

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Thomas A. Russo, Circuit Court Judge

CHRISTOPHER OCAMPO,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-001087

APPENDIX

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) GENERAL SESSIONS
3) OF THE SEVENTH
4) JUDICIAL CIRCUIT
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STATE OF SOUTH CAROLINA,
Plaintiff,
vs.
CHRISTOPHER OCAMPO,
Defendant.

TRANSCRIPT OF RECORD
2017-GS-42-00621
2017-GS-42-00621A
2017-GS-42-00622
2017-GS-42-00622A

September 7, 2017
Spartanburg, South Carolina

B E F O R E:

HONORABLE R. KEITH KELLY, Judge.

A P P E A R A N C E S

SPENSER H. SMITH, ASSISTANT SOLICITOR
For The State

E. JOSHUA SCHULTZ, ESQUIRE
For The Defendant

Julie A. Ashbrook,
Circuit Court Reporter
Seventh Judicial Circuit

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

THE STATE VERSUS CHRISTOPHER OCAMPO

THE COURT: Good afternoon, ladies and gentlemen. Thank you for your patience. I know you've been here since 2 o'clock, just a few minutes after that, but we have as well. In fact, we started back at 1:30 taking care of some other matters. But we now find ourselves in need of a jury.

We are here in the matter of the State of South Carolina versus Christopher Ocampo. Mr. Ocampo is charged with two indictments with four criminal offenses.

Indictment 2017-0622 alleges that he did in Spartanburg County, South Carolina, on/or about January 23 of this year, while armed with a deadly weapon, commit the criminal offense of armed robbery. Count 2 of the same indictment alleges that he did on/or about January 23, 2017, while committing armed robbery, possess a firearm.

Indictment 2017-0621 alleges that Mr. Ocampo did in Spartanburg County, South Carolina, on/or about January 23 of 2017 commit the criminal offense of attempted armed robbery. And in Count two of that indictment, it is alleged that he did in Spartanburg County, South Carolina, on/or about January 23, 2017, commit the attempted armed robbery while in possession.

1 of a weapon during the commission of a violent crime.

2 I tell you again that the Defendant has entered a
3 plea of not guilty to both indictments, to all charges
4 in the indictment and under our system of justice he is
5 presumed innocent until proven guilty beyond a
6 reasonable doubt. The burden remains on the State of
7 South Carolina to prove him guilty beyond a reasonable
8 doubt. The indictments are nothing more than a piece of
9 paper that bring him before the Court for, for a trial.

10 Now, ladies and gentlemen, there are certain
11 questions, again, that I have to ask by state law. Mr.
12 Ocampo, would you stand, please, and face the jury just
13 for about ten seconds. (Complies.)

14 Okay, thank you. Is there any member of the jury
15 panel who is now or ever has been related to Mr. Ocampo?
16 If so, please stand.

17 (Whereupon, no juror stood.)

18 Is there any member of the jury panel who has a
19 close, personal or social relationship with Mr.
20 Christopher Ocampo? Is so, please stand. You know him
21 from work, school, recreation, however you might know
22 him.

23 (Whereupon, no juror stood.)

24 The following is a list of potential witnesses in
25 this case. Penny Wyatt, Nathan Cantrell, Jovan

1 Garcia-Sanchez, Robert Talanges, Tonya Bassel, Vyas
2 Pinal, Lanier -- Lathier -- I'm sorry, Lathier Graham,
3 Clifford Junkins, Latasha Mattison, William Schall,
4 Brandon Letterman and Michael Walsh.

5 Is there any member of the jury panel who is now
6 or ever has been related to any of those potential
7 witnesses in this case? If so, please stand.

8 (Whereupon, no juror stood.)

9 Is there any member of the jury panel who has a
10 close, personal or social relationship with any of those
11 potential witnesses? Is so, please stand.

12 (Whereupon, no juror stood.)

13 We'll ask the lawyers to introduce themselves.

14 MR. SMITH: My name is Spenser Smith. I work at
15 the Seventh Circuit Solicitor's office prosecuting
16 violent crimes and felony DUIs.

17 MR. SCHULTZ: Thank you, Your Honor. My name is
18 attorney Joshua Schultz. I represent Christopher
19 Ocampo. My office is directly across the street.

20 THE COURT: Thank you.

21 MR. SCHULTZ: Thank you, Your Honor.

22 THE COURT: Is there any member of the jury panel
23 who is now or ever has been related to either of the
24 lawyers in this case? If so, please stand.

25 (Whereupon, no juror stood.)

1 THE COURT: Is there any member of the jury panel
2 who is -- who has a close social or friendship
3 relationship with any of the lawyers? If so, please
4 stand.

5 Yes, ma'am your number, please.

6 JUROR 149: 149.

7 THE COURT: You know a witness?

8 JUROR 149: I know Josh.

9 THE COURT: Mr. Schultz?

10 JUROR 149: Yes, sir.

11 THE COURT: Would that interfere with your
12 ability to be fair and impartial?

13 JUROR 149: No, it would not.

14 THE COURT: Ma'am, you may stay. Anyone else?
15 (Whereupon, there was no response.)

16 Has any member of the jury panel ever sought
17 legal advice from either of these lawyers in any legal
18 matter? Just legal advice is fine.

19 Sir, your number?

20 JUROR 124: I have -- oh, it's 124.

21 THE COURT: Yes, sir.

22 JUROR 124: And I've used Mr. Schultz for legal
23 services.

24 THE COURT: Okay. Would that interfere with your
25 ability to be fair and impartial?

1 JUROR 124: No, sir.

2 THE COURT: Sir, you may stay. Anyone else?
3 Even if you didn't hire him, maybe a real estate closing
4 or anything.

5 (Whereupon, there was no response.)

6 THE COURT: Okay. Is there any member of the
7 jury panel who has a family member who is employed by
8 the Seventh Circuit Solicitor's office? If so, please
9 stand.

10 (Whereupon, no juror stood.)

11 Any member of the jury panel have a family member
12 employed in the law firm of Mr. Josh Schultz? If so,
13 please stand.

14 (Whereupon, no juror stood.)

15 Any member of the jury panel have a family member
16 or a friend employed in either the Seventh Circuit
17 Solicitor's office or the law firm of Mr. Schultz?
18 Please stand. A friend.

19 (Whereupon, no juror stood.)

20 Any member of the jury panel ever testified in a
21 case on behalf of the Seventh Circuit Solicitor's
22 office? If so, please stand.

23 (Whereupon, no juror stood.)

24 Any member of the jury panel, either yourself or
25 a family member or friend been prosecuted by the Seventh

1 Circuit Solicitor's office? If so, please stand.

2 Your number, please?

3 JUROR 169: 169.

4 THE COURT: 169. Would that interfere with your
5 ability to be fair and impartial?

6 JUROR 169: No, sir.

7 THE COURT: You may stay.

8 Any member of the jury panel ever been summoned
9 as a witness to testify in any case by Mr. Schultz, his
10 law firm? Please stand.

11 (Whereupon, no juror stood.)

12 Any member of the jury panel who is now or has
13 previously been a law enforcement officer? That
14 includes military police, SLED, City, County, you,
15 yourself, employed now or formerly? Please stand.

16 JUROR 58: 58.

17 THE COURT: Yes, ma'am.

18 JUROR 58: My father was in SLED as a lieutenant
19 with Horry Police Department in Horry County.

20 THE COURT: Okay. Would that interfere with your
21 ability to be fair and impartial?

22 JUROR 58: No, it would not, sir.

23 THE COURT: Yes sir, number?

24 JUROR 94: 94.

25 THE COURT: You were employed in Maryland

1 corrections?

2 JUROR 94: I was employed by the Department of
3 Corrections.

4 THE COURT: Would that interfere with your
5 ability to be fair and impartial?

6 JUROR 94: No, sir.

7 THE COURT: You may stay.

8 Yes, sir, your number?

9 JUROR 2: Number two. Was an officer in the
10 coast guard.

11 THE COURT: Would that interfere with your
12 ability to be fair and impartial?

13 JUROR 2: No.

14 THE COURT: Okay. Anybody else got a family
15 member who might be employed by law enforcement?

16 Yes, ma'am, your number?

17 JUROR 79: 79. My husband was a lieutenant over
18 at the City of Spartanburg narcotics and criminal
19 investigation division.

20 THE COURT: Would that interfere with your
21 ability to be fair and impartial?

22 JUROR 79: No.

23 THE COURT: You may stay.

24 Yes, sir.

25 JUROR 76: My dad works for the City.

1 THE COURT: Your number, sir?

2 JUROR 76: 76.

3 THE COURT: Would that interfere with your
4 ability to be fair and impartial?

5 JUROR 76: No, sir.

6 THE COURT: You may stay.

7 Any member of the jury panel either a volunteer
8 or financial contributor to any pro law enforcement
9 organization such as MADD, Sheriff's Association,
10 Trooper's Association and other such organizations?
11 Please stand.

12 (Whereupon, no juror stood.)

13 Is there any member of the jury panel who knows
14 anything at all about this case? If so, please stand.

15 (Whereupon, no juror stood.)

16 Does any member of the jury panel know of any
17 reason why he or she should not serve in this case?
18 Please stand.

19 (Whereupon, no juror stood.)

20 Anything from the State?

21 MR. SMITH: No, Your Honor.

22 THE COURT: From the Defense?

23 MR. SCHULTZ: No, sir.

24 THE COURT: Okay. We'll have the jury. Let's
25 see, 10 and 5.

1 MR. SCHULTZ: Ten for the State or ten for the
2 defense, Your Honor?

3 THE COURT: Ten for the defense.

4 MR. SCHULTZ: Yes, sir.

5 THE COURT: Yes, sir, 10 and 5 -- 5 and 10.

6 MR. SCHULTZ: Okay.

7 THE CLERK: As I call your name, will you please
8 come and stand facing the attorneys' tables. Number
9 178, Nicole Wilson.

10 (Whereupon, a white female comes forward.)

11 Says the State?

12 MR. SMITH: Please present the juror.

13 THE CLERK: Says the Defense?

14 MR. SCHULTZ: Please seat the juror.

15 THE CLERK: 89, Kristin James.

16 (Whereupon white female comes forward.)

17 What says the State?

18 MR. SMITH: Please present the juror.

19 THE CLERK: What says Defense?

20 MR. SCHULTZ: Please seat the juror.

21 THE CLERK: 63, Morgan Floyd.

22 (Whereupon, white female comes forward.)

23 What says the State?

24 MR. SMITH: Please present the juror.

25 THE CLERK: What says Defense?

1 MR. SCHULTZ: Please seat the juror.
2 THE CLERK: 93, Stewart Johnson.
3 (Whereupon, a white male comes forward.)
4 What says the State?
5 MR. SMITH: Please seat the juror.
6 THE CLERK: Says Defense?
7 MR. SCHULTZ: Please seat the juror.
8 THE CLERK: 58, Cheryl Elliott.
9 (Whereupon, white female comes forward.)
10 Somewhat says the State?
11 MR. SMITH: Please present the juror.
12 THE CLERK: Says Defense?
13 MR. SCHULTZ: Please excuse the juror.
14 THE CLERK: 163, Richard Telleri.
15 (Whereupon, a white male comes forward.)
16 What says the State?
17 MR. SMITH: Please present the juror.
18 THE CLERK: What says Defense?
19 MR. SCHULTZ: Please seat the juror.
20 THE CLERK: 149, Lisa Shea.
21 (Whereupon, white female comes forward.)
22 THE CLERK: What says the State?
23 MR. SMITH: Please excuse Ms. Shea.
24 THE CLERK: 164, Shelbygene Thorn.
25 (Whereupon, a white female comes forward.)

1 What says the State?

2 MR. SMITH: Please excuse Ms. Thorn.

3 THE CLERK: 57, Wendy Elder.

4 (Whereupon, a white female comes forward.)

5 Says the State?

6 MR. SMITH: Please present the juror.

7 THE CLERK: What says Defense?

8 MR. SCHULTZ: Please excuse the juror.

9 THE CLERK: 124, Robert Norris.

10 (Whereupon, a white male comes forward.)

11 THE CLERK: Says the State?

12 MR. SMITH: Please excuse the juror.

13 THE CLERK: 120, Harold Murphy.

14 (Whereupon, a black male comes forward.)

15 What says the State?

16 MR. SMITH: Please excuse this juror.

17 THE CLERK: 155, Robert Smythe.

18 (Whereupon, a white male comes forward.)

19 What says the State?

20 MR. SMITH: What was the number? I'm sorry.

21 THE CLERK: 155.

22 MR. SMITH: Please present the juror.

23 THE CLERK: What says the Defense?

24 MR. SCHULTZ: Please seat the juror.

25 THE CLERK: 147, Amber Seay.

1 (Whereupon, a white female comes forward.)

2 What says the State?

3 MR. SMITH: Please present the juror.

4 THE CLERK: What says Defense?

5 MR. SCHULTZ: Please seat the juror in this case.

6 THE CLERK: 151, Benjamin Smith.

7 (Whereupon, a white male comes forward.)

8 What says the State?

9 MR. SMITH: Please seat the juror.

10 THE CLERK: What says the Defense?

11 MR. SCHULTZ: Please seat the juror.

12 THE CLERK: 81, Labra Eber Hernandez.

13 (Whereupon, a Hispanic male comes forward.)

14 What says the State?

15 MR. SMITH: Please present the juror.

16 THE CLERK: What says Defense?

17 MR. SCHULTZ: Please seat the juror.

18 THE CLERK: 170, Gary Underwood.

19 (Whereupon, a white male comes forward.)

20 What says the State?

21 MR. SMITH: Please present the juror.

22 THE CLERK: What says Defense?

23 MR. SCHULTZ: Please seat the juror.

24 THE CLERK: 70, Christopher Glenn.

25 (Whereupon, a white male comes forward.)

1 What says the State?

2 MR. SMITH: Please present the juror.

3 THE CLERK: What says Defense?

4 MR. SCHULTZ: Please seat the juror.

5 THE CLERK: 71, Thomas Gold.

6 (Whereupon, a white male comes forward.)

7 What says the State?

8 MR. SMITH: Please present the juror.

9 THE CLERK: What says Defense?

10 MR. SCHULTZ: Please seat the juror.

11 THE CLERK: And this is for the alternate. 94,

12 John Kaskabas.

13 (Whereupon, a white male comes forward.)

14 What says the State?

15 MR. SMITH: Please present the juror.

16 THE CLERK: What says Defense?

17 MR. SCHULTZ: Please seat the juror.

18 THE COURT: Any matters from the State?

19 MR. SMITH: No, Your Honor.

20 MR. SCHULTZ: No, sir.

21 THE COURT: Okay. Madam Clerk, will you swear
22 this jury to try this case.

23 THE CLERK: Yes, sir. Please stand and raise
24 your right hands. (All comply.)

25 Do you solemnly swear in the case about to be

1 tried to truly try the issues joined in this case and a
2 true verdict rendered according to the law and evidence
3 so help you God?

