

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
 2) COMMON PLEAS
 3 COUNTY OF SPARTANBURG) OF THE SEVENTH
 4) JUDICIAL CIRCUIT
 5)
 6 FRANCISCO ROBERTO RODRIGUEZ,)
 7)
 8 The Applicant,) TRANSCRIPT OF RECORD
 9 vs.) 2016-CP-42-04153
 10 THE STATE OF SOUTH CAROLINA,)
 11)
 12 The State,)

ORIGINAL

October 10, 2019
Spartanburg, South Carolina

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S.C. SUPREME COURT

B E F O R E:

HONORABLE G. THOMAS COOPER, Judge.

A P P E A R A N C E S

LYDIA ANGELICA HERNANDEZ, ESQUIRE
For The Applicant

JACOB A. ISENBERG, ESQUIRE
For The State

Also present: Julianna Sucuchi,
Interpreter

Julie A. Cendroski,
Circuit Court Reporter
Seventh Judicial Circuit

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1 FRANCISCO ROBERTO RODRIGUEZ VS. STATE OF SOUTH CAROLINA

2 THE COURT: You may proceed.

3 MR. ISENBERG: Thank you, Your Honor. The first
4 case we'll call out is Francisco Rodriguez.

5 THE COURT: All right.

6 MR. ISENBERG: And just so you're aware, Your
7 Honor, I'm not sure how you do things with interpreters,
8 but Mr. Rodriguez will have an interpreter today.

9 THE COURT: All right.

10 THE INTERPRETER: Good morning, Your Honor.

11 THE COURT: Good morning.

12 THE INTERPRETER: For the record, Julianna
13 Sucuchi, Supreme Court certified interpreter.

14 THE COURT: All right. Raise your right hand.
15 Do you solemnly swear or affirm that you will accurately
16 translate all conversation between the State's attorney
17 general, Mr. Rodriguez's lawyer without omitting
18 anything and you will directly translate to me as the
19 words are spoken; is that correct?

20 THE INTERPRETER: I do, Your Honor.

21 MS. HERNANDEZ: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MS. HERNANDEZ: I will be appearing before you in
24 court. My name is Lydia Hernandez, I'm the attorney for
25 Mr. Rodriguez.

1 THE COURT: Ms. Hernandez?

2 MS. HERNANDEZ: Yes, Your Honor.

3 THE COURT: All right, thank you.

4 MR. ISENBERG: Your Honor, and I can proceed with
5 the procedural ---

6 THE COURT: Sorry?

7 MR. ISENBERG: I can go ahead and do the
8 procedural history whenever you're ready.

9 THE COURT: I'm ready.

10 MR. ISENBERG: Thank you, Your Honor.

11 THE COURT: I'd like the packet.

12 MR. ISENBERG: Yes, sir. (Hands packet to
13 Court.)

14 THE COURT: All right. Just do it slowly.

15 MR. ISENBERG: Yes, sir. I'm gonna go ahead and
16 apologize for speaking a little too fast. May it please
17 the Court?

18 THE COURT: Yes.

19 MR. ISENBERG: My name is Jake Isenberg and I'm
20 here with the Attorney General's Office representing the
21 State. This case is Francisco Rodriguez versus The
22 State of South Carolina. Docket Number 2016-CP-42-4153.

23 During its August 2015 term, Spartanburg County
24 Grand Jury indicted applicant for third-degree criminal
25 sexual conduct with a minor. Applicant was also charged

1 with CSC with a minor in the first degree, which was
2 dismissed in exchange for a plea.

3 Joseph R. Baldwin ---

4 THE INTERPRETER: Your Honor?

5 MR. ISENBERG: -- represented him on this charge.

6 THE COURT: Hold on.

7 THE INTERPRETER: Slow down for the interpreter,
8 please. Let me repeat.

9 (Pause in proceedings while interpreter speaks in
10 Spanish to applicant to catch up.)

11 MR. ISENBERG: Okay. Joseph Baldwin represented
12 him on this charge. The assistant solicitor, Lindsay
13 Overby of the Seventh Circuit Solicitor's Office
14 prosecuted the case.

15 On April 12th, 2016, he appeared before the
16 Honorable R. Keith Kelly and pled guilty under
17 North Carolina versus Alford to lewd act with a minor
18 under the age of 16. Judge Kelly sentenced him to a
19 term of imprisonment of 15 years. He did not appeal his
20 plea or sentence.

21 On November 21st, 2016, he filed an application
22 for postconviction relief alleging ineffective
23 assistance of counsel for failing to provide him with
24 discovery, failing to advise applicant of his defense,
25 his right to a jury trial, and the nature of the charge,

1 and failing to have an interpreter present to explain
2 the charges; applicant's constitutional rights, any
3 defenses, and potential sentences.

4 Applicant also alleges his plea was involuntary
5 due to his ---

6 THE INTERPRETER: Your Honor, one second, please.
7 The interpreter needs to catch up.

8 THE COURT: Do your best.

9 (Pause in proceedings while interpreter speaks in
10 Spanish to applicant to catch up.)

11 THE INTERPRETER: Go ahead.

12 MR. ISENBERG: Applicant also alleged his plea
13 was involuntary due to his ignorance and due to the
14 arrest. On January 3rd, respondent met our return
15 requesting an evidentiary hearing be held.

16 He's present here today and represented by Lydia
17 Hernandez. And I'll let her proceed with her case.
18 Thank you.

19 MS. HERNANDEZ: Your Honor, may it please the
20 Court?

21 THE COURT: Yes, ma'am.

22 MS. HERNANDEZ: The allocation presented on the
23 application by the applicant is what we're going to
24 present today is just as he described it, Your Honor.

25 THE COURT: All right.

1 MS. HERNANDEZ: Can I call my first witness?

2 THE COURT: Please do.

3 MS. HERNANDEZ: I call Francisco Rodriguez to the
4 stand.

5 (Witness comes forward.)

6 THE COURT: Have him place his left hand on the
7 Bible, raise his right hand. Do you solemnly swear or
8 affirm you will tell the truth in this hearing?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Be seated.

11 FRANCISCO R. RODRIGUEZ,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. HERNANDEZ:

15 Q. Good morning, Mr. Rodriguez.

16 A. Good morning.

17 Q. Do you understand why we're here today?

18 A. Yes.

19 Q. Is that because we're here on your postconviction
20 relief hearing?

21 A. Yes.

22 Q. Do you understand what will happen if this relief
23 is granted?

24 A. Yes.

25 Q. What would that be?

1 A. A new trial or a reduction of the time.

2 Q. Okay. A new trial would happen if this was
3 granted. Do you understand that?

4 A. Yes.

5 Q. Mr. Rodriguez, where are you from originally?

6 A. From Mexico, Veracruz.

7 Q. What is your primary language?

8 A. Only Spanish.

9 Q. Were you convicted on April 12th of 2015 of lewd
10 act upon a minor under the age of 16?

11 THE INTERPRETER: The name upon a minor?

12 MS. HERNANDEZ: Lewd act upon a minor.

13 THE DEFENDANT: Yes, that's how it is.

14 BY MS. HERNANDEZ:

15 Q. What was your sentence?

16 A. A maximum sentence of 15 years.

17 Q. Who represented you on that charge?

18 A. Joseph Baldwin.

19 Q. Thank you. Who hired Mr. Baldwin to represent
20 you?

21 A. My ex-wife retained him.

22 Q. Is she the one who paid him for his services?

23 A. She did start paying the down payment but then
24 she did not finish paying.

25 Q. How much did she pay, do you know?

1 A. At the beginning she told me she had paid her --
2 paid him 1,000, and then she paid him 1,800.

3 Q. How soon after Mr. Baldwin was hired you met with
4 him?

5 A. A week later he came to see me to tell me he was
6 representing me.

7 Q. Did he come alone?

8 A. Yes, he came alone.

9 Q. And what language did you and Mr. Baldwin spoke
10 on that afternoon?

11 A. In Spanish, the little bit I could understand
12 because of the little bit he speaks of Spanish.

13 Q. So Mr. Baldwin does not speak Spanish fluently?

14 A. Um, a little bit cot [sic], not fluidly.

15 Q. Did you fully understand your conversation with
16 Mr. Baldwin?

17 A. Not everything. He just would come for a few
18 minutes at a time.

19 Q. On that first meeting, what was the extent of
20 what you understood of the conversation?

21 A. Just that he was going to represent me and to
22 trust that he would help me in my case.

23 Q. Did Mr. Baldwin give you any papers on that
24 occasion?

25 A. He gave me six or eight pages, that was all.

1 Q. Were those documents in English or Spanish?

2 A. Every one was in English.

3 Q. Did Mr. Baldwin tell you what was in those
4 documents?

5 A. I'm sorry?

6 Q. Did Mr. Baldwin tell you in Spanish what was
7 written in those documents?

8 A. No, not at that moment.

9 Q. And on any other occasion, he didn't bring them
10 translated in Spanish for you?

11 A. No, only in English.

12 Q. Can you tell me how many times you met with
13 Mr. Baldwin in total?

14 A. Three times at the California Avenue and then the
15 next time I just ask my wife to get rid of him.

16 Q. So in total how many times did you meet with him?

17 A. Three times at the California Avenue and perhaps
18 twice in the Lennon [sic].

19 Q. In the Annex facility? Is that what you say?

20 A. In the Annex. That's how it is.

21 Q. During those meetings, were you and Mr. Baldwin
22 alone?

23 A. Yes.

24 Q. Did you always try to communicate in Spanish with
25 each other?

1 A. Yes, that's my only language.

2 Q. Was there ever an interpreter in any of those
3 meetings?

4 A. No.

5 THE COURT: What was that question?

6 MS. HERNANDEZ? Excuse me?

7 THE COURT: Ask that again.

8 BY MS. HERNANDEZ:

9 Q. During those meetings, was there ever an
10 interpreter?

11 A. No.

12 Q. What happened on the second time you met with
13 Mr. Baldwin?

14 A. Just asked me not to get rid of him, that he
15 would do what was possible for me. And that the rest of
16 the money would be paid by my wife by selling a mobile
17 home.

18 Q. So you intended to fire Mr. Baldwin on that
19 occasion, is that what you're saying?

20 A. That's how it is.

21 Q. But that ended up not happening, right?

22 A. No. Because he promised me he would work towards
23 the case duly.

24 Q. Okay, very well. On that occasion did Mr.
25 Baldwin give you any more documents?

1 A. No. At the moment he only had some folders with
2 him and a DVD.

3 Q. Did you watch that DVD with Mr. Baldwin?

4 A. No, never.

5 Q. Did he tell you what was on the DVD?

6 A. My wife told me because he lend them to her.

7 Q. I'm asking you did Mr. Baldwin tell you what was
8 on the DVD?

9 A. He -- she -- he just told me that it was the
10 testimony of the girl.

11 Q. You mean the girl that was accusing you of that
12 crime?

13 A. That's how it is.

14 Q. On any of the other occasions you met with
15 Mr. Baldwin did you see that DVD?

16 A. No. Because he came to see me, let's say the
17 first time, it was a year after.

18 Q. Okay. Let's not get ahead. I'm gonna ask you
19 about each time he came to see you, so...

20 So you told me that another occasion you spoke
21 about the payment; is that correct? That your wife was
22 gonna pay with the sale of a mobile home; is that
23 correct.

24 A. That's how it is.

25 Q. Those three visits when you were housed in the

1 detention center in Spartanburg at the Carolina Avenue,
2 right? Carolina Avenue[sic].

