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 8

Attorneys for Plaintiff  
 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,  
 13 Plaintiff,  
 14 v.  
 15 KENNETH PETTY,  
 16 Defendant.

No. CR 20-00108-MWF

GOVERNMENT'S SENTENCING POSITION  
FOR DEFENDANT KENNETH PETTY;  
DECLARATION OF KATHRYNNE N.  
SEIDEN; EXHIBITS 1-3

Hearing Date: 7/6/2022  
 Hearing Time: 3:00 p.m.  
 Location: Courtroom of the  
 Hon. Michael W.  
 Fitzgerald

19  
 20 Plaintiff United States of America, by and through its counsel  
 21 of record, the United States Attorney for the Central District of  
 22 California and Assistant United States Attorney Kathrynne N. Seiden,  
 23 hereby files its Sentencing Position for defendant Kenneth Petty.

24 This position is based upon the attached memorandum of points  
 25 and authorities, the files and records in this case, and such further

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1 evidence and argument as the Court may permit. The government  
2 respectfully requests the opportunity to supplement its position or  
3 otherwise respond to defendant as may become necessary.

4 Dated: June 22, 2022

Respectfully submitted,

5 TRACY L. WILKISON  
United States Attorney

6 SCOTT M. GARRINGER  
7 Assistant United States Attorney  
8 Chief, Criminal Division

9 /s/

10 KATHRYNNE N. SEIDEN  
Assistant United States Attorney

11 Attorneys for Plaintiff  
12 UNITED STATES OF AMERICA  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Having previously been convicted of attempted rape, defendant  
4 knowingly failed to register as a sex offender upon moving to  
5 California. In September 2021, defendant pled guilty to one count of  
6 failing to register as a sex offender, in violation of the Sex  
7 Offender Registration and Notification Act ("SORNA"), 18 U.S.C.  
8 § 2250(a). Dkt. 54. In his plea agreement, defendant reserved the  
9 right to argue that he is a Tier II offender under SORNA. Dkt. 49.  
10 The government reserved the right to argue that defendant is a Tier  
11 III offender. Id.

12 In December 2021, the United States Probation and Pretrial  
13 Services Office ("Probation") filed its Presentence Investigation  
14 Report ("PSR") and Recommendation Letter. Dkts. 56 (Recommendation  
15 Letter) & 57 (PSR). Assuming defendant was a Tier II offender,  
16 Probation calculated a total offense level of 12 and a criminal  
17 history category of II, for a Sentencing Guidelines range of 12 to 18  
18 months' imprisonment and five years' supervised release.<sup>1</sup> PSR ¶¶ 29,  
19 39, 80, 83. Although it identified no factors that would warrant a  
20 downward variance or departure, Probation recommended that the Court  
21 sentence defendant to six months' imprisonment -- only half the low-  
22 end of his Guidelines range -- and a period of supervised release to  
23 include six months' home confinement at his six-bedroom, seven-  
24 bathroom home in Calabasas, which is located in a "gated affluent

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27 <sup>1</sup> As explained in Section IV.A, infra, Probation's assumption  
28 that defendant is a Tier II offender was based largely on his  
classification as a "Level Two" offender under New York's evaluation  
system, which is an independent rating system with levels that do not  
correspond to SORNA's tiers. PSR ¶ 21.

1 community" and includes a pool, a music studio, and a landscaped  
2 backyard. Id. ¶¶ 60, 92-93.

3 The government contends that defendant is a Tier III offender  
4 under SORNA because his underlying attempted rape conviction fits  
5 squarely within the definition of attempted aggravated sexual abuse  
6 under 18 U.S.C. § 2241. See United States v. Cabrera-Gutierrez, 756  
7 F.3d 1125, 1133 (9th Cir. 2014). Accordingly, defendant's base  
8 offense level is 16 and his total offense level is 13, for an  
9 advisory Guidelines range of 15 to 21 months' imprisonment. See USSG  
10 §§ 2A3.5(a)(1), 3E1.1(b), 5A. Moreover, because defendant falls in  
11 Zone D of the Sentencing Table, a period of home confinement is not  
12 an adequate substitute for a minimum term of imprisonment under the  
13 Guidelines, nor is it appropriate here. See USSG § 5C1.1(f).  
14 Instead, the government respectfully requests that the Court sentence  
15 defendant to a low-end Guidelines sentence of 15 months'  
16 imprisonment, five years' supervised release, a mandatory \$100  
17 special assessment, and a \$55,000 fine. A low-end Guidelines  
18 sentence properly balances the sentencing factors in 18 U.S.C.  
19 § 3553(a) by accounting for defendant's mitigating characteristics,  
20 while acknowledging the seriousness of the offense and providing just  
21 punishment and respect for the law.

22 **II. STATEMENT OF FACTS**

23 In 1995, defendant was convicted of first degree attempted rape,  
24 under New York Penal Law § 130.35. Dkt. 49 ¶ 11. As a result of  
25 defendant's conviction, he was sentenced to 18 to 54 months'  
26 imprisonment and required to register as a sex offender under SORNA.  
27 Id. From 1999 to 2018, defendant completed annual registration  
28 documents in which he acknowledged, every year, his lifetime

1 registration requirements. Id. Defendant was notified repeatedly  
2 that if he moved to another state, (1) he was required to notify New  
3 York of his change of address, and (2) it was his responsibility to  
4 follow any local, city, state, federal, or international laws  
5 regarding registration. Id.

6 Defendant moved to California in July 2019, but knowingly failed  
7 to register as a sex offender in California. Id. During a traffic  
8 stop in November 2019, defendant admitted that he had not registered  
9 as a sex offender in California. Id.

10 **III. PRESENTENCE INVESTIGATION REPORT**

11 Based on the facts above, Probation determined: (1) because  
12 defendant is a Tier II offender under SORNA, his base offense level  
13 is 14 under USSG § 2A3.5; and (2) because defendant accepted  
14 responsibility for his conduct, he is entitled to a two-level  
15 decrease under USSG § 3E1.1(a). PSR ¶¶ 18-22. Accordingly,  
16 Probation calculated defendant's total offense level as 12. Id.  
17 ¶ 29. Probation also determined that defendant has three criminal  
18 history points, for a criminal history category of II. Id. ¶ 39.  
19 Based on a total offense level of 12 and a criminal history category  
20 of II, Probation calculated defendant's Guidelines range as 12 to 18  
21 months' imprisonment and five years' supervised release. Id. ¶¶ 80,  
22 83. Although Probation identified no factors that would warrant a  
23 departure or variance below the Guidelines range, it recommended that  
24 the Court sentence defendant to just six months' imprisonment (half  
25 his low-end Guidelines sentence, or the equivalent of a three-level  
26 downward variance). Id. ¶¶ 92-93; Recommendation Letter at 1.  
27 Probation also concluded that defendant should pay a \$55,000 fine and  
28 a mandatory \$100 special assessment. Id.

