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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLAYBON LEWIS ATWATER, JR.

APPELLANT

APPELLATE CASE NO. 2021-001320

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[STATE’S EXHIBITS #1, #21, #28, #36, AND #37 ARE ON FILE WITH THIS COURT]

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1 THE COURT: All right, sir.

2 MR. DEBUSK: We would ask you to hear from the family
3 understanding their emotional state, they'd both like to speak
4 at the appropriate time.

5 THE COURT: All right. Very good.

6 MR. SCHNELL: My name is David Schnell. I really don't
7 have anything to say to you.

8 THE COURT: Sir, when you talk, you must address the
9 Court. You cannot address anyone else.

10 MR. SCHNELL: Okay. I really don't have anything to say
11 because seeing his actions in the court, I really don't think
12 he has any respect for me or my family. Thank you.

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

14 Yes, ma'am, just state your name and I'll be glad to hear
15 from you?

16 MS. SHANNON ESPEL: My name is Shannon S. Espel, Donna
17 Schnell was my aunt. Her daughter, unfortunately, was not
18 able to be here today; she lives out of state. So, I was
19 wondering if I could read her impact statement?

20 THE COURT: Yes, ma'am.

21 MS. SHANNON ESPEL: This was written by Jamie Frasche,
22 who is Donna Schnell's daughter. Your Honor, I'm addressing
23 you today to introduce you to my mother, Donna Schnell, and to
24 tell you just a little bit more about who she was. My mother
25 was an absolute breath of fresh air. She could light up any

1 room that she entered, and it wasn't just her beauty, but her
2 free spirit and her genuine kindness and love that she had.
3 Her love for her life and the people in it is what made her
4 choose to pursue her career in nursing. She was a registered
5 nurse at multiple hospitals and home health care agencies in
6 New Jersey and one in Myrtle Beach, North [sic.] Carolina.
7 She loved the outdoors and became one with nature and animals.
8 She is the proud owner of two horses, many dogs, a pig,
9 numerous chickens. Every time I looked at my mother, all I
10 saw was the most perfect, caring, beautiful person. Not just
11 because she was my mother, but because she was a good person.
12 The kind of person we should all strive to be, just selfless.

13 The impact my mother's passing has had on my life has
14 been truly devastating. There are so many times that all I
15 want to do is call my mother and ask her simple things, like
16 how long to cook something or what the best solution of
17 cleaning my floors is, so I won't ruin it. Yes, I can Google
18 it; that's easy, but I want to hear what my mom has to say. I
19 want my mom's answers and my mom's advice and it's not fair in
20 any way that myself and my family must go on every single day
21 without her. It still doesn't make the slightest bit of sense
22 to me that a woman such as my mother could be taken from this
23 earth so prematurely, because I know for a fact that she had
24 so much left to do. Being a grandmother to my niece was one
25 of them. My mother waited her entire life to be a grandmother

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1 and, just a month after finding out that she would be, her
2 life was taken. I will never forget the last thing she said
3 to me. She had called me that morning to share her excitement
4 about becoming a grandmother and myself an aunt. Although
5 this moment was about my brother and our family in the future,
6 she said to me, don't worry, baby, it'll be your turn one day,
7 too, and you'll be the best mother. She always put mine and
8 my brother's feelings ahead of hers, and it just truly made
9 her a fantastic mother. She put us first.

10 I am asking you, Your Honor, to sentence Mr. Atwater to
11 the maximum possible sentence. When he got behind the wheel
12 of his car on April 6th of 2019 and drove straight into
13 traffic with no awareness or care whatsoever for the innocent
14 people surrounding him and killed my mother, he made his
15 choice. He made his choice to sit behind bars -- he made his
16 choice to sit behind bars where he belongs for murdering my
17 mother. I know it sounds a bit harsh to call it murder, but
18 it is exactly what it is. And in what world does a murderer
19 deserve to walk the streets free. I will let you decide.

