

STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

Nov 16 2022

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY

The Honorable Donald B. Hocker, Plea Judge

The Honorable William P. Keesley, Sentencing Judge

The Honorable Brooks P. Goldsmith, Post-conviction Relief Judge

Case No.: 2020-000013

Destiny H. Mills,

Petitioner.

vs.

State of South Carolina,

Respondent,

APPENDIX

TOMMY A. THOMAS

Bar No.: 005536

Post Office Box 88

Irmo, SC 29063

(803) 732-5507

ATTORNEY FOR PETITIONER

Taylor Z. Smith, Esq.
Post-Conviction Relief
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211
ATTORNEY FOR RESPONDENT

INDEX

Plea Transcript of November 2, 2017.....	1
Sentencing Transcript of November 16, 2017	16
Indictment and Sentencing Sheet	51
Application for Post-Conviction Relief (2018-CP-32-01575).....	54
State's Return dated August 16, 2018	61
Amended Application dated March 26, 2019.....	69
Post-Conviction Relief Transcript dated June 28, 2019.....	73
PCR Conclusion Transcript dated September 9, 2019.....	179
Order of Dismissal filed November 26, 2019	203
Notice of Appeal filed January 3, 2020	233
Exhibit – Email from Judge Keesley's Law Clerk dated November 8, 2017.....	235

1 State of South Carolina) Court of General Sessions
2 County of Lexington) Eleventh Judicial Circuit
3
4

5 State of South Carolina,) Transcript of Record
6 vs.) 2015-GS-32-02929
7 Destiny H. Mills,)
8 Defendant.)
9

10 November 2, 2017
11 Lexington, South Carolina

12 B E F O R E:

13 The Honorable Donald B. Hocker, Judge
14

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

16 Todd Michael Wagoner, Assistant Solicitor Lexington County
17 On behalf of the State of South Carolina

18 Robert "Theo" Williams, Sr., Esquire
19 On behalf of the Defendant
20

21

22 Stacy S. Johnson
23 Circuit Court Reporter
24
25

I N D E X

PAGE

Certificate of Reporter

15

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held November 2, 2017,
2 beginning at 2:57 PM.)

3 **THE CLERK:** Indictment 2015-GS-32-02929. State versus
4 Destiny Mills. Indicted for felony driving under the
5 influence where death results. She is pleading as charged;
6 signed and properly attested to, true billed. Represented
7 by Mr. Williams.

8 Raise your right hand.

9 (Whereupon, Destiny H. Mills was duly sworn by the
10 Clerk of Court.)

11 **THE COURT:** All right. Mr. Williams, you represent
12 Destiny Mills?

13 **MR. WILLIAMS:** I do, Your Honor.

14 **THE COURT:** Okay. And have you had an opportunity
15 to explain this charge to her, her constitutional rights
16 that she's giving up as a result of the plea and the
17 maximum punishment she could receive?

18 **MR. WILLIAMS:** I have, Your Honor.

19 **THE COURT:** And do you believe she has understood your
20 explanation?

21 **MR. WILLIAMS:** She has.

22 **THE COURT:** I've got one charge before me, which is a
23 felony driving under the influence with death resulting.
24 How does she plead to that?

25 **MR. WILLIAMS:** Guilty, Your Honor.

1 **THE COURT:** As her attorney, do you agree with that
2 decision?

3 **MR. WILLIAMS:** I do, Your Honor.

4 **THE COURT:** And do you believe that if you went to
5 trial the strong likelihood would be she would be found
6 guilty?

7 **MR. WILLIAMS:** Yes, Your Honor.

8 **THE COURT:** Thank you very much.

9 All right, Ms. Mills. I'm gonna ask you some
10 questions. I want you to pay very close attention to the
11 questions that I ask you and when you respond, speak up
12 loud enough so we can hear you, okay?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** All right. You are Destiny H. Mills?

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** And how old are you?

17 **THE DEFENDANT:** I am twenty-five.

18 **THE COURT:** Okay. And how far did you go in school?

19 **THE DEFENDANT:** I'm still in school right now.

20 **THE COURT:** Okay.

21 All right. You just heard Mr. Williams tell me you're
22 pleading guilty to one count of felony driving under the
23 influence with death resulting; is that correct?

24 **THE DEFENDANT:** Correct.

25 **THE COURT:** Are you pleading guilty because, in fact,

1 you are guilty?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Did anyone force you to plead guilty
4 against your will?

5 **THE DEFENDANT:** No, sir.

6 **THE COURT:** Did anyone promise you anything to get
7 you to plead guilty against your will?

8 **THE DEFENDANT:** No, sir.

9 **THE COURT:** Are you pleading guilty today freely,
10 voluntarily and intelligently?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Have you consumed any substance, alcohol,
13 drugs or medication that would not only affect your ability
14 to understand these proceedings, but also affect your
15 ability to make decisions?

16 **THE DEFENDANT:** No, sir.

17 **THE COURT:** Do you suffer from any problem or
18 condition, physical, mental or emotional, that would not
19 only affect your ability to understand these proceedings,
20 but also affect your ability to make decisions?

21 **THE DEFENDANT:** No, sir.

22 **THE COURT:** All right. And it's my understanding,
23 Ms. Mills, that the lawyers have requested that I defer
24 sentencing. In other words, if your guilty plea is
25 accepted by me, then sometime in the future another

1 circuit judge would have this case and impose sentencing.
2 Do you understand?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** All right. Solicitor.

5 **MR. WAGONER:** Your Honor, Tuesday morning,
6 September 1, 2015, around 2 AM, Joseph Mozingo was driving
7 Olivia Johnson's 1996 Jeep Cherokee. Ms. Johnson had just
8 picked up Mr. Mozingo at his job at Dominos. They were
9 going, I believe, to Waffle House. They were driving
10 eastbound on I-26 just before the 113 mile marker in
11 Lexington County. Joseph Mozingo goes by Kenny, so I may
12 refer to him as Kenny. He's actually in the courtroom
13 today in the blue shirt.

14 He's familiar with that Jeep Cherokee. It actually
15 shakes at a high rate of speed. He estimated his speed at
16 approximately 55 miles per hour in a 60 mile per hour zone.
17 I believe the MAIT investigation showed that he was going
18 60 in that 60 mile per hour zone. He was in the far right
19 lane. The slow down, if you will.

20 Kenny describes that he remembers checking his
21 mirrors. He saw headlights that had caught his attention
22 and saw them coming up very fast. He assumed that that
23 vehicle that was approaching him was going to go around
24 him. He looked up again, saw the headlights again, closed
25 his eyes and he ended up -- the next thing he remembers is

1 awaking in the vehicle.

2 Olivia Johnson, who was twenty-one years old at the
3 time of this incident, was in the passenger seat of that
4 Jeep Cherokee. We believe that she had her purse behind
5 the seat. She was reaching behind her seat to get some
6 sort of something out of her purse and she may have taken
7 off her seatbelt in order to do that at this moment.

8 Ms. Johnson was ejected from the vehicle. She was hit by
9 a gray Kia Soul that was driven by Destiny Mills.

10 Your Honor, Mr. Mozingo actually called 9-1-1. On
11 that 9-1-1 call, you can almost hear Mr. Mozingo's heart
12 break, but you can also hear a lot of strength coming from
13 him. This is one of the most composed 9-1-1 calls I've
14 ever heard. He actually finds -- he's on the call with
15 9-1-1 as he's looking for Olivia Johnson. The moment
16 where he finds Ms. Johnson is on that 9-1-1 call. A
17 trucker stopped to help. Fire and EMS does respond. The
18 highway patrol responds, Your Honor.

19 Ms. Mills was -- admitted to law enforcement on-scene
20 that she had had one beer. There was another witness,
21 who was a friend of the Defendant, that arrived on-scene.
22 This was Mr. James Bonner. He stated that he had been
23 with Ms. Mills and her passenger, Mr. Andrew Graham,
24 earlier that evening. He stated that they were at Wild
25 Wings in the Harbison area of Columbia and they were also

1 at the British Bulldog, also in the Harbison area.

2 Trooper Bennett spoke with Ms. Mills while she was on
3 the back of the ambulance, inside that ambulance. Trooper
4 Bennett observed a strong odor of alcohol beverage, slurred
5 speech. She initially told Trooper Bennett that she was in
6 the right lane, she didn't see the car because they were
7 going slow. She did say that she hit them and then rolled
8 her car. She said that she was at a friend's house in the
9 Harbison area and had one beer.

10 Everybody was transported to the Lexington Medical
11 Center. After Ms. Mills was arrested and -- and
12 Mirandized, she stated that she was driving, she was trying
13 to switch lanes, didn't see the car, the Jeep, and she was
14 looking at her phone to change a song. Again, she stated
15 she was coming from a friend's house and had one beer and
16 that she had been at Applebee's. She was asked to quantify
17 her buzz level. She stated that she was approximately a
18 two out of ten.

19 Around 4:19 she was officially placed under arrest
20 for driving under the influence, felony DUI. She was read
21 her implied consent rights. She did submit to the blood
22 sample. SLED analysis would come back at a .127, Your
23 Honor. It's my understanding that two samples were taken,
24 but as the officer was handling the samples -- or it may
25 have been a nurse that was handling the samples, I'm not

1 sure exactly what transpired, but one of the samples
2 dropped and actually shattered on the floor of the
3 hospital.

4 After she gave the sample, she started to cry. She
5 told troopers that she wanted to tell them everything.
6 She stated that she was at Applebee's with a friend and
7 that at Applebee's she had nothing alcoholic to drink.
8 She then went to the Ale House, also in the Harbison area,
9 and had one beer. They then -- a friend, I think a Mariah
10 Harvey, drove her to the Wild Hare on Harbison. She said
11 -- actually there is no Wild Hare on Harbison, but there
12 is one in the Irmo, Saint Andrews area. At some point they
13 did make it to the Wild Wings. She may have been confused
14 with the Wild Hare versus the Wild Wings. At Wild Wings
15 she stated she had two beers between 9 PM and midnight.

16 As Wild Wings was about to close, they walked over
17 across the parking lot into the British Bulldog Pub where
18 she had two beers and she states two sips of Bud Light.
19 She then reported that Mr. Graham, Mr. Andrew Graham, who
20 was her passenger that evening, asked her to take him home,
21 and on the way that he kept trying to -- to kiss her and
22 that distracted her.

23 Your Honor, MAIT did investigate this. Her speed was
24 75 in a 65. MAIT found no mechanical failure on either of
25 the vehicles. She has a limited prior record. A 2012

1 shoplifting and, Your Honor, this was on the trial list
2 for November 13th. I believe that Mr. Bruce Johnson here,
3 who is the father of Olivia Johnson who tragically passed
4 away September 1, 2015, I believe that he and Kenny do
5 appreciate the fact that she is saving them the anxiety of
6 the unknown when it comes to trial.

7 **THE COURT:** Okay. All right. Thank you very much,
8 Solicitor.

9 Ms. Mills, while you may not agree with every single
10 detail as stated by the solicitor, would you agree that he
11 was substantially correct in the statement of facts behind
12 this felony DUI charge?

13 **THE DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** Okay. Now you understand that even
15 though sentencing is being deferred that this carries --
16 this offense carries up to twenty-five years in prison?

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

18 **THE COURT:** And up to twenty-five thousand -- or
19 \$25,100 in fines. Do you understand that?

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

21 **THE COURT:** Understanding that, you still want to
22 plead guilty?

23 **THE DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** Now when you plead guilty, you give up
25 certain constitutional rights. You have the right to a

1 jury trial. The solicitor said that it was on the trial
2 docket for -- in a couple of weeks. Do you want a jury
3 trial on this charge?

4 **THE DEFENDANT:** No, Your Honor.

5 **THE COURT:** You understand that when you plead guilty
6 you give up your right to remain silent. Do you understand
7 that?

8 **THE DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** And you understand that you have the right
10 for Mr. Williams on your behalf to make legal arguments,
11 put up legal challenges, file legal motions, make arguments
12 concerning any evidence or documents that the State may
13 have, as well as to confront and cross-examine the State's
14 witnesses, all on your behalf. Do you understand when you
15 plead guilty you give up that right for him to do that for
16 you?

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

18 **THE COURT:** When you were arrested on this charge
19 back in 2015, you were automatically presumed innocent
20 and that presumption of innocence has carried with you all
21 the way until today; however, when you plead guilty, as
22 you're doing so now, you're no longer entitled to that
23 presumption of innocence. Do you understand that?

24 **THE DEFENDANT:** Yes, Your Honor.

25 **THE COURT:** And when the State elected to charge you

1 with a criminal offense, they took on what is called a
2 burden of proof to prove each and every element of the
3 offense beyond a reasonable doubt standard. That's the
4 highest burden of proof we have in the law today; however,
5 when you plead guilty, as you're doing so now, they no
6 longer have a burden of proof. All they have to do is
7 present sufficient facts to base your guilty plea on. Do
8 you understand that?

9 **THE DEFENDANT:** Yes, Your Honor.

10 **THE COURT:** Okay. And you understand that this
11 charge, felony DUI with a death, is classified as a
12 violent, serious offense. The violent will determine the
13 amount of time that you have to serve -- or no less than
14 the amount of time you have to serve and the seriousness
15 -- or the classification of a serious charge is that if
16 you were later on in the future to be convicted of either
17 serious or most serious charges that can result in a life
18 imprisonment without parole. Do you understand that?

19 **THE DEFENDANT:** Yes, Your Honor.

20 **THE COURT:** So you're laying the groundwork. And
21 I'm not suggesting that you're gonna engage in further
22 criminal activity, I'm just saying you're laying the first
23 floor of this life imprisonment without parole house. Do
24 you understand that?

25 **THE DEFENDANT:** Yes, Your Honor.

1 **THE COURT:** Are you satisfied with Theo Williams'
2 representation?

3 **THE DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** Has he done everything you've wanted him
5 to do or expected that he would do?

6 **THE DEFENDANT:** Yes.

7 **THE COURT:** Have you adequately reviewed with him the
8 discovery file, which is all the evidence and documents
9 that the State has in this case?

10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** You understand, Ms. Mills, that if you
12 have a legal basis to challenge this guilty plea you're
13 making today that you only have ten days to file a notice
14 of intent to appeal to the higher court. Do you understand
15 that?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Have you understood all of the Court's
18 questions?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Are all your answers truthful?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Do you have any questions of your own?

23 **THE DEFENDANT:** No, sir.

24 **THE COURT:** All right. Thank you very much.

25 Let the record reflect that there is a factual basis

1 for this plea. The plea's been made freely, voluntarily
2 and intelligently by Ms. Mills and she's done so with
3 competent counsel of whose services she expresses
4 satisfaction with.

5 **MR. WAGONER:** I'm just making sure --

6 **THE COURT:** Okay.

7 **MR. WAGONER:** I'm sorry, Your Honor.

8 Thank you.

9 **THE COURT:** Sentencing will be deferred.

10 Good luck to you, ma'am.

11 **THE DEFENDANT:** Thank you.

12 **MR. WILLIAMS:** Thank you, Your Honor.

13 (Whereupon, the proceedings were concluded at
14 3:11 PM.)

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 2nd day of November, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

July 25, 2018

ISI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

1 State of South Carolina) Court of General Sessions
2 County of Lexington) Eleventh Judicial Circuit
3
4

5 State of South Carolina,) Transcript of Record
6 vs.) 2015-GS-32-02929
7 Destiny H. Mills,)
8 Defendant.)
9

10 November 16, 2017
11 Lexington, South Carolina

12 B E F O R E:

13 The Honorable William P. Keesley, Judge
14

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

16 Todd Michael Wagoner, Assistant Solicitor Lexington County
17 On behalf of the State of South Carolina

18 Robert "Theo" Williams, Sr., Esquire
19 On behalf of the Defendant
20

21 Stacy S. Johnson
22 Circuit Court Reporter
23
24
25

I N D E X

PAGE

Certificate of Reporter

35

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(The following proceedings were held November 16, 2017, beginning at 1:55 PM.)

BAILIFF: All rise.

THE COURT: Thank you. Be seated, please.
All right, Solicitor.

THE CLERK: Destiny Mills, come around.

Indictment 2015-GS-32-02929. State versus Destiny Mills, indicted for felony driving under the influence. Death results. She was put to the bar and arraigned and pled as charged on November 2, 2017, before the Honorable Judge Hocker. The plea was accepted and sentence was deferred at that time. This is for sentencing purposes.

Raise your right hand, ma'am.

(Whereupon, Destiny H. Mills was duly sworn by the Clerk of Court.)

THE COURT: Solicitor.

MR. WAGONER: Your Honor, on Tuesday morning, September 1st of 2015, approximately 2 AM, Joseph Mozingo, who also goes by Kenny, so I may refer to him as Kenny, and Olivia Johnson were coming home from their jobs at Dominos. They were traveling eastbound on I-26 just before the 113 mile marker in Lexington County. Joseph was driving Olivia's 1996 Jeep Cherokee. It shakes at a high speed, so he was travelling at 60 miles per hour in a 60 miles per hour zone. He was in the far right lane,

1 the slow lane, Your Honor, when a gray Kia Soul driven by
2 Destiny Mills who was twenty-three at the time, slammed
3 into the rear of that Jeep causing both vehicles to
4 overturn. Olivia Johnson, who was twenty-one, was ejected
5 from that Jeep sustaining fatal injuries.

6 Your Honor, Joseph Mozingo made a 9-1-1 phone call
7 where he requested EMS when he could not find his
8 girlfriend, Olivia Johnson. It's actually on that 9-1-1
9 call when he found Olivia, who was at the time fighting
10 for her life. The reason I mention that is that 9-1-1
11 call has a great effect. The strength that Mr. Mozingo
12 shows and the calm he shows I believe led law enforcement
13 to get there very swiftly. He told them exactly where
14 they were.

15 Highway patrol did respond to the scene. Ms. Destiny
16 Mills, who was the driver of that gray Kia Soul, admitted
17 to law enforcement on-scene that she'd had one beer.
18 Another witness, a friend of the Defendant, arrived
19 on-scene. His name was James Bonner. He stated that he
20 had been with Ms. Mills earlier in the evening and her
21 passenger -- and Destiny Mill's passenger, Andrew Graham,
22 and that Ms. Mills had more than one beer. They had been
23 at the Wild Wings on Harbison and also at the British
24 Bulldog saloon.

25 Trooper Bennett spoke with Ms. Mills as she was on

1 the back of the ambulance. He observed the odor of
2 alcoholic beverage and slurred speech. At first she
3 stated that she was in the right lane and she didn't see
4 the car because they were going slow. She hit them and
5 she rolled her car. She stated she was coming from a
6 friend's house in the Harbison area and had one beer.

7 She was transported, along with the victims, to the
8 Lexington Medical Center. She was transported with
9 actually Andrew Graham and Mr. Mozingo. Olivia was much
10 more critical, so she was taken in a separate ambulance.
11 She was Mirandized. After Miranda, she stated she was
12 driving, she tried to switch lanes and didn't see the car,
13 the Jeep. She stated that she was going 65 to 70 miles
14 per hour and she was looking at her phone in order to
15 change a song; that she was coming from a friend's house
16 and had one beer. She was asked if she had a buzz. She
17 said she was two out of ten.

18 At 4:19 AM, she was placed under arrest and read her
19 implied consent rights, which she did submit. Two vials
20 were taken, Your Honor, and in some circumstance one of
21 those vials was dropped by either a nurse or a highway
22 patrolman and that vile shattered leaving only one vile.
23 SLED did analyze that vile and her blood alcohol content
24 was .127.

25 After she gave the sample, she started to cry. She

1 told troopers that she wanted to tell them everything.
2 She stated she was at Applebee's with a friend, had
3 nothing to drink there, then she went to Ale House, also
4 in the Harbison area, and had one beer. Later she -- she
5 used -- she said she was at Wild Hare on Harbison; however,
6 we believe that that's actually Wild Wings. There is no
7 -- or there was no Wild Hare in the Harbison area, there
8 was one in Saint Andrews. She stated that she had two
9 beers at Wild Wings between 9 PM and 12 AM. As they were
10 about to close, they walked across the parking lot to the
11 British Bulldog where she stated there was two beers and
12 she had two sips of a Bud Light. Then she stated the
13 reason for the collision was that Mr. Graham asked her to
14 take him home and he kept trying to kiss her as she was
15 driving.

16 Your Honor, part of this investigation included some
17 civil depositions that we were provided and I provided to
18 Mr. Williams. Tragically, we believe this Defendant met
19 Mr. Graham a night or two prior to this incident. Most
20 importantly, they were together at a bar by the name of
21 Ozzy's. I believe that's in the West Columbia area of
22 Lexington County. The reason why they were at Ozzy's that
23 night was for a benefit to support Caitlin Clark, who was
24 the victim of another highway fatality that involved the
25 use of alcohol.

1 MAIT investigation did put the victims at 60 miles
2 per hour in a 60 and placed the Defendant's vehicle at
3 75 miles per hour in a 60 mile per hour zone. If I didn't
4 mention it earlier, I-26 just before the 119 {sic} mile
5 marker is in Lexington County. There was no mechanical
6 failure. Her prior record consists of a 2012 shoplifting.

7 Your Honor, we do have a couple of individuals that
8 would like to speak on behalf of Olivia Johnson and we'll
9 do that at the appropriate time.

10 **THE COURT:** All right. Let me hear from them.

11 **BEVERLY JOHNSON CHISOLM:** Beverly Johnson Chisolm.

12 **THE COURT:** What would you like to say, Ms. Chisolm?

13 **BEVERLY JOHNSON CHISOLM:** Pardon?

14 **THE COURT:** What would you like to say?

15 **BEVERLY JOHNSON CHISOLM:** Oh, is it time to speak?

16 **THE COURT:** Yes, ma'am, please.

17 **BEVERLY JOHNSON CHISOLM:** Yes. Okay. I am Olivia's
18 aunt and her dad is my -- my brother and I've known Olivia
19 since she was a baby. She grew up very humble beginnings
20 in Pelion, overcame a lot of hardship, was determined to
21 make something of her life, was very smart. She had a 4.0,
22 I believe, and she played tennis in high school. She had
23 met the love of her life and had planned to marry and she
24 -- she just was a wonderful girl and her father -- her
25 father, we were afraid he was gonna take his life when he

1 found out that she was dead, so that's all I need to say.
2 I appreciate you for letting me speak.

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

4 **KENDALL ALEXIS JAMES:** My name is Kendall Alexis James
5 and --

6 **THE COURT:** I'm sorry. Kendall? Did you say Kendall?

7 **KENDALL ALEXIS JAMES:** Kendall James.

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

9 **KENDALL ALEXIS JAMES:** I was Olivia's best friend.
10 She was more than a best friend. She was like my sister.
11 When she passed, I did a lot of things wrong, I made a lot
12 of mistakes, and still to this day I'm trying to do better,
13 but two years later I still feel like I'm gonna wake up
14 from this nightmare. She taught me how to live my life.
15 She taught me how to love and care and be humble. She
16 taught me how to play tennis and how to play Jeopardy on
17 the violin. She was a great girl and I miss her very much.
18 Thank you.

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

20 What's your name, please?

21 **PARKER COATS:** Parker Coats.

22 **THE COURT:** C-O-A-T-E-S?

23 **PARKER COATS:** C-O-A-T-S, no E.

24 **THE COURT:** What would you like to say?

25 **PARKER COATS:** When I met Olivia, she changed my live

1 and in some way probably saved it, and losing her was the
2 hardest thing I've ever been through. September 1st also
3 happens to be my birthday, so she passed away on my
4 birthday. I had -- I got a memorial tattoo for her and
5 there's a quote that stands with me and it says "You taught
6 me the courage of stars before you left", and she really
7 did teach me a lot of courage, and I really miss her.

8 **THE COURT:** Thank you.

9 **MR. WAGONER:** Judge, Joseph Mozingo is also in the
10 courtroom. He just is a little too emotional to speak.
11 I got personal with him when we were prepping this case
12 for trial and he authorized me to let you know that --
13 that in the future plans between him and Olivia they
14 were planning at some point for marriage and potentially
15 children. Tragically that won't happen.

16 We also have Rick Hall, who would like to speak on
17 behalf of the brothers of the deceased. Bruce Johnson,
18 the father of the deceased, he was very emotional two
19 weeks ago. He was present two weeks ago. It seems like
20 he was unable to make it today. He wanted me to know how
21 much of a special person Olivia was. A very artistic
22 person. He showed me some of her photography work. And
23 I would invite Mr. Hall to speak, Your Honor.

24 **MR. HALL:** If it please the Court, Your Honor?

25 **THE COURT:** Yes.

1 **MR. HALL:** You may recall that I was involved in some
2 certain earlier aspects of this case.

3 **THE COURT:** The civil case?

4 **MR. HALL:** Correct.

5 **THE COURT:** Yes, sir.

6 **MR. HALL:** I've been asked to speak today on behalf
7 of Rodney and Alex Johnson, and Kate Johnson, who was my
8 paralegal before -- she and her husband, Rodney, who is
9 married to my former paralegal, Kate. Rodney and Alex are
10 the sons of Bruce Johnson.

