning of this trial on
4 yesterday, Curtis Pauling told you that Mr. Arroyo,
5 the defendant, came into this courtroom, sat down at
6 that table an innocent man. The Judge in a few
7 minutes is going to charge you that that presumption
8 of innocence is like a robe of righteousness that's
9 placed around the defendant and it stays with him
10 through this trial.

11 Well, ladies and gentlemen, now that the trial
12 is over, you've heard the witnesses testify, you've
13 seen the evidence, there's not an innocent man that
14 sits at that table anymore, that man is guilty.
15 That man is guilty of selling drugs. He's guilty of
16 selling drugs on April 29th, 2010, at 313 Cedar
17 Street in Horry County when he sold 25 grams of
18 heroin and received \$1800 in cash. He's guilty of
19 the charges he's been charged with. He is guilty of
20 trafficking in heroin 14 grams or more.

21 Now, I'm going to get into what y'all heard
22 today, but there's a couple areas of law that I want
23 to talk with you about and the Judge is going to
24 charge you in a little bit on these same areas. If
25 he says something different than what I say right

1 now, well, obviously, you follow him because he is
2 the judge of the law, that's his role in this
3 courtroom. He tells you what the law is.

4 You are the fact finders. You look at the
5 evidence, you determine what really happened, you
6 apply it to the law that he's given you, and you
7 come back with a verdict. That's essentially how it
8 works.

9 Now, in the beginning of the trial, Mr. Pauling
10 told you that we have the burden of proof. When I
11 say we, that means the State of South Carolina has
12 the burden of proving that the defendant is guilty.
13 And that burden of proof in this state is beyond a
14 reasonable doubt. And the Judge is going to talk to
15 you about what reasonable doubt is. The defense may
16 talk to you about what reasonable doubt is, but I'm
17 going to talk to you.

18 In the State of South Carolina, reasonable
19 doubt can be defined a couple of ways. It can be
20 defined as a doubt that would cause a reasonable
21 person to hesitate to act or it can also be defined
22 as if you're firmly convinced of the defendant's
23 guilt, then the State has met its burden of proof.

24 We don't have to prove beyond every doubt that
25 the defendant is guilty because there's really a lot

1 of thing -- very few things that you can prove
2 beyond every doubt. So when you get back there and
3 you take this evidence and you apply it to the law,
4 if you firmly are convinced that the defendant is
5 guilty of trafficking cocaine -- I mean, trafficking
6 heroin 14 grams or more, then you come back with a
7 guilty verdict.

8 Now, the Judge is going to go over what
9 constitutes trafficking in heroin. And I submit to
10 you that there's four basic elements that we have to
11 prove and we have to prove each of those elements
12 beyond a reasonable doubt.

13 Those four elements are that the defendant,
14 Mr. Arroyo, sold, delivered or was in actual
15 possession of heroin and that its weight was more
16 than 14 grams. Four essential elements, that it was
17 the defendant, that he sold, delivered or possessed
18 heroin and that it weighed more than 14 grams.
19 Those are the four things that when I'm going over
20 the facts, I want you to keep those four things in
21 mind and you make the determination of whether we
22 have proved each of those elements beyond a
23 reasonable doubt.

24 Now, let's look at the evidence that you
25 actually heard and that's how we prove our case is

1 we bring witnesses who get up there on the stand to
2 testify, take an oath to tell the truth, the whole
3 truth, nothing but the truth, and then we also
4 submit evidence through those witnesses. These
5 things that have been labeled that I've asked to be
6 introduced throughout this trial, those are things
7 that you're going to have, you can take back to the
8 jury room, you can look at all you want. And you
9 have to remember the testimony that was provided
10 from each of the witnesses and you apply it to these
11 essential elements that I gave you and you determine
12 whether or not we have proved it.

13 We started off with Agent Wood. He came in
14 here and testified, gave you a background of his law
15 enforcement experience, his training, how many drug
16 investigations he's been on. Then he gave you an
17 overview of how they conduct some of these
18 investigations using confidential informants, that
19 they would use these confidential informants to set
20 up other individuals in drug deals.

21 He went through what precautions or procedures
22 they do when conducting these confidential informant
23 buys. They search the informant when they get
24 there, they search his car, they equip them with
25 some type of video so that they can actually record

1 whatever happens during these transactions. Then
2 they meet back up with them, search them again and
3 find out what happened.

4 And then he got into the specifics of this
5 particular case and he told you about Emigdio
6 Penaloza, that's an individual who also testified
7 and I'll get to his testimony. And he told you
8 that, yeah, I arrested Emigdio Penaloza on a cocaine
9 transaction about -- he said it was some time before
10 the actual transaction with Juan Arroyo took place.
11 And he says Emigdio wanted to cooperate right away.
12 He said, in fact, that they took -- Emigdio took him
13 to get a key of cocaine on that particular occasion
14 right then and there.

15 And I want to point out one thing, and I want
16 -- there's going to be several different things that
17 I'm going to point out that I'm going to call smoke
18 screens. These are issues that defense counsel are
19 going to argue that they want you to pay attention
20 to because it, one, affects the credibility of the
21 case or a witness, or they want you to focus on that
22 and not the overall picture of actually what went
23 down on April 29th, 2010, okay. They're smoke
24 screens. They don't want you to pay attention to
25 all of this stuff. They want you to pay attention

1 to a irrelevant inconsistency in testimony.

2 When we get to Emigdio, we find the first
3 inconsistency. Agent Wood testified that when
4 Emigdio began cooperating with him about a year
5 later, that Emigdio was the one who brought Arroyo's
6 name into the picture that said, Hey, I think I can
7 buy from this individual named Juan Arroyo, what do
8 you think about that?

9 Well, obviously, when Emigdio got on the stand
10 later, he said, Well, Agent Wood showed me some
11 pictures of Juan Arroyo and asked me if I knew him
12 and I said, yes, I know him and his family. And
13 that's how the conversation about Juan Arroyo
14 started.

15 Ladies and gentlemen, does it matter? Nobody
16 forced Juan Arroyo to agree to sell heroin. Nobody
17 forced Juan Arroyo to get his hands on 25 grams of
18 heroin on April 29th, 2010, and sell that to Emigdio
19 Penaloza for \$1800. Again, all of this evidence,
20 the testimony shows that that's what happened and
21 nobody forced him to.

22 Well, let's keep going with Agent Wood. So,
23 all right, you got Emigdio, he's cooperating. Juan
24 Arroyo's name's brought up. They're going to set up
25 a deal. And then before we get to the specific

1 deal, there's another smoke screen that's thrown.
2 Agent Wood was asked, you have a cooperating
3 confidential informant that you have charges on,
4 what happened to those charges? Well, the state
5 charges were dropped. He was picked up by the feds,
6 indicted by the feds and actually was sentenced
7 later on.

8 Emigdio gets up and testifies that, yeah, I was
9 charged within the state level. I wanted to
10 cooperate. I cooperated. I was indicted by the
11 federal government. He went through what he was
12 facing and then he went to what he pled to.

13 And I submit to you, yeah, the federal charges
14 he was facing when he was indicted carried ten to
15 life. The state charges when he was originally
16 arrested was a felony that carried zero to 15. I'm
17 not going to say it wasn't.

18 But, ladies and gentlemen, if you're a drug
19 dealer who gets caught by law enforcement pretty
20 much red handed, your ultimate goal is to work down
21 those charges. It happens all the time. In fact,
22 if it didn't happen, law enforcement would have a
23 very difficult job to do their duties. They have to
24 have people to cooperate.

25 Again, if you look solely -- if we came in here

1 and only had Emigdio to testify against the
2 defendant, I can see where that question would creep
3 into your head, well, did he set him up, did he
4 actually get the grease tube somewhere else? That's
5 not all you have. You have this other evidence that
6 corroborates everything that they said and testified
7 to.

8 He was working to get his charges down. I
9 can't fault him for that. He wanted to spend less
10 time in prison as he could so he cooperated with law
11 enforcement. And he told you and Agent Wood told
12 you that Mr. Arroyo was not the only person he
13 helped get or helped set up. There were several
14 others. So don't sit here and think, oh, because
15 Mr. Arroyo got set up, he got this sweetheart deal.
16 No. It was because of all the work he did, all the
17 people he set up. Yes, that includes Mr. Arroyo,
18 but it's not just him. And he was able to work his
19 plea down. He pled to a reduced charge and then he
20 got a light sentence.

21 I'm not going to -- ten to life to one year and
22 one day in prison is pretty good, but Agent Wood
23 told you he was a good confidential informant. He
24 helped set up a lot of people. Unfortunately for
25 Mr. Arroyo, he was one of them.

1 Again, it doesn't change the fact that on April
2 29th, 2010, nobody forced Mr. Arroyo to get 25 grams
3 of heroin, nobody forced him to sell it for \$1800 to
4 Emigdio, nobody forced him. Nobody did anything
5 underhanded.

6 Why would Agent Wood get up here and lie?
7 Obviously, you'd have to discredit Agent Wood to
8 consider anything that the defense may put forward.
9 Why would he get up here and lie? To bring down an
10 innocent man? No. He got up here swore to tell the
11 truth, told the truth because Mr. Arroyo is a drug
12 dealer, plain and simple.

13 So let's go forward. Agent Wood then after we
14 got through the benefit Emigdio got and the fact
15 that he had set him up as a CI, they get into the
16 actual specifics of what happened on April 29th,
17 2010. And Agent Wood told you, I searched the car,
18 I searched Emigdio when he got to the scene.
19 Emigdio testified that, Well, it wasn't Agent Wood,
20 some other officer was searching the car. And I
21 believe, at that point in time, defense counsel made
22 a comment that this is the first time we heard that
23 there were other officers on the scene, or it might
24 have been when they were at the ATM.

25 But if you recall, Agent Wood never said that

1 he was alone by himself during this April 29th deal.
2 He never once said, oh, I was out there by myself.
3 I was the only one that maintained the physical
4 surveillance. I was the only one. In fact, if you
5 recall, he says when they do these drug operations,
6 it can be from two to eight individuals, two to
7 eight agents out there surveilling, helping out with
8 an individual buy.

9 The point is, ladies and gentlemen, Emigdio
10 says his car was searched. Emigdio says his persons
11 were searched. Agent Wood said Emigdio was
12 searched. And Agent Wood testified that, hey, we
13 searched the vehicle as well, and went in depth
14 about what they did inside and out, back and front,
15 under the hood.

16 And what was not there? There's no mention of
17 this grease tube anywhere. Why? Because it hadn't
18 been purchased from Juan Arroyo yet. We're going to
19 get back to that.

20 And there's going to be another smoke screen
21 that defense may bring up when they're talking about
22 the video tape and the wiring and the search of
23 Emigdio and the car that I want y'all to -- I'm
24 going to spend a little time on is why wasn't it
25 video taped?

1 Well, if you'll recall, Agent Wood told you
2 that these little button cameras, he doesn't know
3 the exact space they have, but it's limited space.
4 And, heck, y'all witnessed that firsthand because
5 what happened after the drug buy took place before
6 Emigdio could meet up with Agent Wood? The video
7 cuts off. It cuts off while Emigdio's driving down
8 the street going to meet back up with Agent Wood.

9 Imagine if this extensive search that Agent
10 Wood testified to you about had been recorded. We
11 wouldn't have even seen the drug transaction take
12 place. It might have cut off right when he got to
13 the door and met Juan Arroyo.

14 So that's why it's not taped because then,
15 again, you would have to disbelieve everything Agent
16 Wood told you. And I ask you again, why, why would
17 he get up there and say, this is what we did, I
18 searched Emigdio, his car, made sure he was not
19 having any illegal contraband or anything that he
20 didn't need before he was going to make this
21 purchase? There's no reason. Why? Because
22 everything that Agent Wood told you was the truth
23 that they did it because they were going to purchase
24 heroin from Mr. Arroyo, not that he's trying to set
25 up an innocent man.

1 So what happens next? Well, the 18 -- or
2 actually, at this point in time, it's still \$1600.
3 Agent Wood testified that, you know, I got \$1600 out
4 of our account, photographed it, documented it, gave
5 it to the CI, wired him up and sent him on his way.

6 And we watched some of that video. I know
7 portions were skipped, but the first time Emigdio
8 goes over there, the defendant is not home. The
9 girlfriend's at the door, you can see Emigdio get
10 back in his car, meets back up with Agent Wood. At
11 that point in time, Agent Wood testifies that a
12 conversation takes place with Emigdio and the
13 defendant, Juan Arroyo, and they have to go get \$200
14 more.

15 The important part about this I want you to
16 understand is defense counsel, remember the
17 stipulation we made that there was a six to eight
18 minute gap where there was a lost -- that perhaps
19 Agent Wood and the confidential informant, Emigdio,
20 were not together. Ladies and gentlemen, the drug
21 transaction hadn't took place yet, okay. There's no
22 tube that's been given to Emigdio. Emigdio has not
23 given the \$1600 that he had originally to the
24 defendant, okay. So there's a six to eight minute
25 gap. Oh, well.

1 They want you to focus on, well, what if that
2 could have happened later on. It didn't. Again,
3 you would have to discredit everything Mr. Wood
4 said. Mr. Wood said, yeah, he didn't think it was
5 five minutes, but he did tell you, he was honest
6 with you, there was a time where I lost him, but we
7 caught back up.

8 Again, nothing happened on that first attempt
9 to buy. All he did was go over to the house, find
10 out Arroyo wasn't home, went back and met up with
11 Agent Wood, made a phone call, \$200 more, and they
12 cut off the camera. And then they go get money, the
13 \$200 extra. Agent Wood testifies that, you know,
14 Emigdio was with me the whole time. Emigdio
15 testifies, Yeah, I went, I followed them in my car.
16 I was with them the whole time.

17 Agent Wood said nobody came up to the car. He
18 didn't meet with anybody. There was no opportunity
19 to get this grease tube that we see later on. There
20 was no opportunity for him to get rid of the \$1600
21 he had at that time, which eventually turned into
22 \$1800, there was no opportunity.

23 So you go on, they cut the video back on, send
24 Emigdio back over to Juan Arroyo's house and then
25 you see -- Agent Wood testifies, Well, I have eyes

1 on him until he goes into the house where I can't
2 see anything. He comes out of the house. He says,
3 I had eyes on him again, I follow him to our meeting
4 spot.

5 Yes, the video cuts off before you see this
6 meet, but, again, you'd have to discredit everything
7 Agent Wood says when he says, I had eyes on him, he
8 did not meet anybody, nobody came up to his car and
9 there was never an opportunity for him to get that
10 grease tube on his persons or in his car.

11 So what happens next? Well, you get the grease
12 tube and you start getting the photographs after the
13 grease tube is handed to Agent Wood and he
14 photographs everything he did. And you can see the
15 grease tube, same one we have there, unopened.
16 Starts going through the grease, finds the black
17 ball, unwraps the tape back at the office, finds the
18 white plastic baggy with the white substance balled
19 up in it.

20 And then, at that point in time, in his office
21 on April the 29th, 2010, he says he puts it in a
22 heat-sealed bag, plastic bag, and puts it in the DEU
23 safe. He says there's a couple other people that
24 has access to the safe, but then he tells you on --
25 according to this evidence form that he also fills

1 out, he signs it in the DEU safe on April 29th,
2 2010, come gets it eight days later on May 7th,
3 2010, where he then takes it over to the Horry
4 County Police Department evidence room. He puts it
5 in the BEST kit, which is this blue package right
6 here --

7 Let me go back. When he takes it out of the
8 safe, I asked him, Was the heat-sealed plastic that
9 he put it in, was it tampered with? No. Had it
10 been cut? No. Had it been altered in any way? No.

11 So he takes it over, puts the whole complete
12 heat-sealed pack -- white package that he put it in
13 into this BEST kit, which is then also heat sealed,
14 puts it into evidence through Sharon Lilly is who he
15 gives it to. And he also says that's when I sign it
16 in, I sign my name, 5/7/10, this is what I got from
17 the purchase, from the tube, on 4/29/2010, gives it
18 to Sharon Lilly.

19 Sharon Lilly tells you, we take the BEST kit,
20 the heat-sealed BEST kit, keep it in our evidence
21 until we take it over to be tested by the chemist.
22 It's kept in the Horry County evidence room until
23 July 27th, 2010, where she takes it over to the
24 chemist, Lisa Floyd, who you also heard from, who
25 testifies that, I get it, I put it in my lab that I

1 only have access to until it's ready to be tested.

2 She said, tested it a day later on 7/28. She
3 pulls out the package, the BEST kit. And I asked
4 her was it tampered with, was it messed with, was it
5 cut? She goes, no, because if it was, she would not
6 have tested it. So we know whatever was in here in
7 the BEST kit wasn't tampered with.

8 And I also asked her was the individual
9 heat-sealed plastic that Agent Wood had originally
10 put it in, had it been cut, had it been tampered
11 with? She said, No, or I would have marked it on
12 there.

13 So, at that point in time, we know, ladies and
14 gentlemen, beyond a doubt whatever Agent Wood got
15 out of this grease tube that he put in that
16 heat-sealed plastic was what she tested. And what
17 does she find? 25.78 grams of heroin. So we know
18 it's heroin. We know it's over 14 grams.

19 So that leaves us with one last witness and
20 that's Emigdio. Emigdio, again, I'm not going to
21 rehash the testimony I already rehashed, but this is
22 where we get to the video, the video of Emigdio
23 where he's at Juan Arroyo's house. And you see him
24 go in and you see them chitchat for a while,
25 obviously. He's playing Play Station or Nintendo or

1 whatever he's playing, I don't know. And then it
2 cuts to a scene where he's obviously counting money.
3 And Emigdio says, He's counting the money I gave
4 him.

5 Another smoke screen might come here. Well,
6 you didn't see him hand him the money, did you? No.
7 I admit that's not on video. But, ladies and
8 gentlemen, even if we assume that the CI, Emigdio,
9 knew the camera angle, what's the number one rule of
10 being a confidential informant who is buying drugs
11 from a drug dealer? I don't want him to know I'm
12 working with the cops. It's not like I can say --
13 Emigdio can say, hey, I don't think that got on
14 camera, can we change the money up here. It's not
15 going to happen. He don't want to be made because
16 if he's made, what's going to happen? Who knows.

17 Same with the drugs, when he comes back, no,
18 you don't see Juan Arroyo on that camera say, here.
19 You don't. It's not on camera. But, again, why?
20 What's Emigdio going to do if his camera's pointed
21 this way, Juan's over here with the tube and says
22 here? He's going to say, no, no, no, I need you to
23 come over here and hand it to me in front of me so I
24 can get it on camera? No. It's not going to
25 happen.

1 But we do know that this grease tube was
2 brought out at the home of Mr. Arroyo. Why?
3 Because it -- once he's got possession of it,
4 Emigdio just sits there and holds it just like this,
5 y'all saw it on camera, holds it right in front of
6 the face of Juan Arroyo who's sitting there talking
7 to him.

8 The defendant didn't act surprised that he had
9 it in his hand. You figure if Emigdio just pulled
10 it out of his pocket, there would be some surprise,
11 but there wasn't. Why? Because Mr. Arroyo knew he
12 just handed that grease tube. Mr. Arroyo knew that
13 Mr. Emigdio just gave him the \$1800 that it cost to
14 buy the 25 grams of heroin.

15 So you put it all together, ladies and
16 gentlemen, and, again, if it was just Emigdio on
17 that stand testifying, I could see where you'd have
18 some caution that, hey, here's this guy who got
19 caught with trying to sell some cocaine and he's
20 doing everything he can, that would include setting
21 up somebody who's innocent.

22 Well, that's not all you have. You have Agent
23 Wood to tell you that I searched him. I know he
24 didn't have anything on him. I gave him the money.
25 I sent him over there unsuccessful the first time.

1 We got more money. I sent him over there again and
2 we surveilled him. He didn't stop. He didn't see
3 anybody. He didn't have an opportunity to get it
4 anywhere else.

5 You've got a video tape when he goes in the
6 house that shows Mr. Arroyo counting a wad of money.
7 You have a video that shows in the house Emigdio
8 having possession of this grease tube. You have
9 the -- you have Mr. Wood telling you that after it's
10 over, I searched the CI. He no longer has the cash
11 on him, but he has this (indicating). And then you
12 have Agent Wood taking photographs of everything
13 that comes out of that grease tube that Juan Arroyo
14 sold to Emigdio on April 29th, 2010. And you have
15 25.78 grams of heroin. And you have a man that's
16 guilty of trafficking in heroin. Thank you.

17 **THE COURT:** All right. Thank you, Mr. Goings.

18 Ladies and gentlemen, we'll take a ten-minute
19 break, stretch your legs, clear your minds and then
20 you'll hear the closing argument of the defense
21 counsel. Don't discuss the case. Follow the
22 bailiff, please.

23 (The jury retires to the jury room.)

24 **THE COURT:** Do y'all have anything?

25 **MR. KIRKLAND:** No, sir.

1 **THE COURT:** Well, the same juror that was
2 fighting sleep yesterday is fighting sleep today.
3 I'm watching her very closely. She has not fallen
4 asleep in my estimation. So I'm watching her. If
5 she falls asleep, we'll deal with it.

6 **MS. CHAPMAN:** We still have our alternate,
7 right?

8 **THE COURT:** We still have an alternate. It's
9 the same lady. I don't know what the issues are,
10 but it's not warm in here today. We're at ease.

11 (Brief Recess.)

12 **THE COURT:** Defense ready?

13 **MS. CHAPMAN:** I am, Your Honor.

14 **THE COURT:** All right. Bring the jury in.

15 (The jury returns to the courtroom.)

16 **THE COURT:** All right. Ms. Chapman, you're
17 recognized for your closing argument.

18 **MS. CHAPMAN:** Thank you, Your Honor. May it
19 please the Court.

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

21 **MS. CHAPMAN:** Well, I think we're to the end.
22 Let me tell you, no matter what story the State's
23 going to tell you, they still have the burden of
24 proof regardless. They have to prove to you, all of
25 you, that my client was guilty by a reasonable

1 doubt.

2 Well, this case is really pretty simple. We
3 had two witnesses, we had a video tape. And I'd
4 like to go through those with you.

5 Agent Wood, okay, I remember him testifying
6 that he searched the car. And he, and I agree with
7 the State, he said he took out the seats, he looked
8 under the hood. Matter of fact, I think he says it
9 takes a really long time and he searched it by
10 himself is my recollection of his testimony.

11 But oddly enough, the CI gets up and testifies
12 he was talking to Agent Wood. Agent Wood didn't
13 search that car, not at all. Matter of fact, there
14 were other agents there. They searched the car.
15 Did we hear testimony from those agents? You need
16 to ask yourself what's that all about? My client's
17 on trial and this is their job to prove to you.
18 This is a serious case.

19 And you ask yourself why the search of the car
20 is so important. Well, you know, I would submit to
21 you that it's opportunity, opportunity because
22 you've heard from the CI, who is a drug dealer, who
23 is convicted federally, who's looking at life, life,
24 and he walks out with ten months. And we're not
25 talking about a drug dealer who dealt just a little

1 bit of dope. We're talking five keys or more is
2 what he was indicted for. So it creates
3 opportunity, which I submit to you is reasonable
4 doubt, but coupled with a bunch of other things.

5 Officer Wood also testified that he lost the CI
6 at a red light. He estimated it wasn't a real long
7 time, it was like 30 seconds. Well, you watched the
8 video, and we kind of passed through it, but you'll
9 have the opportunity to look at it again if you'd
10 like, but the State even conceded it wasn't 30
11 seconds, it wasn't a minute, it was six to seven
12 minutes. And what does that do? That creates
13 opportunity again and I'll submit to you reasonable
14 doubt.

15 And then interesting enough Officer Wood
16 testifies, and I had to go back and look in my
17 notes, the CI came to him about Juan. He didn't
18 even know who Juan was. Well, that's not the
19 testimony we get from the CI. The CI didn't say
20 that. In fact, he said it was Agent Wood who came
21 to him. Remember all the photos that he'd been
22 identifying of drug dealers. Agent Wood came to him
23 and showed him a photo of Juan and wanted him to buy
24 drugs from Juan.

25 Now, you also have to remember something else

1 about the CI. He signed a plea agreement, he must
2 cooperate to the satisfaction of the government in
3 order to get his deal, his life deal to ten months.
4 He must satisfy the government to their
5 satisfaction. His cooperation must be, and you
6 heard him say, the more drug deals I do, the better
7 off I am, the bigger the deal I'm going to get.
8 Well, I submit to you he wanted to please Agent
9 Wood, that's part of his deal. Juan was part of him
10 getting a ten-month sentence.

11 Then I want to talk about the video and exactly
12 what the video doesn't show you, doesn't show you
13 the search of the CI, certainly doesn't show you the
14 search of the car. Matter of fact, we don't know
15 who searched the car. We've got conflicting
16 testimony about the car.

17 We really don't see any exchange of money
18 between Juan and the CI, none. The State wants you
19 just to believe the CI that he gave him the money,
20 he gave him the drugs. Matter of fact, we don't
21 even see drugs on this video tape, no drugs
22 whatsoever, none. You don't even see Juan give the
23 CI the grease tube at all.

24 And, also, there's this 50-minute lapse in the
25 tape where they cut the tape off so they can go back

1 to the bank to get \$200. And it is the first
2 testimony in this courtroom that there were other
3 agents there.

4 Now, if you remember correctly, that wasn't
5 Agent Wood's recollection, that's not what he
6 testified to. I think he said he might have even --
7 the CI said he got out of his car and talked to a
8 couple of agents. Well, that was the first we heard
9 of it. You didn't see any of these other agents get
10 on the stand and testify to that. The State didn't
11 prove that to you.

12 And then the video cuts off conveniently at the
13 end. So you never get to see the CI go meet Agent
14 Wood. We don't know what the CI did. I don't know
15 if he stopped. I have no earthly idea. Your guess
16 is as good as mine.

17 We never see the search of the tube or the CI
18 giving the tube to Agent Wood. We don't see any of
19 that, none of it. Matter of fact, you know, they
20 made a big deal of taking photos of money and I
21 don't even see any photos of money. Not in this
22 stack over here. I just didn't see it.

23 I would ask you to consider all of these
24 things. And I guess the best recollection, the
25 State has their own, I have mine obviously, but the

1 most important recollection is yours. And that's
2 what I would rely on, what you heard in this witness
3 stand and what you saw on that video.

4 It's really hard to have conflicting stories
5 because I don't think you get the big picture of
6 exactly what happened, how did this case start.
7 You've got one person telling you Agent Wood started
8 it and then you've got Agent Wood saying, hey, he
9 came to me. And then it kind of just goes downhill
10 from there. So there's a lot to consider and I
11 would ask that you consider that because I believe
12 every single one of those is reasonable doubt, every
13 single one of them.

14 This case is truly, truly important to my
15 client. And I know that he will appreciate your
16 time and thought and consideration in this matter.

17 But I want you to remember, you know, we're not
18 here to prove to you -- he doesn't have to prove to
19 you he didn't do it. They have the burden. You're
20 here to protect my client. That's what this system
21 is about to protect him. They have the job of
22 proving to you that my client is guilty beyond a
23 reasonable doubt. And I'd hope that once you look
24 at the evidence, consider it all and consider it as
25 a whole, consider it singularly, but it's truly

1 important, I think you'd find him not guilty. Thank
2 you.

3 **THE COURT:** Thank you, Ms. Chapman.

4 All right. Ladies and gentlemen, like I told
5 you, I always have to take a break between when they
6 finish and when I start. Again, you should be out
7 about ten minutes and then I'll send for you. The
8 law is going to take about 16 minutes to explain to
9 you. Don't discuss the case yet.

10 (The jury retires to the jury room.)

11 **THE COURT:** I want you all to check on
12 something for me, if you would, please. I
13 understand you all have an agreement about whatever
14 audio there is on that DVD. And I often hear the
15 attorneys say, well, we'll just let the jury come
16 into the courtroom to watch whatever they want to
17 watch. And if that's my only option, I guess that's
18 what I'll have to do.

19 I really don't like that because for all I
20 know, they may want to look at the video, stop it,
21 talk about it, and they're not going to be able to
22 do that if we're sitting in the courtroom. So I
23 have to clear the courtroom and then I guess I have
24 to tell them to cut off the security cameras.

25 So my idea -- my question is can't you just

1 disconnect the yellow one that carries the audio
2 that I've been -- the jury's been told they don't
3 have audio on it and --

4 **MR. GOINGS:** The problem with that format is
5 that disk will not play on that system because it is
6 a generated AVI most likely and I don't think that
7 plays AVIs.

8 **MR. KIRKLAND:** It's not in DVD format. It's in
9 AVI file format and that player is not capable of
10 playing that format.

11 **THE COURT:** Well, for future reference for
12 anybody whoever tries a case in front of me, I don't
13 like that. I mean, y'all need to convert it to
14 something that the jury can look at. And I'm not
15 picking on y'all because I promise you, every trial
16 I have now is like this, and how that ever got
17 started, I don't know. I don't like it.

18 Y'all can talk, see if you can come up with
19 some sort of resolution. If I have to tell the jury
20 they've got to come back in the courtroom, I guess I
21 will, but -- I mean, sometimes a video is like the
22 most central piece of evidence in an entire case.
23 It cuts through all the credibility issues. It gets
24 through all these things. And the jury may want --
25 they may disagree over what that particular picture

1 shows and if they don't have the ability to talk
2 about it while they're looking at it or freeze it or
3 do all the things they can normally do with a video,
4 that bothers me.

5 MS. CHAPMAN: Well, Judge, how about if it can
6 be played on a lap top?

7 THE COURT: Well, as long as you all agree that
8 I tell them they are not to turn on the sound.
9 Y'all told me there's sound on that thing. I
10 assumed there was no sound on it. And for all I
11 know, it's in Spanish. I don't know if they were
12 speaking English or -- I mean, if y'all agree that I
13 can just tell them that it's in Spanish and we don't
14 have anybody to translate so they can't listen to
15 the audio or just tell them don't turn on the audio,
16 but I don't want them to get back there and turn on
17 the audio and one of them speaks Spanish and --

18 MS. CHAPMAN: That's exactly right.

19 MR. KIRKLAND: If we can talk for a minute,
20 maybe we can figure something out.

21 THE COURT: That's what I asked y'all to do.
22 All right. We're at ease.

23 (Brief Recess.)

24 THE COURT: My understanding is that we're
25 going to get the IT people to come in with a

1 computer with a disabled sound card and if the jury
2 wants to watch the video, then they can send me a
3 note. We'll make sure that somebody on the jury is
4 instructed about how to operate the machine and they
5 can watch it back there in private. Is that right?

6 MS. CHAPMAN: Yes, sir.

7 MR. GOINGS: That's correct, Your Honor.

8 THE COURT: The last time we had a similar
9 issue come up, that's what -- we had to get the IT
10 guy to come in and explain it to the jury. I had
11 that done out in open court. Some of the younger
12 people on the jury, maybe some of the older people
13 on the jury know how to do it, but that's what we
14 did before.

15 Where's co-counsel?

16 MR. GOINGS: He's working with the IT people --

17 MS. CHAPMAN: I think they're both working with
18 the IT --

19 THE COURT: So they're not going to be in here
20 for the charge?

21 MS. CHAPMAN: That's fine with me, Judge. We
22 can go forward.

23 MR. GOINGS: Fine with me.

24 THE COURT: Bring them in.

25 During the charge, please stay still, stay

1 quiet, don't do anything to distract the jury.
2 Absent an emergency, please don't be moving around
3 or doing anything to distract the jury.

4 I'm not going to send the computer back there
5 unless they ask for it.

6 **MS. CHAPMAN:** That's fine.

7 (The jury returns to the courtroom.)

8 CHARGE OF THE COURT

9 **THE COURT:** Members of the jury, all of the
10 evidence has been presented, you've heard the
11 arguments of counsel and now it's time for me to
12 instruct you on the law that applies to the case.
13 Please, continue to pay close attention during this
14 next stage.

15 Now, first, you need to understand some basic
16 ground rules. You, the jury members, are the sole
17 judges of the facts. You decide all of the issues
18 of fact. You alone determine the truth of the
19 evidence, its effect, its value and its weight. You
20 alone judge the credibility of witnesses, in other
21 words, whether or not a witness' testimony is
22 believable.

23 Now, in that regard, you may believe all that a
24 witness said or none of what a witness said. So in
25 evaluating the testimony of any witness, including

1 expert witnesses, you may believe all of what the
2 witness said, part of what the witness said or none
3 of what the witness said. You may believe part and
4 disbelieve the balance. You may believe one witness
5 against many, many against one. You may consider
6 any interest or bias or prejudice that you feel that
7 a witness has in the case. You may consider the
8 demeanor and the appearance of the witness and the
9 opportunity for knowledge that the witness had. You
10 may consider the lack of evidence presented by the
11 State.

12 But you're not to exercise these considerations
13 arbitrarily. What I want you to do is to use your
14 common sense, use your sense of logic and reason and
15 your good judgment.

16 Now, it's not proper for me to give you a
17 charge on the facts of the case. I can't discuss
18 the facts with you. I'm not even permitted to
19 convey to you an impression as to what, if any,
20 personal feelings I may develop about the facts of a
21 case. So if, during any stage of this trial, you
22 develop an impression that I've got a personal
23 opinion about the facts, then you must remove that
24 belief totally from your mind. You're the sole
25 judges of the facts.

1 Now, I am the judge of the law that applies to
2 the case and under your oath, you must accept and
3 apply the law as I give it to you. If you have
4 conflicting ideas about what the law is or what it
5 should be, you must abandon those. I give you the
6 law, you apply it to the facts as you determine them
7 to be and in that way, you reach your verdict.

8 It's also my job to decide what evidence is
9 admissible. If I rule something inadmissible or
10 instruct you to disregard something, you're not to
11 consider those things in arriving at your verdict.
12 Base your verdict on the competent evidence before
13 you, consider the testimony of the witnesses, any
14 exhibits admitted and any stipulations of counsel.

15 I need to explain to you that there are two
16 types of evidence generally presented during a
17 trial. There's direct evidence and there's
18 circumstantial evidence.