3 A. That's how it is.

4 Q. And you're telling me that the fourth and fifth
5 time you met with him you were already transferred to
6 the Annex facility; is that correct?

7 A. Yes, that's how it is.

8 Q. Once you were transferred to the Annex, how long
9 a time had occurred since you had been incarcerated?

10 A. Perhaps 12 months, a year.

11 Q. Did you still think that Mr. Baldwin represented
12 you on this case?

13 A. No. Because I had already written asking for the
14 petition of the public defender.

15 Q. You're saying that there's a kiosk in the
16 facility where you could write to request an attorney
17 from the public defender's office; is that correct?

18 A. That's it.

19 Q. And what happened? You wrote to them and what
20 did they write back?

21 A. They told me that they couldn't assign me a
22 public defender because Mr. Baldwin was still
23 representing me. It showed that he was still
24 representing me.

25 Q. During your stay at the Annex, you stated that

1 you met with him twice, right?

2 A. That's it, at the library.

3 Q. Was he coming to see you?

4 A. The last occasion, those occasions, yes.

5 Q. Okay. And what did you talk about on those
6 meetings?

7 A. He asked me, he said we read this book very short
8 time.

9 Q. During the visit, did he bring you the discovery
10 or the DVDs or any of this in your case?

11 A. No.

12 Q. So you're saying that you never went over all the
13 evidence in your case with Mr. Baldwin; is that correct?

14 A. No, I did not see it.

15 Q. Isn't it true that when the police came to your
16 house they confiscated many equipment containing
17 cameras, DVD's, videos, computers, things of that
18 nature?

19 A. That's it, they did confiscate all of that.

20 Q. Did Mr. Baldwin ever tell you what happened with
21 those or what did they find in those?

22 A. He told me they didn't find the evidence and I
23 asked him to return it back to me.

24 Q. Did they return it back to you?

25 A. No. He promised me he would return them to the

1 person I named as my represented [sic], my ex-wife.

2 Q. During those meetings that you had with
3 Mr. Baldwin, Mr. Baldwin -- and I know the conversation
4 was not very fluent but did you ever tell him to
5 investigate any matters for you?

6 A. Yes. I ask him to interview my wife and probably
7 a friend of mine, Louis.

8 Q. And you told him to interview your wife and
9 Mr. Sanchez because they could testify to what?

10 A. My wife because she was the babysitter and
11 the ---

12 THE COURT: She was what?

13 THE INTERPRETER: The babysitter.

14 THE COURT: Okay.

15 THE INTERPRETER: And when the investigators
16 interviewed her, they said that she left her alone and
17 that's not true.

18 MS. HERNANDEZ: Just allow her to interpret,
19 please.

20 THE INTERPRETER: (Speaks in Spanish.) I'm so
21 sorry, Your Honor. The interpreter was speaking in
22 Spanish.

23 And only in one occasion when the girl was crying
24 because she wanted to go with my son, 6 years old, and a
25 friend, 11 years old, to go with me to cut Louis' lawn

1 at his house. And when we arrived to Louis' house, he
2 was coming, he opened the door and the kids went to play
3 at the pool and I went to mow the yard.

4 BY MS. HERNANDEZ:

5 Q. So to resume what you said, your wife could
6 testify that you were never left alone with the girl
7 that was accusing you; is that correct?

8 A. That's it.

9 Q. And this person, Louis Sanchez, was a friend or
10 the person who called you to come and cut his lawn and
11 he knows that when you were there, the girl was there,
12 and two other kids were there and you were never alone
13 with the girl also; is that correct?

14 A. That's it. That's correct.

15 Q. Was there anything else that you asked him to
16 investigate?

17 A. During those months that things was happening it
18 was because my wife volunteer to take care of the girl
19 because she was being left home alone. She only watch
20 her for three months, and during those three months
21 vacations happened and she was sent to Mexico. When she
22 returned, she came back pretty rebellious because her
23 stepbrothers did not treat her well.

24 Q. So you asked him to investigate that for you; is
25 that correct?

1 A. That's it. I asked him to investigate.

2 Q. Do you know if he investigated those things for
3 you?

4 A. No. I don't think so because when he came I
5 would ask him and said, no, he would do it because he
6 had the way to find out if she left the country.

7 Q. So he never told you the result of any
8 investigation; is that correct?

9 A. That's correct.

10 Q. During the visits that Mr. Baldwin had with you,
11 did he ever tell you that there was an offer from the
12 solicitor?

13 A. Yes. After I wrote at the kiosk he came on
14 February 8th to drop off the offered paperwork.

15 Q. Was that paper in Spanish?

16 A. No.

17 Q. Did you understand what the papers said?

18 A. No.

19 Q. Did Mr. Baldwin tell you what the paper said in
20 Spanish?

21 A. No.

22 Q. Before you went to the court did you know what
23 the offer was for your case?

24 A. I just got me an English dictionary and it said
25 third degree.

1 Q. Did it mention a possible penalty?

2 A. In the paper he brought me about sentencing we
3 did discuss the equivalent of the charge.

4 Q. And what was that?

5 A. He said it was equivalent to 15 years, but he
6 would do whatever was possible to reduce the time or get
7 me served time.

8 Q. Okay. And your conversation for Mr. Baldwin, did
9 he tell you that you were gonna plead to what is called
10 an Alford plea?

11 A. No.

12 Q. He did not explain to you what Alford was?

13 A. No.

14 Q. On the day of the hearing, did you know what you
15 were going to the court for?

16 A. No, not exactly.

17 Q. What did you think you were doing over there?

18 A. Well, I thought it was going to be a trial. I
19 asked witnesses to come.

20 Q. Isn't it true that your father came from Mexico
21 because you told him that you were gonna have a trial on
22 that day?

23 A. Yes. He came from Mexico and finished paying Mr.
24 Baldwin.

25 Q. Okay. On the day of the hearing, did Mr. Baldwin

1 give you any documentation?

2 A. No.

3 MS. HERNANDEZ: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes.

6 BY MS. HERNANDEZ:

7 Q. Do you recognize this paper?

8 A. Yes. It is the paper that I got five minutes
9 before -- 5, 10, 15 minutes before the hearing.

10 Q. And can you tell me what this paper says?

11 A. I don't know how to speak. I don't know how to
12 read English.

13 THE COURT: What is it?

14 MS. HERNANDEZ: It is under the PCR, sir.

15 THE COURT: Okay. All right.

16 BY MS. HERNANDEZ:

17 Q. Do you recognize your signature on that paper?

18 A. Yes.

19 Q. And did you sign that on that day?

20 A. Yes.

21 Q. And do you see this word over here?

22 A. Yes, Alford.

23 Q. And we spoke before about the Alford pleas,
24 right?

25 A. That's correct.

1 Q. And you told me that you didn't know before what
2 that was, right?

3 A. No. That's why during the court I interrupted
4 the hearing to ask him what it was.

5 Q. Okay. When did Mr. Baldwin tell you what an
6 Alford plea was?

7 A. He didn't explain it to me. He just said to
8 accept it.

9 Q. Today can you tell me what an Alford plea is?

10 A. I studied a little bit at the prison's library.
11 And I have some notion that it says that I'm pleading
12 guilty due to the weight of the evidence, but I don't
13 acknowledge being guilty.

14 Q. Did you and I also discuss the Alford plea?

15 THE INTERPRETER: I'm sorry, can you repeat that
16 for the interpreter?

17 MS. HERNANDEZ: Yes. Did you and I also discuss
18 the Alford plea?

19 THE DEFENDANT: Yes.

20 BY MS. HERNANDEZ:

21 Q. Wasn't it difficult for me to explain to you what
22 it actually was?

23 A. Yes. Very difficult because I am pleading and at
24 the same time I am not.

25 Q. And the conversations that you and I had, we had

1 them in Spanish; is that correct?

2 A. That's it.

3 Q. And did I tell you to that Spanish was my native
4 language also?

5 A. That's it.

6 Q. And you also know that I am from Mexico, right?

7 A. That's it.

8 Q. So our language is pretty much equal?

9 THE INTERPRETER: Your Honor, the interpreter is
10 going to clarify the words iwual igual the same.

11 MS. HERNANDEZ: Thank you.

12 BY MS. HERNANDEZ:

13 Q. And even though we speak Spanish fluently and is
14 our native language, we still had hard time for you to
15 understand what an Alford plea was; is that correct?

16 A. Yes. I found it to be controversial.

17 Q. You're right about that. It's a hard concept to
18 grasp. So much so that even when I explained it to you
19 in your mother tongue you still went to the library to
20 look it up, correct?

21 A. That's it.

22 Q. Okay. During the hearing did the judge ever ask
23 you if you wanted to speak to the lawyer?

24 A. Yes.

25 MS. HERNANDEZ: Your Honor, I'm referring to the

1 transcript of the pleading -- of the plea date. Line 10
2 on page 7.

3 On that page the judge asked you, do you want to
4 talk to your lawyer. And there is a pause where the
5 court reporter says that the defendant is speaking with
6 his lawyer. And that is right after the Court asked you
7 or said to you, you have certain rights. On line 3:
8 All right.

9 You have certain rights you must waive and give
10 up to plead guilty or to plead under Alford. You have a
11 right -- sorry.

12 (Pause for interpreting.)

13 You must waive and give up to plead guilty or to
14 plead under Alford.

15 He also said: You have a right to remain silent
16 under the state and federal constitution. Do you give
17 up that right?

18 And on line number 7 your response was: When,
19 now?

20 The Court response: Will you give up that right?
21 Yes?

22 And your response was: Well...

23 And there's a pause there. And that's when he
24 asked you if you wanted to talk to your lawyer. It says
25 you were speaking to your lawyer.

1 When you were speaking to your lawyer, the
2 interpreter was translating what you were talking about?

3 A. No.

4 Q. Also the judge on line 23 is asking you if you
5 are giving up your right also to present any witnesses
6 in your favor.

7 And your answer on line 23: Is witnesses in
8 favor or against me?

9 And there's another pause where you speak to your
10 lawyer. That'd be another talk. Were you speaking in
11 Spanish to your lawyer?

12 A. At that moment I asked him why was I giving up
13 two of my witnesses if they were present?

14 Q. And what was Mr. Baldwin's answer?

15 A. He just said to say yes to continue on.

16 Q. On page number 8 there's a third pause in the
17 record.

18 On line 2 the court asked you again: You don't
19 give up that right?

20 And you -- and Mr. Baldwin says: No, he...

21 There's a pause and then there's another
22 conversation between you and Mr. Baldwin. That's a
23 third conversation you had in front of the judge with
24 your lawyer and after that you answer yes. Why did you
25 answer yes again?

1 THE INTERPRETER: Why or when?

2 MS. HERNANDEZ: Why.

3 THE DEFENDANT: He told me to answer yes or to
4 continue.

5 BY MR. HERNANDEZ:

6 Q. Okay. On that same page ---

7 THE INTERPRETER: Your Honor, hold on. The
8 interpreter is going to clarify. The interpreter did
9 clarify he did answer yes to continue.

10 BY MS. HERNANDEZ:

11 Q. On the same page 8 and line 10 the judge asked
12 you: Okay, sir, did you offer to plead under
13 North Carolina versus Alford?