11 Your Honor, it's hard to find the words to say what
12 a beautiful young woman Olivia Johnson was. She was an
13 honor graduate of her high school. She had been admitted
14 to the University of South Carolina. She had the most
15 beautiful smile one might could ever imagine. She played
16 tennis, she played the violin, she jumped out of airplanes,
17 but more importantly she was apparently a friend to
18 everyone that ever knew her. They had a lot of plans.
19 She had probably one of the brightest futures I've ever
20 seen.

21 It's really one of the most tragic cases that I've
22 seen in thirty-five years of practicing law. And I don't
23 know if the Court has heard the 9-1-1 call, but it's
24 probably one of the most horrific things I've ever heard
25 in my life. This young woman was struggling and gasping

1 for breath and spitting up blood and this young man behind
2 me, Kenny, tried to -- everything he could to save her.
3 It was just horrific. The automobiles were virtually
4 destroyed and crushed to death and this young woman had
5 been out binge drinking. They were purposely out to get
6 drunk that night, and that's exactly what happened.

7 Your Honor, I would say this. I would say justice
8 should always be tempered by mercy, but there cannot be
9 real mercy unless there's been real justice. I will say
10 this. That I believe the Court should consider that not
11 only has the family lost a beautiful young woman, the
12 State of South Carolina and our society lost the gifts,
13 the talents and the courage that she would have given to
14 the State of South Carolina and society in general.

15 A significant jail sentence is warranted in this
16 case; otherwise, it leaves nothing to speak for this
17 beautiful young woman that was killed.

18 Thank you.

19 **THE COURT:** Thank you, sir.

20 **MR. WAGONER:** Judge, in conclusion --

21 **THE COURT:** Yes, sir.

22 **MR. WAGONER:** -- Wayne Labounty from the highway
23 patrol his here.

24 **THE COURT:** Say that name again.

25 **MR. WAGONER:** Wayne Labounty.

1 **THE COURT:** L-A-B-O-U-N-T-Y?

2 **TROOPER LABOUNTY:** Yes, sir.

3 **MR. WAGONER:** He's just here to support. Highway
4 patrol and all law enforcement treats these as very
5 serious and preventable sadly.

6 I'll also hand up a photograph that is of Olivia and
7 Kenny.

8 Your Honor, these type of cases -- first of all, he
9 mentioned the 9-1-1 call again. I elected not to play
10 that for you, and that's for Kenny. As we were prepping
11 for trial, the emotion that he showed when we got to parts
12 of that 9-1-1 call, I just don't want to put him through
13 that. These type of cases, nobody should envy anybody.
14 No one should envy the person that's sitting in the black
15 robe that will be handing the sentencing. We leave
16 sentencing in your discretion, Your Honor.

17 **THE COURT:** All right. So is there an estimate
18 related to speed of the vehicle that struck the victim's
19 vehicle?

20 **MR. WAGONER:** Correct.

21 **THE COURT:** Which was what?

22 **MR. WAGONER:** 75 in a 60, which is what MAIT
23 determined, and the victim's vehicle was travelling at
24 the speed limit, 60 at 60.

25 **THE COURT:** I heard that. I missed the 75.

1 And what time of day?

2 MR. WAGONER: It was 2 AM when this collision
3 occurred. It would have been early Tuesday morning,
4 September 1st.

5 THE COURT: All right, Mr. Williams.

6 MR. WILLIAMS: Your Honor, obviously there are no
7 winners in these types of cases. I've practiced law for
8 a lot of -- a lot of years, Your Honor. I've seen all
9 kind of crimes that are being sentenced for various things.

10 First, I want to mention the father who's not here.
11 A wonderful human being. I've actually talked to him on
12 two occasions and -- and I don't doubt that he is upset
13 and doesn't want to be here. He was -- he essentially
14 told me that -- I think he forgives, if he can forgive. I
15 just say that because he is a kind and caring father, and
16 I think, you know, even though he's not here somebody
17 should say something; that that's exactly what he is.

18 And I'm -- and all of the things that have been said
19 about -- about the victim are true. She's a wonderful,
20 wonderful person. And the sadness in this thing is that
21 my client is a wonderful, wonderful person who went out
22 and did something that she shouldn't have done.

23 As I understand the facts, Your Honor, I know you've
24 heard the blood alcohol was a .12. As I understand the
25 facts of the case, my client was taking home a boy who

1 was too drunk to drive. A boy. He's a man, he's over
2 twenty-one, and he was attempting to kiss her. She was
3 driving, he was attempting to kiss her, grabbing her face
4 and turning it to her -- to attempt to kiss her. It
5 doesn't -- it doesn't excuse the underlying .12, Your
6 Honor, and, you know, I'm not doing that. The person who
7 was driving the Jeep, the boyfriend or fiancé, I should
8 say, who was driving the Jeep, it's my understanding that
9 the deceased was -- had unbuckled her seatbelt, was
10 reaching back to grab something from behind the seat.

11 So it's a perfect storm, Your Honor. It's just a
12 perfect storm because, as I understand it, she was ejected
13 from the Jeep and that's why he was looking for her is
14 because she was ejected from the seat because she didn't
15 have a seatbelt on. And, Your Honor, that's obviously not
16 blaming the victim in this case. That's just -- it's a
17 perfect -- perfect case for terrible things to happen and
18 you want to -- you wonder what's gonna happen.

19 Your Honor has had children just like I've had
20 children and you worry about your youngsters growing up
21 and the biggest fear -- I've got a twenty-six-year-old
22 son. The biggest fear you could have is that your child
23 will go out and drink beer and somehow be involved in an
24 accident and somebody will die as a result of it. That's
25 biggest fear I have. I don't worry about my son going

1 out and robbing a bank or something like that, but I do
2 worry about things like that.

3 And in Destiny's case, that's what happened. Speed
4 wasn't excessive really. It wasn't -- it wasn't going a
5 hundred miles an hour. At one point in time, she obviously
6 had another attorney, there was some thinking about, you
7 know, well, you know, you had the other blood that was
8 broken, the other test tube that was broken, and maybe it
9 was defective or something like that. She did not elect
10 to do that and the reason I think she did not elect to do
11 that is because she accepted the fact that it was her
12 fault and she did not want the family to go through with
13 more of this pain and anguish that they have.

14 Your Honor, I have some -- some statements from
15 people, and I've already given the solicitor some, that I
16 would ask the Court to look at because these are people
17 that -- that know Destiny and have known -- if I may
18 approach and give Your Honor. I've already given a copy
19 to the solicitor, Your Honor.

20 **THE COURT:** Yes, sir.

21 **MR. WILLIAMS:** These are -- these are statements from
22 people who have known her and, you know, Destiny is just
23 like everybody else in terms of she's lived a life before
24 this and she -- she's got a little baggage with her and
25 probably that may have put her in the position that she

1 was in.

2 She never knew who her father was, Your Honor. Her
3 mother gave her up when she was two years of age and you
4 will see a statement in there from her father, who is in
5 California and could not get back because Your Honor knows
6 we were trying to schedule this sentencing hearing, but he
7 sent his statement in about her, which is a wonderful
8 statement.

9 But as a result of things that she went through in
10 her life, she went through anxiety and depression, tried
11 to kill herself when she was seventeen. She did that by
12 slicing her wrist. She tried to kill herself when she
13 was twenty-two by taking pain pills. She's gone through
14 therapy at Serenity Rehab. Now the doctor gives her
15 medication for -- Xanax -- or Zoloft, I guess I should
16 say, that's right, Zoloft, because she's suffering now
17 from PTSD.

18 This is not -- these statements about this individual
19 are not meant to excuse that bad behavior which caused the
20 loss in this case. It's just to show this is an individual
21 who's -- who obviously has had some bad things that have
22 happened to her and she -- she was the reason why this
23 happened. You know, if she hadn't have been out there
24 driving, this would not have happened.

25 Your Honor, she -- she has been in jail for 189 days.

1 She spent 189 days in jail. She has been on an alcohol
2 monitor with a dusk to dawn curfew, and I know Your Honor
3 is familiar with that because Your Honor is the one who
4 set that condition on her, for a year and four months --
5 I'm sorry. I just -- I'm sorry. The solicitor's told me
6 it was Judge Addy. I'm sorry, Your Honor.

7 **THE COURT:** I'm flattered. Go ahead.

8 **MR. WILLIAMS:** But in any event, she -- she has --
9 she's had that alcohol bracelet on her and she's gone
10 for a year and four months with that. And, you know,
11 dagburnit, you know, life is strange. Life is so strange.
12 She has -- she has given birth to a twelve-week-old baby
13 in the midst of all this and -- and I -- probably a lot of
14 people would say well, why in the world did you give birth
15 to a baby when you knew that you were facing this kind of
16 thing, and she, I think, and I hope I'm not speaking out of
17 turn, I think she probably thought about not having that
18 baby. But, Your Honor, like most adopted children, they
19 have a problem with that. They have a big problem with
20 that and -- and I'm sure that's the reason why that did not
21 occur.

22 She -- she was in my office about a week ago and she
23 read me something and I have never heard anything like
24 this in my life and I would ask the Court to indulge this
25 because what she did -- I guess she was soul searching and

1 she wanted to say something about the person she had killed
2 and -- and she typed it. It's on her phone and she wanted
3 me to read it. I said no, no, you're the person on trial,
4 you need to read this. So, Your Honor, I would -- I've got
5 two people, I think, that want to speak. One is who she
6 considers her mother and her name is Karen Addy. I say
7 considers her mother. When she got out of jail, you know,
8 she stayed with her for a period of time because her
9 daughter was one of the -- was one of her friends, as well
10 as her fiance, but I would ask Your Honor to hear this that
11 she wrote about how she felt about -- about what she had
12 done.

13 **THE COURT:** Sure.

14 **MR. WILLIAMS:** And if you'll indulge reading from a
15 cell phone, Your Honor.

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

17 **THE DEFENDANT:** Okay. I'm sorry if I break up.

18 **THE COURT:** Take your time.

19 **THE DEFENDANT:** Two years ago today, September 1,
20 2015, was the day my life forever changed. As always, I'm
21 initially asking everyone to pray for the family and not
22 me. I can't say I've gotten over it because I haven't.
23 I've learned to positively deal with it. Some days are
24 worse than others, but I never let it show. God sure has
25 a way of painting a bigger picture and I'm slowly seeing.

1 But because of Olivia I've accomplished more in two years
2 than I have in my whole life. I've become a better person.
3 I've become someone I could look at and say I'm actually
4 proud of not only the progress I've made, but where I'm
5 going on in life. It's hard to deal with and I wouldn't
6 wish this on anyone, but God's blessed me with some amazing
7 people who helped me pull through. There's not a day that
8 goes by that I don't think about what happened, but I
9 constantly remind myself that everything happens for a
10 reason and sometimes we don't know that reason and may
11 never know God's actual intentions with why things happen
12 the way they do, but trust and believe there's some method
13 behind the madness.

14 I recently went on her Facebook and although it's
15 just social media I feel like I got to know who she was or
16 who she portrayed herself as; a free spirit with a love for
17 adventure, a genuine person with passion and love for all
18 living creatures, a caring soul with not one ounce of
19 hatred or deceit. Those are qualities I aim to have. The
20 ones I had before I lost myself years ago. In her I saw
21 the Des I was before chaos consumed me and took over. I
22 see the Des I've become again and I'd do anything in this
23 world to have had the opportunity to at least meet her once
24 to apologize, but also thank her.

25 You can let tragedy do one of two things; make you

1 bitter or better, and because of Olivia I chose to be
2 better. I chose to -- I'm sorry. I chose to make a
3 difference in not only my life, but to go beyond that
4 and make a difference in the lives of others. As I said,
5 please pray for the family and friends today. They deserve
6 all the prayers.

7 **MR. WILLIAMS:** Your Honor, I neglected about her --
8 her education, which she got her GED. She's been going
9 to Midlands Tech and she was taking -- she was getting a
10 medical -- some sort of medical degree and she changed it
11 to human services for drug and alcohol rehabilitation.
12 And the reason she did that was because with this felony
13 on her record there's a lot of things she won't be able
14 to do, but she feels that with this -- if she gets this
15 degree, maybe she can teach other young people.

16 Your Honor, I -- I actually have -- if I could have
17 two other people speak on her behalf, Your Honor?

18 **THE COURT:** I'll hear from whoever wishes to speak.

19 **MR. WILLIAMS:** Ms. Addy, yes, ma'am.

20 **KAREN ADDY:** Your Honor?

21 **THE COURT:** Yes, ma'am. You're Karen Addy?

22 **KAREN ADDY:** Yes, sir. My name is Karen Addy. I'm
23 a -- I grew up in Lexington County, but lived most of my
24 adult life in other places and moved back when my one
25 child was ten years old. It was at that time that I met

1 Destiny Mills. She was the first child in the elementary
2 school to reach out to my daughter. My daughter's very
3 shy and she reached out to my daughter in friendship to
4 her.

5 In the years to come, their friendship grew closer.
6 Destiny spent many, many days and nights and hours in our
7 home. As I grew to know her better and better, I came to
8 think more and more of her because not only did she, along
9 with my daughter, fill my house with laughter and joy, she
10 also was an incredibly thoughtful young lady. She -- I
11 would wake up in the morning, on a Saturday morning, and
12 find that my kitchen had been cleaned by this child at
13 that age, a child in middle school, or that -- I mean,
14 just something -- you know, usually you have to force your
15 children to -- to do chores around the house, but this
16 child would go out of her way to do kind things for me and
17 for my daughter without ever being prompted to do so.

18 As I grew to know more and more about her and got to
19 know her family of origin, I learned what a very, very
20 difficult situation she was living in. In fact, I will
21 never forget being awoken at three in the morning by a
22 social worker at Lexington Medical Center calling me to
23 beg me to come to Lexington Medical Center to pick up
24 Destiny to temporarily remove her from what appeared to
25 be an abusive situation. Destiny stayed with myself and

1 my daughter for several months after that while DSS worked
2 out some details. I petitioned -- I asked DSS or made it
3 clear that I would be very happy for Destiny to live in
4 my home with my daughter until Destiny and my daughter
5 graduated from high school, but her family of origin would
6 not allow that to happen. They -- and, of course, the DSS
7 is going to obviously favor the birth family.

8 So after high school, after our -- my daughter and
9 Destiny graduated from high school, they both went to
10 different schools. So as is usually the case with young
11 people, sometimes friendships, you know, come -- they're
12 not as close to their high school friends as they once
13 were, they make new friends in college, and that's
14 basically what happened with Destiny and Georgia. They
15 were friends, they saw each other occasionally, but they
16 were not bonded the way they were in high school. But
17 sometimes Destiny would stop by my house and just catch
18 up and tell me what was going on with her life, what she
19 was doing, who -- you know, who her friends were, how
20 things were going.

21 She had a hard time, you know, when she was -- the
22 day she turned eighteen, her parents literally kicked her
23 out of the house without a cent to her name, without any
24 clothes, and just said you're an adult now, make your way.
25 Now perhaps that is the way that some people think

1 parenting should be done for teenagers. It's not my
2 feeling that that's the best way to care for your teenage
3 children, but anyway that's what happened. When Destiny
4 was twenty-three -- twenty-two, twenty-three, I remember
5 this. Again, a very vivid memory. She stopped by our
6 house. It was in the summer. She and my daughter were
7 going to go out and reminiscence and catch up and she was
8 so happy and she said I want you to come outside and see
9 something and she took me out and showed me a car.
10 Destiny had never owned a car in her life unlike many,
11 many teenagers and young people who kind of take it for
12 granted because their parents chip in and buy them or help
13 them buy a vehicle or co-sign a loan. She never had a car
14 until she had a job and could get a loan on her own and
15 could buy a car. She was so proud of this vehicle and I
16 said -- I mean, she -- I just can't tell you the emotion
17 she was showing and I was so happy for her, so happy for
18 her, and so proud to see her making strides in an -- toward
19 an adult-responsible life. It was only a few weeks later
20 that I woke up to the news on television of this horrible,
21 horrible tragic accident that took the life of this
22 precious, beautiful soul, Olivia.

23 I grieved for Destiny's -- the mistake that in just a
24 heartbeat can change a life, change the course someone's
25 life completely, especially when she had been doing so

1 well to go in the right direction. But I also grieved
2 deeply and sincerely for the parents of Olivia. My own
3 daughter has had very severe chronic medical conditions
4 and has come very close to dying and even though I don't
5 pretend for a second to really understand what Olivia's
6 parents and family have experienced and continue and will
7 continue to experience the rest of their life, I can tell
8 you that I have been a breath away from that sense of
9 losing my child and I lived with it for two years while
10 she was in and out of the hospital. We ended up going to
11 Mayo Clinic and they finally got her in remission. But,
12 Judge, I still live with that knowledge. It's almost woven
13 into my brain now the understanding of loss, how quickly
14 it can happen, and now devastating and incomparable it is
15 to lose a child. It is just truly the worst thing that I
16 think can happen to someone. So I do sincerely -- I do
17 sincerely feel compassion, deep, deep compassion for
18 Olivia's family.

19 Like Destiny, I looked at Olivia's Facebook page. I
20 didn't know her as a young lady, but I looked at her
21 Facebook page and I was so impressed of the type of young
22 woman she seemed to be. The type of young woman that
23 these -- my daughter and this young woman were. An animal
24 lover, a person who did good without being prompted to do
25 good. You know, I -- when I saw it I just thought she

1 would have been friends with these girls, she could have
2 been friends with my daughter and this child. And so the
3 tragedy, it just -- it's just -- I can't even express to
4 you how tragic the whole situation is for everyone
5 concerned.

6 Now I was not there obviously the night that this
7 accident happened, but what's difficult for me to grasp
8 is the fact that she had that car for the first time and
9 that she would do something as reckless as go out and
10 deliberately go out with the intention of getting drunk,
11 drunk, smashed, being that irresponsible. I just cannot
12 accept that. I believe, as her attorney has said, because
13 I saw Destiny, I went to see her in jail the week after
14 she was arrested after the accident and the first thing
15 she talked to me about was this young man sitting beside
16 her pawing at her. He really was truly drunk and
17 interfering with her driving and he took no responsibility.
18 The police did not hold him in any way accountable. I
19 know that she was driving, but -- but I believe her. I
20 believe that this happened. I know how young boys are and
21 I believe that this happened. And because she told me so
22 quickly after it happened, she was not speaking in a
23 rehearsed way, she was -- it was raw emotion coming from
24 her mouth.

25 She was in jail for a while and as you know because

1 I wrote the letter asking that you allow her to come to
2 my house on house arrest and stay with me with an alcohol
3 monitor awaiting trial or resolution of this and I saw
4 during that time how deeply remorseful, how affected
5 she was and -- and just so -- just so remorseful about
6 everything that had happened and that she felt it so
7 deeply what -- what she had taken from this family and
8 this young woman. And -- and yet, you know, she -- she
9 tried to live day by day and tried to do what she could to
10 keep moving forward with her life, tried to keep taking
11 classes.

12 She developed a relationship with a very nice and
13 respectable and respectful young man. They've created an
14 absolutely beautiful child together. She's also serving
15 basically as a stepmother to this young man's other
16 children and she is a really good mother. I have seen it
17 with my own eyes and it amazes me given her own childhood
18 how she can -- how she can know instinctively how to be
19 such a good mother.

20 And this is what I want to say, and I'm sorry to keep
21 going on and on, but this is really important for me to
22 say. What Olivia's attorney said and the witnesses said
23 about her, that this is a terrible waste, that this young
24 woman had so much to give, that the State of South
25 Carolina, that our society has lost so much because that

1 young woman, Olivia, is not with us now, but I could make
2 the same statement if we take this young woman out of
3 society away from her children instead of allowing her to
4 somehow have the opportunity to make meaning out of this
5 awful tragedy and mistake, which she has readily admitted
6 to, but make meaning out of it in a way that honors
7 Olivia's life beyond any way that that could happen if she
8 is locked up and out of circulation, out of -- away from
9 society. Someone who has been through something like this
10 and the emotions that are attached to this, and they will
11 be with her for her life, she may be able to get through to
12 young people who are at risk of making the same foolish
13 mistakes in a way that others are not.

14 She is genuinely remorseful and I believe that she
15 with restrictions, with perhaps strong restrictions on her
16 freedom, I believe there -- if there could be a way to
17 restrict her freedom without taking her away from her
18 children but also require her -- you know, put it in
19 writing and make it very tight that she continue for years
20 and years to come to provide a community service in the
21 -- you know, with the end goal of trying to save other
22 young people and other families from this kind of tragedy.
23 And that's what I wanted to say.

24 Thank you, Your Honor.

25 **THE COURT:** The most community service you can give

1 in South Carolina is five to 600 hours.

2 Thank you, ma'am.

3 **MR. WILLIAMS:** Your Honor, there's only one other
4 person and that would be her fiance. That would be the
5 only other person to talk, Judge.

6 **THE COURT:** What's your name, sir?

7 **TYLER RICHBOURG:** Tyler Richbourg.

8 **THE COURT:** What would you like to tell me, sir?

9 **TYLER RICHBOURG:** I've got it written down here. If
10 you don't mind, I'd like to read it.

11 **THE COURT:** Do you spell your last name B-U-R-G or --

12 **TYLER RICHBOURG:** It's R-I-C-H-B-O-U-R-G.

13 **THE COURT:** Sure, you're welcome to read. You're
14 welcome to read it.

15 **TYLER RICHBOURG:** Thank you.

16 As I said, my name is Tyler Richbourg. I'm Destiny's
17 fiance. I've known Destiny for five years and we've been
18 together now for two of those years. I reached out to
19 Des when I found out she was released on bond. I knew she
20 needed all the friends she could get. What I didn't know
21 was the drastic impact she would make on my life and how
22 quickly she would do so. I don't trust people easily, but
23 with her I just knew I could trust her and I knew that she
24 was the one I wanted to spend the rest of my life with,
25 and I mean that. She did save me as well. I was going

1 down a not so bright road and she turned it around and
2 made my life better. She encouraged me and inspired me to
3 follow my dreams. If it weren't for her willingness to
4 see others succeed, I wouldn't have the career of my
5 dreams. I wouldn't be half the man I am now without her
6 guidance.

7 My family loved her immediately after introducing
8 them to her. Besides our twelve-week-old son together, I
9 have two children, a son and a daughter, ages nine and
10 ten. My daughter Savannah doesn't have a mother figure
11 that makes an impact on her life the way Destiny does.
12 Savannah adores her, she looks up to her and she follows
13 in her footsteps, and I couldn't be more thankful that my
14 daughter has a role model like she does in Destiny. I
15 look at our son Roman and I see her, but more importantly
16 he sees her. They have a bond unlike any other. I know
17 of this bond. My daughter and I share that bond. We're
18 extremely close. I haven't seen a bond like that since me
19 and my daughter until now with her and Roman. The way she
20 looks at him, the way he looks at her, he looks at her the
21 way I do with nothing but pure love. He needs her just as
22 I do and his big brother and big sister do as well.

23 Just as anyone else in this courtroom or anyone else
24 who has written a statement to attest to Destiny's
25 character, I can vouch for the type of person she is.

1 She was a lost -- excuse me. She was a lost girl and she
2 was transformed into a beautiful, mature young woman.
3 Destiny has dreams and goals to center her whole rest of
4 her life around this tragedy and keep Ms. Johnson's name
5 alive. She uses this to keep other people -- I'm sorry
6 -- to help other people and to save them as well. One by
7 one she's making the lives of others better and I couldn't
8 be prouder to call this soul, this beautiful soul, my
9 soon-to-be wife.

10 I'm a -- I'm an inspector for Infracture Consulting
11 and Engineering. The job I'm currently in charge of is
12 out of town in Greenville. Destiny is in school currently,
13 but also a stay-at-home mom for the time being. Seeing
14 her with my son and my other two children, I can say that
15 being -- I can say that being a mother was her calling.
16 Helping people in need is her calling. She does so much
17 good for the community and I sincerely hope it is taken
18 into consideration. What happened is a horrible tragic
19 accident, but she's not a bad person. She's done so much
20 already on her own. On behalf of Destiny and myself, with
21 deepest regards we apologize to the family and friends of
22 Olivia Johnson. I couldn't imagine the heartache and pain
23 it is to lose a loved one and it breaks my heart to even
24 think of that, but we are hopeful that -- that we -- that
25 we get the family's forgiveness.

1 THE COURT: Thank you, sir.

2 TYLER RICHBOURG: Thank you. Thank you for hearing
3 me.

4 THE COURT: Yes, sir.

5 MR. WILLIAMS: That's it, Your Honor.

6 THE COURT: All right. I've been handed fourteen
7 statements. It's gonna take me a while to read these.
8 We'll be at ease.

9 MR. WAGONER: Judge, if I may, I just also wanted
10 to point out Kimberly Hopper from MADD is present. I
11 neglected to mention that earlier. I apologize.

12 THE COURT: All right. Thank you.

13 We're at ease.

14 (Recess taken.)

15 BAILIFF: All rise. Court is now in session.

16 THE COURT: Thank you. Please be seated.

17 I had thought there were fourteen statements.
18 Apparently there were duplicates, so I apologize. I've
19 read them all.

20 Anything else from the defense?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Anything else from the State?

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

24 THE COURT: There's no restitution being sought?

25 MR. WAGONER: Your Honor, we believe that was handled

1 civilly with Mr. Hall, so, no.