4 THE JURY: I do. (All confirm.)

5 THE COURT: Thank you. Ladies and gentlemen who
6 were not selected, I have some very bad news for you,
7 and that is that this is the last trial of the week. I
8 know you're disappointed. I can see it on your faces.

9 Thank you so very much for your help this week
10 and for your patience and for being kindly in your jury
11 service. I appreciate that very much. We all do. We
12 have to have everyone here to do the trials and we have
13 to have everybody here on time and present and we
14 appreciate you. You've been great.

15 I will invite you to stay with us. We're gonna
16 continue to work a little bit today. And we'll
17 certainly be working tomorrow. This is your courthouse
18 and mine. I can't say that every week because I'm not
19 in the same county, but I'm a Spartanburg County
20 resident. So anyway, it's our courthouse so we have
21 open courtrooms, so you're certainly welcome to stay and
22 watch your judicial system at work. If you don't want
23 to stay in our courtroom, Judge Hayes is across the way
24 and Judge Cole is across the way. So, please, you're
25 welcome to stay and watch, but you're not going to be

1 required to do so.

2 If you can't do it -- if you can't stay this
3 time, please come some other time. I don't own this
4 courthouse, I just have the privilege of working in this
5 courthouse and I am very appreciative of that.

6 All right. With that, I'm gonna release you for
7 the week. You don't have to call that magic number and
8 you don't have to come back tomorrow, but you're
9 certainly welcome to do so.

10 Pay vouchers, Madam Clerk, do they get them in
11 the mail or what do you do?

12 THE CLERK: They'll be mailed, yes, sir.

13 THE COURT: Okay. Again, it's different in every
14 county. Some counties just pay cash, so it's gonna be
15 mailed to you. And when you get that pay voucher, you
16 be sure and get one of your local law enforcement to go
17 with you because it's a million-dollar check and you
18 don't want to get mugged on the way. All right? I
19 don't know what it is, but it won't be a million
20 dollars, all right? Thank each of you.

21 (Whereupon, the jury panel leaves the courtroom
22 at 4:41 p.m.)

23 Okay. While they're going out, let's see the
24 lawyers. Let's see where we are. It's 20 minutes to 4.

25 (Whereupon, a bench conference was held off the

1 record.)

2 THE COURT: All right. I was discussing with the
3 lawyers about starting this case right now. They are
4 wanting to start the case first thing in the morning. I
5 take the bench at 9 o'clock. Everyone knows that. And
6 they want to start in the morning.

7 They indicate that this is not going to be a very
8 long trial and we will be sure to finish it tomorrow,
9 which would include the time for deliberations. But
10 they're assuring that the case will move quickly. They
11 want to start first thing. I'm gonna go with them on
12 that with the understanding that we are going to start
13 promptly at 9:00 a.m.

14 Having said that, there's no number for you to
15 call. I need everybody here before 9 -- 8:59 a.m.,
16 please. I need everybody here before 8:59. I will
17 already be here, as you all know. We've been together
18 all week. I'm here a little after eight every morning.
19 The coffee's good. Have some coffee, have some soda.
20 Have whatever you want.

21 Sometimes on Fridays around here one of the
22 secretaries or one of the bailiffs or somebody should
23 have opened up a box of doughnuts. Now, I stay away
24 from them, but there might be a box of doughnuts or
25 something in the morning, or homemade brownies or

1 something like that. But please be here sometime
2 between 8:30 and 8:59. We're gonna start this trial
3 immediately at 9 a.m. tomorrow morning.

4 When we return tomorrow, Ms. Morgan Floyd, Juror
5 63, ma'am, where are you?

6 JUROR 63: (Raises hand.)

7 THE COURT: Ms. Floyd, unless you have a violent
8 objection, it is my custom to alternate between a
9 forelady and a foreman and it's time for a forelady. I
10 would ask you to serve. Are you okay with that?

11 JUROR 63: Yeah.

12 THE COURT: Great. Tomorrow morning, ma'am, if
13 you'd be kind enough to sit in this chair on the very
14 end, that is the forelady's seat.

15 And, sir, you are in the correct seat. That's
16 the alternate's seat, so I would ask that you two always
17 remain in those seats. Everyone else can sit on the
18 front, the back. You can change seats each and every
19 time you come in here, I don't care, but my foreperson
20 and my alternate, please seat in the assigned seat.

21 All right. Do you want them in the morning here?

22 THE BAILIFF: In this room right there.

23 THE COURT: Okay. He's gonna show you where this
24 room is. Some of you know and some of you don't, but
25 he's gonna take you out and show you right here where to

1 be in the morning. And then from there you can be
2 dismissed for the day. All right. Madam Forelady, take
3 the jury out.

4 (Whereupon, jury leaves courtroom at 4:45 p.m.)

5 THE COURT: All right. We're going to step right
6 out here. Sir, you stay where you are.

7 (Whereupon, bench conference was held off the
8 record.)

9 THE COURT: Okay. Gentleman, do we have any
10 pretrial? Let the record reflect that the jury has gone
11 for the day and is no longer in the courtroom. Do we
12 have any pretrial motions from the State?

13 MR. SMITH: None from the State, Your Honor.

14 THE COURT: From the Defense? ~

15 MR. SCHULTZ: Thank you, Your Honor. May it
16 please the Court? I have a motion to sever the two
17 cases here. If I could, please, approach the bar and
18 receive these documents there.

19 THE COURT: Sure.

20 MR. SCHULTZ: Okay. Thank you, Your Honor. Your
21 Honor, what I have before me are the two indictments.
22 As the Court of General Sessions convened February 23rd,
23 grand jury present upon their oath Count 1 for attempted
24 armed robbery on my client and also a possession of a
25 weapon during the commission of a violent crime. The

1 State alleges that these two counts happened on January
2 23rd.

3 And I'm also looking at another indictment here.
4 The same grand jury convened and they indicted my client
5 for two counts, one of armed robbery and one of
6 possession of a weapon during the commission of a
7 violent crime. The State is alleging on these two
8 indictments, and as well as the warrants too, that my
9 client did these two things on the same date. However,
10 it is my understanding that these occurred at two
11 separate times, although within apparently a 24-hour
12 span.

13 I would make a motion to sever these two cases.
14 We are prepared to try, obviously, both but I think it
15 would be in the interest of justice and also due process
16 that the, the courts or make or elect for the Solicitor
17 or the State to try one or the other.

18 There's a couple reasons why I would make that
19 motion to sever. One, to protect the record. And also
20 protect my client's interest as far as causing undue
21 confusion in the jurors' mind. And, also, that perhaps
22 the jurors would tend to believe that two incidents
23 happening would create, like I said, undue confusion or
24 unnecessary prejudice on the jurors part against my
25 client.

1 So I'm asking that the State be allowed or elect
2 to try at least one of these, these cases. But, again,
3 Your Honor, just for the record I'm prepared to try
4 both, but I believe that in the interest of justice and
5 to my client and in the light most favorable to the
6 State, I believe that the State should try one of these.

7 And we're prepared to try either the attempt
8 armed robbery and also the other count that goes with
9 this or the armed robbery and also the other count that
10 goes with that as well. But, again, Your Honor, I want
11 to make the record clear I'm moving to sever these two
12 indictments at this time. Thank you.

13 THE COURT: Solicitor.

14 MR. SMITH: Your Honor, it's the State's position
15 that they should be tried together. I just sent your
16 law clerk *State versus Cutro*. I believe that's a case
17 on point.

18 Quoting from that it says: Generally when an
19 offense is charged and separate indictments are the same
20 general nature involving connected transactions closely
21 related in time, place, and character, the trial judge
22 has the discretion to order the indictment to try it
23 together so long as the defendant's rights aren't
24 prejudiced.

25 And then it goes into a discussion on Lyle

1 situations in which we're trying to allege bad acts that
2 may not have been adjudicated for situations in which is
3 joined or in a case. Talks about there's additional
4 procedural safeguards because if the jury found -- or
5 there was -- if the judge, Your Honor, if you decided to
6 do a directed verdict on the first armed robbery case,
7 then there would be a mistrial potentially for
8 prejudice.

9 But as far as the connections between it, the
10 clothing, is it the same? And we're talking within 12
11 hours that these happened. The suspect vehicle's the
12 same. The three individuals involved are the same. The
13 contents inside the car are found after the attempted
14 armed robbery matched contents that were stolen in the
15 initial armed robbery. I don't think there's any risk
16 for confusion or anything like that.

17 But, Your Honor, *State versus Cutro*, obviously it
18 leaves it in your discretion whether to do this. But if
19 you read *State versus Cutro*, the facts in that, it's
20 nowhere near as closely related as this specific
21 situation. That's multiple different shaking baby cases
22 from a daycare that occurred way different times from
23 each other.

24 But there's not really the issue of prejudice
25 because this is not something that has not been gone

1 through the judicial filter. This is a case that's been
2 indicted by the grand jury, warrant issued by a judge.
3 So there already is a level of verification on the
4 charge that shouldn't create any prejudice towards the
5 defendant. We just ask to try them together.

6 Obviously judicial efficiency we would end up
7 retrying the first case on the second one, or we
8 basically have to go into all of the facts of the second
9 one because the only way that they got the car, which
10 they got all the contents of the first one, is it was
11 followed by a person who witnessed the second armed
12 robbery occur.

13 So I don't really know if there's a way both
14 practically to prevent the jury from understanding that
15 two armed robberies occurred even if we severed the
16 cases. I think it would still require that we go into
17 that. And I just ask that we do them together.

18 THE COURT: Okay. That motion is under
19 advisement. Do you have anything else?

20 MR. SCHULTZ: I do, Your Honor. I think it would
21 be probably pretty easy and I think it would create --
22 and I think it would be in the interest of judicial
23 economy to try the armed robbery with it. And I think
24 it would probably be in the interest of my client as
25 well.

1 The facts involving the armed robbery, apparently
2 the State is alleging and probably the State is going to
3 present this. I don't know if they are or not, but
4 there is a video of this alleged incident there. They
5 have apparently a corroborating witness with that. And
6 I think to just focus on that I think would be the key
7 thing that I'm making this motion to sever on.

8 The Court is probably well aware that tomorrow is
9 the last day of the term. Hopefully this won't go into
10 Saturday, but I think it would probably be not only in
11 the interest of judicial economy, but to also create no
12 prejudice or undue prejudice to my client to just try
13 one. That would make everything clean. And I think
14 that would be in the interest of everybody involved.

15 THE COURT: Okay. That's under advisement. Do
16 you have another motion?

17 MR. SCHULTZ: I do, Your Honor.

18 THE COURT: Okay.

19 MR. SCHULTZ: If it pleases the Court. Your
20 Honor, my understanding is that there's three people
21 charged with this crime -- crimes. My client, a
22 gentleman -- well, Chris Ocampo, who is my client,
23 another gentleman who was -- who just entered a guilty
24 plea, I believe, about an hour-and-a-half ago, and also
25 another gentleman, who has not entered a plea nor has

1 asserted his right to a jury trial. That individual is
2 represented by Mr. Morin. And I believe his name is
3 Jovan Garcia. And he, to my understanding, is going to
4 testify against Mr. Ocampo in the State's case in chief.

5 My motion would be to -- well, it will be
6 twofold. Number one, to reveal Mr. Garcia's past
7 record. I know Mr. Garcia apparently is an illegal,
8 recognized a legal immigrant right now. I believe his
9 status has changed since all these people were arrested
10 back when this happened earlier on in the year, but I
11 wanted to see if, a, he has a record; and, b, if the
12 State has made any promises, guarantees or anything to
13 him in order for him to compel or get his testimony to
14 cooperate against my client.

15 So my motion would be to reveal any deals that
16 the State has made against Mr. -- with Mr. Garcia.

17 THE COURT: Solicitor.

18 MR. SMITH: Your Honor, the State hasn't made any
19 deals and he spoke with me without a proffer.

20 THE COURT: Does he have a past record?

21 MR. SMITH: I'm pulling that up right now, Your
22 Honor, but I don't believe he does. No, these are his
23 first arrests.

24 THE COURT: Okay. The Solicitor is saying
25 there's no deal and this is his first arrest.

1 MR. SMITH: Mr. Morin is present if you would
2 like to ask him, but...

3 THE COURT: Do you want to confer with Mr. Morin?

4 MR. SCHULTZ: I've known Mr. Morin for a long
5 time and I take Mr. Smith at his word as well. So I
6 just want to make the record clear, there's no deals as
7 far as no guarantees that was made to the cooperating
8 witness against my client.

9 MR. SMITH: That's correct, Your Honor.

10 THE COURT: That's the -- there's no deal.

11 MR. SCHULTZ: All right.

12 THE COURT: And Mr. Garcia, they say, this is his
13 first arrest.

14 MR. SCHULTZ: In the event, Your Honor -- that
15 would conclude my motion on that. In the event that the
16 gentleman that they just offered a guilty plea in front
17 of Your Honor a couple hours ago testifies in the
18 State's case in chief, I would also make a similar
19 motion at this point. I do believe that Cesar does have
20 a record and I would ask that the State produce his
21 record as well. And also to reveal any deals that the
22 State may make with that gentleman.

23 THE COURT: I'll tell you what his deal was. His
24 deal was 10 to 20, a cap of 20. Anywhere between 10 and
25 20.

1 MR. SMITH: Yeah. Your Honor, first off, I
2 didn't put him on my witness list, so I don't even know
3 if you'd let me call him. I haven't talked to him.
4 Right now I don't have any plans of using him, but that
5 is correct. And we dismissed one of the possession of a
6 weapon during a violent crime charge with a concurrent
7 recommendation. He has a prior record of a petit
8 larceny from 2015.

9 THE COURT: Okay. He has a petit larceny. The
10 deal was 10 to 20.

11 MR. SCHULTZ: So right now the State does not, I
12 guess, plan to offer him as evidence or a witness in the
13 case of chief?

14 THE COURT: I was trying to see if I wrote it
15 down. I wrote it down when I took the plea. It's 10 to
16 20. Yeah, 10 to 20.

17 MR. SMITH: Your Honor, if I may? We've offered
18 Mr. Ocampo something in the case. I won't go into it
19 for Your Honor, but --

20 THE COURT: No, I don't want to know that.

21 MR. SMITH: -- he needs to plead today if he
22 wants the offer. It'll be withdrawn after today. If we
23 show up tomorrow to try the case, there'll be no offer.

24 MR. SCHULTZ: We understand that, Your Honor.
25 Your Honor, if it pleases the Court, I have a couple

1 more things.

2 THE COURT: Sure.

3 MR. SCHULTZ: Your Honor, I know Mr. Ocampo's
4 case has been called right now, and I've alerted him to
5 the fact that his bond under the law is at this point
6 distinguished. I know different judges in the circuit
7 and different judges in the state have different
8 policies as far as whether to escort somebody into
9 custody tonight.