14 You have another conversation with your lawyer
15 there. You don't answer right away, why?

16 A. Because at that moment I wanted to clarify the
17 meaning of Alford. I wanted him to explain it to me.

18 Q. And did he explain it to you at that time?

19 A. No.

20 Q. So then why did you answer yes?

21 A. To continue on with the hearing.

22 Q. Okay. Going on in the transcript on page number
23 9, the judge is asking you if Mr. Baldwin has done
24 everything he can do for you and there is a big pause
25 before you answer. And then you answer maybe and then

1 there's another pause. Why did you have to say that
2 there?

3 A. Because as I said at the beginning he never
4 brought me the investigations I asked for.

5 Q. Okay. And so the judge says: Do you want -- do
6 you know of anything you would like him to do that he
7 had refused to do?

8 And you said exactly what you're telling me. I
9 asked him to investigate.

10 THE INTERPRETER: And you asked him to
11 investigate?

12 MS. HERNANDEZ: And you answer. I asked him to
13 investigate that the victim went to Mexico with someone
14 that wasn't her parents. She went and came back during
15 the month that they are saying, so I asked them to
16 investigate it.

17 And the Court is asking you if he did do that.
18 And you said, I don't know. And the Court asked you
19 again, well, ask him.

20 So there's another pause where you're speaking to
21 your attorney. This is the fifth time that the hearing
22 is interrupted because you need to speak to an attorney
23 about what you're doing, right?

24 A. (No response.)

25 BY MS. HERNANDEZ:

1 Q. And the Court asked you again whether you know
2 whether he did or not. And on page 10, line 1 you said
3 I don't know again.

4 The judge then said: Okay, Mr. Baldwin, you want
5 to, you want to sit him down and talk to him for a
6 minute or something?

7 Mr. Baldwin's response: Yes, Your Honor, I'll,
8 I'll try to do that. The problem is they make this
9 indictment so broad and he wants to take it literally.
10 I'll talk to him for a minute. And that is the sixth
11 interruption. Do you hear it?

12 This interruption lasted for three minutes, from
13 11:22 to 11:25. What did you talk to him about?

14 A. At that moment I asked him if he had done the
15 investigations and if he had interviewed the witnesses I
16 had asked him to. And since I saw he just had a yellow
17 note pad with the names of my dad and friends, I noticed
18 he didn't bring with him any evidence to my favor. So
19 at that moment I was just thinking for the hearing to
20 finish. But he told me, no, the moment will come for me
21 to present your defense.

22 Q. So even when you asked him to stop, he said let's
23 continue, I'm gonna have a chance to defend you later
24 on; is that correct?

25 A. That's it.

1 Q. So when the Court goes back on the record, then
2 you answered yes, he answered the questions. Why did
3 you say yes again?

4 A. Because the attorney said to say yes to continue
5 on.

6 Q. Okay. So on page 13 on line 23, the judge asked
7 you: And you've already told me you believe that if she
8 did that, that the jury will in all likelihood convict
9 you; is that true?

10 A. Correct.

11 Q. And on that occasion there's another pause where
12 you're talking to your attorney. This is the seventh
13 time you had to talk to your attorney at that hearing;
14 is that right?

15 A. (No response.)

16 Q. And your response was: They didn't find
17 anything, they took my computer.

18 And they yet again one more pause for you to talk
19 to your attorney. This is the eighth time you had to
20 talk to your attorney during a plea hearing; is that
21 correct?

22 A. Yes, that's it.

23 Q. When you finish speaking to your attorney you
24 answer yes. Why did you do that?

25 A. When they just ask me if the prosecutor took the

1 evidence to the juror, I wanted to ask what evidence do
2 they have about me if I wasn't ever brought to the
3 police hearing of the girl or my witnesses.

4 Q. And what did he say?

5 A. And he said: Don't worry, say yes, we'll
6 continue.

7 Q. It sounds to me like through the whole plea
8 hearing you were confused about what was going on; is
9 that correct?

10 A. Yes.

11 Q. Did you actually know what was going on in that
12 hearing?

13 A. The truth? No.

14 Q. Did you understand what the judge told you, that
15 he could sentence you up to 15 years?

16 A. The judge said it from the beginning. He read
17 it, the charge. And the sentence it could apply.

18 Q. At that moment, even though he said that, did you
19 think you were gonna get 15 years as the sentence?

20 A. I didn't even pay attention to the judge. I just
21 wanted to clarify that the dates were not correct.

22 Q. Okay. Yes. On the transcript you clarified that
23 for the judge or tried to clarify that the allegations
24 were only for three months, not the whole two years. In
25 your conversations with Mr. Baldwin, did he ever say

1 you're gonna get the maximum 15 years if we plead or did
2 he promise you anything different?

3 A. He told me it could be less because there were no
4 evidences against me. And the only witness was the
5 girl.

6 Q. In the conversations that you had with Mr.
7 Baldwin and what you understood of them, did you ever
8 talk about that when you're sentenced you will be placed
9 on the sexual offender's registry?

10 A. No, he did not explain it to me.

11 Q. Not even at that time of the hearing?

12 A. No.

13 Q. At the time of the plea when they sentenced you,
14 did you know what the sexual offender registry was?

15 A. No.

16 Q. Do you know now what that entails?

17 A. Yes. That you lose a lot of privileges in the
18 schools with your children.

19 Q. Anything else?

20 A. Schools, parks, all of that now I avoid.

21 Q. Did Mr. Baldwin know that you were originally
22 from Mexico?

23 A. Yes.

24 Q. Did Mr. Baldwin know your legal status in the
25 United States?

1 A. Probably.

2 Q. You never spoke about that?

3 A. He just told me that it would be possible for me
4 to be deported.

5 Q. So when -- when did he say that?

6 A. During the visit at the Annex.

7 Q. Was that when he was explaining to you about the
8 plea deal?

9 A. Yes.

10 Q. And did he tell you that a sexual crime against a
11 minor is considered, as far as immigration is concerned,
12 a crime involving moral turpitude?

13 THE INTERPRETER: (Indicating.)

14 BY MS. HERNANDEZ:

15 Q. A crime involving moral turpitude.

16 A. No.

17 Q. And did he tell you by pleading guilty to this
18 charge you will be banned completely from ever reporting
19 legal status in the United States?

20 A. No, he did not explain it to me.

21 Q. Did Mr. Baldwin know that you have children?

22 A. Yes.

23 Q. And your children are United States citizens?

24 A. Yes.

25 Q. And did he ever explain -- did Mr. Baldwin ever

1 explain to you that if you were deported you could never
2 come back and be with your children or raise your
3 children?

4 A. No, he didn't explain it to me.

5 Q. After the beginning of the hearing and the plea
6 went on, did Mr. Baldwin file a notice of appeal in your
7 case?

8 A. No.

9 Q. Did Mr. Baldwin ever visit you again in jail?

10 A. No. After the hearing was over and I was
11 sentenced, after it all was over, my dad was present and
12 Robert, who is here, he told them that there was nothing
13 else to do; that I already had pled guilty, that there
14 was nothing else to do.

15 Q. So you had no contact about this case with Mr.
16 Baldwin ever again?

17 A. No. I was taken to pod six. I called my parents
18 for them to hire another attorney and to appeal. The
19 following morning I was taken to Columbia and I was
20 locked in Columbia.

21 Q. Okay. But you did not see him again? That's
22 what I'm asking.

23 A. Not anymore.

24 Q. Okay. Did you ever see him again? Not for this
25 case but anywhere else?

1 A. No. No more. Only seven or eight months later.

2 Q. Where did you see him?

3 A. He was representing my wife to remove my legal
4 custody of the children. And I had three hearings at
5 family court.

6 Q. Just a second, please. Let him look at this.

7 Your Honor, may I approach the witness?

8 THE COURT: (Nods head up and down.)

9 BY MS. HERNANDEZ:

10 Q. So you're saying you were involved with your wife
11 in a Family Court case?

12 A. That's it.

13 Q. And you said that was seven months after this
14 happened?

15 A. Perhaps a little bit later.

16 Q. Okay. Mr. Baldwin was then representing your
17 wife against you in that case?

18 A. That's it.

19 Q. Is this your name over here as the defendant on
20 this order?

21 A. That's it.

22 Q. And did Mr. Baldwin represent your wife
23 throughout the whole case?

24 A. In the three first hearings he represented her
25 until Judge Karen fired him because I said that it --

1 there was conflict of interest.

2 MS. HERNANDEZ: Your Honor, at this time I would
3 like to introduce the order of removal of Mr. Baldwin
4 for the 2017-DR-42-0459 case.

5 THE COURT: What is it, termination of parental
6 rights?

7 MS. HERNANDEZ: It was -- it is the custody
8 battle, Your Honor.

9 THE COURT: Oh, custody.

10 MR. ISENBERG: Your Honor?

11 MS. HERNANDEZ: Court visitation.

12 MR. ISENBERG: For the record, at the very least,
13 I'm gonna have to object to this for, number one, the
14 relevance. This is something that happened way after
15 his plea hearing; therefore, it has nothing to do with
16 whether or not his plea was involved or whether his
17 counsel was effective in his criminal case.

18 THE COURT: I understand.

19 MS. HERNANDEZ: Your Honor ---

20 THE COURT: I'll let her make a record.

21 MS. HERNANDEZ: Thank you.

22 (Applicant's Exhibit Number 1, Order of Removal,
23 was marked for identification.)

24 (Applicant's Exhibit Number 1 was entered into
25 the record.)

1 BY MS. HERNANDEZ:

2 Q. Were you representing yourself on that hearing?

3 A. That's it.

4 Q. Did you ever have a lawyer?

5 MR. ISENBERG: Your Honor, I'm just gonna have to
6 object to this line of questioning.

7 THE COURT: I sustain all that. That is ---

8 MS. HERNANDEZ: Yes, thank you, Your Honor.

9 THE COURT: All right. Sustain the objection.

10 MS. HERNANDEZ: Thank you, Your Honor.

11 MR. ISENBERG: Thank you, Your Honor.

12 BY MS. HERNANDEZ:

13 Q. On the day of the plea, did you freely plead
14 guilty to an Alford plea?

15 A. No.

16 Q. Did you make an intelligent decision on that day
17 to plead to an Alford plea?

18 A. No. Because the first time I heard that plea
19 through the prosecutor's voice.

20 Q. Did you feel under duress to plead to an Alford
21 plea on that day?

22 A. Yes.

23 Q. If it wasn't for Mr. Baldwin telling you to go
24 ahead and go on through the full eight interruptions,
25 would you have gone on with that plea?

1 A. No.

2 Q. Would you have gone to trial on this case
3 instead?

4 A. Yes.

5 Q. In fact, on that day you thought you were going
6 to a trial; is that correct?

7 A. Yes. Because the judge said if I wanted to go to
8 trial the jurors were there.

9 MS. HERNANDEZ: No more questions, Your Honor.

10 MR. ISENBERG: May it please the Court?

11 THE COURT: Cross-examination.

12 THE INTERPRETER: Your Honor, how long have we
13 been going?

14 THE COURT: An hour and 15 minutes.

15 THE INTERPRETER: The interpreter is going to ask
16 for a five or ten-minute break.

17 THE COURT: All right.

18 THE INTERPRETER: Thank you.

19 THE COURT: All right. Take a ten-minute break.

20 (Witness leaves witness stand.)

21 (A recess was had from 10:46 a.m. - 10:59 a.m.)

22 THE COURT: Okay. Let's proceed.

23 MR. ISENBERG: Thank you, Your Honor.

24 (Witness resumes witness stand.)