2 **THE COURT:** I'm reading through this book. It states
3 that the mandatory fine is a mandatory minimum fine; is
4 that correct?

5 **MR. WAGONER:** Yes, Your Honor. I don't have that
6 before me, but there is a mandatory minimum fine.

7 **THE COURT:** I'm going to try to keep my comments to
8 a minimum because I learned a long time ago that trying to
9 explain the sentences that are imposed typically results
10 in just making things more convoluted, more painful for
11 those who are waiting for the sentence.

12 I do want to state that making something good come
13 from a tragedy is admirable and it should continue. Your
14 attorney's done an excellent job of presenting your
15 situation. Your statement was very impressive. You have
16 people who love and care for you, and I've taken all of
17 that into consideration. You have a newborn child. I've
18 taken that into consideration.

19 You broke the law. It resulted in a death and
20 everybody in the courtroom is in agreement that the death
21 occurred to someone who was young and talented and had the
22 world by the string. There is an aspect of punishment
23 that involves sending a message and there's an aspect that
24 just involves punishment, so I noted that your -- some of
25 these statements talked about rehabilitation, and I

1 certainly believe in that. I think you can do much good
2 in this world with the lessons you've learned and you can
3 do great things, but you've got to pay a price. And I
4 know your side's not gonna agree with my price that I'm
5 gonna put on this and the other side probably will not be
6 happy with it either. The first person I ever sentenced
7 was a felony DUI case. It hasn't gotten any easier.

8 Your sentence is you be committed to the South
9 Carolina Department of Corrections for ten years and pay
10 a fine of \$10,100, plus costs and assessments. You have
11 to have an ignition interlocking device on your vehicle.
12 You're given credit for jail time under Section 24-13-40
13 to be calculated and applied by the Department of
14 Corrections.

15 Good luck to you, ma'am.

16 **MR. WILLIAMS:** Could I ask a question in reference
17 to the sentence, Your Honor?

18 **THE COURT:** Certainly.

19 **MR. WILLIAMS:** The amount of time that she was on
20 electronic monitoring and alcohol monitoring, could she
21 receive credit for that?

22 **THE COURT:** Y'all brief me on that and I will
23 consider it.

24 **MR. WILLIAMS:** All right, sir.

25 **MR. WAGONER:** We'll do that, Your Honor.

1 **THE COURT:** File a motion, so you don't lose -- so I
2 don't lose jurisdiction, all right, Mr. Williams?

3 **MR. WILLIAMS:** Yes, sir.

4 **THE COURT:** Thank you.

5 **MR. WAGONER:** Thank you, Your Honor.

6 **THE COURT:** Court's in recess until 10:30 AM.

7 (Whereupon, the proceedings were concluded at
8 3:00 PM.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 16th day of November, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

July 25, 2018

ISI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

WITNESSES

S.C. Highway Patrol Headquarters

J A Bennett

Law Enforcement Case #: 15BW187665

TMW

ARREST WARRANT NUMBER

H374641

ACTION OF GRAND JURY

Donald V. Myers
Foreperson of Grand Jury

Date: *12/7/2015*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS3202929

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

DECEMBER TERM 2015

THE STATE

vs.

Destiny H Mills

CDR #: 0395

Indictment for

Felony driving under the influence, death results

§ 56-05-2945(A)(2)

DONALD V. MYERS, SOLICITOR

A TRUE COPY

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR
Felony driving under the influence, death results

§ 56-05-2945(A)(2)

At a Court of General Sessions, convened on December 2015, the Grand Jurors of Lexington County present upon their oath:

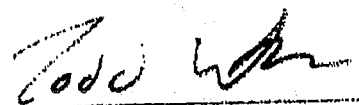
That Destiny H Mills, while driving a motor vehicle on or about September 1, 2015 in Lexington County, South Carolina, under the influence of alcohol and/or drugs to the extent that her faculties to drive were materially and appreciably impaired, did an act or acts forbidden by law and/or neglected a duty imposed by law in driving or said motor vehicle, to wit:

- (a) Drove her vehicle in a reckless manner in willful or wanton disregard for the safety of others; and/or
- (b) Failed to keep and maintain proper control of her vehicle; and/or
- (c) Failed to maintain a proper lookout; and/or
- (d) Unlawfully drove her vehicle at an unlawful speed; and/or
- (e) Drove too fast for conditions; and/or
- (f) Failed to exercise due care.

Which act or acts, omission(s) and/or neglect proximately caused death to Olivia

Johnson; all in violation of Section 56-5-2945, 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



ASSISTANT SOLICITOR

Year - 25 years AND \$10,100 - \$25,100

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.
AKA: Destiny H Mills
Race: White Sex: F Age: 25
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: West Columbia, SC 29169-6012
DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: DUI/Felony driving under the influence, death results

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GSJ202929
A/W#: R374641
Date of Offense: 9/1/2015
S.C. Code §: 56-05-2945(A)(2)
CDR Code #: 0395

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

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
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ☐ Negotiated Sentence, ☐ Recommendation by the State.
The plea is: ☒ Without Negotiations or Recommendation, ☐ Defendant Waives Presentment to Grand Jury, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: [Signature] Solicitor 70206 SC Bar# [REDACTED] Defendant [Signature] Attorney for Defendant 6149 SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or \$10,100 under the Youthful Offender Act not to exceed - years
and/or to pay a fine of \$ - provided that upon the service of - days/months/years and/or payment
of \$ - plus costs and assessments as applicable, the balance is suspended with probation for -
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

☒ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$10,100
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(1) (Vehicle Assessment)	\$40/en
3% to County (if paid in installments)	\$

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA217 (07/2016)

☐ Appointed PD or appointed other counsel.
§ Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge:

Judge Code:

Sentence Date:

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
payments of \$ beginning

\$ paid to Public Defender Fund

Other: IGNITION INTERLOCK DEVICE

A TRUE COPY

Lex. Ob. CIO/C.P., G.S. & E.C.

Guilty plea accepted 11/2/17

COPY

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

Destiny H. Mills 374576
Full name and prison number (if any) of Applicant.

2018CP3201575

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Department of Corrections
2. Name and location of Court which imposed sentence Lexington, SC General Sessions
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015GS3202929
 - (b)
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence: November 16, 2017
 - (a) imprisonment for 10 years
 - (b)

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
no

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____ii. _____iii. _____

(b) the result in each such Court to which you appealed:

i. _____ii. _____iii. _____

(c) the date of each such result:

i. _____ii. _____iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____ii. _____iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) wasn't aware of time frame.(b) _____(c) _____10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: ~~wasn't aware of time frame~~

- (a) ~~involuntary guilty plea~~ ⁵⁶ involuntary guilty plea
 (b) ~~ineffective assistance of counsel~~ ineffective assistance of counsel
 (c) ~~any other grounds~~

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

- (a) ~~see attached page~~
 (b) a) mistake
 (c) b) lack of research

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

- (a) any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. motion for reconsideration
 ii. motion for credit for time served
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. General sessions, Lexington, SC
 ii. General sessions Lexington, SC
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. court denied
 ii. court denied
 iii. _____

iv. _____

(d) the date of each such disposition:

i. February 9, 2010

ii. _____

iii. _____

iv. _____

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

i. dismissedii. dismissed

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Haven't had the opportunity

(b) _____

(c) _____

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

- (a) your arraignment and plea? yes⁵⁸
(b) your trial, if any? n/a
(c) your sentencing? yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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

(a) the name and address of each attorney who represented you:

i. Theo Williams P.O. Box 2390 Lex, SC 29072

ii. David Mauldin - public Defender

iii. Wesley Waites (civil lawsuit)

iii. Robin Alley Columbia, SC (preliminary)

(b) the proceedings at which each such attorney represented you:

i. Theo Williams - plea, sentencing

ii. David Mauldin handled the case for the first year

iii. Wesley Waites - civil lawsuit

Robin Alley (preliminary hearing)

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

~~renewal of plea~~ new trial

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

no

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

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

Destiny H. Mills

SWORN to and subscribed before me this 2nd
day of MAY, 2018

Cynthia Jones (L.S.)
Notary Public

My Commission Expires: July 22nd, 2026

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

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

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

Destiny H. Mills
Applicant

SWORN or affirmed to and subscribed before me this

2nd day of May, 2018.

Crystal Jones
Notary Public

My Commission Expires: July 22nd, 2026

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Destiny H. Mills, #374576,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-32-01575

RETURN

Respondent, making its Return to the application for post-conviction relief filed on May 11, 2018, would respectfully show this Court:

I.

Destiny H. Mills (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its December 2015 term, the Lexington County Grand Jury indicted Applicant for felony driving under the influence resulting in death (2015-GS-32-02929). Robert T. Williams, Sr., Esquire, represented Applicant on this charge. On November 2, 2017, Applicant appeared before the Honorable Donald B. Hocker and pled guilty as indicted. Judge Hocker accepted Applicant's plea and deferred sentencing. Thereafter, on November 16, 2017, Applicant appeared before the Honorable William P. Keesley for sentencing. Judge Keesley sentenced Applicant to a term of imprisonment of ten years. Applicant did not appeal her plea or sentence.

II.

On September 1, 2015, at approximately two o'clock in the morning, Joseph Mozingo was driving Olivia Johnson's 1996 Jeep Cherokee. Guilty Plea Tr. 6. Ms. Johnson had just picked up Mr. Mozingo from work, and the two were going to Waffle House, travelling eastbound on Interstate

26 just before the 113 mile marker. Guilty Plea Tr. 6.

As Mr. Mozingo was travelling in the far right lane, he noticed headlights coming up behind him at a high rate of speed. Guilty Plea Tr. 6. That vehicle was a grey Kia Soul, driven by Applicant. Guilty Plea Tr. 7. Applicant hit Mr. Mozingo's vehicle, and Ms. Johnson, who had undone her seatbelt to reach something in the back of the car, was ejected from the vehicle. Guilty Plea Tr. 6-7.

When law enforcement arrived on scene, Applicant admitted to consuming one beer earlier that evening. Guilty Plea Tr. 7, 8. However, law enforcement detected a strong odor of alcohol emitting from Applicant and noticed her speech was also slurred. Guilty Plea Tr. 8. Applicant's friend, James Bonner, who had also been with her earlier that evening, arrived on scene and informed law enforcement the two had been at Wild Wings and the British Bulldog Pub that evening. Guilty Plea Tr. 7-8.

A blood alcohol content test was taken from Applicant, which revealed she had a BAC of 0.127. Guilty Plea Tr. 8. Applicant then admitted she consumed several beers that evening. Guilty Plea Tr. 9. She further admitted her passenger was distracting her as she was driving him home. Guilty Plea Tr. 9.

III.

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on:

1. Involuntary Guilty Plea; and
 - a. "Misled."
2. Ineffective Assistance of Counsel.
 - a. "Lack of research."

Attached to this Return and incorporated by reference are the records of the Lexington

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, [s]he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Applicant alleges her counsel was ineffective for a "lack of research," which Respondent interprets as an allegation counsel was ineffective for failing to prepare. "There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence that counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *See Harris v. State*, 377 S.C. 66,

County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's guilty plea and sentencing proceedings, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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

IV.

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

659 S.E.2d 140 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test, particularly in light of the fact she wholly fails to provide any reason as to why additional preparation on the part of Counsel would have affected the outcome at trial. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant further alleges that her plea was not knowingly or intelligently entered. Respondent submits this allegation is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that her guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why she should be allowed to depart from the truth of those statements. *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. In particular, Applicant indicated to the plea court she was pleading freely, voluntarily, and intelligently. Guilty Plea Tr. 5. Applicant further indicated no one had forced her or promised her anything in order to induce a plea of guilty against her will. Guilty Plea Tr. 5. She also indicated she understood each of her constitutional rights and did not want a jury trial. Guilty Plea Tr. 10-12. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. *Sharper v. State*, 305 S.E.2d 247.

VI.

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

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel and whether or not Applicant's plea was knowingly and voluntarily made.

[signature block to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

August 16, 2018

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

DESTINY H. MILLS, #374576

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

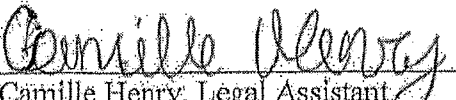
2018-CP-32-01575

CERTIFICATE OF SERVICE BY MAIL

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

Tommy Arthur Thomas, Esquire
 7588 Woodrow Street
 Irmo, South Carolina 29063

DATED this the 16th day of August, 2018.


 Camille Henry, Legal Assistant
 For Respondent

COPY⁶⁹

STATE OF SOUTH CAROLINA)

THE COURT OF COMMON PLEAS

COUNT OF LEXINGTON)

CASE NO.: 2018-CP-32-1575

Destiny H. Mills #374576,)

Applicant,)

AMENDED POST CONVICTION
APPLICATION

Vs.)

State of South Carolina,)

Respondent.)

2019 MAR 27 PM 12:17

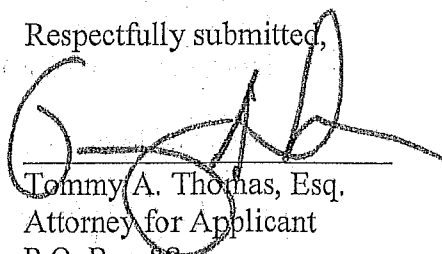
The Applicant above named in the aforementioned matter, through her Attorney, Tommy A. Thomas, respectfully moves to amend her original Post Conviction Relief Application. The Applicant realleges those grounds contained in the original Application for Post Conviction Relief as if fully repeated herein.

That Counsel was ineffective which in turn lead the Applicant to involuntarily enter into a guilty plea for the following reasons:

1. Failure to move for dismissal and/or suppression of blood alcohol evidence as a result of Law Enforcement's failure to comply with requirements that a Defendant is entitled to a private testing of any blood evidence.
2. Failure to move Pre-trial to suppress video evidence.
3. Failure to move Pre-Trial to suppress any and all statements made by the Petitioner.
4. Failure of Defense Counsel to advise the Petitioner that she should assert her Constitutional right not to incriminate herself in a civil deposition conducted by Attorney Rick Hall.

5. Failure of Defense Counsel to attend the civil deposition on behalf of the Applicant.
6. Failure to adequately advise the Petitioner regarding her rights at trial.
7. Failure to properly advise the Applicant about her guilty plea. More specifically that she would only receive five (5) years if she plead guilty or even the possibility of house/arrest.
8. That the Applicant was mistakenly advised that if she assisted in the civil case that she would be assisted in the criminal case. That the Applicant mistakenly believed that this would result in the receipt of less or no active prison sentence.
9. That Defense Counsel did not adequately consult with the Applicant regarding her case, the evidence the State had against her and any theory of Defense.
10. That the Applicant believes that all plea offers were not conveyed to her.

Respectfully submitted,



Tommy A. Thomas, Esq.
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063

March 26, 2019

COPY 71

STATE OF SOUTH CAROLINA)
COUNT OF LEXINGTON)
Destiny H. Mills #374576,)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

THE COURT OF COMMON PLEAS
CASE NO.: 2018-CP-32-1575

CERTIFICATE OF SERVICE

FILED
2019 MAR 27 PM 12:17
CLERK OF COURT
J. A. COOPER
LEXINGTON, SC

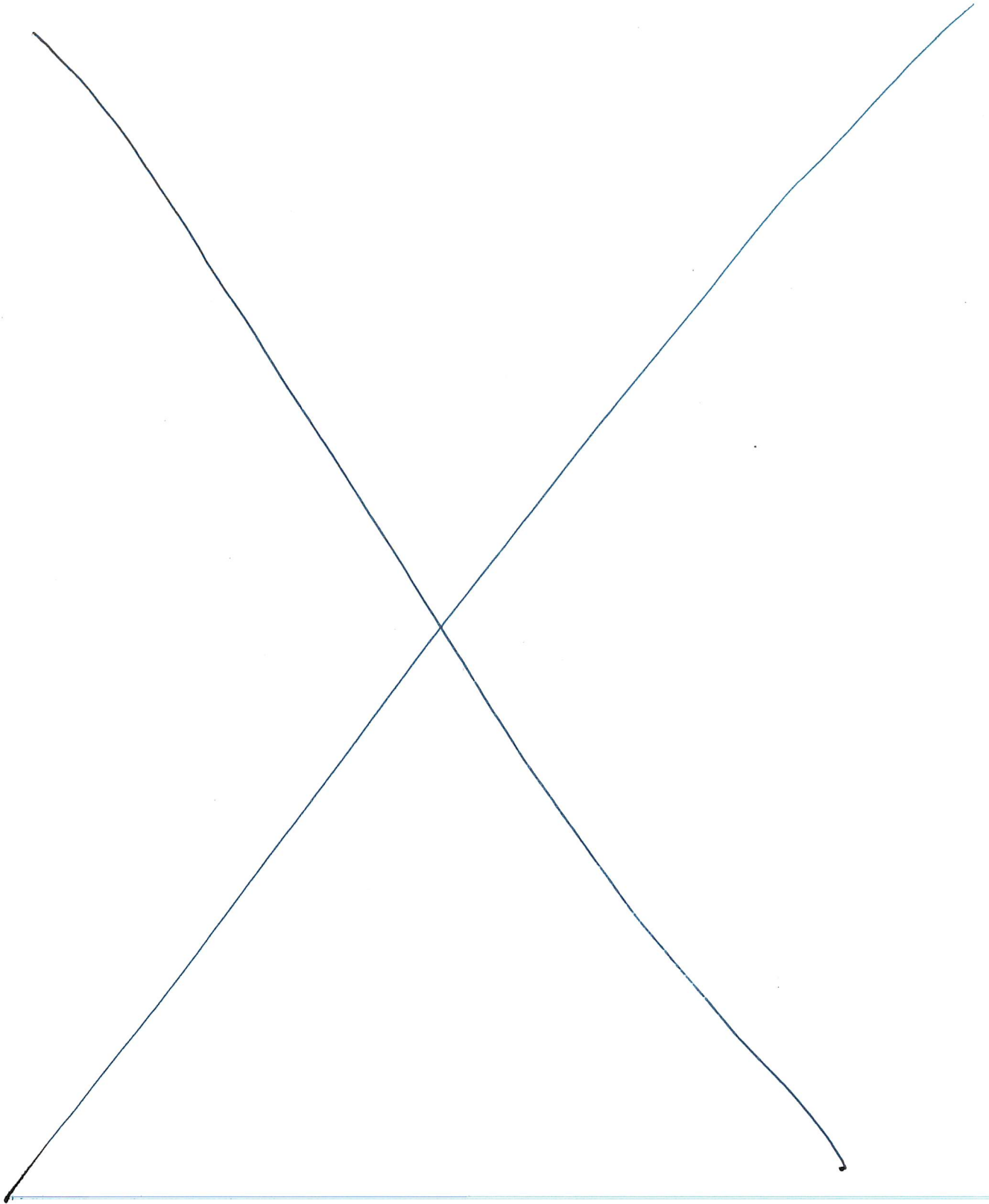
I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicate hereby certify that I placed in the United States Mail, a copy of an Amended Post Conviction Application with postage prepaid and the return address clearly shown on said envelope to Janell Gregory, Esq. of the Attorney General's Office, at:

Janell Gregory, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
March 26, 2019



1	State of South Carolina	)	In the Court
2	County of Lexington	)	Of Common Pleas
3	Destiny H. Mills,	)	Case No.: 2018-CP-32-01575
4	Applicant/Plaintiff,	)	
5	vs.	)	Transcript of Record
6	State of South Carolina,	)	
7	Respondent/Defendant.	)	
8		)	

June 28, 2019

Lexington, South Carolina

BEFORE:

The Honorable Brooks P. Goldsmith, IV, Judge

APPEARANCES:

Tommy A. Thomas, Esquire
Attorney for the Applicant/Plaintiff

Taylor Z. Smith, Assistant Attorney General
Attorney for the Respondent/Defendant

ALSO PRESENT:

Destiny H. Mills

1	INDEX	
2	PCR HEARING	
3	WITNESS	PAGE
4	DESTINY HEATHER MILLS	
5	Direct Examination by Mr. Thomas	7
6	TODD MICHAEL WAGONER	
7	Direct Examination by Mr. Smith	35
8	Cross Examination by Mr. Thomas	43
9	Redirect Examination by Mr. Smith	48
10	DESTINY HEATHER MILLS (Cont.)	
11	Cross Examination by Mr. Smith	49
12	Redirect Examination by Mr. Thomas	55
13	Recross Examination by Mr. Smith	56
14	THEODORE MILLS	
15	Direct Examination by Mr. Thomas	58
16	DAVID MAULDIN	
17	Direct Examination By Mr. Smith	60
18	Cross Examination by Mr. Thomas	71
19	Redirect Examination by Mr. Smith	73
20	ROBERT THEODORE WILLIAMS, SENIOR	
21	Direct Examination by Mr. Smith	74
22	Cross Examination by Mr. Thomas	88
23	Redirect Examination by Mr. Smith	95
24	DESTINY HEATHER MILLS (Rebuttal)	
25	Rebuttal Examination by Mr. Thomas	103

1			PAGE
2	Certificate of Reporter		105
3		EXHIBITS	
4	APPLICANT/PLAINTIFF		
5	NO. DESCRIPTION	ID	EVDS.
6	1 Destiny Mills deposition 4/26/16	20	20
7	2 Email 11/8/17	92	92
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

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

1 Thereupon, the following proceedings were had,

2 THE COURT: Mr. Smith, whenever you're ready.

3 MR. SMITH: Your Honor, this is the case of Destiny
4 Mills v. State of South Carolina. Case number
5 2018-CP-32-01575. Ms. Mills is presently confined in
6 SCDC pursuant to orders of commitment of the Lexington
7 County Clerk of Court. During its December of 2015 term
8 the Lexington County grand jury indicted her for felony
9 driving under the influence resulting in death. Robert
10 Theo Williams, Senior, Esquire represented her on the
11 case. On November 2nd, 2017 she appeared before the
12 Honorable Donald Hocker and pleaded guilty as indicted.
13 Judge Hocker accepted her plea and deferred sentencing.
14 Then in November of 2017 Ms. Mills appeared before the
15 Honorable William Keesley for sentencing. Judge Keesley
16 sentenced her to a term of imprisonment of ten years.
17 She did not appeal her plea or sentence.

18 Your Honor, Ms. Mills has filed her application
19 today and in her original application she raises, I
20 believe, just maybe two issues, that her counsel mislead
21 her and alleged lack of research, and Mr. Thomas has
22 filed an amended PCR application on her behalf and he's
23 alleged the following issues. That counsel failed to
24 move for a dismissal and/or suppression of blood alcohol
25 evidence as a result of law enforcement's failure to

1 comply with requirements that the defendant is entitled
2 to private testing of blood evidence, counsel failed to
3 move pretrial to suppress video evidence, counsel failed
4 to move pretrial to suppress any and all statements made
5 by petitioner, counsel failed to advise her that she
6 should assert her right to not incriminate herself in a
7 civil deposition conducted by attorney Rick Hall who was
8 the attorney in a civil case against Ms. Mills arising
9 out of the same incident, counsel failed to attend the
10 civil deposition on her behalf, counsel failed to
11 adequately advise her regarding her rights at trial,
12 counsel failed to properly advise her about the guilty
13 plea, and that counsel advised her that she would receive
14 five years if she pleaded guilty or possibly even house
15 arrest, that counsel advised her that if she assisted in
16 the civil case, she would be assisted in the criminal
17 case, and that she believed this would result in a lesser
18 sentence, that counsel did not adequately consult with
19 her regarding her case, the evidence the State had
20 against her for defense theories, and that she believes
21 that there were plea offers that were not communicated to
22 her by her attorney.

23 I would just ask before we begin taking testimony,
24 Your Honor, that Mr. Thomas clarify for the record the
25 issues upon which we'll move forward today.

1 THE COURT: Mr. Thomas.

2 MR. THOMAS: Your Honor, may it please the Court. I
3 believe that in the parameters of post conviction we have
4 alleged ineffective assistance of counsel as well as an
5 involuntary guilty plea. More specifically we alleged in
6 the application, we intended to go forward and touch on
7 all of these issues that we have outlined, Your Honor.

8 We can do it in a very brief fashion.

9 THE COURT: That's fine. The Attorney General just
10 wants to know if there are any additional grounds.

11 MR. THOMAS: I think that some may evolve but they
12 will be within the context of what we have pled, Your
13 Honor.

14 THE COURT: All right.

15 MR. SMITH: I'll accept that, Your Honor.

16 THE COURT: All right.

17 MR. THOMAS: It's difficult in a post conviction,
18 Your Honor, to say just bullets that this is what it's
19 gonna be. Sometimes things kind of emerge around that
20 issue and, of course, I think we are allowed to present
21 that, Your Honor, as a notice pleading.