20 Thank you, Your Honor.

21 THE COURT: Thank you, ma'am.

22 DIANE ESPEL: Hi, my name is Diane Espel.

23 THE COURT: Yes, ma'am.

24 DIANE ESPEL: Donna Schnell was my twin sister. Your
25 Honor, I lost my twin sister and my best friend because of Mr.

1 Atwater's incomprehensible decision and irrefutable choice to
2 drink and drive on April 6, 2019. The loss I suffered as a
3 family and a community as a whole cannot be measured
4 adequately by words. I'll never shared another birthday with
5 her, but I had the best 54 years. I'm sorry. Donna was
6 stolen from us before her time. His actions and decision on
7 that day have permanently pain -- in family's heart that will
8 never be mended. His actions -- I'm sorry, I can't see. His
9 actions have destroyed my sister's dreams during that time.
10 The accident should be roughly -- was roughly -- ten years
11 prior, my sister has serving the community in the medical
12 field helping others and providing comfort to the people in
13 their most trying -- I'm sorry; I'm having trouble -- I'm
14 sorry.

15 THE COURT: That's all right, ma'am.

16 MS. HARTE: Your Honor, if I may finish?

17 THE COURT: Yes, ma'am, you may.

18 MS. CANNON: During the time of the accident and for
19 roughly two years prior, my sister had been serving the
20 community in the medical field helping heal and provide
21 comfort to people at their most trying times was one of her
22 life goals. Donna Schnell was a selfless nurse for a unit
23 desperately needed and misses gravely. Most importantly, of
24 the dreams stolen from her was her dream to become a
25 grandmother. The morning of the accident, my sister had

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1 called to tell me that she was going to be a grandmother.
2 This is a call that will forever be engraved into my mind. I
3 had never heard her that overfilled with happiness, joy, and
4 excitement for the future. She never had the pleasure of
5 meeting her granddaughter, [REDACTED]. She will not get to see her
6 grow, and she will not get to be there for the milestones a
7 grandmother yearns to be there for. She never got to attend
8 her son's wedding. All of these things leaving voids in our
9 lives that cannot be filled without her. My niece, Jamie, who
10 needs her mom more than anyone, will never have her for
11 guidance, love, and advice, and all that a daughter needs from
12 their mother. My brother-in-law, Dave Schnell was critically
13 injured in the accident and faces a life of difficult healing.
14 He has astronomical medical bills from this horrific accident.
15 The survivor's guilt he feels, though not his fault, will
16 haunt him for the rest of his life. A pain that will never
17 subside. He lost his wife, his best friend, and his love. My
18 children and my brother lost their aunt and sister.

19 I'm asking you, Your Honor, to sentence Mr. Atwater to
20 the maximum sentence. Mr. Atwater made his choice on April
21 6th of 2019 to drink and drive. The senseless and selfish
22 choice destroyed my family. He should be punished to the
23 fullest extent of the law.

24 Your Honor, Donna Schnell will never have the privilege
25 to make another decision for herself, our family or our

1 community. I ask that you speak justly for the life that was
2 stolen. The precious and beaming light that was my sister,
3 Donna Schnell.

4 THE COURT: Thank you, ma'am.

5 MS. CANNON: Your Honor, I do have two written impact
6 statements that I would like the Court to take under
7 advisement, if I could offer those. One from the brother of
8 Donna Schnell and one from Shannon Espel, her niece.

9 THE COURT: All right. So, if you can have those marked
10 by the Court Reporter, please.

11 MS. CANNON: Your Honor, I'm Tameka Cannon, I'm the
12 attorney for the victim. I would like to state on the record,
13 because this was just of importance to Mr. Schnell, that the
14 defendant has pending charges in North Carolina. That was of
15 importance that that be mentioned.

16 THE COURT: All right. Thank you, ma'am.

17 MS. CANNON: Thank you.

18 THE COURT: Anything further, Solicitor?

19 MR. DEBUSK: Your Honor, just the prior record. Thank
20 you.

21 THE COURT: All right. Thank you. All right. Mr.
22 Truslow?

23 MR. TRUSLOW: Yes, sir. Thank you for coming back ---

24 THE COURT: Yes, sir.

25 MR. TRUSLOW: Your Honor, I'd like his wife to speak

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1 first, and then him if he'd like to, and I'd like to speak
2 after that.

3 THE COURT: All right, sir.

4 MR. TRUSLOW: Ms. Espada.

5 THE COURT: You want to come forward, please.

6 MR. TRUSLOW: And his father.

7 MS. ESPADA: My name Yarisbeth Espada.

8 THE COURT: Yes, ma'am.

9 MS. ESPADA: I want to say something about my husband,
10 because this man does not deserve to be in this type of
11 situation. I'm sorry for the family, but my husband is a good
12 man. He don't do no wrong. It's not his fault that people is
13 hating on him for him to get in any type of trouble,
14 definitely his past. They cannot look at his past, because he
15 ain't done nothing wrong. He now locked up for it and
16 fighting for it. I just want y'all to have some reasonable
17 time on this, because this man do not deserve it. He got a
18 family at home. He got a daughter that he really close to.
19 Imagine I go home and tell them he's not coming home. That's
20 gone be harder on me and my children. This man is the only
21 provider at the house, and I don't want my husband to be doing
22 no type of time for something he ain't done and that's what I
23 feel. Thank you.