1 **IV. ARGUMENT**

2 **A. Defendant's Base Offense Level Is 16 Because He Is a Tier**  
3 **III Sex Offender<sup>2</sup>**

4 The government respectfully disagrees with Probation regarding  
5 defendant's base offense level. As permitted by the plea agreement  
6 (Dkt. 49 ¶ 13), the government contends that defendant's base offense  
7 level is 16 because SORNA required defendant to register as a Tier  
8 III offender. USSG § 2A3.5(a)(1). Under 34 U.S.C. § 20911, a Tier  
9 III offender includes someone whose prior offense (1) is punishable  
10 by imprisonment for more than one year and (2) is comparable to or  
11 more severe than sexual abuse, aggravated sexual abuse, or the  
12 attempt of either, as defined in 18 U.S.C. §§ 2241 and 2242. 34  
13 U.S.C. § 20911(4).

14 The Ninth Circuit uses the categorical approach to determine a  
15 defendant's SORNA tier. United States v. Cabrera-Gutierrez, 756 F.3d  
16 1125, 1133 (9th Cir. 2014). Under the categorical approach, a court  
17 must compare the statutory definition of the defendant's prior  
18 offense (here, rape, under New York Penal Law § 130.35) with the  
19 elements of the "generic" federal offense (here, sexual abuse or  
20 aggravated sexual abuse, under 18 U.S.C. §§ 2241 and 2242). See id.  
21 In this case, defendant's attempted rape conviction makes him a Tier  
22 III offender if the New York law is defined more narrowly than, or  
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24 \_\_\_\_\_  
25 <sup>2</sup> In the PSR, Probation conflates defendant's designation by the New  
26 York State Board of Examiners of Sex Offenders -- which classified  
27 defendant as a level two sex offender -- with his tier level under  
28 SORNA. PSR ¶ 21. But New York's levels correspond to a defendant's  
risk of recidivism and are distinct from SORNA's tiers, which are  
based exclusively on the elements of a defendant's underlying  
conviction(s). See New York Corr. Law § 168-1 (McKinney).

1 has the same elements as, sexual abuse or aggravated sexual abuse (or  
2 the attempt of either) under 18 U.S.C. §§ 2241 and 2242. See id.

3 Sexual abuse requires that a defendant either cause another to  
4 engage in a sexual act by threat or fear or to engage in a sexual act  
5 with a victim who is mentally or physically incapable of consent. 18  
6 U.S.C. § 2242; see Cabrera-Gutierrez, 756 F.3d at 1134. Aggravated  
7 sexual abuse requires that a defendant knowingly cause another person  
8 to engage in a sexual act by using force against the person or by  
9 threatening or placing the person in fear of death, serious bodily  
10 injury, or kidnapping. 18 U.S.C. § 2241.

11 In 1994, New York Penal Law § 130.35 defined rape in the first  
12 degree as follows:

13 A male is guilty of rape in the first degree when he  
14 engages in sexual intercourse with a female:

15 (1) By forcible compulsion; or

16 (2) Who is incapable of consent by reason of being  
17 physically helpless; or

18 (3) Who is less than eleven years old.<sup>3</sup>

19 New York Penal Law - Sexual Assault Reform Act, 2000 Sess. Law News  
20 of New York Ch. 1 (S. 8238, A. 11538) (McKinney's); see also United  
21 States v. Gilchrist, 2021 WL 808753, at \*5 (M.D. Pa. Mar. 3, 2021)  
22 (stating elements of 1994 iteration).

23 Because rape under New York Penal Law § 130.35 includes  
24 alternative elements by which a person can be guilty, it is a  
25 divisible statute. See Cabrera-Gutierrez, 756 F.3d at 1134.

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27 <sup>3</sup> In 2000, New York amended its first degree rape statute to (1)  
28 criminalize women's conduct as well as men's; and (2) apply where the  
victim is less than 13 years old and the perpetrator is more than 18  
years old. New York Penal Law § 130.35.

1 Accordingly, the modified categorical approach applies. Id. Under  
2 the modified categorical approach, the Court can look to certain  
3 extra-statutory materials underlying defendant's attempted rape  
4 conviction -- including the charging documents or the transcript of  
5 defendant's plea colloquy -- to identify defendant's actual crime of  
6 conviction and to then compare the elements of that crime with those  
7 of federal sexual abuse and aggravated sexual abuse. Id.; see also  
8 Johnson v. United States, 559 U.S. 133, 144-45 (2010) (listing  
9 documents a court can look to under the modified categorical  
10 approach).

11 Here, those documents confirm that defendant pled to attempted  
12 rape by the forcible compulsion prong of New York Penal Law  
13 § 130.35(1).<sup>4</sup> The complaint underlying defendant's conviction states  
14 that defendant "engage[d] in sexual intercourse with a female by  
15 forcible compulsion," "subject[ed] another person to sexual contact  
16 by forcible compulsion," and "[r]estrained another person" when he  
17 placed what the victim believed was a handgun into her back and  
18 forced her to go upstairs into his bedroom, squeezed her neck, and  
19 forced himself on her, while holding a knife against the victim's  
20 stomach and telling her she could not leave. Seiden Decl. ¶ 2 & Ex.  
21 1 at USAO\_000078. Likewise, the indictment states that defendant  
22 "engaged in sexual intercourse with a female by means of forcible  
23 compulsion." Id. at USAO\_000076. The transcript of defendant's plea  
24 colloquy similarly reflects that defendant admitted that he

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26 <sup>4</sup> The government provides these documents for the sole purpose  
27 of justifying its request that the Court classify defendant as a Tier  
28 III offender under SORNA, as contemplated by the plea agreement.  
Dkt. 49 ¶ 13. Nothing about these documents changes the government's  
recommendation that defendant should be sentenced to a low-end  
Guidelines sentence.



1 "attempted to engage in sexual intercourse with [the victim], a  
2 female, by means of forcible compulsion." Seiden Decl. ¶ 3 & Ex. 2  
3 at USAO\_000010. Defendant also admitted that he had a knife and that  
4 he displayed it to the victim. Id. at USAO\_000011. Thus, the  
5 documents underlying defendant's attempted rape conviction reflect  
6 that he pled guilty to rape by forcible compulsion.

7 Because rape by forcible compulsion fits squarely within the  
8 definition of aggravated sexual abuse under 18 U.S.C. § 2241 -- which  
9 prohibits rape by using force against the person or threatening or  
10 placing the person in fear of injury -- defendant's prior conviction  
11 qualifies him for Tier III under SORNA. See Gilchrist, 2021 WL  
12 808753, at \*5 (applying the categorical approach to find that the  
13 defendant's conviction under the 1991 version of New York Penal Law  
14 § 130.35 qualified him as a Tier III sex offender under SORNA because  
15 "the New York statute criminalized a subset of the conduct  
16 criminalized by [SORNA] for aggravated sexual abuse under [ ]  
17 § 2241").