25 May it please the Court?

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. ISENBERG:

4 Q. Good morning, Mr. Rodriguez.

5 A. Good morning.

6 Q. You testified on direct examination that all your
7 attorney's communications were in English, correct?

8 A. They were in Spanish.

9 Q. So your attorney's communications with you were
10 in Spanish?

11 A. His Spanish is very not that understandable, but
12 I tried to understand him.

13 Q. But right now your testimony is that your
14 attorney communicated with you in Spanish?

15 A. That's it.

16 Q. Did you ever tell him that you couldn't
17 understand his Spanish?

18 A. I did not tell him, but I had to pay a lot of
19 attention to understand what he was saying.

20 Q. So after paying a lot of attention you understood
21 what he was saying?

22 A. Not every time. They were very few minutes I
23 would see him. I saw him with lack of interest and even
24 yawning.

25 Q. That's not an answer to my question. The

1 question is, after paying attention, as you previously
2 testified, were you able to understand his Spanish?

3 A. Not everything.

4 Q. Okay. So you weren't able to understand
5 everything, but you didn't tell him you weren't able to
6 understand, correct?

7 A. No, I did not tell him.

8 Q. Okay. And at your plea hearing you had an
9 interpreter, correct?

10 A. That's it.

11 Q. Were you able to understand your interpreter at
12 the plea hearing?

13 A. Yes.

14 Q. Okay. So at your plea hearing do you remember
15 telling the judge through your interpreter that you
16 understood why you were there that day?

17 A. I understood the things that the interpreter was
18 saying.

19 THE COURT: Mr. Isenberg, would you clarify on
20 that very subject whether the interpreter interpreted
21 the conversation -- the off-the-record conversations he
22 had with his lawyer during the plea.

23 MR. ISENBERG: I will have his lawyer testify
24 about their conversations --

25 THE COURT: Okay.

1 MR. ISENBERG: -- that occurred off the record.
2 I do plan to address that.

3 THE COURT: Yeah, because they're two different
4 things.

5 MR. ISENBERG: Yes, Your Honor.

6 THE COURT: All right.

7 MR. ISENBERG: Thank you.

8 BY MR. ISENBERG:

9 Q. Okay. I'll re-ask. Do you remember telling the
10 judge you knew what you were doing in court that day?

11 A. Yes.

12 Q. Okay. Do you remember telling the Judge that you
13 wish to give up your right to confront witnesses?

14 A. After the attorney advise me because I did not
15 want to give up the right to my witnesses.

16 Q. So your testimony is that your attorney gave you
17 advice and you listened to that advice, correct?

18 A. To say the word say yes, it's easy to pronounce
19 it.

20 Q. That's not an answer to my question. You
21 testified that your attorney gave you advice and you
22 listened to that advice, correct?

23 A. Every interruption was not even for one minute.
24 The longest interruption in the hearing was maybe three
25 minutes.

1 Q. Okay, we'll move on. Do you remember the
2 solicitor giving the facts at your plea hearing?

3 A. Yes.

4 Q. Do you remember the solicitor saying there was at
5 least one instance of oral sex that occurred at the
6 babysitter's home on Cody Street in Spartanburg County?

7 A. Was the first time I heard it.

8 Q. But you, in fact, heard that?

9 A. Yes.

10 Q. And you remember telling the judge that you
11 thought the solicitor would be able to show that fact to
12 a jury, correct?

13 A. Yes, but it was evidence that was never given to
14 me.

15 Q. If the evidence was never given to you, why did
16 you tell the judge you believed the solicitor could
17 prove that fact to a jury?

18 A. Because I turned to look at my attorney and he
19 said to say yes.

20 Q. Are you alleging that after the judge asked you
21 this question you turned and talked to your attorney?

22 A. That's it.

23 Q. Do you understand that this conversation that
24 you're alleging is not in the record?

25 A. There was no interruption, I just said I turned

1 to look at him and he assented with his head.

2 Q. So you decide to interrupt eight other times, but
3 on this occasion you did not decide to interrupt?

4 A. That's it.

5 Q. Okay. So you're saying that you answered yes to
6 the question from the judge because your attorney told
7 you to, correct?

8 A. That's it.

9 Q. Did you ever answer a question on your own at the
10 plea hearing without turning to your attorney?

11 A. No.

12 Q. Okay. So it was common for you to turn to your
13 attorney before answering a question?

14 A. I'm sorry?

15 Q. I'll withdraw that question.

16 Do you remember telling the judge that no one
17 threatened, forced or made you enter into the plea?

18 A. For, for -- for threat it was in my mind the word
19 death. And, yes, if it it's equivalent to pressure, I
20 feel that I was pressured, the attorney was manipulating
21 me.

22 Q. So are you now testifying that you were
23 threatened or pressured to enter into the plea?

24 A. I didn't say pressured or threatened, I said
25 manipulated.

1 Q. Okay. Now, you testified that your attorney did
2 not sufficiently review discovery with you, correct?

3 A. Did not review it with me.

4 Q. And you tried to fire him, correct?

5 A. On the second or third week.

6 Q. Why did you tell the judge that you were
7 satisfied with your attorney at your plea hearing?

8 A. Because before I had interrupted and he had said
9 to me for him to give the version of the facts.

10 Q. That's not an answer to my question. Why did you
11 tell the judge you were satisfied with your attorney?

12 A. Because the attorney said he was just going to
13 give the defense to my favor.

14 Q. Do you remember the Court asking you if there's
15 anything else you would like your attorney to do?

16 A. I didn't want to interrupt anymore because the
17 attorney had said he was just going to give his version.

18 Q. That does not make any sense. I'm just asking a
19 yes or no question. Do you remember the judge asking
20 was there anything else you would like your attorney to
21 do?

22 A. I said no.

23 Q. Okay. Would it surprise you if you told the
24 judge you did not have anything else for the attorney to
25 do?

1 A. It would surprise me? How is that?

2 Q. Why did you not tell the judge that your attorney
3 had not reviewed discovery with you?

4 A. I truly did not have any experience in law, as I
5 put it on the PCR.

6 Q. Okay. So you wanted your attorney to review a
7 DVD with you; is that correct?

8 A. That's it.

9 Q. Did you know about the DVD before you pled
10 guilty?

11 A. Not exactly.

12 Q. You knew it existed, correct?

13 A. It existed because he showed it to my wife.

14 Q. And your wife told you about it, correct?

15 A. She told me she saw it.

16 Q. And that was before your plea hearing?

17 A. That's it.

18 Q. And yet you didn't raise any issues with the DVD
19 at your plea hearing, correct?

20 A. Yes. Because he said there was nothing against
21 me.

22 Q. Are you saying that the attorney told you that
23 the DVD was not evidence against you?

24 A. No.

25 Q. So your attorney did tell you that the DVD that

1 you reviewed was unfavorable to you?

2 A. He just left me some papers but did not give me
3 all the documentation to review with me.

4 Q. So he never talked to you about the papers he
5 left you?

6 A. No.

7 Q. And those papers were in English?

8 A. That's it.

9 Q. And you couldn't understand those papers?

10 A. No.

11 Q. So you had papers based upon a DVD and you did
12 not raise any issues with not being able to understand
13 those papers at your plea hearing, correct?

14 A. No, not there.

15 Q. Okay. And you testified on direct examination
16 that your attorney told you that you could receive 15
17 years before your plea hearing, right?

18 A. That's how it is.

19 Q. And you received 15 years, right?

20 A. When he told me about that he told me not to
21 worry because he would either try to reduce the time or
22 get me to have served time, credit for served time.

23 Q. So your attorney had conversations with you about
24 your potential sentence but never had conversations with
25 you about the discovery?

1 A. That's how it is.

2 Q. And you would like to go back to -- I'm sorry,
3 I'll withdraw that question.

4 You filed this PCR application to receive lesser
5 time or go to trial, correct?

6 A. That's how it is.

7 Q. Okay. But your attorney talked to you about the
8 fact that you may be potentially deported upon release
9 from prison, correct?

10 A. Told me that there was a possibility that I was
11 deported.

12 Q. And you're testifying today that you understood
13 everything the interpreter told you at the plea hearing,
14 correct?

15 A. The woman was a good interpreter, I did
16 understand her.

17 Q. So you're testifying that she interpreted
18 everything the judge said accurately, correct?

19 A. I understood everything. What I didn't
20 understand was what was going on in that hearing.

21 Q. And you remember her interpreting the judge going
22 over your constitutional rights, correct?

23 A. Rights for which I interrupted because I didn't
24 want to give up my witnesses because I thought it was
25 going to be a trial.

1 Q. But you ultimately waived those rights, correct?

2 A. Yes, after the attorney advised me to do so.

3 Q. So why are you now alleging that you had no
4 knowledge of those rights when you entered into a plea?

5 A. Excuse me?

6 Q. Why are you alleging that you did not have
7 knowledge of your constitutional rights when entering
8 into a plea agreement?

9 A. I don't have a criminal record. I have never
10 been in court. I didn't know which one my rights were.

11 Q. Okay. But the judge also told you that you could
12 receive 15 years, correct?

13 A. I did not pay attention. At that moment I just
14 wanted to clarify the dates that were given.

15 Q. Okay. But you knew that you could receive 15
16 years, correct?

17 A. Yes.

18 Q. Why are you now alleging that you did not know
19 how much time you could receive?

20 A. Because the attorney told me that he was going
21 get me credit for time served.

22 MR. ISENBERG: Okay. I have no further questions
23 for this witness.

24 THE COURT: Redirect?

25 MS. HERNANDEZ: Just a few questions, Your Honor.

1 THE COURT: Yes.

2 REDIRECT EXAMINATION

3 BY MS. HERNANDEZ:

4 Q. During the interruptions in the court hearing,
5 when you had side conversations with your lawyer, was
6 the interpreter there interpreting there for both of
7 you?

8 A. No.

9 Q. Was it just you and your attorney speaking in
10 Spanish?

11 A. That's how it was.

12 Q. You ultimately said that you were, yes, you were
13 happy with the services or satisfied with the services
14 of your lawyer; is that correct?

15 A. Yes.

16 Q. But before you did that, you have to have a side
17 conversation with your lawyer; is that correct?

18 A. Yes.

19 Q. When the judge asked you about the evidence and
20 the likelihood of there be a percent that you could be
21 convicted, isn't it true that you had another side
22 conversation with your lawyer right there?

23 A. Yes.

24 Q. And after that you still answered: They didn't
25 find anything, they took my computer.

1 A. That's it, yes.

2 Q. And there was another time when you spoke to your
3 lawyer before answering again?

4 A. A few seconds.

5 MS. HERNANDEZ: No more questions, Your Honor.

6 THE COURT: All right.

7 MR. ISENBERG: Nothing on recross, Your Honor.

8 THE COURT: All right. Thank you very much.

9 You're done. Next witness?

10 MS. HERNANDEZ: No more witnesses, Your Honor.

11 THE COURT: All right. From the State any
12 witness?

13 MR. ISENBERG: Yes, Your Honor. The State would
14 call Joseph Baldwin.

15 THE COURT: Come around, Mr. Baldwin.

16 (Witness comes forward.)

17 Place your left hand on the Bible and raise your
18 right hand, please. (Complies.)

19 Do you solemnly swear or affirm the testimony
20 you're about to give in this hearing will be the truth,
21 the whole truth, and nothing but the truth?