19 Now, direct evidence is evidence of direct
20 perception, including the testimony of a person who
21 asserts or claims to have actual knowledge of a
22 fact, such as an eyewitness. Circumstantial
23 evidence is proof of a chain. It's proof of a chain
24 of facts and circumstances indicating the existence
25 of a fact.

1 The law makes absolutely no distinction between
2 the weight or value to be given to either direct
3 evidence or circumstantial evidence, nor is a
4 greater degree of certainty required of
5 circumstantial evidence than of direct evidence.
6 What you need to do is to weigh all of the evidence
7 in the case. And after weighing all of the
8 evidence, if you're not convinced of the guilt of
9 the defendant beyond a reasonable doubt, then you
10 must find him not guilty.

11 The defendant in this case, Mr. Arroyo, is
12 presumed to be innocent. Now, this is no mere legal
13 theory. It is a fundamental and substantial right
14 to which everyone is entitled. It's been described
15 as being like a robe of righteousness that's placed
16 around an accused to protect an accused and it
17 remains with him through every stage of the trial.
18 It continues to exist after you go back to your jury
19 room to deliberate so that he is presumed to be
20 innocent unless and until you, the jury, determine
21 that the State has proven him guilty beyond a
22 reasonable doubt.

23 I remind you that the fact that the defendant
24 elected not to testify is not a factor to be
25 considered by you in any manner in your

1 deliberations and in your consideration on the
2 question of whether Mr. Arroyo is guilty or not
3 guilty. His decision not to testify must not be
4 considered by you in any manner whatsoever against
5 him. An accused has a constitutional right to
6 remain silent and the assertion of that right cannot
7 and must not be considered by you in your
8 deliberations in any manner against Mr. Arroyo.

9 Under your oath, you are to reach no inference,
10 you're to draw no conclusion whatsoever from the
11 fact that the defendant elected not to testify. You
12 should not discuss that in the jury room. His
13 decision not to testify should not be discussed by
14 you. It should not enter into your minds in making
15 the decision of whether he is guilty or not guilty.

16 The burden of proof is entirely on the State to
17 prove every essential element of the offense charged
18 beyond a reasonable doubt and an accused has no
19 obligation to prove anything at all. So a
20 defendant's not required to prove his innocence.
21 He's not required to prove anything. The burden's
22 on the State and the State has to prove beyond a
23 reasonable doubt every essential element of the
24 offense charged.

25 The State is not required to prove the guilt of

1 the defendant beyond all doubt or beyond every
2 doubt. The appropriate standard is proof beyond a
3 reasonable doubt. So what do I mean by that?

4 Well, some of you may have served as jurors in
5 civil court and if you have, you know that the
6 burden of proof in a civil case is known as the
7 greater weight or a preponderance of the evidence.
8 You have to prove that something is more likely than
9 not in civil court. But in criminal court, which is
10 what we're in now, the standard's much higher and
11 the proof required is much stronger than the civil
12 standard. The burden of proof in this case is proof
13 beyond a reasonable doubt.

14 Now, what I mean by that term is this: Proof
15 beyond a reasonable doubt is proof that leaves you
16 firmly convinced of the defendant's guilt.

17 There are few things in the world that we know
18 with absolute certainty and in criminal cases, the
19 law does not require proof that overcomes every
20 possible doubt. If, based on your consideration of
21 the evidence, you are firmly convinced that the
22 defendant is guilty of the crime charged, then you
23 are to find him guilty. If, on the other hand, you
24 think there is a real possibility that he is not
25 guilty, you have to give him the benefit of the

1 doubt and find him not guilty.

2 There's no obligation on the part of Mr. Arroyo,
3 or the defense to raise any doubt or any other
4 possibility. He's presumed to be innocent. The
5 State has the entire burden of proof and the State
6 has to prove to you that Mr. Arroyo is guilty of the
7 crime charged to the exclusion of any other real
8 possibility.

9 All right. Now, let's turn to the specific
10 charge that's alleged here. As you know, Mr. Arroyo
11 is charged with trafficking in heroin. And,
12 basically, the indictment alleges that Juan Rodolpho
13 Arroyo did, in Horry County, on or about April 29,
14 2010, knowingly and unlawfully sell, deliver or
15 possess heroin weighing more than 14 grams, but less
16 than 28 grams.

17 I read the indictment to you at the beginning
18 of the trial and I remind you that an indictment is
19 not evidence. You cannot give it any evidentiary
20 value. It's merely a charging paper.

21 Now, let me explain to you what trafficking
22 means. The Legislature has defined certain
23 activities related to controlled substances as
24 trafficking. Heroin is a Schedule I Controlled
25 Substance. Where a person knowingly sells, delivers

1 or is in actual possession of more than 14 grams of
2 heroin, that constitutes trafficking in heroin.

3 So to prove the defendant guilty of the offense
4 charged, the State has to prove to you beyond a
5 reasonable doubt that on the date alleged and in
6 Horry County, South Carolina, the defendant sold,
7 delivered or was in actual possession of more than
8 14 grams of heroin.

9 The State has to prove to you that the
10 defendant engaged in this alleged unlawful conduct
11 knowingly, intentionally and willfully. The State
12 has to prove to you that the substance in question
13 was heroin. The State has to prove to you the
14 weight and that is that they have to prove to you
15 that the amount of heroin exceeded 14 grams in
16 weight. And the State has to prove to you that the
17 defendant either sold it, delivered it or actually
18 possessed the heroin.

19 Now, actual possession of a controlled
20 substance exists when the person has actual physical
21 custody of that substance. To deliver something in
22 context of drug distribution or drug delivery means
23 to actually transfer heroin as alleged in the
24 indictment.

25 But mere presence of the controlled substance

1 in proximity to a defendant is not enough. The
2 State has to prove that the defendant knowingly
3 possessed and delivered heroin, that the drug was
4 present and that he knew that he was exercising
5 control over the drug. There has to be actual
6 knowledge of the presence of the controlled
7 substance by the defendant.

8 And, finally, the State has to prove to you
9 that the offense occurred in Horry County, South
10 Carolina, on or about April 29, 2010.

11 Now, the last thing I need to explain to you
12 about the law, ladies and gentlemen, is that a
13 defendant is entitled to every reasonable doubt that
14 arises in an entire case. If upon any issue
15 essential to a conviction, you have a reasonable
16 doubt as to how that issue should be resolved, you
17 have to resolve the doubt in favor of the defendant.
18 So if upon reviewing an entire charge, you have a
19 reasonable doubt as to whether the defendant has
20 been proven guilty of that charge, then he is
21 entitled to that doubt and a verdict of not guilty.

22 On the other hand, if upon reviewing the entire
23 case, you find that the State has proven every
24 essential element of its case of the offense charged
25 against the defendant beyond a reasonable doubt,

1 it's equally your duty to find the defendant guilty
2 of that charge.

3 And that's the law.

4 Now, folks, I have to give you a couple of
5 housekeeping instructions and then I'm going to wrap
6 this up. First of all, the Chief Justice has, and
7 the Supreme Court, set certain guidelines for judges
8 to inform jurors about. I already read you the one
9 early on about the independent investigation. Well,
10 there's a similar one dealing with guns. If a case
11 involves firearms and they bring firearms, we have
12 to go through certain steps.

13 But with drugs, there's an instruction that's
14 common sense and I feel kind of silly even saying
15 it, don't open the sealed bag, okay. Don't open
16 those sealed exhibits, because you'll have all the
17 exhibits back there with you when you decide the
18 case.

19 Now, that gets me to the second thing. There
20 is a video tape in evidence, a DVD type -- it's
21 actually on a computer format. And it won't play on
22 a regular T.V. like that one over there. It has to
23 be a computer. So that is in evidence and you have
24 a right to review it as much as you like. And the
25 disk itself is going to go back there with you in

1 the jury room is my understanding. It's completely
2 up to each individual jury as to whether -- to what
3 extent you may want to see the evidence again or
4 look at the evidence again, that's up to each
5 individual jury and juror.

6 What I've done in cases where we've had these
7 types of digital format is I bring an IT person in
8 and they supply a computer and we make sure one
9 person, at least, on the jury knows how to operate
10 it, but I'm not going to send that back there unless
11 you tell me that you want that done.

12 So if you want to watch the video, send me a
13 note. It's no big deal. I'm happy to do it.
14 They're standing ready to come in here and explain
15 how to operate the computer. But I won't send that
16 back unless you send me a note, unless the lawyers
17 tell me -- convince me different, all right.

18 Now, how you go about your deliberations, your
19 discussions is in -- that's in your sole discretion
20 and how you go about reaching your verdict is in
21 your sole discretion subject to this requirement:
22 The verdict has to be unanimous. All 12 have to
23 agree before the verdict can be recorded. You
24 cannot do anything to change the requirement of a
25 unanimous verdict. In other words, if it's a

1 verdict, that means it's unanimous. So if you're
2 able to reach a verdict, that means that all 12 of
3 you must agree in order for it to be a verdict.

4 So when you go back to your jury room, you're
5 going to have all the exhibits, you're going to have
6 this verdict form. And on this form, you're going
7 to tell me your decision. It's got a caption up
8 here at the top and then -- it reads: As to the
9 charge of trafficking heroin greater than 14 grams,
10 we, the jury, unanimously find the defendant, and
11 you have two options, you may find him not guilty or
12 you may find him guilty of trafficking heroin
13 greater than 14 grams.

14 Madame Foreman, part of your job is to record
15 this verdict for me. I think you'll find it
16 self-explanatory, just choose the option chosen by
17 the jury and sign your name on the signature line.
18 When you've reached your verdict, knock on the door,
19 the bailiff will respond to your knock.

20 Now, folks, I've told you probably a dozen
21 times not to discuss the case until I tell you to
22 and believe it or not, it's not time yet. The
23 lawyers have to have an opportunity to go over with
24 me what I just told you and that's just common
25 sense, we don't want you back there deciding this

1 case using the wrong law. So if I said something
2 wrong, they have to be given an opportunity to point
3 it out to me and that's what we'll do.

4 Now -- actually, my practice is that I print
5 out the draft of the charge before lunch and I gave
6 it to the jury -- excuse me -- I gave it to the
7 lawyers. The lawyers read it over lunch and we've
8 met before y'all came back and we've already talked
9 about this. So it shouldn't take very long. But I
10 never read the charge verbatim. Sometimes I say
11 things I don't even know I said, so the lawyers
12 point something out to me.

13 This is the signal you need to look for. If
14 I'm satisfied with what I told you, I will send back
15 to the jury room the verdict form and the exhibits
16 and the alternate will be brought out. When it's
17 just the 12 of you in there, no bailiff, no
18 alternate, just the 12 of you and you've got those
19 exhibits and the verdict form, you can start talking
20 about the case, you don't have to wait another
21 second, but don't talk about it until then.

22 I greatly appreciate your attention.

23 Madame Alternate, I need you to go back now and
24 I'll send for you momentarily, hopefully.

25 All right. Folks, if you'll retire to the jury

1 room, I would appreciate it.

2 (The jury retires to the jury room.)

3 THE COURT: State for the record exceptions,
4 additions or objections to the charge or
5 instructions, from the State.

6 MR. GOINGS: None from the State, Your Honor.

7 THE COURT: Defense.

8 MS. CHAPMAN: None, Your Honor.

9 THE COURT: Is that okay about the computer?

10 MR. KIRKLAND: It is, Your Honor. And I'll put
11 on the record what I saw them physically do to it in
12 case I'm asked about it years from now.

13 There are -- obviously, for a computer to play
14 sound, there has to be a speaker hooked up to the
15 computer. And everyone, of course, is familiar with
16 the external speakers that you plug in the back of a
17 computer. This is a desk top computer. Most people
18 are not aware that virtually all desk top computers
19 have an internal speaker and it's the speaker that
20 makes the beeps whenever you turn the computer on.

21 Not only have the external speakers been
22 removed from the computer, the internal speaker has
23 been physically unplugged from the motherboard. So
24 in order for the jury to play the sound, they have
25 to know enough to open the computer case and replug

1 in the internal computer speaker. And so we're
2 satisfied that's virtually impossible that it would
3 occur, so I don't think it's possible to play sound.

4 **THE COURT:** As far as they know, there's no
5 sound. So I don't know why anybody would even go to
6 that extreme and they'd have to speak Spanish.

7 Do y'all have anything else?

8 **MR. GOINGS:** Nothing from the State, Your
9 Honor.

10 **THE COURT:** All right. Well, folks, it's been
11 a great pleasure being with you. You've done a very
12 good job. The jury's got the most difficult job in
13 the courthouse. We'll put it in their hands. But
14 regardless of the outcome, I appreciate the respect
15 you've shown to the Court throughout the trial.

16 All right. Check the verdict form, check the
17 exhibits. When you're satisfied, give those to the
18 bailiff, please.

19 **MR. GOINGS:** Your Honor, the only other thing
20 is if they do request it, we'll have to check the
21 DVD to make sure it plays correctly before we send
22 it back.

23 **THE COURT:** That's fine.

24 (Pause.)

25 **THE COURT:** Bring the alternate in.

1 (The alternate enters the courtroom.)

2 THE COURT: Ms. Harney.

3 JUROR: Uh-huh.

4 THE COURT: Ms. Harney, we've gotten through
5 the case without losing any of the jurors, so I
6 don't have to substitute you in anyone's place. I
7 hope you understand, we -- I wind up using an
8 alternate in about half the cases, so we have to
9 have you over there. Once we swear the jury,
10 jeopardy attaches so we need to keep moving forward.

11 But you're through with jury duty. You don't
12 have to call in. You don't have to come back.
13 You're discharged as soon as you want to leave. You
14 have a three-year exemption, 2013, '14 and '15, in
15 state court jury duty. And since you actually sat
16 on a jury, you're disqualified from state court for
17 one year. They'll mail a little check to you with a
18 slip if you need that.

19 You're welcome to stay if you'd like to stay,
20 but you're free to go any time you wish to go, all
21 right.

22 JUROR: Thank you.

23 THE COURT: Thank you very much.

24 (The alternate was excused.)

25 THE COURT: We're at ease on this case pending

1 a verdict.

2 (The jury commences its deliberations at
3 3:08 p.m.)

4 (A recess transpired.)

5 **THE COURT:** I've been informed the jury has a
6 verdict. Please do not show any sign of approval or
7 disapproval with the verdict, don't shake your head
8 in agreement or disagreement, don't make any sounds,
9 just stay still and stay quiet.

10 Bring the jury in.

11 (The jury returns to open court to report
12 its verdict at 3:33 p.m.)

13 **THE COURT:** All right. Madame Forelady, has
14 the jury reached a verdict?

15 **FORELADY:** We have.

16 **THE COURT:** Would you pass it to the bailiff,
17 please?

18 (The bailiff hands the verdict to the
19 Judge.)

20 VERDICT OF THE JURY

21 **THE COURT:** All right. This is case number
22 2010-GS-47-07, the State Grand Jury of South
23 Carolina, Court of General Sessions, State of South
24 Carolina versus Juan Rodolpho Arroyo. As to the
25 charge of trafficking heroin greater than 14 grams,

1 we, the jury, unanimously find the defendant guilty
2 of trafficking heroin greater than 14 grams, signed
3 by the Foreman.

4 Madame Forelady, ladies and gentlemen of the
5 jury, if I've accurately stated your verdict, that
6 is guilty, please signify by raising your right
7 hand.

8 All hands are raised. Thank you very much.

9 Are there any matters to take up prior to the
10 jury being discharged, from the state?

11 MR. GOINGS: None from the State, Your Honor.

12 THE COURT: From the defendant?

13 MS. KIRKLAND: We would make a motion for a new
14 trial based on all --

15 THE COURT: Do you want them polled? That's
16 what I'm asking.

17 MR. KIRKLAND: Yes, sir, we would like them
18 polled.

19 THE COURT: All right. Madame Foreman, ladies
20 and gentlemen, what that means is that the clerk is
21 going to call the roll. As he calls your name,
22 raise your hand so he knows where to look and you
23 can put your hand down once he sees you. And then
24 he's going to ask you -- sometimes they ask the
25 question together, sometimes they ask two separate

1 questions, but basically the question or questions
2 will be this: Was this your verdict, is it still
3 your verdict? Just answer him truthfully.

4 Are you ready?

5 **THE CLERK:** Yes, Your Honor.

6 Ladies and gentlemen of the jury, the verdict
7 that has just been published was the verdict you
8 reached in the jury room. I ask you now was it your
9 verdict then and is it your verdict now? As I call
10 your name, please answer yes or no: Nicole
11 Layfield.

12 **JUROR:** Yes.

13 **THE CLERK:** Amanda Hucks.

14 **JUROR:** Yes.

15 **THE CLERK:** Charles Hawley.

16 **JUROR:** Yes.

17 **THE CLERK:** Dustin Harmon.

18 **JUROR:** Yes.

19 **THE CLERK:** Frances Garris.

20 **JUROR:** Yes, sir.

21 **THE CLERK:** Ciara Brooks.

22 **JUROR:** Yes.

23 **THE CLERK:** Ashley Jovanelly.

24 **JUROR:** Yes.

25 **THE CLERK:** Georgia Papay.

1 JUROR: Yes.

2 THE CLERK: Kathryn Heron.

3 JUROR: Yes.

4 THE CLERK: Taylor Harris.

5 JUROR: Yes.

6 THE CLERK: Robert Koch.

7 JUROR: Yes.

8 THE CLERK: David Aull.

9 JUROR: Yes.

10 THE COURT: All jurors indicated in the
11 affirmative. Anything else before the jury is
12 discharged?

13 MR. GOINGS: Nothing from the State, Your
14 Honor.

15 MR. KIRKLAND: Of course, that we would make a
16 motion for a new trial, Your --

17 THE COURT: I just need to know if --

18 MS. CHAPMAN: They can be excused, Your Honor.

19 MR. KIRKLAND: Nothing else that we need --

20 THE COURT: I'll hear from you after they
21 leave.

22 Folks, that concludes your jury service. I
23 thank you very much. You are through with jury
24 duty. You don't have to come in. You don't have to
25 call back. You're exempt for one year -- I'm sorry

1 -- you're exempt for three years, 2013, '14, '15.
2 You're disqualified for one year since you actually
3 served on a jury. Now, that only applies to state
4 court, civil or criminal. It won't help you if you
5 get a summons from magistrate's court or municipal
6 court or federal court.

7 The computers are supposed to purge you from
8 the list through 2015, sometimes it doesn't work.
9 So if you get a notice and you're in an exemption
10 period, you don't want to serve, let the clerk know.
11 And if you're disqualified, make sure you let us
12 know, okay.

13 I used to talk to jurors. I used to go back
14 and take off my robe and let them have at me for
15 questions, comments, criticisms or complaints.
16 There were a few issues that arose on some cases and
17 the Chief Justice decided that it was probably a
18 better practice not to do that. I hate that we've
19 come to that because I felt like the jurors got a
20 lot out of it and I know I got a lot out of it. I
21 can't discuss any jury's verdict. I'm not permitted
22 to do that, but we could talk about why we do
23 certain things and how we do them and things like
24 that.

25 But because those issues arose and then -- it

1 all happened behind closed doors and there was no
2 record of it and then the judge becomes a witness
3 and it just got to be a mess, so the Chief said
4 stopped so I stopped. It wasn't directed at me. It
5 was directed at all judges.

6 Now, what I do want to make sure is this, that
7 I tell you, if there is some issue that's arisen,
8 some serious thing that's bothering you about your
9 experience, how you were treated, how you think
10 things could be improved, questions, comments,
11 criticisms or complaints, if you put it in writing,
12 you can find me on the Internet pretty easily and
13 you send it to me and I'll get you a response. I
14 may not be able to respond depending on what you ask
15 me or what you say, but I'll at least acknowledge
16 it. And if there's anything we can do to pass it
17 along, I will do it, okay.

18 You've been an exemplary group. I thank you
19 very much and you're free to go. Thank you.

20 (The jury was excused.)

21 **THE COURT:** All right. Now, motions.

22 **MR. KIRKLAND:** There was a little bit of drama
23 going on over here, so I wasn't paying the sort of
24 attention that I would have liked to have paid.

25 We would make a motion for a new trial and

1 that's simply based on all of the objections that we
2 made throughout the trial and the arguments that
3 were made during closing argument by Ms. Chapman.

4 **THE COURT:** All right. The motions are
5 respectfully denied.

6 Do y'all have a sentence sheet?

7 **MR. GOINGS:** We do, Your Honor.

8 **THE COURT:** Isn't this mandatory 25?

9 **MR. GOINGS:** Yes, sir, Your Honor.

10 **MS. CHAPMAN:** It is, Your Honor.

11 **THE COURT:** Y'all don't have to sign it unless
12 you want to. In my opinion, after a trial, you
13 don't have to sign it. Now, I could be wrong.

14 (Pause.)

15 **MR. KIRKLAND:** Your Honor, we are ready for
16 sentencing.

17 **THE COURT:** Does the State have anything
18 related to sentencing?

19 **MR. GOINGS:** Nothing from the State, Your
20 Honor. I believe the statute's clear, it's a
21 mandatory 25, no discretion. So we'll rest with
22 that.

23 **THE COURT:** And what does the defense want me
24 to hear?

25 **MR. KIRKLAND:** The family members would like to

1 address the Court; however, two of the family
2 members speak only Spanish and so a friend, I
3 believe, will have to translate. So I'll get them
4 to stand up and introduce themselves. Do you want
5 them to address the Court from right here?

6 THE COURT: No.

7 MR. KIRKLAND: How about this microphone right
8 here in the front?

9 THE COURT: Well, right now I'm trying to get
10 past the translation issue. Can the ones that speak
11 English just have the ones that speak Spanish tell
12 them and then --

13 MR. KIRKLAND: Yes.

14 THE COURT: Not like as a translator, but just
15 like if they were reading me a letter or something.

16 MR. KIRKLAND: Yes, sir.

17 THE COURT: All right. I'll be happy to take a
18 break and let y'all get that together.

19 MS. CHAPMAN: No, we're ready.

20 THE COURT: What's your name, ma'am?

21 MS. ARROYO: My name is Anna Arroyo. I'm
22 related to Mr. Juan Arroyo. I'm his sister. And
23 I'm speaking on behalf of my mother and my sister.

24 We would like to let you know that we really
25 appreciate everything that has happened right now.

1 We are truthfully believers of God and we know that
2 sometimes he lets things happen for -- we love him,
3 we love God so we know that anything that happens is
4 for the good. Whatever the sentencing is, we would
5 just like you to consider he's a father of three and
6 that -- and that God bless you. That's basically
7 it.

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

9 **MR. KIRKLAND:** And Mr. Arroyo has indicated
10 that he wishes to address the Court. Would you like
11 him to stand at this same microphone?

12 **THE COURT:** He can stay there as long as the
13 court reporter can hear him.

14 **DEFENDANT:** First of all, I would like to
15 apologize, you know, to the Court, especially to my
16 family, to God. And then I want to thank you for
17 the opportunity. I just want to -- I want to be
18 honest and say that I'm just sorry.

19 **THE COURT:** Mr. Arroyo, you may want to talk to
20 your lawyers. If you say anything that incriminates
21 you --

22 (Mr. Kirkland confers with the defendant.)

23 **THE COURT:** You understand, sir, under this
24 law, I have no discretion, I have to give you 25
25 years --

1 **DEFENDANT:** Yeah, I understand, Your Honor.

2 **THE COURT:** -- and a 200,000 dollar fine.

3 **DEFENDANT:** I understand.

4 Basically, I just -- God have me here for a
5 reason. And I just thank everybody being here. And
6 I'm sorry that I made you be here, you know, wasting
7 your time.

8 **THE COURT:** You're not wasting my time,
9 Mr. Arroyo.

10 **DEFENDANT:** Well, thank you. I just want to
11 say, like I say, you know, thanks -- thank you. And
12 that's it, Your Honor.

13 **THE COURT:** Okay. Thank you, sir.

14 All right. Mr. Arroyo, I have to cover a
15 couple of housekeeping issues, so just bear with me.
16 I have to do this, okay.

17 **DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** The first is that there is a
19 statute that has been enacted. I don't think a lot
20 of people know about it. I would probably not have
21 known about it except some smart lawyers brought it
22 to my attention in a matter. And it's section
23 16-23-500, I believe, of the code.

24 And what it provides is that I am supposed to
25 make a specific finding on the record that you have

1. been convicted of a violent crime, which I have
2. done, and that it is a felony, which I have done.
3. And the significance of that statute is that it
4. relates to your inability to possess any type of
5. firearm or ammunition.

6. So you can get your lawyers to print that code
7. section out for you and you can read it. You can
8. read as well as I can. But there's a separate
9. section dealing with handguns that doesn't require
10. the judge to make that finding. This is -- I think
11. it was passed in 2010.

12. So I'm finding on the record, and I'm going to
13. write on this sentence sheet, that I found on the
14. record that this is a violent felony under the law.
15. You understand?

16. **DEFENDANT:** Yes, Your Honor.

17. **THE COURT:** You cannot possess rifles,
18. shotguns, ammunition, anything or you'll be in
19. violation of that law. You understand?

20. **DEFENDANT:** Yes, Your Honor.

21. **THE COURT:** The second thing I need to cover
22. with you is this: You have a right to appeal
23. anything from this proceeding. And I would
24. encourage you to go ahead and instruct your
25. attorneys to file a written notice of appeal. It

1 has to be in writing. There's a relatively short
2 timeframe. You can't play around with the
3 timeframe. You have to get it filed.

4 Now, if you cannot afford an attorney to
5 represent you on the appeal, there's an agency of
6 the state that will take up your appeal and
7 represent you at the appellate level.

8 So you understand that if you want to file an
9 appeal, you need to tell your lawyers to file that
10 written notice right away. Do you understand that?

11 **DEFENDANT:** Yes, Your Honor. We already talked
12 about it.

13 **THE COURT:** Okay. Well, you have fine
14 attorneys and I'm sure you have. Like I said, I've
15 got to cover these things on the record.

16 SENTENCE OF THE COURT

17 **THE COURT:** All right. If there's nothing
18 further, the way I read the statute, it doesn't
19 matter whether I agree or disagree with the statute,
20 you, having been convicted of trafficking heroin
21 greater than 14 grams, the sentence of the Court is
22 that you be committed to the South Carolina
23 Department of Corrections for 25 years and pay a
24 fine of \$200,000. Now -- plus the costs and
25 assessments. You're given credit for any jail time

1 under section 24-13-40. That's to be calculated and
2 applied by the South Carolina Department of
3 Corrections.

4 Now, Mr. Arroyo, I've imposed your sentence.
5 Do you have \$200,000?

6 **DEFENDANT:** No, Your Honor.

7 **THE COURT:** Well, it's probably closer to half
8 a million when they get through adding all the costs
9 to it. Do you have appointed lawyers?

10 Were y'all appointed?

11 **MR. KIRKLAND:** We were not, Your Honor.

12 **THE COURT:** Do you have any assets anywhere
13 that --

14 **DEFENDANT:** No, Your Honor.

15 **THE COURT:** No real estate?

16 **DEFENDANT:** No, Your Honor.

17 **THE COURT:** No bank accounts?

18 **DEFENDANT:** No.

19 **THE COURT:** Well, what I'm going to do is I'm
20 going to make a finding that I have imposed the fine
21 and I have given you an opportunity to pay the fine
22 and that you cannot pay the fine. And so I'm going
23 to extinguish the fine because -- that I can
24 extinguish, but some of them they won't let me
25 extinguish. But -- if I'm reading the statute

1 right, I'll go back and read it, the fine is
2 mandatory I believe. Let me make sure I'm reading
3 it right.

4 (Pause.)

5 MR. GOINGS: That's correct, Your Honor.

6 THE COURT: Do you understand your sentence,
7 Mr. Arroyo?

8 DEFENDANT: Yes, Your Honor.

9 THE COURT: Good luck to you, sir.

10 DEFENDANT: Thank you.

11 MS. CHAPMAN: Thank you, Your Honor.

12 MR. KIRKLAND: Thank you, Your Honor.

13

14 END OF PROCEEDINGS

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

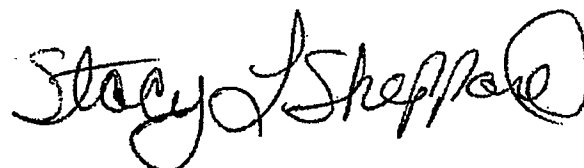
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 4th - 5th of March, 2013.

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

June 27, 2013



Stacy L. Sheppard, RPR
Circuit Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

RECEIVED
JAN 27 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JUAN ARROYO,

APPELLANT

APPELLATE CASE NO. 2013-000580

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803).734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	7
PETITION TO BE RELIEVED AS COUNSEL	8

TABLE OF AUTHORITIES

Cases

<i>State v. Allen</i> , 370 S.C. 88, 634 S.E.2d 653 (2006).....	6
<i>State v. Hill</i> , 331 S.C. 94, 501 S.E.2d 122 (1998).....	6
<i>State v. Hill</i> , 361 S.C. 297, 604 S.E.2d 696 (2004).....	6
<i>State v. Wise</i> , 359 S.C. 14, 596 S.E.2d 475 (2004)	6

STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in refusing to ask during voire dire whether potential jurors would be able to judge the believability of law enforcement officers by the same standards as any other witness, regardless of his social standing or position in life?

STATEMENT OF THE CASE

On September 15, 2010, the State Grand Jury of South Carolina indicted Appellant Juan Rodolpho Arroyo for trafficking heroin greater than fourteen grams but less than twenty-eight grams. R. 289 – R. 294; Tr. 5, ln. 12—Tr. 6, ln. 9. On March 4, Appellant proceeded to trial in Lexington County before the Honorable William P. Keesley and a jury. Debra R. Chapman and Bradley M. Kirkland represented Appellant, and Cary N. Goings and Curtis A. Pauling, III represented the State. Tr. 1.

On March 5, 2013, the jury found Appellant guilty as charged. Tr. 272, ln. 20—Tr. 273, ln. 8. The court imposed a 25 year prison sentence and a \$200,000 fine. Tr. 283, ll. 16-24.

ARGUMENT

THE TRIAL JUDGE ERRED IN REFUSING TO ASK APPELLANT'S SPECIFIC QUESTION REGARDING WITNESS CREDIBILITY DURING VOIRE DIRE WITHOUT CONSIDERING WHETHER IT WAS NECESSARY TO ENSURE APPELLANT RECEIVED A FAIR TRIAL.

STATEMENT OF FACTS

The State alleged that on April 29, 2010, Appellant sold twenty-five grams of heroin to a confidential police informant. Tr. 83, ln. 20—Tr. 88, ln. 16. Prior to jury selection, Appellant requested that the court pose the following question regarding the credibility of Appellant and any police officers during voire dire:

Jurors are often required to decide which witnesses to believe and which not to believe. In deciding believability, jurors may consider how the witnesses presented themselves, certain factors in the witnesses' background, and many other factors. However, you may not judge believability of a witness based simply on that person's occupation or position in life.

Understanding these rules, would you be able to judge the believability of law enforcement officers and other government witness[es] by the same standard as any other witness?

R. 287 (Court's Exhibit 1).

During voire dire, the court asked potential jurors the following questions, inter alia:

(1) "Is there anything about your experience, your relationship with those individuals that affects your ability to be fair and impartial as a juror in the case?" (2) "Have any of you formed expressed any opinions about this case[?]" (3) "Are any of you aware of any interest, bias or prejudice that you might have for or against the State, for or against the defendant, for or against anyone or any entity involved in this case[?]" and (4) "Can each of you give both the State of South Carolina and the defendant, Mr. Arroyo, a fair and

impartial trial?" The court refused to ask Appellant's proposed question regarding credibility, and Appellant objected. Tr. 50, ln. 4—Tr. 51, ln. 19.

DISCUSSION

The trial judge erred in refusing to ask Appellant's specific question regarding witness credibility during voir dire without considering whether it was necessary to ensure Appellant received a fair trial. The scope and manner of conducting voir dire are within the sound discretion of the trial judge. *State v. Wise*, 359 S.C. 14, 23, 596 S.E.2d 475, 479 (2004). The failure to exercise discretion is itself an abuse of discretion. *State v. Allen*, 370 S.C. 88, 95, 634 S.E.2d 653, 656 (2006). To constitute reversible error, a limitation on questioning must render the trial "fundamentally unfair." *State v. Hill*, 331 S.C. 94, 104, 501 S.E.2d 122, 127 (1998). "In the final analysis, what is constitutionally mandated is the selection of a fair and impartial jury. . . . [T]he trial judge has the discretion and the duty to monitor the voir dire so as to ensure that the jury selected measures up to the constitutional standard." *State v. Hill*, 361 S.C. 297; 310, 604 S.E.2d 696, 702 (2004).

At the trial below, Appellant posed a question specifically regarding the potential jurors' assessment of credibility based on the witness's standing or social status in life. The question was important because Appellant is a Hispanic immigrant, and the State planned to call as witnesses law enforcement officers. The trial judge summarily refused to ask the question and never examined its import or possible impact in ferreting out jurors with unacceptable preconceptions about the credibility of Hispanic immigrants versus law enforcement officers. This absence of analysis was a lack of discretion in its most bare form.

Further, this abuse of discretion rendered the trial fundamentally unfair. Laymen naturally regard law enforcement with esteem and defer to their authority. On the other hand, immigrants are often viewed in our society as subversive to the law. Thus, a specific inquiry into these preconceptions—beyond the ordinary conversations about credibility—was necessary to ensure that the jurors selected would initially treat witnesses on equal footing.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests reversal of his conviction and remand for a new trial. Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of January, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUAN ARROYO,

APPELLANT

APPELLATE CASE NO. 2013-000580

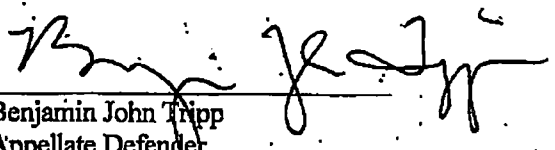
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Juan Arroyo states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on March 5, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Juan Arroyo.