18 Because defendant is a Tier III sex offender under SORNA, his  
19 base offense level is 16. See USSG § 2A3.5(a)(1)

20 **B. Defendant Is Entitled to a Three-Point Reduction for**  
21 **Acceptance of Responsibility**

22 Because it calculated defendant's base offense level as 14,  
23 Probation adduced that defendant was not eligible for the third point  
24 for early acceptance of responsibility under USSG § 3E1.1(b). PSR  
25 ¶ 28. However, because defendant's base offense level is correctly  
26 calculated as 16, defendant qualifies for a third point for early  
27 acceptance of responsibility under that section. See id.  
28 Accordingly, defendant's total offense level is 13. With a total

1 offense level of 13 and a criminal history category of II,  
2 defendant's advisory Guidelines range is 15 to 21 months'  
3 imprisonment.

4 **C. Defendant Is Not Eligible for Home Confinement Because He**  
5 **Falls in Zone D**

6 With a total offense level of 13 and a criminal history category  
7 of II, defendant falls in Zone D of the Sentencing Table. Under the  
8 Guidelines, the minimum term -- here, 15 months -- shall be satisfied  
9 by a sentence of imprisonment. USSG § 5C1.1(f). Accordingly, a  
10 period of supervised release including home confinement is not an  
11 adequate substitute for the minimum Guidelines term of imprisonment.

12 **V. 15 MONTHS' IMPRISONMENT AND FIVE YEARS' SUPERVISED RELEASE IS**  
13 **SUFFICIENT BUT NOT GREATER THAN NECESSARY TO ACCOMPLISH THE**  
14 **GOALS OF SECTION 3553 (A)**

15 The government respectfully requests that the Court sentence  
16 defendant to a low-end Guidelines sentence of 15 months'  
17 imprisonment, five years' supervised release, a \$100 special  
18 assessment, and a \$55,000 fine.

19 **A. Nature and Circumstances of the Offense and Need for**  
20 **Sentence To Reflect the Seriousness of the Offense, Provide**  
21 **Just Punishment, and Promote Respect for the Law**

22 Defendant has been completing sex offender registration  
23 documents for nearly 20 years. Dkt. 49 ¶ 11. Over the course of two  
24 decades, he was repeatedly warned that if he moved to another state,  
25 it was his responsibility to follow any local, city, state, federal,  
26 or international laws regarding registration. Id. In 2019,  
27 defendant began a relationship with a celebrity and moved to  
28 California. PSR ¶¶ 11-12, 59-60. Only then did defendant decide to  
shirk his registration requirements, despite having had the benefit  
of 20 years' worth of warnings. Id. ¶¶ 11-12. Defendant's sentence

1 should reflect that he knowingly disregarded the law. 18 U.S.C.  
2 § 3553(a)(1).

3 The Court should disregard defendant's attempt to backpedal on  
4 what he knew. Specifically, defense counsel told Probation that  
5 defendant "was not advised that he would need to register under SORNA  
6 or that federal registration would be required if he moved to a  
7 different state" and that he "did not know of the requirements and  
8 believed that he was properly registered in New York." Id. ¶ 16.  
9 These claims are at odds with the facts defendant admitted to in his  
10 plea agreement and at his plea colloquy -- namely, that he knowingly  
11 failed to register as a sex offender in the State of California, as  
12 required under SORNA. See Dkt. 49 ¶ 11. Nor do they make sense,  
13 given the annual warnings defendant received every year for 20 years.  
14 PSR ¶¶ 11-12. In the face of these contradictions, the Court should  
15 disregard defendant's assertions to Probation and credit the sworn  
16 admissions he made at his change-of-plea hearing. See Blackledge v.  
17 Allison, 431 U.S. 63, 74 (1977) ("Solemn declarations in open court  
18 carry a strong presumption of verity.").

19 In short, the timing of defendant's lapse in registration is  
20 concerning, given that it occurred when defendant began dating his  
21 wife, quit his job, moved to Los Angeles, and adopted an affluent  
22 lifestyle. PSR ¶¶ 11-12, 59-60, 71. The Court should impose a  
23 within-Guidelines sentence to impose on defendant the importance of  
24 his registration requirements and the need to follow the law,  
25 regardless of his changed socioeconomic status. See 18 U.S.C.  
26 § 3553(a)(2)(A). Moreover, while a within-Guidelines of 15 months'  
27 imprisonment and five years' supervised release will satisfy  
28 defendant's need for punishment and rehabilitation and afford

1 adequate deterrence to future crimes. See 18 U.S.C. § 3553(a)(2).  
2 In particular, given defendant's serious criminal history (PSR ¶¶ 31-  
3 44) and past parole violations (id. ¶ 37), five years' supervised  
4 release will be crucial to holding defendant accountable once he is  
5 released.

6 Still, while a within-Guidelines sentence is appropriate, the  
7 government recommends a sentence at the low end of that range in  
8 light of various mitigating factors, including defendant's difficult  
9 upbringing (as discussed in more detail in the next section).

10 **B. History and Characteristics of Defendant and Need to**  
11 **Protect the Public**

12 Defendant's history contains mitigating factors, including that  
13 he was born to a single teenage mother who physically abused him.  
14 PSR ¶¶ 52-56. He was introduced to drug dealing at a young age. Id.  
15 And he was sent to an adult prison for over three years while still a  
16 teenager. Id. Given defendant's challenging start in life, a low-  
17 end Guidelines sentence of 15 months' imprisonment is appropriate.  
18 18 U.S.C. § 3553(a)(1).

19 While a low-end sentence appropriately accounts for those  
20 mitigating factors, other aspects of defendant's history and  
21 characteristics warrant against a more lenient sentence, such as a  
22 downward variance from the Guidelines or a substitution of home  
23 confinement for imprisonment.<sup>5</sup> In addition to his attempted rape  
24 conviction, and as outlined in the PSR, defendant has numerous other  
25 felony and misdemeanor convictions, including a conviction for first  
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28 <sup>5</sup> For the reasons set forth in Section IV.C, supra, home  
confinement is also inappropriate because defendant falls in Zone D.

1 degree manslaughter.<sup>6</sup> PSR ¶¶ 33-38. As to that conviction,  
2 defendant told Probation that he committed the crime because he  
3 “confronted a drug dealer who physically assaulted his grandmother.”  
4 Id. ¶¶ 37, 57. But defendant did not mention his grandmother (or any  
5 purported defense of others) when he pled guilty to that crime;  
6 instead, he admitted that he shot the victim five times while  
7 crossing the street and that he did so with the intent to cause the  
8 victim serious physical injury. Seiden Decl. ¶ 4 & Ex. 3 at  
9 USAO\_000095-97. Accordingly, in considering defendant’s personal  
10 history and characteristics and the need to protect the public, a  
11 sentence at the low-end of Guidelines range appropriately balances  
12 defendant’s difficult childhood with the need to protect the public  
13 given his criminal history. See 18 U.S.C. §§ 3553(a)(1), (2)(C).