22 THE WITNESS: I do.

23 THE COURT: All right. Have a seat.

24 JOSEPH BALDWIN,

25 having been duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. ISENBERG:

Q. Good morning, Mr. Baldwin.

A. Good morning.

Q. How are you doing today?

A. I'd rather be somewhere else, but I'm doing fine.

Q. I get that a lot with PCR witnesses. How long have you been practicing law?

A. I've actually been a member of the bar since 1986, but I actually only practiced since 2010.

Q. Okay. And how long since 2010 have you been practicing criminal law?

A. Probably seven or eight years.

Q. How many child sex crime cases have you done?

A. I've probably had about five.

Q. Okay. Was Mr. Rodriguez's case your first one?

A. I think I had one or two before.

Q. Okay. And how did you come about representing Mr. Rodriguez?

THE INTERPRETER: I'm sorry, Your Honor. Do you mind, the solicitor kind of tilting this way so that the interpreter can hear?

MR. ISENBERG: Sure.

THE INTERPRETER: Thank you.

BY MR. ISENBERG:

1 Q. How did you come about representing Mr.
2 Rodriguez?

3 A. Well, his live-in girlfriend, the mother of his
4 children came to see me.

5 Q. Okay. And you're saying after she came to see
6 you, you began to represent him?

7 A. I went and talked to him at the jail. At that
8 time, of course, I didn't know much about his case. I
9 just knew what she was telling me.

10 Q. And what did y'all talk about during that first
11 meeting?

12 A. Well, just what she knew about the case. I, you
13 know, I think I read the warrants that he had against
14 him. And I asked him a little bit about, you know, why
15 these people would be accusing him of this. What he
16 knew about it, that type of thing. And I explained to
17 him that I would be doing what Rule 5 in this case, that
18 I would be getting the reports and evidence that the
19 State had and that I would be -- and that I would be
20 requesting a preliminary hearing. And that I would be
21 talking to him once I knew a little bit more about,
22 about the case.

23 Q. At this meeting did he give you his version of
24 the facts?

25 A. Yeah. And it was basically that he didn't know

1 any, you know, that it was untrue. That he really
2 didn't know -- the allegations were not true. That the
3 girl that was accusing him was somebody that his live-in
4 girlfriend was babysitting.

5 Q. Did he indicate to you that he had never been
6 alone with the girl before?

7 A. I think -- I'm not sure exactly where I learned
8 that she went to Wal-Mart and this occurred -- the
9 allegation is that it occurred while his -- the
10 girlfriend was at Wal-Mart and that he was alone with
11 her at the time.

12 Q. Did you talk to her about that allegation?

13 A. Yes. And he, he did -- he did tell me that he
14 was alone with her for a very short time. That that
15 would be, you know, that early on in the investigation,
16 that's really about the only time he said he was alone
17 with the girl when she did go to Wal-Mart. Well, he was
18 never alone with the girl. I think there were always
19 other people around. There were other children around.

20 Q. But he indicated to you that at some point his
21 girlfriend had gone to Wal-Mart, he had been with the
22 victim?

23 A. Yes.

24 Q. Okay. So he's now testified that he was never
25 alone with her and that he asked you to investigate two

1 witnesses, one being his girlfriend, the other being a
2 friend. Did you ever investigate any of those
3 witnesses?

4 A. Well, of course I talked to the girlfriend. And
5 she basically confirmed that there would be very short
6 periods of time when she wasn't watching -- when she
7 wouldn't be there.

8 Q. Did you consider that to be unfavorable testimony
9 or unfavorable statement?

10 A. Not, not really. But if it was gonna be a trial
11 and she testified to that, it would, I mean, the
12 evidence may be opportunity.

13 Q. Right.

14 A. I'm not -- I didn't consider it extremely
15 unfavorable, but it wouldn't have helped.

16 Q. Right. Did you ever talk to the friend that he
17 testified about today?

18 A. I don't ever recall talking to him, but...

19 Q. Did he ever ask you to talk to the friend? I
20 believe the friend's name is Louis?

21 A. I think he did, but if I recall it was more about
22 being that somebody could attest to his character. And
23 the incident that he's talking about I am familiar with
24 and it wasn't -- it didn't have anything to do with the
25 charge in Spartanburg County. I never did let the

1 solicitor know about that because I was worried if they
2 found out about it, they could possibly indict him in
3 another county because it was an incident that did not
4 occur in Spartanburg County.

5 Q. What county did that occur in?

6 A. Well, he told me it was in Simpsonville, so it
7 would have been a Greenville County case.

8 Q. Okay. And he was never indicted in Greenville?

9 A. No. He was never indicted on that. But it was
10 in discovery, you know, and I did talk to him about it
11 and he did tell me about it. And I knew exactly where
12 it occurred.

13 Q. Why was he never indicted in Greenville?

14 A. I don't think they knew about it. And the reason
15 they didn't know about it was because the girl really
16 couldn't -- the victim really wasn't very specific about
17 where it occurred and couldn't really give much facts
18 about where it occurred.

19 Q. Okay. Now, you received discovery in this case,
20 correct?

21 A. That's correct.

22 Q. Okay. And you reviewed that discovery with the
23 applicant?

24 A. I did on, really on more than one occasion. And
25 we also had a preliminary hearing in the case, but I did

1 review the discovery with the defendant on really more
2 than one occasion.

3 Q. And how did you communicate with him?

4 A. Well, I always thought he understood me. And he
5 never said I don't understand, but I did go over the
6 things that worried me about the case that were not good
7 for him. And I think he was fully aware of them. For
8 instance, I asked him -- where the body cam and the
9 reports -- what he did not see was the video and the
10 body cam, but what was in the body cam and the video was
11 written in reports. And I gave him a copy of all the
12 reports. Of course, the reports weren't in English.

13 But I did ---

14 Q. Sorry, I did just want to go ahead and clear this
15 up.

16 A. Yeah.

17 Q. What language did you verbally review everything
18 with him in?

19 A. I told him what the report said in Spanish.

20 Q. Okay. So you reviewed the report in Spanish,
21 correct?

22 A. Yes. I, I -- basically, I didn't go -- I don't
23 think I ever went line-for-line over the reports, but I
24 did tell him what the reports said in Spanish.

25 Q. And to the best of your knowledge, he understood

1 everything about the report after you went over it with
2 him because you spoke to him in Spanish, correct?

3 A. That's correct. And he would ask me questions in
4 Spanish also.

5 Q. So he cooperated with you during this discussion?

6 A. That, that's correct. He, he was cooperative and
7 he would, he would ask me things in Spanish also. It
8 wasn't a one-way conversation.

9 Q. Now, did you receive an actual copy of this DVD
10 during discovery?

11 A. I did, and I reviewed. And I don't remember. I
12 don't remember showing it to the girlfriend but, you
13 know, maybe I did. But I did review the DVD, the video.

14 Q. Were you able to go over that DVD with the
15 applicant?

16 A. Well, I told him what she said in the DVD. And
17 what she said in the DVD was also written in reports
18 that I was given by the solicitor.

19 Q. And you went over what she said in those reports
20 with him during those conversations, correct?

21 A. That's correct.

22 Q. Okay. And he's alleging that you failed to give
23 him advice about his potential defenses in this case.
24 What, if any, defenses did y'all go over?

25 A. Well, I went over with him I was very concerned

1 about the fact that on the reports indicated and the
2 body cam both indicated when the police first approached
3 him that he told -- he wasn't truthful with the police
4 about his identity. And I asked him about that and he
5 said he was worried about some traffic tickets that
6 might not have been paid. And he thought that might
7 have been why the police were approaching him.

8 But it was my opinion, and I communicated this
9 with him, that I thought it would make it very difficult
10 for him to testify at trial because one of the first
11 things that would have been mentioned was the fact that
12 he wasn't being truthful right from the start.

13 Q. So are you indicating that you notified him of
14 evidence of impeachment that the State had?

15 A. Yes.

16 THE INTERPRETER: Hold on. I'm sorry, go ahead.

17 THE WITNESS: And I was ---

18 THE COURT: What was your answer?

19 THE WITNESS: My answer? Yes, I did. I mean,
20 that was something that I brought up to him on more than
21 one occasion. You know, this doesn't look good that
22 right from the start you weren't being truthful about
23 your identity. And I indicated to him that I thought it
24 would be a real problem for him to testify because that
25 would be the very first thing they would probably want

1 to bring up.

2 Another thing that I was concerned about and I
3 went over with him was that he actually gave a statement
4 to the, to the police. And basically they asked him why
5 the girl would be wanting to make up stories about him
6 and he indicated because I make her watch scary movies.
7 And I -- you know, didn't seem like a very good
8 explanation to me.

9 But the other thing that disturbed me about it is
10 that they could show, I believe, that he had a lot more
11 access to this girl than he might have been trying to
12 indicate to me because if she had actually watched
13 movies with him or he had shown her scary movies, he had
14 more access to this -- to the victim than he was trying
15 to indicate that he really had.

16 Q. And so you communicated these concerns with his
17 case going to trial with him, correct?

18 A. I did. And I will state that I did not think
19 that it was a -- you know, I wasn't -- I would go to
20 trial, but I did not want to guarantee him anything;
21 that I thought his chances were probably a little bit
22 less than 50 percent.

23 Q. Uh-huh.

24 A. And these were pretty big problems. You know,
25 these two things were big problems, as well as other

1 things. Most of what she was saying could be
2 corroborated.

3 Another defense -- you know, I basically tried to
4 communicate to him, and I think he understood this, that
5 I thought that being able to get a not guilty verdict,
6 he couldn't really prove he was innocent. And I was
7 concerned about him getting on the stand and denying it
8 because of the things I was telling you about. But I
9 basically communicated to him that I thought we could
10 kind of impeach the State's witnesses to some extent and
11 try to create a little reasonable doubt in their mind.

12 They did seize a lot of stuff out of his house.
13 And I'm convinced, you know, I would have asked, of
14 course, why did you seize all that stuff and what did it
15 prove? And it really did prove nothing. They seized
16 all these things and actually it didn't prove anything.

17 The medical proof was not, was not compelling in
18 any way. A doctor was gonna say it could happen, but it
19 -- they couldn't rule it out, but they didn't come up
20 with anything that would indicate that it really did --
21 that they came to a medical conclusion that it did
22 happen.

23 And I also, I told him this, and I think I'm the
24 one that raised an issue with him that the parents, even
25 though the girl was a U.S. citizen, the parents might

1 try to apply for a U visa, and that I could bring that
2 up as a way to try to impeach the case of the State.
3 But the evidence to me seemed fairly strong in that it
4 was kind of a hard case because the incidents occurred
5 several months before.

6 And the little, the victim, it didn't come to
7 anyone's attention until several months later when the
8 girl sent a hand-written letter, which was in Spanish,
9 it wasn't real good Spanish, informing her parents that
10 he had touched her like that. And he only -- she only
11 wrote this letter after she went to a seminar at the
12 Catholic church or something indicating where they had
13 talked about good touching and bad touching. And it was
14 only after she went to that thing that all this came to
15 light. And it was several months after the incident
16 actually occurred.