10 Mr. Ocampo has been an ideal candidate on home
11 detention. He's done everything that he needs to do on
12 home detention. I think he served several months in
13 jail, Spartanburg County jail, on this charge. He's
14 been very nice to me and my office and everything. I
15 can't say enough good things about him.

16 He's a very strong Christian. And I think his
17 belief is getting him through this very difficult time.
18 But, like I said, Your Honor, he's a citizen of this
19 country. He was born in Los Angeles. And I think he
20 has a small prior record, Your Honor. But I would ask
21 that his bond be extended at this point and that he not
22 be escorted into custody today at the call of the case.

23 And, Your Honor, just also for the record, Mr.
24 Ocampo met with Mr. Smith last week. And under a
25 proffer, he presented some testimony to Mr. Smith and I

1 was present as well. I want to make sure that that is
2 not going to be used against him either if he testifies
3 or if he doesn't testify. I do not believe that they
4 can use that against him because I think it was all
5 covered in proffer, but out of an abundance of caution,
6 I would like to make that motion at this point.

7 THE COURT: All right. Well, let's talk about
8 the proffer first. Yes, sir.

9 MR. SMITH: Yes, sir. Your Honor, the person
10 that was present during that was Blythe Walters. Again,
11 she's not on my witness list. I wouldn't be able to get
12 his statement in through my own recollection and I don't
13 intend to call her. We're not gonna use anything. We
14 haven't done any investigation in the case off of
15 anything that came from that proffer. It essentially
16 confirms what Mr. Garcia Sanchez had already told us.

17 THE COURT: All right. They're not gonna use it.

18 MR. SCHULTZ: Thank you, Your Honor.

19 THE COURT: Okay. As to the bond, no, sir, I
20 can't do that. When your case is called, your bond is
21 extinguished. He's in custody as he sits there.
22 Anything further?

23 MR. SMITH: Nothing from the State, Your Honor.

24 MR. SCHULTZ: Nothing from the Defense at this
25 time, Your Honor.

1 THE COURT: Do you want to talk for a minute with
2 your client?

3 MR. SCHULTZ: I do, Your Honor.

4 THE COURT: Okay.

5 (Whereupon, a discussion was held off the record
6 between counsel and client.)

7 MR. SCHULTZ: Your Honor, the only thing I have
8 is that in my investigation of the case and it's
9 continuing things and Mr. Ocampo, I do not believe at
10 this point that I have any further pretrial motions of
11 any length, but I will let the Court know first thing in
12 the morning if I find something that is particularly
13 relevant to this case as far pretrial goes. But at this
14 point I did not plan on presenting any pretrials in the
15 morning. I think we should be able to get going around
16 9 o'clock.

17 THE COURT: Well, it won't be around nine, it'll
18 be at nine.

19 MR. SCHULTZ: Yes, sir.

20 MR. SMITH: Your Honor, just for timing. I mean,
21 if something comes up I'll be here at 8:30 if we need to
22 take up any motions, but as far as the State is not
23 intending to offer anybody who's going to ID him other
24 than the defendant that was inside of the car with him.
25 There's no photo lineup. And we're not intending to use

1 any of his statements that he gave to law enforcement.

2 THE COURT: Okay. Well, let's make sure that the
3 jail transports Mr. Morin's client.

4 MR. SMITH: Yes, sir.

5 THE COURT: Let's make sure everybody's in place.
6 And I'll be here at 8 o'clock, 8:05, something like,
7 like always. You know where I am. Everybody here
8 probably has my cellphone number, but I'll be here if we
9 need to talk, but we're gonna start at nine.

10 MR. SCHULTZ: We understand, Your Honor. Thank
11 you very much.

12 THE COURT: Your client, he's got about 42
13 minutes if he wants to think a little bit.

14 MR. SCHULTZ: Thank you, Your Honor.

15 THE COURT: Do you need us to hang on a few
16 minutes?

17 MR. SCHULTZ: Okay. Mr. Ocampo says he wants to
18 talk. Would it be appropriate, Your Honor, for me and
19 him to go in the general room, Your Honor?

20 THE COURT: I don't know who's over there. I
21 tell you what I can do, is we've got an officer here.
22 We can make -- there's no one outside this room is
23 there?

24 THE DEPUTY: No, sir.

25 THE COURT: Do you want to go in this jury room

1 right here?

2 MR. SCHULTZ: Yes, sir.

3 THE COURT: All right. I'll stay in the
4 courtroom. One of these officers will escort you in
5 there, sir.

6 MR. SCHULTZ: Thank you, Your Honor.

7 (Whereupon, a recess was had in this case from
8 4:14 p.m. - 4:42 p.m.)

9 MR. SCHULTZ: We appreciate the Court's patience,
10 Your Honor.

11 THE COURT: Yes, sir, you're welcome.

12 MR. SMITH: Judge, do you have the indictments?

13 THE COURT: I do have the indictments. His wife
14 is not here. Do you want her or did she leave?

15 MR. SCHULTZ: Can I go get her, Judge?

16 THE COURT: Yeah. Stick your head out and see if
17 she's here.

18 Okay. We're here in the matter of the State of
19 South Carolina versus Christopher Ocampo, 2017-0622.
20 Has he been sworn, Madam Clerk?

21 THE CLERK: No, sir, he hasn't.

22 THE COURT: He hasn't?

23 THE CLERK: No. Raise your right hand, please.

24 THE DEFENDANT: Oh, I'm sorry.

25 THE CLERK: That's okay. (Complies.)

1 Do you solemnly swear that the testimony you're
2 about to give will be the truth, the whole truth and
3 nothing but the truth so help you God?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Mr. Ocampo in 2000 -- you are
6 Mr. Christopher Ocampo?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Sir, in 2017-0622, the State says
9 that in Count 1, that you did in Spartanburg County,
10 South Carolina, on or about January 23rd of 2017, while
11 armed with a deadly weapon or while alleging either by
12 actions or words that you were armed using a
13 representation of a deadly weapon or any object which a
14 person present at the time reasonably believed to be a
15 deadly weapon, feloniously took from the person or
16 presence of Tanya Bustle by means of force, violence
17 and/or intimidation goods or monies, such goods or
18 monies being described as a sum of money belonging to
19 Shell gas station with the intent to deprive the owner
20 permanently of the property in violation of state law.

21 In Count 2 of the same indictment, it's alleged
22 that you did in Spartanburg County, South Carolina on
23 the same day, possess a firearm or visibly display what
24 appeared to be a firearm during the commission of a
25 violent crime, that being armed robbery. That

1 indictment was presented to the grand jury of
2 Spartanburg County and a true bill was returned.

3 As to the armed robbery, I understand that you
4 are offering to plead as indicted. It carries with it
5 from 10 years up to 30 years. There is a recommendation
6 by the State written here and it says a cap of 20?

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

8 MR. SCHULTZ: Yes, sir.

9 THE COURT: Okay. So the recommendation on this
10 one is a cap of 20 years. Do you understand what I
11 said, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And as to the Count 2, which is the
14 possession of a weapon during a violent crime, I
15 understand you're pleading as indicted. It's
16 non-violent. It carries with it up to five years.
17 There's the same recommendation of a cap of five. That
18 would be a cap of five on that. Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: On Indictment 2017-0621, the State
21 says that you did in Spartanburg County, South Carolina
22 on/or about January 23 of 2017, while armed with a
23 deadly weapon or while alleging either by actions or
24 words that you were armed by using a representation of a
25 deadly weapon, or any object which a person present at

1 the time reasonably believed to be a deadly weapon,
2 feloniously attempted to take from the person or
3 presence of Latosha Mathieson by means of force or
4 intimidation goods or monies of Family Dollar with the
5 intent to deprive the owner permanently of the property
6 in violation of state law.

7 In that same indictment, Count 2 alleges you did
8 in Spartanburg County, South Carolina, on the same date,
9 possess a firearm or visibly display what appeared to be
10 a firearm during the commission of a violent crime, that
11 being attempted armed robbery in violation of state law.
12 That matter was true billed by the grand jury.

13 As to the attempted armed robbery, you're
14 pleading as indicted. It is violent and it is most
15 serious for future sentencing purposes. I don't believe
16 I told you that on 2017-0622. It also is violent and
17 both serious for sentencing purposes.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: It carries with it up to 20 years.
20 There is a recommendation by the government of a cap of
21 20 years. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And as to Count 2, the possession of
24 a weapon during a violent crime, carries up to five
25 years with it. It is non-violent. You're pleading as

1 indicted, and there's the same recommendation by the
2 government. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Campo -- Mr. Ocampo there is --
5 there are certain rights you must waive and give up to
6 enter a plea to these indictments.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You have a right to a trial by jury
9 and you know that we have selected a jury and we have
10 sworn that jury to try your case.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And they will be here in the morning,
13 as you well know. Do you wish now to waive your right
14 to a trial by jury?

15 THE DEFENDANT: Like not to do it?

16 THE COURT: Yes, not to do it.

17 THE DEFENDANT: Yeah, I don't want to do it.

18 THE COURT: You don't want a trial by jury?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. Sir, you have the right to
21 remain silent. Do you give up that right?

22 THE DEFENDANT: Um, yeah.

23 THE COURT: Okay. You have the right ---

24 MR. SCHULTZ: Yes, sir.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You have the right to call any
2 witness you choose up here to this witness stand to
3 testify for you. And you have the right to have your
4 lawyer cross-examine, confront any witness who would
5 testify against you. Do you give up that right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir, understanding your rights and
8 having waived them, how do you offer to plead on
9 2017-0621A, that is the possession of a weapon during a
10 violent crime?

11 THE DEFENDANT: Guilty.

12 THE COURT: And 2017-0621, which is Count 1,
13 which would be the attempted armed robbery?

14 THE DEFENDANT: Guilty.

15 THE COURT: And on 2017-0622, the armed robbery,
16 how do you wish to plead?

17 THE DEFENDANT: Guilty.

18 THE COURT: And on Count 2 of that same
19 indictment, 0622A, which is possession of a weapon
20 during a violent crime, how do you plead?

21 THE DEFENDANT: Guilty.

22 THE COURT: Sir, do you plead guilty to these
23 offenses because you are guilty of them?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you plead guilty freely?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you do so voluntarily?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you do so after much talk?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Sir, did anyone pressure you in
7 anyway to plead guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Now, I know you had some time to
10 speak with your lawyer and you've had some time to speak
11 with your wife.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: But did either of them pressure you
14 to do this?

15 THE DEFENDANT: No, sir.

16 THE COURT: Is it true that it's your decision?

17 THE DEFENDANT: It's my decision, sir.

18 THE COURT: Okay. Sir, you've been represented
19 by Mr. Schultz. Have you had sufficient time to speak
20 with him?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did he answer your questions?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did he share all of the discovery
25 materials with you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you completely satisfied with his
3 services?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Sir, has he done everything he
6 possibly can for you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: We have these things called
9 post-conviction relief hearings and sometimes people
10 tell me that their lawyer made them do something or
11 either that their lawyer didn't do something. So let me
12 ask you, do you have any complaints at all about Mr.
13 Schultz, sir?

14 THE DEFENDANT: No, sir, I love him.

15 THE COURT: You love him, okay.

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. Please listen to the
18 Solicitor.

19 MR. SMITH: Thank you, Your Honor. Both of these
20 incidents occurred on January 23rd of 2017. I know
21 we've heard previously it was Jovan Garcia-Sanchez,
22 Cesar Martinez-Mendez and Christopher Ocampo. The three
23 of them had gotten together early in the night to do
24 drugs, marijuana, methamphetamine and Xanax.

25 What I understand, Cesar came up with the idea to

1 hit a lick. And they went and picked up a shotgun, then
2 they went to Walmart and shoplifted other things that
3 were then used in the crime. Air soft pistols, blue
4 gloves. And they also had a large amount of black
5 clothing as well.

6 The first place that they hit was the Shell Food
7 Mart here in Spartanburg County around 5:15 in the
8 morning. Mr. Ocampo went in with a shotgun, which was a
9 real weapon, and he pointed it at the clerk while Jovan
10 emptied the register that she had handed over to them.
11 And then they fled. They got a description of a silver
12 Mustang in that car -- or in that case, Your Honor.

13 They then went to the Family Dollar around 1
14 o'clock in the afternoon. And, again, Mr. Ocampo had
15 the shotgun. Cesar went in on that one and Jovan stayed
16 in the Mustang. That one the clerk realized what was
17 happening, saw the clothing they were wearing, saw the
18 long gun and actually ran out of the store before the
19 robbery happened, but it was obvious what their
20 intention was. And then she hid in the woods until law
21 enforcement arrived.

22 There was a witness, Ms. Penny Wyatt, who saw
23 what was happening. She followed in behind the silver
24 Mustang. Called law enforcement. Was on the phone with
25 9-1-1 until they were able to take over and do a traffic

1 stop on that Mustang.

2 Mr. Ocampo was in the passenger's seat dressed in
3 black. Still had a white and black bandana on him when
4 he was pulled over. He also had some coins that fell
5 out of his pocket that were taken from the first armed
6 robbery. There was 50 shotgun shells in the backseat.
7 The shotgun was found in the trunk.

8 There was a very large amount of U.S. currency on
9 the backseat and all kinds of other items both
10 consistent with what was seen on videotape and with what
11 was taken. There was a deposit bag taken in the first
12 armed robbery. That was found in there, complete with
13 the deposit slips from the gas station to BB&T.

14 Your Honor, he has a prior record. His prior
15 record is a possession of controlled substance. I know
16 you already sentenced Mr. Martinez-Mendez. Their
17 records are very similar, very light records. I guess
18 as far as differentiating him, Mr. Ocampo is the person
19 who had a real weapon in both of these cases and entered
20 the store in both of these cases.

21 THE COURT: Sir, do you hear what the Solicitor
22 told me?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is that true?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: The Court accepts your plea as being
2 freely, intelligently and voluntarily given with the
3 sound advice of an excellent lawyer. Mr. Schultz?

4 MR. SCHULTZ: Thank you, Your Honor. May it
5 please the Court. First of all, I'd like to put a
6 couple things on the record as far as the delay in this
7 case.

8 Mr. Ocampo is on home detention right now and
9 it's a very, very difficult decision for a young man,
10 like yourself, to do this. But he is taking
11 responsibility like a man does. And I'm proud of him
12 for doing that. And I think he's doing this in the best
13 interest of not only himself, but also his wife and also
14 his child. He dearly loves his child. And he's very
15 strong in faith as well.

16 He's expressed to me several times how strong in
17 Christ and the Christian faith that he is. In fact, him
18 and I, you know, we appreciate the Court letting us do
19 this. And a couple minutes ago we prayed back there,
20 said the Lord's prayer. And this is a big decision for
21 a young man to make and I'm glad that he's doing this.

22 We apologize for the last couple hours for the
23 delay. I hope the Court doesn't hold that against my
24 client. And if -- I don't think the Court does, but I
25 know it's a very difficult decision and if the Court

1 does, please hold that against me and not my client.