Respectfully submitted,


Benjamin John Tapp
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of January, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUAN ARROYO,

APPELLANT

APPELLATE CASE NO. 2013-000580

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (March 4 – 5, 2013)
- (3) Court's Exhibit #1

I certify that this designation contains no matter which is irrelevant to this appeal.

January 27, 2014



Benjamin Jean Tripp
Appellate Defender

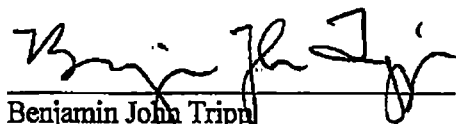
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 27, 2014


Benjamin John Tripp
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JAN 27 2014
SC Court of Appeals

Appeal from Lexington County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUAN ARROYO,

APPELLANT

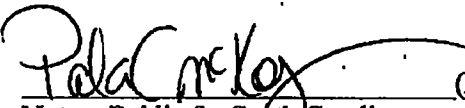
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Cary N. Goings, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Juan Arroyo, #354538 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 27th day of January, 2014.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JUAN ARROYO #354538

APPELLANT,

APPELLATE CASE NO.: 2013-000580

APPELLANT'S PRO SE RESPONSE TO ATTORNEY'S ANDERS BRIEF

Juan Arroya # 354538
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010
(pro se litigant)

RECEIVED

MAR 19 2014

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT ONE	5,6
CONCLUSION OF ARGUMENT ONE	6
ARGUMENT TWO	7,8
CONCLUSION OF ARGUMENT TWO AND BRIEF	8,9

TABLE OF AUTHORITIES

Cases

Abney v. United States, 431 U.S. 651, 97 S.Ct. 2034	6
Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194	7,8
Downum v. United States, 372 U.S. 734, 83 S.Ct. 1033	5
Gori v. United States, 367 U.S. 364, 81 S.Ct. 1523	5
State v. Ervin, 333 S.C. 351, 510 S.E. 2d. 220 (Ct. App. 1998)	6
United States v. Dinitz, 424 U.S. 600, 96 S.Ct. 1075	5
United States v. Jorn, 400 U.S. 470, 91 S.Ct. 547	6
**** Gibson v. State, 334 S.C. 515; 514 S.E. 2d. 320 (SC 1999) ...	8
**** Constitutional Law Key 43 (1)	8

STATEMENT OF ISSUES ON APPEAL RAISED BY APPELLANT

(I). Was the trial court in Appellant's subsequent trial deprived of subject matter jurisdiction by a Double Jeopardy Clause violation?

(II). Was Appellant denied his constitutional right to a fair trial where the State concealed potential witnesses and evidence in violation Brady v. Maryland?

STATEMENT OF THE CASE

On September 15, 2010, the State Grand Jury Of South Carolina indicted Appellant Juan Rodolpho Arroyo for trafficking heroin greater than fourteen grams but less than twenty-eight grams. (R.289-R.294; Tr.5, ln.12 -Tr.6, ln.9... The case was first tried November 15, 2011, wherein, a mistrial was declared. (Tr.71, ln.24-25).

The mistrial was granted on Appellant's Attorney's motion asserting prosecutorial misconduct and bad faith. (Tr.72, ln.19-22).

On March 4, 2013, The case was called to trial again, after the jury was selected, during pre-trial proceedings, Appellant's attorney made a motion to dismiss, arguing that the present trial was barred by Double Jeopardy. (Tr.72, ln.19-25)

However, The Motion was denied and the case proceeded to trial in Lexington County before the Honorable William P. Keesley and a jury., the Appellant being represented by Debra R. Chapman and Bradley M. Kirkland, The State was represented by Cary N. Goings and Curtis A. Pauling, III. (Tr.1)

On March 5, 2013, the jury found appellant guilty as charged (Tr.272, ln.20-Tr.273, ln.8). The court imposed a 25 year prison sentence and a \$200,000 fine....

The Appellant filed a timely Notice Of Intent To Appeal, the appeal was assigned to Appellate Defender Benjamin John Tripp of the South Carolina Commission On Indigent Defense, who filed an Anders Brief on January 27, 2014, w/ a Petition To Be Relieved As Counsel.....

On February 6, 2014, Appellant recieved notice from The Clerk Of Court Of The South Carolina Court Of Appeals, dated February 4, 2014, giving Appellant (45) days to file a Response to Ander's Brief, listing any issues Appellant believes should be addressed by the Court., And Thus,

On this 10 day of March 2014, Appellant submits the following issues to this Honorable Court which he believes should be addressed.....

ARGUMENT ONE

WAS THE TRIAL COURT IN APPELLANT'S SUBSEQUENT TRIAL DEPRIVED OF SUBJECT MATTER JURISDICTION BY A DOUBLE JEOPARDY CLAUSE VIOLATION?

STATEMENT OF FACTS

On September 15, 2010, the State Grand Jury Of South Carolina indicted Appellant for trafficking heroin greater than fourteen grams but less than twenty-eight grams. (R.289-R.294; Tr.5, ln.12-Tr.6, ln.9)...

The case was first tried November 15, 2011, wherein, a mistrial was granted based on Appellant's Attorney's motion alleging prosecutorial misconduct and bad faith. (Tr.71, ln.24-24) and (Tr.72, ln.19-22).....

On March 4, 2013, The case was called to trial again, after the jury was selected, during pre-trial proceedings, Appellant's Attorney made a Motion To Dismiss, arguing that the present trial was barred by the Double Jeopardy Clause. (72, ln.19-25)...

The motion was denied and the case proceeded to trial in Lexington County before the Honorable William P. Keesley and a jury.

On March 5, 2013, The jury found Appellant guilty as charged. (Tr.272, ln.20-273, ln.8).....

The court imposed a 25 year prison sentence and a \$200,000 fine. (Tr.283, ln.18-25)

DISCUSSION

There can be no Retrial when bad faith conduct by either the trial judge or the prosecutor is responsible for the mistrial. The 'Double Jeopardy Clause protects defendants from harassment by successive prosecutions and from being required to forgo trial before the original tribunal in order to give the prosecutor a better chance to convict., See: United States v. Dinitz, 424 U.S. 600, 96 S.Ct.1075; Downum v. United States, 372 U.S.734, 83 S.Ct.1033; and Gori v. United States 367 U.S.364, 81 S.Ct.1523.....

The Record Of Transcript in Appellant's case indicates that the Appellant's

initial trial which ended in mistrial was the result of prosecutorial misconduct and bad faith. (Tr.72, lns.19-25)....

Therefore, The court did not have 'Subject Matter Jurisdiction' to conduct a trial, which would be barred by the Double Jeopardy Clause Of The State and United States Constitutions.

Although, Appellant's trial attorneys failed him in the following two respects:

(1). If trial counsel was sure judge had granted the mistrial motion based on prosecutorial misconduct, finding bad faith., Appellant's Trial Attorneys should have ordered the transcript of record from the initial trial to support Motion To Dismiss because of a possible Double Jeopardy Clause violation... (This is assuming the initial Motion For A Mistrial was an 'oral' one and the court's Ruling granting the mistrial was oral)...

(2) A Motion To Dismiss an Indictment on grounds of Double Jeopardy, An Order denying such a motion is appealable. (Abney v. United States 431 U.S. 651, 97 S.Ct. 2034) and (United States v. Jorn 400 U.S. 470, 91 S.Ct. 547)... However, Appellant's Trial Attorneys failed to preserve or appeal the Judge's Ruling Denying The Motion.

In spite of these errors by Appellant's Trial Attorneys, The Issue Appellant is raising in this 'Pro Se Brief' a question of 'Subject Matter Jurisdiction', which can be raised at any time. See: (State v. Ervin, 333 S.C. 351, 510 S.E. 2d. 220 (Ct. App. 1998)...

CONCLUSION OF ISSUE ONE

Therefore, Appellant respectfully ask this Honorable Court to deny Appellate Counsel's 'Petition To Be Relieved As Counsel' and Order him to obtain the Record Of Transcript from the first trial, in relation to the oral motion for mistrial and any oral Ruling from the Bench, and or any written motions or orders; then to amend such records to the Record Of Appeal Before This Honorable Court and then fully Brief the issue to this Court?.

(6)

ARGUMENT TWO

WAS APPELLANT DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL WHERE THE STATE CONCEALED POTENTIAL WITNESSES AND EVIDENCE IN VIOLATION OF BRADY V. MARYLAND?

STATEMENT OF FACTS

The Appellant was indicted by the State Grand Jury Of South Carolina on September 15, 2010 for Trafficking heoin greater than fourteen grams but less than twenty-eight grams. (R.289-R.294; Tr.6, ln.9)

The case was first tried November 15, 2011, wherein a mistrial was declared. (Tr.72, ln.10-12)

The Appellant's current trial, which is before this court for review, took place on March 4-5, 2013. (Tr.1, ln.10-11)....

The State's case consisted of two witnesses, The confidential informant Emigdio Penaloza and Law Enforcement Officer Ryan Curtis Wood. (Tr.174-215) and Tr. 97-152).

The State's assertion throughout the entire discovery process through affidavits, testimony, etc., that Agent Ryan Woods searched the confidential informants person and car before the alleged control buy. (Tr.111, ln.7-10), and (Tr.142, ln.8-10) ., Nowhere in the procedures or process does Agent Wood's or the State prosecutor inform the Defense Team that there was, in fact, another law enforcement officer, who actually conducted the search of confidential informant's car before the controlled drug buy. (Tr.212, lns.16-25)... Then, The confidential informant discloses to the defense legal team that there were several other officers involved. (Tr.213, ln. 1-6).... The Appellant's constitutional right to a fair trial includes the right to call witnesses who might be able to call into question state witnesses credibility, the appellant attorney was denied this right when the state did not disclose these other officers involvement or identities. This also infringed on Appellant's constitutional right to

present a defense.,because the purpose of a confidential informant's person and vehicle being searched prior to a controlled buy by the confidential informant is to prevent Defense Attorneys from raising a defense that the confidential informant brought the drugs with him and claiming they were obtained from a defendant.... See:(Tr.143,ln.9-14)....

There were other witnesses who were present and involved in the search of informant's vehicle prior to the controlled buy,who could have conclusively discredited Agent Wood's testimony,affidavits,and reports,which the Appellant's Attorneys were not made aware of by the prosecution,in violation of (Brady v. Maryland). See:(Tr.212,ln.6-10) and (Tr.212, lines 16-21,22,23,24,25 and (Tr.213,ln.1-6),then see state's key witness's Agent Wood's testimony at (Tr.111,ln.7-10 and Tr.142,lns.8-10)....

This failure on the part of the prosecution to disclose these other witnesses who would have discredited the state's key witness testimony and credibility before the jury deprived the trial proceedings from fundamental fairness and denied Appellant his constitutional rights to a fair trial,.

1. The prosecution had a duty disclose to defense attorney's the names of these other witnesses who were involved in the search of confidential informant's person and car under Brady v. Maryland.
2. The prosecution had a duty to disclose to Defense Attorneys the names of the other officers who were involved and participated,on the scene, of the controlled buy under Brady v. Maryland.

The prosecution's failure to disclose the above information denied Appellant his constitutional right to present a defense,which is a part of the sixth amendment right to a fair trial.

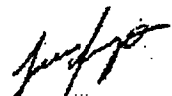
The courts have repeatedly stated,'When a defendant lacks knowledge of material evidence in the prosecution's possession,the waiver of constitutional rights cannot be deemed knowing and voluntary. (Gibson v. State 334 S.C. 515,514 S.E. 2d. 320 (S.C. 1999) Constitutional Law Key 43 (1).

CONCLUSION

Therefore,Appellant respectfully prays that this Honorable Court would Deny Appellate Counsel's Petition To Be Relieved As Counsel and Appellate Counsel Benjamin John Tripp be Ordered to Amend The Record On Appeal to include relevant parts from Appellant's first trial regarding any motion,

transcript, and or written orders requesting or granting the mistrial;
And That Appellate Counsel be Ordered to fully brief the two issues
Appellant has raised in this 'Appellant's Pro Se Response To Attorney's
Ander's Brief And Petition To Be Relieved As Appellate Counsel'.

Respectfully!



Juan R. Arroyo #354538
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010.
(Pro Se Litigant)

This 10 day of March, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

JUAN ARROYO,

APPELLANT

RECEIVED

MAR 19 2014

SC Court of Appeals

CERTIFICATE OF MAIL SERVICE

Personally Appeared Before me, Juan Arroyo, Appellant in the above captioned matter, who first being duly sworn, deposes and states the following: That on this 10th, day of March 2014, I placed a copy of my 'Appellant's Pro Se Response To Anders Brief' in the United States Postal mail, postage pre-paid, mailing one copy addressed to Clerk Of Court For The South Carolina Court Of Appeals, Post Office Box 11629 Columbia, South Carolina 29211 and placing another copy in U.S. Postal mail addressing it to: Assitant Attorney General Cary Nicholas Goings, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, South Carolina 29201.

Respectfully!


Juan Arroyo #354538
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

(Pro Se Litigant)

3-10-14
Date:

cc:
Benjamin John Tripp, Esquire

March 10th, 2014

Juan Arroyo #354538
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

Clerk Of Court jenney Abbott Kitchings
South Carolina Court Of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Juan Arroyo
Appellate Case Number: 2013-000580

Dear Clerk Of Court,

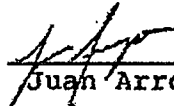
I recieved your office letter dated February 4, 2014 on February 6, 2014, giving me 45 days to file a pro se brief addressing any issues I believe this court should address in response to Anders Brief file by my appointed Appellate Counsel.... On this 10th day of March 2014., Im timely filing my pro se brief response...

Please find enclosed pro se brief, along with certificate of mail service verifying I served Attorney General with a copy and sent Appellate Defender Benjamin John Tripp a copy.....

+Also, please find enclosed an extra copy, which I ask your office to clock-stamp recieved and return it to me via US Postal Mail?

"Thank You Very Much!"

3-10-14
Date:


Juan Arroyo #354538

RECEIVED

MAR 19 2014

SC Court of Appeals

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Juan Arroyo, Appellant.

Appellate Case No. 2013-000580

Appeal From Lexington County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2014-UP-338
Submitted August 1, 2014 – Filed September 24, 2014

APPEAL DISMISSED

Appellate Defender Benjamin John Tripp, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General Curtis Anthony Pauling, III, and
Assistant Attorney General Cary Nicholas Goings, all of
Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

HUFF, SHORT, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 10, 2014

The Honorable Beth Carrigg
205 E Main St Ste 146
Lexington SC 29072-3557

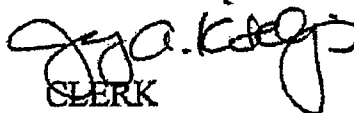
REMITTITUR

Re: The State v. Juan Arroyo
Lower Court Case No. 2010GS4700007
Appellate Case No. 2013-000580

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: Juan Arroyo, 354538
Benjamin John Tripp, Esquire
Alan McCrory Wilson, Esquire
Cary Nicholas Goings, Esquire
Curtis Anthony Pauling, III, Esquire
The Honorable William P. Keesley

ORIGINAL

FORM 5

STATE OF SOUTH CAROLINA

FILED

JM

COUNTY OF LEXINGTON

2015 MAY 22 } A 8:12

IN THE COURT OF COMMON PLEAS

JUAN ARROYO, #354538,

Full name and prison number (if any) of Applicant

BETH A. CARRIG
CLERK OF COURT
15746-300

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2015 CP3201885

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 Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010
2. Name and location of Court which imposed sentence: Lexington County Court of General Sessions, 205 S. Main Street, Lexington, SC, 29072
3. Name(s) of co-defendant(s) (if any) Francisco Guerrero Flores
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-32-4707 (trafficking heroin)
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 5, 2013; 25 years.

Revised 3/2003

2015 CP 3201885

FILED

2015 MAY 22 A 8:12

BETH A. CARRIGG
CLERK OF COURT
LEWISTON

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 24, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpub. Op. No. 2014-UP-338
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Revised 3/2003

FILED

- (a) Ineffective assistance of trial counsel.
- (b) Ineffective assistance of appellate counsel.
- (c) _____

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

- (a) Failure to properly prepare Applicant prior to trial.
- (b) Failure to call witnesses and utilize evidence.
- (c) Failure to raise all meritorious issues on appeal.

BETH A. CARRIGG
CLERK OF COURT
JULY 22 2015

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. _____

2015 CP 3201885

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) PCR is the proper forum.

(b) _____

(c) _____

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

FILED

2015 MAY 22 A 8:12

BETH A. CARRIS
CLERK OF COURT

Revised 3/2003

2015 CP3201885

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

FILED

2015 MAY 22 A 8:12

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

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

- (a) the name and address of each attorney who represented you:
- Debra Chapman, 2007 Lincoln Street, Columbia, SC 29201
 - Bradley M. Kirkland, 2007 Lincoln Street, Columbia, SC 29201
 - Benjamin John Tripp, P.O. Box 11589, Columbia, SC 29211
- (b) the proceedings at which each such attorney represented you:
- Trial & sentencing.
 - Trial & sentencing.
 - Direct Appeal.

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

A new trial.

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

No.

Revised 3/2003

STATE OF SOUTH CAROLINA

County of Lee,

VERIFICATION

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

SWORN to and subscribed before me this 12th
day of May, 2015.
[Signature] (L.S.)
Notary Public

My Commission Expires: 4/12/2016

FILED
2015 MAY 22 A 8:12
BETH A. CARRICO
CLERK OF COURT
LEE COUNTY, SC

2015 CP 3201885

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

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

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


Applicant

SWORN or affirmed to and subscribed before me this
10th day of May, 2015.


Notary Public

My Commission Expires: 4/12/2016

BETH A. GARRIGO
CLERK OF COURT
LEVITT COUNTY

2015 MAY 22 A 8:13

FILED

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

CASE NO.

2010GS 47 07

VS.

JOSE JUAN GARCIA ROBLES,
FRANCISCO GUERRERO-FLORES,
JUAN RODOLPHO ARROYO,
GADIEL GARCIA DE DIOS
"ANDRES SANDAVOL",
MANUEL HERNANDEZ ROBLES,
JOSHUA GRIFFIN,
ALFREDO PEREZ-PEREZ,
BOBBY BURROUGHS,
KENNETH ANDREWS,
BRAINEN BORCHERS,
BARBARA BREITENBACH,
WILLIAM CHRISTOPHER BROWN,
MICHAEL RION BYRD,
EDGAR ALLAN CRAIG,
WENDY ANNETTE CRAIG,
IAN MATTHEW CRAVEN,
JAMES ADAM GLEATON,
JEREMY LEWIS GRAY,
LARRY ALLEN HOURIHAN,
LISA AMANDA LONDONO,
PETER TURANEC,

DEFENDANTS.

INDICTMENT FOR
UNLAWFUL DRUGS

ORIGINAL FILED

SEP 15 2010

JAMES R. PARKS
CLERK, STATE GRAND JURY

Trafficking Heroin (Conspiracy)
> 28 grams

S.C. Code Ann. § 44-53-370 (e)(3)

Trafficking Heroin > 28 grams

S.C. Code Ann. § 44-53-370 (e)(3)

Four Counts

Trafficking Heroin 14-28 grams

S.C. Code Ann. § 44-53-370 (e)(3)

Possession with Intent to Distribute
Heroin

S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

At a session of the State Grand Jury of South Carolina, convened in Columbia,

South Carolina, on September 15, 2010, the State Grand Jurors present upon their oath:

COUNT I
TRAFFICKING HEROIN > 28 GRAMS
(CONSPIRACY)
S.C. Code Ann. § 44-53-370 (e)(3)

That Jose Juan Garcia Robles, Francisco Guerrero-Flores, Juan Rodolpho Arroyo, Gadiel Garcia De Dios a/k/a "Andres Sandavol", Manuel Hernandez Robles, Joshua Griffin, Alfredo Perez-Perez, Bobby Burroughs, Kenneth Andrews, Brainen Borchers, Barbara Breitenbach, William Christopher Brown, Michael Rion Byrd, Edgar Allen Craig, Wendy Annette Craig, Ian Matthew Craven, James Adam Gleaton, Jeremy Lewis Gray, Larry Allen Hourihan, Lisa Amanda Londono, Peter Turanec and other persons whose names are both known and unknown to the State Grand Jury, in Lexington County, Horry County, and Florence County, South Carolina, during the period of time extending from, on, about or between September 2009 to the present, did conspire to sell, manufacture, deliver, purchase, or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession or provided financial assistance or otherwise aid, abet, or bring into this State, more than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT II
POSSESSION WITH INTENT TO DISTRIBUTE HEROIN
S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

That Francisco Guerrero-Flores, did in Lexington County, on or about November 5, 2009, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT III
TRAFFICKING HEROIN > 28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(3)

That Francisco Guerrero-Flores and Joshua Griffin, did in Lexington County, on or about March 16, 2010, sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession of more than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IV
TRAFFICKING HEROIN > 14 GRAMS BUT < 28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(3)

That Juan Rodolpho Arroyo, did in Horry County, on or about April 29, 2010, sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession of more than fourteen (14) but less than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT V
TRAFFICKING HEROIN > 28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(3)

That Alfredo Perez-Perez and Bobby Burroughs, did in Florence County, on or about May 1, 2010, sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession of more than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or

having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VI
TRAFFICKING HEROIN > 28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(3)

That Juan Rodolpho Arroyo, did in Horry County, on or about May 21, 2010, sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession of more than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VII
TRAFFICKING HEROIN >28 grams
S.C. Code Ann. § 44-53-370 (e)(3)

That Juan Rodolpho Arroyo and Gadiel Garcia De Dios a/k/a "Andres Sandavol" did in Georgetown County, on or about August 2, 2010, sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State or did knowingly become in actual or constructive possession or did knowingly attempt to become in actual or constructive possession of more than twenty-eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976),

as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

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

A True Bill

R. J. King 9-15-10
FOREMAN

Henry McMaster
HENRY McMASTER (rem)
ATTORNEY GENERAL

South Carolina Department of Corrections

Classification Summary Reports

Date: Tuesday, June 30, 2015

Classification Summary Reports	
Inmate Number 354538	Submit

Classification Summary Report for ARROYO, JUAN :																					
Create PDF																					
CLASSIFICATION SUMMARY REPORT DATED 06/30/2015 ARROYO, JUAN																					
SCDC# 00354538 OFFENDER ADULT-STRAIGHT TYPE: SENTENCE INSTITUTION: LEE SECURITY/CUST: 3 MINIMUM IN CURR INCARC 25 YRS 0 MOS 0 SENT: DAYS VICTIM WITNESS: SEPREQ:N MED CLASS: [REDACTED] INST RESTRICT: NO RESTRICTION MENTAL CLASS: [REDACTED] CURRENT NO CURRENT PROGRAM: PROGRAM SEX REGISTRY: N DNA: C AGE: [REDACTED]	 RESIDENT STABILITY: NC DORMROOMBUNK_CODE: RID 0233 T PROJ MAXOUT DATE: 09/28/2035 PROJ PAROLE DATE: - EWC JOB: MECHANIC ASSIGNMENT: MAINTENANCE EWC LEVEL: 3F5 EEC LEVEL:- EDUC PGM: NO CURR EDUC PROGRAM																				
PREVIOUS NUMBERS: *NO PREVIOUS NUMBERS*																					
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">CURRENT OFFENSES</th> <th style="text-align: center;">YRS</th> <th style="text-align: center;">MOS</th> <th style="text-align: center;">DYS</th> <th style="text-align: center;">COUNTY</th> <th style="text-align: center;">SENTENCE</th> <th style="text-align: center;">START</th> <th style="text-align: center;">V/NV</th> <th style="text-align: center;">CAT</th> <th style="text-align: center;">INDICT</th> </tr> </thead> <tbody> <tr> <td>TRAFFICKING IN ILL.DRUGS</td> <td style="text-align: center;">25</td> <td style="text-align: center;">0</td> <td style="text-align: center;">0</td> <td style="text-align: center;">LEXINGTON</td> <td style="text-align: center;">SENTENCE</td> <td style="text-align: center;">10/04/2010</td> <td style="text-align: center;">V</td> <td style="text-align: center;">4</td> <td style="text-align: center;">10GS324707</td> </tr> </tbody> </table>		CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	SENTENCE	START	V/NV	CAT	INDICT	TRAFFICKING IN ILL.DRUGS	25	0	0	LEXINGTON	SENTENCE	10/04/2010	V	4	10GS324707
CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	SENTENCE	START	V/NV	CAT	INDICT												
TRAFFICKING IN ILL.DRUGS	25	0	0	LEXINGTON	SENTENCE	10/04/2010	V	4	10GS324707												

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

TRAFFICKING IN ILL.DRUGS	NOTIFY	OPEN ARREST NOTIFICATION	CATEG:4
TRAFFICKING IN MARIJUANA	NOTIFY	OPEN ARREST NOTIFICATION	CATEG:4
	WANTED	AGENT FARLEY	CATEG:

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

02/20/2014	REFUSING TO WORK	DISMISSED	OTHER ACTION TAKEN/INFORM
------------	------------------	-----------	---------------------------

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

04/16/2013	LEE	INCARCERATED	ADMINISTRATIVE
03/06/2013	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
MECHANIC	03/25/2015	-		3F5
GENERAL WORKER	05/13/2014	03/24/2015	INMATE REQUEST	3F5
BAKER	10/31/2013	05/12/2014	LATERAL TRANSFER	3F5
WASH RACK ATTENDANT	06/27/2013	10/30/2013	LATERAL TRANSFER	3F5

HISTORY OF EARNED EDUCATION CREDITS:

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

Create PDF

Source : SummaryReport.jsp

Copyright © 2007-2015 South Carolina Department of Corrections. All rights reserved.
[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 11:06:11 AM]

14:02:03 Tuesday, June 30, 2015

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 06/30/15
OMCOMITA RELEASE DATE SCREEN C056368
SCDC# > 00354538 LOC: LEE
ARROYO, JUAN - SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
CURRENT SENTENCE: 025-00-000 CONSECUTIVE SENTENCE ...: N
025-00-000 CURRENT SENT START DATE: 10/04/2010
PROJECTED COMPLETION DATES
MAXOUT DATE ...: 09/28/2035 CURRENT EWC ...: 3 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ...: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED ...: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000406 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ...: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ...: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 001706 ISS...:

PFKEYS: 5:HISTORY OF DATE CHANGES

Count 4

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington

MAR 05 2013

STATE Juan vs. Arroyo

JAMES R. PARKS
CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2010-GS-47-07

AW#: DP

AKA: _____
Race: _____ Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

Date of Offense: Apr 1 29, 2010
S.C. Code §: 44-53-370(c)(3)(b)
CDR Code #: 0287

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Trafficking Heroin (14 to 28 grams)

In violation of § 44-53-370(c)(3)(b) of the S.C. Code of Laws, bearing CDR Code # 0287

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury, (def.'s initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 72512

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, SC Bar # _____
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 200,000; 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.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning
Substance Abuse Counseling ☐

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§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	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.6 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (If paid in installments)	\$	\$
TOTAL	\$	\$ <u>340.00</u>

Clerk of Court/Deputy Clerk James R. Parks
Court Reporter: S. Sheppard

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
Other: THE COURT MADE A FINDING ON
THE RECORD, UNDER §16-23-500, THAT
THIS CONVICTED IS FOR A FELONY
OFFENSE CLASSIFIED AS A VIOLENT CRIME.
THE COURT ATTEMPTED TO COLLECT THE FINE &
☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge William P. Cluskey
Judge Code: 2050
Sentence Date MARCH 5, 2013

SCCA/217 (03/2011)

FINDS THE DEFENDANT INDIGENT & UNABLE TO
PAY THE FINE. WPA

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

ORIGINAL

FILED IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Arroyo, Juan #354538

2015 SEP 28 A 11:20 2015-CP-32-01885

Applicant,

BETH L. CARLIGG
CLERK OF COURT
LEXINGTON, SC

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed May 22, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the September 2010 term of the State Grand Jury on seven counts including trafficking heroin, possession with intent to distribute heroin, and conspiracy. (2010-GS-47-4707). Applicant was represented by Debra Chapman, Esq. and Bradley M. Kirkland, Esq. Applicant was tried on March 4th—5th, 2015, where he was convicted. The Honorable William P. Keesley sentenced Applicant to twenty-five (25) years imprisonment.

A Notice of Appeal was filed on Applicant's behalf on March 14, 2013. Benjamin John Tripp, Esquire, represented Applicant on appeal, and submitted a final brief and petition to be relieved as counsel pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal. State v. Arroyo, Op. No. 2014-UP-338 (S.C. Ct. App. filed September 24, 2014). The remittitur was also sent on September 24, 2014.

Attached herewith and incorporated herein by reference are the records of the State Grand Jury Clerk of Court regarding the subject conviction(s), the transcript, Applicant's records for the Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective assistance of trial counsel, in that;
 - a. "Failure to properly prepare Applicant prior to trial."
 - b. "Failure to call witness and utilize evidence."
2. Ineffective assistance of appellate counsel.
 - a. "Failure to raise all meritorious issues on appeal."

III.

Respondent interprets Applicant's claims as allegations of ineffective assistance of counsel. Respondent contends that Applicant's plea counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that 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, 305 S.E.2d 247 (1983).

IV.

Respondent therefore requests that this Court convene an evidentiary hearing on the issue of ineffective assistance of counsel. As to any and all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

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

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

ALAN WILSON
Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

September 26, 2016

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Juan Arroyo, #354538,

Applicant,

v.

State of South Carolina,

Respondent.

THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT

Case No: 2015-CP-32-1885

AFFIDAVIT OF SERVICE BY MAIL

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

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette
P.O. Box 12725
Columbia, SC 29211

DATED this 26th day of September, 2016.


Tess P. McDougal
Assistant Attorney General

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2016 SEP 28 AM 11

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

JUAN ARROYO, 354538,

Plaintiff,

vs.

STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-32-1885

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Tricia A. Blanchette, Bar No. 74904

Address:

PO Box 2147, Leesville, SC 29070

Phone: 803-908-3266 Fax _____

E-mail: blanchettelaw@gmail.com Other: _____

Defendant's Attorney:

Jessica Kinard, Bar No. _____

Address:

PO Box 11549, Columbia, SC 29211

Phone: 803-734-3737 Fax _____

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Amendment

Estimated Time Needed: 2 hours

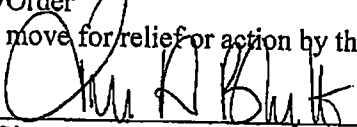
Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☐ Defendant

March 22, 2017
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1885

Juan Arroyo, #354538,)
Applicant,)

v.)

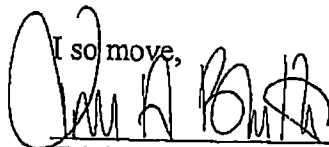
State of South Carolina,)
Respondent,)

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

This matter comes before the Court by way of an Application for Post Conviction Relief filed on May 22, 2015. Applicant amends his Application by making the following claims:

1. Ineffective assistance of trial counsel for failure to ensure that Judge Keesley's comments to the jury regarding as state wide grand jury case were cured and/or failure to move for a mistrial.
2. Ineffective assistance of trial counsel for the handling of the plea negotiations with Applicant and the State. Specifically, failure to effectively communicate all plea offers to Applicant and the sentencing possibilities under such offers.
3. Ineffective assistance of counsel for failure to effectively make a double jeopardy argument at the second trial. Ineffective assistance of appellate counsel for failure to raise the issue on appeal.
4. Ineffective assistance of trial counsel for failure to object to the introduction of the video and narration of the video by testifying witness(es).
5. Ineffective assistance of trial counsel for failure to make all viable contemporaneous objections.
6. Ineffective assistance of trial counsel for having knowledge that the trial court was concerned with imposing the mandatory sentence and not asking the trial court to exercise discretion and sentence Applicant to a lesser term of years.

March 21 2017
Lexington, SC

I so move,

Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
Attorney for Applicant

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1885

Juan Arroyo, 354538,)
Applicant,)

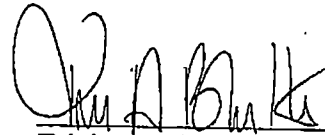
v.)

State of South Carolina,)
Respondent,)

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States Mail this 22nd day of March 2017, a copy of an Amendment to Application for Post Conviction Relief to Jessica Kinard of the Attorney General's Office, at:

Office of the Attorney General
Att: Jessica Kinard, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

March 22, 2017

1	State of South Carolina	)	In the Court
2	County of Lexington	)	Of Common Pleas
3	Juan A. Arroyo,	)	Case No.: 2015-CP-32-1885
4	Applicant,	)	
5	vs.	)	Transcript of Record
6	State of South Carolina,	)	
7	Respondent.	)	

8

9

April 18, 2017

10

Lexington, South Carolina

11

12

BEFORE:

13

The Honorable Robert Hood, Judge

14

15

APPEARANCES:

16

17

Tricia A. Blanchette, Esquire
 Jeremy A. Thompson, Esquire
 Attorneys for the Applicant

18

19

Clay Mitchell, Assistant Attorney General
 Attorney for the Respondent

20

21

ALSO PRESENT:

22

Juan A. Arroyo

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
 P.O. Box 184, Lexington, South Carolina 29071

1	INDEX	
2	PCR HEARING	
3	WITNESS	PAGE
4	DEBRA Y. CHAPMAN	
5	Direct Examination by Mr. Thompson	10
6	Cross Examination by Mr. Mitchell	36
7	Redirect Examination by Mr. Thompson	45
8	Examination by the Court	46
9	Redirect Examination Continued by Mr. Thompson	48
10	Recross Examination by Mr. Mitchell	49
11	JUAN A. ARROYO	
12	Direct Examination by Ms. Blanchette	50
13	Cross Examination by Mr. Mitchell	82
14	Redirect Examination by Ms. Blanchette	95
15	BRADLEY KIRKLAND	
16	Direct Examination by Mr. Mitchell	100
17	Cross Examination by Mr. Thompson	110
18		
19	Certificate of Reporter	124
20		
21		
22		
23		
24		
25		

1	EXHIBITS			
2	APPLICANT'S			
3	NO.	DESCRIPTION	ID	EVDS.
4	1	Proffer Agreement	4	8
5	2	Plea Agreement	4	18
6	3	Sentencing Sheet	4	21
7				
8	RESPONDENT'S			
9	1	Letter 1/9/13	91	91
10	2	Letter 4/23/13	91	91
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 Thereupon, the following proceedings were had,

2 (Whereupon, Applicant's Exhibits #1 through #3
3 marked for identification)

4 THE COURT: Okay. Who is this?

5 MR. MITCHELL: Judge, this is Juan Arroyo.

6 THE COURT: Okay.

7 MR. MITCHELL: That's the packet in front of you.

8 THE COURT: We are on the record in 2015-CP-32-1885.

9 This is Juan Arroyo. How are you?

10 MR. ARROYO: Pretty good, sir.

11 THE COURT: Where did you come in from?

12 MR. ARROYO: Lee County.

13 THE COURT: Okay. That's a hike this morning.

14 Okay. Juan Arroyo versus the State of South Carolina.

15 The State is present and represented by Clay Mitchell and

16 the applicant is present and represented by Tricia

17 Blanchette. And, Jeremy, I don't remember your last

18 name.