17 But I went over all these things with him and I
18 think he understood. And it was my opinion, and he
19 never admitted that he was -- that he had done these
20 things, and that's where the Alford plea came in. I
21 told him the only way he could ---

22 Q. Yeah, I just wanted to ---

23 A. Yeah.

24 Q. So you, you're testifying that you went over the
25 Alford plea with him before his plea hearing, correct?

1 A. Yes. And I don't know if it was the -- I can't
2 remember the exact date. It was a day or two before he
3 actually went into court. And ---

4 Q. And you believe that he understood what you were
5 saying when you went over the Alford plea?

6 A. Yeah. And he -- we went over -- I mean, it's not
7 like it was a one-sided conversation. It was a
8 two-sided conversation. And he went over -- he'd been
9 keeping track of people that were accused of what he
10 considered to be similar, similar crimes and he was
11 advising me that so and so got seven years. You know,
12 another person got eight years for this. And he was
13 very much aware of what some of the judges were doing
14 with other ---

15 Q. So you're saying that he indicated to you that he
16 had done some research on his case?

17 A. Well, he actually had talked to people who -- I
18 mean, you know, people in jail talk. And he knew that
19 the people that had been charged with similar crimes and
20 he knew what the resulting sentence was. And he talked
21 to me about this.

22 I can't remember how many times I talked to him
23 at the end, but probably the last two times we talked he
24 went over what some of these other defendants were
25 getting, you know, for a similar type of crime. What he

DIRECT EXAMINATION OF JOSEPH BALDWIN BY MR. ISENBERG

1 considered to be similar types of crimes.

2 Now, I tried to tell him no two cases are alike,
3 of course, but the charges were very similar. They
4 started out with charges that were very similar to his.

5 Q. Right. So I just want to summarize. You're
6 saying that he indicated to you that he was competent
7 that he could receive a similar sentence to the ones
8 that he had discussed with others?

9 A. Well, we talked about it and, you know, I think
10 that I, I told him, and this was just an opinion but I
11 don't know if it came off as an opinion or more of a
12 fact, that even though that maximum was 15 years, that
13 judges do appreciate the fact that the victims don't
14 have to testify and that generally the sentence is less
15 than what the maximum is.

16 Q. And on the date of his plea hearing, did he know
17 or had you communicated to him that he was going to
18 plead?

19 A. I think he did. After listening to him today, I
20 think he thought that we were gonna -- that the judge
21 had a chance to say he was not guilty. I don't -- was
22 convinced he understood and that he understood that, you
23 know, we went over an Alford plea because he said he
24 didn't do it and he wasn't gonna admit to it. And I did
25 explain what an Alford plea was.

1 Q. And he indicated to you that he wanted to plead
2 before he went to the hearing, correct?

3 A. He told me that he -- he did not -- I don't -- he
4 told me he didn't want a trial. He did not want to have
5 the possibility of 25 years -- well, a 25-year minimum.
6 I explained to him that if he went to trial it could
7 very well be more than 25 if he was guilty.

8 Q. Did you ever go over any potential deportation
9 consequences of his plea?

10 A. I, I told -- well, I told him that immigration
11 was probably gonna come and get him when his sentence
12 was over no matter when it ended. You know, whether it
13 was, you know, at -- and that they would use this
14 conviction against him as a reason to deport him.

15 Q. Okay. Did you ever follow up on whether
16 immigration put him on a potential deportation list
17 after he pled?

18 A. Well, I haven't checked, but he had a hold on him
19 the whole time he was in Spartanburg County. So, you
20 know, I'm sure the Department of Corrections probably
21 has a hold on him as well, but...

22 Q. Can you explain what a hold is for the Court.

23 A. Well, they -- what it basically means is that the
24 State will notify immigration, ICE, as soon as his
25 sentence is over.

1 Q. Uh-huh.

2 A. And they're gonna tell me you have -- and the
3 jail is 48 hours. I don't know if it changes with the
4 Department of Corrections, but you have a certain amount
5 of time to come and begin a deportation case on him.
6 It's their decision whether they're gonna come and get
7 him, but based on his conviction and all that, I'm sure
8 that they're probably gonna come and get him. And this
9 conviction will certainly be used against him.

10 And he'll have a hard time raising any defense to
11 deportation because one of the things you do have to
12 show is good moral character and they would use this
13 against him and say you're not a person of good moral
14 character because of this conviction.

15 Q. Now, at the plea hearing y'all had several
16 discussions off the record, right?

17 A. Yes.

18 Q. Were those discussions in Spanish?

19 A. They were. I believe all my communications with
20 him were in Spanish.

21 Q. Okay. Now, to the best of your knowledge, what
22 questions was he asking you during the plea hearing off
23 the record?

24 A. He seemed very confused.

25 Q. Okay.

1 A. I, you know, for instance, you know, most
2 Americans don't -- a lot of native people don't
3 understand their rights, but when they were asking about
4 do you understand you're giving up your right to
5 cross-examine witnesses, I don't know if he understood
6 that because there were some people that came to court,
7 you know, his father and I believe somebody else who
8 could, who could talk to the judge prior to sentencing.

9 But, you know, he seemed very confused. And I
10 think I basically -- I can't remember the conversations
11 but I think I said do you want a trial or do you want to
12 enter a plea. And, you know, I think he -- we agreed,
13 you know, a day or two before court that he was gonna
14 enter a plea and it was gonna be an Alford plea. And I
15 don't think he -- I don't know if he really -- I think
16 he said he wanted to go -- continue to go forward, but I
17 just cannot remember the, the conversations during the
18 breaks that we had, but I ---

19 Q. Did ---

20 A. He was more concerned about what he was gonna
21 get, the amount of time he was gonna get, than whether
22 -- than the trial. That's what I vaguely remember about
23 the conversations.

24 Q. But to the best of your knowledge, he never told
25 you he wanted to go to trial during those conversations,

1 correct?

2 A. No. He never said let's, let's not go forward
3 with the plea, you know, I've decided I'd rather have a
4 trial.

5 Q. And you weren't looking at him during the plea
6 hearing and telling him what to say, correct?

7 A. No. I just said you have to answer the judge's
8 questions if you want to go forward with the plea. But,
9 you know, looking back, maybe I should have just taken a
10 lot more time with him to make sure he understood that
11 it wasn't a trial. I, I have a hard time believing he
12 understood that it wasn't a trial. I -- you know, the
13 solicitor wasn't there. The little, you know, the
14 victims weren't there. Nobody was there that day.

15 Q. Let me ---

16 A. The solicitor was there to read off the facts.

17 Q. Let me ask you this, you never told him there was
18 a trial, right?

19 A. No, I never told him that we're gonna have a
20 trial. That the witnesses that, you know, that the
21 victim's gonna testify, the police are gonna testify,
22 I'm gonna cross-examine them. And I told him it's only
23 gonna take -- you know, it's not gonna be an all-day
24 thing.

25 Q. Right.

1 A. Of course, a trial would have been a two-day
2 affair probably.

3 Q. But you had had a full conversation with him days
4 prior about pleading guilty, correct?

5 A. That's right.

6 Q. And when you left that conversation, you were
7 confident that he wanted to plead guilty, correct?

8 A. I believe so.

9 Q. And it was around that point that you told him
10 you were going to court to take care of the situation,
11 correct?

12 A. No. I told him -- I can't remember if I told him
13 the exact date, but it was only a day or two before we
14 actually went that I, that I went and talked to him a
15 final time about it.

16 Q. Right. And at that final time when you left, you
17 believe he knew he was going to plead, correct?

18 A. Yes.

19 Q. And at the plea hearing, you did your best to
20 handle any of the confusion that he had about the
21 hearing, correct?

22 A. Yes, I did.

23 Q. Okay. And all of those conversations were in
24 Spanish, right?

25 A. They, they all were.

1 MR. ISENBERG: Okay. No further questions, Your
2 Honor. Thank you.

3 THE COURT: Ms. Hernandez.

4 MS. HERNANDEZ: Thank you, Your Honor. May it
5 please the Court?

6 THE INTERPRETER: Your Honor, this interpreter is
7 very tired and --

8 THE COURT: I'm sorry?

9 THE INTERPRETER: -- please understand that the
10 interpreter is saying everything all this time. I need
11 a five-minute break. My apologies.

12 THE COURT: Well, you need to step aside?

13 THE INTERPRETER: So you realize, when we do
14 hearings that are one hour or longer, we use two
15 interpreters to help each other.

16 THE COURT: We'll take five minutes.

17 THE INTERPRETER: Thank you, Your Honor.

18 THE COURT: Do you need to step out?

19 THE INTERPRETER: Yes, always.

20 THE COURT: We'll wait for you.

21 THE INTERPRETER: Thank you, Your Honor.

22 (A recess was had from 11:57 a.m. - 12:01 p.m.)

23 THE COURT: Is the interpreter ready to proceed?

24 THE INTERPRETER: Yes, Your Honor.

25 THE COURT: I don't think it will be too much

1 longer, but we'll see.

2 All right, Ms. Hernandez, you may proceed.

3 MS. HERNANDEZ: Thank you, Your Honor. May it
4 please the Court?

5 THE COURT: (Nods head up and down.)

6 CROSS-EXAMINATION

7 BY MS. HERNANDEZ

8 Q. Good afternoon Mr. Baldwin. I know we wish we
9 were under other circumstances, but today we're in this
10 one.

11 THE INTERPRETER: I'm sorry, Your Honor. Could
12 you, please, step this way so the voice travels this
13 way?

14 MS. HERNANDEZ: Yes.

15 THE INTERPRETER: Thank you.

16 MS. HERNANDEZ: I'm sorry.

17 BY MS. HERNANDEZ:

18 Q. So you came into this case because his wife or
19 live-in girlfriend hired you?

20 A. Yes.

21 Q. And ---

22 A. I went to see him afterwards.

23 Q. Yes. Did she pay you any of your fees?

24 A. I can't remember how much they paid. I know that
25 to go see him, she paid me \$1,000 and I would tell her

1 whether I would take the case. And I think they -- she
2 paid more after that.

3 Q. And ---

4 A. You know, that was a while back. I was sort of
5 by myself back then and I don't remember exactly how
6 much was paid now.

7 Q. Okay. Did they finish paying you all your fees?

8 A. I think they did.

9 Q. Okay. When you decided to handle this case, did
10 you know if he only spoke Spanish?

11 A. Yes.

12 Q. Did you know he was original to Mexico?

13 A. I'm not sure I did, but I suspected -- I
14 suspected it.

15 Q. Did you know ---

16 MR. ISENBERG: Your Honor, I'm just gonna have to
17 object to the relevance of that. Him being from Mexico
18 has no bearing on this case.

19 THE COURT: It's -- I'm gonna allow it cause
20 there's no jury here.

21 MR. ISENBERG: All right.

22 BY MS. HERNANDEZ:

23 Q. Did you know about his immigration status in the
24 United States?

25 A. Yes. I think I asked him about it. I asked a

1 friend about it. And I think I was able to determine
2 that there was a hold on him, so I knew that he wasn't
3 legally in the United States.

4 Q. Okay. You testified that you handled a few other
5 cases involving criminal sexual conduct, right?

6 A. That's correct.

7 Q. Did you ever go to trial on any of those cases?

8 A. Yes.

9 Q. Were you successful?

10 A. No, I was not. But I will also state, though,
11 that the evidence was even stronger than it was in his
12 case.

13 Q. Are you handling any criminal sexual conduct
14 cases right now?

15 A. I think I may have -- I think I may have two
16 still pending. One got Nolle prossed recently. I think
17 I may have two still pending.

18 Q. I understand you work at the Grek Law Firm; is
19 that correct?

20 A. I do now, yeah.

21 THE COURT: What's the name of it?

22 MS. HERNANDEZ: Grek Law Firm.

23 BY MS. HERNANDEZ:

24 Q. Are you aware that on the website for the firm
25 there's a statement that quotes: Please note at this

1 time ---

2 MR. ISENBERG: Objection, Your Honor.

3 THE COURT: You don't have -- I haven't heard the
4 question.

5 MR. ISENBERG: Sorry.

6 BY MS. HERNANDEZ:

7 Q. Please note at this time our firm does not accept
8 cases involving the following: Sex offenses of any
9 kind, assault, including sexual assault, battery, rape,
10 and domestic assault.