22 THE COURT: You may proceed.

23 MR. THOMAS: Your Honor, we call Destiny Heather
24 Mills to the stand.

25

1 Thereupon,

2 DESTINY HEATHER MILLS

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

4 DIRECT EXAMINATION

5 BY MR. THOMAS:

6 Q. Ms. Mills, would you please state your name for the
7 record.

8 A. Destiny Heather Mills.

9 Q. Ms. Mills, and you're currently serving time with
10 the South Carolina Department of Corrections?

11 A. Yes, sir.

12 Q. And you're serving for what crime?

13 A. Felony DUI.

14 Q. How much time did you receive?

15 A. Ten years.

16 Q. What's your max out date?

17 A. November 2025.

18 Q. You're being housed here in Columbia?

19 A. Yes, sir.

20 Q. Okay. The Women's Center or Camille Graham?

21 A. Camille Graham. Yes, sir.

22 Q. Now, let me ask you, I know that, could you just
23 very briefly describe your case? You were arrested for felony
24 DUI. Can you tell us a little bit about what happened?

25 A. I was taking a friend home. I was going down the

1 road. He kept on trying to kiss me and that's when I lost
2 control of my vehicle and I hit the other car.

3 Q. Okay.

4 A. Uhm, the officer arrived on scene. Uhm, they took
5 the victim.

6 Q. So as a result you were prosecuted?

7 A. Yes. I was prosecuted.

8 Q. And your case was set for trial?

9 A. Set for trial. Yes, sir.

10 Q. You ended up accepting the plea, is that correct?

11 A. I pled guilty. There were no plea offers.

12 Q. Okay. All right. Now, you understand that you're
13 asking for a new trial? Post conviction, the only relief you
14 can receive is a new trial?

15 A. Yes, sir.

16 Q. Do you understand that you could, although you
17 accepted the plea, you could actually be tried?

18 A. Yes, sir.

19 Q. Would be tried if this conviction was set aside. Do
20 you understand that you could receive more time?

21 A. Yes, sir.

22 Q. You're willing to run the risk of that and you want
23 to proceed today?

24 A. Yes.

25 Q. Okay. So when did this accident happen?

- 1 A. September 1st, 2015.
- 2 Q. Did that happen here in Lexington County?
- 3 A. Lexington County. Yes, sir.
- 4 Q. What time of the day was this?
- 5 A. It was two in the morning.
- 6 Q. And you were arrested on scene?
- 7 A. No. I was arrested at the hospital two hours
- 8 later.
- 9 Q. Were you injured as a result of this?
- 10 A. I had road rash.
- 11 Q. Now, when this happened and you were there at the
- 12 scene, how long were you at the scene before you were taken to
- 13 the hospital?
- 14 A. An hour.
- 15 Q. And you were taken to the hospital by who?
- 16 A. I was taken by I think it was Officer Bennett.
- 17 Q. Not EMS?
- 18 A. Oh, EMS. Yes. Sorry. I asked him if he would take
- 19 me.
- 20 Q. Okay. Now, and you were taken to the hospital and
- 21 you were treated there?
- 22 A. Yes, sir.
- 23 Q. And were you -- Was there a blood draw done?
- 24 A. There was.
- 25 Q. Do you remember roughly what time that was?

1 A. It was at 4:45.

2 Q. You remember all of this?

3 A. Mm-hmm.

4 Q. And the highway patrolman, you spoke with a highway
5 patrolman?

6 A. Yes, sir.

7 Q. When were you actually arrested?

8 A. I was arrested 4/19.

9 Q. All right. And when you were arrested, were you
10 given, were you Mirandized?

11 A. I was.

12 Q. Did you understand those rights?

13 A. Yes.

14 Q. Were you represented by an attorney or did any legal
15 person come to assist you while you were in the hospital?

16 A. No, sir.

17 Q. And when did you finally retain or get a counsel?

18 A. Uhm, I believe it was in October when they assigned
19 me a Public Defender.

20 Q. How long had you been in the county jail?

21 A. Uhm, it was a month. How long was I in county
22 total?

23 Q. Before you got an attorney?

24 A. A month.

25 Q. A month. Okay. Now, your blood alcohol level came

1 back?

2 A. Correct.

3 Q. And what was that level?

4 A. It was a .127.

5 Q. .127. Now, did you make any statements?

6 A. I made a couple statements actually.

7 Q. Do you remember what those statements were?

8 A. Yes.

9 Q. What were they?

10 A. Uhm, the first statement I give to the cop was on
11 the scene. I didn't really want the guy to get in trouble
12 that I was with so I told him that we were coming from a
13 friend's house and I had one beer. And then the next
14 statement was at the hospital and that's after I found out
15 somebody passed away and I told them that I wanted to tell
16 them everything.

17 Q. Okay. And so you told the police officer, the
18 trooper, what did you tell him?

19 A. I told him where I was at and how many drinks I
20 had.

21 Q. Okay. How many drinks had you had?

22 A. Four.

23 Q. And that was over what kind of period of time?

24 A. From 8:00 that night until 1:00 in the morning.

25 Q. Did he ask you anything about your level of

1 intoxication?

2 A. He did before I was Mirandized.

3 Q. What did he ask you?

4 A. He asked what kind of buzz I had.

5 Q. What did you tell him?

6 A. I told him a two.

7 Q. That come back to haunt you?

8 A. Yes.

9 Q. How?

10 A. That's what the arrest warrant was on was, it said I
11 had a buzz and slurred speech and smelled like alcohol and all
12 of this was made before I was Mirandized.

13 Q. Okay. Did you make any other statements, any
14 written statements or anything?

15 A. No. Not that I know of.

16 Q. Okay. All right. Now, there was a video from the
17 hospital?

18 A. Yes.

19 Q. Did you see that video?

20 A. I have never seen it. I have never seen any
21 video.

22 Q. Okay. You don't know how you appeared on that video
23 whether you appeared to be sober or intoxicated?

24 A. No, sir.

25 Q. How do you think that you appeared?

1 A. I feel like I appeared to be sober.

2 Q. Okay. Now, in representation you were originally
3 appointed, initially appointed a Public Defender?

4 A. Correct.

5 Q. Do you remember when that was?

6 A. I believe October. I had him from October of 2015
7 to maybe October of '16.

8 Q. About a year?

9 A. About a year.

10 Q. Okay. Now, during that period of time that you were
11 represented by the Public Defender, what did you do to prepare
12 your case? Did you, were you out on bond? Were you still in
13 the detention center or what?

14 A. I was out on bond after six months being held in
15 Lexington County.

16 Q. So you were in the detention center for six
17 months?

18 A. Mm-hmm.

19 Q. So it would be fair to say six months in the
20 detention center and then six months out during the
21 representation by the Public Defender?

22 A. Correct.

23 Q. Okay. Now, during that period of time, how did you
24 prepare your case? What was your understanding of what was
25 going on?

1 A. Uhm, can you rephrase that a little bit? Sorry.

2 Q. During that period of time, what did your Public
3 Defender do?

4 A. Uhm, he came by to see me I think once or twice at
5 jail. I talked to him maybe two or three times. One was to
6 get my location because I was restricted to live with my
7 mother. One was to get that amended.

8 Q. For your bond?

9 A. For my bond. Yes. Bond modification.

10 Q. Did y'all talk about the evidence? Did you talk
11 about the case or preparing the case or anything?

12 A. We did briefly but not as much as I have since I
13 have been incarcerated and done my own research.

14 Q. Okay. I know you have been very involved in your
15 case. So how did you feel about the representation you were
16 receiving from the Public Defender?

17 A. Uhm, I felt it was inadequate but I also know that
18 he had a high case load as most Public Defenders do which led
19 me to hire Theo.

20 Q. You hired Mr. Williams?

21 A. Yes. Correct.

22 Q. Do you remember when that was?

23 A. I believe October 2016.

24 Q. Let me kind of take you back a little bit, if we
25 could, to the time in which you were represented by the Public

1 Defender. You were sued; is that correct?

2 A. Uhm --

3 Q. Civilly?

4 A. They had a civil lawsuit. There was gonna be a
5 personal one against me but then it turned into a deposition
6 where they were suing the bar.

7 Q. Okay. So you were named but you feel like they were
8 actually pursuing the bar for responsibility?

9 A. Yes.

10 Q. And this was, who was bringing this action?

11 A. I think the victim's family.

12 Q. Okay.

13 A. Mm-hmm.

14 Q. Okay. And so you were out of the detention center
15 when this action was brought?

16 A. Yes.

17 Q. And how did you know that you were supposed to
18 appear for a deposition?

19 A. Well, they sent me a, it was the day I got out, they
20 served me with papers. The cop came by and served me at my
21 mother's house and the paper said that I had to cooperate. I
22 was being subpoenaed for a deposition and if I did not show
23 up, then a warrant would be sent out for my arrest and being
24 that I just got out of jail, I did not want to go back there
25 so I was under the impression that I had to participate.

1 Q. Did you talk to your Public Defender about it?

2 A. I did.

3 Q. What did he say, if anything?

4 A. He told me he wouldn't be there. He wasn't getting
5 paid for civil suits or anything. He told me that they were
6 making it out to be a help me, help you situation which is, I
7 think, I ended up hiring Wesley Waite to represent me civilly
8 and he said the same thing when he talked to Rick Hall, that
9 it was a help me, help you situation and he would just tell
10 the truth.

11 MR. SMITH: Objection. Hearsay.

12 THE COURT: Overruled. Go ahead.

13 BY MR. THOMAS:

14 Q. Did your Public Defender ever discuss with you the
15 possibility of not taking this deposition?

16 A. I don't recall.

17 Q. Did he ever advise you -- He was your criminal
18 lawyer, right?

19 A. Correct.

20 Q. Did he ever advise you that maybe it was not a good
21 idea to do this?

22 A. I don't remember.

23 Q. Okay. Did he explain to you that you could exert
24 your right to remain silent, your constitutional right --

25 A. No.

1 Q. -- and not give a civil deposition?

2 A. Nope. No one told me that. I mean, now I know what
3 the Fifth Amendment is but...

4 Q. But not then?

5 A. No. Because I didn't even know that it could be
6 used against you. I thought by me helping them out, you know,
7 it would just be them helping me out. I didn't know it would
8 be used against me in any way.

9 Q. Let's skip ahead a little bit. Did they actually
10 use it against you?

11 A. They did.

12 Q. What happened to that deposition?

13 A. The Solicitor got a copy of it. He sent it to me
14 three weeks before I was supposed to go to trial and Rick Hall
15 testified, he was the deposing attorney, he testified at my
16 sentencing hearing.

17 Q. Okay. And you believe that that information that
18 was gained from you was given to the Solicitor?

19 A. Correct. I believe in my sentencing hearing it does
20 say that, I don't remember if the Solicitor said it, but he
21 said part of our investigation involved a civil deposition.

22 Q. No one ever told you that you had the right to
23 exercise your Fifth Amendment?

24 A. No, sir.

25 Q. Did your defense attorney go to the deposition

1 with you?

2 A. No.

3 Q. What did he tell you?

4 A. I'm sorry. What?

5 Q. What did he tell you, your defense attorney?

6 A. He said it like a help me, help you situation.

7 Q. Did he say something about, I mean, was he gonna be
8 paid to go with you or --

9 A. Oh, that he didn't - he was a criminal attorney. He
10 wasn't a civil attorney.

11 Q. Okay. But he was representing you?

12 A. Correct.

13 Q. For the charges?

14 A. Yes.

15 MR. THOMAS: Your Honor, if I may, at this point I
16 do have a copy of that deposition. I don't know if the

17 Court wants it. I thought that the AG, the Attorney

18 General has it. It appears that he does not. I will be

19 more than happy to make a copy for him and submit a copy

20 to the Court if you would like to have it.

21 THE COURT: Well, it's up to you if you want to
22 introduce it.

23 MR. THOMAS: I would like to, Your Honor, just for
24 the record.

25 MR. SMITH: Then I would like a copy.

1 MR. THOMAS: Your Honor, I apologize. I only have
2 one copy.

3 MR. SMITH: I'm making another one here.

4 MR. THOMAS: I'm not gonna ask her any questions
5 about it. I was just gonna introduce it for the Court's
6 information.

7 THE COURT: Let me make sure that there's no
8 objection.

9 MR. SMITH: I don't believe I would have an
10 objection but I would like to have a few minutes to look
11 at it.

12 THE COURT: Certainly. All right. We'll stand down
13 for a few minutes.

14 MR. THOMAS: Thank you, Your Honor.

15 (Short break.)

16 THE COURT: Keep your seats.

17 MR. THOMAS: Your Honor, I apologize for the delay.
18 I looked at the deposition and I was under the
19 impression that, I actually thought that I got it from
20 the Attorney General's Office. Maybe not. But it's in
21 my file and that's why I did not provide him a copy of
22 it.

23 MR. SMITH: I think we can go forward, Your Honor.

24 THE COURT: Apparently there's no objection?

25 MR. SMITH: No objection to this, Your Honor.

1 MR. THOMAS: Your Honor, if I may approach. Your
2 Honor, we would move this as applicant's 1.

3 THE COURT: Give it to the court reporter to mark
4 it.

5 (Whereupon, Applicant's Exhibit #1 marked for
6 identification and entered.)

7 BY MR. THOMAS:

8 Q. Rick Hall was the attorney on the other side
9 representing the family?

10 A. Correct.

11 Q. Did you ever talk to Rick Hall?

12 A. Not personally.

13 Q. Was there ever any promises conveyed to you through
14 Mr. Hall?

15 A. Beside the if you help us, we'll help you.

16 Q. That was your understanding?

17 A. That was my understanding, correct.

18 Q. But nothing ever more direct than that?

19 A. No, sir.

20 Q. All right. Now, let's kind of move onto you're now
21 at this point being represented by Mr. Williams?

22 A. Mm-hmm.

23 Q. Is that fair to say? Everything with your Public
24 Defender had basically been concluded?

25 A. Yes.

1 Q. Now, at that point what did you do? What did you
2 and Mr. Williams do to prepare your case for trial?

3 A. Uhm, well, initially I hired him and he always told
4 me from the beginning that I shouldn't be charged with what I
5 was charged with, that there was a possibility that I could
6 get house arrest and we really didn't discuss any defense. We
7 didn't - he didn't go over the discovery with me. He didn't
8 go over what was in it with me. I mean, I looked through it a
9 lot and brought up some key points but it was never further
10 addressed.

11 Q. So did you see what the State's evidence was against
12 you?

13 A. Yes. I saw in the paperwork the discovery but I
14 never saw any videos.

15 Q. Okay. Were there any videos?

16 A. There were.

17 Q. What?

18 A. There were.

19 Q. There were?

20 A. Mm-hmm.

21 Q. Do you know what videos there were?

22 A. I know there was the one at the hospital. That was
23 the only one. Uhm, and then I think somebody said something
24 about having videos from the bars. I never saw any of those.
25 I didn't even know those existed.

1 Q. Did you ever see any of those?

2 A. Mmm-mmm. (Witness shaking head.)

3 Q. Let me take you back to the hospital. They did the
4 blood draw at what time?

5 A. They did the blood draw at 4:45.

6 Q. Now, the officer came out to speak with you and give
7 you one of the samples?

8 A. No. He took both of them.

9 Q. Okay. Did he ever, was there any arrangements ever
10 made for you to have a sample, a blood draw sample that you
11 could have tested?

12 A. Yes. I asked for my sample. He said that one of
13 them was going directly to SLED to be tested for them and then
14 the second copy would be my copy.

15 Q. Okay. What, if anything, happened then about the
16 sample? Did you receive it?

17 A. I did not receive it.

18 Q. Why not?

19 A. He had it. He put one in his pocket and then he
20 took the other one.

21 Q. Was that sample that you were supposed to receive,
22 was it destroyed?

23 A. Yes.

24 Q. Why or how?

25 A. He dropped it at my grandfather and mother's feet.

1 Q. Okay. This was at the hospital?

2 A. Correct.

3 Q. Well, how much time had elapsed between him dropping
4 it and you and the blood draw?

5 A. I don't know the exact time. Around 7:00. It was
6 daylight outside.

7 Q. Okay. So a couple hours?

8 A. About three hours. Three or more at least.

9 Q. And what did the trooper say about that?

10 A. He brought it back to me and he had a smug look on
11 his face. He was like, you know, you still want your copy
12 now?

13 Q. After it had been dropped?

14 A. After it had been dropped and it all shattered in
15 the bag.

16 Q. Did you ever have an opportunity to have that blood
17 independently tested?

18 A. No. It was too late at that point to draw any more
19 blood anyway.

20 Q. Okay. Did you do anything to prevent you from being
21 able to obtain that sample?

22 A. No.

23 Q. Was it your fault that it was dropped?

24 A. No.

25 Q. Did you talk to Mr. Williams about that?

1 A. Yes.

2 Q. And what did he say?

3 A. It was pretty much, you know, because someone died
4 in the accident that it would never get suppressed or nothing
5 would ever come of it.

6 Q. Now, I know you have been very active in your case
7 since your incarceration. Are you now concerned about that?

8 A. I'm very concerned about it.

9 Q. And why?

10 A. Just because I have read so many cases and the
11 statute specifically states that you are entitled to have
12 someone of your own choosing test the blood. The officer
13 should have never had possession of it. It should have been
14 directly given to the hospital to test which is why I asked to
15 go to Lexington Hospital.

16 Q. And as a result you feel like that could have been
17 suppressed?

18 A. Yes.

19 MR. SMITH: Objection, Your Honor. Calling for a
20 legal conclusion.

21 THE COURT: Overruled. Go ahead.

22 BY MR. THOMAS:

23 Q. You felt like that was something that would have
24 benefited you in your case?

25 A. Yes.

1 Q. Now, we are talking about, you and I have discussed
2 this, about how you made your decision to either go to trial
3 or to accept a plea?

4 A. Yes.

5 Q. Did that factor into your decision to go and make a
6 plea?

7 A. Yes.

8 Q. How?

9 A. I just - I felt like they didn't want to hear my
10 story. They just wanted to make their own theory of what
11 happened. They didn't want to look into my medical records.
12 They didn't want to look to see that this could have just
13 potentially been an accident.

14 Q. And would it have made a difference if the blood
15 alcohol level had been suppressed?

16 A. Yes.

17 Q. Why?

18 A. Because they wouldn't have had any evidence against
19 me.

20 Q. What evidence did they have against you?

21 A. Uhm, the blood work was the only evidence --

22 Q. You felt like --

23 A. -- against me.

24 Q. You're speaking today pretty well. You remember
25 these things, the times, what happened?

1 A. Correct.

2 Q. You feel like that you were pretty coherent?

3 A. Very.

4 Q. So you feel like your physical appearance would not
5 have been to your detriment at trial?

6 A. Correct.

7 Q. And the only video that they had of you was in the
8 hospital?

9 A. Yes.

10 Q. So in making this decision to enter into the plea
11 what information did you have?

12 A. Meaning what?

13 Q. Well, you didn't know whether or not the blood
14 alcohol evidence could have been suppressed? You didn't know
15 that?

16 A. Yes. Correct.

17 Q. You didn't know the answer to that?

18 A. Yeah.

19 Q. That's because you were deprived of that sample?

20 A. Mm-hmm.

21 Q. Did you talk to Mr. Williams about going to trial
22 and what other evidence that they had? How were they gonna
23 prove you guilty of felony DUI?

24 A. Pretty much with the blood work.

25 Q. With the blood work?

- 1 A. Correct.
- 2 Q. All right. Now, after you were Mirandized, at that
3 point in time you didn't give any written statements?
- 4 A. No written statements.
- 5 Q. You didn't give any statement like I had been
6 drinking heavily?
- 7 A. (Witness shaking head.)
- 8 Q. Or it's all my fault or anything like that?
- 9 A. No. I just told them what I had to drink.
- 10 Q. Do you feel like you're guilty of felony DUI?
- 11 A. No.
- 12 Q. You have some responsibility?
- 13 A. Correct.
- 14 Q. And you accept that responsibility?
- 15 A. I accept responsibility of that.
- 16 Q. But not felony DUI?
- 17 A. Not the felony DUI.
- 18 Q. Is that part of the reason you're here today?
- 19 A. Yes.
- 20 Q. Now, which brings us back I guess to the issue about
21 the deposition. This deposition was given to the Solicitor?
- 22 A. Correct.
- 23 Q. That's where you got it from?
- 24 A. Mm-hmm.
- 25 Q. Was from the Solicitor. And Rick Hall was at your

1 plea?

2 A. Yes.

3 Q. Your sentencing?

4 A. Yes.

5 Q. And you feel like you were prejudiced by this?

6 A. Yes.

7 Q. Okay. Now, moving on, how about plea offers. Were
8 you ever given any plea offers in this case?

9 A. Not that I know of.

10 Q. Did you ever discuss with Mr. Williams about any
11 kind of plea offers?

12 A. I remember we went in February to a hearing and the
13 Solicitor asked if I wanted to enter into a guilty plea before
14 I had the baby.

15 Q. You were pregnant?

16 A. Yes. Uhm, he said - he just had me stand outside
17 the courtroom. I never went in. Then he came back out and
18 said I'm not gonna let you accept an offer that they don't
19 expressly like convey.

20 Q. So that wasn't conveyed to you?

21 A. Yes.

22 Q. You don't know what that offer was?

23 A. I don't know what the offer was. I don't know what
24 was said in the courtroom.

25 Q. What were you told about your plea? What was going

1 to happen to you if you actually went and just pled straight
2 up in front of the Court?

3 A. I was under the assumption that I would get house
4 arrest.

5 Q. Why was that?

6 A. I was told that I would get house arrest. That once
7 again, I shouldn't be charged with what I was charged with.
8 That I would probably get house arrest. And I had a better
9 chance of getting house arrest if I pled guilty instead of
10 going to trial but we were on the trial docket.

11 Q. I've enjoyed talking with you because you actually
12 understand, not that a lot of people don't, but you understand
13 some of these mixes as far as what we've been talking about.
14 Did you balance -- I mean, you had to make a balance between
15 going to trial and accepting the plea? You had to make a
16 decision between the two?

17 A. Yes.

18 Q. And part of your decision to enter the plea was the
19 fact that you thought that you were going to get house
20 arrest?

21 A. Correct.

22 Q. Now, I think this is a little bit unusual. You
23 mentioned to me the fact about the victim's father?

24 A. Correct.

25 Q. And what happened, if anything, with that?

1 A. Uhm, he called me in December of, I believe, 2016
2 and he told me he knew a lot of people who knew me, that he
3 believed this was just an accident and he did not want me to
4 go to prison and he told me that --

5 MR. SMITH: Objection, hearsay.

6 THE COURT: Overruled. Go ahead.

7 BY THE WITNESS:

8 A. -- the day after the accident he went to the
9 Solicitor's Office and he told the Solicitor that he didn't
10 want to press charges and the Solicitor told him that the
11 State picked it up, that there was nothing that he could do
12 about it.

13 BY MR. THOMAS:

14 Q. And you conveyed that information to Mr. Williams?

15 A. Correct. And I believe that he also said pretty
16 much the same thing to Theo.

17 Q. Okay. Now, was that gentleman at your hearing?

18 A. He was at -- Well, there was a deferred sentencing.
19 He was at the plea hearing, uhm, when I went into the guilty
20 plea but he was not at the sentencing hearing.

21 Q. Maybe this a good time to ask you that question. So
22 you're in legal terms we call it bifurcation. You had two
23 different hearings?

24 A. Correct.

25 Q. What happened with that? Why did you have two

1 hearings?

2 A. Uhm, they told me that because I was on the trial
3 docket that I had to go in front of the trial judge that I was
4 scheduled to go in front of.

5 Q. For the plea?

6 A. For the plea.

7 Q. Or for the sentencing?

8 A. That was for the sentencing.

9 Q. All right. I'm confused now.

10 A. Sorry.

11 Q. Why did you go in front of one Judge for the actual
12 guilty plea?

13 A. Okay. They told me that I had to enter into a
14 guilty plea before it went to trial but because I was already
15 on the trial docket I had to get sentenced in front of the
16 trial Judge.

17 Q. Okay. Do you believe that that was to your benefit?

18 A. No.

19 Q. Why?

20 A. I believe that they were Judge shopping.

21 Q. Because?

22 A. There is no reason I shouldn't have gone in front of
23 the Judge that accepted the guilty plea.

24 Q. So that wasn't your idea? You weren't asking for a
25 delay in sentencing?

1 A. No. I wasn't.

2 Q. Now, at the bifurcation, at the actual sentencing
3 hearing was the victim's father there?

4 A. He was the only one that wasn't there.

5 Q. He was the only one that wasn't there?

6 A. Mm-hmm.

7 Q. So you didn't get the benefit of what he would have
8 said?

9 A. No. And he expressly told me when he spoke to me in
10 December that he wanted to be there and he wanted to talk to
11 my sentencing Judge.

12 MR. SMITH: Objection. Hearsay.

13 THE COURT: Overruled. Go ahead.

14 BY MR. THOMAS:

15 Q. Okay. Destiny, I think we're just about finished.
16 We talked about the videos from the bar. You didn't ever see
17 any of those?

18 A. No.

19 Q. And how about the hospital records. Were those
20 obtained from the hospital?

21 A. Yes. I have every copy of the hospital records and
22 the EMS record.

23 Q. Okay. And you think they are favorable for you?

24 A. Absolutely.

25 Q. Did you discuss those with Mr. Williams?

1 A. Yes.

2 Q. What, if anything, did he say?

3 A. Well, once again with the blood work he said it
4 didn't matter because of the blood work.

5 Q. So the blood work was controlling this case?

6 A. Yes.

7 Q. I can't think of anything else. You and I discussed
8 this question. You have waited a long time to be in court and
9 you have worked on your own very hard on your case. Is there
10 anything that I may have forgotten to include or anything else
11 that you would like to bring to the attention of the Court?