19 MR. THOMPSON: Thompson, Your Honor.

20 THE COURT: Thompson. I remembered your first name
21 was Jeremy. I apologize.

22 MR. THOMPSON: That's all right.

23 THE COURT: And also by Mr. Thompson. And is

24 everybody ready to go forward or what are we doing with

25 this one?

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 MR. MITCHELL: We're ready to go forward, Your
2 Honor.

3 THE COURT: Okay. All right. Do you want to get us
4 kicked off here, Mr. Mitchell.

5 MR. MITCHELL: Sure. This is case number
6 2015-CP-32-1885. This application was filed May 22nd,
7 2015. Mr. Arroyo was indicted in September of 2010 by
8 the state grand jury on seven counts including
9 trafficking heroin, possession with intent to distribute
10 heroin and conspiracy to traffic heroin. That's
11 indictment number 2010-GS-47-07. He was represented on
12 the charges by Ms. Debra Chapman and Bradley Kirkland.
13 He was brought to trial in March of 2015 where he was
14 convicted on trafficking 14 grams to 28 grams. He was
15 sentenced to the mandatory sentence of 25 years. An
16 appeal was taken up and an Anders Brief was filed on his
17 behalf. The Court of Appeals dismissed the appeal in
18 September of 2014. Mr. Arroyo is here today present
19 represented by Ms. Tricia Blanchette and Jeremy Thompson.
20 They have filed an amended application spelling out the
21 allegations that we will be going forward on today. I
22 will let opposing counsel speak to those and we'll be
23 ready to go, Your Honor. Thank you.

24 THE COURT: All right. Ms. Blanchette, are you
25 getting us started?

1 MS. BLANCHETTE: Yes, Your Honor. May it please the
2 Court.

3 THE COURT: Yes, ma'am.

4 MS. BLANCHETT: Tricia Blanchette on behalf of Juan
5 Arroyo. The first thing I would like to hand up to the
6 Court is actually an order that Your Honor issued back in
7 October of 2015. It was a protective order as this is a
8 statewide grand jury case and everything was sealed. At
9 that time Brian Patrono was handling the case for the
10 State. Myself and him submitted this order to you which
11 you signed and as a result of it we were able to get
12 access to the discovery, the grand jury transcripts,
13 those types of things. In conjunction with that my
14 client has asked today and we're in concurrence with his
15 request that due to the sensitive nature of this case
16 that the courtroom be closed at this time.

17 THE COURT: Okay.

18 MS. BLANCHETTE: We have his family in from Horry
19 County. We ask that they be allowed to stay in the
20 courtroom and anyone that is necessary. Looking around I
21 don't see anyone that is here beyond that but just that
22 it be closed so no one can wander in and out while we are
23 discussing this case today.

24 THE COURT: Okay. And one of you get the back door.
25 I don't know that you need to lock it. Just somebody can

1 be back there and somebody tries to walk in. Not
2 somebody -- I mean, somebody that we all kind of
3 recognize, you know, then just keep it closed.

4 MS. BLANCHETTE: And, Your Honor, I have a copy of
5 the order that you signed if you would like it
6 (proffering.)

7 THE COURT: Great.

8 MS. BLANCHETTE: Additionally, Your Honor, this was
9 a very complicated and long case. As I said, as a result
10 of that order we were able to obtain a number of the -
11 all the grand jury transcripts. We have reviewed those,
12 gone over these with our client. We also got a number of
13 pretrial transcripts and for the Court's reference it's
14 my understanding these are not included in your packet.
15 I do have a copy of a transcript from a
16 pretrial/scheduling conference that was held with Judge
17 Keesley on March 21st, 2011. Additionally I have a bond
18 reconsideration hearing that was held in front of Judge
19 Benjamin on October 31st, 2012. And then in this case
20 there was a first trial that ended in a mistrial and we
21 obtained a complete copy of that transcript.

22 THE COURT: On Mr. Arroyo?

23 MS. BLANCHETTE: Yes. And that was held on November
24 10th in Saluda and then November 14th through 15th, 2011
25 in Lexington County in front of Judge Keesley. I have a

1 complete copy of that transcript as well (proffering.)

2 THE COURT: Okay. Great. Thank you. May I keep
3 it?

4 MS. BLANCHETTE: Mm-hmm. And then finally, Your
5 Honor, I have a copy of a proffer agreement that was
6 court's exhibit 1 marked at the trial that I intended to
7 introduce as applicant's number 1. It's my understanding
8 the State does not have an objection.

9 MR. MITCHELL: No objection to that coming in.

10 MS. BLANCHETTE: I would like to admit it at this
11 time.

12 THE COURT: All right. .

13 (Whereupon, Applicant's Exhibit #1 received in
14 evidence.)

15 MS. BLANCHETTE: Your Honor, just by way of
16 background information, I know the State gave a
17 procedural history but as I indicated there was a first
18 trial, held on November 10th was pretrial motions in
19 Saluda and then November 14th through 15, 2011 in
20 Lexington. The second trial was heard March 4th through
21 5th of 2013 in Lexington again in front of Judge Keesley.
22 At the first trial the Attorney General's Office was
23 represented by David Stumbo and Jonathan Waller. At the
24 second trial the State was represented by Carrie Goings
25 and Curtis Pauling so there was a change in the

1 prosecutors.

2 The incident date for this case is April 29th, 2010.
3 It was a controlled buy that was actually executed by the
4 Fifteenth Circuit Drug Enforcement Unit in Horry County.
5 There was a subsequent controlled buy by the Fifteenth
6 Circuit DEU, Drug Enforcement Unit on May 21st, 2010 and
7 then our client was detained following a traffic stop in
8 Georgetown on August 2nd, 2010 and that was handled by
9 the Georgetown County Sheriff's Department.

10 The State grand jury indictment number was
11 2010-GS-47-07. The county that we are here on today is
12 actually count 4, that was trafficking 14 to 28 grams of
13 heroin and the State reported that there was 25.7 grams
14 of heroin found. As already addressed by the State Mr.
15 Arroyo received a sentence of 25 years following his jury
16 trial.

17 Your Honor, at this time we would be prepared to go
18 forward with witnesses unless there's any other
19 additional background information that the Court would
20 like.

21 THE COURT: No. I'm good.

22 MS. BLANCHETTE: Your Honor, my co-counsel Mr.
23 Thompson will be handling our first witness.

24 THE COURT: Okay.

25 MR. THOMPSON: We call Debra Chapman, Your Honor.

1 THE COURT: All right. Ms. Chapman, please come
2 forward and be sworn.

3 Thereupon,

4 DEBRA Y. CHAPMAN

5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat. Once you're seated,
7 state your full name for the record.

8 THE WITNESS: It's Debra Y. Chapman.

9 DIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q. Ms. Chapman, how are you doing this morning?

12 A. I am good, Jeremy. How are you?

13 Q. Doing well. We do know each other outside of the
14 courtroom so if I slip up and call you Debbie, I apologize.

15 A. I prefer you call me Debbie.

16 Q. How long have you been in practice?

17 A. Oh, gosh, 24 years.

18 Q. How much of that would you say has been devoted to
19 criminal law?

20 A. 24 Years.

21 Q. Have you been in private practice the entire time?

22 A. Private practice the entire time.

23 Q. Do you handle cases in both State and Federal
24 Court?

25 A. I do.

1 Q. Have you been doing that as well for 24 years or did
2 you kind of move to federal later?

3 A. No. As a matter of fact, one of my very first cases
4 was federal. So no. I have done both.

5 Q. So in representing folks in Federal Court in
6 particular but also State Court, you're familiar with proffer
7 agreements, cooperation agreements?

8 A. I am.

9 Q. And what is a proffer agreement just generally?

10 A. Well, usually when my clients proffer, the
11 government agrees not to use anything against them for what
12 they say and they evaluate their information. Uhm, it's
13 really not a promise that we're gonna cut your sentence or
14 anything like that. Uhm, they evaluate it and if it's useful,
15 there's always the chance that they could have their sentence
16 reduced or they will offer a better deal. But basically it's
17 a promise not to use. As long as they don't lie they're not
18 gonna use that evidence against them.

19 Q. And in your practice, I guess, how many times would
20 you say you have had clients sign proffer agreements just
21 ballpark number? More than a hundred?

22 A. Oh, absolutely.

23 Q. When you have clients sign proffer agreements, do
24 you expect them to go to trial?

25 A. Usually not.

1 Q. Is your advice to someone who signs a proffer
2 agreement that you anticipate this case is going to end in a
3 plea?

4 A. No. I just tell them not to lie.

5 Q. But generally they are proffering in order to
6 cooperate as you said to try and get a better plea?

7 A. That's correct.

8 Q. And in Federal Court at least there are mechanisms
9 for reducing sentences explicitly in the federal guidelines
10 for cooperation, right?

11 A. That's right.

12 Q. Unfortunately we don't have similar structures in
13 State Court but you're still hoping in State Court to get it
14 reduced?

15 A. You know, maybe a lesser included or a negotiated
16 plea.

17 THE COURT: That's actually factually inaccurate
18 There's a state statute on sentence reduction now.

19 BY THE WITNESS:

20 A. Now there is.

21 THE COURT: But there probably wasn't in 2010.

22 BY THE WITNESS:

23 A. There wasn't back then.

24 THE COURT: That's right.

25 BY MR. THOMPSON:

1 Q. And I'm thinking more of the -- I think -- I - I - I
2 don't -- I think the statutes for cooperation that comes after
3 someone has been sentenced?

4 A. Right.

5 Q. And more 5k1.1 is what I'm thinking about for
6 Federal Court for cooperation at the time of sentencing. But
7 regardless, there is now a specific provision in the South
8 Carolina Code to reduce sentences for cooperation.

9 A. I'm aware of that.

10 Q. If your client wanted to go to trial just generally
11 speaking, would you advise them to sign a proffer agreement?

12 A. If they told me they wanted to go to trial to start
13 with? No.

14 Q. Now, referring specifically to, one, were you
15 retained or appointed to represent Juan?

16 A. Retained.

17 Q. How soon into the process were you hired after he
18 was arrested, if you remember?

19 A. I can tell you I think they came to my office like
20 in December 2010. I think - I think it was then.

21 Q. Now, where was he located? Was he on bond or did he
22 get detained?

23 A. No. He was in Lexington.

24 Q. Was that true throughout the course of the cause?
25 Did he ever make bond?

1 A. No. I want to say and I'm just going by memory that
2 there was an ICE detainer on him if I'm not mistaken, uhm, and
3 I can't remember if I tried to get him bond or not but I do
4 know, I think my memory tells me there was a detainer on
5 him.

6 Q. So you think -- So throughout the entire case he was
7 at LCDC?

8 A. Right.

9 Q. How many times would you say you met with him at
10 LCDC?

11 A. I couldn't tell you. I couldn't.

12 Q. Ballpark. Like more than 15?

13 A. I would assume so. It was over a two year period.
14 Uhm, I know I was out there. Uh, I know we went through
15 debriefings. Uh, I know he signed a proffer. Uhm, it was a
16 lot. I like Juan. He was a great client. Uhm, Very
17 likeable.

18 MR. THOMPSON: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes, sir.

21 BY MR. THOMPSON:

22 Q. This is applicant's 1, a copy of the proffer
23 agreement. Do you recall that document?

24 A. Did I sign it?

25 Q. I think your signature is on there.

1 A. Yes. My signature is on here. Yes.

2 Q. So you went over that proffer agreement with Juan?

3 A. I'm sure I did.

4 Q. I know we talked generally about proffer agreements.
5 Was it Juan's intent to cooperate?

6 A. Yes.

7 Q. That's why he signed the proffer agreement?

8 A. Yes. You know, he was looking at a mandatory 25
9 years, uhm, right off the bat, uhm, and we talked about it. I
10 mean, I remember he had young children. I think he had a
11 really good work history. I don't know why I remember that.
12 Uhm, and 25 years is a long time for somebody to go do and we
13 talked about it and I'll tell you it's very unusual, at least
14 for me practicing law to have him cooperate. Most I will tell
15 you Mexican nationalities just across the board just do not so
16 it was really unusual that he agreed to cooperate and I really
17 do think because I know he was devastated about his kids, I
18 think that was one of his driving forces for it but he agreed
19 to cooperate and he was debriefed and I can't tell you. I
20 know it was more than twice. I think it might have been three
21 or four times. Yes. We signed this.

22 Q. And based on the signing of that proffer agreement
23 obviously you can't always know the future, did you anticipate
24 this case was going to result in a plea or a trial when that
25 proffer was signed?

1 A. I could probably say I thought it was heading
2 towards a plea not that it doesn't turn out different
3 sometimes but that would be what I was anticipating.

4 Q. I understand. Now, there were kind of extensive
5 discovery materials in this case.

6 A. A ton.

7 Q. Did you go over those materials with Juan at LCDC?

8 A. We went over the materials but I'll tell you what,
9 and I don't know when I did this but I ended up, I mean, it
10 was thousands and thousands of pages. I mean, it had to be
11 20,000 pages if not more, uhm, and videos and wiretaps and it
12 involved a bunch of different counties. Uhm, I remember
13 Charleston, Lexington and specifically Horry County. Uhm, I
14 made a motion in limine. I remember arguing it in Saluda in
15 front of Judge Keesley. If this case was gonna go to trial, I
16 wanted Juan -- There were some wiretaps out there that Juan
17 was in. That case ended up being appealed by Aimee Zmroczek,
18 and so when we got ready to go to trial, I did a motion in
19 limine and we decided only Horry County and I think that was
20 kind of an agreement that the Attorney General's Office had,
21 too.

22 Q. Now, regarding those Horry County charges, was there
23 video evidence in those charges or at least the charge --

24 A. The charge that we went to trial on?

25 Q. Yes.

1 A. Yes. There was video evidence.

2 Q. Did you go over that video with Juan?

3 A. Oh, yes. We went over that video. It was a
4 terrible video.

5 Q. By your reaction I would assume that you did not
6 believe that Juan's chances at trial were very good based on
7 the video. Is that fair to say?

8 A. Well, you know, let me tell you, the video was kind
9 of a double edged sword to be honest with you. Uhm, the video
10 had Juan sitting right there. There is no doubt it's Juan.
11 Uhm, if I remember correctly, you never see the dope go to -
12 there was a CI, uhm, and that's how this whole case started
13 with Juan with this CI. But, uhm, he came to the house I
14 think a couple of times, uhm, and then the deal was supposed
15 to go down for 25 grams for I don't know 14, \$1500.00 but you
16 never see them exchange the dope. However, you do see Juan
17 with the money and counting it. Uhm, and, you know, the other
18 thing is, uhm, the agents had, I think there was a search. I
19 know there were time periods in that video that they had cut
20 off the video. I think they had gone to the bank or they went
21 somewhere and they cut it off and then the tape gave out
22 because there was no memory left in the cassette or whatever.
23 So, you know, it was kind of almost a defense for us, too, for
24 opportunity. Uhm, but the video, it was all on video.
25 There's some segments that were missing like I stated but...

1 Q. Were you optimistic about Juan's chances at trial
2 based on your review of the discovery and the video?

3 A. I thought that he would be convicted.

4 Q. I'm going to hand you a document and see if you
5 recognize that.

6 A. This is his plea agreement.

7 Q. And by "his", you mean Juan's plea agreement?

8 A. Right.

9 MR. THOMPSON: Your Honor, I would like to admit
10 this as applicant's 2.

11 MR. MITCHELL: No objection, Your Honor.

12 THE COURT: Okay.

13 (Whereupon, Applicant's Exhibit #2 received in
14 evidence.)

15 MR. THOMPSON: Yes, sir. May I approach?

16 THE COURT: You may. You don't need to ask to move
17 around. Just move around.

18 MR. THOMPSON: Thank you.

19 BY MR. THOMPSON:

20 Q. Now, this I'm gonna just talk generally about for a
21 second. The first paragraph says agreement made this and it
22 looks like 13th is scratched out and 17th is written above it,
23 and then September is written in and scratched out and October
24 is written above it, 2011, and then the numbered paragraph 2
25 says the parties have negotiated the sentence of defendant

1 Juan Adolpho Arroyo for a sentence of 18 years and then that's
2 scratched out, then it says recommended sentencing range of 14
3 to 18 years. I'm going to ask first, I would assume that the
4 - well, not assume but did the original offer, was it for a
5 negotiated 18 years?

6 A. Yes. I remember that. 18 and my client was not a
7 happy camper.

8 Q. And since it's written, do you recall, was this plea
9 agreement sent to you already signed by the prosecutor by
10 Mr. Stumbo?

11 A. I don't know. I don't know. Uhm, it looks like his
12 initials that are up there by the scratched out September and
13 the 15th. Uhm, yeah. I don't know if he did or not. I
14 couldn't tell you.

15 Q. So but you do recall specifically that there was an
16 18 year plea offer --

17 A. I do.

18 Q. -- made first. And did you go over that offer with
19 Juan at LCDC?

20 A. Yes.

21 Q. You said he was not happy.

22 A. No.

23 Q. What was his reaction?

24 A. Uhm, he was pretty angry. Uhm, you know, he had
25 been cooperating. He debriefed. He felt like he had done

1 everything that they wanted him to do and he wasn't happy.

2 Q. Were you surprised by the plea offer? Did you
3 expect that he would get a better deal?

4 A. I certainly was hoping for something a little bit
5 better than that but I think any lawyer would. Uhm...

6 Q. What did you -- What was your response to the
7 prosecutor after you went over this offer with Juan?

8 A. I know I went back and talked to him. Uhm, I mean,
9 18 years is a long time, uhm, especially with somebody
10 cooperating. That was my personal opinion. Uhm, and
11 evidently we must have gotten somewhere to 14 to 18. I know
12 and I remember doing this in this case, uhm, one of the
13 co-defendants went federally so I went back and worked the
14 federal guidelines just to see if he had gone federally what
15 his guideline range would have been and so maybe I could sell
16 that to the prosecutor. Uhm, but I just know that was going
17 to be the best offer that we got I guess is the 14 to 18 is
18 what I remember. I know I was pushing for 12. I don't know
19 if it's because I went over the guidelines and looked at that.
20 Uhm, I don't know. I had 12 in my head for some reason.
21 Maybe that's what I was going for but if it says 14 to 18,
22 then that was their bottom offer.

23 Q. All right. I'm going to hand you one additional
24 document. Can you identify that document please?

25 A. Yeah. That's his sentencing sheet. It has written

1 on it a negotiated 14 to 18 years. I have no reason to
2 believe that it's not that.

3 Q. All right. Now, your signature appears on --

4 MR. THOMPSON: I'm sorry. I would like to admit
5 this as applicant's 3, the sentencing sheet.

6 MR. MITCHELL: No objection.

7 THE COURT: Without objection.

8 (Whereupon, Applicant's Exhibit #3 received in
9 evidence.)

10 BY MR. THOMPSON:

11 Q. Does your signature appear on both the sentencing
12 sheet and the plea agreement?

13 A. It does.

14 Q. This plea offer looks like it was dated October
15 17th, 2011. Do you recall, where were you when you got that
16 offer?

17 A. I have no earthly idea.

18 Q. Did you go to court for a plea hearing?

19 A. You know, I want to say I think he was brought over
20 and we were gonna try to plea. Uhm, I don't remember what the
21 date was. I know that we came over here thinking we were
22 gonna do a plea and that just didn't happen.

23 Q. Did you think based on your conversations with Juan
24 that if the deal got better, he was going to accept it?

25 A. Yes.

1 Q. And did you --

2 A. Or I was hopeful.

3 Q. Did you convey that to Mr. Stumbo? Did you convey
4 that to the prosecutor?

5 A. Well, I probably told him he wasn't going to plea to
6 18. I feel sure that's what I told him.

7 Q. So did you go over this plea agreement, the 14 to 18
8 with Juan?

9 A. Yes.

10 Q. Did you go over that with him at the courthouse to
11 the best of your recollection?

12 A. You know, I don't know. I want to say it was at the
13 jail. I just don't remember. I know at one time we sat back
14 here in that little back room in the holding cell and went
15 over some stuff about his plea. Is that like right up towards
16 trial?

17 Q. This is like a month before trial.

18 A. All right. Then I know that I ended up, I talked to
19 him about everything they offered so it must have been the 14
20 to 18. Uhm, I think he was wavering. I ended up and that's
21 how Brad got involved in this case, I went and talked to Brad.
22 I said, you know, this guy is going to get 25 years. Uhm,
23 will you help me? So he did. He came in. We went and talked
24 to Juan about this plea. And, in fact, uhm, he just wasn't
25 gonna plea. He said God had told him to go to trial, uhm, and

1 I hate to say this but we went as far as I think Brad looked
2 up some Bible verses and we went and talked to him, uhm, you
3 know, sometimes God might throw you a lifeline. Grab it and
4 come on. He wasn't gonna do it so we turned around and got
5 ready for trial.

6 Q. Now, regarding this plea, let me just preface this.
7 Is there a difference between a recommended sentencing range
8 and a negotiated sentencing range?

9 A. Yes.

10 Q. The plea agreement reads recommended sentencing
11 range of 14 to 18 years, but the sentencing sheet reads
12 negotiated 14 to 18 years.

13 A. I don't know why they put negotiated. That's not my
14 writing. But what the deal was we could argue anything
15 between the 14 and 18. So we negotiated, I guess you could
16 say because it carries 7 to 25, it was a lesser included
17 offense than what he was charged with and I guess negotiated
18 is that he would have to at least get 14, no more than 18.

19 Q. So that I think answers my question. So your
20 interpretation is that the offer was a negotiated range of 14
21 to 18 years, not a recommended sentencing range?

22 A. Right.

23 Q. Because if it had been a recommended sentencing
24 range --

25 A. He wasn't going to let me go below the 14.

1 Q. And that's the prosecutor Mr. Stumbo?

2 A. That's exactly right.

3 Q. Do you recall ever meeting with the prosecutor with
4 Juan in the room to talk about the plea?

5 A. I don't know.

6 Q. You testified earlier regarding 12 years. Do you
7 ever recall getting a formal 12 year plea offer from the State
8 at any point in time?

9 A. No. I'm just telling you 12 is coming from my head.
10 For some reason that's just something I remember. I don't
11 know if it's because I worked out the federal guidelines. I
12 don't know if that's what Juan wanted. I just know that I had
13 12 stuck in my head, uhm, I think when I talked to y'all.
14 Uhm, I don't know.

15 Q. Now, the first trial was held the week of November
16 14th, 2011 and the second trial held the week of, I guess on
17 March 4th and 5th, 2013 so by my math that's about I think
18 about 17 months difference between the first and second
19 trials? Somewhere close. About a year and a half; is that
20 right?

21 A. What did you say?

22 Q. About a year and a half between the first and second
23 trial?

24 A. I will agree with you if that's what it is.

25 Q. Were there any plea negotiations after the first

1 trial ended?

2 A. I don't - I don't remember.

3 Q. Did you go back and talk to -- Let me rephrase that.
4 Were there different attorneys prosecuting the case at the
5 second trial from the first trial?

6 A. Yes. It seems like we went through like three
7 different lawyers to be honest with you.

8 Q. Did you go to any of the new attorneys that were on
9 the case and ask them for a better deal than the one that you
10 had gotten from the original prosecutor?

11 A. I think the last one, wasn't it Carrie Goings? I
12 think Carrie and I met about this case trying to resolve it.
13 Uhm, you know, I just - that was so long ago I just don't
14 remember but I would assume that's what I did.

15 Q. From at least the record it's Carrie Goings and
16 Curtis Pauling who were prosecuting the case at the second
17 trial.

18 A. Okay.

19 Q. How many times would you say between the first and
20 second trials would you say you met with Juan at LCDC, if you
21 recall?

22 A. I would - I don't know but I know I met with him. I
23 know that Brad was with me. I know we got into trial mode and
24 ready to go.

25 Q. Was there any discussion about trying to reapproach

1 the prosecutors trying to get a better deal than the one that
2 had been offered prior to the first trial?

3 A. I'm sure we did. I mean, I can promise you this, if
4 I could work something out, I would have done it. Uhm, that's
5 just me.

6 Q. Do you - going back to that 12 year, I know you said
7 the 12 year number, did you have a conversation recently with
8 Jack Rushing regarding the offer, regarding the existence of
9 the offer?

10 A. I did.

11 Q. Who is Jack Rushing?

12 A. He was the agent in this case. Uhm, he was with
13 SLED.

14 Q. Did he recall there being a 12 year plea offer?

15 A. He couldn't remember. He thought 12 sounded
16 familiar to him. Tricia was in my office. We called
17 together. Uhm, you know, we looked at it. I couldn't find -
18 uhm, I didn't have a copy of the plea agreement in my file,
19 uhm, so I couldn't remember the years and what was offered at
20 that time and I don't - he couldn't remember. He just said he
21 thought maybe something like that sounded familiar. I don't
22 know if I was just begging him for the 12. You know, I just
23 don't know. Uhm, but I'm here to tell you if it says 14 to 18
24 and that's what my plea agreement said, I'm gonna tell you
25 that was their bottom line.

1 Q. You testified earlier regarding the fact that I
2 think that the trial was going to be only on count 4 of the
3 indictment, just one?

4 A. Right. The Horry County.

5 Q. One distinct count?

6 A. Right.

7 Q. Did you have an agreement with the government, with
8 the State to limit the amount of evidence that they would
9 introduce against Juan?

10 A. I did.

11 Q. At the trial?

12 A. I did.

13 Q. Specifically at the first trial that was in November
14 of 2011?

15 A. Right.

16 Q. Do you recall why the trial ended in a mistrial?

17 A. Oh, yeah. It was a bummer. They put their first
18 agent up and what did he do, he said this was some kind of
19 investigation that involved Lexington County, Charleston
20 County, Horry County and to be honest with you, I sat there
21 and it took a minute for it to register with me, uhm, before I
22 stood up and asked for a mistrial because we had promised to
23 leave out all these other counties. That was my motion in
24 limine that I had made with Judge Keesley and Judge Keesley
25 said once the bell had rung, it was over with. So it ended in

1 a mistrial. I don't think we were ten minutes into that trial
2 to be honest with you. It wasn't long at all and that was
3 with the new Attorney General. He was just a little baby
4 lawyer. Uhm, I think that was Jonathan Walling.

5 Q. Waller?

6 A. Waller, if I'm not mistaken.

7 Q. So there was again a year and a half between the
8 first and second trials. Did you research double jeopardy
9 issues prior to heading into the second trial?

10 A. I think Brad and I talked about double jeopardy.

11 Q. Did you discuss making a double jeopardy argument
12 with Juan prior to the second trial?

13 A. Yes.

14 Q. Did you order the transcript of the first trial
15 prior to beginning the second trial?

16 A. I don't think we did.

17 Q. What was your opinion regarding a double jeopardy
18 argument? Did you think it was going to be successful or
19 unsuccessful?

20 A. Well, I didn't see anything -- I don't think they
21 intentionally brought this up. Uhm, I didn't think we were
22 gonna win it but I made it. I know Juan wanted me to make it.
23 Uhm, we talked about it. I remember it and, you know, I just
24 told him I didn't think it was gonna reach the threshold of
25 the government doing something intentional, uhm, for it to be

1 double jeopardy.

2 Q. But you still made the motion prior to the second
3 trial beginning?

4 A. I did.

5 Q. And did you tell Judge Keesley that you were making
6 that motion because your client wanted you to?

7 A. I did.

8 Q. Ultimately that motion was unsuccessful?

9 A. It was.

10 Q. Now, do you have a copy of the transcript up there
11 with you of the second trial?

12 A. Of the second trial. I think I do. Is that the
13 March --

14 Q. 4th through 5th, 2013.

15 A. -- 4th through 5th, '13.

16 Q. I'm going to refer to page 6 of that transcript,
17 lines 14 through 18. Judge Keesley is talking to the jury
18 during jury selection. He says, this is a state grand jury
19 case. It falls under a specific statute and that's really
20 insignificant except that the State is going to have to prove
21 certain elements that I will explain to the jury at a later
22 stage. I know it's a really specific thing to ask,
23 if you remember, but do you remember Judge Keesley telling the
24 jury that?

25 A. No. I don't remember that. But it was a state

1 grand jury case.

2 Q. Do you know what additional elements Judge Keesley
3 may have been referring to?

4 A. I do not. I don't even remember him saying this to
5 be honest with you.

6 Q. So obviously you don't remember the -- I guess you
7 don't remember the instruction. Do you recall if the jury was
8 charged on any kind of additional elements because it was a
9 state grand jury case?

10 A. I don't recall. I would have to go back and look
11 through this whole transcript but no. I don't recall.

12 Q. If there wasn't anything additional that needed to
13 be proven because it was a state grand jury case, I know you
14 don't remember it, but did you consider making an objection
15 because he's making that erroneous instruction to the jury?
16 That's a very complicated question. I can rephrase it.

17 THE COURT: Where are you?

18 BY THE WITNESS:

19 A. Yes.

20 BY MR. THOMPSON:

21 Q. On page 6.

22 THE COURT: Of which transcript.

23 MR. THOMPSON: The March 4th through 5th, 2013
24 transcript, lines 14 through 18.

25 BY THE WITNESS:

1 A. I don't know if he's talking about the elements of a
2 drug offense. I don't know. I think he was just trying to
3 say it was a state grand jury case just reading it. I mean, I
4 just -- You know, at that time I'm getting ready for trial and
5 everything else. I just don't -- I don't remember him saying
6 that and thinking it's something that I needed to stand up and
7 correct him on.

8 BY MR. THOMPSON:

9 Q. Did you think it was unusual that the -- I mean, I
10 know state grand jury case has jurisdiction can get a little
11 funky but did you think it was unusual that the case involving
12 only a Horry County charge is being tried in Lexington
13 County?

14 A. Well, number 1, that's where Judge Keesley was and
15 he was the state grand jury judge. But, uhm, you know, I am
16 the one who made the motion in limine to limit it to one area.
17 You know, his indictment certainly included Lexington. It
18 included Horry County. I mean, if I had won that case and
19 they wanted to come back and try him on the other ones, I
20 guess they could have, you know? And that was something that
21 we talked about. But no. State grand jury cases get tried
22 usually wherever the judge is. I traveled to Saluda just to
23 be with Judge Keesley on my motions. I didn't think it was
24 unusual.

25 Q. I apologize if I'm jumping around a little bit. So

1 the video recording that got introduced at the second trial
2 which we talked about earlier --

3 A. Right.

4 Q. -- did that - was that recording in English or in
5 Spanish?

6 A. It was in Spanish.

7 Q. Did you try and have that recording translated?

8 A. No. I think we went over it with Juan if I remember
9 correctly. Uhm, and I think he told us what was going on on
10 it. Uhm, I believe, if I'm not mistaken the state grand jury
11 had it transcribed, uhm, because we ended up having an
12 agreement on the video.

13 Q. What was that agreement?

14 A. The agreement was no sound. Uhm, I wanted no sound.
15 You know, the video was kind of important, you know. Why it
16 was certainly damaging in one aspect it also gave us a defense
17 on the other hand. Like I said, it was a double edged sword.
18 It gave opportunity for something else to have happened with
19 that CI, uhm, versus Juan sitting there counting money, you
20 know, uhm, and we figured no sound, uhm, would be to his
21 benefit to be honest with you. I guess it was a strategy
22 thing. Uhm, Brad and I talked about it and we were all thumbs
23 up for the no sound.

24 Q. Did you realize it was going to give the informant
25 the ability to narrate the video, to basically tell the jury

1 what's happening in his words?

2 A. Well, he was there. I would assume that he was
3 going to.

4 Q. Uhm, now, you, uhm, you were talking about the kind
5 of double edged sword for, I guess, the State because there
6 are portions of the video that are not on tape, right?

7 A. Right.

8 Q. There's interactions between the agent and the
9 informant that are not recorded?

10 A. Right.

11 Q. Is there also a portion in time where they're not
12 together on the video where they're traveling, if you recall
13 that?

14 A. This is what I recall on the video, uhm, is I think
15 the informant was in his own car. I don't think he was
16 traveling with him, not that I remember. Uhm, but I also know
17 they stopped at the bank and I can't remember. I just
18 remember the bank and they cut the video off. I think there
19 was some testimony to them cutting the video off and then I
20 remember the video running out of tape or memory or whatever.
21 I know the end part where the CI goes and they usually search
22 him and get the dope from him, none of that is on video.
23 There were some segments missing that I thought were to our
24 advantage.

25 Q. Do you recall questioning the informant regarding

1 the fact that there was a period of time in which they are on
2 the recording but they're not together?

3 A. I don't know. If you have it there, I don't know if
4 I did or not. I just don't remember. But if you have it,
5 I'll look at it.

6 Q. Well, in any event, do you recall that there was
7 a portion of the recording that was fast forwarded by the
8 State during his testimony? This is on page 197, lines 11
9 through 20.