24 THE COURT: Thank you, ma'am.

25 CLAYBON LEWIS ATWATER: Your Honor, I'm his father.

1 THE COURT: Yes, sir, could you state your name, please?

2 CLAYBON LEWIS ATWATER: Claybon Lewis Atwater.

3 THE COURT: Yes, sir.

4 CLAYBON LEWIS ATWATER: And I know I don't have a perfect
5 son, and we all may not have perfect children, but I do know
6 that he has a lot of good inside of him. I know he has made
7 mistakes, and as adults we all still make mistakes. But I'm
8 thinking that whatever the sentence time, I pray the Court
9 would give the lesser time, because I think maybe his life
10 after this will be a much better life. So, I ask, sir, if you
11 could have mercy of the Court of the sentencing.

12 THE COURT: Thank you, sir.

13 MR. TRUSLOW: Thank you.

14 Your Honor, my client would like me to speak.

15 THE COURT: Yes, sir.

16 MR. ATWATER: I'd like to say I'm sorry; I'm sorry for
17 what happened to that family.

18 MR. TRUSLOW: He's pretty shaken up, Your Honor, but he
19 says he's sorry he hurt them, and he is. As we know in these
20 cases, he's not free to write a letter of apology or say he's
21 sorry during trial or before.

22 Your Honor, I was thinking this job doesn't get any
23 easier, and I told the jury I wouldn't want to be in their
24 shoes. And, then I think about it, I wouldn't want to be in
25 your shoes. It's a tough decision and these cases are tough.

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1 I think they're tougher than any other cases we do in here,
2 these felony DUI cases. It has the same result as a murder
3 case, but you know, I've often said, and you know how many
4 DUIs are out there, and the question of impaired and not
5 impaired is really on the person, an individual person to
6 decide themselves, and then -- but the point being, the
7 difference between a DUI and this situation is honestly bad
8 luck in an accident -- a traffic accident. It just is.
9 Anybody who has been arrested for DUI very easily could have
10 been in trial for felony DUI, not that that takes away from
11 it. You know, it's an awful situation. My job is to point
12 out from this perspective, and he said he's sorry, and I am as
13 well. This was a tough case for me as well, and I know it was
14 for him.

15 Your Honor, my client has those DUIs, and two of them
16 were a long time ago. Unfortunately, one was when it was.
17 The possession of cocaine, the simple possession of cocaine,
18 and he was 18 years old at the time. He's now 38. That was a
19 while ago.

20 Your Honor, the DUI laws in sentencing, not felony DUI
21 but regular, they have now in the last five or ten years
22 trifurcated sentences. The legislature has the BA levels that
23 divide out in three penalty levels, and I just wanted to point
24 out that his -- his BA level as -- as found by the DataMaster
25 machine and the blood test was in the -- the blood test in the

1 lowest and towards the lowest end. Highest end being a .16 or
2 greater is the biggest sentence for DUIs. I have represented
3 people with .29, .31. .15 now is ignition interlock, even
4 though the DUI regular, you can't even drive. He had a .105
5 or a .11. In terms of I would call it, I think, the -- the
6 egregious nature of these cases, despite the fact that in a
7 death case, and a death is a death, and it's the same result.
8 But when you look at the conduct, Your Honor heard the entire
9 trial, and Your Honor listened to the testimony, and the jury
10 found it amounted to felony DUI, but I would point out that
11 there was a jury issue there. We were not interested in
12 dragging this out and just wasting Court's time. There were
13 some real issues to be tried, and he came forward in his jury
14 trial and his constitutional right and he exercised it. There
15 was a question of whether the traffic had stopped, whether he
16 was waved through. He certainly, it doesn't appear, just blew
17 through, and I think the consensus was he stopped. But we are
18 where we are. I would point out as well, the legislature in
19 all their wisdom, they've told us what the inference is;
20 they've told us what the sentences are. But, Your Honor, in
21 this case, a felony DUI with death occurring, it carries, as
22 you know, one year to 25 years. We have drug statutes that
23 carry 25 years, and that's the only sentence, and it's a
24 mandatory. For one reason or another, the range is set forth
25 at one to 25, and there must be cases that land on the lower