14 **C. Need for Sentence To Avoid Unwarranted Disparities**

15 Section 3553(a)(6) requires the Court to minimize sentencing  
16 disparities among similarly situated defendants. One way of doing so  
17 is to correctly calculate the Guidelines range. See United States v.  
18 Treadwell, 593 F.3d 990, 1011 (9th Cir. 2010) (“Because the  
19 Guidelines range was correctly calculated, the district court was  
20 entitled to rely on the Guidelines range in determining that there  
21 was no ‘unwarranted disparity’ . . .”); Gall v. United States, 552  
22 U.S. 38, 54 (2007) (“[A]voidance of unwarranted disparities was  
23 clearly considered by the Sentencing Commission when setting the  
24 Guidelines ranges.”).

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<sup>6</sup> Seven of these convictions -- including four felonies -- are not included in defendant’s criminal history score because of their age or for other reasons. PSR ¶¶ 33-38.

1 Here, under the correctly calculated Guidelines range, other  
2 defendants "with similar records who have been found guilty of  
3 similar conduct" can expect to receive a sentence between 15 and 21  
4 months' imprisonment. Defendant is entitled to the low end of that  
5 range, given his mitigating characteristics. He is not, however,  
6 entitled to preferential treatment, whether in the form of a  
7 substitution of home confinement for imprisonment or otherwise.  
8 Especially where Probation has identified no justification for a  
9 downward variance or departure below the Guidelines range (PSR ¶¶ 92-  
10 93), defendant should receive the same sentence as other defendants  
11 who committed the same crime while in the same criminal history  
12 category. See USSG § 5A.

13 **VI. CONCLUSION**

14 For the foregoing reasons, the government respectfully requests  
15 that the Court sentence defendant to a low-end Guidelines sentence of  
16 15 months' imprisonment, five years' supervised release, a \$100  
17 special assessment, and a \$55,000 fine.

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**DECLARATION OF KATHRYNNE N. SEIDEN**

I, Kathrynne N. Seiden, declare as follows:

1. I am the Assistant United States Attorney assigned to this case. I have knowledge of the facts set forth herein and could and would testify to those facts fully and truthfully if called and sworn as a witness.

2. Attached as **Exhibit 1** is a true and correct copy of certified charging documents for defendant’s 1995 attempted rape conviction in the Supreme Court of the State of New York, Queens County, Case Number 4521-94.

3. Attached as **Exhibit 2** is a true and correct copy of the transcript of defendant’s change-of-plea hearing for defendant’s 1995 attempted rape conviction in the Supreme Court of the State of New York, Queens County, Case Number 4521-94.

4. Attached as **Exhibit 3** is a true and correct copy of the transcript of defendant’s change-of-plea hearing for defendant’s 2006 voluntary manslaughter conviction in the Supreme Court of the State of New York, Queens County, Case Number 2852-03.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed at Los Angeles, California, on June 22, 2022.

\_\_\_\_\_  
/s/  
Kathrynne N. Seiden

**Exhibit 1**



SUPREME COURT OF THE STATE OF NEW YORK NO FEE  
QUEENS COUNTY  
125-01 QUEENS BOULEVARD  
KEW GARDENS, NY 11415

CERTIFICATE OF DISPOSITION INDICTMENT

DATE: 10/09/2019

CERTIFICATE OF DISPOSITION NUMBER: 35075

PEOPLE OF THE STATE OF NEW YORK  
VS.

CASE NUMBER: 4521-94  
LOWER COURT NUMBER(S): 94Q033243  
DATE OF ARREST: 09/16/1994  
ARREST #: 094035395  
NYSID #: [REDACTED]  
DATE OF BIRTH: [REDACTED] 1978  
DATE FILED: 10/05/1994

PETTY, KENNY

DEFENDANT

I HEREBY CERTIFY THAT IT APPEARS FROM AN EXAMINATION OF THE RECORDS ON FILE IN THIS OFFICE THAT ON 11/10/1994 THE ABOVE NAMED DEFENDANT WAS CONVICTED OF THE CRIME(S) BELOW BEFORE JUSTICE COOPERMAN, ARTHUR THEN A JUSTICE OF THIS COURT.

ATTEMPTED RAPE 1st DEGREE PL 110-130.35 00 CF

THAT ON 04/05/1995, UPON THE AFORESAID CONVICTION BY PLEA THE HONORABLE COOPERMAN, ARTHUR THEN A JUDGE OF THIS COURT, SENTENCED THE DEFENDANT TO

ATTEMPTED RAPE 1st DEGREE PL 110-130.35 00 CF  
IMPRISONMENT = 18 MONTH(S) TO 54 MONTH(S)

SURCHARGE = \$155 (PAID)

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL ON THIS DATE 10/09/2019.

  
QUEENS COUNTY CLERK  
COURT CLERK

Marijuana convictions under PL 221.05 or PL 221.10 are vacated, dismissed and expunged as of August 28, 2019. The court system is in the process of updating its records, but in the meantime, it is an unlawful discriminatory practice unless specifically required or permitted by statute, for any entity to make any inquiry about an expunged conviction or to use an expunged conviction adversely, whether in any form of application or otherwise, against such individual.

Pursuant to section 70.15 of the Penal Law, any misdemeanor sentence with a jail term of "1 year", "12 months", or "365 days" is, by operation of law, deemed to be a sentence of 364 days. Any Certificate of Disposition indicating a jail sentence of "1 year", "12 months", "52 weeks", or "365 days" for a misdemeanor conviction shall be interpreted as a sentence of 364 days.

13 e

pro  
1/21/94



S U P R E M E C O U R T O F T H E S T A T E O F N E W Y O R K  
C O U N T Y O F Q U E E N S

Res  
9/21

THE PEOPLE OF THE STATE OF NEW YORK

AGAINST

XJ. KENNY PETTY - VFO  
DEFENDANT  
940033243



OCT 5 1994

FILED:  
INDICTMENT NO. 4521/94

- 130.35-1 RAPE IN THE FIRST DEGREE (1)
- 130.65-1 SEXUAL ABUSE IN THE FIRST DEGREE (2)
- 135.05 UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE (3)
- 120.05-6 ASSAULT IN THE SECOND DEGREE (4)
- 265.01-2 CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE (5)

THE GRAND JURY OF THE COUNTY OF QUEENS BY THIS  
INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF RAPE IN THE  
FIRST DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT SEPTEMBER 16, 1994, IN THE  
COUNTY OF QUEENS, BEING MALE, ENGAGED IN SEXUAL INTERCOURSE WITH  
[REDACTED] A FEMALE BY MEANS OF FORCIBLE COMPULSION.

SECOND COUNT

THE GRAND JURY OF THE COUNTY OF QUEENS BY THIS  
INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF SEXUAL ABUSE IN  
THE FIRST DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT SEPTEMBER 16, 1994, IN THE  
COUNTY OF QUEENS, SUBJECTED [REDACTED] TO SEXUAL CONTACT BY  
TOUCHING THE VAGINA OF [REDACTED] WITH THE PENIS OF THE  
DEFENDANT BY MEANS OF FORCIBLE COMPULSION.