12 A. I think a little further into detail about the
13 hospital records.

14 Q. Tell us, what do you think about the records?

15 A. Well, with the EMS records they all say clear
16 speech, normal mental status, everything is completely normal.
17 It says I'm alert, oriented to time, place, everything. The
18 hospital records say the same thing, clear speech. It says I
19 have well formed sentences. Normal motor skills. Normal
20 motor movements. And if I was so incomprehensibly
21 intoxicated, then how is everything completely normal in those
22 records?

23 Q. Which takes us back to the question about the
24 evidence they had was the blood alcohol content?

25 A. Correct.

1 Q. One final question.

2 A. Yes.

3 Q. Knowing what you know today and had Mr. Williams and
4 your Public Defender explain all this to you, would you have
5 taken the plea or would you have taken the case to trial?

6 A. I would have absolutely taken it to trial.

7 MR. THOMAS: I have no further questions.

8 THE COURT: Thank you. Cross examination.

9 MR. SMITH: Yes, Your Honor. And I may need to
10 discuss this with Mr. Thomas.

11 THE COURT: Sure. Go ahead.

12 MR. SMITH: Your Honor, I'm planning on calling the
13 Solicitor as a witness in this case and he has to be
14 somewhere at 11:00 so is it possible for us to get him
15 and then come back and continue because I'm worried if we
16 don't get his testimony in now he may not be available.

17 MR. THOMAS: I don't have any objection, Your
18 Honor.

19 THE COURT: Sure. We can do that. This witness can
20 step down.

21 MR. SMITH: I would just like to be able to cross
22 her afterwards.

23 MR. THOMAS: Your Honor, on the record, I'll let
24 Destiny know, what we're gonna do, you're still subject
25 to cross examination and I cannot speak to you, okay?

1 THE WITNESS: Okay.

2 MR. THOMAS: It would be improper for me to do that,
3 okay?

4 THE WITNESS: Okay.

5 MR. THOMAS: Okay.

6 MR. SMITH: Okay, Your Honor.

7 THE COURT: Call your witness.

8 MR. SMITH: Yes, Your Honor. The State would call
9 Mr. Todd Michael Wagoner.

10 MR. THOMAS: May it please the Court. I may have to
11 ask her questions about his testimony but as an officer
12 of the Court I will not ask her anything about her cross,
13 potential cross examination.

14 THE COURT: I understand. I don't have any
15 objection to that.

16 Thereupon,

17 TODD MICHAEL WAGONER

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

19 DIRECT EXAMINATION

20 BY MR. SMITH:

21 Q. Can you tell me where you work?

22 A. I work at the Eleventh Circuit Solicitor's Office.

23 Q. How long have you been practicing law?

24 A. I started --

25 THE COURT: Let's get the witness' name on the

1 record.

2 MR SMITH: Yes, sir.

3 BY MR. SMITH:

4 Q. Tell us your name please.

5 A. My name is Todd Wagoner. Last name W-a-g-o-n-e-r.

6 To answer the question, I was admitted to the bar in November

7 of 2003. I started with the Fifth Circuit Solicitor's Office

8 in February of 2004. I started with the Eleventh Circuit

9 Solicitor's Office in February of 2011.

10 Q. Okay. Did you prosecute Ms. Mills' case, felony
11 DUI?

12 A. Yes. I did.

13 Q. Will you tell us briefly about that case?

14 A. Well, it was a felony DUI where the victims were
15 coming from work. I believe Mr. Mazinga picked up Ms. Johnson
16 from a Dominoes where they worked. They were headed to Waffle
17 House, approximately 2:00 in the morning. They were on I-26.
18 Mr. Mazinga was driving Ms. Johnson's vehicle. He was
19 familiar with that vehicle. It was an older vehicle that
20 would shake when it was going over 60 miles an hour so he was
21 in the slow lane. When he looked in his mirrors, he saw
22 headlights coming up real fast. There was nothing he could
23 do. There was a collision. I believe the vehicles
24 overturned. Ms. Johnson had unbuckled her seat belt to reach
25 for her purse in an opportune moment. She was ejected. She

1 did die on scene. I do recall the 911 call vividly.

2 Fire and EMS did respond as well as highway patrol.
3 At the scene the trooper did speak with Ms. Mills on the back
4 of the ambulance. She did admit that she was driving. There
5 was a statement early on that she did have one beer. I
6 believe that was on the back of the ambulance and then she was
7 taken to the hospital. At the hospital further investigation
8 there was like two or three different stories. One was the
9 changing the music or something like that, and the other one
10 was the gentleman that was in the seat with her was trying to,
11 was distracting her.

12 The officer, based on my recollection and my
13 recollection being refreshed from the transcript that I
14 received of the plea hearing, she was Mirandized, then she was
15 asked some questions about the drinking. This was prior to
16 her arrest. Then she was read her Implied Consent Rights
17 where she did submit to a blood sample. The scenario where
18 the individual, I was not aware of whether it was a trooper or
19 if it was a nurse that dropped the blood sample. That was
20 also put on the record at the plea hearing and the results
21 came back as Ms. Mills stated as a .127.

22 Q. Did she make conflicting statements after the
23 accident leading up to her arrest?

24 A. Yes.

25 Q. What were they?

1 A. Again, they varied minorly. I think one was
2 reaching for the music or something like that trying to change
3 a song. One was that the individual in the passenger seat was
4 trying to get amorous and that distracted her.

5 Q. Okay. Did she - you mentioned a 911 call, too.
6 Briefly what were the contents of that call?

7 A. Mr. Mazinga actually called 911. You can hear the
8 moment when Mr. Mazinga found his fiancée Ms. Johnson. It's
9 just one of those 911 calls that kind of sticks in your head,
10 very emotional. I remember doing trial prep when we played it
11 for Mr. Mazinga, he became very emotional.

12 Q. And was that something the State would have used at
13 trial?

14 A. Absolutely.

15 Q. Okay. So did Ms. Mills make statements as to her
16 alcohol consumption after the crash?

17 A. Initially she stated that she had, I believe, one
18 beer. Later on she admitted to going to, I think it was Wild
19 Wings having at least one beer. I think there was also prior
20 to that at Applebee's. Then she stated that she went over to
21 the British Bulldog where a beer was bought for her. I think
22 she claimed she did not drink that entire beer. She also, I
23 believe she also gave an estimate to MAIT investigators in
24 this where she did also talk about the consumption of
25 alcohol.

1 Q. Were there other witnesses who corroborated her
2 alcohol consumption?

3 A. I don't recall the name of the passenger but I do
4 recall the name of one of the other witnesses. His name is
5 James Bonner. I think they called him LB. He was drinking
6 with them at Wild Wings. I believe he may have gone with them
7 to British Bulldog as well and he was buying the rounds for
8 them and apparently that was his MO if you will.

9 Q. So just for clarification those were two people, a
10 passenger and then someone else?

11 A. Correct.

12 Q. Did both of those people corroborate that she had
13 been consuming alcohol?

14 A. Correct.

15 Q. I'm sure you have heard about this case, the
16 deposition. Did the State have independent evidence of Ms.
17 Mills' conduct outside of what was given to the State in this
18 deposition transcript?

19 A. Absolutely. In this case the victims were civilly
20 represented. They kind of acted as the victim advocates in
21 this particular case. They invited me to just kind of look at
22 their file. Because I looked at their file I asked for a copy
23 of everything so I could turn it over to defense counsel.
24 Those included deposition of Ms. Mills, deposition of Mr.
25 Bonner, deposition of the individual that was in the passenger

1 seat. And again, I apologize. I don't recall his name. It
2 was a lot of the same and Ms. Mills' deposition wasn't really
3 earth shattering. I think the only use I would have got out
4 of it is had she testified, there may be some cross
5 examination in that. I think she referred to videos from
6 bars. The civil attorneys had their investigators go out to
7 get surveillance video and also receipts. I, of course, I got
8 copies of that and I immediately turned it over to the
9 defense. I did do redactions of personal identifying
10 information as per usual but those were turned over to defense
11 counsel. I think I may have actually turned those over to
12 Theo multiple times but I know those were turned over.

13 Q. Okay. So you may have tried to use it to impeach
14 her on cross examination?

15 A. Yes, sir.

16 Q. Do you know if she was a party in that civil case or
17 merely a witness?

18 A. Based, again, based on the transcript of that matter
19 it looked like she was a party and was represented by a civil
20 attorney.

21 Q. Okay. The video footage in the civil case did they
22 get that from Ms. Mills or from someone else?

23 A. They would have got that from the businesses.

24 Q. Okay. All right. Did the State extend any plea
25 offers to Ms. Mills in this case?

1 A. No. The only offer was that me on behalf of the
2 State would not specifically ask for any specific amount of
3 jail time, that I would not mute my victims and that I would
4 not mute law enforcement. There were several hearings. One
5 was for a bond. One was to change the terms of the bond so
6 that she could stay at another location. She was put on a
7 SCRAM monitor dusk to dawn curfew. Then later when
8 Mr. Williams was involved it came to light that she was
9 pregnant and having some health issues with her ankle and
10 that, I believe that may have been the February hearing that
11 Ms. Mills was testifying to. I probably told, asked
12 Mr. Williams, hey, the victims are here. If she wants to
13 accept responsibility, I'll be happy to defer sentencing until
14 she gives birth. That just was a no go which is fine. We met
15 in chambers with Judge McMahon I believe, discussed the issues
16 about the ankle monitor and the health problems she was
17 having. Judge McMahon did lift the ankle monitor at that time
18 and we basically waited until after her child was born in
19 order to get the trial on the trial docket.

20 Q. Okay. Why was she not sentenced at the same time as
21 her plea hearing? Why were there two different judges?

22 A. I don't remember the exact term but it was mid
23 November of 2017 when the trial Judge was William Keesley.
24 Judge Keesley. A couple weeks prior to that Mr. Williams
25 expressed that this will be a plea. I suggested that, hey,

1 and I did meet with my boss, it was suggested that we take the
2 plea two weeks before at the prior term of court, defer
3 sentencing and have the trial Judge sentence. The reasoning
4 for that in my opinion was to save the victims the anxiety of
5 trial prep and also save the State from the anxiety of, you
6 know, if she were to back out of the plea, we would have to go
7 straight into the trial. I explained that to Mr. Williams. I
8 think he understood that as well and I do believe that, and I
9 put on the record, I'm not sure if it was at the plea or at
10 the sentencing that the family and the State thanks Mrs. Mills
11 for taking responsibility and saving the State and the victims
12 the heartache and the anxiety of a trial.

13 Q. Okay. Did she enter an Alford plea in this case?

14 A. I'm sorry.

15 Q. Did she enter an Alford plea in this case?

16 A. No.

17 Q. It was a guilty plea?

18 A. Correct.

19 Q. If the State had not gotten this civil deposition,
20 would it have dropped the case against her?

21 A. No.

22 Q. Would you still try her?

23 A. Again, it had very little - it was not a game
24 changer or anything like that. It just it was similar to her
25 statements given to law enforcement. I think she did go a

1 little more into depth of who paid. I mean, Mr. Bonner was
2 the one that paid the bar tabs and stuff like that but nothing
3 earth shattering.

4 Q. What impetus would the State have used at trial
5 other than the blood evidence?

6 A. Well, we would have used -- unfortunately he's no
7 longer around -- we would have used Mr. Bonner, the individual
8 that was in the passenger seat. We would have used the
9 testimony of Joseph Mazinga who is the surviving party in the
10 other vehicle. We would have used EMS. We would have used
11 the law enforcement, the medical draw. Excuse me. The
12 Implied Consent draw and also again, it's very - how this
13 collision occurred, she was going too fast for conditions.
14 Well, too fast for conditions and at the last moment it
15 appears she tried to avoid it and clipped the vehicle and the
16 vehicle then flipped. Again, we would have used as much
17 evidence as we could. I don't believe that the blood would
18 have been suppressed at all.

19 MR. SMITH: Your Honor, those are all of my
20 questions. Thank you.

21 THE COURT: All right. Cross examination.

22 MR. THOMAS: Your Honor, please the Court.

23 CROSS EXAMINATION

24 BY MR. THOMAS:

25 Q. Mr. Wagoner, good to see you. It's been a while.

1 A. How you doing?

2 Q. So let me ask you about the blood sample. Were you
3 concerned about that at all that the officer dropped the blood
4 and she was unable to get an independent testing?

5 A. No. Because it is my understanding is that I was
6 told, I was under the belief that it happened in front of her
7 and that she witnessed it. Furthermore, I don't believe she
8 ever stated I want an independent sample. When an individual
9 does give a sample whether it be breathe or blood, they have
10 to request their independent sample and then they are entitled
11 to affirmative assistance to get that done.

12 Q. But wouldn't it appear that she had requested it,
13 that the officer had a separate sample? He had another
14 vial?

15 A. Again, I think that may have been a courtesy.
16 Furthermore, when the sample goes to SLED, part of the sample,
17 not all of the sample is used. It's sent back to the agency.
18 There was never any request for the rest of the vial or
19 anything like that.

20 Q. If she had not been given an opportunity to have an
21 independent testing, could the blood alcohol level been
22 suppressed?

23 A. Now, if she had specifically requested, hey, I want
24 an independent sample for independent testing, then there may
25 be issues. Yes, sir.

1 Q. Let me kind of follow up on that. Let me ask you
2 about, I saw the video from the hospital. I would assume that
3 you saw that as well?

4 A. Yes.

5 Q. I have looked at the EMS reports and all of that.
6 All of those especially the video she seems to be very
7 coherent to me. Do you remember?

8 A. I don't recall in particular. I actually asked my
9 paralegal if we had gotten medical records in this case.
10 Typically we do. I just don't recall if we did in this case.
11 I think she did look stunned and dazed if my recollection is
12 correct.

13 Q. That's when he told her that the other passenger had
14 passed away?

15 A. And that may be. Again --

16 Q. Okay. The deposition, I mean, basically you were
17 able to obtain sworn testimony from her when you would not
18 really have been able as a Solicitor to depose her in a
19 criminal case?

20 A. Yes. I would not be able to depose her. I had no
21 advanced knowledge that there was a deposition.

22 Q. You didn't participate in it?

23 A. Absolutely not.

24 Q. But my question is, did you benefit from receiving
25 it?

1 A. I received it. Again, the contents of it I didn't
2 think it was super beneficial. It almost, I don't want to say
3 bolstered, but it was very similar to her statements given.

4 Q. Right. Had you gone the trial I think you said that
5 you could have used that document --

6 A. To cross examine.

7 Q. -- to cross examine her?

8 A. In the event she chose to testify.

9 Q. And had there not been a civil deposition you would
10 not have been able to do that because you wouldn't have it?

11 A. If I didn't have it, I could cross examine on a non
12 existent document.

13 Q. Would you advise a criminal defendant to take a
14 deposition?

15 A. Again, I'm not a criminal defense attorney. I'm a
16 prosecutor. I have defended one case in my career. That was
17 when I was in law school. Typically it's my understanding
18 that when a criminal defense attorney is advised that there is
19 a deposition scheduled in a matter that is related to a
20 criminal case, that they typically would advise them to assert
21 their Fifth Amendment Rights. Not always but that's my
22 understanding.

23 Q. Yes. One further question. I'm still a little bit
24 confused about bifurcation between the sentencing and the
25 plea. When she did the actual sentencing, she was set in

1 front of a trial Judge?

2 A. Again, since it was on the trial docket and we were
3 first up that mid November, we were, again, we were, I guess,
4 pedal to the metal getting ready so once Mr. Williams stated
5 my client wishes to plead guilty, I don't recall if there was
6 any conversation about basically me remaining silent at
7 sentencing. I probably offered that since it was a relief to
8 the State and a relief to the victims that I would remain
9 silent as to sentencing. Once I heard that she wanted to
10 plead guilty, I went to my boss and said, hey, look, what do
11 you advise and that's when it came to let's plead, lock it in,
12 save the State, you know, the effort we would still need to go
13 through even if it pleads because we need to be ready to go in
14 the event she backs out of the plea. Also, it saves the
15 victims just the anxiety of the unknown and so we gave, Ms.
16 Mills gave these victims the certainty that she took
17 responsibility and that she would be sentenced on that day and
18 not be unknown of, well, the defense attorney says she's gonna
19 plead guilty. I don't know what's really gonna happen on
20 Monday in mid November.

21 Q. So she was on the trial docket when she entered into
22 the plea?

23 A. Correct.

24 Q. But not necessarily on the trial docket when she was
25 sentenced?

1 A. She was not on -- Well, that's not correct. She was
2 on the trial docket for the week of the sentencing if that
3 makes sense.

4 Q. But not set for trial?

5 A. She was not set for trial on the week where she
6 entered the plea. We were scheduled for trial that following
7 term which is when she did get sentenced.

8 Q. Right. Okay. Do you know whether or not there was
9 a plea judge that day as well on the actual sentencing day?

10 A. Again, typically there is a plea and a trial Judge
11 that is scheduled by court admin. Because it was a trial and
12 because it was on the trial list that is why it was sentenced
13 in front of the trial Judge.

14 MR. THOMAS: No further questions.

15 THE COURT: Redirect?

16 MR. SMITH: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. SMITH:

19 Q. If Ms. Mills had gone to trial, would you have used,
20 I believe you testified earlier you would have used witnesses'
21 statements?

22 A. Yes.

23 Q. Okay. Would you have attempted to bring into
24 evidence her previous statements to law enforcement?

25 A. The ones to law enforcement. Yes.

1 Q. And then maybe just one more question. The hospital
2 video, do you know how much time elapsed from when the crash
3 occurred and when she was in the hospital and recorded on the
4 video?

5 A. Exact time I don't have off the top of my head but
6 it would be probably well over an hour.

7 MR. SMITH: Thank you. No more questions, Your
8 Honor.

9 THE COURT: Step down.

10 MR. SMITH: I would ask that this witness be
11 excused, Your Honor.

12 MR. THOMAS: No objection, Your Honor.

13 Thereupon,

14 DESTINY HEATHER MILLS

15 after having been previously first duly sworn, testified
16 further as follows,

17 CROSS EXAMINATION

18 BY MR. SMITH:

19 Q. Yes. Ms. Mills, I've got some questions for you.
20 How long were you at the scene of the crash before you went to
21 the hospital?

22 A. An hour.

23 Q. About how long was it at the hospital before your
24 blood was drawn?

25 A. It was at 4:45 so it was about two hours and 45

1 minutes I guess after the accident and then two hours after I
2 was at the hospital.

3 Q. Okay. And when you were out on the roadside, you
4 did make statements to the police?

5 A. Correct.

6 Q. Okay. And you made a statement again at the
7 hospital, right?

8 A. Yes.

9 Q. In your civil deposition, the civil case, you
10 testified earlier you weren't a party. They got the videos
11 from the bars, right?

12 A. That's what I'm being told. Yes.

13 Q. Okay. Tell me again what did Mr. Mauldin tell you
14 when you discussed the civil case?

15 A. He said that it was a help me, help you situation
16 and he wasn't going to be a part of it.

17 Q. He told you he wasn't a civil attorney?

18 A. Yes, sir.

19 Q. The attorney who was at that deposition with you,
20 was he involved in your criminal case?

21 A. No. It was a civil attorney.

22 Q. Okay. And you testified earlier that you don't
23 remember what Mr. Mauldin told you about what could happen.

24 A. No. I don't recall. I know it was nothing along
25 the lines of like coming back to haunt me.

1 Q. You testified earlier that the State's only real
2 evidence against you was the blood work but that wasn't true.
3 They could have called these other witnesses, right, at your
4 trial?

5 A. They could but the statements that these people gave
6 to the police officer all went alongside with what I said. I
7 believe there's also a video of the guy that I was taking home
8 and he said the same thing, that he asked me to drive because
9 he was too drunk and that I only had one to three beers.

10 Q. But these were people the State could have called at
11 trial?

12 A. They could have. Yes. Absolutely.

13 Q. And when you pled guilty, didn't the Judge you
14 through the fact that you had trial rights?

15 A. Yes.

16 Q. Okay. That you could go to trial, cross examine
17 witnesses, contest the State's evidence. Do you remember
18 those?

19 A. Correct.

20 Q. Okay. And that you would be waiving them if you
21 pled guilty?

22 A. Mm-hmm.

23 Q. And you still pled guilty anyway?

24 A. Well, I felt that it wasn't - I wasn't innocent
25 until proven guilty. I thought I was guilty, period, by the

1 State's belief.

2 Q. But you told the Court you were pleading guilty
3 because you were guilty?

4 A. Correct.

5 Q. Okay. And that was after he had explained the
6 charge against you?

7 A. Yes.

8 Q. Okay. And when he asked was anyone forcing you to
9 plead against your will, you said no?

10 A. Yes.

11 Q. Yes as in correct?

12 A. Correct. Yes. Sorry.

13 Q. And he asked you were you pleading freely,
14 voluntarily, intelligently and you told him yes, right?

15 A. Yes. I thought I had to go through this whole
16 scenario with him to answer those questions to get through
17 what I had to do.

18 Q. And you were under oath at the time?

19 A. Yes.

20 Q. Okay. He asked you did you want a jury trial and
21 you said no?

22 A. Yes.

23 Q. Okay. And the Judge explained that if you went to
24 trial, Mr. Williams would be able to file motions on your
25 behalf, cross examine witnesses and you told him you

1 understood that?

2 A. Correct.

3 Q. And that you wanted to waive those rights and plead
4 guilty, right?

5 A. Correct.

6 Q. Okay. And he asked you were you happy with Mr.
7 Williams' work on your case?

8 A. Yes.

9 Q. You told him you were?

10 A. Yes. Correct.

11 Q. You told him you had adequately gone over the
12 evidence in the case, right?

13 A. I don't recall that.

14 Q. Well, we can take a look. Okay. If you will please
15 confirm for me that this is the November 2nd, 2017 transcript
16 from your case?

17 A. Mm-hmm.

18 Q. This is your plea hearing, right?

19 A. Correct.

20 Q. Okay. And at this point you're sworn in, right?

21 A. Yes.

22 Q. If we look on page 13, line 7, the Court asks you,
23 read what he asks and read your answer, please.

24 A. It says, have you adequately reviewed with him the
25 discovery file which is all the evidence and documents that

1 the State has in this case? I said, yes, Your Honor.

2 Q. And then on line 20 the Judge are your answers
3 truthful and you say yes, sir?

4 A. Yes. And at that time they were. I have never had
5 any experience with any criminal action so I didn't know what
6 the standard should be. Being that I hired a paid attorney I
7 figured he was doing his job.

8 Q. You're not an attorney yourself, right?

9 A. I'm not.

10 Q. Okay. To this day you're not an attorney now,
11 right?

12 A. Not yet.

13 Q. Okay. But still you didn't have to be an attorney
14 because the Judge told you what your rights were, right?

15 A. Correct.

16 Q. You told him you understood them?

17 A. I did.

18 Q. He didn't ask you if you were an attorney. He asked
19 you if you understand?

20 A. Correct.

21 Q. You told him yes and that you wanted to plead guilty
22 anyway?

23 A. Correct.

24 Q. Okay. Did the Judge explain the potential sentence
25 you could get if you would plead guilty?

1 A. Yes.

2 Q. When he said that, he didn't promise you that you
3 would get house arrest, did he?

4 A. No.

5 Q. Okay. When he asked you did anyone promise you
6 anything what you would get as a sentence, you told him no?

7 A. Yes.

8 Q. By that you mean correct?

9 A. Correct. Yes.

10 MR. SMITH: Thank you. No more questions, Your
11 Honor.

12 THE COURT: Redirect?

13 MR. THOMAS: Please the court. Just one or two.

14 THE COURT: Sure.

15 REDIRECT EXAMINATION

16 BY MR. THOMAS:

17 Q. Ms. Mills, let me ask you about the blood sample.
18 Did you request a blood sample?

19 A. I did and I signed my own implied consent statute,
20 or implied consent rights.

21 Q. But you wanted a copy?

22 A. Mm-hmm. That's why I signed it. Correct.

23 Q. Now, counsel asked you about what we call the
24 colloquy when we were standing and talking with the Judge when
25 you did the plea?

1 A. Mm-hmm.

2 Q. And at that time he asked if you were guilty?

3 A. Correct.

4 Q. Were you guilty of felony DUI?

5 A. I don't believe so.

6 Q. Okay. Were you guilty of too fast for conditions?

7 A. No.

8 Q. Were you guilty of anything?

9 A. I feel that I was guilty of like maybe reckless
10 homicide.

11 Q. Now, was your plea in this case freely and
12 voluntarily given?

13 A. I don't believe so.

14 Q. Was it knowingly and intelligently given?

15 A. No.

16 MR. THOMAS: All right. No further questions, Your
17 Honor.

18 RECROSS EXAMINATION

19 BY MR. SMITH:

20 Q. Yes, ma'am. I'll just clarify again. The Judge
21 told you what you were pleading to, right?

22 A. Yes.

23 Q. And you pled to that?

24 A. Yes.

25 Q. You didn't plead to reckless homicide?

1 A. Yes.

2 Q. You pled to felony DUI?

3 A. Yes. Well, I didn't know -- I want to add this -- I
4 did not know like how the situation works. I didn't know if
5 the Judge could lower it himself or make that decision
6 himself. I didn't know what to expect.