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1 end. And I'm not saying this is one, but my point being, if
2 you look at the number involved and the issues and the
3 egregious nature of some cases like the one just in the news,
4 150 miles an hour, the NFL player versus somebody on vacation
5 with his family trying to cross the street. And again, he's
6 guilty, and I acknowledge that, but in terms of sentencing I'm
7 talking. I believe -- actually, this week we resolved other
8 cases through our court systems with much lesser sentences for
9 the same offense. So, I know it's a case-by-case basis. He
10 is where he is. But I would ask Your Honor, obviously, and I
11 know you will, I've been before you before, I asked the jury
12 if he's not guilty have the courage to say so. If it's not,
13 then do that, and I just ask Your Honor to please take into
14 consideration everything. You know, yeah, it appears he's had
15 a problem with alcohol and the DUIs. The one other criminal
16 offense, he was 18 years old; that was 20 years ago. And I
17 do think the facts speak for themselves in the case. It was a
18 jury issue, and we had to come to trial with it. And that's
19 it. We would just ask you to sentence appropriately.

20 THE COURT: Thank you, sir.

21 MR. DEBUSK: Your Honor?

22 THE COURT: Yes, sir.

23 MR. DEBUSK: May we approach briefly?

24 THE COURT: Yes, sir.

25 (REPORTER'S NOTE: Bench conference is held off the record in

1 the presence of but outside the hearing of the jury.)

2 THE COURT: As I understand it, counsel, the defendant, I
3 mean the ---

4 MR. DEBUSK: The victim, Your Honor.

5 THE COURT: --- the victim in the great bodily injury
6 case has made a request for restitution; is that correct,
7 counsel?

8 MS. HARTE: That is correct, Your Honor.

9 THE COURT: All right. Understanding that -- as I
10 understand it, the parties have not had a chance to
11 communicate regarding a possible resolution of that one
12 particular issue. And, also, if the Court would make that
13 decision, I'd need to hear evidentiary type of presentation.
14 So, what I'm going to do is reserve that matter, take it under
15 advisement. I'm going to give the parties an opportunity to
16 talk and also to prepare for an evidentiary hearing, if
17 necessary.

18 MS. HARTE: Very well.

19 THE COURT: All right.

20 MR. TRUSLOW: Yes, sir.

21 THE COURT: Thank you.

22 MS. HARTE: Thank you.

23 MR. DEBUSK: Thank you, Your Honor.

24 THE COURT: 2019-GS-26-2900, State of South Carolina,
25 County of Horry versus Claybon Lewis Atwater, Jr., regarding

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1 felony driving under the influence death resulting. Regarding
2 this matter, there is a wide range possible sentence in this
3 matter, that being a minimum of one year up to 25 years. The
4 Court has heard all the evidence in this case. I've taken
5 into consideration what has been said now before sentencing.
6 In the trial, as the jury so found by finding the defendant
7 guilty of the crime charged, there was clearly evidence that
8 the faculties of the defendant were impaired by the use of
9 alcohol that materially affected his ability to drive a
10 vehicle in the State of South Carolina. There was testimony
11 and it was clear that the right of way regarding the travel
12 was with the motorcycle or trike, it has been called in the
13 trial. Evidence from a number of witnesses as to the way the
14 defendant exited the Circle K, certainly at a place that
15 considering the conditions, the time of day, the traffic, to
16 try and go across three lanes of traffic to go in the opposite
17 direction was questionable to say the least. And then you add
18 to that how the defendant did that exit from the Circle K as
19 described by the eyewitnesses, how he did that.

20 I do take into consideration the prior record of the
21 defendant for driving offenses. Particularly as North
22 Carolina classifies it, driving while intoxicated, DWI, and
23 the several violations for that in the State of North
24 Carolina, one charge happening a few weeks before this
25 particular accident, and the conviction occurring thereafter.

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1 Based on all that, again, 2019-GS-26-2900, State of South
2 Carolina, County of Horry, Claybon Lewis Atwater, Jr. felony
3 driving under the influence death resulting, the defendant is
4 committed to the State Department of Corrections for a
5 determinate term of 22 years.

6 2019-GS-26-2899, felony driving under the influence great
7 bodily injury, the defendant is committed to the State
8 Department of Corrections for a determinate term of 15 years
9 concurrent with the sentence in 2019-GS-26-2900.