THIRD COUNT

THE GRAND JURY OF THE COUNTY OF QUEENS BY THIS  
INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF UNLAWFUL  
IMPRISONMENT IN THE SECOND DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT SEPTEMBER 16, 1994, IN THE  
COUNTY OF QUEENS, RESTRAINED [REDACTED]

THE GRAND JURY OF THE COUNTY OF QUEENS BY THIS  
INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF ASSAULT IN THE  
SECOND DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT SEPTEMBER 16, 1994, IN THE  
COUNTY OF QUEENS, IN THE COURSE OF AND IN FURTHERANCE OF THE  
COMMISSION OR ATTEMPTED COMMISSION OF A FELONY, OTHER THAN A  
FELONY DEFINED IN ARTICLE 130 OF THE PENAL LAW WHICH REQUIRES  
CORROBORATION FOR CONVICTION, OR OF IMMEDIATE FLIGHT THEREFROM,  
CAUSED PHYSICAL INJURY TO [REDACTED], WHO WAS NOT A  
PARTICIPANT IN THE CRIME.

FIFTH COUNT

THE GRAND JURY OF THE COUNTY OF QUEENS BY THIS  
INDICTMENT, ACCUSE THE DEFENDANT OF THE CRIME OF CRIMINAL  
POSSESSION OF A WEAPON IN THE FOURTH DEGREE COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT SEPTEMBER 16, 1994, IN THE  
COUNTY OF QUEENS, KNOWINGLY AND UNLAWFULLY POSSESSED A DANGEROUS  
INSTRUMENT TO WIT: A KNIFE, WITH INTENT TO USE UNLAWFULLY  
AGAINST ANOTHER.

DISTRICT ATTORNEY



CRIMINAL COURT OF THE STATE OF NEW YORK  
PART APAR COUNTY OF QUEENS

THE PEOPLE OF THE STATE OF NEW YORK

STATE OF NEW YORK  
COUNTY OF QUEENS

V.

940033243

KENNY PETTY

DEFENDANT

POLICE OFFICER PAUL BOOTH OF 106 PCT, SHIELD 21635, TAX REG# #897055, BEING DULY SWORN, DEPOSES AND SAYS THAT ON OR ABOUT SEPTEMBER 16, 1994 AT ABOUT 8:45 AM AT INSIDE 123-40 INWOOD STREET, COUNTY OF QUEENS, STATE OF NEW YORK,

THE DEFENDANT COMMITTED THE OFFENSES OF:  
PL 130.35-1 RAPE IN THE FIRST DEGREE  
PL 130.65-1 SEXUAL ABUSE IN THE FIRST DEGREE  
PL 135.05 UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE

IN THAT THE DEFENDANT DID: BEING A MALE, ENGAGE IN SEXUAL INTERCOURSE WITH A FEMALE BY FORCIBLE COMPULSION; SUBJECT ANOTHER PERSON TO SEXUAL CONTACT BY FORCIBLE COMPULSION; RESTRAIN ANOTHER PERSON;

THE SOURCE OF DEPONENT'S INFORMATION AND THE GROUNDS FOR DEPONENT'S BELIEF ARE AS FOLLOWS:

DEPONENT IS INFORMED BY [REDACTED] THAT AT THE ABOVE TIME AND DATE AT THE VICINITY OF ROCKAWAY BOULEVARD AND INWOOD STREET, THE DEFENDANT PLACED A HARD CIRCULAR OBJECT TO COMPLAINANT'S BACK, AND THE OBJECT MADE A CLICKING SOUND. DEPONENT IS FURTHER INFORMED THAT DEFENDANT THEN TOLD THE COMPLAINANT TO KEEP WALKING.

DEPONENT IS FURTHER INFORMED THAT DEFENDANT THEN FORCED COMPLAINANT TO WALK TO [REDACTED] STREET, FORCED HER TO ENTER THE PREMISES AND TO GO UPSTAIRS INTO DEFENDANT'S BEDROOM BY PUSHING HER FROM BEHIND WITH THE HARD OBJECT WHICH COMPLAINANT BELIEVED WAS A HANDGUN.

DEPONENT IS FURTHER INFORMED THAT DEFENDANT THEN LAID HIS WEIGHT ON TOP OF COMPLAINANT, PINCHED HER SIDES AND SQUEEZED HER NECK CAUSING HER TO SUSTAIN BRUISES AND PAIN, AND THEN DEFENDANT FORCED HIS PENIS INTO HER VAGINA.

DEPONENT IS FURTHER INFORMED THAT DEFENDANT THEN BRANDISHED A KNIFE, HELD IT AGAINST COMPLAINANT'S STOMACH, AND TOLD HER SHE COULD NOT LEAVE, AND DEFENDANT THUS PREVENTED COMPLAINANT FROM LEAVING UNTIL COMPLAINANT STRUCK DEFENDANT WITH A PLASTIC BOTTLE AND ESCAPED.

Defendant : **PETTY, KENNY**

Page 2

FALSE STATEMENTS MADE IN THIS DOCUMENT ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW

9/17/94  
DATE

*P. O. Paul Holt*  
SIGNATURE

SWORN TO BEFORE ME ON THE DAY OF 9/17/94

Sgt Philip Rodriguez  
SIGNATURE

940033243

10X20 700  
[Faint, mirrored text and signature, likely bleed-through from the reverse side of the page]

**Exhibit 2**

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STATE OF NEW YORK : QUEENS COUNTY  
SUPREME COURT : PART K-6

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

INDICTMENT NO.  
4521-1994

KENNETH PETTY,

Defendant.

-----x

125-01 Queens Boulevard  
Kew Gardens, N.Y. 11415

November 10, 1994

MINUTES OF PLEA

B E F O R E: HON. ARTHUR J. COOPERMAN  
Supreme Court Justice

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

HON. RICHARD BROWN  
Queens County District Attorney  
BY: FRANK DEGAETANO, ESQ.,  
Assistant District Attorney,  
Of Counsel, for the People

OFFICE OF ROBERT BAUM  
LEGAL AID SOCIETY - QUEENS COUNTY  
Attorney for the Defendant  
BY: JENNIFER MICHAELSON, ESQ.

Mary Ocskai  
Senior Court Reporter



1 THE CLERK: Number 94521-94, Kenny Petty.

2 MS. MICHAELSON: Jennifer Michaelson.

3 MR. DEGAETANO: Frank Degaetano, Special  
4 Victims Bureau.

5 THE CLERK: Second call.

6 (Whereupon, the matter was recalled.)

7 THE CLERK: Recalling number 9 on the  
8 calendar, 94521-94, Kenny Petty.

9 Are you Kevin Petty?

10 THE DEFENDANT: Yes.

11 MS. MICHAELSON: Robert Baum by Jennifer  
12 Michaelson.

13 MR. DEGAETANO: Frank Degaetano for the  
14 People.

15 MS. MICHAELSON: At this time Mr. Petty  
16 authorizes me to withdraw his previously entered plea of  
17 not guilty and enters a plea of guilty to Penal Law  
18 Section 110/130.35, Attempted Rape 1, a class C felony,  
19 in full satisfaction of 4521-94 pending before the  
20 Court.

21 THE CLERK: Raise your right hand, sir.

22 Do you solemnly swear to answer truthfully all  
23 questions put to you so help you God?

24 THE DEFENDANT: So help me God.

25 THE COURT: What is your name?

Proceedings

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THE DEFENDANT: Kenny Petty.