10 A. I know they didn't play the whole video, uhm, and
11 we, I think we agreed to all of that. Yes. Obviously we
12 stipulated to it.

13 Q. And then I did find it. Page 211, lines 6 through
14 21. Just read that to yourself.

15 A. (Witness complies.)

16 Q. My question is, do you think it might have been
17 helpful since you were questioning him about the period of
18 time that was kind of, they were not together, do you think it
19 would have been beneficial to have the jury actually watch
20 that portion of the tape instead of fast forwarding through
21 it?

22 A. I don't know. I mean, I just don't know.

23 Q. Finally, I know you testified way back to the very
24 beginning of your testimony that this was a mandatory 25 year
25 sentence in this case?

1 A. That's right.

2 Q. To your recollection did Judge Keesley want to
3 impose that sentence?

4 A. Absolutely not. You know, and it's like I told
5 y'all when you came to my office, you know, nobody likes to
6 see anybody get 25 years. Uhm, it made me sick to be honest
7 with you. Uhm, but I remember after we tried that case, uhm,
8 you know, judge - and I assume this is what y'all are
9 referring to when I read your amended, uhm, complaint or
10 whatever, you know, Judge Keesley said, golly. He said,
11 couldn't y'all have worked something out with anything offered
12 and we said yes and we told him that he just wouldn't accept
13 it. And, you know, it's a mandatory 25 years and it's not
14 like there's any, the judge has any discretion in it because
15 he doesn't. It's by law. Uhm, and we explained that to Juan.
16 Told him, I mean, short, No. I'll tell you, we did beg him.
17 Uh, I know I did, uhm, because I didn't want to see him get
18 that kind of time and it made, Judge Keesley wasn't happy to
19 do it. I don't think any judge is happy to sentence somebody
20 to 25 years. He had no prior record. No prior record. Uhm,
21 it was - I don't know. It is what it is and it's the law. I
22 can't change it.

23 MR. THOMPSON: I have no further questions, Your
24 Honor.

25 MR. MITCHELL: May it please the Court.

1 CROSS EXAMINATION

2 BY MR. MITCHELL:

3 Q. Good morning, Ms. Chapman.

4 A. Good morning, Mr. Mitchell.

5 Q. I'll try to keep this somewhat brief. Thank you for
6 being here today.

7 A. You're welcome.

8 Q. So your involvement, was that after Mr. Arroyo was
9 charged after he was indicted?

10 A. Yes.

11 Q. Okay. This was a state grand jury case, correct?

12 A. It is.

13 Q. And there was a number of other defendants charged
14 in this case?

15 A. There was. I mean, there was a good many.

16 Q. 20 or so?

17 A. Yes.

18 Q. So a lot of moving pieces to the cases; is that
19 right?

20 A. Absolutely.

21 Q. Where did the State view him in the organization, on
22 the higher end or --

23 A. He was on the higher end.

24 Q. He wasn't just a low level dealer or anything like
25 that?

1 A. No.

2 Q. At least in the State's view?

3 A. In the State's view.

4 Q. Now, he began cooperating; is that correct?

5 A. He did.

6 Q. Now, he was debriefed?

7 A. He was.

8 Q. Gave some information to the investigators, right?

9 A. He did and, you know, I think the investigators were
10 very happy with him.

11 Q. So that's when the proffer came about and he agreed
12 to cooperate a bit, right?

13 A. That's right.

14 Q. And then when did the plea offer come in the
15 timeline of things, if you are?

16 A. Oh, gosh, I couldn't tell you. Uhm, I know there
17 was a bunch of - a bunch of the other co-defendants pled, uhm,
18 and I think they kind of wanted to do Juan last, uhm, in case
19 they needed him. Uhm, but, uhm, golly, you know, most of
20 those guys got a bunch of time.

21 Q. So at some point he stopped cooperating, right?

22 A. He did.

23 Q. Did the offer get better after he stopped
24 cooperating, if you recall?

25 A. No. You know, I just don't know. I know the first

1 offer was 18. He was not happy. Then I think we went back to
2 the drawing table. I think, it seems like I remember Jack
3 Rushing coming out and talking to him again or showing him a
4 photograph or something and, you know, I just can't tell you.
5 I think the last offer must have been 14 to 18 according to
6 the paper work and that wasn't going to suit so we went to
7 trial.

8 Q. Okay. So you obviously went over all these offers
9 with him, right?

10 A. Absolutely.

11 Q. And that was in detail that he would give up certain
12 rights to plead guilty in exchange for a favorable sentence?

13 A. Yes.

14 Q. Relatively favorable sentence?

15 A. Yes.

16 Q. So your advice on the offers was to accept the 14 to
17 18; is that right? Or --

18 A. Oh, yeah. That was the best we were going to get.

19 Q. So weighing the discovery and weighing the evidence
20 and everything you thought this was a strong case for the
21 State?

22 A. Yes.

23 Q. Why did he not accept it?

24 A. I'm telling you, God told him to go to trial. I am
25 telling you just like it is. Uhm, right back there in that

1 room he told me God told me to go to trial.

2 Q. So it looks like it came from 18 negotiated down to
3 14 to 18 negotiated range and then in the plea agreement it
4 actually says recommended range, right?

5 A. Right. And I could argue between the 14 and 18 was
6 my understanding of it. I knew that there was a cut off on
7 it.

8 Q. Do you think you could have argued below the 14 at
9 that point if that plea had gone through?

10 A. If it was recommended, yes. If it was negotiated,
11 no.

12 Q. When did Mr. Kirkland get involved?

13 A. Gosh, it was before the first trial. I guess it was
14 when Juan decided to go to trial. I went and talked to Brad
15 about it, uhm, because it was just - I thought maybe he could
16 shine a different light for Juan than what I could, uhm, you
17 know, uhm, it carried so much time.

18 Q. What was your overall strategy in defending the case
19 at the trial?

20 A. The only thing we had was, I mean, basically was
21 opportunity. You know, the CI was a federal - he was indicted
22 federally so, you know, we could at least kind of tarnish him,
23 uhm, because he did - he was looking I think like at a life
24 sentence and ended up with ten months or something. Uhm, but
25 basically it was just the opportunity that the gaps in the

1 case, uhm, and in the video, uhm --

2 Q. Just kind of nick away bit by bit at some pieces of
3 evidence?

4 A. Oh, absolutely. You know, a couple of things fell
5 in our lap on the way, you know, during the trial like it
6 always does. I mean, you just never know. I think one agent
7 said he searched the car and the CI said, no. He didn't
8 search the car. Somebody else did. Uhm, you know, we just
9 grabbed for anything and everything we could.

10 Q. Moving to the specific allegations, the first
11 allegation about Judge Keesley's comments, that's page 6,
12 lines 14 to 18 that you were questioned about on direct, I
13 believe the allegation is that Judge Keesley was instructing
14 the jury that the State would have to prove certain elements
15 of multi county jurisdictions. Was that your understanding of
16 what he's saying there or --

17 A. No. I don't know. It was a state grand jury case.
18 I don't know if he's talking that there's a specific -- I
19 can't tell you what Judge Keesley was thinking but it looks to
20 me like he's talking about he'll charge elements later. Uhm,
21 I don't know if it's for the drug offense or --

22 Q. Maybe the multi county significance of it?

23 A. Maybe multi county. I don't know. I just don't
24 remember. I remember him telling us to look over one jury
25 charge at one time and told us to come back. I don't even

1 remember what jury charge that was, if it's in here.

2 Q. Well, in any event, that would add an element or
3 burden to the State in that case, right?

4 A. Right.

5 Q. I think we have been through the plea offer stuff.
6 Let's move to the double jeopardy argument. The first trial
7 was handled by now solicitor Stumbo and Jonathan Waller,
8 right?

9 A. I don't even think Stumbo was there on that one. I
10 don't know if he was or not.

11 Q. The case had changed hands a few times though; is
12 that right?

13 A. Yes. It did.

14 Q. What's your understanding of the goading argument
15 that the solicitor would have to intentionally provoke defense
16 counsel into moving for a mistrial? If they see their case
17 not going well, they can kind of throw it away to get a second
18 chance?

19 A. Yeah. This was their first witness, uhm, and
20 honestly, uhm, the lawyer, like I said, he was a very, very
21 young lawyer. Uhm, I think he just hated that it happened. I
22 felt really sorry for him. Uhm, I didn't see anything
23 intentional. I don't think Judge Keesley saw anything
24 intentional about it. Uhm, we weren't in trial for ten
25 minutes which is, you know --

1 Q. So it wasn't a situation where the State's case was
2 going sideways?

3 A. We hadn't even gotten to the stuff yet, you know,
4 the good stuff. I mean, we hadn't even gotten that far yet.
5 It was just sad. And, you know, everybody is geared up ready
6 to go and that's not what you want to happen. Uhm, I hate
7 that it happened for Juan, uhm, but, uhm, we just did it
8 again.

9 Q. So you did make the objection at the beginning of
10 the second trial just to put that out there with Judge Keesley
11 that --

12 A. I did. I did. Uh, we knew to make it. Uhm, I
13 just, you know, I didn't see anything intentional that they
14 had done. We didn't even get into any specifics of the case
15 really yet.

16 Q. Do you believe that objection was preserved
17 though?

18 A. Yes.

19 Q. It was raised and ruled upon?

20 A. Yes. He ruled upon it.

21 Q. As far as the video goes, the video is pretty clear,
22 was it not?

23 A. Yes.

24 Q. You could -- It resembled Mr. Arroyo, correct?

25 A. Yes.

1 Q. So you think the video was probably the strongest
2 piece of evidence in the case, one of the stronger pieces?

3 A. Yes. The video coupled with all the agents
4 testifying who were riding behind him and everything else.
5 Yes.

6 Q. So you were able to do it without the sound being
7 played. Why did you do that? Why did you agree to have the
8 sound muted?

9 A. Well, number 1, the whole tape was in Spanish, uhm,
10 and they were going to try to get in a transcript. I didn't
11 want the transcript in. Uhm, and so it was a stipulation
12 between Stumbo and myself, uhm, and Brad. No sound. Uh, to
13 me that was good for my client.

14 Q. You thought it helped the case without having any
15 sound?

16 A. Absolutely. Absolutely.

17 Q. And them discussing the actual drug deal, right?

18 A. That's right.

19 Q. So if they had a transcript of --

20 A. If they had a transcript, they would be reading it
21 and following right along. At least at this point, you know,
22 all I had was a CI who we could somewhat tarnish, uhm, but,
23 you know, to me it was, uhm, a plus for him.

24 Q. As far as fast forwarding through certain pieces,
25 you think that helped your client, too, in that you were able

1 to kind of have a line of attack that the State didn't show
2 every second of every transaction?

3 A. Yes.

4 Q. Now, the investigator testified that he was behind
5 him and their video was shut off for certain periods to go get
6 more money from the bank?

7 A. Yeah. From the bank they cut it off and, uhm --

8 Q. You were able to kind of jump on that, right, and
9 kind of chip away at --

10 A. I did.

11 Q. -- some discrepancies there?

12 A. I did. At anything and everything we could find on
13 it down to them running out of tape.

14 Q. Did you move to have the tape transcribed
15 yourself?

16 A. I don't think we did.

17 Q. Okay. You think the State did have a copy of the
18 translation?

19 A. Uhm, I'm pretty sure they did. If I remember
20 correctly, I think they did.

21 Q. This is kind of going back but Mr. Arroyo, you never
22 had any issues with a translator, right? He never required a
23 translator?

24 A. No. Uhm, If I remember, Juan, I think he went to
25 elementary school here and middle school and high school. I

1 never had a problem in speaking with Juan. He speaks very
2 good English.

3 Q. Did you see any reason for argument to argue for
4 anything less than the 25 years when the conviction came
5 down?

6 A. It's the mandatory 25. No.

7 Q. So even though Judge Keesley may not be thrilled
8 that he has to impose that sentence, that's what he's required
9 to do?

10 A. It's what he has to do.

11 MS. BLANCHETTE: No further questions. Thank you.

12 MR. THOMPSON: Just one or two.

13 REDIRECT EXAMINATION

14 BY MR. THOMPSON:

15 Q. You may not know or remember, but if - you've
16 testified that Juan was kind of the last one to go, right?

17 A. He was one. I think there might have been out of
18 that 20. I don't know. I think most of them had already
19 gone. There was a few left. I mean, a good many. I don't
20 know. Uhm, maybe about six or seven left but I know, I just
21 remember them telling me they were going to hold off on him.

22 Q. What took them so long to take the case back to
23 trial? Why did it take 17, 18 months to go back to trial?

24 A. You know, I don't know. I don't know. If I had to
25 guess it was probably the wiretaps but I don't know.

1 MR. THOMPSON: No further questions.

2 THE COURT: Just a couple.

3 EXAMINATION

4 BY THE COURT:

5 Q. Earlier you said that the video was terrible. Now,
6 I think by terrible my interpretation of that in my own mind
7 is that it was really good. You could see my client and I
8 never wanted to see it again but sometimes when people say
9 videos are terrible, you can't see anything on them. So can
10 you define what you meant by the video was terrible?

11 A. Terrible -- Yeah. I'm sorry. I guess, like I said,
12 Judge, he was there. There is no denying it was him. It was
13 terrible in that sense.

14 Q. It was terrible in that it was evidence against
15 him?

16 A. Yes. That it was him.

17 Q. Okay. Now, the next thing. Do you have a copy of
18 that plea agreement in front of you?

19 A. I do.

20 Q. So reading paragraph 2, it says the parties have
21 negotiated the sentence of the defendant Juan Arroyo for a
22 recommended sentencing range of 14 to 18 years; is that
23 right?

24 A. That's right.

25 Q. Was it your understanding that it was a negotiated

1 sentence?

2 A. Yes.

3 Q. And then do you have the sentencing sheet in front
4 of you?

5 A. I do.

6 Q. Does it say negotiated in the top right hand
7 corner?

8 A. It does.

9 Q. Is the middle box for negotiated checked?

10 A. Yes.

11 Q. Okay. Was that a form that you received from the
12 Assistant Attorney General? You didn't create that form?

13 A. No. I didn't create it.

14 Q. In 24 years of practice do you understand that
15 negotiated means the judge's hands are tied? He has to give
16 you a sentencing range of between 14 and 18 years?

17 A. 14 and 18. And I was free to argue for the low
18 end.

19 Q. All right. The next thing. On page 6 of the
20 transcript where Judge Keesley says it falls, this is a state
21 grand jury case. It falls under a specific statute and that's
22 really insignificant except that the State is going to have to
23 prove certain elements that I will explain to you later at a
24 later stage. And where is the word -- I mean, if anything,
25 does that hurt or help your client in your mind?

1 A. Judge, I don't think it hurts him. It was a state
2 grand jury case.

3 Q. Right. Which was a fact.

4 A. Absolutely. And the elements, uhm, I'm just
5 assuming he's talking about the elements --

6 Q. Of the crime?

7 A. -- of the crime.

8 Q. And the last thing. You talked about the
9 jurisdiction of the case, how you kind of bounced around from
10 hearings but do you remember an order being signed by a
11 circuit court judge that would have assigned jurisdiction in
12 this case to Lexington County and then later Judge Keesley got
13 assigned? Did you ever see that order?

14 A. I don't know. I don't know if I saw that order,
15 Judge.

16 THE COURT: Any follow-up to that, Mr. Thompson?

17 MR. THOMPSON: Yes.

18 REDIRECT EXAMINATION CONTINUED

19 BY MR. THOMPSON:

20 Q. Just a quick question about the plea. Was this plea
21 agreement in your file?

22 A. No. I didn't have it in there.

23 Q. You just got this, I think, for the first time. I
24 think you e-mailed it to you --

25 A. That's right. You did.

1 Q. -- yesterday, right?

2 A. Right.

3 THE COURT: Any follow-up to that, Mr. Mitchell?

4 MR. MITCHELL: One quickly.

5 RECROSS EXAMINATION

6 BY MR. MITCHELL:

7 Q. Ms. Chapman, could this plea agreement, could it
8 have been for a recommended sentence, could that have come
9 after you received this sentencing sheet? What I'm really
10 asking, could you have talked him down from the negotiated 14
11 to 18 to a recommended 14 to 18 possibly?

12 A. Oh --

13 Q. Maybe that explains the discrepancy there.

14 A. I don't know. Uhm, I think he's recommending a
15 sentence of 14 to 18. It carried 7 to 25 and I could argue
16 between 14 and 18 and that itself is the negotiated
17 sentences.

18 MR. MITCHELL: Okay. Got you. Thank you.

19 THE COURT: All right. Thank you. Call your next
20 witness.

21 MS. BLANCHETTE: Your Honor, I call Juan Arroyo to
22 the stand.

23 THE COURT: Okay, sir, come on up.

24 Thereupon,

25 JUAN ARROYO

1 after having been first duly sworn, testified as follows,

2 THE CLERK: Please have a seat. Once you're seated,
3 state your full name for the record.

4 THE WITNESS: Juan Adolpho Arroyo.

5 MS. BLANCHETTE: Your Honor, may I approach?

6 THE COURT: Yes.

7 DIRECT EXAMINATION

8 BY MS. BLANCHETTE:

9 Q. Mr. Arroyo, I have a copy of every transcript that I
10 have handed you. Juan, we're here today on a PCR application
11 that you filed in Lexington County in 2015; is that correct?

12 A. Yes, ma'am.

13 Q. And Jeremy and I have both been retained by you and
14 we have discussed with you that there is only one form of
15 relief that you can ask the Court for today and what is that
16 relief you're asking the Court for?

17 A. Say that again.

18 Q. What is it you're asking the Court to give you?
19 What relief today?

20 A. Oh, some relief on my sentencing.

21 Q. Okay. Do you understand that by way of the PCR the
22 Judge can give you a new trial? That means that your current
23 conviction would be set aside. You would be facing the
24 original charges all over again with no guarantee of less
25 time. Do you understand that?

1 A. Yes, ma'am.

2 Q. And is that, in fact, what you are asking the Judge
3 to do for you today?

4 A. Yes, ma'am.

5 Q. Juan, you have heard some reference when Ms. Chapman
6 was on the stand that you had grown up here in the United
7 States. Tell us a little bit about yourself. When did you
8 get to the United States?

9 A. I move over here when I was like seven years old and
10 at that time we moved to California. I went to middle school.
11 I mean elementary school, middle school and graduated from
12 high school and once I graduated my mom had moved to South
13 Carolina and I decided to move to South Carolina with her.

14 Q. With that said, you have no issue understanding the
15 English language, do you?

16 A. No, ma'am.

17 Q. Are you fluent in Spanish as well?

18 A. Yes, ma'am.

19 Q. Did you actually assist with some interpretation
20 services while you were at Lexington County Detention
21 Center?

22 A. Yes. They would call me up different times, you
23 know, hours of the time due to a lot of Hispanics, you know,
24 that couldn't speak English, they would call me to come and
25 translate because some of them did not understand what they

1 was saying to them.

2 Q. Now, in this case there was a traffic stop on August
3 2nd of 2010 in Georgetown County that you were involved with
4 with the Georgetown County Sheriff's Department; is that
5 correct?

6 A. Yes, ma'am.

7 Q. After that traffic stop, were you detained?

8 A. Yes, ma'am.

9 Q. Where were you detained at that time, Juan?

10 A. I was in Georgetown County.

11 Q. Do you remember approximately how long you stayed at
12 Georgetown County Detention Center?

13 A. Uhm, I believe it was like two months.

14 Q. After that, where did you go?

15 A. Lexington County.

16 Q. Prior to being detained and arrested in August of
17 2010, did you have employment?

18 A. Yes, ma'am.

19 Q. What were you doing for employment at that time?

20 A. Uhm, I was a framer working for a company George
21 Smith I believe his name is. Uhm, I used to work for him and
22 that's what I did.

23 Q. Do you have children?

24 A. Yes. I have two children, ma'am.

25 Q. Were you supporting them at that time?

1 A. Yes, ma'am.

2 Q. Okay. Now, after you got detained in Georgetown and
3 then subsequently moved to Lexington County, how was it that
4 you obtained the services of Ms. Chapman?

5 A. Uhm, I heard from, uhm, different, uhm, inmates
6 there, uh, that she was a really good lawyer and that's when I
7 decided, you know, I asked my family to give her a call and
8 talk to her.

9 Q. Okay. I'm going to ask you about some of your
10 involvement with the DEA and other agencies post Ms. Chapman
11 being retained. But before she was retained, were you already
12 communicating with the DEA officers such as Jack Rushing?

13 A. Yeah. I was talking with him.

14 Q. Tell us about that, your communication with them.

15 A. Well, they came and, uhm, said that they needed my
16 help, you know, uhm, with the other - to the - to the other
17 people involved in the organization and I was talking to them
18 and telling them, you know, what they needed to know what they
19 were asking me.

20 Q. Okay. Did you ever ride around with them and show
21 them any locations?

22 A. Yes. The day I got arrested.

23 Q. The day you got arrested you rode around with
24 them?

25 A. Yeah.

1 Q. Did you ever at any time prior to Ms. Chapman
2 getting on your case tell them no. I don't want to speak
3 with you. I don't want to be involved with you in any way?

4 A. No.

5 Q. Now, once she was retained, did you continue to
6 cooperate with the prosecution for lack of a better word?

7 A. Yes, ma'am.

8 Q. Now, during that time when you're cooperating with
9 the State and Ms. Chapman has come on board, did you ever
10 question her or anyone as to why this case wasn't being
11 handled federally? Why it was being considered a state
12 case?

13 A. Yes, ma'am.

14 Q. One of transcripts you have in front of you there is
15 actually the March 21st, 2011 pre-trial transcript in front of
16 Judge Keesley where there's a number of your co-defendants and
17 their attorneys and Judge Keesley on pages 20 through 21
18 actually proposes that exact question to now Solicitor Stumbo
19 as to why isn't this a federal case. That's a question that
20 you had yourself; is that correct?

21 A. Yes, ma'am.

22 Q. Did you ever get an answer to that question that you
23 posed and here Judge Keesley was posing to the attorneys?

24 A. Well, first, uhm, they say they didn't want it.
25 That's the whole time that I heard that they didn't want the

1 case. That's about it.

2 Q. Okay. The other question that I'm going to ask if
3 you had is did you ever discuss with her or anyone else why
4 this was being handled as a statewide grand jury case versus
5 an Horry County case?

6 A. Yes.

7 Q. What were your discussions with her in that
8 regard?

9 A. Uhm, I had asked her why if it was breaking it down
10 -- Well, that was in the second trial though. In the first
11 trial they were going forward with the conspiracy and that was
12 the reason it was held in Horry County. I mean in Lexington
13 County.

14 Q. So that was your understanding is that in the first
15 trial where they actually, in fact, called two witnesses
16 before the mistrial, they first called Agent Burke that goes
17 into the fact that there was - it was in Columbia and Myrtle
18 Beach and they were going forward on more of the conspiracy
19 even though just one incident of it. It was your
20 understanding that's why it was in Lexington County. So you
21 raised that question for the second trial?

22 A. Yeah. It was for the second trial that the question
23 came into effect because they had dropped the conspiracy and
24 decided that they were just gonna try me under Horry County
25 and that's when I asked my lawyer Debra Chapman, uhm, if it

1 was Horry County, why was it being tried in Lexington
2 County.

3 Q. Now, you have already heard reference today of Judge
4 Keesley's comments. If you want to look at it there in the
5 second trial, page 6, lines 10 through 18 where he makes
6 references to the jury that it's a statewide grand jury case
7 and there's additional elements. If you want to turn in the
8 second trial on page 73 the issue comes up again. 73
9 beginning at the very bottom of the page. I apologize. I'm
10 turning there myself. And beginning at the very bottom of the
11 page is says right after he denies the double jeopardy motion
12 he says, all right. Now, with the state grand jury cases
13 there has to be a significance in more than one county. Is
14 that something you all have stipulated to or is that because
15 you say you're not going to go into any of that? And Mr.
16 Goings cuts him off there and then there's a discussion by
17 both of the attorneys on page 74, lines 5 through 15 that, no,
18 Your Honor. Actually there's nothing additional. That's just
19 when we're in front of the grand jury.

20 Now, here I would deem this the judge was confused.
21 He thought there were additional elements they were gonna have
22 to prove as he had stated previously in the transcript. Was
23 that also your understanding that they were gonna have to show
24 more since this was a statewide grand jury case?

25 A. Yes, ma'am.

1 MR. MITCHELL: Objection, Your Honor. He's making a
2 legal argument here. I think those are better posed for
3 the attorneys than the applicant here.

4 THE COURT: Sustained.

5 BY MS. BLANCHETTE:

6 Q. Mr. Arroyo, let me rephrase that. You have reviewed
7 the transcript; is that correct?

8 A. Yes, ma'am.

9 Q. And you reviewed the judge's comments on page 6 and
10 then the discussions between himself and the attorneys on
11 pages 73 through 74?

12 A. Yes, ma'am.

13 Q. Was it ever explained to you what the State had to
14 prove at trial since it was a statewide grand jury case?

15 A. No, ma'am.

16 Q. Did you have questions as to what elements they
17 would have to prove in front of the jury?

18 A. Yes, ma'am.

19 Q. What came of your discussions with your attorneys
20 about that? What was your understanding?

21 A. Well, the only - that particular where he talk about
22 it, it never came into - we never discussed it but I was, the
23 only, like the discussion that we had, it was about the
24 jurisdiction where it was held at and the reason they just -
25 that they didn't go with the conspiracy was because they have

1 the power to do so. They could have tried me separately in
2 all counties if they wanted to. They could pick and choose
3 what charge to bring up.

4 Q. Okay. When you were sitting in the courtroom and
5 hearing what is discussed here on page 73 and 74, did you have
6 some of those same questions yourself?

7 A. Yes.

8 Q. And do you still have those questions today?

9 A. Yes, ma'am.

10 Q. Okay. Now, let's go back. I jumped ahead there but
11 let's go back to when you had retained Ms. Debbie Chapman and
12 she was handling your case. Did she come to Lexington County
13 Detention Center and review the discovery with you or how did
14 that go?

15 A. Due to the fact that there was, uhm, an order of
16 protection on discovery, I had to see her, uhm, you know, with
17 her. I had to review it with her and she came. I mean, uhm,
18 from what my understanding and the first day there was so much
19 evidence and, uhm, she had to go through the evidence to, uh,
20 find out where, whatever it was pertaining to me and then we
21 went over that.

22 Q. Did she also have a paralegal or an assistant that
23 would come out and meet with you?

24 A. Yes. I believe her name was Denita.

25 Q. How did you feel the level of your communication was

1 with Ms. Chapman? Were you satisfied?

2 A. Yes, ma'am.

3 Q. Now, you referenced the fact that there was a
4 protective order and the discovery was sealed. Was that
5 similar to what transpired in this PCR case?

6 A. Yes, ma'am.

7 Q. And myself and Jeremy, did we come and discuss the
8 discovery with you but we weren't able to give you copies of
9 that to have in the prison?

10 A. Yes, ma'am.

11 Q. Okay. And as far as the video, do you recall
12 reviewing that with her?

13 A. Yes, ma'am.

14 Q. Did you also have the opportunity to review that
15 with myself at the prison?

16 A. Yes, ma'am.

17 Q. What were your discussions with her about the video
18 leading up to your trial?

19 A. Uhm, we talked about, you know, like she said, you
20 know, in her testimony that, uhm, it could either go good or
21 bad, you know, due to the fact that in the video they don't
22 show when they search the car and there's, you know, gaps in
23 between the videos and they don't show when there's the
24 transactions of any drugs involved or that at the end they -
25 the video cuts off before the CI gets to where he's supposed

1 to meet the other agents and, uhm, hand them the drugs, there
2 was no video then.

3 Q. You reference that there was a CI. Did you know the
4 confidential informant in this case?

5 A. Yes, ma'am.

6 Q. What discussions did you have with your attorney
7 about the CI leading up to your trials?

8 A. Well, she just came and asked me questions about
9 him, you know. Uhm, how did we know each other. Who he was
10 and that's about it.

11 Q. Okay. Did you tell her everything you knew about
12 him?

13 A. Yes, ma'am.

14 Q. Now, at your trial, the second trial, Agent Ryan
15 testifies on page 104 that the CI told him about you. On page
16 183 the CI says Agent Ryan brought you up. That was an
17 inconsistency that your attorney pointed out at trial. Which
18 do you agree with? Did you know the CI or would they have had
19 to bring you up to him?

20 A. I think they had to bring me up to him because me
21 and him were friends for a long time and, uhm, we used to work
22 together and everything, uhm, so I think it was agents that
23 had to show him and tell him.

24 Q. Okay. Did you explain that to your attorney? Did
25 you have communication with her about that?

1 A. No. We never talked specifically about that.

2 Q. All right. Now, we talked a little about your
3 review of the discovery and just to clarify, that would be
4 leading up to your first trial, correct?

5 A. Yes, ma'am.

6 Q. Between the first and second trials you went up for
7 a bond hearing with Judge Benjamin on October 31st, 2012 and
8 the Court has a copy of that. But what other communication
9 and interaction did you have with your attorney during that
10 year and a half or so gap between trials?

11 A. It was, uh, it was more me calling to ask her what
12 was going on. It was like the communication was minimal
13 because all she kept telling me was that they really didn't
14 make no offer or nothing like that and that's when after, I
15 think after a year I started pushing her to go for a bond
16 hearing.

17 Q. Okay. And then you went for that bond hearing in
18 front of Judge Benjamin?

19 A. Yes, ma'am.

20 Q. What was the outcome of that?

21 A. The bond was denied.

22 Q. But was it your understanding that you were supposed
23 to be called to trial pretty shortly thereafter?

24 A. No.

25 Q. What was your communication with her about after the

1 bond hearing leading up to your second trial?

2 A. Well, one of the things that, uh, that I told her I
3 was upset because, uh, she said she put -- She sent me the
4 copy where the motion was put in for the bond hearing and
5 while I was sitting in the county, all of a sudden they just
6 called me out for court without notifying her. She didn't
7 notify me until I called her and asked her what was going on
8 and she said that they have notified her the night before so I
9 didn't have a chance to call my family to let them know, hey,
10 I'm going for a bond hearing and, uhm, the reason I found out
11 is because, that I was going to court is at that time I was
12 taking some medication. When you got to go to court, uhm,
13 they usually give you the medication around I think it was
14 8:00 or 9:00 in the morning. But if you going to court or you
15 doing something else, they will come early in the morning like
16 around 4:00 in the morning and give you your medication so you
17 don't have to wait because you have to be, you know, they move
18 you like around 7:00 from the jail to the courthouse.

19 Q. So you found out that you were going to the bond
20 hearing because of getting your medications at a different
21 time?

22 A. Yes, ma'am.

23 Q. Okay. And then what were your discussions with her
24 at the bond hearing itself?

25 A. I asked her what was going on. You know, why was I

1 there without being notified and that's when she told me that,
2 uh, the judge had an opening and they had let her know the
3 night - the day before, late the day before.

4 Q. Would you have wanted your family to be present to
5 speak on your behalf?

6 A. Yes, ma'am.

7 Q. Let's talk a little bit about the proffer. I'm
8 going to show you the agreement that has already been
9 introduced as applicant's number 1 and this is an agreement
10 that was marked May of 2011 but crossed out and dated June
11 8th, 2011. It's signed by David Stumbo, yourself and Debra
12 Chapman back on June 8th, 2011. I'll give you that to review.
13 And this was a document provided to us by the State prior to
14 the hearing so you have had a chance to look over it; is that
15 correct?

16 A. Yes, ma'am.

17 Q. Tell us about your discussions with Ms. Chapman
18 before you signed and entered into this proffer agreement.

19 A. She have informed me that, uhm, I had to be truthful
20 and, you know, uhm, because they had - being in the county
21 jail I have already know what a proffer statement was and I
22 kind of told her too that I kind of knew what the whole thing
23 was about about going in there and talking to them and letting
24 them know what you know and to always keep it, you know, to
25 say the truth because if you lie, that it can always come back

1 and hurt you in the end.

2 Q. And in agreeing to do, to sign this proffer
3 agreement and then be subsequently interviewed in a formal
4 interview in September of 2011, was it your understanding you
5 were doing this because your case was on a plea track? Your
6 attorney was trying to work out a plea?

7 A. Yes.

8 Q. Did she discuss with you before you signed the
9 proffer agreement of the implications of doing a proffer if
10 you planned to go to trial?

11 A. No. Because we were never talking about going to
12 trial.

13 Q. So were your discussions primarily about pursuing a
14 plea in this case?

15 A. Yes.

16 Q. Okay. Now, in the first trial an issue comes up
17 about the suppression of your proffered statement. On page 13
18 looking at lines 7, if you want to, the State begins talking
19 about the fact --

20 MS. BLANCHETTE: And, Your Honor, I'm just
21 summarizing. The transcript will properly reflect.

22 BY MS. BLANCHETTE:

23 Q. -- but they begin talking about the fact that you
24 had refused to be questioned on the record in October, the
25 prior October and had violated the proffer. Then on page 15

1 Ms. Chapman clarifies that you were brought over in October
2 but they never asked you to testify so it's her opinion that
3 you didn't violate the proffer. Jumping forward to page 18
4 through 20, the Court explains to the State that it's his
5 position that just because you didn't enter a plea in October
6 doesn't mean you violated your proffer and he wouldn't allow
7 them to introduce the proffer on that basis. I wanted to ask
8 you, all of that to ask you about what transpired in October
9 that everybody is referring to when you were supposedly coming
10 over to enter a plea and they're saying you violated the
11 proffer in some capacity?

12 A. Well, that day when they call me, uh, we didn't
13 know, I didn't know I was going to court. Like I said again, I
14 was never notified until they came and got me. So from my
15 understanding I was going to testify because prior to that, me
16 and Ms. Debbie having, talk about no plea so to that day I
17 didn't know what was on the table or nothing like that. So my
18 only guess was that somebody was going to trial because she
19 had informed me that they wanted to keep me to the end in case
20 for me to be plea the last in case they needed me to testify
21 against somebody else. So that day we went and, uh, my
22 understanding, me thinking that I'm gonna testify against
23 somebody else and when I get there they tell me that it was a
24 plea - a plea court. That I was pleading.