10 Thank you very much.

11 END OF DAY 4

12 ADJOURNED @ 3:22 P.M.

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WITNESSES

CKET NO. 2019062602399

Bryan E Floyd North Myrtle Beach Dept of Public Safety

C

The State of South Carolina
County of Horry

George H. DeBusk, Jr.
19H01966

FILED

2019 JUN 20 PM 2: 12

RENEE K. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

DATE RECEIVED FROM
GRAND JURY

COURT OF GENERAL SESSIONS

JUNE, 2019 TERM

THE STATE

vs.

Claybon Lewis Atwater Jr
B/ M
Richmond Ave
Burlington, NC 27217
DOB: 1983-
SSN:

ATTORNEY: ~~Kia T. Wilson~~ Kirk Truvelow

Indictment for

FELONY DRIVING UNDER THE INFLUENCE
WITH GREAT BODILY INJURY

Jimmy A. Richardson, II, Solicitor

ARREST WARRANT NUMBER

2019A2620700170
CDR: 0406 56-05-2945(A)(1)
DOA: 4/7/2019

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: JUN 12 2019

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

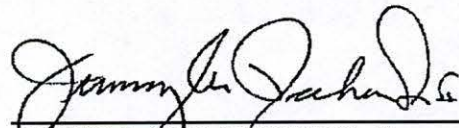
At a Court of General Sessions, convened on June 12, 2019, the Grand Jurors of Horry County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE
GREAT BODILY INJURY

CDR: 0406 56-05-2945(A)(1)

That Claybon Lewis Atwater Jr did in Horry County, on or about April 6, 2019, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused great bodily injury to David Schnell, to wit: Failure to Yield Right of Way, in violation of Section 56-05-2945(A)(1), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
 STATE)
 VS.)
Claybon Lewis Atwater Jr)
 AKA:)
 Race: BLACK Sex: M Age: 38)
 DOB: -1983 SS#)
 Address: Richmond Ave)
 City, State, Zip: Burlington, NC 27217)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS2602899

A/W#: 2019A2620700170
 Date of Offense: 4/6/2019
 S.C. Code § : 56-05-2945(A)(1)
 CDR Code #: 0406

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: DUI / Felony driving under the influence, great bodily injury (.10 law) **(30d-15y)**
 in violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

GBAD SCB16182 Defendant
 DeBusk, Jr., George H. SC Bar# Truslow, D. Kirk Attorney for Defendant
 SCB66465 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
 for a determinate term of 15 ~~days/months/years/Time Served~~ Youthful Offender Act not to exceed 50 years

and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years/Time Served and or payment
 of \$ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
 CONCURRENT or CONSECUTIVE to sentence on: 2019-GS-26-2900

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC
 _____ days/months
 To include time spent on monitored house arrest prior to trial and sentencing.
 The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS Claybon Lewis Atwater Jr INDICTMENT/CASE#: 2019GS2602899

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Attend Voc. Rehab. or Job Corp
- Mental Health Counseling
- Completion of GED
- No Contact with _____
- May serve W/E beginning : _____
- Random Drug/Alcohol testing
- Domestic Violence Intervention Program

Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment 0 _____ days/hours

Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Term _____ Set by SCDPPPS

Recipient: _____

FILED
HENRY COUNTY
102 NOV -4 P 3: 59
RENEE N. ELVIS
CLERK OF COURT
HENRY COUNTY, SC

*Fine:

Fine may be pd. in equal, consecutive ~~weekly~~ monthly pmts. of \$ 25.00 Beginning 12/4/2013

Description	Amount	Total
§14-1-206 (Assessments 107.5 %)	\$100	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$12	\$100.00
§56-5-2995 (DUI Assessment)	\$25	\$12.00
§56-1-286 (DUI Breath Test)	\$25	\$25.00
§14-1-212 (Law Enforce. Funding)	\$150	\$
§14-1-213 (Drug Court Surcharge)	\$41	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$50	\$
§50-21-114(BUI Breath Test Fee)	\$40/ea	\$
§56-5-2942(J) (Vehicle Assessment)	TBD	\$4.11
3% to County (if paid in installments)		
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$141.11

Clerk of Court/ Deputy Clerk: Renee Elvis
Court Reporter: Kay Richardson

Presiding Judge: _____
Judge Code: _____
Sentence Date: 11/4/21

WITNESSES

Bryan E Floyd North Mrtle Beach Dept of Public Safety

Owen Lynam

FILE NO. 2019GS2602900

**The State of South Carolina
County of Horry**

George H. DeBusk, Jr.
19H01966

FILED
2019 JUN 20 PM 2:12

RENEE H. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

DATE RECEIVED FROM
GRAND JURY

COURT OF GENERAL SESSIONS

JUNE, 2019 TERM

ARREST WARRANT NUMBER

2019A2620700171
CDR: 0395 56-05-2945(A)(2)
DOA: 4/7/2019

THE STATE

vs.