THE COURT: Do you understand English?

THE DEFENDANT: Yes.

THE COURT: Is that your lawyer Miss Michaelson standing next to you?

THE DEFENDANT: Yes.

THE COURT: Did you hear and understand the application and guilty plea she made to the Court a few moments ago in your behalf?

THE DEFENDANT: Yes.

THE COURT: Have you had a full and complete opportunity to discuss your plea in this case with your lawyer, and at the end of that discussion, did you ask her to make this application for you?

THE DEFENDANT: Yes.

THE COURT: Do you now wish to withdraw your prior plea of not guilty and plead guilty at this time to the charge of Attempted Rape in the First Degree, under the first count of the indictment, to cover all remaining charges against you in this indictment?

THE DEFENDANT: Yes.

THE COURT: Are you pleading guilty because you are, in fact, guilty?

THE DEFENDANT: Yes.

THE COURT: Has anybody threatened you,

1 coerced you or forced you to plead guilty?

2 THE DEFENDANT: No.

3 THE COURT: Are you pleading guilty  
4 voluntarily?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that you have a  
7 constitutional right to a speedy trial before a jury on  
8 these charges, and that the People have the burden of  
9 proving these charges beyond a reasonable doubt to a  
10 unanimous jury, and that the Court is prepared to begin  
11 that trial shortly if you so desired.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you further understand if you  
15 proceeded to trial you would have the right to confront  
16 the witnesses against you. Further, your lawyer would  
17 have a full opportunity to cross-examine these  
18 witnesses, and you would also have the right to present  
19 witnesses in your own behalf.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Have you had the opportunity to  
23 discuss with your lawyer any defenses you may have to  
24 the charges brought against you?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you realize by pleading guilty  
2 to a felony today, this plea could serve as the basis  
3 for an enhanced sentence in the future should you commit  
4 and be convicted of a felony in the future?

5 THE DEFENDANT: Yes.

6 THE COURT: If you proceed to trial you could  
7 not be compelled to incriminate yourself in any way, and  
8 that would include not being compelled to take the stand  
9 and testify against yourself, although you would have  
10 the right to take the stand in your own behalf at the  
11 time of trial if you wished to do so.

12 Do you understand all of that?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you now wish to waive all these  
15 rights and plead guilty to the charge of Attempted Rape  
16 in the First Degree?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand your guilty plea  
19 is the same as if you had a trial and were found guilty?

20 THE DEFENDANT: Yes.

21 THE COURT: Did your lawyer tell you that  
22 there was a discussion among the attorneys and the Court  
23 concerning the possible disposition and sentence in this  
24 case?

25 THE DEFENDANT: Yes.

1 THE COURT: Did she further tell you that the  
2 Court indicated that it would give favorable  
3 consideration to imposing a sentence of incarceration of  
4 not less than one and-a-half, no more than four  
5 and-a-half years, if after reading the probation report  
6 the Court is of the opinion that such sentence would be  
7 in the interest of justice?

8 THE DEFENDANT: Yes.

9 THE COURT: Did your lawyer also tell you if  
10 after reading the probation report the Court comes to  
11 the conclusion that the interest of justice require that  
12 you be given a longer sentence, then you will be given  
13 the choice of accepting that longer sentence or  
14 withdrawing this plea of guilty without prejudice.

15 That is, if the Court can't keep the promise  
16 with respect to the sentence, you could take back your  
17 plea and go on trial.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Has anybody made any promises  
21 other than what I have told you?

22 THE DEFENDANT: Yes -- no.

23 MS. MICHAELSON: There's one other thing I did  
24 indicate to him, that he is YO eligible and while the  
25 Court has said it's not inclined to grant him YO

1 treatment, that the Court would consider it on the day  
2 of sentencing, and if the Court after reading the  
3 probation report and any other pending documents thought  
4 it would be appropriate, the Court would sentence him to  
5 YO if it felt it was appropriate.

6 THE COURT: Keeping in mind, of course, the  
7 Court does, while it can consider the probation report,  
8 it also considers the statements made before the Court  
9 at the time and all pertinent factors dealing with  
10 sentence.

11 It's not limited to any particular source, but  
12 you're correct, the Court will consider that application  
13 as it must, as it's required by law, at the time of  
14 sentence.

15 Mr. Petty, do you still wish to plead guilty?

16 THE DEFENDANT: Yes.

17 THE COURT: By pleading guilty, are you  
18 admitting that on or about September 16, 1994, in the  
19 County of Queens, you attempted to engage in sexual  
20 intercourse with J [REDACTED] H [REDACTED], [REDACTED], a female by  
21 means of forcible compulsion?

22 Is that correct?

23 THE DEFENDANT: Yes.

24 THE COURT: Where did this incident take  
25 place?

1 THE DEFENDANT: In my grandmother's house.  
2 THE COURT: Where is that located?  
3 THE DEFENDANT: [REDACTED] Street.  
4 THE COURT: Is that in the County of Queens?  
5 THE DEFENDANT: Ah hah.  
6 THE COURT: Say yes or no.  
7 THE DEFENDANT: Yes.  
8 THE COURT: And, what happened?  
9 THE DEFENDANT: She was in my house, we had  
10 sex.  
11 THE COURT: Do you recall moments ago you  
12 indicated you attempted to engage in sexual intercourse  
13 by means of forcible compulsion?  
14 So, with respect to that aspect of what  
15 occurred, did you have any weapon at that time?  
16 THE DEFENDANT: A knife.  
17 THE COURT: You had a knife?  
18 THE DEFENDANT: Yes.  
19 THE COURT: And, did you display it --  
20 THE DEFENDANT: Yes.  
21 THE COURT: -- to her, before you had sexual  
22 intercourse with J [REDACTED] H [REDACTED]?  
23 THE DEFENDANT: Yes.  
24 THE COURT: Okay.  
25 Is the plea acceptable to the People?

1 MR. DEGAETANO: Plea is acceptable.

2 I've also turned over to defense a copy of a  
3 Waiver of Right to Appeal which is a condition of the  
4 People's offer.

5 MS. MICHAELSON: We have executed the Waiver  
6 of Right to Appeal and are handing it to the Court at  
7 this time.

8 THE COURT: Do you understand in every case a  
9 defendant has a right to appeal?

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: In this case you wish to waive  
13 your right to appeal?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you discussed this with your  
16 attorney?

17 THE DEFENDANT: Yes.

18 THE COURT: Has anybody threatened you,  
19 coerced you, or forced you to waive your right to  
20 appeal?

21 THE DEFENDANT: No.

22 THE COURT: You do so voluntarily?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. Do you understand by  
25 waiving your right to appeal, you waive your right to



1 have somebody appointed to represent you in an Appellate  
2 Court in the event you cannot afford an attorney, and  
3 that person would submit a brief or argue in your behalf  
4 before an Appellate Court on any of the issues relating  
5 to your conviction and sentence?

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: And that by waiving your right to  
9 appeal you waive your right to have that done?