11 THE COURT: All right. What's the ---

12 MR. ISENBERG: And I'll -- should I re-raise my
13 objection?

14 THE COURT: Are you testifying?

15 MS. HERNANDEZ: No. I was asking him if he's
16 aware that that is on the website for ---

17 THE COURT: Well, what's the relevance?

18 MS. HERNANDEZ: Your Honor, he's not actively
19 aware of those cases.

20 THE COURT: All right. That's impeachment and
21 I'll allow it.

22 THE WITNESS: I wasn't aware of that. I haven't
23 even looked at our website.

24 BY MS. HERNANDEZ:

25 Q. Okay, fine. So during the meetings with Mr.

1 Rodriguez, did you ever think I probably need an
2 interpreter?

3 A. I thought I understood him fine and I thought he
4 understood me fine.

5 Q. So there was no interpreter any of the weeks?

6 A. No.

7 Q. And you always communicated in Spanish?

8 A. That's correct.

9 Q. How well do you speak Spanish, Mr. Baldwin?

10 A. Well, my wife's from Mexico, I communicate with
11 her in Spanish. I communicate with her family in
12 Spanish. I mean, it's just Spanish that I've learned
13 from her basically. It's not my native language.

14 Q. Have you ever had any formal training in Spanish?

15 A. I took it two or three years in high school. And
16 I forgot it until I, until I start -- until I got
17 married again -- until I got married.

18 Q. Have you ever taken a proficiency exam of the
19 Spanish language?

20 A. No, not recently. I took tests in high school of
21 course.

22 Q. Okay. In your opinion, when you were speaking
23 Spanish to Mr. Rodriguez, the conversations were
24 completely understood by him?

25 A. I, I think so. You know, I know in your direct

1 examination about the Alford plea and he didn't
2 understand it when you -- you know, it's not an easy
3 concept to explain. I, I told him that what it meant
4 that more likely than not if it went to trial there was
5 enough evidence you could lose the case. I tried to
6 explain it to him in that way. And I think he
7 understood because he wasn't -- he'd never admit that he
8 was guilty.

9 And I explained the concept of an Alford plea to
10 him. And, of course, that was in Spanish. Some people
11 don't understand it in English, of course, but...

12 Q. Yes. That's a conversation that I had with him
13 before --

14 A. Yeah.

15 Q. -- about the Alford plea. And that is what I am
16 referring to, Mr. Baldwin. If you went to talk to him
17 and all these issues legally is complicated, how could
18 you be sure that he understood everything?

19 A. Well, I'm not -- I think he understood the
20 weaknesses of his case. And, you know, he understood
21 the strengths of his case. And he testified, you know,
22 in his direct examination he said there was no evidence.
23 Well, there was very little evidence except that what
24 this victim testified to. I think he fully understood.
25 It seems like he testified to a lot. And the only --

1 and he was able to testify as to what was said. And the
2 only way that he would know that is because of what I
3 told him in Spanish.

4 Q. So you were satisfied with him understanding the
5 weaknesses and strength of the case, even if he
6 understands everything completely?

7 A. I think he understood. I think he understood his
8 case. And as I indicated earlier, I was very concerned
9 about the untruthful statements he made at the start.
10 And I'm pretty clear he understood that. And the fact
11 that he gave a declaration to the police officers when
12 he was first arrested. He understood that.

13 He was at -- we actually had a preliminary
14 hearing. And I can't remember if there was an
15 interpreter there or not, but it was clear from the
16 preliminary hearing that the evidence pretty much rested
17 on the testimony of the victim.

18 Q. That's really my experience, the evidence was not
19 all there, right?

20 A. I think I had, I think I had the discovery at the
21 preliminary hearing. It was several months after his
22 arrest, so I think I already had it. And I was able
23 to -- you know, basically it was the police officer that
24 testified, the arresting officer that testified. And,
25 you know, he -- I basically got him to admit that the

1 whole case hinged on -- basically hinged on the, on the
2 testimony of the, of the victim that they had not been
3 able to come up with other corroborating evidence.

4 Q. Okay. And knowing that the whole case rested on
5 the testimony of the victim, you did not think that you
6 needed to share that with him and --

7 A. Well, I had ---

8 Q. -- show him the video?

9 A. Well, I had notes of what the video said. They
10 were in the reports, and I went over the reports with
11 him. So, I don't know if he's ever actually ever seen
12 the video. I probably -- you know, but it's hard to
13 show somebody a video in the jail.

14 Q. But you said there were written records of that,
15 right?

16 A. Yeah. The video was summarized, and I was able
17 to go over the summary of what was in the video to him.
18 And I would ask him questions. Like I remember asking
19 him what's all this about this pool house? And he told
20 me, you know, it was in Simpsonville and that type of
21 thing. So, I mean, it's not like -- I mean, I would ask
22 him questions, he would respond to me, so I think he
23 understood what I was telling him.

24 Q. Did you know that he didn't have any prior
25 criminal record before?

1 A. I knew that. Well, I -- he mentioned something
2 about traffic tickets, but as far as a criminal record I
3 don't think he had a criminal record. And that was
4 pointed out to the judge also.

5 Q. So did that have -- be a reason he wasn't
6 familiar with any of the court proceedings or any legal
7 matters?

8 A. Well, I mean, I assume he was -- I mean, most
9 people really aren't until they get caught up in court.
10 And especially him being from Mexico, you know, they
11 even have less familiarity with what's going on.

12 Q. Yes. And him not speaking the language, right?

13 A. That, that's correct.

14 Q. The documents that you gave him as far as
15 discovery is concerned, all of them were in English; is
16 that correct?

17 A. That's correct.

18 Q. And you said you only gave him a summary of what
19 was in it?

20 A. That's right. I don't know if I ever went over
21 it line for line. I mean, I went into some detail about
22 what was in each one of them.

23 Q. When did you get the offer from the solicitor?

24 A. I can't remember. It was, maybe it was a month
25 or two before, before the plea hearing.

1 Q. And then you went and talked to him about that?

2 A. That's right. And I'm not sure he wanted to
3 accept it the very first time or not or if it was the
4 second time I went and actually talked to him about it.
5 He -- I think, if my discussion with him the first time
6 was, you know, to try to get maybe a recommendation from
7 the solicitor, you know, it was an open-ended plea
8 offer.

9 THE COURT: What was the offer? Ask him.

10 BY MS. HERNANDEZ:

11 Q. What was the offer?

12 A. It was reduced from criminal sexual conduct in
13 the first to the charge he entered the plea to which was
14 lewd act on a minor.

15 Q. But there was no recommendation so it --

16 A. No.

17 Q. -- was a straight-up sentence?

18 A. It was a possible 15-year sentence, which is what
19 he got.

20 Q. Is it true you discussed with him the fact that
21 you thought that it could possibly be reduced?

22 A. No. I didn't think that that could be reduced.
23 I thought that, you know, I told him that I did not
24 think he would get 15 years for the charge. And I, I
25 really believe that if the sentence would have been

1 maybe 10 years or something like that we probably
2 wouldn't be here today because I think he thought that
3 he was gonna get less than 15 years and it would be 10
4 years. And maybe even if it was 12 it might be
5 different. But I did leave the impression with him that
6 very seldom is the maximum given.

7 Q. So you thought that was a good offer for Mr.
8 Rodriguez?

9 A. No. I remember him asking me should I do this or
10 not. And I said it's your life, it's not my life. I
11 remember telling him that. And I remember telling him
12 that in my opinion he could win the case, but there was
13 more than -- you know, that there was sufficient
14 evidence that he could -- that there was probably even
15 better than a 50 percent chance that he, that he would
16 lose the case, and if he did, the lewd act on a child
17 wouldn't be what he went to trial on. It would be the
18 criminal sexual conduct in the first degree, which would
19 carry a minimum of 25 years.

20 Q. The day of the plea hearing, there was an
21 interpreter for Mr. Rodriguez; is that correct?

22 A. There was.

23 Q. If the court needs an interpreter for any
24 defendant, wouldn't you think that you also needed an
25 interpreter when you were meeting with him?

1 A. I've never used an interpreter just to talk to
2 somebody. You know whenever there's a deposition, of
3 course there's an interpreter. I, I felt that he
4 understood everything I was saying. Every time I go to
5 talk to somebody in jail, I don't take an interpreter.
6 I don't know if I've ever taken one with me.

7 Q. So you're very confident with your Spanish?

8 A. I, I couldn't run for -- I couldn't pass a
9 college course in Spanish, but I can certainly converse
10 with people.

11 Q. If you were to rate your Spanish fluency in a
12 percentage, how would you rate it?

13 A. Well, I don't know how you would do that --
14 exactly how I can answer that question. My wife
15 understands me when she wants to.

16 Q. I understand that. I do the same thing.

17 A. And her mother-in-law understands me when she
18 wants to also.

19 Q. Yes, sir. Mr. Rodriguez testified that he asked
20 you to investigate some issues; is that correct?

21 A. Yeah, he did. The one had to do with the girl.
22 She went to Mexico like in that summer. And the
23 allegations was that it occurred in March or April. She
24 went to Mexico subsequent to the allegations that were
25 being made.

1 Q. So you thought there was no need to investigate
2 her in person?

3 A. I, I didn't see what the relevance of it was.

4 Q. And you testified that you spoke to the wife or
5 the live-in girlfriend; is that correct?

6 A. That's correct.

7 Q. Did Mr. Rodriguez ever tell you that she could be
8 an alibi witness for her -- for him?

9 A. Yeah. He -- well, he did. Yeah, and I did talk
10 to her about it. It's like we talked about, she wasn't
11 in the house all the time. She did go to Wal-Mart. I
12 -- you know, she was there most the time, but she wasn't
13 there all the time.

14 Q. On direct examination you testified that she did
15 go out for short periods of time, but isn't it true that
16 he also testified that he never was alone, alone with
17 the minor girl?

18 A. That's correct. Other children were there.

19 Q. In fact ---

20 A. Not -- besides for the victim.

21 Q. And so there were his children and also another
22 boy that was around 11 years old. Do you remember this?

23 A. I don't remember that. I remember the discovery
24 talking about the little girl accusing him of looking
25 kind of strange at a five-year old boy. And, of course,

1 you know, the police were probably gonna look into that.
2 And, of course, that didn't -- there was nothing in the
3 discovery indicating that there was -- that they had
4 discovered anything there either.

5 Q. On the discovery you testified on direct
6 examination that there was -- that incident in
7 Simpsonville was there in discovery?

8 A. Yes. It -- they didn't know where it was. The
9 little girl talked about that place in Simpsonville, that
10 pool house. And I asked them. What are you talking
11 about here? And he explained to me that it occurred in
12 Simpsonville. And I can't remember how many occasions
13 it happened in his house, but this was the only occasion
14 out away from his place in Spartanburg County where
15 anything allegedly happened.

16 Q. Did you not think that it was relevant for you to
17 investigate further into this friend that asked him to
18 come and do the work for him, Mr. Louis?

19 A. Well, I don't -- I did not look -- I don't think
20 I did talk to Louis, and I'm not sure. Of course, the
21 incident in Simpsonville wasn't what the charge was all
22 about. And I don't remember talking to Louis. And the
23 other thing is I really didn't want to bring it up to
24 anybody for the simple reason I didn't want him to be
25 charged in a different county.