2 We've been through all of the discovery. I've
3 looked at the, particularly the video for the gas
4 station there on Blackstock Road. What I saw in that
5 video I just can't square with the type of person that
6 he is. Even in jail when people are at their most, I
7 guess for lack of a better word, raw, raw mental state,
8 he was always very pleasant with me. You know, always
9 yes, sir, no, sir.

10 You know, I just can't square that with the
11 person that did this stuff. It just doesn't, it doesn't
12 make sense to me and I don't think it ever will make
13 sense to me when somebody so nice and presents so nice
14 in the jail, at my office, at the court could do
15 something like this, but it happened.

16 Cesar, I would hold, is the main ringleader with
17 all this. Cesar was the one that got Jovan into this
18 and I think got Chris into this. And I think that if
19 this had gone to trial, I think that would have been
20 established that Cesar was the ringleader in all this.

21 In fact, I think in the first incident that the
22 Court is aware of, the first one at the gas station
23 there, that Cesar I believe would wait in the car
24 telling them, compelling them to stop being -- he didn't
25 use this word, but said stop being wimps. Go in there

1 and do that.

2 And just last week, Chris had a meeting with
3 Spenser, Mr. Smith and me. And I think Ms. Walters was
4 there as well. And he told the Solicitor exactly what
5 happened that day. And he said, and I believe him, come
6 on, Chris, do this. Come on, stop being whatever. And
7 I don't want to say what they said, but it wasn't wimp.
8 Compelled them to do this. And I think there's the
9 thing. And I think this is true.

10 He's never expressed this to me, but Cesar is
11 illegal in this country and I think he's had various
12 run-ins with the law, even though he has a light record.
13 But he's had more runs-in with the law than his record
14 reveals. And Cesar is illegal and Jovan is illegal.

15 Chris is born in this country. He's from L.A.
16 And I think that's one reason why Judge Hayes granted
17 him a bond so he was allowed to be with his family
18 because he is a citizen of this country. He was born in
19 Los Angeles. He came here a long time ago, but
20 nevertheless he's a citizen of this country. And I
21 think there was a conflict between people that were
22 born, raised in Mexico and people that were born in this
23 country in the Hispanic community.

24 And I think that Cesar, and maybe to a larger
25 extent Jovan, was trying to compel and trying to get

1 Chris out of the good life and get him into a life of
2 crime. And unfortunately his soul was very weak on that
3 day and he gave into the temptations that these two
4 individuals let him get into.

5 I mean, that's unfortunate that in the span of 24
6 hours he made a decision that may ultimately cause him
7 20 years of his life. And that is a terrible decision
8 for a young man to make. But nevertheless, I think he
9 now has the courage to accept responsibility in what he
10 did.

11 At the same time, Your Honor, he's a good father.
12 He, he comes in with his child there to my office. I
13 really can't say enough good things about him. But the
14 person I saw on that video was not that individual. I
15 just -- I mean, it was not only physically, but
16 mentally, psychologically, I just don't understand it
17 for such a nice young man to do something like this, do
18 something so stupid. And now he's here. And I hate it
19 for his wife too. And I hate it for his child.

20 And Mr. Smith was right. I think he was under
21 the influence of something. Can't prove it, but I think
22 he was being pressured to do it, was compelled by Cesar,
23 who I think is the main guy. And I think it's a justly
24 deserved 18-year sentence, Your Honor.

25 We are asking, Your Honor, because of Mr.

1 Ocampo's very minimal record and the fact that he's
2 admitting responsibility and not only that, he talked to
3 Mr. Smith, he told him everything he knew about the
4 case. And I think that was, that was a great weight on
5 his chest. A great weight on his mind. He finally got
6 it out that this happened.

7 And there's one other thing too. When he was in
8 jail -- and I saw this happen because I go to the jail a
9 lot. And when I was in pod four, Mr. Ocampo came down
10 to see me. And Cesar yelled at him at the top floor
11 saying don't snitch. Don't do this, don't do that.
12 Okay? So I knew right then and there who was the
13 ringleader in this whole crew and it certainly wasn't my
14 guy. It was Cesar, with all due respect to Mr. Ray. It
15 was Cesar who led this whole thing.

16 That's all I have to say, Your Honor. I'd like
17 to present his wife.

18 THE COURT: Ma'am, if you'd like to speak, come
19 up and stand wherever the officer asks you to. Tell me
20 your name, please.

21 MS. OCAMPO: My name is Autumn Ocampo.

22 THE COURT: Can you hear her?

23 COURT REPORTER: Speak up a little bit.

24 THE COURT: She has to be able to record you.
25 Yes, ma'am, tell me your name again.

1 MRS. OCAMPO: My name is Autumn Ocampo.

2 THE COURT: Okay.

3 MRS. OCAMPO: Since, since this happened --
4 before this happened, we was going to church and we had
5 -- sorry. He had just got baptized and I was pregnant
6 with my daughter and we have a four-year-old too. And
7 we were doing really good. We had our own house. We
8 had -- we basically had everything that we needed and
9 there was no reason that we needed the money like that
10 in that type of way.

11 And after he went to jail he was the one that
12 basically kept me going because I just wanted to give up
13 and just forget about everything, but he was the one
14 that kept me focussed. When he would call me and when
15 he got out it was like he was a whole different person.
16 I mean, he wasn't the person in that video to begin
17 with, but he was even a more different person. He had
18 more respect. He, he never argued with me. He -- I
19 mean, we argued but not like we did in the past.

20 And he's always there for my daughters. He comes
21 home after work. He has a job right now. And he comes
22 home after work and he gets our daughter and he feeds
23 her and takes care of her and gives her baths and he --
24 he's just not -- I don't know what happened that night.
25 He's just not that guy that was, that was in that video.

1 THE COURT: Thank you, ma'am.

2 MR. SCHULTZ: Thank you, Your Honor.

3 THE COURT: Sir, would like to speak?

4 THE DEFENDANT: I want to say, Your Honor, I
5 really, I'm really sorry for what happened. I take
6 responsibility for what I've done. And, I mean, like I
7 told Spenser, we had -- like I said, that's me in the
8 video, man. That's not me, who represents who I am, you
9 know? It's not the person that I was being, you know
10 what I'm saying?

11 Like, and once I told -- I talked to Spenser, I
12 felt relief. In this life if you come and tell the
13 truth, you know what I'm saying, you have to take
14 responsibility because if you lie about something then
15 it's gonna come and get you. You know what I'm saying?

16 So I kept thinking, like, should I go to jury
17 trial, should I not. And when you said last time, you
18 know what I'm saying? So it's like it hit me and said
19 you better own up to it now. Tomorrow, you know what
20 I'm saying, tomorrow none of this is part of this, you
21 know what I'm saying? So I've done a lot of thinking.

22 And I know I disappointed my family. And I know
23 I'm facing -- I'm about to face some time, but I really
24 regret what I had done that day. That's not me. I've
25 done everything. I was blessed to have a job when I got

1 out of work -- when I got out of jail. And I'm still
2 blessed now, you know, because of the things that
3 happened. You know? So it's making me stronger inside
4 than it is in the outside (sic).

5 And I thank Spenser for everything that he's
6 doing. I know that's his job, you know what I'm saying?
7 He's doing what he has to do to get people like me out
8 of the streets. You know what I'm saying? So I know
9 that he feels if he goes home I'm not doing my job. You
10 know what I'm saying? So I appreciate what he done
11 because he's, he's a good man, you know? And he's just
12 doing his job.

13 And I thank Josh for everything that he's doing.
14 You know what I'm saying? And telling me, you know what
15 I'm saying, everything that he told me and everything,
16 it just got inside of me.

17 So I'm just like hoping that you won't give me
18 like 18 years because I was adding up the numbers. If I
19 get out even 18 or 20, my daughter, Vanessa, would be --
20 she would be 25. She's four right now. And my
21 daughter, Natalie, she's four months. And she would be,
22 you know, I can't imagine, you know what I'm saying?

23 I know I should have been doing that since the
24 start with my Vanessa, you know what I'm saying? And
25 when I got baptized and I started doing the same thing.

1 Like one thing went into another, just like smoking. I
2 told myself not to smoke and I started smoking again.
3 And I started hanging out with certain people that I
4 know it was bad, you know what I'm saying?

5 So the day that happened, that's not me. You
6 know what I'm saying? That's not me who I am, but I got
7 to take responsibility for what I did and I'm just sorry
8 that I done it. I'm sorry for that I put a lot of
9 people in -- and like I told Josh when I was in jail, I
10 said, man, I could have killed somebody. You know what
11 I'm saying? I could have took somebody's life that day
12 and I don't know why I was the one carrying the real
13 gun. You know what I'm saying?

14 Like the whole process, I said why am I the one
15 carrying the gun, the real gun. And I was asked to get
16 the fake guns, you know what I'm saying, because I -- he
17 said something like, hey, you go get the guns at
18 Walmart. And I told Spenser we went in the door at
19 Walmart and he told me any pistol, any pistol you could
20 find. So I went. I don't know how I done it.

21 I don't know how I didn't get caught because I
22 was just doing it ruthlessly. Like I don't know why I
23 was doing it, but I was waking up from things that --
24 and then I was doing stuff. And I was blacking out.
25 And then when I came back out, I was doing something

1 else.

2 And then when that happened, like I couldn't get
3 it together then. My wife kept telling me something's
4 gonna happen. I'm telling you something's gonna happen
5 and you're not listening to me. And I told her nothing
6 was gonna happen. I was being me, you know? Like it's
7 me, like, ain't nothing gonna happen, you know what I'm
8 saying? Then it was too late. Before I know it I was
9 in there, I was in jail.

10 THE COURT: Mr. Ocampo, you, I dare say, don't
11 know how much damage a 12-gauge shotgun can do, but I
12 do. I do because I used to be a criminal defense
13 lawyer, 25 years. Worked alongside Mr. Schultz, Mr.
14 Morin, these other lawyers, Mr. Smith. A 12-gauge
15 shotgun would have decapitated that person.

16 One of the last murder cases I had as a defense
17 lawyer before I came up here, it was right over there in
18 Gaffney where a college student was home for Christmas.
19 They went over there. My guy furnished the gun. They
20 went in there. A drug deal. But the guy that they shot
21 and killed was the wrong guy. He was a college student.
22 He was six months from graduating from Wesleyan,
23 Southern Wesleyan. He was on the couch. He raised up
24 when they kicked the door in, decapitated him.

25 2017-0622, as to the armed robbery, he's to be

1 confined to the Department of Corrections for 18 years,
2 concurrent, credit for time.

3 As to 2017-622A, the weapon, state Department of
4 Corrections for five years. Concurrent and credit for
5 time.

6 2017-0621, state Department of Corrections for 18
7 years. Concurrent, credit for time.

8 2017-0621A, that's the weapon. State Department
9 of Corrections for five years. Concurrent, credit for
10 time. Best of luck to you.

11 MR. SMITH: Thank you, Your Honor.

12 MR. SCHULTZ: Thank you, Your Honor.

13 (Whereupon, hearing concluded at 5:08 p.m.)

14

15 --- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability the foregoing is a true, accurate,
7 and complete transcript of record of all the proceedings
8 and evidence introduced in the hearing and/or trial of
9 the captioned case, relative to appeal, in the court of
10 General Sessions for Spartanburg County, South Carolina,
11 on the 7th day of September, 2017.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17
18

19 s/Julie A. Ashbrook.
20 Julie A. Ashbrook
21 Circuit Court Reporter
22 Seventh Judicial Circuit
23
24
25

FORM 5

2018 CP 42-1557

STATE OF SOUTH CAROLINA

COUNTY OF *Spartanburg*

IN THE COURT OF COMMON PLEAS

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

Christopher Ocampo #373835

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth 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. 2021C

1. Place of detention *Brook River CORR. Ins. 4460 Brook River, Columbia SC*
2. Name and location of Court which imposed sentence *See Attached Sheets*
3. Name(s) of co-defendant(s) (if any) *See Attached Sheets*
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) *2017GS4200621*
 - (b) *2017GS4200622*
 - (c) *~~2017GS4200623~~*
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) *Sept 7, 2017*
 - (b) _____

CLERK OF COURT
2018 MAY 10 PM 12:58
H. MORE CLERK

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____ N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____ N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____ N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____ N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel did not inform me of the right to do so
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2018 MAY 10 PM 12:58
M. 101-
COURT

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

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

(a) ~~trial counsel~~ See Attached Sheets

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? 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. _____

2010 MAY 10 PM 12:58
CLERK OF COURT
JAMES H. HANCOCK JR.
CLERK OF COURT

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) this is the first and only forum to raise the ground

(b) _____

(c) _____

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

- (a) your arraignment and plea? Yes
 (b) your trial, if any?
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

- (a) the name and address of each attorney who represented you:
 i. E. Joshua Schultz, 184 N. Daniel Morgan Ave
Spartanburg, SC
 ii.
 iii.
 (b) the proceedings at which each such attorney represented you:
 i. arraignment
 ii. guilty plea proceeding
 iii.

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

a new trial, a new sentencing hearing

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

NO

2019 MAY 10 PM 12:58

CLERK OF COURT
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

Christopher Ocampo)

I, Christopher Ocampo, 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.

Christopher Ocampo

SWORN to and subscribed before me this 8th
day of May, 2018.

Salvina J. Butler (L.S.)
Notary Public

My Commission Expires: March 29, 2020

2018 MAY 10 PM 12:58

CLERK OF COURT
JUDICIAL BRANCH

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

Christopher Orampo
I, 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.

Christopher Orampo
Applicant

SWORN or affirmed to and subscribed before me this
8th day of May, 2018.

Sabrina J Butler
Notary Public

My Commission Expires: March 29, 2028

2018 MAY 10 PM 12:58

COURT

Cont'd (Attached Sheet)

2. Spartanburg County Circuit Court, 180 Magnolia St,
Spartanburg, SC 29306

3. Cesar Mendez-Martinez, Jovan Garcia-Sanchez

~~11. (a)~~ Trial Counsel erroneously advised applicant of the
sentence that the trial judge would impose if a plea
of guilt was entered

2018 MAY 10 PM 12:58
CLERK OF COURT
SPARTANBURG COUNTY
WALL L. B. ...

Christopher Ocampo # 373835 R4U 112
4460 Broad River
Columbia SC, 29210



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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Christopher Ocampo, #373835,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-42-1557

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on May 10, 2018, and received by Respondent on May 17, 2018, would respectfully show this Court:

I. Procedural History

Christopher Ocampo (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In February 2017, the Spartanburg County Grand Jury indicted Applicant for attempted armed robbery and possession of a weapon during the commission of a violent crime (2017-GS-42-0621) and armed robbery and possession of a weapon during the commission of a violent crime (2017-GS-42-0622). The charges stem from a January 23, 2017 incident in which Applicant and a co-defendant, while armed with a shotgun, robbed a Shell Gas Station and attempted to rob a Family Dollar.