7 Q. Well, ma'am, he told you what to expect. He told
8 you you were pleading guilty to this crime?

9 A. Yes.

10 Q. You told him you understood that?

11 A. Yes.

12 Q. He told you what he could sentence you to, right?

13 A. Mm-hmm.

14 Q. You told him you understood?

15 A. Correct.

16 Q. And you pled guilty?

17 A. Correct.

18 MR. SMITH: Okay. Thank you.

19 THE COURT: Thank you, ma'am. Step down.

20 MR. THOMAS: Your Honor, if it please the Court, we
21 have one other very short witness. I think her
22 stepfather is here.

23 DESTINY MILLS: No. My papa. My dad right there in
24 front of you.

25

1 Thereupon,

2 THEODORE MILLS

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

4 MR. THOMAS: Your Honor, I only know the witness as
5 papa. I probably should put that on the record.

6 DIRECT EXAMINATION

7 BY MR. THOMAS:

8 Q. Would you please state your name for the record.

9 A. Theodore Mills.

10 Q. Mr. Mills, you were present at the hospital when
11 Destiny was there?

12 A. Correct.

13 Q. And you were also present in regards to the blood
14 sample?

15 A. Correct.

16 Q. And did you have an opportunity to see the trooper
17 with the blood sample?

18 A. I did.

19 Q. And what, if anything, was he gonna give the blood
20 sample to you or what was going on?

21 A. He was in the hallway talking to another trooper and
22 had his arms crossed. I don't know whether he was playing
23 with it or sticking it in his pocket but he dropped it on the
24 floor.

25 Q. He had a vial of blood?

1 A. He had a vial. He dropped it on the floor and blood
2 squirted out.

3 Q. What happened then?

4 A. He just reached down and picked it up.

5 Q. So it was in a bag?

6 A. No.

7 Q. It wasn't?

8 A. It wasn't in a bag.

9 Q. All right. Did they ever furnish you or furnish the
10 Destiny to the best of your knowledge another blood sample?

11 A. Not that I remember.

12 Q. Okay. He didn't discuss anything with you about
13 obtaining another sample or did he say anything to you?

14 A. He didn't say anything except he was going to go
15 wash his hands.

16 Q. Okay. All right. But she had requested a sample, a
17 blood sample?

18 A. I didn't.

19 Q. But she did?

20 A. I couldn't tell you that.

21 Q. You don't know. Okay. All right. But he had a
22 sample available, that sample?

23 A. The only sample I saw was the one he dropped.

24 MR. THOMAS: The one he dropped. I have no further
25 questions, Your Honor.

1 MR. SMITH: Thank you, Mr. Mills. No questions.

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

3 MR. THOMAS: Your Honor, that's the applicant's
4 case.

5 THE COURT: Mr. Smith, the applicant rests.

6 MR. SMITH: Okay. Your Honor, at this time I would
7 call Mr. Mauldin.

8 Thereupon,

9 DAVID MAULDIN

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

11 DIRECT EXAMINATION

12 BY MR. SMITH:

13 Q. Mr. Mauldin, please state your name for the record.

14 A. My name is David Mauldin, M-a-u-l-d-i-n.

15 Q. All right. Where do you work now?

16 A. I work with the Lexington County Public Defender's
17 Office.

18 Q. How long have you been practicing law?

19 A. I was admitted to the Bar in 1997 so a little over
20 20 years.

21 Q. All right. How much of your practice has been
22 devoted to criminal law?

23 A. Roughly 20 years, since 1999.

24 Q. Did you represent Ms. Mills in her case?

25 A. I did for a period of time.

1 Q. Do you know how long that period was?

2 A. It was roughly a year from her arrest until she
3 hired Theo Williams the next year.

4 Q. So about a year. All right. What kind of work did
5 you do on her case during that time?

6 A. Uhm, I met her at the jail a couple of times. I got
7 some discovery from the State and forwarded to her what
8 discovery had been given to me from the State. Discussed the
9 case with her a little bit. While she was in jail she was
10 more worried about the bond hearing so we eventually had a
11 bond hearing. In March she bonded out and then about a month
12 after that she wanted to have another hearing because the
13 original bond said she had to live with her mom. Apparently
14 there was issues with her mom. She didn't want to live with
15 her mom anymore. We had another hearing about her living
16 somewhere else with a family friend and then a couple more
17 months went by and she hired Theo.

18 Q. You said, do you know how many times you met with
19 her?

20 A. No. Not off the top of my head. We had that
21 hearing in June. We talked a couple of times on the phone.
22 Let's see. There's a time in, two times in May we talked on
23 the phone. Talked to her on the phone in April. Those are
24 times after she had bonded out. We had the bond hearing in
25 early March. I met with her while she was in jail in late

1 February, late January. Attended a prelim on December 4th.
2 She had hired a private attorney for the prelim, but I did
3 attend that prelim December 4th of '15. Met with her in jail
4 December 2nd of '15 and then October 30th which is really kind
5 of the initial visit because I had visited her earlier in
6 October and she told me her family hired a private lawyer and
7 that she was gonna deal with that private lawyer. That turned
8 out not to be true. So that many times. Several phone calls,
9 several in person visits at the jail.

10 Q. That may be 10 to 15 visits do you think?

11 A. I would say about four or five in person and about
12 four or five phone calls so somewhere in that neighborhood.

13 Q. Okay. All right. What kinds of things did you
14 discuss with her whenever you met or talked on the phone?

15 A. Well, like I said, the first time we talked about
16 their family had hired an attorney. She thought it was Theo
17 Williams at that time and that turned out not to be true.
18 Then they said it was Robin Alley who actually was the one who
19 represented her at the prelim. He said no. I don't represent
20 her. I just represent her on the prelim. Then I went back
21 out and saw her again on October 30th like I said and then by
22 then I got a copy of the blood result and had given her a copy
23 of that and explained to her about the law on felony DUI. We
24 talked a little bit about her side of the story as far as what
25 happened and what she talked to the police about and how many

1 drinks she might have had.

2 Let's see. I don't remember when I got discovery
3 but I did forward her discovery at some point in time at least
4 the initial discovery as far as the initial highway patrol
5 report and the MAIT report. Like I said, a lot of discussions
6 after that were about bond. Let's see. Got a brief biography
7 of her in late October. On December 12th meeting she did
8 discuss the fact that there was a civil case being involved
9 and that Rick Hall was prosecuting that. I told her that, you
10 know, if she had -- I don't handle civil cases. I did say
11 that, that she would have to have a civil lawyer represent her
12 for the civil case because I don't have -- I'm hired to do the
13 criminal cases by the -- It's not a financial thing. It's
14 probably more of a liability thing but if something went
15 wrong, I'm only covered to be a criminal lawyer malpractice
16 wise here for Lexington County and not to handle other cases
17 outside the scope of my employment.

18 And we discussed about cooperating with the civil
19 case. I don't recall if we had all of the discovery at that
20 time and I said that I had seen cases where sometimes if
21 somebody cooperates with the civil case, that the victims
22 would speak up for them, although I didn't at that time know
23 what all the evidence was against her and that if she did
24 cooperate as far as giving statements, that the statements
25 could possibly be used against her at trial.

1 Again, 12/4, I didn't meet with her, it was the
2 prelim. I just attended and took some notes. On January 27th
3 I think we had some of the paper discovery by then and we
4 talked about it. She said that she had spoken with a lawyer
5 about the lawsuit, uhm, at that point in time and we were kind
6 of going over bond again and just the discovery. Uhm, the
7 meeting on February 24th we were talking about the bond mainly
8 and where she would be living at. Then on March 2nd we had
9 the bond hearing and she was granted bond, bonded out. Phone
10 call in April. We discussed the fact whether or not the dusk
11 to dawn curfew would be considered as house arrest or not and
12 if she would get credit for time served. Like if she was
13 convicted, would she get credit for time served while she was
14 on the dusk to dawn curfew. I said the Judge would have to
15 find that it was house arrest and that given jail time credit
16 for house arrest is discretionary on a Judge's part. You're
17 not entitled to it. It's up to the Judge.

18 A call in early May, May 5th, talked to her. She
19 was calling about wanting to move from her mom and that's when
20 she informed me that she had had the deposition the week
21 before and that was the first time I had heard about the
22 deposition and she said that she had retained Wesley Waite for
23 that and that was the first I had heard of it and I had never
24 heard from Mr. Waite so if there was a deposition, he didn't
25 consult with me about what was going on with the criminal

1 case. And so that was the first time I heard about the
2 deposition was a week after it happened.

3 Q. Was she the one that told you about it?

4 A. Yes, sir. Because she was calling me about wanting
5 to get the bond changed so she didn't have to live with her
6 mom but she wanted to live with somebody else so then that's
7 when she told me about the deposition she had done the week
8 previous. And then most of the conversations after that were
9 about trying to set up that bond hearing to get her that
10 condition change where she wouldn't live with her mother. I
11 think the last conversation I had with her was in late June
12 after we had the hearing and gotten her a copy of the order
13 from the hearing where that was granted.

14 Q. Okay. Did you tell her that she should cooperate
15 with the civil case?

16 A. I think at the time it was kind of a let's wait and
17 see thing. It wasn't a definite yes, cooperate or a definite
18 no, not cooperate. If the lawyer had contacted me, I would
19 have asked him if he had talked with the lawyer on the other
20 side, you understand, to kind of get the lay of the land
21 before any kind of advice was given on that.

22 Q. So she didn't tell you I've got a deposition next
23 week?

24 A. No. Those are my notes on my conversations as far
25 as I know of the first time I heard of a deposition. I know

1 that there was a lawsuit pending and things going on with that
2 but as far as the actual deposition I think the first I heard
3 of it was the week after it happened. Like I said, the notes,
4 I talked to her in April after she had bonded out and that was
5 discussing whether or not house arrest counted as credit for
6 jail time served.

7 Q. What was her story about what happened in the
8 case?

9 A. Uhm, basically it was she was with a group of
10 friends and they had kind of gone from two or three different
11 bars around the Harbison area and that she had a number of
12 drinks at that point in time and that she was driving that
13 fellow home and that he was making some amorous advances
14 toward her and she was looking at him and not at the road and
15 she hit the other car, something along those lines. She
16 admitted to drinking maybe like somewhere between five and
17 seven drinks in like a four hour period or from 9:00 until
18 about one something in the morning, somewhere in there.

19 Q. Okay. Were you aware of the blood alcohol evidence
20 in the case?

21 A. Yes.

22 Q. Okay. And did you see any problem issues with that
23 at trial?

24 A. Well, I mean, if we had gone to trial - if I had
25 gone to trial, like I said, she hired another lawyer, I mean,

1 if it actually had gone to trial we would look at it and poke
2 the case apart any way I could have with any kind of motion I
3 could do that with being reasonable.

4 Q. Okay. Do you know if she had requested a second
5 sample for independent testing?

6 A. I don't. I don't really recollect that. Let's see.
7 I don't know if we necessarily discussed that issue or if I
8 took notes regarding that issue. Mainly the notes I took were
9 about where she had gone and how much she had to drink and who
10 would have seen how much she had to drink, that kind of
11 thing.

12 Q. At this point what was the State's evidence against
13 her that you knew of?

14 A. Well, let's see. The witness from her car. The
15 surviving witness from the other car. The officers that
16 arrived at the scene. The officers that talked to her at the
17 hospital. The MAIT team expert reconstruction of the scene
18 where I think that said that she was essentially speeding it
19 was 65 to 70 in a 60 mile an hour zone. The blood result
20 which was the blood was .08, and it wasn't like, you know,
21 .40. Like I said, the troopers with the statements that she
22 gave at the hospital and apparently afterward with the civil
23 people had done some digging they had found some other
24 witnesses that had been out with them drinking, too maybe,
25 that kind of thing.

1 Q. Okay. Let me ask you this: What was her stance on,
2 had you discussed whether or not you should go to trial or
3 plead at that point?

4 A. That was kind of up in the air. It was up in the
5 air at that point in time. She knows that she had been
6 drinking. They had that result that was definitely over the
7 legal limit. It was just all kind of up in the air. It was
8 wait and see because we were in the trial posture or plea
9 posture at that point in time and we had just gotten the bond,
10 had gotten her bonded out of jail and had the bond changed and
11 she decided to go with Mr. Williams and she didn't even go to
12 court until about a year later.

13 Q. So she didn't have had a strong leaning one way or
14 the other?

15 A. I wouldn't say so. She was kind of hesitant. I
16 wouldn't say that she was all rah rah, I'm gonna plead guilty
17 or anything like that but we were still just kind of reviewing
18 the evidence at that point in time.

19 Q. Okay. Did you promise her any kind of sentences if
20 she were to cooperate in the civil case?

21 A. No. No. I just said that I had seen in the past
22 where sometimes if they had cooperated in the civil case, the
23 victim or whatever, that side would come forward and talk
24 about how they appreciated that the person was
25 straightforward. And I even think when we were discussing

1 about cooperating in the civil case, I said, well, you're not
2 really like -- Because they were really wanting to sue like
3 the Dram Shop people and I said typically, you know, because
4 she doesn't have a lot of money or anything, and I said
5 they're probably gonna do that kind of thing and from what
6 you're talking about it wasn't like you were a sloppy drunk
7 and they kept serving you drinks or anything like that and
8 that wasn't really gonna help that so... But like I said, it
9 was kind of a wait and see thing and then I didn't even know it
10 happened until after it happened so...

11 Q. Okay. Did you ever have a chance to look at the
12 deposition?

13 A. Just recently I was able to thumb through. Theo
14 gave me a copy of the one that he had and I don't know if it
15 was too much different than the statements that she had given
16 the police. I think it was a recorded statement that she had
17 given the police where she admitted to drinking about five
18 drinks over a four hour period and then she was bought like
19 another beer and she had a couple sips of it but didn't really
20 drink it because she felt kind of sick or something like
21 that.

22 Q. In your opinion did it add much to the State's case
23 other than --

24 A. Like I said, I only got to thumb through it but from
25 what I saw it wasn't much different than what she had told the

1 police previously.

2 Q. What kind of independent research did you do in her
3 case?

4 A. Uhm, well, like I said, it wasn't up for trial and
5 I'm a Public Defender. I have to do kind of like triage on
6 things that are coming up right before me. I do know that I
7 had pulled, let's see, I just pulled notes and decisions in
8 general about felony DUI, I put it in the folder. I pulled
9 this here case. I'm just looking in my file now. State v.
10 Dantonio about sufficiency of evidence and the DUI directed
11 verdict.

12 Q. At that point had you identified that there may be
13 suppression issues coming up in the case if it were to go to
14 trial?

15 A. Well, I mean, there are always issues but whether
16 they're gonna be successful or not are another thing. You can
17 feel that something should be suppressed but the law
18 necessarily isn't on your side. But I hadn't like deeply dug
19 into the issues of that blood draw or whatever if that's what
20 you're getting at.

21 Q. When she was asking about testifying in the civil
22 case, and again, I believe you testified earlier that you told
23 her it could be used against her?

24 A. Yeah.

25 MR. SMITH: Okay. Thank you. No more questions,

1 Your Honor.

2 MR. THOMAS: Please the Court.

3 THE COURT: Cross examination.

4 MR. THOMAS: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. THOMAS:

7 Q. When you talked to her about the civil case, you
8 were aware of it?

9 A. Yes. She had made me aware of it.

10 Q. She made you aware of it. I think you actually said
11 that, well, it could be like when she said the help me, help
12 you type situation?

13 A. I said I had seen that in the past but at that point
14 I said that you would have to wait and see because you have
15 the evidence in your case and whether or not if her
16 cooperation would go beyond what she had already given the
17 State and it would be damaging to her, that's a balancing test
18 that you would have to do.

19 Q. But you talked to her about it?

20 A. Yes. I did.

21 Q. And you know there was a civil case?

22 A. Right. But I told her I couldn't represent her on
23 it because like I said.

24 Q. Because of the more of the, I guess, the insurance
25 issues?

1 A. Well, also and I don't think Lexington County would
2 be very happy with me like having a business on the side or
3 having cases on the side whether it be pro bono or for
4 profit.

5 Q. But you did represent her in her criminal case?

6 A. That's correct.

7 Q. Would you ever advise a criminal defendant to take a
8 deposition?

9 A. It would depend on the facts and circumstances of
10 the case.

11 Q. All right. You didn't go with her to this
12 deposition?

13 A. No, sir. I did not.

14 Q. Now, counsel also asked you about suppression of
15 evidence mainly the blood alcohol content with the blood?

16 A. Yes. I think there was some discussion about
17 that.

18 Q. Okay. Had she requested a sample to independently
19 test --

20 A. I wasn't at the hospital, sir, so I can't tell. It
21 would probably be her word against the police officer's with
22 regard to that and if it's in the discovery, I don't
23 remember.

24 Q. All right. Well, let me ask you hypothetically. If
25 she had requested a sample and say in this situation the

1 officer came and he had the sample in his but he dropped it on
2 the floor and it broke so she was not provided with a sample
3 for independently testing --

4 A. Mm-hmm.

5 Q. -- under those circumstances could you suppress the
6 evidence?

7 A. I would have to do some research on that and I
8 couldn't tell you. That's probably going to be Judge
9 Goldsmith's job to figure that out.

10 MR. THOMAS: I have no further questions.

11 THE COURT: Redirect?

12 MR. SMITH: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SMITH:

15 Q. Mr. Mauldin, if this case had come to trial, would
16 you have brushed up on this --

17 A. Oh, yes. Definitely. I definitely would have done
18 research on it.

19 MR. SMITH: Thank you. No more questions, Your
20 Honor.

21 THE COURT: Thank you. You may step down.

22 MR. THOMAS: Your Honor, if it please the Court,
23 I've a short rebuttal witness. I don't know if you would
24 want that at the end of the State's case or if you would
25 like to take it now or I just kind of need the Court's

1 advice about that.

2 THE COURT: Whatever you want to do. Well, I don't
3 know. You got more witnesses to call?

4 MR. SMITH: I do.

5 MR. THOMAS: We can to it at the end.

6 MR. SMITH: Is it specific to just this one?

7 MR. THOMAS: It is. It will be specific to him, his
8 testimony.

9 MR. SMITH: At the end would be fine.

10 MR. THOMAS: That's fine. Thank you, Your Honor.

11 THE COURT: Okay.

12 MR. SMITH: Your Honor, the State would call Mr.

13 Theo Williams.

14 Thereupon,

15 ROBERT THEODORE WILLIAMS, SENIOR

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

17 DIRECT EXAMINATION

18 BY MR. SMITH:

19 Q. Please state your name on the record for us.

20 A. It's Robert Theodore Williams, Senior.

21 Q. Where do you practice now?

22 A. Lexington.

23 Q. How long have you been practicing law?

24 A. A little over 42 years.

25 Q. How much of your practice has been devoted to

1 criminal law?

2 A. Since 1997 probably a hundred percent. 99
3 percent.

4 Q. Okay. Did you represent Ms. Mills in her felony DUI
5 case?

6 A. I did.

7 Q. Okay. Tell us a little bit about how you got
8 involved in the case.

9 A. Uhm, she had previously been represented by the
10 Public Defender. Uhm, she, I want to say one of her relatives
11 came to see me to hire me to represent her.

12 Q. Okay. What did you do in her case once you got
13 involved?

14 A. Everything. I got copies of the file that the
15 Public Defender had. I did discovery motions with the
16 Solicitor. Got copies of everything that I knew of though it
17 did seem that I got extra stuff from the Solicitor that I
18 wasn't aware of until he just kind of handed it to me and said
19 I got this.

20 Q. What kinds of things were those?

21 A. Those were things from the civil case. They were
22 depositions. They were copies of bar receipts from various
23 bars which was interesting.

24 Q. The deposition was of Ms. Mills or someone else?

25 A. It was of Ms. Mills. It was, interestingly enough

1 it was, they had filed a lawsuit against the establishments
2 that were selling alcohol as opposed to suing her for the
3 wreck and I'm not really sure why that never happened unless
4 perhaps maybe they had settled the car wreck with her prior to
5 her coming to be represented by me.

6 Q. So it was a Dram Shop case?

7 A. It was a Dram Shop case where she was not listed as
8 the defendant.

9 Q. Okay. The receipts that were given to you, was it
10 your understanding that they were something provided to the
11 civil attorney from Ms. Mills or something that they had
12 collected in the process of their civil case?

13 A. No. The receipts that were given to me were
14 receipts which had been recovered by I assume the private
15 investigator and/or -- No. I would assume it would be the
16 private investigator through the discovery in the civil case
17 for various drinks that were done that night by Ms. Mills and
18 by the people she was with.

19 Q. Okay. So that's not something she gave to them?

20 A. No. She didn't. I don't think she gave them to
21 them.

22 Q. Okay. What kind of preparation did you do with the
23 discovery in this case?

24 A. Talked to her a lot. Looked at the discovery that
25 the Solicitor had given. It was a close case. We discussed

1 trying the case on several occasions. The issue which has
2 been brought up here a lot which is the broken vial I have
3 actually tried that issue and without success. I think
4 there's a Thunderbird case which deals with that. But it was
5 an example where the Lexington County Sheriff's Department,
6 the Lexington County Detention Center was, I don't want to
7 slander them but it's actually the truth, you didn't get your
8 blood vial very often like you should. It was always stored
9 away in some refrigerator and you don't necessarily get it.
10 The next thing you know somebody has gone through there and
11 has thrown it out. So I have argued that issue in trial
12 before about whether or not the failure of the defendant to
13 have their blood sample tested is sufficient to throw the case
14 out. I think I was unsuccessful if I remember correctly on
15 that issue.

16 Q. Okay. But if the case had gone to trial, would you
17 have attempted to suppress it?

18 A. I would have because I think that there's been more
19 case law since the time I tried that that indicates you might
20 find a favorable Judge who might issue that order because it
21 seems like if she is prevented from testing that, that maybe
22 she ought to at least get a shot at it.

23 Q. Okay. In her application Ms. Mills has alleged that
24 you failed to make certain suppression motions, pre-trial
25 motions. Why didn't you move to suppress the blood?

1 A. Because she was pleading.

2 Q. Okay. If the case had gone to trial, would you have
3 tried to suppress it?

4 A. I would have.

5 Q. And in reviewing the case with her did you discuss
6 potential defenses?

7 A. We did. I think her major defense was to throw in
8 that intervening cause which would have been the boyfriend who
9 was trying to kiss her because you see that a lot in wreck
10 cases. Somebody is always hugging on somebody. I'm not sure
11 would it have been sufficient based on the MAIT report and on
12 what the factual scenario was but it was something she could
13 talk about.

14 Q. Right. Okay. And in discussing the case with her,
15 I mean, did you give her your thoughts on whether she could be
16 successful at trial or how did that discussion go?

17 A. She is an extremely clever person. You probably
18 picked up on that in her testimony. I'm sure Tommy has
19 reflected on it. She weighs everything out and she should.
20 It's her life we are talking about so she should weigh it out
21 and she made a decision she thought she might come out better
22 by doing the plea than by trying it because she was facing one
23 to 25, you know, and if you're not right, you're wrong so...

24 Q. Okay. And I assume by that you also discussed
25 potential sentencing?

1 A. We did.

2 Q. Did she understand that?

3 A. She did.

4 Q. Okay. Whose decision was it to plead guilty?

5 A. It was her decision.

6 Q. Okay. Did you explain to her what you would be able
7 to do for her or attempt to do for her if you were to go to
8 trial?

9 A. Yes. I think I would have preferred, though I
10 didn't cram it down her throat, I think I would have preferred
11 to try the case because I thought it was an interesting case
12 to try. The only bad thing about trying it is that she's got
13 all this stuff that may come back to haunt her like, you know,
14 going to various bars. It's hard to explain how she ran smack
15 dab into the rear end of somebody in their lane in the proper,
16 you know, just -- just -- I don't know if she didn't see them
17 or what happened. It's hard to explain that. It was a
18 problem.

19 Q. What do you mean by interesting?

20 A. Well, it was a low reading. It was like a .12
21 something. She makes a good appearance. She's got the
22 boyfriend, you know, that was pulling on her. She's
23 sympathetic. I don't mean that in a bad way but I mean she's
24 nice. You wouldn't want to find her guilty if you didn't have
25 to. But if you're a juror and if you're looking at the

1 evidence, there's a strong likelihood that you're gonna
2 convict her. Once you convict her, then it's up to the Judge
3 to sentence you.

4 Q. Would you agree with me that that's what made this
5 case so tragic is both the victim and Ms. Mills seemed to be
6 sympathetic people?

7 A. It was. I don't know if you have read what we put
8 up in the sentencing but Judge Keesley could have easily, he
9 could have given her life if he wanted to based on what she
10 put up. She had a boat load of people who came to her
11 support. She had gotten pregnant during that time span which
12 is not bad. I mean, I would think it would be hard to put
13 somebody in jail who just had a small baby. She had a shot.
14 She had a shot at the sentencing except for maybe what I
15 thought was extraneous things that occurred.