Claybon Lewis Atwater Jr
B/ M
Richmond Ave
Burlington, NC 27217
DOB: 1983
SSN:

ACTION OF GRAND JURY

ATTORNEY: ~~Kia T. Wilson~~ Kirk Truslow

[Signature]
Foreperson of Grand Jury
Date: JUN 12 2019

Indictment for

**FELONY DRIVING UNDER THE INFLUENCE
WITH DEATH**

VERDICT

TRUE BILL

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

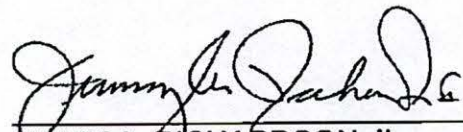
At a Court of General Sessions, convened on June 12, 2019, the Grand Jurors of Horry County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE - DEATH

CDR: 0395 56-05-2945(A)(2)

That Claybon Lewis Atwater Jr did in Horry County on or about April 6, 2019 drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused the death of Donna Schnell, to wit: did fail to yield right of way, in violation of Section 56-05-2945(A)(2), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
 STATE)
 VS.)
Claybon Lewis Atwater Jr)
 AKA:)
 Race: BLACK Sex: M Age: 38)
 DOB: -1983 SS#)
 Address: Richmond Ave)
 City, State, Zip: Burlington, NC 27217)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS2602900
 A/W#: 2019A2620700171
 Date of Offense: 4/6/2019
 S.C. Code § : 56-05-2945(A)(2)
 CDR Code #: 0395

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: DUI / Felony driving under the influence, death results (.10 law) 1-25

in violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature]

SCB16182

DeBusk, Jr., George H.

SC Bar#

Defendant

Truslow, Kirk
Attorney for Defendant

SCB66465

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,

for a determinate term of 22 ~~60~~ years/Time Served Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years/Time Served and or pay

of \$ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC _____ days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

FILED
 Horry County
 21 NOV 4 3:09 PM
 REBEKAH NEWMAN
 CLERK OF COURT
 Horry County, S.C.

STATE VS Claybon Lewis Atwater Jr INDICTMENT/CASE#: 2019GS2602900

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Attend Voc. Rehab. or Job Corp
- Mental Health Counseling
- Completion of GED
- No Contact with _____
- May serve W/E beginning : _____
- Random Drug/Alcohol testing
- Domestic Violence Intervention Program

Sex Offender Registry pursuant to S.C. Code § 23-3-430 Public Service Employment 0 _____ days/hours

Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Other: _____

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Term _____ Set by SCDPPPS

Recipient: _____

FILED
 Horry County
 2019 NOV -14 P 3:59
 RENEE N. ELVIS
 CLERK OF COURT
 Horry County, SC

*Fine: Fine may be pd. in equal, consecutive weekly pmts. of \$ 25.00 Beginning 12/4/2018

§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$100.00
§56-5-2995 (DUI Assessment)	\$12	\$12.00
§56-1-286 (DUI Breath Test)	\$25	\$25.00
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$4.11
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$146.11

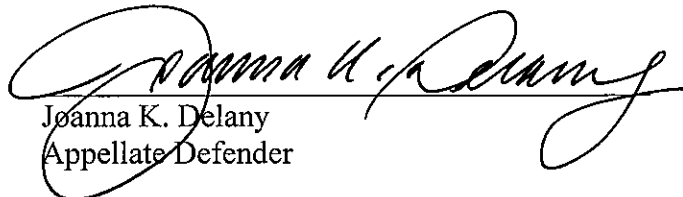
Clerk of Court/ Deputy Clerk: Renee Elvis
Court Reporter: Kay Richardson

Presiding Judge: _____
Judge Code: _____
Sentence Date: 11/4/21

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

Jan 26 2023

SC Court of Appeals

This 26th day of January, 2023.