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Defendant executed a Waiver of  
13 Right to Appeal form, his attorney has signed it, the  
14 Court has affixed its signature as well.

15 This will remain in the file pending sentence  
16 in the case.

17 The Court will except the plea.

18 THE CLERK: Is your true name Kenneth Petty?

19 THE DEFENDANT: Kenneth Petty.

20 THE COURT: What is your date of birth?

21 THE DEFENDANT: [REDACTED]/78.

22 THE COURT: Your current address?

23 THE DEFENDANT: [REDACTED] [REDACTED] [REDACTED].

24 THE CLERK: Where is that?

25 THE DEFENDANT: [REDACTED] y [REDACTED].

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THE CLERK: Date for sentence.

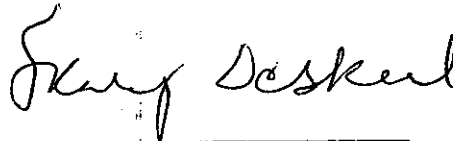
THE COURT: November 29th?

MS. MICHAELSON: Fine.

THE CLERK: November 29th. Defendant's  
remanded for sentence.

\* \* \*

I, Mary Ocskai, Senior Court Reporter, hereby  
certify that the foregoing is a true and correct transcript  
of the within proceedings.



\_\_\_\_\_  
Mary Ocskai  
Senior Court Reporter

**Exhibit 3**

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF QUEENS: CRIMINAL TERM: PART TAP B

3 -----x  
4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against- Indictment No.  
6 2852/03  
7 PLEA

8 KENNETH PETTY,  
9 Defendant(s).

10 -----x  
11 March 2, 2006  
12 125-01 Queens Boulevard  
13 Kew Gardens, New York 11415

14 B E F O R E:

15 THE HONORABLE RANDALL T. ENG

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

17 THE HONORABLE RICHARD A. BROWN  
18 DISTRICT ATTORNEY  
19 Queens County  
20 BY: JOHN KOSINSKI, ESQ.,  
21 Assistant District Attorney

22 ROBERT DIDIO, ESQ.,  
23 Attorney for the Defendant

24

25

Nancy Samms,  
Senior Court Reporter

## Proceedings

1 THE COURT CLERK: This is number nine, case on  
2 trial, indictment 2852 of 03, Kenneth Petty, who is present  
3 before the Court.

4 Appearances, please.

5 MR. DiDIO: Robert DiDio, 80-02 Kew Gardens Road.

6 MR. KOSINSKI: Office of Richard A. Brown by John  
7 Kosinski.

8 THE COURT: Good morning, everyone.

9 MR. DiDIO: Good morning.

10 THE COURT: Let's bring in the panel and start  
11 jury selection, please.

12 THE COURT OFFICER: Prospective jurors entering  
13 the courtroom.

14 THE COURT CLERK: Would you all please stand and  
15 raise your right hands.

16 (Whereupon, the panel was sworn and jury selection  
17 commenced, which was recorded but not transcribed herein:)

18 THE COURT CLERK: Recall of number nine on the  
19 calendar, Kenneth Petty, present with his attorney,  
20 Mr. DiDio, and Mr. Kosinski is also present.

21 MR. DiDIO: Judge, may I step out in the hall? I  
22 believe his wife is outside.

23 THE COURT: Yes, of course.

24 (Whereupon, there was a brief pause in the  
25 proceedings.)

Proceedings

1 MR. DiDIO: Thank you, Judge.

2 (Defendant and counsel confer.)

3 THE COURT: All right. The defendant can remain  
4 seated during this process.

5 What's your application, Mr. DiDio?

6 MR. DiDIO: Judge, after consulting with my client  
7 in regards to this matter, he is prepared to withdraw his  
8 previously entered plea of not guilty and enter a plea of  
9 guilty to manslaughter in the first degree, a B violent  
10 felony -- I'm not sure under what count. I don't have the  
11 indictment.

12 THE COURT: It should be the first count of the  
13 indictment, intentional.

14 MR. KOSINSKI: That's correct.

15 MR. DiDIO: Under count one.

16 THE COURT: Swear the defendant, please.

17 (Defendant sworn.)

18 THE COURT CLERK: Is your true name Kenneth Petty?

19 THE DEFENDANT: Yes.

20 THE COURT CLERK: Date of birth?

21 THE DEFENDANT: [REDACTED] 78.

22 THE COURT CLERK: Address?

23 THE DEFENDANT: [REDACTED] Street.

24 THE COURT CLERK: Are you a United States citizen?

25 THE DEFENDANT: Yes, ma'am.

Proceedings

1 THE COURT: Thank you.

2 Mr. Petty, I'm going to ask you questions about  
3 this guilty plea. You have to answer each one. Make sure  
4 that you keep your voice up.

5 Is Mr. DiDio, the attorney seated next to you,  
6 your lawyer for this case?

7 THE DEFENDANT: Yes, sir.

8 THE COURT CLERK: Have you talked to him about  
9 this case and about this guilty plea?

10 THE DEFENDANT: Yes, sir.

11 THE COURT CLERK: Mr. DiDio has asked permission  
12 of the Court to withdraw your plea of not guilty and  
13 instead enter a plea of guilty under the first count of the  
14 indictment to the lesser included offense of manslaughter  
15 in the first degree, which is, in law, a class B violent  
16 felony, to satisfy all of the charges contained in this  
17 indictment number 2852 of 2003.

18 Is it your wish to plead guilty to manslaughter in  
19 the first degree?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you doing so freely and  
22 voluntarily?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I have to advise you of the following,  
25 and that is, on the charges contained in this indictment,

## Proceedings

1 the law provides that you could have a complete jury trial  
2 by a jury of 12 persons. In fact, we were in the process  
3 of doing just that, choosing a jury.

4 At such trial, you would have the right to  
5 confront and examine the People's witnesses; you could  
6 examine and question any other evidence offered by the  
7 People; you would have the right to testify for yourself,  
8 although you could not be made to do so. In addition, you  
9 could call your own witnesses and present other matters in  
10 your defense.

11 By pleading guilty, you are giving up the right to  
12 have a complete jury trial and the legal result is the same  
13 as though you had a finished trial and been found guilty of  
14 manslaughter in the first degree.

15 Is that understood?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Let me have the indictment, please. I  
18 will go over with you now the charges contained under the  
19 first count in which you are pleading guilty to, the lesser  
20 included offense of manslaughter in the first degree.

21 It's charged that on or about April 27, 2002 in  
22 Queens with intent to cause the death of I [REDACTED] R [REDACTED]  
23 you caused the death of I [REDACTED] R [REDACTED] by shooting him  
24 with a deadly weapon.

25 Is it true that this happened on April 27, 2002?



Proceedings

1 THE DEFENDANT: Yes, sir.

2 THE COURT: At what time of the day or night  
3 approximately did this happen?

4 THE DEFENDANT: 1:00.

5 THE COURT: Would that be in the morning or in the  
6 afternoon?

7 THE DEFENDANT: Afternoon -- in the morning.

8 THE COURT: You are saying sometime after  
9 midnight?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: On what street in Queens did this  
12 happen?