16 Q. Well, and, you know, then again had she gone to
17 trial, she could have gotten --

18 A. She could have gotten 25.

19 Q. Which is over double what she did get?

20 A. Because then she would have gone through the deal
21 where the 911 tape was played, where the relatives, and I
22 don't necessarily mean the father of the dead person but maybe
23 brothers and people like that, they were extremely upset. The
24 father was not. She's correct with what she had said about
25 that. The father was not. He was a nice guy, you know, live

1 and let live. But there probably would have been enough going
2 on that somebody could have gotten excited at the conclusion
3 of the case and might have sentenced her a little bit more
4 based on that. The 911 tape would have been enough for that
5 probably.

6 Q. So what evidence did you see in this case that was
7 harmful to her defense?

8 A. Okay. So she hits a car dead smack dab in the rear
9 end. I neglected to say one thing that would have helped her
10 out a little bit. The person who died, the passenger who died
11 actually was violating the law at the time that she was hit.
12 She had taken off her seat belt and was reaching around behind
13 the driver and if that individual had had on a seat belt, she
14 might have survived. So that might have helped her in a trial
15 and, you know, if you've got somebody on the jury to say,
16 well, you know, if she hadn't done that, then maybe she would
17 be alive today. But you can't get around the fact that the
18 vehicle was hit in the rear. There was no excuse for hitting
19 the person in the rear. If the person who was in the car was
20 causing a disturbance, she should have pulled over. She had
21 been drinking. There was nothing about the other people
22 indicating they were driving inappropriately. They were in
23 their lane. They were driving slow but it was within the
24 speed limit. It was kind of what they were supposed to have
25 driven. So I guess on a scale she probably would have been

1 convicted unless you've got a sympathetic jury that would have
2 let her go.

3 Q. Okay. And so you believe there was enough
4 evidence?

5 A. There was. Oh, yeah. There was enough to get her,
6 to have her convicted.

7 Q. And you went over that with her?

8 A. I did.

9 Q. Okay. What kind of independent research did you do
10 in this case? Did you look at the blood issue?

11 A. I did. We talked about it. As a matter of fact, I
12 told her that I had a case similar to that where the vial had
13 disappeared or didn't get a chance to be checked. We talked
14 about everything that could come into play in the trial of the
15 case and what would help her and basically she made the call.
16 It was close. She could have tried it, you know. It's not
17 the worst case I have ever seen but, uhm, she might have
18 gotten more time, too.

19 Q. Okay. And those are the things that you and Ms.
20 Mills were taking into consideration?

21 A. Yes.

22 Q. At any point did you promise her that if she took a
23 deal, that she would get house arrest?

24 A. No. We did discuss those issues. She asked me how
25 much I thought she might get. I don't know if she remembers

1 that or not. She did. I said I don't know. It's one to 25.
2 I think based on similar cases that I see you might get five.
3 You might get credit, if the Judge is willing to give you
4 credit for the time in which you got that monitor on your leg
5 because she was under house arrest. We actually pulled the
6 statute, did some research on that and the record I don't
7 think reveals it but Judge Keesley asked both sides to do a
8 memorandum as to whether or not he could give her credit for
9 that and we did. The Solicitor and I both did memorandums and
10 Judge Keesley ruled that he could not give her credit for
11 that. This was after the trial.

12 Q. Okay. But you attempted to help her with that?

13 A. I did.

14 Q. Okay. What kind of conversations did you have with
15 her about the impact of victim statements might have at
16 sentencing?

17 A. Uhm, well, obviously we are very sympathetic. In
18 today's world when it comes to sentencing everybody is
19 influenced by victim statements. It's become more over the
20 last few years than it used to be. I guess everybody is
21 afraid not to give the victim -- Well, we have a victims'
22 rights. We have a victims' bill that requires people to
23 notify them when we have a hearing so it's become, it's very
24 important, the victims' rights are just like, I guess, a lot
25 more important than they used to be.

1 Q. Okay. Did she understand when she was pleading, Ms.
2 Mills understand when she was pleading guilty that she was
3 pleading guilty to the crime of which she was charged?

4 A. Yes. There was no question about that.

5 Q. She didn't think she was pleading to reckless
6 driving or something like that?

7 A. Oh, no. Oh, no.

8 Q. And speaking of impact at sentencing, she also had
9 her own mitigating people speaking?

10 A. She did. She had a great group of people who came
11 to her support.

12 Q. Let's talk I guess --

13 A. I think there were like 16 or 17 affidavits,
14 something like that. There were a bunch besides the people
15 that showed up.

16 Q. Let's talk about the deposition that was taken in
17 the civil case. Were you aware that that was going on or did
18 that happen before you got --

19 A. That happened before I became involved.

20 Q. What did you think the impact of that deposition was
21 in her criminal case?

22 A. The impact of that was not necessarily a bunch of
23 additional information but once she gives that sworn testimony
24 and then she's already got two other statements that she's
25 allegedly given, one at the scene, one at the hospital, then

1 when you give those, give that sworn testimony, see, there's
2 something fancy to a jury when you say that you have given,
3 gave sworn testimony as opposed to did you understand that you
4 could talk or not talk. Well, just makes it like the gospel.
5 So she has basically given them the facts that they need which
6 they should believe are true based on her sworn testimony. It
7 was enough to get her convicted. I think sometimes people
8 understand that when you make a statement out on the side of
9 the road, you might say something because you're nervous,
10 you're upset, you got a police officer standing there. But
11 when you have the time to recollect and you're sitting in your
12 own chair and you have a chance to think about it, then those
13 statements are worth, and they're sworn, who can argue about
14 that? And you got your own lawyer there. That's a problem.

15 Q. Did the testimony she gave in that deposition
16 conflict with her defense of how much she had been drinking?

17 A. It didn't really. It wasn't that it conflicted with
18 what she had already said on an occasion but it gave it more
19 credence. It made it more hard to overcome.

20 Q. But she never denied that she had done some drinking
21 that night?

22 A. No. She didn't deny it.

23 Q. Did anything she gave in her, any testimony she gave
24 during the deposition negate the fact that her blood alcohol
25 test showed that she was over the limit?

1 A. No.

2 Q. Okay. And in discussing, I mean, the merits of the
3 case with her, do you think the State could have convicted her
4 without the deposition?

5 A. Yes.

6 Q. Okay.

7 A. But they had that.

8 Q. Okay. Did the State offer any plea offers in this
9 case?

10 A. No.

11 Q. Had they extended any plea offers before the
12 deposition happened that you are aware of?

13 A. Not that I'm aware of.

14 Q. Do you know if they requested to have an independent
15 blood sample taken?

16 A. I don't know that she ever told me she did that.

17 Q. What about the videos in this case. What kind of
18 video evidence did the State have?

19 A. Well, I have heard about these videos that have been
20 talked about at the bar and stuff like that. I'm not sure
21 that was turned over. I don't recall that being -- And I
22 looked in my file today and I saw audios, 911 calls. I saw
23 pictures of the body maybe. Maybe that's what it was. I just
24 don't recall that.

25 Q. Did you have any evidence that you did not review

1 with Ms. Mills?

2 A. I reviewed all the evidence that I had with her.

3 Q. If she had decided to go the trial, would you have
4 tried to suppress the videos?

5 A. Yes.

6 Q. And, you know, I guess leading up to this plea
7 hearing I know that the plea Judge explained her trial rights
8 to her but did you go over those, too?

9 A. I did.

10 Q. How much preparation did you do with Ms. Mills?

11 A. We did a lot. It was, we probably spent more time
12 on whether or not we were going to plea than we did on
13 anything else because her life had changed, you know. She had
14 a baby. She was more concerned - I shouldn't say more
15 concerned but she was extremely concerned about who was gonna
16 take care of that child so she wanted to limit the amount of
17 time that she had to serve. She didn't want to take a chance
18 of getting 25 years, that's for sure, and I'm sure that that
19 might have been driving the train on whether or not she took
20 the risk of a trial or a plea. I say that. What do I know.
21 But I'm just saying it seemed that way to me.

22 Q. But she was a new mother?

23 A. She was a new mother which I would think would help
24 her in regards to sentencing.

25 Q. Maybe it did.

1 A. Maybe it did.

2 MR. SMITH: No more questions, Your Honor. Thank
3 you.

4 THE COURT: Cross examination.

5 MR. THOMAS: Please the Court.

6 CROSS EXAMINATION

7 BY MR. THOMAS:

8 Q. It's always nice to see someone who's practiced law
9 longer than me.

10 A. Thank you, Tommy. I feel much better.

11 Q. When you get something and it says from the senior
12 Bar. But anyway. Mr. Williams, good to see you. As an
13 attorney it's difficult but I think I only have two questions.

14 A. Okay.

15 Q. One is, would you ever advise your criminal client
16 to take a deposition?

17 A. No.

18 Q. Okay. And did this deposition help her?

19 A. No.

20 Q. Did it hurt her?

21 A. Yes.

22 MR. THOMAS: No further questions, Your Honor.

23 THE COURT: All right.

24 THE WITNESS: Judge, may I ask a question of the
25 Court since I'm an officer of the Court?

1 THE COURT: Do you have any objection?

2 MR. THOMAS: I have no objection, Your Honor.

3 THE COURT: All right.

4 THE WITNESS: There is an issue which has been
5 brought forward and it has not been addressed by either
6 one of the two people handling this case and I
7 represented her before and I have those feelings that I
8 still want my client, and she's still a client, if the
9 Court understands what I'm saying, that she should, those
10 issues I think the Court should consider but I'm just a
11 witness. I don't represent the plaintiff - or the State
12 and I don't represent the defendant right now so I guess
13 that's my question, Your Honor.

14 THE COURT: I didn't understand your question.

15 THE WITNESS: Okay. The question is if I as a
16 witness know something that I think would be important
17 in regards to whether or not she should have pled or not
18 pled or tried or not tried or if I thought there might
19 have influenced things, as a court officer do I have that
20 obligation to say that? I'm just a witness right now. I
21 think it's important to be brought before the Court.

22 THE COURT: Well, you know, you can't just start
23 talking.

24 THE WITNESS: Saying things. I understand that.
25 That's why I asked the question.

1 THE COURT: So that's why you can ask another
2 question.

3 MR. SMITH: I can ask another question, Your Honor,
4 if it please the Court.

5 THE COURT: I think you can.

6 BY MR. THOMAS:

7 Q. Mr. Williams, is there anything else of importance
8 that you feel should be brought to the attention of the
9 Court?

10 A. There is.

11 Q. Could you explain please?

12 A. The procedure of her pleading and when she pled I
13 believe might have been, might have been skimmed over because
14 she entered her plea because there was, it was on the trial
15 docket. She wanted to resolve the case. She didn't want -
16 and she also had all of her witnesses that she wanted to be
17 there. When it became time to be sentenced, uhm, I don't
18 think, I don't think it was as it has been stated. Uhm, we
19 had two Judges that week. We had Judge Keesley and we had a
20 plea Judge. Uhm, I was prepared to do her plea that
21 particular week and she was, too.

22 We were told by the State that she could not enter
23 her plea before the plea Judge because Judge Keesley, that she
24 was on the trial roster at some point in time and Judge
25 Keesley was the trial Judge that week so she had to be

1 sentenced by the trial Judge that week. I don't know of any
2 reason why that's true. I have an email which was sent by
3 Judge Keesley's law clerk to the Solicitor by Clark McCants, I
4 think that was his name, and he asked Mr. Wagoner is there any
5 reason why the other plea Judge couldn't do it because that
6 week Judge Keesley was being reconsidered as a Circuit Court
7 Judge. I think he had to go maybe - he had some other
8 obligations to maintain his status as a Circuit Court Judge.
9 And the response from Todd to the Judge was that -- I can read
10 it if Your Honor wants me to. I actually have the email with
11 me.

12 Q. Yeah. If you would like. Please.

13 A. Because I found it while I was sitting over on the
14 bench. And I was looking at that and I said hmm. Does it
15 need to be made an exhibit?

16 Q. Can you verify it. Is that the email that you
17 received from the Solicitor?

18 A. It is.

19 MR. THOMAS: Your Honor, we would move that as
20 applicant's 2 at this time.

21 BY THE WITNESS:

22 A. And I just found this.

23 MR. SMITH: If I may.

24 THE WITNESS: (Proffering.)

25 MR. SMITH: I have no objection but I would like to

1 make a copy, if I may. You want one?

2 MR. THOMAS: Yes, please.

3 THE COURT: That will be admitted without objection.

4 (Whereupon, Applicant's Exhibit #2 marked for
5 identification and entered.)

6 BY THE WITNESS:

7 A. Uhm, you want me to publish it?

8 BY MR. THOMAS:

9 Q. Yes. If you would publish it please.

10 A. On November 8, 2017 at 12:07 p.m., Keesley, William
11 P. law clerk Clark McCants wrote, good morning, addressing
12 Mr. Williams. It says Mr. Williams: Could you please tell me
13 your position on holding this hearing this week - next week.
14 You indicated on a prior email that you would like the hearing
15 postponed until a later date yet Mr. Wagoner's email indicates
16 you were fine with having it done later in the week. Mr.
17 Wagoner, Judge Keesley -- This is to Judge Keesley. Judge
18 Keesley would like to know why Judge Cooper cannot hear this.
19 Thank you, Clark.

20 And then Mr. Wagoner responds to Judge Keesley.
21 After speaking with Rick, we feel that with this case being
22 off the trial list the trial Judge should be the sentencing --
23 I'm sorry. Being off the trial list the trial Judge should be
24 the sentencing Judge. And then he goes on to say that it's my
25 understanding that Theo may have Magistrate trial Thursday

1 Q. In your professional opinion as her defense attorney
2 would it have been your belief that the State would have
3 considered, that they would have gotten a higher sentence from
4 Judge Keesley?

5 A. You will have to ask them why they did that.

6 Q. Okay. But you were concerned about it?

7 A. Sure. I mean, it was turning into some sort of,
8 they had MADD there. They had Rick Hall there who is doing
9 this presentation.

10 Q. And he was the attorney from the deposition?

11 A. He was. He was. She had entered her plea and she's
12 either guilty -- Well, she's guilty so the question is what is
13 she gonna be sentenced.

14 Q. The question I guess that begs to be asked is from
15 that, all of that was done in a, with a purpose to enhance the
16 sentence?

17 A. I don't know why else you would do that but I can't
18 speak to that.

19 Q. Right. Right. I understand.

20 A. You will have to ask the individuals who did it.

21 MR. THOMAS: I have no further questions, Your
22 Honor. I want to make sure that that gets marked. I
23 apologize. This would be applicant's 2.

24 THE WITNESS: Of course, I can always, being a
25 lawyer I can always turn that around the other way. I

1 p.m. so I'm willing to do the matter first thing Thursday
2 morning.

3 And I heard something in the testimony about it
4 being Monday. So I believe the sentencing was done on perhaps
5 Thursday. But that was, that was underlying the whole
6 situation in regards to why it was sent, who had to hear it,
7 things like that. I know of no rule that says that and
8 obviously Judge Keesley knew of no rule that said that
9 either.

10 Q. What would have been the benefit of having Judge
11 Keesley hear it for sentencing versus Judge Cooper?

12 A. I don't know. You would have to ask Mr. Wagoner
13 that. I did note that there was one other thing that was left
14 out. Because it's my recollection they actually brought the
15 television station to the courtroom and if I'm wrong on that,
16 I don't see it in the record but I thought TV was there.

17 Q. Right.

18 A. And this is not in the record either. I hate to say
19 things that are not in the record. At the time of the
20 Solicitor after he concluded his presentation, he attempted to
21 introduce the 911 tape and asked Judge Keesley to listen to it
22 and I raised such a stink in the courtroom that he then did
23 not ask Judge Keesley to listen to it. And I felt like that
24 was just like carrying coals to Newcastle. So all of that
25 stuff was --

1 can say, well, it's the right of the public to know about
2 wrecks and they're entitled to have TV there to show it.
3 The victims have a right to have a civil lawyer there to
4 present their side of it.

5 BY MR. THOMAS:

6 Q. Did you express your concern at that time to
7 someone?

8 A. When the 911 tape was going in, it doesn't show that
9 I expressed it but I did and it was not, Judge Keesley did not
10 hear it. And that doesn't mean that I don't think that Judge
11 Keesley is the most fairest Judge in the world because anybody
12 who's ever practiced with Judge Keesley knows that but it
13 certainly did look like somebody was going overboard but maybe
14 they were just representing the victim and the State.

15 MR. THOMAS: Thank you, Your Honor.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. SMITH:

19 Q. Judge Keesley didn't hear the call though, right?

20 A. He what?

21 Q. He did not hear the call?

22 A. He did not.

23 MR. SMITH: No further questions, Your Honor.

24 THE COURT: Thank you, Mr. Williams. You may step
25 down.

1 THE WITNESS: Thank you, Your Honor.

2 MR. THOMAS: Your Honor, if it please the Court, my
3 client advises me she needs to take a restroom break.

4 THE COURT: All right. We'll take a short five
5 minute recess.

6 (Short break.)

7 THE COURT: Keep your seats. It's still the State's
8 case.

9 MR. SMITH: Your Honor, that is the State's case.

10 THE COURT: The State rests.

11 MR. THOMAS: Your Honor, please the Court, we have
12 just one rebuttal witness and that's Destiny Mills, Your
13 Honor.

14 THE COURT: Okay.

15 MR. SMITH: Your Honor, I guess maybe this is the --

16 MR. THOMAS: He has a motion as well, Your Honor.

17 MR. SMITH: Yes. At the end I'm gonna move to leave
18 the record reopen just in light of the issue that came up
19 today and it's my understanding --

20 MR. THOMAS: I don't have any objection, Your Honor,
21 as far as if he wants to do that, I think he wants to
22 have Mr. Wagoner who he can call I think but
23 unfortunately he's left for the day so I don't know, I
24 don't have any problem leaving the record open.

25 MR. SMITH: I would like it just left open to the

1 specific issue of misconduct related to the logistics of
2 sentencing and those issues that were brought up today
3 that weren't pled.

4 THE COURT: I'm confused. Are we going to go ahead
5 with your rebuttal?

6 MR. THOMAS: Yes, sir. I think he just wanted to
7 preserve his motion in regards to leaving the record open
8 before he rests, Your Honor.

9 THE COURT: Okay. I see. We'll go ahead and do
10 that now. Tell me officially what it is you want to
11 do.

12 MR. SMITH: Your Honor, I would like to leave the
13 record open as to the issues that were raised today
14 during testimony that were not pled and specifically to
15 whether there was prosecutorial misconduct related to
16 having a bifurcated plea hearing and sentencing hearing
17 and whether it was misconduct for the State to try to
18 play the 911 call to the sentencing court and I guess
19 maybe the issue of trying to do that to have other people
20 present at the hearing that might not have been if, for
21 example, media or MADD, and just the Lexington County
22 Solicitor's Office motivation in doing that and whether
23 that prejudiced the applicant. That's kind of all one
24 issue but I just wanted to state all the facets of it and
25 it's just limited to that. I don't want to retry any

1 other issue of the case. Since that was raised today and
2 my witness had to leave to go be in court elsewhere, I
3 think that's a fair way to handle it.

4 THE COURT: All right. Mr. Thomas, what do you say?

5 MR. THOMAS: Your Honor, I don't particularly have
6 any objection to it. I know that Mr. Williams has said
7 on a couple of occasions you would have to ask
8 Mr. Wagoner that. Mr. Wagoner is not here. He was here
9 earlier. I don't have any particular problem with the
10 Court doing that on those issues only. I think we can
11 settle the issue of the media and all that stuff. They
12 certainly had a right to be there. I wouldn't think
13 there would be any kind of misconduct on the State's
14 behalf by having the media there. Whether or not it was
15 an orchestrated thing I guess could flow into the other
16 questions about unofficially Judge shopping. It's up to
17 the Court, Your Honor.

18 THE COURT: Well, I mean, if there's no objection,
19 we'll do it. But let me ask you this: Is there any
20 possibility that our missing witness is down the hall
21 somewhere?

22 MR. SMITH: I believe he's at the Sheriff's
23 Department and it was my understanding from my
24 conversation with him this morning that he had to leave
25 at 11:00 and would not be available for the rest of the

1 day but that was my understanding at the time. That's
2 why I asked to have him go earlier.

3 MR. THOMAS: Your Honor, you want to do it by
4 deposition? That way we could, maybe that would be more
5 to the benefit of the Court. I would be glad to get with
6 the Solicitor, we'll get a court reporter. I think it's
7 only gonna be a few questions and then we can just submit
8 it to the Court.

9 THE COURT: Well, only if the two of you agree on
10 that.

11 MR. THOMAS: You want to do it that way?

12 THE COURT: You have to decide now.

13 MR. SMITH: Your Honor, it probably would definitely
14 be more expensive to do it that way. I don't have a
15 specific objection to doing it that way if that's what
16 the Court would prefer but I would also point out if we
17 did it that way, would the Court still want some kind of
18 argument on that testimony at that point?

19 THE COURT: Yeah.

20 MR. SMITH: So it may be logistically easier to not
21 do it by deposition but I'll leave it to the Court's
22 discretion. I'll do it either way.

23 THE COURT: So we're gonna have -- You're not gonna
24 leave this up to me. It's up to the two of you if y'all
25 want to agree to do that.

1 MR. THOMAS: When are you gonna be back in Lexington
2 County, Your Honor?

3 THE COURT: I'm not sure I'm scheduled to come back
4 to Lexington County.

5 MR. THOMAS: That was my concern and I was just
6 trying to -- If it was more convenient for the Court to
7 do it by deposition?

8 THE COURT: You can come to Edisto. We have court
9 there.

10 MR. THOMAS: Yes, sir.

11 THE COURT: I'm trying to see where I am next week.
12 Well, we can go to Allendale next week.

13 MR. SMITH: Your Honor, if the Court does not want
14 argument on those issues, then I would be happy to do it
15 by deposition if that's easier or if you wanted argument,
16 we can submit briefs.

17 MR. THOMAS: My position, Your Honor, of course, we
18 have a Judge, we don't have a jury. I don't normally do
19 a closing argument because I think that the Court has
20 heard all of the issues and all of the facts and it's
21 just kind of redundancy to do oral argument but I'll be
22 glad to do that if the Court wishes.

23 THE COURT: Well, let me ask you this: Does the
24 State know for certain that the State would, in fact,
25 wish to present additional evidence?

1 MR. SMITH: If that's what it takes, Your Honor,
2 I'll be happy to do that.

3 THE COURT: Give me one more second. Let me look
4 and see if I can find something else. I'm doing post
5 conviction relief August the 19th in Chesterfield. The
6 rest of the time I'm spending most of my time in Beaufort
7 and Allendale.

8 MR. THOMAS: Chesterfield is fine with me.

9 THE COURT: August 19th is the one I was just
10 speaking about a moment ago.

11 MR. SMITH: On that one specific day or the whole
12 week.

13 THE COURT: No. The whole week?

14 MR. SMITH: That's agreeable to the State, Your
15 Honor.

16 THE COURT: They've already published the roster.
17 In October I'm in Beaufort for three weeks. I'm doing
18 PCR's in Beaufort the week of November 4th.

19 MR. SMITH: That would also be agreeable to the
20 State.

21 THE COURT: Here's what we're gonna do. We're gonna
22 reconvene this after the two of y'all discuss when and
23 where. Y'all let me know something in the next ten days
24 or so about where you can do it. In the mean time you're
25 gonna go ahead and present your rebuttal testimony.

1 MR. SMITH: In response to the evidence that was
2 raised here today, yes, Your Honor.

3 THE COURT: Well --

4 MR. SMITH: Because I would like to point out they
5 were issues that were not pled.

6 THE COURT: I will be doing PCR's in the Third
7 Circuit on July 29th.

8 MR. THOMAS: Where is the Third Circuit, Your Honor?

9 THE COURT: Darlington.

10 MR. SMITH: I would be agreeable to that.

11 MR. THOMAS: That's fine, Your Honor. I'll be glad
12 to do that.

13 MR. SMITH: July 29th.

14 THE COURT: You'll have to figure it out with
15 somebody else.

16 MR. THOMAS: Mr. Wagoner will have to come.

17 MR. SMITH: We'll have to do that but as far as the
18 State is concerned that's fine but I guess I would need
19 to consult with him to make sure he would be available
20 that day.

21 THE COURT: Talk to him, see if he's available, then
22 figure out what day, then talk to whoever else has got
23 stuff scheduled that week to see what they've got, if
24 they've got any place to put on our hearing, 30, 45
25 minute hearing.

1 MR. THOMAS: Yes, Your Honor.

2 MR. SMITH: Thank you, Judge.

3 THE COURT: All right.

4 MR. THOMAS: Please the Court.

5 THE COURT: The witness is still under oath.

6 Thereupon,

7 DESTINY HEATHER MILLS

8 after having been previously first duly sworn, testified

9 further as follows,

10 REBUTTAL EXAMINATION

11 BY MR. THOMAS:

12 Q. Destiny, you understand that you are still under
13 oath to tell the truth?

14 A. Yes.

15 Q. You intend to tell the truth?

16 A. Yes.

17 Q. All right. The question was presented of the Public
18 Defender representation as to whether or not he knew about the
19 deposition?