25 Q. Okay. And let me show you -- Let me ask you a

1 couple of questions first. Throughout our representation have
2 you repeatedly asked Jeremy and I to track down any written
3 plea offers or any information regarding the plea offers in
4 this case?

5 A. Yes, ma'am.

6 Q. Were we able to do that prior to this morning?

7 A. No, ma'am.

8 Q. Okay. And this morning did I provide you with a
9 written copy of a plea offer and a sentencing sheet that the
10 State provided to us on Friday?

11 A. Yes, ma'am.

12 Q. And you have had a chance to review those this
13 morning; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. I'm gonna show you what's been marked as
16 applicant's number 2 and 3. Are these the documents we
17 reviewed with you this morning?

18 A. Yes, ma'am.

19 Q. Okay. Now, on applicant's number 2 there's some
20 scratched off writing there but it first says September. Were
21 you advised of any plea offer in September that you were aware
22 of?

23 A. No. Not to that day I went to court.

24 Q. And that day you went to court would be the October
25 day that they're referencing in the first trial transcript?

1 A. Yes.

2 Q. When you got to court, were you told about the 14 to
3 18 year plea offer that's reflected on that written document
4 applicant's number 2?

5 A. No, ma'am.

6 Q. You weren't told about that?

7 A. No.

8 Q. What were you told when you went to court in
9 October?

10 A. 15 to 18.

11 Q. And that's the only range that you remember?

12 A. Yeah. That's the only thing they told me was 15 to
13 18.

14 Q. Do you recall ever going over this written document
15 applicant's number 2 with Ms. Chapman?

16 A. No, ma'am.

17 Q. You will see if you turn through it on page, which
18 is unnumbered but would be page 4, there's a spot for your
19 signature there. Does your signature, is it on that page?

20 A. No, ma'am.

21 Q. Okay. And why is your signature not on that page?

22 A. Because I never seen these papers until this
23 morning.

24 Q. Okay. Now I'm gonna show you what's been marked as
25 applicant's number 3. It appears to be a sentencing sheet

1 that reflects the information regarding your case, your
2 criminal case. It reflects the signatures of David Stumbo and
3 his bar number and Debbie Chapman and her bar number but where
4 is says defendant is there a signature?

5 A. No.

6 Q. Did you ever go over this document with your
7 attorney?

8 A. No, ma'am.

9 Q. Why is your signature not reflected on that
10 document?

11 A. Because it was never shown to me.

12 Q. Okay. So take me through then what did happen when
13 you came to court in October.

14 A. When they told me it was 15 or 18, I asked why. If
15 they wanted me to cooperate and from learning from my other
16 co-defendants, you know, because sometimes we bump into each
17 other going to medical, none of them were testifying or
18 helping and they wanted me to testify and do, you know, I had
19 already proffer and they still wanted me to testify but they
20 still want to give me 15 to 18.

21 Q. Okay.

22 A. And so I said no. That I was not - you know, that I
23 felt, you know, I already know about prior people that have
24 pleading that their offers were way below mine. And so that
25 day we went and like I said, there was none of my family

1 members there because nobody notified me because I'm thinking
2 I'm gonna testify. So they get there and my lawyer come tells
3 me, you know, it's 15 or 18 and I said nope. That I was not
4 gonna plea to that. So she was like, well, that's the only
5 offer they have and that's the only thing they gonna do and,
6 uhm, he say if you don't take it right now, the offer is off
7 the table. We going to trial. And I said that that was fine.

8 So when I went back to the county, they took me back
9 to the county that morning that I went back, she came and see
10 me that afternoon and she was like, okay, now, they gonna give
11 you one more chance, you know, to plea tomorrow. That's when
12 I was able to call my family and tell them that I was going to
13 court the following day. And that day we were going to have a
14 chance to talk to Mr. Stumbo and talk about, you know, the
15 whole case and why he was going from 15 to 18.

16 So the next day we came in and we talked to
17 Mr. Stumbo in one of the cell rooms back there and, uhm, I
18 asked him why was the reason why he was giving me that much
19 time being that it was my first offense and I felt that due to
20 my history being here that, you know, I could, uh, have gotten
21 something better. And, uhm, one of the comments he said, he
22 said that I was - the reason why they were giving me that time
23 is because my easy access to the drugs. And I asked him like,
24 what do you mean my easy access to the drugs? And he said,
25 uhm, he said, yeah. That you -- You know, I said, you said it

1 because I'm Hispanic? And he's like no. And that's what I
2 end up saying, because that's what it sounds like. Because
3 I'm Hispanic you telling me that you gonna give me that much
4 time.

5 Q. And as far as you were aware, were they ever
6 alleging that you were directly involved in coming to and from
7 Mexico in this case?

8 A. No.

9 Q. All right. And ultimately you were questioning him
10 if it had something to do with the fact that you being
11 Hispanic is why you were being offered that time?

12 A. Yes, ma'am.

13 Q. Is that a subsequent discussion that you had with
14 your attorneys?

15 A. We really didn't talk about it that much because we
16 had this discussion with him, you know, in the back room.

17 Q. Okay.

18 A. That was about it.

19 Q. Okay. Now, I'm gonna ask you just some technical
20 questions about these documents I have previously shown you.
21 I know you said that you didn't specifically review these with
22 your attorney but your attorney has identified these and
23 indicated that you did so I need to ask you about them. On
24 the first one here it says a recommended sentencing range from
25 14 to 18 and you have heard some questions today about

1 recommended versus negotiated, okay?

2 A. Okay.

3 Q. And then here on the sentencing sheet it just simply
4 says negotiated in two places where that can be indicated.

5 Did your attorney explain to you at any time when pleas were
6 being offered to you and discussions were being had regarding
7 a plea the difference between recommended and negotiated?

8 A. No, ma'am.

9 Q. Have I had the opportunity to explain that to you?

10 A. Yes.

11 Q. Okay. And do you understand today that if it was
12 just simply recommended, that would leave room for Ms. Chapman
13 to potentially argue that you could get as low as seven years,
14 the range of the sentence?

15 A. Yes, ma'am.

16 Q. Okay. And if it's negotiated, then it's given to
17 the court that it has to be sentenced between 14 and 18 and he
18 can either accept or reject that negotiation. You understand
19 that?

20 A. Yes. That's what I was informed that it was
21 supposed to be negotiated.

22 Q. So the plea offers that were communicated to you, it
23 was your understanding they were for negotiated time?

24 A. Yes.

25 Q. Okay. If it would have been communicated to you

1 that it was for a recommended sentence where Judge Keesley
2 could sentence you between 14 and 18 but your attorney would
3 be allowed to argue for lesser than 14, would you have wanted
4 to go forward with that plea?

5 A. Yes, ma'am. At one time I did told her that could
6 they make the 15 to 18 either non violent, that I would plea
7 to a non violent or that I would plea to 7 to 25.

8 Q. So you were willing to plea to an open 7 to 25?

9 A. Yes, ma'am.

10 Q. And was that plea offer involving that ever
11 communicated to you?

12 A. No.

13 Q. Okay. Let me take these back from you. Mr. Arroyo,
14 so you go to court in October back to back days believing
15 you're going to testify, you're given a plea offer, you go
16 back to Lexington County. Then what was done as far as
17 communication with your attorney after that?

18 A. Uhm, that she was gonna get ready for trial and I
19 believe she came up a month later and asked me again if I
20 wanted to plea to the 15 to 18.

21 Q. What was the result of that discussion?

22 A. I said - I denied it.

23 Q. Okay. Ms. Chapman testified today and she was kind
24 enough to meet with me previously and communicated to me that
25 the 12 years stuck out to her for some reason. Was a plea

1 offer of 12 years ever communicated to you?

2 A. No, ma'am.

3 Q. If it would have been, would you have been willing
4 to accept that offer?

5 A. Yes, ma'am.

6 Q. Now, I'm gonna jump forward between the two trials
7 and still talk about pleas here. Were any pleas communicated
8 to you between the two trials?

9 A. No, ma'am.

10 Q. Was that something that you asked her, hey, what's
11 the State's position? Am I going to be able to got a plea
12 since we already had a mistrial?

13 A. Uhm, what she communicated to me right after the
14 first trial when we had the mistrial she said we just wait.
15 They might have a better offer. So I called her, you know. I
16 have communicated with you her a couple of times and asked her
17 over the phone, uhm, if they have said anything and the whole
18 time she said that they never said anything.

19 Q. Okay. Now, you have heard her testimony that you
20 informed her that you did not want to plea. That God had told
21 you to go to trial. Do you recall that discussion with her?

22 A. Yes, ma'am.

23 Q. Was that prior to the first or prior to the second
24 trial?

25 A. In the first trial.

1 Q. Take me through that discussion specifically.

2 A. Uhm, she informed me that how the odds were stacked
3 against us and, you know, being with the proffer statement
4 being that I have, you know, pretty much, you know, admit to
5 all this, uhm, it was - I wasn't -- I'm in a journey, you
6 know, that's something that it's hard for me to explain
7 because, uhm, I still don't understand it completely, uhm, but
8 the experience of being in jail, it gave me a different
9 understanding of life, you know, as far as the things that I
10 was doing and how I was living.

11 So, uhm, the religious process, you know, I read my
12 Bible and started praying. Uhm, that's when I -- It's really
13 hard to explain because a lot of people, there's a lot of
14 people that have a hard time understanding how faith works and
15 how God works and at that time, uhm, I was, like I said, I was
16 reading my Bible and it was laid in my heart real heavy, you
17 know, and every time I pray and I ask for answers, you know,
18 the answer was given to me that inclined to go to trial. Not
19 to take the 15 to 18.

20 So it was hard for me because I understood Ms.
21 Debbie, I understood her completely, you know. We called to
22 believe, you know, to live life in faith even when things
23 don't look right, you know. We called to be faithful and
24 that's one of the reasons I decided to go to trial. It was in
25 my heart heavily, you know, and I understood all the

1 implications and what she, you know, what Ms. Debbie was
2 talking to me about. How they have all this evidence against
3 you and you cooperated and, uhm, but I still decided to go to
4 trial.

5 Q. Mr. Arroyo, I don't mean to cheapen or be a cynic
6 regarding anything you just shared. I thank you for sharing
7 that. But you were praying and making those decisions based
8 upon a offer for a negotiated 15 to 18; is that correct?

9 A. Yes, ma'am.

10 Q. You didn't make that decision believing that there
11 was the option of a recommended 14 to 18 where she could
12 potentially have argued for less time?

13 A. No, ma'am.

14 Q. Okay. But that, the decision was made solely based
15 upon an understanding of a negotiated plea offer of 15 to 18
16 years?

17 A. Yes, ma'am.

18 Q. Now, you chose as you have explained to us to go to
19 trial and your faith was implicated in that decision to go to
20 trial with an understanding from your attorney and her advice.
21 That first trial begins with one agent getting up, a Lexington
22 County Sheriff's Office agent getting up and testifying about
23 surveillance and different things like that and then Agent
24 Hardin took the stand and he begins testifying on page 158
25 about how he participated in two controlled buys?

1 A. Yes, ma'am.

2 Q. And it was your understanding you were going to
3 trial about one controlled buy; is that correct?

4 A. Yes, ma'am.

5 Q. Shortly thereafter your attorney on page 160 makes a
6 motion explaining to the court that there had been a pre-trial
7 agreement to only go into one of the controlled buys and as a
8 result on page 172 the court found that the State had violated
9 that agreement but he specifically found that it was not
10 intentional. I'm sorry. This is a long question. He goes on
11 then to say on pages 175 through 180 that he finds no goading
12 on behalf of the State. At the start of the second trial your
13 attorney makes a motion she says because you want her to about
14 double jeopardy. What was discussed with you regarding what
15 transpired at the first trial that resulted in a mistrial that
16 I just went over and the issue of double jeopardy? What did
17 you discuss with her?

18 A. Uhm, you know, I have comment to her, you know, uhm,
19 because I read, you know, I was reading some stuff on double
20 jeopardy laws, you know, uhm, and it says that it had to be
21 done in bad faith. It has to be proven bad faith was
22 involved. And, uhm, that's what I was telling her. I said,
23 well, I mean, they - you specifically talked to them. They
24 talk about they have done hundreds of cases and they were all
25 present, you know, when you guys talk about they just mention

1 the April buy and nothing else and for him to get up on the
2 stand and then when he was asked that question and go ahead
3 and talk about the other cases knowing that they had already
4 agreed prior to the trial starting to not mention nothing
5 about none of them was to me, you know, done in a bad faith.

6 Q. And so you voiced that to her and she indicated, of
7 course, she was raising that motion or making a double
8 jeopardy motion because you wanted her to?

9 A. Yes.

10 Q. Okay. Now, she made that motion and as attorneys we
11 would say that was then preserved for appeal. Did your
12 appellate defender raise that issue on appeal?

13 A. No, ma'am. I think I only met with him one time and
14 there was really no communication other than by the phone.

15 Q. Is that an issue you would have wanted him to raise
16 on appeal for you?

17 A. Yes, ma'am.

18 Q. I have already asked you about Judge Keesley's
19 comments to the jury that we asked Ms. Chapman about and then
20 some further discussion about what was required to be proven
21 in the statewide grand jury case. Is there anything else you
22 want to testify about regarding your concerns with it being a
23 statewide grand jury case?

24 A. Just, you know, the fact that when I first, you
25 know, asked them, like, okay, if it's state grand jury, why

1 the reason why they picked Lexington County. So it was
2 informed to me that the reason they went to Lexington County
3 is because their headquarters was right there. But I was
4 telling them that there was some, uhm, being held in Horry
5 County I came across other inmates - in Lexington County I
6 came across other individuals that were state grand jury that
7 their cases were heard, you know, in their county.

8 Q. I want to ask you a little bit more about the video.
9 You said you watched that in the county with Ms. Chapman; is
10 that correct?

11 A. Yes, ma'am.

12 Q. Did you know going into the second trial that there
13 had been an agreement regarding the video being played without
14 sound? What did you know about that?

15 A. Uhm, well, the reason why they didn't want to play
16 the video what I was informed is because there's English and
17 Spanish and they wanted to translate everything into English
18 and then there was issues that you can hear some of the things
19 that was said, you know. The audio wasn't clear. So based on
20 that decision and the decision that it was going to cost a lot
21 of money to translate it into English, uh, one of the things
22 my lawyer advised me was to go ahead and play it without
23 sound. That it was best.

24 Q. When y'all discussed that agreement to play it
25 without sound, did she also explain to you that then the

1 confidential informant would be able to narrate and explain
2 his version of what was going on?

3 A. Yes.

4 Q. So you knew that going into trial?

5 A. Yes, ma'am.

6 Q. Sitting there though and hearing his testimony, did
7 you think that was helpful or harmful to your case?

8 A. I believe it was harmful.

9 Q. Why is that?

10 A. Because he could say whatever he wanted to say
11 especially, you know, in the time that there was no video or
12 recording like you mentioned in the first that, uh, they say
13 it was, uh, one agent searching the car and then it was a
14 different agent. So pretty much, you know, one of the things
15 she really raised hard was that he had to comply to their
16 satisfaction of whatever they were asking him to because he
17 was looking at a lot of time, too.

18 Q. And on the pro se Anders response that you did
19 yourself you raised an issue about additional testimony being
20 offered about different officers searching the vehicle?

21 A. Yes, ma'am.

22 Q. Was that information that you first learned at the
23 time of your trial?

24 A. Yeah.

25 Q. What was your concern with that?

1 A. Uh, well, we were talking about why is the officers
2 not testifying and then it became an issue in the second trial
3 because in the first trial, you know, they had the Sheriff's
4 Department, the SLED, and DEA testifying and, uhm, in the
5 second trial they didn't call none of them and they called, I
6 believe, Agent Woods from Horry County. But being that they
7 were stating that there was still state grand jury my question
8 was why was they switched the whole agents that were
9 testifying, you know, in the first trial to the control buy
10 that happened in April and in the second trial they were never
11 called to testify.

12 Q. So in your first trial Agent Burke and Agent Hardin,
13 one being out of Columbia, one of Lexington testified. In the
14 second trial they only called Agent Wood out of Horry?

15 A. Yes.

16 Q. So that raised concerns with you about the statewide
17 grand jury and about the video?

18 A. Yes, ma'am.

19 Q. Would you have wanted your attorney to object or try
20 to suppress the video?

21 A. Uhm, I didn't know that we had that option at that
22 time.

23 Q. If she would have explained to you that you had that
24 option, is that something that you would have wanted her to do
25 or did you want her to agree for it to come in as she did?

1 A. Uhm, yeah, I would have liked for her to not have it
2 come in.

3 Q. Okay. Now, you have heard testimony from Ms.
4 Chapman today about her perceived hesitation on the part of
5 Judge Keesley in having to sentence you to 25 years. Would
6 you have wanted her to make a motion or put on the record a
7 request for the judge to sentence you to less than 25 years?

8 A. Yes, ma'am.

9 Q. Okay. Would you have subsequently to the sentence
10 being handed down wanted her to make a motion to go back in
11 front of Judge Keesley to address your cooperation with the
12 State and ask for less than 25 years?

13 A. Yes, ma'am.

14 Q. Just to be clear for the record I want to ask you a
15 little bit more about the plea offers and what was
16 communicated and what we presented here today by way of the
17 exhibits. The exhibit says that it was a range of 14 to 18
18 years. You indicated to me that turned down 15 to 18. Would
19 it have mattered if you would have known that it was 14 to
20 18?

21 A. Uh, I don't think so, ma'am.

22 Q. Okay. Now, you have explained to us that it was an
23 act of faith that you decided to go forward with the trial.
24 Is that a proper characterization?

25 A. Yes, ma'am.

1 Q. Did your decision to go to trial have anything to do
2 with for lack of better words the Mexican drug cartel in fear
3 of any implications if you did not go to trial?

4 A. No, ma'am.

5 Q. Mr. Arroyo, you have been waiting for today for a
6 while because it took us a long time to go through the
7 discovery and get our hands on things that you wanted us to
8 review before we came today to do your PCR. You have done a
9 lot of preparation yourself. Is there anything that I have
10 failed to ask you that you would like to explain to the Judge
11 in support of your PCR allegations?

12 A. No, ma'am.

13 MS. BLANCHETTE: Your Honor, I have no further
14 questions.

15 MR. MITCHELL: You want a quick break, Judge, or you
16 ready to roll? Or could I step out for a minute?

17 THE COURT: Sure.

18 (Short break.)

19 THE COURT: We're back on the record.

20 CROSS EXAMINATION

21 BY MR. MITCHELL:

22 Q. Good morning, Mr. Arroyo.

23 A. Good morning, sir.

24 Q. How are you doing?

25 A. Good. And you?

1 Q. Very good. Very good. Let's see. So you were
2 charged with conspiracy as part of a larger drug
3 investigation; is that right?

4 A. Yes, sir.

5 Q. There was about I think 21 total defendants in your
6 case; is that correct?

7 A. Yes, sir.

8 Q. And the State's theory of the case is that you're
9 kind of on the higher end of this organization; is that a fair
10 characterization?

11 A. That's what they say.

12 Q. You may not agree with that --

13 A. No.

14 Q. -- but that's what they were hoping to prove,
15 right?

16 A. Yes.

17 Q. Now, you say you retained Ms. Chapman and
18 Mr. Kirkland, right?

19 A. It was just Ms. Chapman.

20 Q. And then Mr. Kirkland got involved as the case
21 approached trial; is that right?

22 A. Yes. She - I believe it was like, uh, I would not
23 say no more than - no less than a month that she came an
24 informed me that she had talked to Mr. Kirkland and that he
25 was gonna help her through the trial.

1 Q. Okay. You met with Ms. Chapman numerous times; is
2 that right?

3 A. Yes, sir.

4 Q. She came down to the jail to see you and y'all
5 talked about the case, right?

6 A. Yes.

7 Q. She told you in her opinion that the case was pretty
8 strong, right?

9 A. Yes.

10 Q. And she advised you that you should accept the plea
11 offer or one of the plea offers; is that correct?

12 A. There was just one plea offer.

13 Q. So the way you remember the plea offer it was 15 to
14 18 years, right?

15 A. 15 to 18 years.

16 Q. And your testimony is that the 14 year to 18 year
17 was never brought to your attention?

18 A. No.

19 Q. So you never reviewed those exhibits that you were
20 shown earlier?

21 A. No, sir.

22 Q. Okay. That's not with Ms. Chapman nor
23 Mr. Kirkland?

24 A. No, sir.

25 Q. So the number in your head is 15; is that correct?

1 A. Yes. That's what it was informed to me from the
2 beginning, 15 to 18 and from my understanding it was
3 negotiated because she informed me that they cannot give me no
4 more than 18, no less than 15.

5 Q. You thought you were stuck in that range no matter
6 what?

7 A. Yes.

8 Q. That's how you looked at it; is that right?

9 A. Yes.

10 Q. So you never signed these plea agreements, right?

11 A. No, sir.

12 Q. It's your testimony you have never seen them?

13 A. I never seen them until this morning when Ms. Tricia
14 showed them to me.

15 Q. So you declined this offer and then wanted to
16 proceed to trial; is that correct?

17 A. Yes. But, you know, my intention was at the
18 beginning I thought they were going to come with a better
19 offer, you know, after the first trial.

20 Q. So you kind of thought after the first trial was
21 mistried you may get a better offer to kind of go ahead and
22 wrap the case up?

23 A. Yes, sir.

24 Q. Did you do any -- You didn't do any further
25 cooperating, right?

1 A. No.

2 Q. You didn't meet with any DEA agents or SLED
3 agents?

4 A. No.

5 Q. You didn't meet with them after the first trial or
6 anything like that?

7 A. Well, it was actually -- No. After the first trial,
8 we didn't meet but pretty much the last time we met, uhm, they
9 told me that that was it. They pretty much had everything
10 they needed because from - there was a few months in between
11 from the last time I talked to them to where the first court
12 appearance came for the plea offer that I didn't know we were
13 gonna plead to.

14 Q. Okay. So you met with Agent Michael Burke and SLED
15 Agent Jack Rushing; is that right?

16 A. Yes, sir.

17 Q. Those were the main people you spoke to with regards
18 to --

19 A. Yes, sir.

20 Q. -- the investigation, right?

21 A. Yeah. They were to two. Mainly Jack Rushing was
22 the one.

23 Q. Mainly Jack or Lieutenant Rushing I believe. You
24 talked about why you declined the offer. You thought that,
25 you had prayed on it and you thought that the case would turn

1 out in your favor. Is that what you were thinking? Did you
2 think that you were going to win at the trial if you were to
3 go to trial?

4 A. No.

5 Q. So you kind of understood the weight of the evidence
6 against you at that point, right?

7 A. Yes, sir.

8 Q. So back to the plea offers then. You say the 14 to
9 18 year range was not communicated to you?

10 A. No, sir.

11 Q. But you would not have accepted the 14 to 18 year
12 range, would you?

13 A. If it was negotiated, no.

14 Q. So you would not have accepted a range of 14 to 18,
15 right?

16 A. Right.

17 Q. You were looking at something below that, right?

18 A. Yes, sir. Well, not necessarily below that, uhm,
19 because like I said, due to the, you know, due to what I
20 believe now, I accept my responsibility but I wanted the
21 judge, for the judge, for it to be up to the judge and
22 presented like I said because like I said I felt my background
23 was not even taken in consideration.

24 Q. You thought you were kind of getting locked in with
25 the bad guys?

1 A. Especially -- Not that. But especially after all
2 the cooperation and that they wanted me to come back and
3 testify and all the things that they wanted, you know, for me
4 to do and still end up with this amount of time.

5 Q. So you were just looking for a lower end of the
6 range, right?

7 A. I was looking for whatever Judge Keesley, he felt
8 that he was - whether it was less than 14 or more than 14, but
9 I wanted my chances to be heard because like I said, they
10 wanted me to testify. They wanted me to - you know, they had
11 me cooperate and they still wanted me to do all this time.

12 Q. So you felt like you deserved a better deal due to
13 your cooperation?

14 A. Like I said, not necessarily.

15 Q. Okay. You just wanted it to be left up to Judge
16 Keesley. I understand you. Now, both Ms. Chapman and Mr.
17 Kirkland discussed this plea offer with you?

18 A. The 15 to 18? Yes.

19 Q. Yes. They both did?

20 A. Yeah. We talk about it.

21 Q. And their advice to you was that you should accept
22 it, right?

23 A. Uhm, well, Mr. Kirkland, like I say, we really
24 didn't - he mentioned it but we never talk about it because he
25 came at the end and he was more on a mind set of let's go to

1 trial, you know. We're going to trial, you know. But the one
2 that talked to me was Ms. Debbie Chapman. She was the one
3 saying to take the plea.

4 Q. And I understand Mr. Kirkland got involved late but
5 he spoke with you about this offer and advised you to take it,
6 right?

7 A. Uhm, yeah, due to the fact that, you know, what we
8 were facing in trial.

9 Q. And you understood that, too, right?

10 A. Yes, sir.

11 Q. And you thought you would kind of put it in God's
12 hands; is that correct?

13 A. Yes, sir.

14 Q. Now, I know you had spoke to Ms. Chapman when you
15 were in jail throughout. Did you ask her to pursue a time
16 served plea?

17 A. No.

18 Q. Would you have accepted a time served plea --

19 A. Of course.

20 Q. -- at that point, right?

21 A. Yeah.

22 Q. Now, when you were in jail, did you write letters to
23 Ms. Chapman?

24 A. Uhm, you mean when I came here or when I was --

25 Q. When you were in jail?

1 A. In Lexington County?

2 Q. Right.

3 A. Uhm, I don't think I wrote letters to her. I think
4 I wrote letters to the judge. I think I might have wrote a
5 copy - or sent her a copy of what I sent to the judge due to
6 the fact that I had asked for a speedy trial and it was
7 informed to me that in state grand jury they didn't have no
8 speedy trial because they were taking too long. You know,
9 they just kept saying about he wiretaps and we couldn't go
10 forward with the cases until the wiretaps, the issue with the
11 wiretap was solved.

12 Q. Do you remember that being part of the reason why
13 the second trial may not have gone forward as quickly as you
14 may have liked? The wiretap issue was pending at the
15 Appellate Court, right?

16 A. Yes.

17 Q. Do you remember recognize this letter here, this
18 writing?

19 A. Yeah. That's my writing.

20 Q. That's your handwriting?

21 A. Mm-hmm.

22 Q. Is that a letter to your attorney Ms. Chapman from
23 what you can tell?

24 A. Yes.

25 Q. What's the date of that letter?

1 A. 1/9/2013.

2 MR. MITCHELL: Judge, can I mark this quickly?

3 (Whereupon, Respondent's Exhibits #1 and #2 marked
4 for identification.)

5 BY MR. MITCHELL:

6 Q. Mr. Arroyo, let me ask you to take a look at these
7 and read these and see if you recall these letters to Ms.
8 Chapman?

9 A. Are they the same one?

10 Q. Two different ones. That's the date and that's the
11 date. I'll give you a second to do that.

12 A. (Witness complies.)

13 Q. Mr. Arroyo, you just finished reading the January 9,
14 2013 letter?

15 A. I read them both already.

16 Q. Okay. And those are the letters that you wrote to
17 Ms. Chapman; is that correct?

18 A. Yes.

19 MR. MITCHELL: You Honor, I move in defendant's
20 exhibits 1 and 2.

21 MS. BLANCHETTE: No objection, Your Honor.

22 THE COURT: Respondent's exhibits 1 and 2 admitted
23 without objection.

24 BY MR. MITCHELL:

25 Q. Thank you. I don't have extensive questions on

1 those. I just wanted to introduce those to point out that you
2 really put your faith in God that you thought things would
3 work out as far as the trial of your case would go; is that
4 right?

5 A. No. I put my faith in God that he would decide
6 whatever the outcome was, you know. Like to be specific right
7 now I don't hold no grudges against Ms. Chapman and you showed
8 me these letters and I thanked her for the good things she did
9 for me. Like I said, my literacy for the law, you know, I
10 don't know what she did wrong or she did right. I'm not here,
11 you know, to judge, you know, what she did right or wrong,
12 uhm, but at the end I have learned to thank everybody, you
13 know, anybody that comes into your life for the good they do
14 regardless of whether it was wrong or right at the moment.

15 Q. Right. And you even thanked the court and the judge
16 for their time during the trial, right?

17 A. Yes, sir.

18 Q. Moving to the appeal issue, there was an Anders
19 brief filed on your behalf; is that right?

20 A. Yes, sir.

21 Q. You testified earlier that you did not have much
22 contact with your appellate attorney; is that correct?

23 A. No.

24 Q. Okay. And did he explain to you what an Anders
25 brief was?

1 A. No. He just told that he was my appellate lawyer
2 and the only thing he explained was that he was going to look
3 for any errors that was done. That's it. That's what he
4 said.

5 Q. And then you were given an opportunity to write your
6 own brief, correct?

7 A. That's what I learned from a little bit of the study
8 I did, you know, being able to go to the law library which is
9 minimum, you know, and from other inmates.

10 Q. And you raised the issue about the video in your
11 pro-se response; is that correct?

12 A. Yes, sir.

13 Q. Okay. You didn't raise the issue about the double
14 jeopardy, did you?

15 A. No. No. One of the reasons was because I didn't
16 know how to approach it.

17 Q. It's a complicated thing for everyone. I'm with you
18 there. Now, Mr. Kirkland, he went over the procedures of what
19 would happen if you would go to trial; is that correct? Did
20 he go over with you what would happen like the day of trial?

21 A. Uhm, I don't remember but it was explained to me by
22 Debbie Chapman the procedure.

23 Q. So she did explain there would be witnesses to come
24 say that you committed the crime, right?

25 A. Yeah.

1 Q. Okay.

2 A. Yeah. She told me what the procedure was.

3 Q. And you knew what the evidence would be going into
4 trial; is that right?

5 A. Yes, sir.

6 Q. You testified earlier that you met with Solicitor
7 Stumbo and you asked him for a better offer yourself. You had
8 a chance to talk to him face to face?

9 A. Yes.

10 Q. What did you ask him when you were there in the room
11 with him?

12 A. To explain to me why was the reason why he was
13 offering me that much time being that, uhm, it was my first
14 time and, you know, I explained to him that I did not come
15 from Mexico, you know, with a sole purpose of selling drugs in
16 America, you know. I was young when, you know, my mother and
17 father decided to come to the United States and, you know,
18 that I had been doing, obeying the law. At one point I told
19 him that at one point I had my own construction company, you
20 know, and I have two kids and I was just explaining to him
21 basically, you know, about my background. I wanted to
22 understand what was the reason why he was still stuck in that
23 15 to 18 because it was informed to me that it was the only
24 offer that was gonna be available and if I didn't take it
25 then, that the offer was off the table and that's when he got

1 mad and he said, okay. Well, I'll see you in trial.

2 Q. So at that point you rejected the offer and then the
3 next step would be to go to trial, right?

4 A. Yeah.

5 Q. You still said 15. So it's 15 to 18 is what you
6 believe the offer to be, right?

7 A. That's what it was.

8 Q. Okay. And you're not testifying today that you
9 would have accepted the 14 to 18?

10 A. If it was negotiated, no. I would not.

11 MR. MITCHELL: No further questions. Thank you.

12 MS. BLANCHETTE: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. BLANCHETTE:

15 Q. Mr. Arroyo, we have already introduced the proffer
16 agreement that you signed back in 2011. Was it your
17 understanding pursuant to that agreement that you would be
18 legally bound to testify if the State called upon you to
19 testify?

20 A. Yes, ma'am.

21 Q. Okay. And that continued even after you rejected
22 the plea offer was your understanding you were legally bound
23 by the proffer agreement?

24 A. Yes, ma'am.

25 Q. Okay. Was there any point in time that you remember

1 where you were asked to cooperate and provide further
2 information and you said no. I'm done cooperating. I'm not
3 going to work with you all anymore?

4 A. No, ma'am.

5 Q. At your first trial Judge Keesley when I was talking
6 before about how he determined that they weren't going to be
7 able to introduce the proffer agreement, he actually gave the
8 State the opportunity, told them that they could polygraph you
9 between the pretrial motions on November 10th and then when
10 y'all reconvened. When you reconvened, Mr. Stumbo said that
11 they didn't polygraph you. Were you ever polygraphed as a
12 result of your proffer agreement?

13 A. I was informed by Ms. Debbie Chapman that I was
14 gonna be polygraphed I believe on Friday and, uh, but they
15 never came and done a polygraph test.

16 Q. So it wasn't something where you had refused to be
17 polygraphed?

18 A. No. I was ready that Friday for them. From what my
19 understanding that Friday because trial was that following
20 Monday, I believe, and they have talked that they were gonna
21 do it Friday.

22 Q. Okay. The State asked you a number of questions
23 about Mr. Kirkland's involvement. It's my understanding he's
24 gonna testify here today so I want to be really clear. When
25 you're talking about the rejection of the 15 to 18 year plea

1 offer when you were here in this courthouse in October, was
2 Mr. Kirkland involved in those meetings?

3 A. Yeah. He did come talk to me. Yeah. Before the
4 trial. I mean before the -- When I came for the 18, when I
5 thought that I was gonna testify and there was a plea offer,
6 he wasn't there. He was there before the trial.

7 Q. Okay. So he wasn't involved when you came to the
8 courthouse the month before trial --

9 A. No.

10 Q. -- and you thought it was to testify?

11 A. No.

12 Q. And that would have been in the same time when you
13 had the meeting with Mr. Stumbo?

14 A. Yes. That's the following day, the first day we
15 came, that's when I told him no and then the following day
16 they brought me back again and that's when we had the meeting
17 with Mr. Stumbo.

18 Q. And your recollection was Mr. Kirkland wasn't
19 representing you at that time?

20 A. No. He was not involved.

21 Q. Now, the State has introduced two letters that you
22 wrote to Ms. Chapman. I want to ask you specifically about
23 the State's or defendant's exhibit 1. Do you still have a
24 copy of that in front of you to reference?