13 THE DEFENDANT: 116th.

14 THE COURT: Is it true that you shot I [REDACTED]  
15 R [REDACTED]

16 THE DEFENDANT: Yes, sir.

17 THE COURT: What kind of weapon did you use to  
18 shoot I [REDACTED] R [REDACTED]?

19 THE DEFENDANT: Nine-millimeter.

20 THE COURT: How many times did you fire at I [REDACTED]  
21 R [REDACTED]

22 THE DEFENDANT: I don't know.

23 THE COURT: Was it once or more than once?

24 THE DEFENDANT: More than once.

25 THE COURT: Tell me in your own words how you shot

Proceedings

1 I [REDACTED] R [REDACTED] at that time and place. You can talk to  
2 Mr. DiDio before you answer.

3 (Defendant and counsel confer.)

4 THE DEFENDANT: While I was walking across the  
5 street, I fired shots at him.

6 THE COURT: When you fired shots at L [REDACTED]  
7 R [REDACTED], did you intend to cause serious physical injury  
8 to him?

9 THE DEFENDANT: Yes.

10 THE COURT: Any questions by the People,  
11 Mr. Kosinski?

12 MR. KOSINSKI: No.

13 The People would like to note the victim was shot  
14 approximately five times, a nine-millimeter weapon was used  
15 and approximately eight shell casings were recovered at the  
16 scene where he was shot corroborating the defendant's  
17 allocution.

18 THE COURT: Thank you.

19 Mr. Petty, I have had a conference with your  
20 lawyer and with the District Attorney, and I have agreed  
21 upon the People's recommendation to sentence you to a  
22 determinate term of ten years, that means ten straight  
23 years with credit for the time already served.

24 In addition, you will be subjected to five years  
25 post release supervision as the law requires.

Proceedings

1 Do you understand this?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anyone promised you anything else  
4 to get you to enter into this guilty plea?

5 THE DEFENDANT: No, sir.

6 THE COURT: Has anyone threatened you or pressured  
7 you to enter this guilty plea?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you guilty of having caused the  
10 death of I [REDACTED] R [REDACTED] by shooting him as you just told  
11 the Court?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you discussed with your lawyer,  
14 Mr. DiDio, the giving up your right of appeal as a  
15 condition of this plea and promised sentence?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Were you presented with a writing  
18 giving up your right of appeal?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did you review that writing along with  
21 your lawyer before you signed it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you giving up the right of appeal  
24 freely and voluntarily?

25 THE DEFENDANT: Yes, sir.

## Proceedings

1 THE COURT: I have the document that I have been  
2 referring to in my hand right now. That is your signature,  
3 Mr. Petty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: The record should reflect the  
6 execution of the written waiver of appeal by defendant and  
7 counsel in open court.

8 What is the People's recommendation as to this  
9 plea and promised sentence?

10 MR. KOSINSKI: The People at this time recommend  
11 the acceptance of the plea and the recommended sentence of  
12 ten years incarceration along with five years post release  
13 supervision.

14 THE COURT: Accordingly, the plea is satisfactory  
15 to the Court. Even though no jurors have been sworn,  
16 everyone agrees to the declaration of a mistrial here. Is  
17 that correct?

18 MR. KOSINSKI: Yes.

19 MR. DiDIO: Yes, your Honor.

20 THE COURT: Mistrial declared in light of the  
21 disposition. I will bring everyone in just to thank the  
22 panel briefly for their service.

23 I want everyone to remain in place, please. We  
24 will arraign him on the second felony after I let the  
25 jurors go.

## Proceedings

1 (Whereupon, the prospective jurors enter the  
2 courtroom.)

3 THE COURT: I'm sorry to have kept you waiting for  
4 approximately 45 minutes, but it was for a good purpose,  
5 and that is since we reconvened, there has been a  
6 disposition of this case. There has been a resolution of  
7 this case. A jury trial will not be necessary any longer.

8 I do want to thank you before I discharge you from  
9 service in this case that it would not have been concluded  
10 were it not for your service. This matter has been pending  
11 in this court for two years and two months, and this was  
12 the moment of truth. However, before the moment of truth  
13 came, there was a resolution of this case.

14 I know some of you may be very disappointed in not  
15 having had the opportunity to serve for two weeks in this  
16 murder case, but those are the fortunes of war, as we say.  
17 I will send you back to Central Jury. They may excuse you  
18 from service, I don't know, but you are discharged from  
19 this case with the thanks of the Court.

20 Thank you again. Follow the officers, please.

21 (Jurors exit the courtroom.)

22 THE COURT: Before we adjourn this for sentence,  
23 arraign the defendant as a second violent felony offender.

24 THE COURT CLERK: The District Attorney's office  
25 has filed a statement of predicate felony conviction

## Proceedings

1 alleging that you, Kenneth Petty, under predicate felon  
2 indictment number 4521 of 1994 under the name of Kenneth  
3 Petty; the date of plea was April 5, 1995; the crime  
4 attempted rape in the first degree; place of conviction  
5 Queens County; date of conviction sentence April 5, 1995,  
6 the sentence -- one moment.

7 (Whereupon, an off-the-record discussion was  
8 held.)

9 THE COURT: We will start all over. Under this  
10 predicate felony indictment number 4521 of 94, under the  
11 name of Kenneth Petty, the date of plea was November 10,  
12 1994; the crime was attempted rape in the first degree; the  
13 place of conviction is Queens County; the date of sentence  
14 April 5, 1995; the sentence was 1 1/2 to 4 1/2 years.

15 You may admit or deny that you are the person so  
16 named. You may also challenge any allegations made in the  
17 statement, but you must specify the particular allegations  
18 you wish to challenge.

19 Unchallenged allegations shall be deemed to be  
20 admitted by you. You may also challenge a predicate felony  
21 conviction on the ground it was unconstitutionally  
22 obtained.

23 Failure to make such a challenge constitutes a  
24 waiver on your part of any allegations of  
25 unconstitutionality.

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1 Kenneth Petty, having been advised of your rights,  
2 do you admit that you are the person so named in the  
3 statement?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT CLERK: Do you wish to challenge the  
6 constitutionality of the statement?

7 THE DEFENDANT: No, ma'am.

8 THE COURT CLERK: Thank you.

9 The defendant is arraigned as a predicate and  
10 admits.

11 THE COURT: Accordingly, he is adjudicated a  
12 second violent felony offender for sentencing purposes.  
13 Remand for sentence.

14 I am looking at March 23 at 2:00 P.M. for  
15 sentence.

16 MR. DiDIO: That's good.

17 MR. KOSINSKI: That's fine.

18 THE COURT: March 23, 2:00 P.M.

19 (Matter adjourned to March 23, 2006.)

\* \* \* \* \*

20 The foregoing is certified to be a true and  
21 accurate transcript of the original stenographic minutes  
taken of this proceeding.

22 *Nancy Samms*  
\_\_\_\_\_  
23 Nancy Samms, SCR

24  
25