E. Joshua Schultz, Esquire, represented Applicant. Assistant Solicitor Spenser H. Smith, Esquire, prosecuted the case. On June 14, 2017, Applicant pleaded guilty as indicted before the Honorable R. Keith Kelly. Pursuant to a recommendation by the State, Judge Kelly sentenced Applicant to imprisonment for concurrent terms of eighteen years each for attempted armed robbery and armed robbery, and five years for each count of possession of a weapon during the

commission of a violent crime, along with credit for time served of 227 days. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Allegations Raised and Relief Sought

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial counsel erroneously advised applicant of the sentence that the trial judge would impose if a plea of guilt was entered."

As requested relief, Applicant states he is seeking "a new trial, new sentencing hearing."

III. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d

624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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, Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's

advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” *Id.* at 771.

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea, and Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

V. Motion for More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth facts to “support each ground” or to explain with any specificity whatsoever the facts upon which his claim is based. The Uniform Post-Conviction Procedure Act requires Applicant to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-

27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. Response to Any and All Other Allegations

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

VII. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

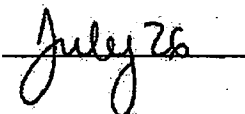
W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JORDAN COX
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

 2018

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

CHRISTOPHER OCAMPO, #373835,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

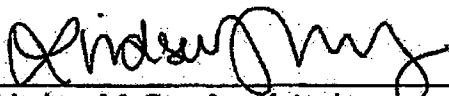
2018-CP-42-1557

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 by depositing same in the United States mail, postage prepaid:

Susannah Conyers Ross, Esquire
 Ross & Enderlin, PA
 330 East Coffee Street
 Greenville, South Carolina 29601

DATED this 26th day of July, 2018.


 Lindsey McCoy, Legal Assistant

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS NONJURY

3
4 CHRISTOPHER OCAMPO,
5 APPLICANT,
6 VS.

7 THE STATE OF SOUTH CAROLINA,
8 RESPONDENT.

TRANSCRIPT
OF
RECORD

2018-CP-42-1557

9
10 March 7th, 2019
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE THOMAS A. RUSSO, Judge.

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

16 SUSANNAH C. ROSS
17 ESQ.
18 Attorney for the Applicant

19 JOHNNY E. JAMES, JR.
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the Respondent

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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

WITNESSES

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Certificate 41

E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Respondent's Exhibits</u>		
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P R O C E E D I N G S

THE COURT: All right. And this matter is Mr. --?

MR. JAMES: Ocampo.

THE COURT: Ocampo.

Okay.

MR. JAMES: If it may please the Court?

THE COURT: Yes, sir.

MR. JAMES: This is the matter of Christopher Ocampo versus State of South Carolina. It is Docket Number 2018-CP-42-1557.

Mr. Ocampo is present here in the courtroom today, and is represented by Ms. Susannah Ross, Esquire. Mr. Ocampo was indicted in February, 2017 by the Spartanburg County Grand Jury for attempted armed robbery, and possession of a weapon during the commission of a violent crime as well as additional count of armed robbery, and an additional count of possession of a weapon during the commission of a violent crime.

Your Honor, he is represented on these charges by Joshua Schultz, Esquire. Assistant Solicitor Spenser Smith prosecuted the case. On June 14th of 2017 he pled guilty before the Honorable Keith Kelly. Pursuant to a recommendation by the State, Judge Kelly sentenced him to concurrent terms of 18 years for both the armed robbery, and

1 attempted armed robbery, and five years for each count of
2 possession of a weapon. He received credit for time served,
3 227 days, and he did not appeal his conviction or his
4 sentence.

5 Your Honor, the State originally filed a Motion for a
6 More Definite Statement, and subsequently received from Mr.
7 Ocampo an Amended Application clocked September 11th,
8 2018. Just respectfully request that Your Honor confirm
9 that I provided that in the packet of materials handed up to
10 you.

11 THE COURT: The -- now, what am I looking for, the --?

12 MR. JAMES: The Amended Application.

13 THE COURT: I have --

14 MR. JAMES: Clock date September 11, 2018.

15 THE COURT: I do have that.

16 MR. JAMES: Wonderful.

17 THE COURT: Yeah.

18 MR. JAMES: All right. The State's understanding is
19 that these are the allegations he wishes to proceed on
20 today, and with that understanding---

21 THE COURT: Okay.

22 MR. JAMES: ---I will give the floor over to Ms. Ross.

23 THE COURT: Yes, ma'am.

24 MS. ROSS: Thank you, Your Honor.

25 May it please the Court?

1 I believe the Amended Application should, should speak
2 for itself. Those are the allegations he's presented to me
3 that, that he was proceeding to trial because he thought the
4 codefendant had told him that he refused to testify, and
5 that that changed later on. He claims his counsel turned
6 down an offer of 15 years without advising him as to his
7 potential sentence, and, and what the ramifications of
8 turning that offer down were, failing to investigate before
9 trial, failing to present witnesses in mitigation.

10 He had his pastor and wife and a number of mitigation
11 witnesses to testify as to his worth ethics -- work ethics,
12 and, and history. And he really thought he'd get less than
13 sort of the, the frontrunner perpetrator in this case, and,
14 instead, he got the same thing.

15 So, at this point, we'd call Christopher Ocampo to the
16 stand.

17 THE COURT: All right. Mr. Ocampo, please come around,
18 and, if you would, place your left-hand on the Bible, and
19 raise your right.

20 CHRISTOPHER OCAMPO, being first duly
21 sworn, testifies as follows:

22 THE COURT: Thank you, sir. If you'd please have a
23 seat, and I would ask that you state your name for the
24 record.

25 THE WITNESS: Christopher Ocampo.

1 THE COURT: All right. Ms. Ross.

2 DIRECT EXAMINATION

3 BY MS. ROSS:

4 Q Hi there, Mr. Ocampo.

5 Do you understand that you're put back -- your -- the
6 only remedy that this Judge can give you is put you back in
7 the position you were in before you pled guilty --

8 A Yes, ma'am.

9 Q -- correct?

10 And you could get more than the 18 years you got?

11 A Yes, ma'am.

12 Q And recognizing that, do you still wish to go forward?

13 A Oh, yes, ma'am.

14 Q Okay. And what have you -- why do you think Joshua
15 Schultz, your attorney, was ineffective in representing you?

16 A Because one, one day, it had been in the afternoon, I'd
17 been working, and he called me. He told me to come in. So,
18 I had came in, and he told me that they had, they had
19 offered me a 15 plea, but he, he said that he rejected it.
20 At the time, I didn't know, you know what I'm saying, that
21 he ain't suppose -- he suppose to like tell me like, you
22 know, whether or not do I want to like -- you know what I'm
23 saying? And I wasn't really understanding him cause he said
24 he could drop -- he was trying to drop the charges lower,
25 and get a lower plea.

Christopher Ocampo - Direct examination
by Ms. Ross

1 Q All right. Did he discuss with you what you could get
2 if you didn't take the 15 year plea offer?

3 A No, ma'am.

4 Q Okay. And you said -- let's talk about -- where were
5 you working?

6 A I, I was working for a lawn service with the owners
7 Chad Hunter.

8 Q How long had you worked there?

9 A I -- well, I, I never worked there when, when I, when
10 I -- before I got locked up. After I got out of jail, he
11 gave me a job, and I been working for him through the time
12 that I been in house arrest.

13 Q Did he tell you he was willing to speak on your behalf
14 at your plea?

15 A Yes, ma'am.

16 Q And was he there to speak on your behalf?

17 A No, ma'am, I, I told Josh, and he said that he, he
18 thinks it would be like irrelevant of the situation. So, my
19 boss been -- was telling me though, the day of the Court, he
20 was like you want me to come. I said no. My, my lawyer
21 said you straight, that you ain't got to come. So he said
22 all right.

23 Q Were there any other witnesses that were not there at
24 your plea that you thought might of helped?

25 A Yeah, my wife, but she's not present at the time. I --

1 like, since I got locked up, she stop, you know, talking to
2 me, and just like all -- almost all my family just isolated
3 me from, you know, talking with me. So --.

4 Q Since you were sent to prison---

5 A Yes.

6 Q ---for this charge?

7 A Yes, ma'am.

8 Q And you also alleged a failure to investigate.

9 what was the investigation that Mr. Schultz should of
10 done on your behalf?

11 A I feel like he should of worked more in my case, and
12 took like -- and he said he, he, he been working on my case,
13 but I feel like he wasn't because the fact that he told me
14 that day that the judge knew that I was in -- the, the head
15 leader of the situation, and I was gonna get either 10 or
16 12. But he said but I had to take the, the 10 to 20. He
17 said the most I can get is 20, but he said the judge already
18 knows the -- this -- the whole situation. So, he said we
19 gonna, we gonna strive for 10 to 12. You know what saying
20 I'm? So I said okay. Yeah.

21 Q What was the whole situation that the Judge knew?

22 A The -- what do you mean?

23 Q Well, was the codefendant -- did, did the
24 codefendant -- was he the gunman, the other guy?

25 A Yes, ma'am.

- 1 Q And you weren't?
- 2 A No, I, I took a part of that, yeah, but I just --.
- 3 Q Under the hand of one---
- 4 A Yes.
- 5 Q ---the hand of all?
- 6 A Yes, ma'am.
- 7 Q So, your lawyer told you that the Judge would consider
- 8 that and not give you the same thing as the codefendant?
- 9 A Yes, ma'am, cause he -- my codefendant that had got 18.
- 10 He had just got 18. So, he -- Josh told me that he just
- 11 pled to 18. So, when I told him, I said you think I'm gonna
- 12 get 18, he said I don't think you will. You know what I'm
- 13 saying? So --.
- 14 Q Okay.
- 15 A That's --.
- 16 Q And were you -- before that, were you thinking
- 17 proceeding towards trial?
- 18 A Yes, ma'am.
- 19 Q And why didn't you go to trial?
- 20 A Because Josh insisted on me not to go to trial, and --
- 21 cause he told me what are the odds of me winning the trial.
- 22 So then I asked him, I said are you, are you working for me
- 23 or are you working for the solicitor, and he told me he
- 24 working for me. And he -- my -- see my wife, my wife was
- 25 there when he told me about -- when she -- when he had told

1 her about the plea for the 15, but then when I told him I
2 wanted to go to trial, he told my wife to step out the, the
3 conference room that we was in. So --.

4 Q And then, when she stepped out, what did he tell you,
5 your lawyer?

6 A He kept saying that I should of plead, that if I plead,
7 you know what I'm saying, that -- no, if I, if, if I plead,
8 he, he would -- he's gonna guarantee me something good,
9 better than 18. That's what he told me. So, I plead.

10 Q All right. And if he hadn't of told you that, would
11 you have pled anyway?

12 A Like what do you mean?

13 Q Well, if he had told you you were gonna get 18, would
14 you have pled?

15 A No, ma'am.

16 Q What would you have done?

17 A I would of tried to go to trial.

18 Q Okay. I've got no further questions.

19 THE COURT: Cross.

20 CROSS-EXAMINATION

21 BY MR. JAMES:

22 Q Mr. Ocampo, your testimony is that you went to visit
23 your attorney, and he told you that he rejected a plea offer
24 without your knowledge?

25 A Yes, sir.

Christopher Ocampo - Cross-examination
by Mr. James

1 Q Did you ever bring this up to the Court before or
2 during your plea?

3 A No, sir.

4 Q Why not?

5 A I -- I'm not, I'm not too much familiar about the law.
6 Like I, I ain't never got in trouble. So, I ain't never
7 knew or read about the law. So, that's about it.

8 MR. JAMES: And if I may have a moment, Your Honor, to
9 move out from behind the table here.

10 THE COURT: Yes, sir.

11 Q But you did tell the Court that you were satisfied with
12 your attorney, correct?

13 A Yes, sir.

14 Q And you even went so far as to say that you loved your
15 attorney.

16 Isn't that correct?

17 A Yes, sir.

18 Q Okay. Did you tell the Court that you'd been promised
19 anything --

20 A Um.

21 Q -- in exchange for your plea?

22 A Oh, no, sir.

23 Q And you knew, prior to going into the plea, that you
24 could get all the way up to 30 years.

25 Isn't that correct?

1 A Yes, sir.

2 Q And you knew that your codefendant had already pled and
3 received 18 years.

4 That's correct?

5 A Yes, sir.

6 Q So, you knew that there was a real possibility that you
7 could get 18 years.

8 Isn't that correct?

9 A Yes, sir.

10 Q Okay. In fact, you could of gotten more than 18 years?

11 A Yes, sir.

12 Q Isn't it true that your wife did testify in mitigation
13 for you at the proceedings?

14 A Yes, sir. Yes, sir.

15 Q Thank you. You have to speak up clearly in the
16 microphone so Madam Court Reporter can record everything you
17 say.

18 A Yes, sir.

19 Q And this is primarily to clarify my own notes, but to
20 ensure that I heard you correctly, a moment ago on the stand
21 you recalled your attorney saying I think you will get 18 or
22 I don't think you will get 18?

23 A He said I don't think I will get 18.

24 Q Okay. I couldn't quite hear you the first time. So, I
25 had a---

Christopher Ocampo - Cross-examination
by Mr. James

1 A Yes.

2 Q ---parentheses on my sheet here.

3 A Yeah.

4 MR. JAMES: I have no further questions for this
5 witness.

6 THE COURT: Anything further of this witness?

7 MS. ROSS: No, Your Honor.

8 THE COURT: Thank you, sir. You may step down.

9 THE WITNESS: Yes, sir.

10 MS. ROSS: That's the Applicant's testimony.

11 THE COURT: All right. The State.

12 MR. JAMES: I would respectfully request a directed
13 verdict as to Allegation 1-D in the Amended Application,
14 failing to present witnesses in mitigation. No other
15 additional witnesses in mitigation have been presented here
16 at the hearing, and so the Court is left with mere
17 speculation as to what, if anything, they would of testified
18 to. And so I respectfully request the Court go ahead and
19 deny that allegation before we proceed forward with the
20 calling of the State's witnesses.

21 MS. ROSS: Judge, and just response to that, you heard
22 the testimony of Mr. Ocampo saying that his boss was willing
23 to come in and testify on his, on his, on his behalf. As to
24 what he would say, just the presence of the -- of an
25 employer in front of the Judge would of been enough to be

1 some kind of mitigation.

2 So, at this time, I was unable to locate him, and I
3 thought it would be irrelevant to this case, what exactly
4 he, he would of said. There's no testimony that he would of
5 said anything negative, and, in my experience, just to have
6 a, an employer of a Defendant come into Court on his behalf,
7 even and just stand up and say nothing, has some effect on
8 the Judge's view of that defendant.

9 THE COURT: All right. I'm, I'm gonna deny the, deny
10 the motion as, as to that issue as far as for a directed
11 verdict.