25 A. Yes.

1 Q. Now, this has been introduced so the body of the
2 letter will be there for the Court to review but in my
3 summation of it you're talking about your belief in God, your
4 faith in God and then you do indicate here that the only plea
5 offer that you would take would be for time served. My first
6 question is: This letter is written in 2013; is that correct?
7 It's not written at the time that the 15 to 18 year plea
8 offer was communicated to you?

9 A. Yeah.

10 Q. All right. At this point in 2013, January 2013 how
11 long had you been sitting in jail?

12 A. Since 2010.

13 Q. Okay. Had it been communicated to you in and around
14 the time of January 2013 that there were any plea offers on
15 the table still?

16 A. (Witness shaking head.) Mmm-mmm.

17 Q. Okay. At that point in writing this letter had you
18 essentially accepted your fate to go to trial?

19 A. Yeah.

20 Q. Okay. If Ms. Chapman or Mr. Kirkland would have
21 come to you and said, hey, we got your letter, we went and
22 talked to the State. They're willing to let you do an open
23 plea 7 to 25, the court can exercise his discretion, would you
24 have accepted that plea offer at this time?

25 A. Yes.

1 Q. So are you saying, in fact, you would have
2 considered other options besides time served?

3 A. Yes, ma'am.

4 MS. BLANCHETTE: Your Honor, I have no further
5 questions.

6 MR. MITCHELL: Nothing further, Your Honor.

7 THE COURT: All right. You can step down. Do y'all
8 have any more witnesses?

9 MS. BLANCHETTE: We do not, Your Honor.

10 THE COURT: Are you calling witnesses?

11 MR. MITCHELL: Yes, sir.

12 THE COURT: This hearing is gonna reconvene at 2:15.
13 I need the courtroom opened and I need the civil parties
14 let in and we're gonna take a ten minute break for staff
15 and I'm gonna do a quick Richland County civil hearing.
16 This hearing will continue at 2:15. Tell Mr. Floyd he
17 doesn't need to show up until whenever you think
18 Mr. Kirkland's testimony is. Okay.

19 MR. MITCHELL: Thank you, Your Honor.

20 MS. BLANCHETTE: Thank you, Your Honor.

21 * * * * *

22

23

24

25

1 THE COURT: We are back on the record in
2 2015-CP-32-1885. You change your mind?

3 MR. MITCHELL: No. Unfortunately. One witness,
4 Judge. The State calls Bradley Kirkland.
5 Thereupon,

6 BRADLEY KIRKLAND
7 after having been first duly sworn, testified as follows,

8 THE CLERK: Please have a seat. Once you're seated
9 state your full name for the record.

10 THE WITNESS: Bradley Kirkland.

11 DIRECT EXAMINATION

12 BY MR. MITCHELL:

13 Q. Good afternoon, Mr. Kirkland.

14 A. Good afternoon.

15 Q. Thank you for being here with us today.

16 A. I appreciate being here.

17 Q. So explain how you became involved in this case?

18 A. When Debbie got close to the point that she knew
19 that she was going to go to trial, she thought for sure that
20 Juan was making a terrible mistake so she asked me to look
21 through the evidence that she had put together, the videotape
22 and the various other stuff that was associated with the case.
23 Of course, we didn't end up having to worry about a lot of
24 that other stuff because it involved, you know, but I needed
25 to know that to know whether this deal was a good deal or not

1 because they could have prosecuted him conceivably on the
2 entire indictment. So I read through all the stuff. I looked
3 at the videotape and have I lot of experience trying drug
4 cases and I told Debbie I concur one hundred percent. I've
5 had a lot of experience in negotiating with the Attorney
6 General's Office which is to say I don't negotiate with the
7 Attorney General's Office because they don't negotiate with
8 people. They basically pick a sentence and send you a plea
9 agreement and you either plead to that plea agreement or you
10 don't and when I realized that she had gotten it down from 14
11 to 18, I said this guy better jump on this because I have
12 never gotten them to come off of a plea offer like that ever
13 in my career.

14 Q. So you thought it was a favorable offer?

15 A. It was an outstanding offer.

16 Q. You heard the testimony today from Mr. Arroyo about
17 your advice to him regarding the plea offer. What was your
18 advice?

19 A. My advice to him was you've got to take the plea
20 offer. If you don't take the plea offer, you are going to end
21 up serving a 25 year sentence. He had never denied to us not
22 even for a moment that he was on the videotape. He had never
23 denied his involvement in the conspiracy. He simply said that
24 God told him to go to trial. Now, when I first went down
25 there, the first thing that I wanted to do was go over with

1 him how a trial works, you know, from opening statement to
2 closing statement, closing arguments, jury charges, the whole
3 thing. I went through the whole thing with him and I said do
4 you realize that we do not have a defense, not what I would
5 call a defense. All we're gonna do is pick apart, pick at
6 this video, little parts that are missing, we're gonna pick at
7 inconsistencies but I do not consider that a theory of a
8 defense. That's just a you can't prove my client did it. You
9 don't have enough evidence and quite frankly I told him you're
10 in Lexington County. This is a conservative group of jurors
11 and they don't have a very high threshold. They don't
12 consider beyond reasonable doubt to be an extremely high
13 threshold. So I told him you look at all of the factors that
14 are coming together at this point, you need to plead guilty
15 and his response -- You want me to tell you? Was no. I'm not
16 going to plead guilty. God told me to go to trial.

17 Q. There's a written plea agreement. Did you review
18 that specifically?

19 A. Yes. We reviewed that, if my recollection is
20 correct, we reviewed that in courtroom 3A in the detention -
21 there's a holding cell behind 3A. We reviewed that with him
22 then. I think Debbie reviewed it -- I'm not gonna speculate.
23 My understanding was that she reviewed it with him prior to
24 that but I came that day and I reviewed it with him in that
25 holding cell back there and begged him to plead. I begged him

1 to take this offer right now because if we walked out, I
2 believe that he would walk out of there with a 14 year
3 sentence because Keesley seemed very sympathetic at the time.
4 And it's Judge Keesley. He's pretty sympathetic anyway
5 especially concerning drug cases.

6 Q. Okay. So that's the written plea agreement that
7 Mr. Stumbo had filled in the dates and recommended?

8 A. Right.

9 Q. That's the actual sheet, you reviewed that with
10 Mr. Arroyo?

11 A. Yes. That is my recollection that we went through
12 that stuff with him and I recall it being -- Now, it may have
13 been at the jail but I recall it being in that holding cell
14 behind 3A. He had said he didn't want to plead guilty and he
15 did not want to be brought to court but we had him brought to
16 court anyway because we have had plenty of times in the past.

17 Q. So you spoke to him before --

18 A. Yes.

19 Q. -- and advised him of the plea offer; is that
20 right?

21 A. Well, Debbie had already talked to him about the
22 plea offer, what it was. I don't know if she showed him the
23 paperwork. He already knew what the plea offer was and he
24 said he didn't want it so...

25 Q. The plea offer was 14 to 18?

1 A. Yes.

2 Q. Or was it 15 to 18?

3 A. No. It was 14 to 18.

4 Q. Okay.

5 A. And so he said that he wasn't going to plea. Me and
6 Debbie walked out of there and she said, what do you want to
7 do, Brad? And I said let's bring him to plead anyway because
8 who knows. Somebody can change their mind. We'll have one
9 last talk with him and then at that one last talk he can just,
10 you know, sometimes that, the reality of their situation dawns
11 on them when they're sitting in a holding cell right behind a
12 courtroom and we say if you just walk out there and do it,
13 it's gonna be done and you can put this behind you and he
14 didn't want to do it. I had met with him actually a couple
15 times before that.

16 Q. Okay. Let's move to the first allegation here.
17 This is the one with Judge Keesley's comments at the beginning
18 of the trial specifically that the State is going to have to
19 prove certain elements that I'll explain to the jury at a
20 later stage. Did you find that objectionable at the time?

21 A. No. Even at this moment I don't find that
22 objectionable at all. He needed to definitely inform the
23 grand jury of why they were hearing a Horry County case in
24 Lexington County.

25 Q. Because this buy took place in Horry County?

1 A. Yes.

2 Q. And we're here in Lexington County trying the
3 case?

4 A. It would make no sense whatsoever. You can't ask a
5 judge to not give the jury some foundation of understanding of
6 why we're in a particular place hearing charges from all the
7 way across the State so I had no objection to that and the
8 statement even looking at it in retrospect I didn't even
9 really know what he was talking about when he said elements.
10 I didn't know until near the end of the trial what he was
11 potentially thinking of which I think was what you have to put
12 in an indictment versus what you can actually try somebody on
13 because the state grand jury, the indictment must allege
14 multiple counties but they can try you on one count as long as
15 the full indictment. And me and Debbie did the research on
16 that because I was like they got a jurisdictional problem
17 maybe here. Maybe we can get them on that. We did the
18 research and it turned out you can go at the time our
19 understanding of the research was they only need to allege it
20 in the indictment that it occurred in multiple counties and
21 they can try you on one charge if they choose to do that.

22 Q. So they only have to allege it in the indictment and
23 not present it as evidence in the trial?

24 A. Right. And, in fact, the mistrial was for that very
25 reason. They attempted -- Well, they accidentally, because

1 the attorney was, I won't call him a baby attorney because I
2 quite frankly don't even remember who it was, but it was clear
3 that he was using a standard set of questions from all of his
4 other cases when they're trying these conspiracies and so he
5 was setting it up the same way he does in every single case
6 and walking it through and then boom, we realized, I remember
7 Debbie and I looking at each other and we realized, oh, my
8 gosh, he's talking about all this other stuff in the
9 conspiracy. What are we gonna do? And Debbie stands up and
10 objects and we go through all that stuff that's in the
11 record.

12 Q. So you didn't think there was -- Well, at least in
13 your opinion you didn't think there was any intentional
14 goading at that point -

15 A. No.

16 Q. -- to try to goad a mistrial?

17 A. No. That poor guy was following his script that he
18 had followed probably 15 times before. He just -- It just
19 didn't dawn on him that we had -- We reached an incredibly
20 favorable agreement because our only other choice was to try a
21 conspiracy case along with everybody else and whoever it was,
22 maybe it was Goings, I don't remember who it was, which of the
23 prosecutors it was but when he said, hey, listen, why don't we
24 just do this one case and not worry about the wiretaps. We'll
25 sever you from all the other defendants and we'll try you by

1 yourself on one single discrete event and forget about the
2 conspiracy and I told Debbie, I said my advice to you, Debbie,
3 is you need to do that because if he has to sit there for two
4 or three weeks during a conspiracy trial and they hear about
5 drugs and guns and money and all this for two or three solid
6 weeks but all we have to do is fight this one videotape and
7 this one CI that has got a plea offer, I was like we need to
8 try to do that. But admittedly they probably could have tried
9 him on the other charges if they had lost but I still would
10 have pitched enough of a fit that I might - I might even would
11 have called Allen Wilson or whoever it was that was the
12 Attorney General if they had tried to do that. I mean, I felt
13 like we kind of had a deal. That that was going to be the
14 end.

15 Q. So let's move to the videotape. You got a couple of
16 agreements out of that. What was the strategy behind that?

17 A. Oh that was -- I felt like we made out like bandits
18 on that. They had their own interpreter. I don't know if the
19 interpreter was certified or not but I told Debbie this: That
20 my understanding of the law is that if they use a certified
21 interpreter, they can get their own interpretation in and I
22 said but we don't know what they're saying. She actually I
23 recall took the - I think she took the interpretation down and
24 watched it with Juan and Juan agreed that it was a more or
25 less correct, the translation was more or less correct. So

1 what ended up happening was I told Debbie I think it's still
2 dangerous territory. If that tape is coming in, we need to
3 got our own translator. So we went to Judge Keesley because
4 Juan's family didn't have anymore money and I understood that.
5 Money is hard to come by, period.

6 And Judge Keesley asked us to get an estimate of
7 what it would cost and it was \$6000.00 to transcribe the
8 videotape and Judge Keesley was like, oh. It wasn't even on
9 the record. We were just in courtroom 3C talking and he was -
10 you could just see the concern on his face of signing an order
11 for \$6000.00 for a translation. So the Attorney General was
12 actually very polite. We started talking about alternate ways
13 of doing it and, you know, he puffed a little bit and said he
14 was gonna put in his translation and that we would just have
15 to try to stop him and so on and so forth but then after a
16 week or two everybody calmed down and we suggested why don't
17 we just not play the sound at all.

18 The strategy was and I don't think - maybe he
19 realized it, was that they would never know that he was a
20 Mexican national because I know that they would have assumed
21 that he was here illegally and I know it would have caused - I
22 mean in my opinion it would have -- You know, he was up here
23 just a little while ago talking about how he felt
24 discriminated against and I believe that that could have
25 occurred which is the reason why we made the strategy

1 decision. I didn't want the jury to know that he spoke fluent
2 Spanish because it never came up at the trial. Now, the
3 witness had a Spanish accent but they had no clue what our
4 client sounded like.

5 Q. What about fast forwarding of the tape and then
6 agreeing to leave out certain parts of it?

7 A. That was also a strategy decision. We talked about
8 that because the Attorney General suggested that on the first
9 day and me and Debbie got into a huddle and we talked about
10 what, do we want to allow that or not. And I thought to
11 myself, you know, if they show the entire tape, it is going to
12 show - it's going to corroborate a lot of things that they're
13 testifying about and I was afraid -- I figured the less that
14 they saw the easier it would be for us to attack it because I
15 really didn't think that they were ever gonna watch it.

16 Jurors are pretty impatient and this is like a two hour tape
17 or something and so I was just thinking to myself, I think
18 strategically, Debbie, if they only play the six minutes in
19 the beginning of the tape, then everything in between is gonna
20 be something we can argue about and they may or may not ever
21 watch it. So I felt better about it going in the way that it
22 did. We decided to agree to that because I thought it was a
23 good decision.

24 Q. Did you see any way of keeping that tape out?

25 A. No. It's impossible. All the witness has to say is

1 that I'm the one that filmed it. It is a fair and accurate
2 representation of what occurred on that day. That's it. It
3 comes in.

4 Q. Did you see any problem with the witness kind of
5 explaining what was going on during the playing of the tape?

6 A. No. I wish that that was a rule that they couldn't
7 narrate the tape because they end up narrating the tapes even
8 in cases in which there is sound. They go back through it and
9 talk about what just happened. What did we just watch? They
10 can narrate during it, after it. They can even tell you
11 before it as long as it's in evidence what's it's going to be.
12 If there is a rule that does not allow a witness to comment on
13 a tape, I want someone to tell me what it is because I'm gonna
14 use it in every trial.

15 MR. MITCHELL: All right. That's all my questions
16 for now. Please answer any questions Ms. Blanchette may
17 have for you or Mr. Thompson.

18 THE COURT: Cross?

19 MR. THOMPSON: Just briefly.

20 CROSS EXAMINATION

21 BY MR. THOMPSON:

22 Q. Mr. Kirkland, I'll tell you the same thing I told
23 Ms. Chapman. I know you outside the courtroom?

24 A. Yes.

25 Q. If you call you Brad on occasion, I do apologize.

1 A. Please do.

2 Q. So I want to talk about the plea deal for a few
3 minutes. Is your understanding the plea was to a negotiated
4 14 to 18 range?

5 A. Yes.

6 Q. There was no discussion about a recommendation of a
7 14 to 18 range?

8 A. No.

9 Q. Did you ask Mr. Stumbo what recommended sentencing
10 was or anything like that?

11 A. No.

12 Q. Did you notice that -- Let me ask you that again.
13 Did you notice any discrepancy in the way it was written in
14 the plea agreement?

15 A. Yes. It was inartfully written but we had already
16 prepared the sentence sheet and I was sitting there, standing
17 there watching Stumbo and, maybe it was Stumbo, I can't
18 remember who it was but Debbie and whoever had done the plea
19 agreement they talked about it and he said I don't care
20 whether he gets 14 or 18 but he's gonna get somewhere in
21 between, as long as he gets somewhere in between those, it
22 doesn't make any difference to me. So it was clear that there
23 was a meeting of the minds between Debbie and the prosecutor
24 that it was actually negotiated which was reflected on the
25 sentencing sheet and we presented it to him that way.

1 However, what you're bringing up is actually, it is
2 an issue that on occasion the only negotiation that you can
3 ever get out of the Attorney General's Office is to change the
4 word negotiated to recommendation. So it was just inartfully
5 done because sometimes they do that but he would not. He was
6 not doing it because he felt like this was a top 25 percenter
7 rather than a bottom 25 percenter in the conspiracy and so
8 they made it clear that they wanted substantial jail time.

9 Q. So you asked Mr. Stumbo about it being
10 recommended?

11 A. No.

12 Q. No. Okay.

13 A. No. I'm saying I watched him explaining the
14 agreement to Debbie and there was never any, any words used
15 other than negotiated. He must get between 14 and 18. So
16 when we presented it to him, that's how we presented it.

17 Q. Who was - I guess in the time between the first
18 trial and the second trial, would you say that - what was kind
19 of the dynamic between you and Ms. Chapman? Was she kind of
20 still handling the discussions with you the Attorney General's
21 Office?

22 A. Yes. One hundred percent.

23 Q. That wasn't you?

24 A. That was not me. What I did was I developed trial
25 strategy. I developed negotiation strategy. I developed - I

1 was at the trial. I handled all of the objections. All of
2 the motion arguments pretty much. I did all of the grunt
3 work. That's what I did. I did the grunt work. The research
4 and the grunt work.

5 Q. But you weren't in communication with the Attorney
6 Generals?

7 A. No.

8 Q. And you didn't ask them about plea deals or anything
9 like that after the trial?

10 A. No. Not one single time. I mean, I may have said
11 something like, God, you guys are rough or something while
12 they were talking but that was the extent of any participation
13 I had.

14 Q. Were you happy with the 14 year plea?

15 A. Yes.

16 Q. You were happy with that?

17 A. Yes. I almost used profanity. Yes. I was
18 extremely pleased with it. I'm telling you I get appointed to
19 these state grand jury cases and a 17 to 20, for this type of
20 drug conspiracy 17 to 20 is a normal sentence. The
21 opportunity at less than that is amazing. I mean, they're
22 just heavy sentencers. Those guys just won't negotiate.
23 That's the bottom line. I don't know how Debbie got him down
24 to 14. I guarantee you if I would have been the attorney and
25 I would have been negotiating it, there is no chance it would

1 have gotten down to 14. It would have never happened.

2 Q. So I just want to make sure I'm understanding that
3 correct. Do you believe that if you had been Juan's attorney,
4 that 18 would have been the best that you would have gotten?

5 A. Probably. You have to understand the relationship
6 that Debbie has with prosecutors. They really like her. Her
7 relationship is probably - she probably has the best
8 relationship with prosecutors of any attorney I know and her
9 own clients. You saw that here today. She is well liked.
10 Well respected.

11 Q. Did you have -- Let me ask this: At any point in
12 time during your involvement was the plea only to 18 or did
13 you come in after the change to 14?

14 A. I'm pretty sure -- I knew of the 18 but I don't
15 think I was involved in the 18. I think that when I got
16 involved it was 14 to 18 but I'm not one hundred percent
17 certain but I am one hundred percent certain that I was aware
18 there was an 18 and then I aware they offered a 14 to 18
19 range.

20 Q. Do you recall meeting with the prosecutors with Juan
21 at the courthouse?

22 A. This is what I think happened. I do not
23 specifically recall that, but there was a day and I talked
24 about it briefly that we all came over here to courtroom 3A
25 and that was when the discussions about the transcript and all

1 of that stuff took place and once he said that I seem to
2 recall him saying can I talk to the prosecutor or something
3 and I think that's when it was but I don't remember it
4 clearly. Me and Debbie were both over there trying to
5 remember. I think that's when it was but I can't remember.

6 Q. But would you disagree that such a meeting
7 occurred?

8 A. I cannot say for certain but I know that because of
9 the informal nature, and I'm just gonna tell you the truth,
10 because of the informal nature of what was going on in that
11 room even though I don't remember it, it is very difficult for
12 me to suggest that he is not telling the truth. He probably
13 is. Almost certainly is because everybody was talking to each
14 other. The judge even left the room for a little while and it
15 was just the attorneys and Juan and that was it. So I can
16 believe that definitely happened.

17 Q. Do you recall a 12 year plea offer ever being
18 made?

19 A. No.

20 Q. Any discussion about that?

21 A. I'll tell you what I remember. Not the number 12
22 but I do remember this. I do remember Debbie thought up a
23 pretty cleaver negotiating tactic of running the federal
24 sentencing guidelines and seeing if the federal sentencing
25 guidelines would work out better. The only thing -- I

1 remember her doing it. I remember us looking around poking
2 around at it and maybe that's where she got the number 12. I
3 don't know because I just don't remember. But I would bet
4 that's where it came from but I never heard that number.

5 Q. Did you do that research too yourself --

6 A. No. No.

7 Q. -- or did Debbie just do it?

8 A. No. She knows the guidelines backwards and forward.
9 I didn't bother with that.

10 Q. Between the first and second trials did you go down
11 to the jail to meet with Juan?

12 A. I have no doubt that I did but over a 17 month
13 period but when we got that letter in January, I know at that
14 point -- That letter was what, a few months after the first
15 trial? The one that's in evidence? Where is that letter
16 that's in evidence? Let me look at those two real fast. Do
17 you mind telling me the date of the trial because I can't
18 remember it.

19 THE COURT: The first one was November of 2011. The
20 second one was March of 2013.

21 BY THE WITNESS:

22 A. Okay. So this letter -- I know after this letter,
23 the 1/9/13, I know I didn't talk to him after that because he
24 made it clear in that letter that he was not going to plead
25 and that even though you guys didn't address this he

1 specifically said in that letter that God was going to cause
2 the investigator to make a mistake at the trial which brings
3 up a topic by the way. It brings up a subject that my
4 interaction with Juan you have to understand. When I first
5 went down there, I talked to him and I explained to him the
6 law and how things were gonna go and gave him my legal
7 opinion. But then after the legal opinion he told me he was
8 going to trial because God told him that he needed to go to
9 trial and so we left. I went and did some research.

10 I found, because I read the Bible when I was young.
11 I was forced to read the Bible by my parents when I was young
12 so I have read it and I remembered stuff in the Bible about
13 man's law and that God requires in the old testimony I'm
14 pretty sure it was, I had the article, I just don't have them.
15 I looked for them. I just couldn't find them. That God --
16 It's a sin to not follow a reasonable man's law and it's
17 mentioned several places in the Bible according to my memory
18 and I printed out the articles discussing it.

19 So I explained to him that - I came back down and I
20 talked to him again and I said listen. Since you won't listen
21 to my legal argument, will you listen to my theological
22 argument that maybe, you know, God is not particularly happy
23 with you selling whatever it was, a black tar case or
24 whatever, black poppy, maybe he wasn't happy about that.
25 Maybe there's some punishment to be exacted. And he said that

1 I don't really understand, you know, faith and all that stuff.
2 And I was like listen, man, I understand faith a hundred
3 percent and I said -- So I started asking him a couple of
4 questions. I said listen, would you agree that we as human
5 beings simply cannot understand the will of God or God's
6 reasoning? And he said yes. I said it's just too far beyond
7 us. You agree with that? And he said yes. I do agree with
8 that. And I said okay. So you don't know what God is going
9 to do about your case. You would agree that you don't know
10 exactly what he's thinking? And he agreed that he did not.

11 And I said, well, have you ever heard this joke,
12 this parable and I'll tell it super fast. A guy is beside a
13 river sitting in his house. Flood occurs. River starts
14 rising. When the river gets up to his porch, a boat comes by.
15 I was telling Juan all this. The boat comes by. The boat
16 says get on. We're here to save you. The guy says no. God's
17 got me covered. I'm good. The water is rising. He has to
18 climb up onto his roof. A helicopter comes by. The
19 helicopter asks him get on. We're here to save you and he
20 says no. I put my life in God's hands. Water rises and he
21 gets swept away and he drowns. He arrives at the pearly
22 gates. He asks God what in the world happened? I put all my
23 faith in you and you let me down. And God said, what are you
24 talking about? I sent you a helicopter and a boat. And I
25 said, Juan, do you realize that me and Debbie are probably

1 your helicopter and your boat. We are the ones here to save
2 you. And he said nope. That wasn't God's plan.

3 So I couldn't reach him. I couldn't reach him.
4 Through all of my conversations I could not reach him and he
5 was the nicest guy you would ever want to talk to. He just
6 politely declined to accept my advice. Very politely.

7 BY MR. THOMPSON:

8 Q. So between the first and second trials you don't
9 recall meeting with him specifically?

10 A. No. But I am certain that - I know that the moment
11 the first trial was over, me and Debbie walked out in the
12 hallway and Debbie was like I wish we could have gotten it
13 done. I felt good about the jury and everything and I was
14 like, yeah. That's too bad because Judge Keesley sua sponte
15 declared the mistrial. I don't even think we moved for it to
16 be perfectly honest with you.

17 Q. You did.

18 A. We might have. I don't remember. But I remember he
19 was pretty on top of it. And so when we walked out in the
20 hallway, I said this is an amazing opportunity because now we
21 have a little bit more chance to talk to Juan and a little bit
22 more time to talk to the prosecutor and I remember
23 specifically subsequent to that trial attempting to get Juan
24 to take the offer which we thought we could get them to put
25 back on the table and he rejected it again. And then he sent

1 us in January that very clear rejection and I'm assuming that
2 that very clear rejection was a result of us continuing to
3 attempt to get him to take the deal and explaining the deal to
4 him.

5 Q. And you don't - you didn't personally talk to the
6 prosecutors about trying to get a better deal?

7 A. No. Nope. Once it was opened back up, Debbie
8 handled the negotiations. She handled them before and she
9 handled them after. I knew that she could get the best deal
10 and they wouldn't budge and Juan wouldn't budge so trial was
11 inevitable.

12 MR. THOMPSON: I don't have any further questions.
13 Thank you.

14 MR. MITCHELL: Nothing further from me, Your Honor.

15 THE COURT: Have a nice day. Any further witnesses
16 from the State?

17 MR. MITCHELL: Nothing further from the State.

18 MR. THOMPSON: Nothing further from us.

19 THE COURT: Okay. Y'all want to be heard?

20 MS. BLANCHETTE: Your Honor, in my experience you
21 listen very well. You ask questions when you have them.
22 You're familiar with the controlling case law so if you
23 have any questions, I'm happen to answer those.

24 THE COURT: I do not.

25 MS. BLANCHETTE: I have no reason to carry on and

1 give you an argument. I know you have listened.

2 THE COURT: No. I paid very close attention. Is
3 there anything the State would like to say?

4 MR. MITCHELL: Nothing, Your Honor.

5 THE COURT: Okay. I don't normally talk to
6 defendants in cases but there is no rhyme or reason why a
7 case goes federal or a case stays in the state or why the
8 state grand jury picks up your case and I mean that and
9 I'm sure your attorneys have told you that. Every
10 attorney that you have had in this case knows exactly
11 what they're doing, okay? I met with clients for years.
12 I mean, I'll never forget I had this guy named Gene Falk
13 and Gene had gotten in trouble. Gene's mama babysat
14 Judge Early's children and every time Gene got in trouble
15 he would get sentenced by Judge Early and Judge Early
16 would give him probation for all of these tiny little
17 drug cases. These non existent - they were felonies, but
18 Judge Early just slapped him on the wrist like five or
19 six times and the feds made one buy from him and used his
20 prior record and the next thing you know Gene was at
21 mandatory life without parole. Gene never got it, you
22 know, why he just didn't go back in front of Judge Early
23 or why the feds picked up his case or why these guys from
24 SLED showed up and all of a sudden my normal drug case
25 that gets held in the course of business is a state grand

1 jury case.

2 There is no rhyme or reason that any defense
3 attorney can ever really provide you to explain that to
4 you. I'm sure they told you that, but I wanted to tell
5 you that because I used to be the chief admin. judge of
6 the Fifth Circuit and why there was 30 people in front of
7 me on state grand jury bond settings as opposed to normal
8 bond settings I didn't even know, okay? And your
9 jurisdiction gets set, I want to make sure you understand
10 this, the jurisdiction of your case is set the day your
11 indictment is unsealed. So in the same exact moment that
12 your indictment is unsealed, that means made a copy of
13 the public record, the judge, not Judge Keesley but the
14 chief administrative judge of the Fifth Judicial Circuit,
15 at that moment signs an order at that point in time that
16 says your case belongs in X county, okay? And there's no
17 way to undo that, okay?

18 That's why they weren't making that argument because
19 they had done all the research and they realized people
20 who made that argument for years never understood why all
21 my action occurred in one county but I'm tried in another
22 but that is the moment when your jurisdiction is set is
23 that very moment when your indictment becomes public
24 record, okay? So that's not something that anybody in
25 your case had any control over as far as your defense

1 team or you. So I understand. I have represented people
2 for years, how you can be sitting there going this makes
3 no sense. My case allegedly occurred in Horry County but
4 I'm at the Lexington County jail and my case is tried not
5 once but twice in Lexington County. So I understand. I
6 can't say I understand your frustration from a personal
7 standpoint but from a client representation standpoint I
8 certainly understand.

9 All right. I'll take this matter under advisement
10 and let you all know by the end of the week, okay?

11 MS. BLANCHETTE: Thank you, Your Honor.

12 MR. MITCHELL: Thank you, Your Honor.

13 MR. THOMPSON: Thank you, Your Honor.

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 18th day of April, 2017.

11 I FURTHER CERTIFY that the forgoing 123 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 10th day of November, 2017.

17
18 
19 _____
20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.
23
24
25



ALAN WILSON
ATTORNEY GENERAL

June 8
May __, 2011

Debra Y. Chapman, Esq.
2007 Lincoln Street
Columbia, SC 29201

Via: Hand Delivery

Re: Proffer of Juan Arroyo

Dear Ms. Chapman:

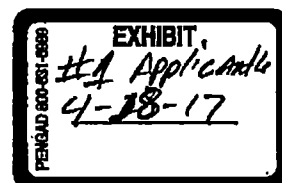
The purpose of this letter is to propose a proffer under which your client would provide information to law enforcement and to define the terms and potential use of the proffer.

Purpose of Proffer Agreement

The purpose of this proffer is to provide the State with an opportunity to assess the value, extent, and truthfulness of Mr. Juan Arroyo's information about his criminal liability and the criminal liability of others concerning the activities of criminal activity operating in South Carolina, including, but not limited to, Drug Trafficking Organizations.

THIS IS NOT A COOPERATION AGREEMENT. Mr. Juan Arroyo has agreed to provide the State with information and to respond to questions so that the State may evaluate his statements and other information in making prosecutive decisions. By receiving Mr. Arroyo's proffer, the State does not agree to make any additional recommendation on his behalf, plea agreement not already extended, immunity or non-prosecutive agreement. The State makes no representation about the likelihood that any such additional agreement will be reached in connection with this proffer.

By signing this proffer agreement, Mr. Arroyo agrees to be fully truthful and forthright



with the Attorney General's office for the State of South Carolina and state law enforcement agents in their investigation of all unlawful activities, to include, but not limited to, truthful and complete debriefings with no misstatements or material omissions of fact of his knowledge concerning all unlawful activities. Mr. Arroyo further understands that he must fully disclose and provide truthful information to the State including any books, papers, or documents or any other items of evidentiary value to the investigation. He must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so by the State, subject to prosecution for perjury for not testifying truthfully.

Mr. Arroyo's failure to be fully truthful and forthcoming respecting all material information within his knowledge and possession will cause the obligations of the State within this agreement to become null and void. Further it is expressly agreed that if the obligations of the State within this agreement become null and void due to the lack of truthfulness on Mr. Arroyo's part: (1) the State may file any and all charges known to the State; and (2) the State may use for any purpose any and all statements made and other information provided by Mr. Arroyo in the prosecution of him on any charges, including perjury. Mr. Arroyo accepts this provision being fully advised that the proffer may be used against him only, as impeachment or rebuttal evidence.

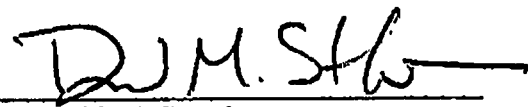
Mr. Arroyo agrees to submit to polygraph examination(s) by any qualified polygraph examiner should such a request be made by the State. Failure to pass any polygraph examination administered pursuant to this agreement constitutes a breach of the agreement, and the State may use for any purpose any statements made and other information provided by Mr. Arroyo in the prosecution of him on any charges.

Provided Mr. Juan Arroyo is truthful as described above, remaining terms of this agreement are as follows:

1. No statements made or other information provided by Mr. Arroyo during this proffer or discussion will be used against him in any criminal case except as provided herein.
2. The State may make derivative use and may pursue any investigation leads suggested by any statements made or other information provided by Mr. Arroyo for the purpose of obtaining other evidence which may be used in a prosecution of him. This is necessary to prevent the State from having to prove that evidence it would introduce at any future trial is not tainted by any statements made or other information provided by Mr. Arroyo during this proffer.
3. In the event that Mr. Arroyo is a witness at a trial or other proceeding concerning any matter discussed in this proffer and testifies materially different from any statements made or other information provided during this proffer, the State may cross examine him concerning any statements made or other information provided during this proffer or use such to rebut any evidence or arguments offered by or on behalf of Mr. Arroyo at any stage of the criminal prosecution should any prosecution of him be undertaken.

4. To the extent the State is entitled under this agreement to offer in evidence any statements made or other information provided by Mr. Arroyo or leads obtained therefrom, she shall assert no claim under the United States Constitution, any statute, or rule of evidence that such statements made or other information provided or any leads therefrom should be suppressed. It is the intent of this agreement to waive all rights in the foregoing respects.
5. The parties hereby agree that this agreement contains the entire agreement of the parties; that this agreement supersedes all prior promises, representations and statements of the parties; that this agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements made prior to this agreement are null and void.

Alan Wilson
Attorney General

By: 
David M. Stumbo
Assistant Deputy Attorney General

I have read this proffer agreement carefully and reviewed each part of it with my attorney. I understand the terms of the proffer and voluntarily agree to it.