1 Q. On the day of the plea, you told him exactly what
2 he was going to do in court that day?

3 A. I probably didn't go over it well enough with him
4 because he did act kind of confused, but I did basically
5 -- I went over it with him.

6 Q. Isn't it true that his father came all the way
7 from Mexico because he thought he was going to have a
8 trial?

9 A. I ---

10 MR. ISENBERG: Objection, Your Honor. Asking him
11 to speculate about the father's intentions.

12 THE COURT: Well, if he knows. Do you know?

13 THE WITNESS: No. I, I think he was told, he was
14 aware that he was going to court, but I don't, I don't
15 believe he knew -- he shouldn't have been told by
16 anybody that it was gonna be a trial.

17 BY MS. HERNANDEZ:

18 Q. Do you think that he was confused about that
19 because he didn't understand parts of the conversations
20 that he had with you in Spanish?

21 A. No. I, I think he understood he was gonna enter
22 a plea. And I think he thought he was gonna get less
23 time than he ended up getting, but that the only way to
24 get that would be to go through a plea. I think he
25 fully understood if he went to a trial he was facing a

1 minimum of 25 years if he was convicted.

2 Q. Did you go over with him the rights, the
3 constitutional rights that he was giving up by pleading?

4 A. Well, like a judge does, I don't think I did.
5 But I explained to him that we, you know, that I wasn't
6 gonna -- that the victim wouldn't be there, the police
7 were probably wouldn't be there. You know, nobody would
8 actually testify as to any facts.

9 Q. During the hearing, as we already went over,
10 there were eight times when you had side conversations
11 with Mr. Rodriguez; is that correct?

12 A. Well, I can't remember how many times but there
13 were several times.

14 Q. At any time during the third, fourth, fifth time,
15 did you think he's not understanding, let's just back up
16 and do this plea some other day so that he can
17 understand with certainty what we're doing?

18 A. I didn't. That actually didn't go through my
19 mind, but it, you know -- because we had talked about it
20 like a day or two, a night or two earlier.

21 Q. Did you actually go to the Annex to talk to him
22 about it?

23 A. Yeah. The last two or three times I talked to
24 him he was here at the Annex.

25 Q. But the day that you talked to him about the

1 plea?

2 A. It was in the Annex.

3 Q. Was it one day before, two days before, or was it
4 right before the day of the plea?

5 A. It was one or two days before it. It was like
6 after 5 o'clock, I believe.

7 Q. When Mr. Rodriguez answered so many questions and
8 he looked confused, did you think about let me take some
9 time, get the interpreter to make sure that he
10 understand what we're doing, and then we can proceed?

11 A. I don't recall thinking that.

12 Q. Did you and Mr. Rodriguez before the plea talk
13 about the sex offender's registry?

14 A. No.

15 Q. But he -- part of the sentence was that he was
16 gonna be placed on the sex offender registry, right?

17 THE INTERPRETER: Can you repeat that question
18 for the interpreter?

19 BY MS. HERNANDEZ:

20 Q. Part of the sentence was that he was gonna be
21 placed on the sex offender registry, right?

22 A. I, I can't remember talking to him about the sex
23 offender registry, but I also didn't think it was
24 extremely relevant because I thought that he was gonna
25 be in Mexico after he was released.

1 Q. Are you familiar with the 2010 Vehicular
2 Assistant Traffic Case?

3 A. That's correct. Yeah, I'm very familiar with it.

4 Q. And you feel that you advised Mr. Rodriguez to
5 comply with the holding on that case?

6 A. I may not have told him that -- I told him that
7 it would be used against him in ---

8 MR. ISENBERG: Your Honor, may I object, just so
9 we can get some foundation on what the awarding of that
10 case is?

11 THE COURT: Padilla?

12 MR. ISENBERG: Yes, Your Honor. I would just
13 like for there to be some foundation laid on the holding
14 before we ask him to discuss his client's compliance
15 with it and their discussion about it.

16 MS. HERNANDEZ: He says he's familiar with it.

17 THE COURT: He says he's familiar with it.

18 MR. ISENBERG: Okay.

19 THE COURT: So go ahead and proceed.

20 BY MS. HERNANDEZ:

21 Q. For the record, can you and I talk about what the
22 particulars of the Padilla case entails?

23 A. Basically when somebody enters a plea and they're
24 not legally in the United States that you have to -- the
25 defense attorney is supposed to advise that the plea can

1 affect their immigration status in the United States.

2 Q. Thank you for that. And did you explain those
3 consequences to Mr. Rodriguez about pleading to these
4 crimes?

5 A. Yes, I'm sure I did. I told him that it would be
6 used against him in a deportation proceeding if there
7 was one.

8 Q. So you were familiar that any crime against a
9 minor would completely ban him from ever being legally
10 here in the United States?

11 A. He'd be inadmissible.

12 Q. Yes. Did you know that he had children that were
13 United States citizens?

14 A. Yes.

15 Q. By pleading to these charges, did you ever
16 discuss that if he was gonna be deported, he could never
17 come back and raise those children?

18 A. Well, if I -- I think I had asked him if there
19 were any -- if there was anything about the children
20 that was exceptional or unusual in any regard. And I
21 don't think there was, but I don't know if I ever told
22 him he'd never be able to come back to the United
23 States. I may not have gone over that with him, but he
24 was very much aware that the immigration court would --
25 you know, this would be used against him and he would

1 probably be deported.

2 Q. After the plea, did you file a notice to appeal
3 in this case?

4 A. No.

5 Q. Why not?

6 A. Why?

7 Q. Why didn't you?

8 A. Well, like he said, the parents said they were
9 gonna get somebody else. But I thought that if there
10 was an appropriate remedy it would be postconviction
11 relief. And I wasn't sure that he actually wanted a
12 trial. You know, he had never told me he wanted a
13 trial. Nobody ever communicated to me that he wanted a
14 trial, so I'm not exactly sure what I could have
15 appealed on.

16 Q. On the day of the hearing -- bear with me. On
17 page 14, do you remember the judge saying that he had
18 the right to appeal; that he had ten days to appeal?

19 A. That's correct.

20 Q. On page 10, line 22 the judge says: Okay. So
21 you have 10 days to appeal your sentence or the plea.
22 If you do so, you must file it in writing with the clerk
23 of court. Do you understand? Do you remember that?

24 A. Yeah. Uh-huh. Yes, I do.

25 Q. And you didn't think a notice to appeal needed to

1 be filed then?

2 A. No, I didn't file an appeal notice.

3 Q. Did you have any contact about this case with Mr.
4 Rodriguez after the plea?

5 A. I don't think it was with him. I think somebody
6 came to see me a day or two later.

7 Q. Did they tell you they were gonna handle the
8 appeal with someone else?

9 A. That's correct. And, frankly, I was under the
10 impression that if he was gonna do this that somebody
11 else would have to do it.

12 Q. Is it true that after you represented his wife in
13 a Family Court case against Mr. Rodriguez?

14 A. That's right. His wife came to see me and the
15 only ---

16 MR. ISENBERG: Objection, Your Honor. If this is
17 talking about the --

18 THE COURT: I understand.

19 MR. ISENBERG: -- post-representation, then this
20 is irrelevant.

21 THE COURT: All right. I'll sustain the
22 objection. I don't see the relevance.

23 MS. HERNANDEZ: Your Honor, it goes to the
24 evidence that I presented about the conflicts of
25 interests.

1 THE COURT: I understand that, but that's not,
2 that's not why we're here.

3 MS. HERNANDEZ: Thank you, Your Honor. No more
4 questions.

5 Thank you, Mr. Baldwin.

6 THE WITNESS: Thank you.

7 THE COURT: Anything further?

8 MR. ISENBERG: No further witnesses from the
9 State, Your Honor.

10 THE COURT: Thank you. You may be excused.

11 (Witness leaves witness stand.)

12 THE COURT: Any final argument? Any final
13 argument?

14 MS. HERNANDEZ: Yes, Your Honor, please.

15 THE COURT: All right.

16 FINAL ARGUMENT

17 MS. HERNANDEZ: Your Honor, I think the applicant
18 has demonstrated that there was ineffective assistance
19 of counsel; that counsel's representation failed below
20 the objective standard, and that it prejudiced the
21 applicant. That if he would have gone to trial, the
22 result could have been different and that is what the
23 applicant was going for.

24 That the counsel failed to advise of the
25 applicant of his constitutional right that the applicant

1 needed an interpreter to communicate at all times for
2 this case, not only on the court proceedings but also
3 during the communication with his lawyer. And that if
4 he would have understand everything, as the counsel
5 stated, he wouldn't have entered this plea. He did not
6 enter this plea freely, voluntarily or intelligently,
7 Your Honor. Thank you.

8 THE COURT: Thank you. From the State.

9 FINAL ARGUMENT

10 MR. ISENBERG: Your Honor, I'm not going to go
11 through every single claim. I'm just gonna state
12 frankly for the record, it seems a little too convenient
13 that the applicant is now claiming he couldn't
14 understand everything through the process of this case
15 with his attorney and that it in effect makes his guilty
16 plea involuntarily.

17 He had an interpreter at his plea hearing. His
18 interpreter, as he testified, communicated everything
19 adequately and effectively. He still waived his
20 constitutional rights after they were explained. He
21 said he was satisfied with counsel. He said he didn't
22 need anything else from counsel.

23 He said the solicitor had enough -- had enough
24 evidence to convict him of the facts. Those facts were,
25 in fact, the crimes that he was accused of. He even

1 testified that counsel went over the sentence with him
2 beforehand. The judge also went over the sentence with
3 him. So if there was noth -- if there was anything
4 counsel didn't go over with him beforehand, the judge
5 cured that in his colloquy.

6 As for the discovery, there's ample testimony
7 from his counsel that they discussed the discovery at
8 length in Spanish. And he believed credibly -- counsel
9 credibly believed that the applicant understood
10 everything, so much so that he was talking back and
11 communication, in cooperation, asking questions. So,
12 based upon all that evidence, we would ask that you
13 dismiss this application with prejudice.

14 THE COURT: All right, thank you.

15 MR. ISENBERG: Thank you.

16 THE COURT: Post orders in 30 days?

17 MR. ISENBERG: Your Honor, may I request more
18 time than 30 days for this order? I'm gonna have to
19 order the transcript on this and I'm not sure how long
20 that's gonna take? And after that I'm gonna need,
21 obviously, a little bit of time to write the order or
22 the proposed order, I apologize.

23 THE: How about 30 days from receipt of the
24 transcript?

25 MR. ISENBERG: That's perfect. I'll notify you

1 the day I receive the transcript, Your Honor.

2 THE COURT: But I'll have to report it to the
3 Supreme Court.

4 MR. ISENBERG: Yes, Your Honor.

5 THE COURT: All right. Thank you very much
6 Counsel.

7 MR. ISENBERG: Thank you, Your Honor.

8 THE COURT: Next case.

9 MS. HERNANDEZ: Thank you, Your Honor.

10 (Hearing concluded at 12:36 p.m.)

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--- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE
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3 I, the undersigned Julie A. Cendroski, 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 Common Pleas for Spartanburg County, South Carolina, on
11 the 10th day of October, 2019.

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

19 s/Julie A Cendroski
20 Julie A. Cendroski
21 Circuit Court Reporter
22 Seventh Judicial Circuit
23
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