12 Anything further from the State?

13 Any witnesses?

14 MR. JAMES: Oh, we are going to call original trial
15 counsel.

16 THE COURT: All right.

17 MR. JAMES: Mr. Josh Schultz.

18 THE COURT: Mr. Schultz, if you please come around. Be
19 sworn, sir.

20 JOSHUA SCHULTZ, being first duly
21 sworn, testified as follows:

22 THE COURT: Thank you, sir. If you would take the
23 stand there, and please state your name for the record.

24 THE WITNESS: Attorney E. Joshua Schultz, Spartanburg
25 County Bar.

Joshua Schultz - Direct examination
by Mr. James

1 DIRECT EXAMINATION

2 BY MR. JAMES:

3 Q Morning, Mr. Schultz.

4 A Good morning.

5 Q How are you doing?

6 A How are you, sir?

7 Q I'm doing very well.

8 How are you today?

9 A Very good.

10 Q You're an attorney licensed to practice in the State of
11 South Carolina?

12 A I am.

13 Q And you represented Mr. Ocampo on his charges at issue
14 in this Post-Conviction Relief action?

15 A I did.

16 Q All right. And how long have you been an attorney in
17 South Carolina?

18 A 2005.

19 Q All right. And since 2005, how much of your practice
20 has been engaged in criminal law?

21 A Almost a hundred percent.

22 Q All right. Do you recall about how many times you met
23 with Mr. Ocampo?

24 A Several times.

25 Q All right. Can you give me a ballpark figure?

1 A Ten or twelve.

2 Q Okay. Did you file for discovery in this case?

3 A I did.

4 Q Rule 5 and Brady?

5 A Yes, sir.

6 Q All right. And did you receive materials responsive to
7 that motion?

8 A I did.

9 Q All right. And did you review those materials?

10 A I did.

11 Q Did you review those materials with your client, Mr.
12 Ocampo?

13 A I did.

14 Q Did he have any questions or concerns for you after
15 reviewing the State's evidence against him?

16 A Yes.

17 Q All right. What were they?

18 A His questions were how can we present the case in a
19 light favorable to him. That's an average question that a
20 client would ask in, in a case as serious, as serious as
21 this.

22 We went over the incident report, incident reports.
23 There were some surveillance videos of the place that was
24 robbed, and we went over and we talked about whom was whom
25 at the video or looking at the videos, things of that

1 nature.

2 He, he wondered if there were any plea offers. I
3 remember specifically telling him that there was an offer of
4 15 years, and I believe my exact words were I don't suppose
5 you'd be interested in that. Mr. Ocampo said no, and the
6 case then went on the trial docket. And I think it was
7 called -- I think it was Thursday afternoon I think the case
8 was called for trial.

9 Do you want me to go on further with that?

10 Q Well, let's stop for a moment, and just kind of take a
11 step back before we get into the pretrial motions that you
12 ultimately proceeded upon.

13 You've, you've touched on this -- what the State's
14 evidence was against your client, that there was a
15 surveillance video, and that there were other individuals
16 involved.

17 Was there additional evidence against your client
18 provided by the State that was particularly damning or
19 troubling?

20 A There was. To my recollection, the -- when some of the
21 people were arrested, and his codefendants were found in the
22 car, some of the things used in the burglary were also found
23 in that car at that time.

24 Q Do you recall the stores it was that he hit?

25 A I don't offhand, but they're -- they are all in

1 Spartanburg County. I could, I could look at my notes if
2 --.

3 Q I'll risk an objection to a leading question, but is it
4 correct that he was alleged to have robbed a Family Dollar
5 and a Shell Food?

6 A Yes.

7 Q Okay. And that he was arrested in the car with his
8 codefendants in possession of goods from Family Dollar?

9 A That is my recollection, yes, sir.

10 Q Okay. Isn't it true that it was a deposit bag?

11 A I believe so, yes.

12 Q Okay. Did Mr. Ocampo give you any leads or witnesses
13 to track down to potentially offer in his defense?

14 A As far as defense of the trial or mitigation?

15 Q In defense of trial purposes.

16 A Well, a, a lot of the -- well, it would of been
17 difficult to say, as far as potential alibi witness because
18 it, it -- that would of been a difficult thing to maintain.
19 I, I, I thought that would be ultimately unsuccessful. But
20 as far as witnesses go as far as mitigation, I think we had
21 two or three bond hearings. He was ultimately let out I
22 believe on bond, and Judge Hayes granted him a home
23 detention bond. And I did have some witnesses there in
24 mitigation, and also for the bond hearings as well. So, I'm
25 not sure if that answered your question.

Joshua Schultz - Direct examination
by Mr. James

1 Q It does.

2 Who all did you have lined up to testify in mitigation?

3 A At, at the bond hearing?

4 Q Yes.

5 A At the bond hearings, I think we had -- I believe one

6 of his employers was there, and I think some family and

7 friends were there as well.

8 Q And did these same people testify in mitigation after

9 his trial had started and after he pled?

10 A No, the, the only person that testified in mitigation,

11 other than him and myself, I believe was his wife at the

12 time. I don't believe I presented any mitigation witnesses

13 during the plea.

14 Q We went over this once already in discussing the plea

15 negotiations, but just to be 100 percent clear, did you ever

16 inform your client that you had turned down a plea offer for

17 him?

18 A Yes.

19 Q Okay. Did you ever inform him that you had turned down

20 a plea offer for him without his consent?

21 A Well, here's how I proposed it to him.

22 Q All right.

23 A They made an offer of 15 to 20 years on this.

24 Q Uh-huh. (Affirmative).

25 A I think that was their first offer. I told Mr. Ocampo,

1 I said would you be interested if it was 15, and, and he --
2 and my recollection is that he said no.

3 Now, if Mr. Ocampo had said yes, I probably would of
4 talked to Mr. Smith, Spenser Smith, who was the Solicitor
5 assigned to prosecute both Mr. Ocampo and his codefendants.
6 I probably would of talked to him immediately, but
7 Mr. Ocampo did not seem interested in that 15 year offer or
8 that 15 to 20 year offer.

9 Q Okay. Were there any subsequent or other offers made
10 by the State other than the one to which he ultimately pled?

11 A I don't believe so.

12 Q Did you anticipate that Applicant's codefendants would
13 testify against him at trial?

14 A Yes. At least one.

15 Q Why did you expect that?

16 A Because I believe the, the Solicitor told me.

17 Q Was the codefendant also represented by counsel?

18 A Yes, I think everybody was represented by a, an
19 attorney. I believe Cesar was represented by Mr. Ray, and I
20 believe the cooperating codefendant was represented by Mr.
21 Morin I think.

22 Q Did you talk to Mr. Morin at all about his client's
23 intention as to whether or not he would testify against your
24 client at trial?

25 A Yes.

1 Q Okay. And do recall what the results of that
2 conversation were?

3 A Said he was gonna testify --

4 Q Okay.

5 A -- at trial. Of course, that never came to fruition,
6 but, should it have been, he was -- I think he was gonna
7 testify at trial.

8 Q Moving ahead to the plea agreement that was ultimately
9 reached.

10 Did you ever promise your client that he would receive
11 less than 18 years?

12 A No.

13 Q Okay. Did you promise him any figure?

14 A No.

15 Q And you advised him, of course, that he could get all
16 the way up to 20 of the deal?

17 A Yes.

18 Q All right.

19 A And I was hoping -- if I could supplement that?

20 Q Sure.

21 A I was hoping for less than 18. Cesar, who I perceived
22 as the ringleader in this whole scheme and plan, received an
23 18 year sentence from Judge Kelly a couple hours previous to
24 Mr. Ocampo's plea, and I told Mr. Ocampo that I planned to
25 present evidence, at least in mitigation, that he was not

1 the ringleader, that he was a follower, not a leader.

2 So, was I hoping for less?

3 Of course.

4 But did I promise?

5 No.

6 And just on a personal note, I, I did like Mr. Ocampo.
7 I did like representing him. He was a model client in all
8 respects, and he complied with everything that home
9 detention wanted him to comply with.

10 Q So, he was cooperative?

11 A Very cooperative. Very cooperative client, and a, a
12 pleasure to work with.

13 Q Answered all your questions?

14 A Absolutely. And I, and I felt really bad for Mr.
15 Ocampo that he was in this really serious situation, and
16 that he received a substantial prison sentence.

17 Q Ultimately he pled after certain pretrial motions had
18 already been resolved, the Motion to Sever, and a Motion to
19 Discover any deals made with the cooperating codefendants.

20 Isn't that correct?

21 A Correct.

22 Q All right. So, were you prepared to proceed with this
23 case to trial?

24 A Absolutely.

25 Q Did you conduct any sort of an independent

Joshua Schultz - Direct examination
by Mr. James

1 investigation in preparation for trial?

2 A I, I did. When I first got retained on this case, Mr.
3 Ocampo told me that he could of been under, under the
4 influence of some narcotics that could of been given to him
5 to maybe compel him to participate in these robberies. I --
6 what I did is I sent a independent analyst over to the jail,
7 because he was incarcerated at the time, to give him a drug
8 test. And the results of that drug test, I believe, did not
9 show any, anything that could be used later on to help
10 advance that theory.

11 Q And that test was administered in close proximity to
12 the time of the crime or --?

13 A Yes, it, it was -- I think it was done within weeks of
14 the, the actual allegation, and the warrant being served on
15 him when he was still in jail.

16 Q And the drugs that he claimed to have been under the
17 influence of at the time of the crime, were they of such a
18 character that you would of expected to find something still
19 a couple weeks later in, in a test?

20 A Yes. Yes.

21 And if, if I could turn to that in my file?

22 Q Yes.

23 A I paid for a -- actually I think his family paid for an
24 expert here to administer a 10-panel drug screen, and that
25 was -- the facts indicate that that was done on February

1 15th, 2017, and the only thing it was positive for was
2 marijuana. It was negative for amphetamine,
3 methamphetamines, opiates, cocaine, benzodiazepines, any
4 other barbiturates, methadone, and anything else.

5 And there's a test comment under there. One -- one and
6 a half inches of hair head -- head hair tested approximately
7 three month timeframe. And that was provided to me from, On
8 Premise Solutions was the drug testing facility here in
9 Spartanburg, on February 15th, 2017.

10 Q And do you have the -- did they provide you with a
11 report as a consequence of their testing?

12 A They did.

13 Q Okay. And do you have it -- is that report in your
14 possession?

15 A I do.

16 MR. JAMES: All right. May I approach the witness?

17 THE COURT: Yes, sir.

18 Q So, what you've handed to me, topped with a fax post
19 from On Premise Solutions, indicating expert tox, drugs,
20 alcohol poisoning, is a laboratory screening for marijuana,
21 amphetamine, methamphetamines, opiates, cocaine. This is
22 the report that you received from the drug screen that you
23 paid for for your client, Mr. Ocampo.

24 Correct?

25 A The family paid for it, but---

Joshua Schultz - Direct examination
by Mr. James

1 Q Right.

2 A ---but it, it was provided to me.

3 Q All right. And you relied upon this in the course of
4 your representation of Mr. Ocampo in determining what
5 strategies were potentially available to him at trial?

6 A I did.

7 MR. JAMES: All right. Your Honor, I would
8 respectfully move to introduce this as State's Exhibit No.
9 1.

10 MS. ROSS: No objection.

11 THE COURT: All right. Without objection, that's
12 State's 1.

13 (WHEREUPON, the drug report was marked as State's
14 Exhibit No. 1, and received into evidence at this time.)

15 THE COURT: Go right on ahead.

16 A Just to supplement that if you don't mind?

17 Q Go right on ahead.

18 A The middle of January was when these crimes were
19 committed, and usually a drug test goes back --a urine test
20 goes back around 30 days. Hair strand sample goes back a
21 lot more.

22 Q Cause the hair sticks around longer, correct?

23 A Yes.

24 MR. JAMES: All right. Beg a moment of the Court's
25 indulgence.

1 (Pause.)

2 Q Did you tell your client not to have his boss appear in
3 mitigation for him at trial?

4 A I can't remember specifically that. Looking back on
5 it, I, I wish I would of, would of had more mitigation
6 witnesses there.

7 Q Did you expect Mr. Ocampo to plead that day?

8 A Up until the time that he pled, I, I, I thought that it
9 would probably be some, some form of guilty plea, but I
10 wasn't sure because we actually had conducted some pretrial
11 motions that Thursday afternoon that the case was called for
12 trial.

13 Q And in the course of that trial, would you have had any
14 use for Mr. Ocampo's bondsman -- a witness to any of the
15 facts in this case?

16 A During trial?

17 Q During trial.

18 A No, but, in mitigation, I thought that could of been
19 important, and I wish I would of presented it.

20 MR. JAMES: Your Honor, I have no further questions for
21 this witness. Please answer any questions Ms. Ross may have
22 for you.

23 THE COURT: All right. Cross.

24 MS. ROSS: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. ROSS:

2 Q Mr. Schultz, now, did -- just one thing.

3 The, the whole -- the hair stand test doesn't show the
4 presence of alcohol, whether he was drunk at the time of the
5 incident?

6 A No. Usually a hair stand sample will probably not
7 detect the presence of any ethanol or alcohol in, in a, in a
8 test of that nature, no.

9 Q And I had here is a question about how, how did the
10 plea come about exactly?

11 At what point did -- did you just recommend it's time
12 to go ahead and plea after the severance motion was denied
13 or, or how did they go about?

14 A We -- Mr. Ocampo and I had a conversation back in one
15 of the conference rooms back there in this courthouse, and I
16 told him specifically, I said, if you do get convicted, it
17 will be certainly a long sentence at trial -- after trial.
18 We are hoping for a lot less than what Cesar got. I cannot
19 guarantee it, but that's how that went forward. I will say
20 that Judge Kelly, who was the presiding judge that day,
21 made, in my opinion, a very magnanimous decision there.

22 I requested Mr. Ocampo meet with his wife back there
23 in -- near the Judge's, for lack of a better word, chamber.
24 And he allowed some privacy to talk to her before he made
25 this decision. And I witnessed some of that, and he gave a

1 very heartfelt apology to his wife. And it was probably one
2 of the most -- it invoked a lot of, a lot of pathos there to
3 me personally, and I thought it was a -- very generous of
4 the Judge to allow Mr. Ocampo to talk to his wife before he
5 made that decision to plead.

6 Q And that's where -- you heard him testify earlier.

7 Do you think that's what he was talking about when he
8 spoke to his wife, and then she left, and then you spoke to
9 him earlier?

10 A I, I don't think he was referring to that specifically.
11 What, what had happened is I, I talked to Mr. Ocampo in, in
12 a conference room prior to that, and then we picked a jury,
13 we did some pretrial motions, and then Mr. Ocampo and I
14 talked again. And then he, Judge Kelly, called the State
15 and I up again, and said do you want to talk to your client
16 again, Mr. Schultz, and I said all right. I'll talk to my
17 client one more time about, about this.

18 And, at that time, Mr. Ocampo went back with his wife
19 to talk about the decision that he had to make, make that
20 day, whether to proceed to trial or to plead guilty.