Juan Arroyo

Date: 6-8-11

I represent Juan Arroyo as legal counsel. I have carefully reviewed every part of this proffer agreement with Mr. Arroyo. To my knowledge, Mr. Arroyo's decision to make this proffer agreement is informed and voluntary.

Debra Y. Chapman
Attorney for Juan Arroyo

Date: 6/8/11

JDW

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

STATE OF SOUTH CAROLINA

-VERSUS-

JUAN RODOLPHO ARROYO,
DEFENDANT.

IN THE COURT OF
GENERAL SESSIONS FOR
THE ELEVENTH JUDICIAL CIRCUIT

CASE NO. 2010-GS-47-07

PLEA AGREEMENT



AGREEMENT made this ^{17th} ~~13th~~ day of ^{October} ~~September~~ 2011, between and among the State of South Carolina, as represented by Attorney General Alan Wilson, David Stumbo, Assistant Deputy Attorney General, and the Defendant, and his attorney, Debra Y. Chapman, Esquire.

1. The Defendant, Juan Rodolpho Arroyo, agrees to plead guilty to Count One in Indictment 2010-GS-47-07 to the offense of Trafficking of Heroin (Conspiracy) 4-14g, a violation of S.C. Code Ann. § 44-53-370(e)(3), which carries a sentence range from seven (7) years to twenty five (25) years.

2. The parties have negotiated the sentence of Defendant, Juan Rodolpho Arroyo, for a sentence of ~~eighteen (18) years~~ recommended sentencing range of ~~fourteen (14)~~ to eighteen (18) years. Dms

3. The Defendant, Juan Rodolpho Arroyo, agrees to fully and truthfully cooperate with the Office of the Attorney General of South Carolina, and any local, state and federal law enforcement agents in their investigation of drug trafficking organizations operating in South Carolina and related unlawful activities. This cooperation is to include, but is not limited to, truthful and complete debriefings of the Defendant's knowledge concerning the importation,

possession, and distribution of controlled substances, commission of violent crimes, structure and hierarchy of drug trafficking organizations and any other related unlawful activities. Also, the Defendant understands that he must fully disclose and provide truthful information to the State including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be truthful or to cooperate at any stage can cause the obligations of the State of South Carolina under this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the State under this Agreement become null and void due to the lack of truthfulness or cooperation on the part of the Defendant, the Defendant understands that: (1) the Defendant will not be permitted to withdraw his plea of guilty to the offense described above;

(2) any and all additional charges known to the State may be filed in the appropriate county; (3) the State may argue for a maximum sentence for the offenses to which the Defendant has pled guilty; (4) the State may use any and all information and testimony provided by the Defendant in the prosecution of the Defendant for all charges; and, (5) the State may advise the Department of Corrections of the Defendant's status as an uncooperative defendant and may accordingly recommend redesignation of the Defendant to a higher custodial level.

4. The Defendant, Juan Rodolpho Arroyo, understands and agrees that any and all firearms, contraband or assets or portions thereof acquired or obtained as a result of illegal trafficking in drugs shall be surrendered to the South Carolina Law Enforcement Division (SLED), and/or other law enforcement related organizations in South Carolina to be designated

by the South Carolina Attorney General, in portions to be determined by the South Carolina Attorney General. The assets so surrendered to South Carolina authorities will be disposed of according to South Carolina law. The assets to be surrendered include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property, real estate, firearms, ammunition or dangerous weapons. Further, the Defendant agrees to fully assist the Office of the Attorney General and SLED in the recovery and return to SLED, and/or other designated law enforcement agencies in South Carolina of any drug-related assets or portions thereof, either domestic or foreign, which have been acquired or obtained either indirectly or directly through unlawful drug activities. The Defendant must prevent the disbursement and immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, all other domestic and foreign assets in which he has any direct or indirect interest or control, if the assets are the proceeds of unlawful drug activities. The Defendant further agrees to immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, in portions to be determined by the South Carolina Attorney General, all conveyances, including but not limited to, aircraft, vehicles, or vessels, which have been used or were intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, concealment of controlled substances. By signing this Agreement, the Defendant consents to civil forfeiture of all assets currently in the possession of the government and further consents to civil forfeiture of all drug related assets seized by law enforcement agents in connection with this investigation.

5. The Defendant, Juan Rodolpho Arroyo, further agrees to submit to polygraph examination(s) by any qualified state polygraph examiner should he be requested to do so

regarding his knowledge of and involvement in drug-related activities, other related unlawful activities, and any and all assets and conveyances acquired and/or used by the Defendant or others, whether drug-related, or not. This Plea Agreement is expressly contingent upon successful completion, to the satisfaction of the State, of the polygraph examination(s).

6. The Attorneys for the State reserve the right to summarize all evidence, which would have been presented at trial to establish a factual basis for the plea.

7. The Attorneys for the State agree to advise any Court or other authority of the extent and value of the Defendant's cooperation if called upon to do so by the Defendant.

8. The Defendant, Juan Rodolpho Arroyo, understands that the State's obligations under this Plea Agreement are expressly contingent upon the Defendant's abiding by state and federal laws, and complying with the terms and conditions of this Agreement, both before and after sentencing, and any bond executed in this case. This Agreement in no way limits or affects the Defendant's potential exposure to further prosecution by any Solicitor's Office in the State of South Carolina or the United States Attorney for conduct that is not a basis for his indictment and prosecution by the State Grand Jury of South Carolina.

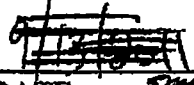
9. The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void.

DATE

Juan Rodolpho Arroyo
Defendant

DATE


Debra Y. Chapman, Esquire
Attorney for Defendant

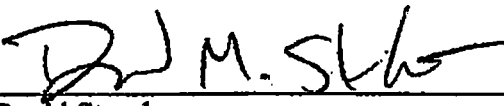

DATE

10/17/2011

DMS

Alan Wilson
Attorney General of South Carolina

By:


David Stumbo
Assistant Deputy Attorney General
State Grand Jury

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

LEXINGTON

STATE

VS.

Juan Rodolpho Arroyo

AKA: Juan Arroyo-Baldovinos

Race: W Sex: M Age: 28

DOB: 4/17/1983 SS#:

Address: 313 Cedar Street

City, State, Zip: Myrtle Beach, SC 29577

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 Heroin 4-14 g (1st Offense)

In violation of § 44-53-370(a)(3) of the S.C. Code of Laws, bearing CDR Code # 2361

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

(def.'s Initials)

☒ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Assistant Attorney General

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center,
for a determinate term of _____ 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.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine: \$ _____

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

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

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

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

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

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

\$14-1-212 (Law Enforce. Funding) \$25 \$ _____

\$14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

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

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

3% to County (If paid in Installments) \$ _____

TOTAL \$ _____

Clerk of Court/Deputy Clerk _____

Court Reporter: _____

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

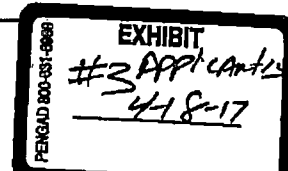
Other: _____

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

Presiding Judge _____

Judge Code: _____

Sentence Date _____



DEFENDANT'S
EXHIBIT

1-9-13

To: Debby

~~#3~~ 4-18-17

I'm writing this letter to let you know some things that I couldn't say over the phone. I would prefer telling you face to face, but I know you are very busy, so this letter is the best way to let you know. Debby I know you still have doubt in your heart, that it was God working that day in my trial, but believe me, God knew agent Adam was going to make that mistake, that's why God told me to go to trial. I will not disobey His guidance. When you asked me Friday, what kind of time I would be comfortable with, I couldn't answer you because I didn't know, but after praying and asking God I could finally say, I would take time served plea. My reason for me saying this is because I know by faith that just like in my trial, God will make a way for the court of appeals to rule in our favor, I have no doubt. I would have a problem pleading to any time, knowing that the first charges were dismissed, my problem would be, that if they didn't have the first charges, there wouldn't be no last charge, kind of like the rule, "the fruit of the poisonous tree." I would plea guilty to time served, so they can have their conviction. I would get deported without being able to come back legally or illegally because I would face time in prison. If they

don't agree I will push forward for trial. That would be my final decision Debby. And if this is the scenario I want you to file a motion for a speedy trial and another one to lift the protection order on the motion of discovery, I know it's my right to review the evidence on the last charge, if I'm going to trial. With everything they've done wrong, I don't trust them, also it will not hurt the investigation, it's been 29 months and I don't see how it will be affected. Debby I don't know what's going on with you, I feel like you don't want to represent me, I pray that I'm wrong, but if that's the case, you can put in a motion to dismiss yourself from my case, God put you in my path because He knows you can handle this case, I believe in you, therefore I could not let you go, but if that's what you want, let me know. One thing I could say is that if you help me to the end, God will reward you, I know deep down in my heart, He will. Debby it's hard being back in here, but today I lived my life for God and everything happens for a reason, if I'm still here it's because this is where God wants me to be. I know it's hard for you because you are a lawyer programmed to fight on facts, like you told me long ago, but I asked that you trust me, but specially trust God, He will not forsake us. I know it's a tough decision, specially because I don't want

to be here no more and It's been a long time too, but God is in control, I believe. No matter what you decide, I want you to know, you are a great lawyer, one of the best, that's from my heart, God bless you and your family, you are in my prayers all the time, Thank you for all you have done Debby

Sincerely

Juan Arroyo

JUAN Arroyo

hello Debby

I am writing to thank you for all the help with my case, sorry it was a lot of headache but you know why I had to go the way I did. I still strong in my faith, even stronger now after all that I have been through, you know getting twenty five years and R & F and now Lee County, One of the worse prison, well the worse one, in S.C. I been here a week and ready to see what the LORD has instore for me here, I will not give up I promise you that. I have faith one day I will see you out of these walls, I pray for you still and your family every day. One thing I also want to asked you is to please send me my motion of discovery with all the statement done by Emigdio, Michelle and any one else, I also would like a copy of the transcript of my trials, the one in 2011 and 2013 please, if there's any thing I got to do please let me know. or if I need to write some else for the transcripts. Well thanks again for everything you did for me, I will pray God keeps blessing you every day and take care of yourself please.

Keep going to church
and seeking Him
because HE Loves You.

juan perez

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Juan Arroyo #354538,

2015-CP-32-1885

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 22, 2015. Respondent filed a Return on September 28, 2016, requesting an evidentiary hearing be convened. Tricia A. Blanchette, Esquire, and Jeremy A. Thompson, Esquire, were retained to represent Applicant. An amended application was filed on March 24, 2017. An evidentiary hearing was held on April 18, 2017, at the Lexington County Courthouse. Applicant was present and represented by Counsel Blanchette and Thompson. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's counsel, Debra Chapman, Esquire and Bradley M. Kirkland, Esquire. This Court had before it the State Grand Jury Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the transcripts.

I. PROCEDURAL HISTORY

Applicant was indicted at the September 2010 term of the State Grand Jury on seven counts including trafficking heroin, possession with intent to distribute heroin, and conspiracy. (2010-GS-47-4707). Applicant initially proceeded to trial on November 15, 2011, before Judge Keesley. A mistrial was declared after the State solicited testimony from an agent concerning

other crimes unrelated to the charge being tried. Judge Keesley ruled that, although unintentional and inadvertent, the State violated an agreement with defense counsel that they would not mention controlled buys from other parts of the investigation. Applicant was then retried on March 4th-5th, 2013, where he was convicted. The Honorable William P. Keesley sentenced Applicant to twenty-five (25) years imprisonment.

A Notice of Appeal was filed on Applicant's behalf on March 14, 2013. Benjamin John Tripp, Esquire, represented Applicant on appeal, and submitted a final brief and petition to be relieved as counsel pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed the appeal. State v. Arroyo, Op. No. 2014-UP-338 (S.C. Ct. App. filed September 24, 2014). The remittitur was also sent on September 24, 2014.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for:
 - a. Failure to ensure that Judge Keesley's comments to the jury regarding a state wide grand jury case were cured and/or failure to move for a mistrial.
 - b. The handling of the plea negotiations with Applicant and the State. Specifically, failure to effectively communicate all plea offers to Applicant and the sentencing possibilities under such offers.
 - c. Failure to effectively make a double jeopardy argument at the second trial. Ineffective assistance of appellate counsel for failure to raise the issue on appeal.
 - d. Failure to object to the introduction of the video and narration of the video by testifying witness(es).
 - e. Failure to make all viable contemporaneous objections.
 - f. Having knowledge that the trial court was concerned with imposing the mandatory sentence and not asking the trial court to exercise discretion and sentence Applicant to a lesser term of years.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the Clerk of Court records regarding the subject convictions, the records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon the information presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective for a number of reasons. The Court will address each in turn.

Failure to ensure that Judge Keesley's comments to the jury regarding a state wide grand jury case were cured and/or failure to move for a mistrial

First, Applicant alleges Counsel were ineffective in failing to object to Judge Keesley's opening comments. The comments were made in his opening remarks to the jury:

THE COURT: Now, you'll notice that I read to you that this is alleged to have occurred primarily in Horry County. I won't get too detailed with it, but basically the venue of this case is here in Lexington. This is a State Grand Jury case. It falls under a specific statute and that's really insignificant except that the State is going to have to prove certain elements that I'll explain to the jury at a later time.

Before opening statements, Judge Keesley questioned whether the parties had reached an agreement concerning whether the crimes had significance in more than one county.

THE COURT: All right. Now, with State Grand Jury cases, there has to be a significance in more than one county. Is that something you all have stipulated to or is that -- because you say you're not going to go into any of that --

MR. GOINGS: Your honor, the case law is clear that we only have to allege that in the indictment and for the grand jury's sake. We don't have to prove it at trial.

MS. CHAPMAN: That's correct, Your Honor. I did that research. And also, Your Honor, I will let you know the other – the balance of these charges, I guess, so to speak, still hasn't been decided by the appellate courts as far as the wiretaps go and that's why we're not mentioning that.

(Trial Tr. p. 73-74).

This Court finds Applicant failed to meet his burden in proving deficient performance. Judge Keesley seemed to be under the impression that the State needed to present some evidence regarding multi-county impact because the case was a State Grand Jury case but was corrected by the parties. Counsels' failure to object to the comments when made was not unreasonable. At worst the comments imposed a higher burden on the State and therefore could not be prejudicial to Applicant. Counsels' testimony that they saw nothing objectionable about the remarks is credible and persuasive. Furthermore, this is the correct interpretation of the law. See State v. Evans, 322 S.C. 78, 81, 470 S.E.2d 97, 99 (1996) (holding that in a SGJ case the State did not have to prove the offense had a multicounty impact at trial and was only required to prove the elements set forth in the charged offense). This allegation is denied and dismissed.

Plea Negotiations, Failure to Effectively Communicate Plea Offers and Failure to Advise of Sentencing Length and Implications

Next, Applicant alleges Counsel were ineffective in their handling of the plea negotiations with the State. Specifically, Applicant argues Counsel should have been more persuasive and encouraging in their advice that Applicant accept the State's plea offer.

Applicant testified that Counsel presented him with an offer from the State that would allow him to plead guilty to a lesser included charge with a sentencing range of fifteen (15) to eighteen (18) years' imprisonment. He testified that he had never seen the actual plea agreement that was signed by both Counsel Chapman and by David Stumbo, Assistant Deputy Attorney General. He testified that he rejected that offer and that he would also have rejected a range of

fourteen (14) to eighteen (18) years. He confirmed Counsels' testimony that he hoped to receive a plea offer with a lesser sentence. Applicant wrote a letter to Counsel Chapman stating that he would only plead to a time served offer.

Counsel Chapman testified that the original offer from the State was a negotiated term of (18) years' imprisonment. She explained that she was able to get the offer down to a recommended range of fourteen (14) to eighteen (18) years' imprisonment. She reviewed the offer with Applicant, who was not happy and believed that he deserved a better offer because of his cooperation with authorities. Notably, Counsel Kirkland testified that he aggressively advised Applicant that he should accept the State's offer of fourteen (14) to eighteen (18) years. He explained that Applicant had a strong faith in his religion and that he believed things would work out for the best. In response, Counsel Kirkland described how he attempted to use a parable to explain that Applicant needed to take action on his own and not be passive in deciding whether to accept the offer.

To be successful on an allegation of an un-conveyed plea offer, Petitioner must prove: (1) trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) Petitioner was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted the original plea offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). Generally, failure to convey a plea offer constitutes deficient performance, although the existence of prejudice needs to be evaluated on a case-by-case basis. Id. at 613, 675 S.E.2d at 422. To show prejudice from a failure to convey a plea offer, Applicant must:

Demonstrate a reasonable probability [he] would have accepted the earlier plea offer had they been afforded effective assistance of counsel. [He] must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the

authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.

Missouri v. Frye, 566 U.S. 133, 146 132 S. Ct. 1399, 1409 (2012).

This Court finds Counsel provided appropriate advice regarding the State's plea offer. Applicant has failed to show how Counsel acted unreasonable in any way. In fact, Counsel made extensive efforts in advising Applicant to accept the offer especially considering the strength of the State's case. Applicant's testimony regarding the offer and advice received from Counsel is not credible. Applicant was adamant that he was offered a range of fifteen (15) to eighteen (18) years' imprisonment, but the weight of the evidence shows that the offer was actually a range of fourteen (14) to eighteen (18) years.

As to the allegation that the plea offer was not effectively communicated, Applicant failed to meet his burden of proof. Counsels' testimony on this issue is particularly credible and persuasive. It is clear that Counsel not only communicated the offer to Applicant, but pled with him numerous times to accept the offer. Moreover, Applicant has failed to present evidence that he would have accepted the offer with the recommended sentencing range of fourteen (14) to eighteen (18) years. Contrary to the allegation, Applicant testified that would *not* have accepted this recommended sentencing range and explained that he would have rejected the offer. This allegation is denied and dismissed.

Failure to effectively make a double jeopardy argument at the second trial

Applicant further alleges that Counsel were ineffective in failing to effectively argue that the State was barred by double jeopardy from retrying Applicant. Specifically, Applicant argues that the State "goaded" or intentionally provoked Counsel into making a motion for a mistrial at the first trial. Applicant cites State v. Parker, 391 S.C. 606, 707 S.E.2d 799 (2011) in support of

this allegation. The application of the double jeopardy bar is dependent on a showing of the prosecutor's *subjective intent* to cause a mistrial in order to retry a case. Id. In Parker, the State introduced an unredacted graphic video of the crime scene, accused the defense attorney of unethical conduct in coaching witnesses, and implied to the jury that it was their community duty to convict the defendant of murder. Id.

Here, Counsel made the appropriate objection to preserve the double jeopardy issue. (Trial Tr. p. 72-73). Judge Keesley denied the motion because there was no proof that the State intentionally sought to cause a mistrial. As Counsel Chapman aptly pointed out, the questioning which led to the mistrial was introductory and came from one of the first witnesses to testify. Furthermore, in granting the mistrial at the first trial, Judge Keesley explicitly found that it was an unintentional mistake made by the prosecutor. Specifically, Judge Keesley found:

[I]t is absolutely abundantly clear to me that it was not an effort to goad the defense into a mistrial motion. I don't think the State wants a mistrial. I think they want to go forward with the case. So I don't find any prosecutorial misconduct. I think it was inadvertent. A question was asked and the answer was directly in response to the question, but I don't think that the questioner and the witness were on the same wavelength. And I certainly find absolutely no indication that there was an intentional effort to violate the agreement between counsel for the State and counsel for the defense.

(Mistrial Tr. p. 28-29). This Court finds the issue was properly preserved for appellate review and now turns to the allegations that appellate counsel was ineffective.

Ineffective Assistance of Appellate Counsel in Failing to Raise the Double Jeopardy Issue

In the alternative, Applicant argues that appellate counsel was ineffective for failing to raise the double jeopardy issue on appeal. This allegation is similarly denied as Applicant has failed to present sufficient evidence to prove deficiency or prejudice.

A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to

provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy." Jones, 463 U.S. at 754, 103 S. Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, the analysis is the same as in evaluating trial counsel: we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

This Court finds Applicant failed to meet his burden in proving appellate counsel was deficient in failing to raise the double jeopardy issue. Additionally, Applicant cannot make a showing of prejudice because there is not a reasonable probability that the double jeopardy argument would have been successful on appeal. Tisdale, 357 S.C. at 476, 594 S.E.2d at 167 (no prejudice where there is no merit to arguments that were not briefed). The trial court's finding concerning the prosecutor's intent is a factual one and will not be disturbed on appeal unless clearly erroneous. State v. Coleman, 365 S.C. 258, 616 S.E.2d 444 (Ct. App. 2005). Applicant

cannot show that Judge Keesley's ruling was clearly erroneous. In fact, it was well supported by the record and by statements of counsel for the State.

Finally, Applicant suffered no prejudice because the Court of Appeals conducted an Anders review and ultimately dismissed the appeal. The Anders procedure ensures that no meritorious issues are overlooked and that before dismissing the appeal that it has no merit.¹ Applicant's burden in proving appellate counsel ineffective is high because "it is reasonable to presume that when the court affirms an Anders appeal it has fully considered and rejected all potential issues that were apparent on the face of the record." Towbridge v. State, 45 So. 3d 484, 487 (Fla. Dist. Ct. App. 2010). This Court finds that the double jeopardy issue was without merit and would not have been successful had it been raised on appeal.

Failure to object to the introduction of the video and narration of the video by testifying witness(es)

Next, Applicant alleges Counsel were ineffective in failing to object to the confidential informant (CI) narrating the video of the controlled buy. During the trial, the confidential informant testified that he was cooperating with investigators and wore a camera hidden on his clothing which depicted him purchasing drugs from Applicant. Applicant argues that the CI's testimony was improper because he was essentially narrating the events as the video was played for the jury.

¹ In State v. McKennedy, 348 S.C. 270, 279, 559 S.E.2d 850, 856 (2002), the South Carolina Supreme Court outlined the Anders procedure as follows:

[A]ccording to Anders, the reviewing court is obligated to make a full examination of the proceedings on its own. After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal.' The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.

Counsel Chapman stressed how damaging the video was to Applicant's defense. It clearly showed him selling the drugs to the CI. Counsel Chapman explained that the parties reached an agreement to have the video played without any sound. She believed this to be beneficial to Applicant. Counsel Kirkland further explained the jury would not know he was a Mexican national if the sound was not played. He explained he did not want the jury to hear him speaking Spanish and that they hoped to chip away at the evidence anyway they could. Counsel Kirkland also noted that they agreed to let the State fast-forward parts of the video. This allowed Counsel to cast some doubt on the events that were not showed to the jury. Counsel Chapman and Kirkland did not see a meritorious objection to be made challenging the CI's testimony regarding the video. They also did not believe there was any objection to be made to suppress the video.

This Court finds Applicant failed to meet his burden on this allegation. Counsel were not deficient in failing to object to this line of testimony or in their handling of the video. Counsel's strategy in their handling of the video was perfectly reasonable. Further, this Court finds that any objection to the CI giving his account of what was happening on the video would have been without merit. See Rule 602, SCRE ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."). Here, the State certainly introduced sufficient evidence that the CI had personal, intimate knowledge of the drug deal captured on video. Finally, Applicant failed to show that an objection to the video's admission would be sustained. This allegation is denied and dismissed.

Failure to make all viable contemporaneous objections

At the hearing, Applicant informed the Court that it had not identified any further objections that it planned to use to support its case. This Court finds Applicant has abandoned this issue and it is therefore dismissed.

Having knowledge that the trial court was concerned with imposing the mandatory sentence and not asking the trial court to exercise discretion and sentence Applicant to a lesser term of years

Applicant failed to meet his burden in proving Counsel were ineffective in failing to ask Judge Keesley to exercise discretion in sentencing Applicant to the mandatory term of imprisonment. South Carolina Code Ann. § 44-5-370(b) provides “a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.” The sentence was dictated by the mandatory nature of the statute. Judge Keesley had no discretion to sentence Applicant to anything below twenty-five (25) years. Counsel cannot be held to be deficient for failing to request a sentence not within the statutory framework. Moreover, Judge Keesley would not have imposed a sentence contrary to the law, so Applicant has suffered no prejudice.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

III. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsels’ performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559,

563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30 day of May, 2017.

Robert E. Hood
ROBERT E. HOOD
Presiding Judge

Columbia, South Carolina

2017 JUN -2 AM 11:14
LISA M. CONER
CLERK OF COURT
LEWISTON SC

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

JUAN ARROYO, 354538,

Plaintiff,

vs.

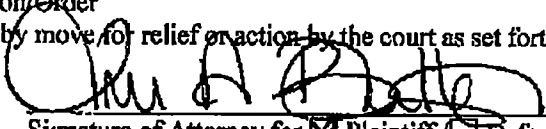
STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-32-1885

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 2147, Leesville, SC 29070 Phone: 803-908-3266 Fax _____ E-mail: blanchettelaw@gmail.com Other: _____		Defendant's Attorney: J. Clayton Mitchell, Bar No. _____ Address: PO Box 11549, Columbia, SC 29211 Phone: 803-734-3737 Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Rule 59, SCRCP Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant June 29, 2017 Date submitted			
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED AMOUNT DUE: \$ _____			

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1885

Juan Arroyo, #354538,)
Applicant,)
v.)
State of South Carolina,)
Respondent,)
_____)

MOTION PURSUANT TO
RULE 59(a) & (e), SCRCP

FILED
2015 OCT 13 11:20 AM
CLERK OF COURT

Pursuant to Rule 59(a) and (e) of the South Carolina Rules of Civil Procedure, Applicant would move before this Court for relief as follows.

PROCEDURAL HISTORY

Applicant was indicted during the September term of the State Grand Jury on seven counts, including trafficking heroin, possession with intent to distribute heroin, and conspiracy (2010-GS-47-4707).

On November 15, 2011, Applicant was called to trial in front of the Honorable William P. Keesley and a jury at the Lexington County Courthouse. As a result of testimony elicited from the State's witness, a mistrial was declared. Applicant was represented by Debra Chapman, Esquire, and Bradley Kirkland, Esquire.

On March 4, 2013, Applicant was retried in front of the Honorable William P. Keesley and a jury at the Lexington County Courthouse. Applicant was again represented by Debra Chapman, Esquire, and Bradley Kirkland, Esquire. On March 5, 2013, Applicant was found guilty as indicted. Judge Keesley sentenced Applicant to a mandatory term of twenty-five (25) years, from which a direct appeal was timely filed.

Benjamin John Tripp, of the South Carolina Office of Appellate Defense, perfected Applicant's appeal. Thereafter, the South Carolina Court of Appeals dismissed the appeal and

affirmed Applicant's conviction. State v. Arroyo, Op. No. 2014-UP-338 (S.C. Ct. App. filed Sept. 24, 2014). The Remittitur was issued on September 24, 2014. .

On May 22, 2105, an Application for Post Conviction Relief was timely filed.

Respondent submitted a Return on September 28, 2016. On March 24, 2017, Applicant, through counsel, filed an Amendment to his Application, which amended his Application by making the following claims:

1. Ineffective assistance of trial counsel for failure to ensure that Judge Keesley's comments to the jury regarding as state wide grand jury case were cured and/or failure to move for a mistrial.
2. Ineffective assistance of trial counsel for the handling of the plea negotiations with Applicant and the State. Specifically, failure to effectively communicate all plea offers to Applicant and the sentencing possibilities under such offers.
3. Ineffective assistance of counsel for failure to effectively make a double jeopardy argument at the second trial. Ineffective assistance of appellate counsel for failure to raise the issue on appeal.
4. Ineffective assistance of trial counsel for failure to object to the introduction of the video and narration of the video by testifying witness(es).
5. Ineffective assistance of trial counsel for failure to make all viable contemporaneous objections.
6. Ineffective assistance of trial counsel for having knowledge that the trial court was concerned with imposing the mandatory sentence and not asking the trial court to exercise discretion and sentence Applicant to a lesser term of years.

On April 18, 2017, an evidentiary hearing was conducted at the Lexington County Courthouse in front of the Honorable Robert E. Hood. Applicant was present and was represented by Tricia A. Blanchette, Esquire, and Jeremy A. Thompson, Esquire. The State was represented by J. Clayton Mitchell, Assistant Attorney General. At the close of the hearing, Judge Hood took the matter under advisement and later instructed the State to propose an Order.

On May 30, 2017, an Order of Dismissal was issued, which was filed on June 2, 2017. Applicant, via counsel, received a copy of the filed Order on June 21, 2017, from which this Motion follows.

ARGUMENT

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered and that the arguments and testimony of each witness is properly addressed. Applicant would further request that this Court review the full evidentiary hearing transcript, reconsider the standing Order of Dismissal, and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRPC.

June 29 2017
Lexington, SC

I so move,



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
Attorney for Applicant

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

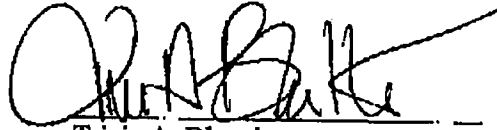
IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1885

Juan Arroyo, 354538,)
Applicant,)
v.)
State of South Carolina,)
Respondent,)

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States Mail this 29th day of June 2017, a copy of Motion Pursuant to Rule 59, SCRPC, J. Clayton Mitchell of the Attorney General's Office, at:

Office of the Attorney General
Att: J. Clayton Mitchell, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549


Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

June 29, 2017

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN CIVIL CASE

CASE NO. 2015 CP-32-1885

RECEIVED
7/2/17

JUAN ARROYO, #354538

STATE OF SOUTH CAROLINA

2017 JUL 14 PM 11:23

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : The motion to Alter and/or Amend is hereby denied.

After considering the arguments the Court has ruled...

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

This judgment was entered on 14th July 2017, and a copy mailed first class or placed in the appropriate attorney's box or 19th July 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Tricia A. Blanchette
PO Box 2147 Leesville, SC 29070
Jeremy Adam Thompson
PO Box 12891 Columbia, SC 29211

Melody Jane Brown
PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lisa M. Comer/jp

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Robert E. Hood, Presiding Judge

2015-CP-32-1885

RECEIVED

AUG 21 2017

S.C. SUPREME COURT

JUAN ARROYO, #354538,

Petitioner,

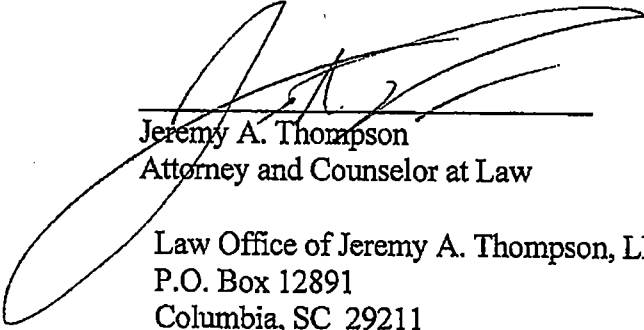
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Juan Arroyo, #354538, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed June 2, 2017, and received by counsel on June 20, 2017, and the Form 4 Order denying the Petitioner's Rule 59(e), SCRCP, motion filed July 14, 2017, and received by counsel on July 21, 2017, issued by the Honorable Robert E. Hood, presiding judge.



Jeremy A. Thompson
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555 Phone
803-779-2556 Fax
jeremyatlaw@yahoo.com E-mail

ATTORNEY FOR PETITIONER

This 17th day of August, 2017.

Other Counsel of Record:
James Clayton Mitchell, III, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Robert E. Hood, Presiding Judge

2015-CP-32-1885

RECEIVED
AUG 21 2017
S.C. SUPREME COURT

JUAN ARROYO, #354538,

Petitioner,

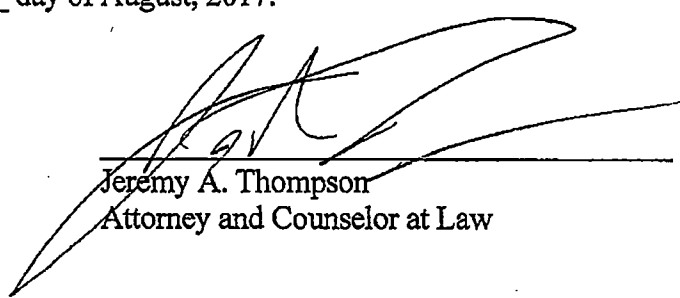
v.

STATE OF SOUTH CAROLINA,

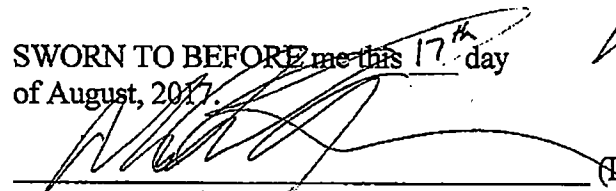
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, James Clayton Mitchell, III, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this 17th day of August, 2017.


Jeremy A. Thompson
Attorney and Counselor at Law

SWORN TO BEFORE me this 17th day
of August, 2017.


Notary Public for South Carolina

My Commission Expires: 7/10/2022

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Robert E. Hood, Circuit Court Judge

RECEIVED

MAR 22 2018

Appellate Case No. 2017-001742
Lower Court Case No. 2015-CP-32-1885

S.C. SUPREME COURT

JUAN ARROYO, #354538,

PETITIONER,

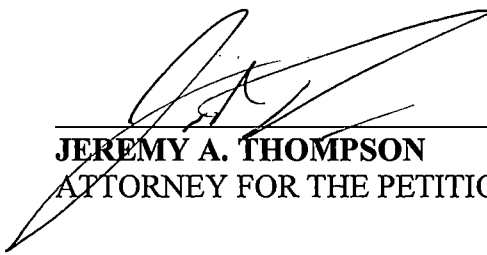
v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appendix in the above-entitled case has been served upon opposing counsel, James Clayton Mitchell, III, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by hand-delivery, this 22nd day of March, 2018.



JEREMY A. THOMPSON
ATTORNEY FOR THE PETITIONER

SWORN TO BEFORE me this 22nd day
of March, 2018.

Angela Carter (L.S.)
Notary Public for South Carolina
My Commission Expires: _____

My Commission Expires August 20, 2025