21 Q All right. And as far as trial, I, I know it really
22 doesn't matter for armed robbery, but weren't these air soft
23 guns that were alleged to have been used during this robbery
24 or is -- am I mistaken in that?

25 I thought that was in the transcript around Page 42.

1 A I, I can't specifically -- I can't remember that, and
2 if that, if that's what the transcript says, yes. But, at
3 the same time, the statute is pretty clear that, that even
4 the representation of a, of a gun can constitute armed
5 robbery.

6 Q Okay. And that's, and that's correct.

7 Now, do you -- is there, is there a physical plea offer
8 in your file?

9 Does the Solicitor, Solicitor provide you with a, a
10 piece of paper that has a plea offer---

11 A In my---

12 Q ---on it?

13 A In my file, a physical, physical copy of it, I have it
14 by email.

15 Q Okay.

16 A And that was received on March 7th, 2017, and that was
17 from Spenser Smith, the Solicitor in the case.

18 Q And what exactly was the offer again?

19 A The, the offer, on March 7th, 2017, was 15 to 20.

20 Q Okay. And that's the one you, you related to Mr.
21 Ocampo at the office visit?

22 A Yes.

23 Q And now is it true that you suggested to him that he
24 didn't want to take that as he testified to or what's your
25 recollection?

1 A My recollection to that is I said to Mr. Ocampo they've
2 made an offer of 15 to 20. There's a possibility that a
3 judge could sentence you to the minimum sentence of 15.
4 Based upon prior conversations with Mr. Ocampo, he, he
5 indicated that he did not want to plead to that. And I
6 said, based upon that, I said to him are you interested in
7 that offer. I don't suppose you are, but are you, and he
8 said no.

9 Q All right. But he did end up pleading.

10 What did you tell him to, to get to where he ended up
11 pleading from the time in that office where he didn't want
12 to plead?

13 Did you tell him that you thought he would be convicted
14 if he didn't plead?

15 A Yes, I mean that, that would be a pretty strong
16 possibility with the evidence that they had against him as I
17 said on direct, and the fact that a codefendant was
18 testifying against him.

19 Q Now, at the beginning of trial, was the codefendant
20 testifying against him or were they both -- didn't the trial
21 initially start where both were on trial or was there a
22 third codefendant you mean?

23 I'm sorry. I'm being confusing.

24 A That's okay. I think what, what happened is Cesar pled
25 that same day, and received a similar sentence to what Mr.

1 Ocampo ultimately, ultimately received. I'm not sure if
2 that the cooperating codefendant entered a plea before that
3 time, but he -- the -- he, he pled later on, and I believe
4 he received a sentence of 10 years.

5 Q Okay. So---

6 A I'm not sure if that answers your question.

7 Q So, prior to trial, what witnesses did you expect to
8 testify?

9 What codefendant witnesses did you expect to testify
10 against Mr. Ocampo a week prior to trial say?

11 A Prior, prior to trial?

12 Q Right.

13 A The, the cooperating codefendant.

14 Q Okay. And then, the day of, the codefendant testified
15 and you told Mr. Ocampo I think he'll testify -- the
16 codefendant pled, and you told Mr. Ocampo I think he'll
17 testify against you as well?

18 A I'm, I'm not sure if the codefendant -- if the
19 cooperating codefendant pled at that point.

20 Q Okay.

21 A But I think he was prepared---

22 Q The Cesar, the non-cooperating codefendant pled.

23 Was it your understanding that he was gonna testify
24 against Ocampo as well or --?

25 A I, I don't believe so.

1 Q Okay. Now, going back to that HIC bond hearing, at
2 that one, his -- so, his employer, friends -- wasn't his
3 pastor very strongly involved in speaking for him as well?

4 A Yes. Yes, I do remember that, and, and HIP, you're
5 referring to home incarceration program?

6 Q Yes, I'm sorry.

7 And you didn't feel that it might be important to get
8 them to be there when this trial was turning into a plea?

9 A Looking back in it, I, I wish I had contacted them to
10 present in mitigation, his employer and his pastor, but they
11 were all present at the bond hearing. I, I wish I had
12 contacted them to be there present at the mitigation hearing
13 for the, for the plea.

14 Q All right. I've got no further questions.

15 THE COURT: All right. Anything in redirect?

16 REDIRECT EXAMINATION

17 BY MR. JAMES:

18 Q There was some discussion of air soft guns earlier.

19 Isn't it true that the State set forth facts that
20 Mr. Ocampo went in with a shotgun into one of these
21 establishments?

22 A If that's what the transcript says, yes.

23 MR. JAMES: All right. And for the Court's
24 information, that is on Page 42, Line 8 continuing on to
25 Line 9.

1 THE COURT: Yeah.

2 MR. JAMES: I have no further questions, Your Honor.

3 THE COURT: All right. Thank you very much, sir.

4 THE WITNESS: Thank you, sir.

5 THE COURT: You may step down.

6 Anything further from The State?

7 MR. JAMES: No, Your Honor. Those are all the
8 witnesses for the State. My understanding is the last
9 engagement for Mr. Schultz.

10 May he be released from his subpoena?

11 THE COURT: Absolutely.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Thank you for being here, sir.

14 All right. All right. So that -- that's all the
15 evidence that's gonna be presented here today.

16 Is that correct?

17 MS. ROSS: Yes, Your Honor.

18 THE COURT: All right. Ms. Ross, I'll be happy to hear
19 from you.

20 MS. ROSS: Again, I'll, I'll just stand by my Amended
21 Application. Here, Mr. Ocampo has very compelling
22 mitigation. He has, has a pastor was willing to testify at
23 the home incarceration hearing, his, his family, his wife,
24 his friends, his employer. None of that was presented at
25 that hearing, and---

1 THE COURT: When, when would that have been done?

2 This, this was a case they had struck a jury, done
3 their pretrial, was ready to go to trial, and he changed his
4 mind, and decided to take a plea.

5 MS. ROSS: I understand, Judge.

6 THE COURT: When, when was Mr. Schultz suppose to stop
7 all the proceedings, and call and hope to round up people?

8 MS. ROSS: Well -- and I, I would argue -- Judge Kelly
9 seemed to be working with him in that he allowed---

10 THE COURT: He allowed him to speak to his wife---

11 MS. ROSS: Exactly.

12 THE COURT: ---cause she was present.

13 MS. ROSS: Exactly. And, and the -- so, we'd argued
14 that possibly Judge Kelly would of been willing to allow
15 them to contact him to try to get those witnesses to be
16 present as well.

17 THE COURT: I can't speak for Judge Kelly. I wouldn't
18 of done that. You've got a jury sitting there waiting to
19 decide whether or not we're going forward or not. The only
20 way you could do that would be to excuse the jury, and delay
21 sentencing until the next day.

22 MS. ROSS: I understand, Your Honor. And, and you
23 heard the testimony as to the, the plea offer, and what he
24 is provided today.

25 THE COURT: All right.

1 MR. JAMES: To be brief, Your Honor, I believe you have
2 correctly noted that this was after a jury had been sworn.
3 Pretrial motions had been resolved. Counsel wasn't really
4 in a position to bring up a issue on witnesses in mitigation
5 at the last possible moment.

6 Additionally, as I indicated earlier in the State's
7 motion for directed verdict, they're not here today. We
8 don't have their testimony to offer. So, we don't know
9 precisely what they would of said in mitigation for Mr.
10 Ocampo. So, we can hardly determine what that impact would
11 of been.

12 Additionally, as a matter of law, I take issue with
13 failure to present witnesses in mitigation as an allegation
14 for Post-Conviction Relief outside of the death penalty
15 context. I'm not certain how Mr. Ocampo could meet his
16 burden of showing a different outcome, of showing prejudice
17 under Strickland versus Washington, or, I suppose, in this
18 case, Hill versus Lockhart, especially that without those
19 witnesses he would not have pled guilty but would of instead
20 insisted on continuing with his trial. Clearly he did not
21 have those witnesses, and he pled guilty anyway.

22 He knew that they weren't there, and we also,
23 additionally, can't really peer into the mind of Judge Kelly
24 and say, oh, well, with these witnesses, surely he would of
25 sentenced him to a lesser sentence. So, we have no real way

1 of determining a different outcome under that sort of
2 numerical value, and it seems self-evidence, for the record,
3 that it wouldn't have resulted in a different outcome as
4 Hill versus Lockhart.

5 As to failure to investigate, Your Honor, it's clear
6 that Mr. Schultz conducted a thorough investigation. He
7 additionally, upon speaking with his client, had to restrain
8 from any drugs to come up with any sort of strategy of, of
9 defending him in mitigation terms that perhaps he was under
10 the influence at the time of the crime. That came up short.

11 He spoke with the attorneys for the cooperating
12 codefendant who confirmed that he would be testifying
13 against him at trial. And, furthermore, Mr. Schultz
14 credibly testified that he communicated the 15 to 20 year
15 offer to his client, and that his client was not interested
16 in it, and, in fact, rejected it.

17 Your Honor, the State's position is that Mr. Ocampo has
18 not met his burden of proof as to any of the allegations
19 raised in the Amended Application, and, for that reason, the
20 State would respectfully ask that the Applicant for
21 Post-Conviction Relief be denied.

22 THE COURT: All right. Thank you, sir.

23 I'm looking at the Amended Application. A, advising
24 the Applicant to plea when the codefendant would have
25 refused to testify at trial. I'm not sure that that was

1 presented here at all. As a matter of fact, I think the
2 exactly opposite was presented.

3 The testimony here was that Mr. Schultz, I think if I'm
4 not mistaken, he indicated Mr. Morin was representing the,
5 the alleged codefendant, and that Mr. Morin informed him
6 that the guy -- the codefendant was going to testify. So,
7 it doesn't appear to have -- that allegation appears not to
8 have been met.

9 There was discussion regarding the plea offer, and,
10 according to Mr. Schultz, he did not, he did not receive an
11 offer of 15 years and turn it down. He received an offer of
12 15 to 20, and that a prior conversation with Mr. Ocampo
13 revealed that he would not accept 15. Mr. Ocampo was
14 present and did present mitigation to the Court.

15 At -- I don't, I don't see anything in this record that
16 would, would support -- what this appears is that, and, and
17 I heard something earlier, and I think I maybe misheard it.
18 I thought maybe when Mr. Ocampo was up there, and, Ms. Ross,
19 you asked him if, if Cesar was the one with the, with the
20 gun and not him, and he said that's right. But then, when
21 you look in the transcript, the Solicitor, in presenting the
22 facts, on Page 42, was, was rather emphatic, and, as a
23 matter of fact, pointed out specifically that, even though
24 the, the first robbery involved the Wal-Mart, they went in
25 with the shotgun, and they shoplifted some air soft pistols,

1 some blue gloves, and other things. But that, when the
2 robberies occurred, that it was Mr. Ocampo who went in with
3 the shotgun on both occasions, and, and I -- again, I can't
4 get inside the head of any presiding judge in what they,
5 what they think or what causes them to make whatever
6 decision it is they make. But when you look, you go through
7 the -- Judge Kelly's sentencing, it, it appeared that it, it
8 weighed heavy on his decision that, in fact, Mr. Ocampo was
9 the one with the 12 gauge shotgun. This appears -- I mean
10 it -- and I can't get into Mr. Ocampo's head.

11 So -- but, but this does -- this appears that he went
12 in, and, and he entered his plea with the hopes of getting
13 something less then his codefendant, and that it, it just
14 didn't turn out the way he wanted it. But I -- there's
15 nothing in this record that would support his, his
16 allegations that it had anything to do with the ineffective
17 assistance of counsel or anything that Mr. Schultz did. I
18 think it -- there's nothing in the record that, that I think
19 supports his Application under the standards of Washington
20 versus Strickland. And I'm gonna respectfully deny his
21 Application.

22 MS. ROSS: Thank you, Your Honor.

23 MR. JAMES: Thank you, Your Honor.

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

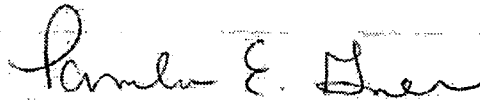
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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 7th day of March, 2019.

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

August 1st, 2019



PAMELA E. GREEN, Court Reporter

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Deer Park, TX 77536
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Client: On Premise Solutions	First Name: Christopher	Test Name: 10 Panel Drug Screen	Specid: A231871
Addr: 207 10th St	Last Name: Ocampo	Profile: HFR0100	Acc #: 170410116
N. Wilkerson, NC 28659	ID: [REDACTED]	Media: Hair	Collected: 2/7/2017 4:15 PM
Phone: (828) 267-0098	Test Result: Positive	Reason: Other	Received: 2/10/2017 1:17 PM
Contact:			Released: 2/14/2017 7:12 AM
			Status: Complete

Drug/Test	Lab Result	Confirm Value	Screen Cutoff	Confirm Cutoff	Confirm Type
MARIJUANA					
delta 9-thc	Positive	>100 pg/mg	1 pg/mg	5 pg/mg	LCMSMS
AMPHETAMINE/MDA	Negative		300 pg/mg	200 pg/mg	LCMSMS
METHAMPHETAMINE/MDMA	Negative		300 pg/mg	200 pg/mg	LCMSMS
OPIATES	Negative		200 pg/mg	200 pg/mg	LCMSMS
COCAINE	Negative		300 pg/mg	200 pg/mg	LCMSMS
PHENCYCLIDINE	Negative		300 pg/mg	100 pg/mg	LCMSMS
BENZODIAZEPINES	Negative		500 pg/mg	200 pg/mg	LCMSMS
BARBITURATES	Negative		500 pg/mg	200 pg/mg	GCMS
METHADONE	Negative		500 pg/mg	200 pg/mg	LCMSMS
PROPOXYPHENE	Negative		500 pg/mg	200 pg/mg	LCMSMS

Test Comment:1.5" of head hair tested (Approximately 3 months timeframe)
Screen analysis by ELISA

The preceding result has been reviewed and is certified to be as reported. S. Holleman (Certifying Scientist)

End of Report

Laboratory Director: Ernest D. Lykissa, Ph.D. Forensic Toxicologist

Print Date: 2/15/2017 14:33:12

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

Christopher Ocampo,) Case No.: 2018-CP-42-01557
S.C.D.C. No. 373835,)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed by Christopher Ocampo (Applicant) on May 10, 2018, thereafter amended by filing on September 11, 2018. Respondent made its return on or about July 26, 2018. The Court convened an evidentiary hearing into the matter on Thursday, March 7, 2019, at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present at the hearing and represented by Susannah C. Ross, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, E. Joshua Schultz, Esq. (Counsel) also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the February 2017 term of the Spartanburg County Grand Jury for attempted armed robbery (2017-GS-42-00621, Ct. I), armed robbery (2017-GS-42-00622, Ct. I), and two counts of possession of a weapon during the commission of a violent crime (2017-GS-42-00621, Ct. II; -00622, Ct. II). E. Joshua Shultz, Esq. represented Applicant, and Spenser H. Smith, Esq., of the Seventh Circuit Solicitor's Office, prosecuted the case. On June 14, 2017, Applicant pled guilty as indicted. The Honorable R. Keith Kelly sentenced Applicant to imprisonment for concurrent terms of 18 years each for armed robbery and attempted armed robbery, and 5 years for each weapon charge. Applicant not appeal his plea or sentence.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully the following reasons:

1. "Ineffective Assistance of Counsel"

- a. "Trial counsel erroneously advised applicant of the sentence that the trial judge would impose if a plea of guilt was entered."

Applicant, by and through PCR counsel, amended his application by filing on September 11, 2018, to add the following additional allegations:

2. "Ineffective assistance of trial counsel for:"

- a. "advising the Applicant to plea when co-defendant would have refused to testify at trial;"
- b. "turning down plea offer of fifteen years without advising Applicant and misadvising Applicant as to potential sentence;"
- c. "failing to investigate and prepare for trial; and"
- d. "failing to present witnesses in mitigation."

Applicant requests relief as follows:

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- "a new trial, a new sentencing hearing"

At the evidentiary hearing, Applicant affirmed that he understood the remedy available in a post-conviction relief action was vacation of the sentence and a remand of the charges for new proceedings.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations of his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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"Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). 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 (citing Strickland, 466 U.S. at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is

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easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Misadvice to Plead Guilty

The Court finds Applicant has failed to meet his burden of proof to show that Counsel misadvised him to plead guilty. At the evidentiary hearing, Counsel testified that Applicant was arrested alongside his two co-defendants in a car shortly after a robbery at a nearby Family Dollar store. Goods stolen from the Family Dollar were in the car, including a deposit bag. Counsel testified he expected one of the co-defendants, Jovan Garcia-Sanchez,¹ would testify against Applicant at trial. Counsel explained he based this belief on a conversation with the attorney for Garcia-Sanchez, Michael Morin, Esq., who indicated his client would indeed testify against Applicant at trial. On cross-examination, Counsel indicated he did not expect the third co-defendant, Cesar Mendez-Martinez, to testify against Applicant.

Counsel credibly articulated a reasonable basis for his belief that a co-defendant would testify against Applicant at trial and properly communicated that belief to Applicant. Applicant offers no credible evidence to show that the co-defendant would not have testified, or that Counsel could have or should have been able to ascertain the co-defendant would not have testified. The Court can only conclude that the co-defendant would have indeed testified against Applicant at trial. Accordingly, Applicant has failed to meet his burden of showing any deficiency on the part of Counsel, and his claim for relief by way of this allegation is **DENIED**.

2. Rejection of Offer Without Consultation, Misadvice as to Expected Sentence

Applicant has failed to show Counsel rejected a plea offer without consulting him or that Counsel misadvised him as to the sentence he should expect from pleading guilty. A defendant

¹ Counsel could not clearly remember the co-defendant's name but it is reflected in the plea transcript and can be ascertained by process of elimination. (Tr. 41, ll. 19-24).

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has the right to effective assistance of counsel during the plea bargaining process. Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009) (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996)). “[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” Missouri v. Frye, 566 U.S. 134, 145 (2012). The failure to timely communicate a plea offer to a defendant constitutes deficient performance. Davie, 381 S.C. at 609, 675 S.E.2d at 420; Frye at 145. To show prejudice from a counsel’s failure to communicate a plea offer, an applicant must demonstrate (1) a reasonable probability they would have accepted the earlier plea offer, (2) a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, and (3) that the plea would have provided a more favorable disposition, such as a plea to a lesser charge or sentence than originally resulted. Frye at 147; see also Davie, 381 S.C. at 613, 675 S.E.2d at 422 (applicant must show he or she “would have accepted the State’s proposed plea bargain and that he would have benefitted from the offer.”). An applicant must show actual prejudice, but depending on the facts of the case, an applicant’s self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

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At the evidentiary hearing, Applicant testified that Counsel informed him of an offer to plead guilty in exchange for a 15 year sentence, but that Counsel had already rejected it. Applicant testified that he was told the subsequent plea offer provided a sentencing maximum of 20 years, but that they would try to convince the Court to sentence him to 12 years. Applicant recalled Counsel telling him he did not believe Applicant would be sentenced to 18 years. Applicant testified Counsel insisted he plead guilty and promised he would get better than 18 years. As noted above, Applicant was sentenced to 18 years. On cross-examination, Applicant acknowledged he

did not tell the Court he was promised anything to plead guilty. Applicant further acknowledged he understood he could be sentenced to 18 years, if not more.

Counsel testified he informed Applicant of the 15 year plea offer and that Applicant rejected it and was not interested in a 15 year sentence. Counsel denied promising a sentence of less than 18 years, and denied promising anything. Instead, Counsel testified he advised Applicant he could be sentenced up to 20 years, though they were hoping for less as co-defendant Cesar Mendez-Martinez, the "ringleader," had already been sentenced to 18 years. On cross-examination, Counsel testified he explained to Applicant that if he was convicted he would receive a long sentence, but that they could hope for better than 18 years as part of the plea. Counsel clarified that he received the State's original offer on March 7, 2017, and promptly related it to Applicant, who was not interested.

The Court finds Applicant has failed to meet his burden of proof to show Counsel failed to communicate the State's plea offer to him or that Counsel misadvised him as to what sentence he could expect. Counsel credibly testified he communicated the plea offer to Applicant and that Applicant rejected it. This Court does not find credible Applicant's testimony that Counsel claimed he had already rejected it. The Court finds the plea transcript, as well as Counsel's testimony, reflect reasonable grounds to *hope* for better than an 18 year sentence. The Court finds from the testimony that Applicant pled guilty hoping for a more favorable sentence than his co-defendant, but that his hope simply did not pan out. The Court does not find credible Applicant's claim he was promised better than an 18 year sentence. Counsel credibly testified Applicant was not promised anything. Applicant knew he could receive an 18 year sentence, or more or less. Accordingly, Applicant has failed to meet his burden of showing any deficiency on the part of Counsel, and his request for relief by way of these allegations is **DENIED**.

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3. Failure to Investigate

Applicant fails to show any ineffectiveness of Counsel for failing to investigate his case and prepare for trial. To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Counsel testified that Applicant's primary concern was about how to present the facts of the case in the light most favorable to him. Counsel noted that an alibi defense would have been difficult given Applicant was arrested in the vehicle with the co-defendants and the stolen goods. Counsel explained he expected co-defendant Garcia-Sanchez to testify against Applicant based on a conversation with Garcia-Sanchez's attorney. Applicant claimed to Counsel that he was under the influence of narcotics at the time of the crime, and so Counsel had Applicant tested promptly after his arrest. The ten panel screen of Applicant's hair came back negative for everything but marijuana. (State's Exhibit #1). Counsel asserted that any narcotics would have appeared on the hair test weeks after the crime. On cross-examination, Counsel conceded that a hair test would not test for alcohol. Counsel testified Applicant may have been armed with some airsoft guns, but

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on re-direct acknowledged the State's assertion that Applicant was armed with a shotgun. (See Tr. 42, line 8).

Applicant has failed to meet his burden of proof to show Counsel failed to adequately investigate his case and prepare for trial. Applicant presents nothing to this Court which would have resulted in a different outcome. To the contrary, Counsel's credible testimony reflects he promptly and thoroughly followed up on leads provided to him by Applicant, investigated the likelihood of hostile witnesses, and considered possible alternate means of defense. Counsel thoroughly investigated Applicant's case and was prepared to proceed to trial. Nothing in the record supports relief, and so Applicant's request for relief by way of this allegation is **DENIED**.

4. Failure to Present Mitigation Witnesses

Applicant fails to meet his burden of showing any ineffectiveness for Counsel's alleged failure to present additional witnesses in mitigation. The standards set forth in Strickland v. Washington do "not require counsel investigate every conceivable line of mitigating evidence or require the submission of such evidence in every case, [but] strategic choices made after less than complete investigation are reasonable only to the extent that reasonable professional judgment support the limitations on investigation[.]" Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004) (quoting Wiggins v. Smith, 539 U.S. 510 (2003)). In order for an applicant to meet his or her burden of proof in alleging ineffectiveness for failing to call a witness, the applicant "must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)) (emphasis omitted).

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At the plea proceeding, Counsel spoke in some length in mitigation. Counsel spoke to the Court about Applicant's Christian faith, that Applicant was roped into the crimes by Cesar Mendez-Martinez, that he was a United States citizen, that he was a good father, that Applicant was potentially under the influence of something, Applicant's minimal prior record, and Applicant's cooperation with the State despite pressure from Mendez-Martinez. (Tr. 44-48). Counsel also presented Applicant's wife, Autumn Ocampo, who praised him as a hardworking husband and father. (Tr. 49, ll. 3-25). Applicant himself spoke in his own mitigation, expressing his remorse, his relief in speaking with the prosecutor, his gratitude for his job, the prosecution, and his attorney, and his hope that he would not get an 18 year sentence. (Tr. 50-51). Applicant implied he was under the influence at the time of the crime and acknowledged he could have killed somebody in the course of the crimes. (Tr. 51-53). The plea court noted just how deadly a 12-gauge shotgun could be. (Tr. 53, ll. 10-24).

At the evidentiary hearing, Applicant testified that he was working while out on bond and that his boss from his landscaping job was willing to speak in mitigation on his behalf, but that Counsel did not want him. Applicant additionally testified that his wife could have spoken for him, but that she no longer spoke with him at the time of the hearing. On cross-examination, Applicant acknowledged that his wife did in fact speak for him in mitigation.

Counsel testified that he had some witnesses present to speak on Applicant's behalf for a bond hearing, but that the only person who came back for the plea was Applicant's wife. Counsel could not recall telling Applicant that his landscaping boss was not necessary, but did note that Applicant was proceeding to trial before the plea and that his boss was not necessary for trial. On cross-examination, Counsel retrospectively wished he had called Applicant's employer and pastor in mitigation.

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Applicant presented no witnesses at the evidentiary hearing other than his own testimony and, as such, he has failed to meet his burden of proof to show he was prejudiced at all by Counsel's failure to call additional witnesses in mitigation. There is nothing in the record to demonstrate to this Court that any different outcome would have resulted from the presentation of additional mitigation, and the Court is left with mere speculation as to what additional mitigation witnesses would have said. Counsel, by his own remarks in mitigation, already spoke to Applicant's industriousness and faith. For these reasons, Applicant has failed to show either a deficiency on the part of Counsel, or any prejudice that could have resulted from the deficiency alleged, and his request for relief by way of this allegation is **DENIED**.

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SPARTANBURG COUNTY
2019 JUN 10 AM 9:49

[Conclusion and signature on following page]

III. CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedure for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 31st day of May, 2019.

THOMAS A. RUSSO
Presiding Judge
Seventh Judicial Circuit

Florence, South Carolina

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SPARTANBURG COUNTY
2019 JUN 10 AM 9:49

WITNESSES

Spartanburg County Sheriff's Office

James W. Evans

ARREST WARRANT NUMBER

2017A4210200298- Count One

2017A4210200289- Count Two

ACTION OF GRAND JURY

A. Evans
Foreperson of Grand Jury
Date:

FEB 24 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 17-GS-42-0621

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2017

TERM

THE STATE

vs.

Christopher Ocampo

Indictment for

ATTEMPTED ARMED ROBBERY AND
POSSESSION OF WEAPON DURING
COMMISSION OF A VIOLENT CRIME

SC Code: 16-11-330 (B); 16-23-490

CDR Code: 26: 549

Class FEL/C; FEL/F

45:0111 02 03 1102
2017 FEB 28 AM 10:54

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

FEB 23 2017

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

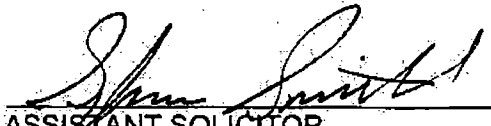
COUNT ONE---ATTEMPTED ARMED ROBBERY

That Christopher Ocampo, did in Spartanburg County on or about January 23, 2017, while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present at the time reasonably believed to be a deadly weapon, did feloniously attempt to take from the person or presence of [REDACTED] by means of force or intimidation, goods or monies of Family Dollar, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (B), CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

**COUNT TWO---POSSESSION OF WEAPON DURING
COMMISSION OF A VIOLENT CRIME**

That Christopher Ocampo, did in Spartanburg County on or about January 23, 2017, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to-wit: ATTEMPTED ARMED ROBBERY, in violation of Code §16-23-490, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

Jimmy W. [Signature]

[Signature]

ARREST WARRANT NUMBER

2017A4210200286- Count One

2017A4210200288- Count Two

ACTION OF GRAND JURY

A. Evans

Foreperson of Grand Jury
Date:

FEB 24 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

17-GS-42-0622

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2017

TERM

THE STATE
vs.

Christopher Ocampo

Indictment for

ARMED ROBBERY AND POSSESSION OF
WEAPON DURING COMMISSION OF A
VIOLENT CRIME

SC Code: 16-11-330 (A): 16-23-490

CDR Code: 139: 549

Class FEL/A: FEL/F

2017 FEB 28 11:10:55

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

FEB 23 2017

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

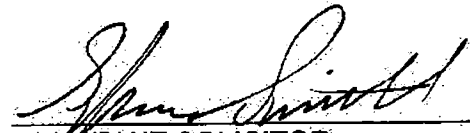
COUNT ONE---ARMED ROBBERY

That Christopher Ocampo, did in Spartanburg County on or about January 23, 2017, while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present at the time reasonably believed to be a deadly weapon, did feloniously take from the person or presence of [REDACTED] by means of force, violence, and/or intimidation, goods or monies, such goods or monies being described as follows: a sum of money belonging to Shell Gas Station, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO---POSSESSION OF WEAPON DURING
COMMISSION OF A VIOLENT CRIME**

That Christopher Ocampo, did in Spartanburg County on or about January 23, 2017, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to-wit: ARMED ROBBERY, in violation of Code §16-23-

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

CHRISTOPHER OCAMPO,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

AMENDED APPLICATION

CASE # 2018-CP-42-1557

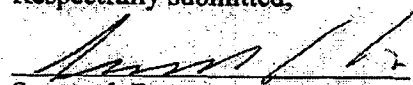
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SPARTANBURG COUNTY
2018 SEP 11 AM 8:52
J. HOPE BUCKLEY

This matter comes before the Court by way of application of post conviction relief filed May 10, 2018, alleging ineffective assistance of trial counsel. A Return and Motion for a More Definite Statement was made on July 26, 2018. This application is intended to incorporate the allegations of the original application and add the following allegations:

1. Ineffective assistance of trial counsel for

- (a) advising the Applicant to plea when co-defendant would have refused to testify at trial;
- (b) turning down plea offer of fifteen years without advising Applicant and misadvising Applicant as to potential sentence;
- (c) failing to investigate and prepare for trial; and
- (d) failing to present witnesses in mitigation.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina

This 4 day of September 2018