20 A. Correct.

21 Q. Did you tell him about the deposition?

22 A. I told him initially about the deposition when I got
23 served the papers and I remember that's when he said about he
24 was the criminal prosecutor. He can't be there because it was
25 a civil lawsuit and I went ahead and did the deposition

1 because from that advice saying he couldn't be there I hired a
2 civil attorney to get their advice.

3 Q. Okay. But you were actually, he knew that you had
4 been served with notice of deposition?

5 A. He knew. Yes. He knew that I was served the
6 papers.

7 MR. THOMAS: No further questions, Your Honor.

8 MR. SMITH: No questions, Your Honor.

9 THE COURT: Thank you, ma'am. You may step down.
10 Anything further?

11 MR. THOMAS: Nothing further from the applicant,
12 Your Honor.

13 THE COURT: From the State?

14 MR. SMITH: Nothing, Your Honor. I assume at that
15 time when we have this hearing you will want some kind of
16 closing?

17 THE COURT: Closing or -- Yeah. Let's go ahead and
18 prepare closing arguments.

19 MR. THOMAS: I'll be glad to, Your Honor.

20 THE COURT: We'll do that.

21 MR. THOMAS: Yes, sir.

22 THE COURT: Other than that, court's adjourned.

23 MR. THOMAS: Thank you, Your Honor.

24 MR. SMITH: Thank you, Your Honor.

25 WHEREUPON, THE HEARING WAS CONCLUDED.

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 28th day of June, 2019.

11 I FURTHER CERTIFY that the forgoing 104 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 29th day of August, 2019.

17

18

By:s/Steven E. LeBlanc

19

20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.

21

22

23

24

25

The first of these is the fact that the
 government has been unable to secure the
 necessary funds to carry out its
 policy of non-interference in the
 internal affairs of the country.

This is due to the fact that the
 government has been unable to secure the
 necessary funds to carry out its
 policy of non-interference in the
 internal affairs of the country.

The second of these is the fact that

the government has been unable to

secure the necessary funds to

carry out its policy of

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Allendale
3

4 Case No.: 2018CP3201575

5 Destiny H. Mills,

6 Plaintiff(s),

7 vs.

Transcript of Record

8 State of South Carolina,

9 Defendant(s).

10

11

12

13

14

15 September 9, 2019

16 Allendale, South Carolina

17

18

19

20

21 BEFORE:

22 The Honorable Brooks Goldsmith

23

24

25

1

APPEARANCES

2

3

REPRESENTING PLAINTIFF:

4

Tommy A. Thomas, Esquire

5

7588 Woodrow Street

6

Post Office Box 88

7

Irmo, South Carolina 29063

8

9

10

REPRESENTING THE STATE:

11

12

Taylor Zane Smith, Esquire

13

PO Box 11549

14

Columbia, SC 29211-1549

15

tsmith@scag.gov

16

803-734-3970

17

18

19

20

21

22

23

24

25

1

PROCEEDINGS

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE CLERK: Okay. Thank you. Mills versus the State of South Carolina, post conviction relief. That was initially scheduled to be heard and had testimony.

And if the attorneys would, I would like for them to each tell me where they believe that we are in this case and what remains to be done. Let's just go ahead and let me hear from the Attorney General first.

MR. SMITH: Good morning, Your Honor. In this case, I believe we have substantially completed all testimony in the case. And just to summarize, it was a felony DUI resulting in death. Ms. Mills pled guilty, and we heard testimony on all the issues. And at hearing, Mr. Theo Williams sort of raised another issue on something akin to roster manipulation or the bifurcation between sentencing and the plea hearing. And in light of additional testimony on that, you know, I asked that the Court would hold the record open so we could address it again, because at the time, the Solicitor had already been excused from subpoena.

And Mr. Thomas agreed to that. You know, the case, it was raised on the feeling it would be good to flesh out all the issues. So that's where we are at today.

I have Mr. Williams and Mr. Wagoner here, and I

1 was anticipating calling Mr. Wagoner, the Solicitor in
2 the case as a witness, just to briefly address the
3 issue. And then if we needed to follow up with
4 Mr. Williams, he is here as well. And Your Honor also
5 requested that we give a short closing on the case
6 today.

7 THE COURT: Right.

8 MR. SMITH: And I believe that covers it. And I
9 will add that I also ordered the transcript from that
10 hearing and I provided it to Mr. Thomas, he included it
11 in the packet for Your Honor today, so that you could
12 review it in its entirety, if that's necessary. But
13 that's our position right now.

14 THE COURT: I have the packet, including the
15 transcript of June 28th.

16 Mr. Thomas, be glad to hear from you.

17 MR. THOMAS: Yes, Your Honor. Good morning.

18 I think that the Attorney General is right. My
19 understanding, what we are here for today is basically
20 a rebuttal witness to Mr. Williams' testimony. And I
21 think the issue is pretty straightforward in regards to
22 whether or not the more common term, "judge shopping",
23 in regards to this plea and sentencing. I think that
24 is why we are here.

25 Your Honor, it was my understanding that we were

1 here only on this issue. In regards to closing, I
2 normally do not do a closing. If the Attorney General
3 is prepared to do one, I really am not, because I
4 didn't anticipate that. I would like to submit
5 something in writing, just to summarize the issues,
6 Your Honor.

7 And also, Your Honor, I think since there is some
8 time difference between the initial trial and this
9 trial, I know that the Attorney General has obtained a
10 transcript of the post conviction, and we would also
11 just ask the Court, if you please, to allow me and I
12 will go ahead and review that transcript. We just
13 received it Friday, I believe.

14 THE COURT: Well, I'm looking at what we -- how we
15 concluded the hearing.

16 MR. THOMAS: Yes, sir.

17 THE COURT: It does sound like I -- it does sound
18 like we anticipated having closing arguments, but --
19 but I'll grant your request to respond to it in
20 writing.

21 MR. THOMAS: Thank you. Thank you, Your Honor.
22 It won't be lengthy. I would like to look back and.

23 THE COURT: To submit it in writing.

24 MR. THOMAS: Right. It won't be lengthy, Your
25 Honor. I'd just like to go back and review so they can

1 summarize the issues to the Court, as far as our
2 position on it.

3 THE COURT: All right.

4 MR. THOMAS: Thank you.

5 THE COURT: Then we may proceed. Who are you
6 calling as a witness?

7 MR. SMITH: Your Honor, I call the Solicitor,
8 Mr. Todd Wagoner.

9 Thereupon,

10 TODD WAGONER

11 was called as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 MR. SMITH: May I approach, Your Honor?

14 THE COURT: Sure.

15 And for the record, state your full name.

16 THE WITNESS: Todd, last name is Wagoner. That's
17 W-A-G-O-N-E-R.

18 DIRECT EXAMINATION

19 BY MR. SMITH:

20 Q Mr. Wagoner, I'm going to show you a document. If
21 you would just briefly describe what it is and pay attention
22 to the dates and recipients.

23 A It appears to be an email exchange, one-page
24 document, with an email from Judge William Keisley's law
25 clerk at the time, from November 8th of 2017. Also my

DIRECT EXAMINATION OF TODD WAGONER BY MR. SMITH

1 response to that email.

2 In that email, the law clerk asked why Judge
3 Keisley wanted to know why Judge Cooper could not hear the
4 case, the sentencing. My response was that after speaking
5 with my solicitor, that because it was off the trial list,
6 that the trial judge should hear the sentencing, should be
7 the sentencing judge, and there was some other discussions
8 about the scheduling, the actual time that week for the
9 sentencing.

10 Q Okay. Is this the end of an email exchange or the
11 beginning of one?

12 A I believe that's the end of an email exchange.

13 Q Okay. Can you briefly provide us context about
14 the exchange leading up to that point.

15 A The exchange leading up to that was -- again, I
16 don't know the entirety of that email chain. There had been
17 discussions between me and defense counsel, Mr. Williams,
18 prior to -- well, after the case was placed on the trial
19 docket. I believe the trial notice was sent September 29th
20 of 2017, so it was clear that she was noticed for trial.

21 She did plead guilty, the term prior to the
22 term that she would have been on the trial docket. The
23 reason why that was done was just to lock it in and just
24 kind of save the victims and the State, kind of the hang
25 stand, the preparation of being ready to go first thing that

DIRECT EXAMINATION OF TODD WAGONER BY MR. SMITH

1 particular week.

2 Q What do you mean, by, "lock it in"?

3 A Lock it in, where she actually takes
4 responsibility, pleads guilty. The Judge takes the plea to
5 first sentencing for the trial judge to actually sentence.

6 Q Okay. Did you have any concern that she might
7 decide not to plead guilty if you were to delay until the
8 next term?

9 A Again, any time someone asks for a trial, and then
10 later the defense counsel says well, they want to take
11 responsibility and plead guilty, especially on something as
12 serious as a felony DUI, I try to get it locked in, if you
13 will, as soon as possible.

14 Q So that's standard practice?

15 A Yes.

16 Q Okay. And in this email, and I'll just ask the
17 Court to take notice that this has been admitted as
18 Applicant's Exhibit 2. But in this email exchange, does the
19 Judge's law clerk ask a question about this?

20 A There was no follow-up questions to that.

21 Q Okay. I mean, in specifically regards to why you
22 were asking Judge Keisley to --

23 A Yeah. Again, the law clerk first addresses
24 Mr. Williams talking about scheduling the hearing, and then
25 addressing me. Then I'll go ahead and quote it, "Judge

DIRECT EXAMINATION OF TODD WAGONER BY MR. SMITH

1 Keisley would like to know why Judge Cooper cannot hear
2 this."

3 Q Okay. Does your office have any standard policy
4 on sentencing and the trial judge?

5 A Again, once something is on the trial docket, the
6 policy is that the trial judge is supposed to take all the
7 pleas off of it. That is subject to the chief
8 administrative judge basically ordering us. You know, go
9 downstairs and go to the plea court for this.

10 Q Okay. So was the deviation deferring sentencing
11 in this case, or in having Ms. Mills plea earlier?

12 A The deviation was the pleaing earlier.

13 Q Okay. And that's something that you would do in a
14 situation like this?

15 A Again, I talked with Mr. Williams, kind of
16 suggesting it. Again, to lock it down. I think that could
17 have been used as mitigation as well.

18 Q Okay.

19 A Because, again, the Defendant is taking
20 responsibility prior to their trial, even though they're
21 noticed for trial. Again, it saves the victim's -- you
22 know, the uncertainty. You know, the weeks and the weekend
23 before, and if this is going to be a trial or not.

24 Q Okay. And I guess, let me just cut right to it,
25 did you make this decision out of any specific desire to

DIRECT EXAMINATION OF TODD WAGONER BY MR. SMITH

1 have Ms. Mills sentenced by a judge who was a little
2 stricter maybe?

3 A No.

4 MR. SMITH: Okay. Thank you, Your Honor. No more
5 questions.

6 THE COURT: Mr. Thomas.

7 MR. THOMAS: Yes, sir.

8 CROSS EXAMINATION

9 BY MR. THOMAS:

10 Q Mr. Wagoner, let me make sure that I have kind of
11 the procedure correct. So, in other words, in Lexington
12 County, you have a plea roster and a trial roster?

13 A Typically we have two terms of Court in a
14 particular week. Typically, we do have a trial judge and a
15 plea judge.

16 Q Okay. And you would have, of course, cases set
17 for trial on the trial list, and the pleas would just be on
18 the other list.

19 A Correct. We notice -- like, for example, if -- I
20 don't know, a felony DUI, great bodily injury says they want
21 to plead guilty without ever asking for a trial, then, yes,
22 it would be scheduled for the plea docket.

23 Q In front of a plea judge?

24 A Correct. Whatever that may be. Because
25 typically, I just go by dates. So if I go out two months, I

CROSS EXAMINATION OF TODD WAGONER BY MR. THOMAS

1 don't know who the plea judge is, I don't know who the trial
2 judge is. That's later, usually later decided.

3 Q Say if I show up and my case is on the trial
4 docket, busy days, and I say, Todd, you know, we talked
5 about it, I will accept your offer for a plea, and we'd like
6 to do a plea, wouldn't it be customary to move me over to
7 the plea judge?

8 A If it's on the trial docket, no. And then
9 typically, once it's on the trial docket, there are no
10 offers. In this particular case, the only offer, if you
11 will, was that I would remain silent. That's the sentence.

12 Q But doesn't that add a lot of congestion to your
13 trial docket if you've got these trials -- I thought the
14 plea judge was -- the purpose of that was to kind of speed
15 things up and move things off of that trial docket.

16 A And, again, we do have plea dockets as well. So,
17 I mean, that's the policy. And honestly, I believe that the
18 Solicitor made that policy to avoid any sort of judge
19 shopping, if you will.

20 Q Okay. So it's my understanding that anything,
21 even though it's a plea, it's going to stay in the trial?

22 A Again, I -- I was going forward and talking to
23 witnesses, prepping for trial, and then I only found out it
24 was a plea -- I mean, it was the two weeks before the term
25 before, and so that's why I met with the Solicitor and

CROSS EXAMINATION OF TODD WAGONER BY MR. THOMAS

1 called Mr. Williams to say, why don't we just take the plea
2 now, lock it in, and then we'll sentence during the week
3 since it was on the trial list.

4 Q All right. Now, going back to the Applicant's 2,
5 which is this email, Judge Keisley is inquiring about Judge
6 Cooper.

7 A Correct.

8 Q So, I guess, Judge Cooper was scheduled to do the
9 plea?

10 A That's -- yes. I believe that would be correct.

11 Q Okay. So you had the trial judge, being Judge
12 Keisley --

13 A Uh-huh. (Indicating affirmatively.)

14 Q -- and plea judge, being Judge Cooper?

15 A Sure.

16 Q Okay. And you said that you knew that this was a
17 plea, you said a short time. But you said a couple of weeks
18 prior to --

19 A It had been a trial until a couple weeks. And,
20 again, it's on the published trial docket, and that's what
21 we go by.

22 Q And I apologize, I don't mean to be argumentative.

23 A Sure.

24 Q This doesn't make much sense to me, when you know
25 the case is going to plea, why -- I mean, you got both

CROSS EXAMINATION OF TODD WAGONER BY MR. THOMAS

1 judges there.

2 A And it may be, you know, again, to avoid either
3 side judge shopping.

4 Q Yeah, but doesn't that produce -- doesn't that
5 produce a reverse kind of judge shopping for the Solicitor?
6 In other words, we have it on this trial docket, we believe
7 that this judge may be a little harsher than Judge Cooper on
8 this kind of case, and that's why we are leaving it there.

9 A I'm not the one that chooses who is the trial
10 judge or who is the plea judge. We simply, once my trial
11 notice is sent out, that's the judge that is going to hear
12 it.

13 Q And that's the Solicitor's call?

14 A Correct. There is a caveat that certain times the
15 chief administrative judge, you know, on a Monday, when you
16 have a whole bunch of -- like as you say, off the trial list
17 may order us to go in front of the plea judge. But
18 typically, we take the trialess pleas in front of the trial
19 judge.

20 Q You said something about the chief administrative
21 judge. Now, the chief administrative judge's role in this
22 type of case would be what?

23 A Typically, after -- I can't remember the case that
24 is, typically they are the ones that choose who the plea and
25 the trial judges are.

CROSS EXAMINATION OF TODD WAGONER BY MR. THOMAS

1 Q Okay. They choose who is going to be what?

2 A That is my understanding. I think they do have to
3 input with the Public Defender's and also the Solicitor's
4 Office.

5 Q All right. I misunderstood, because it said
6 something about consulting the administrative court judge.
7 But you didn't say anything about consulting the
8 administrative court judge in this case.

9 A I honestly, in 2017, I don't know who the chief
10 administrative judge was.

11 Q But -- because you didn't consult the judge in
12 this case about moving the case off the trial roster to the
13 plea trial --

14 A Because we were ready to roll. I mean, again, it
15 looked like, based on all the schedules that Judge Keisley,
16 which would have been the trial judge, had availability to
17 take it.

18 Because normally we would have done it on
19 Monday, just again, since it's on the trial list. It's my
20 understanding that Mr. Williams wanted later in the week. I
21 think that was partly to get some mitigation people in.

22 We had to do it that week because the -- I
23 think it was the brothers of the deceased were coming in
24 from Florida or something like that.

25 Q How many days did you have to try something like

CROSS EXAMINATION OF TODD WAGONER BY MR. THOMAS

1 this?

2 A Again, we would have been first. So I don't
3 believe it would have saved the entire week, probably three
4 or four.

5 Q Okay. All right. And by moving it to -- by
6 moving it to a plea, you were able to open up that period,
7 that lock of time?

8 A For another trial, yes.

9 Q For another trial. Okay.

10 And that is kind of the whole purpose of the
11 plea roster is to not burden the trial court with these
12 numbers of pleas that are going to be rolling through versus
13 concentrating on a particular trial.

14 A And, again, once something is placed on the trial
15 list, and you are going a mile a minute prepping --

16 Q Right.

17 A That is -- the policy is to go in front of the
18 trial judge.

19 Q Right.

20 MR. THOMAS: I have no further questions,

21 Your Honor.

22 THE COURT: Anything further?

23 MR. SMITH: No more questions, Your Honor.

24 THE COURT: Thank you, Solicitor. You may step
25 down.

CROSS EXAMINATION OF TODD WAGONER BY MR. THOMAS

1 MR. THOMAS: Your Honor, if it pleases the Court,
2 we would like to call Mr. Williams, as well, as to
3 rebuttal this, since we're here.

4 Thereupon,

5 ROBERT THEODORE WILLIAMS, SR.
6 was called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8 THE COURT: Mr. Williams, will you please state
9 your full name for the record.

10 THE WITNESS: Robert Theodore Williams, Senior.

11 DIRECT EXAMINATION

12 BY MR. THOMAS:

13 Q Mr. Williams, you represented Ms. Mills?

14 A I did.

15 Q Okay. And we have already had a lot of testimony,
16 so we kind of cut to what we are talking about today.

17 You are aware of this email that's been
18 marked as Applicant's 2?

19 A I am.

20 Q Okay. And you have heard Mr. Wagoner's testimony?

21 A Yes.

22 Q Okay. In your practice of law -- you practice in
23 Lexington County?

24 A I do.

25 Q And you practice in criminal court, general

DIRECT EXAMINATION OF ROBERT WILLIAMS BY MR. THOMAS

1 sessions?

2 A I do.

3 Q Okay. Is it customary once a plea, agreement or
4 plea, is entered into or agreed to be entered into, to move
5 it to the plea judge?

6 A It's done periodically.

7 Q Okay. And if you had a case on trial, on the
8 trial list, has it been your experience that that case would
9 or could be moved to the plea roster?

10 A Again, it's done periodically also.

11 Q Okay. Are you aware of any firm and hard set rule
12 that once a case reaches the trial docket, that it never can
13 be moved?

14 A No.

15 Q Okay. And in your last testimony, you were
16 concerned -- actually, you raised this on your own, about
17 this email and the difference between both the judges, Judge
18 Keisley and Judge Cooper.

19 A Yes.

20 Q Okay. And do you, in your representation of
21 Ms. Mills, have a preference as to which judge you would
22 have liked to present this case in front of? Would it have
23 mattered to you?

24 A It's one of those deals that probably didn't
25 matter as much to me as it did to the Solicitor.

DIRECT EXAMINATION OF ROBERT WILLIAMS BY MR. THOMAS

1 Q Okay. And why did you feel like it mattered to
2 the Solicitor?

3 A Because he didn't want it pled in front of anybody
4 but Judge Keisley. And, see, the problem I have with that
5 particular issue is that the Solicitor appears to be in
6 charge of which judge you go in front of by doing it that
7 way.

8 Q Right. By kind of a reverse selection, they get
9 to choose who is going to hear the case.

10 A Correct. Because -- and you never know --
11 because, see, they're in charge of which case goes on the
12 trial roster also. Because the Solicitor is in charge of
13 what case is called for trial.

14 So if you know a particular judge is going to
15 be the trial judge that particular week, then the
16 Solicitor's office can choose those cases which it wants to
17 go on the trial roster that week, and by taking this
18 procedure, then you can make sure that whichever person that
19 you put on the trial roster that week can receive whatever
20 sentence that you think would be more beneficial to the
21 State versus any other consideration.

22 That may be a sinister way of looking at it,
23 but it certainly is conducive to that way of -- to that
24 activity.

25 MR. THOMAS: Your Honor, I have no more questions.

DIRECT EXAMINATION OF ROBERT WILLIAMS BY MR. THOMAS

1 THE COURT: Cross.

2 CROSS EXAMINATION

3 BY MR. SMITH:

4 Q Mr. Williams, I know in our last hearing, you
5 brought this email back and forth for the Solicitor. We
6 referred to it as Applicant's 2, and we talked about it
7 again this morning.

8 Did you reply to this email, saying that you
9 would rather have it in front of Judge Cooper?

10 A I talked to the Solicitor, but I don't think I
11 replied to it written. But, yeah, that is all I can
12 remember other than the fact that it was pretty firm from
13 the Solicitor's Office that we had to go in front of Judge
14 Keisley, who I've probably known a lot longer than I have
15 known any of the other judges around.

16 MR. SMITH: Right. Okay.

17 That is all, Your Honor. Thank you.

18 MR. THOMAS: Nothing further, Your Honor.

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

20 I have lost track of who is presenting and whose
21 case we are in.

22 MR. SMITH: Your Honor, in this kind of case,
23 Mr. Mills would have the burden.

24 THE COURT: Right. But I didn't know if you
25 called the witness, you.

CROSS EXAMINATION OF ROBERT WILLIAMS BY MR. SMITH

1 MR. SMITH: I called Mr. Wagoner.

2 MR. THOMAS: He called Mr. Wagoner, and then we
3 called Mr. Williams in rebuttal to that testimony,
4 Your Honor.

5 THE COURT: You have nothing else in reply then?

6 MR. THOMAS: No, Your Honor. I have nothing
7 further.

8 THE COURT: Nothing from the stand.

9 MR. SMITH: No, Your Honor.

10 THE COURT: All right. Since we have heard all of
11 the testimony and evidence in the case, the Court, as
12 indicated earlier, will permit counsel to submit
13 closing arguments in writing.

14 Ten days?

15 MR. THOMAS: That's fine, Your Honor. Be glad to.

16 THE COURT: Ten to respond?

17 MR. SMITH: That is fine, Your Honor. We can do
18 it.

19 THE COURT: All right.

20 MR. THOMAS: And thank you, Your Honor.

21 MR. SMITH: Thank you.

22 THE COURT: Court is adjourned.

23 MR. THOMAS: Yes, sir.

24 (Hearing concluded.)

25

CROSS EXAMINATION OF ROBERT WILLIAMS BY MR. SMITH

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

10 DATED this 23rd day of February, 2020.

9

10

11

12 *Mona L. Manley* /s/
13 MONA L. MANLEY
14 Official South Carolina Court Reporter
15 Circuit Reporter for the 14th Circuit
16 (850) 893-6662
17 mmanley@scccourts.org
18
19
20
21
22
23
24
25



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP3201575

Destiny H Mills 374576

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

11/26/2019

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Tommy Arthur Thomas PO Box 88 Irmo, SC 29063

Taylor Zane Smith PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

Destiny H. Mills, #374576,

LISA M. COMER
 CLERK OF COURT
 LEXINGTON SC

Case No. 2018-CP-32-01575

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this Court by way of an Application for Post-Conviction filed on May 11, 2018, by Destiny H. Mills (Applicant). The State (Respondent) filed its Return on August 17, 2018. On March 27, 2019, Applicant filed an Amended Post-Conviction Relief Application. An evidentiary hearing in the matter was held before the undersigned on June 28, 2019, at the Lexington County Courthouse. Applicant was present and was represented by Tommy A. Thomas, Esquire, (PCR Counsel). Respondent was represented by Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office. At the hearing, Applicant testified on her own behalf, and she called Theodore Mills as a witness. Respondent called as witnesses Assistant Solicitor Todd Michael Wagoner, Assistant Public Defender David Michael Mauldin, and Robert Theodore Williams, Senior, Esquire. During the June 28, 2019, hearing, an issue was raised that required additional testimony from the witnesses, so a supplemental hearing was held on September 9, 2019, at the Allendale County Courthouse. At that hearing, Wagoner and Williams provided additional testimony. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearings, this Court finds that Applicant has failed to meet her requisite burden of proof and denies this application.

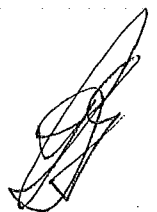
PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its December of 2015 term, the Lexington County Grand Jury indicted Applicant for felony driving under the influence resulting in death (2015-GS-32-02929). Assistant Public Defender David Michael Mauldin was appointed to represent Applicant, but was relieved when Applicant later retained Robert Theodore Williams, Senior, Esquire. Assistant Solicitor Todd Michael Wagoner prosecuted the case on behalf of the State. On November 2, 2017, Applicant appeared before the Honorable Donald B. Hocker and pleaded guilty as indicted. Judge Hocker accepted Applicant's guilty plea and deferred sentencing. On November 16, 2017, Applicant appeared before the Honorable William P. Keesley for sentencing. Judge Keesley sentenced Applicant to a term of imprisonment of ten years. Applicant did not appeal her plea or sentence.

CURRENT PROCEEDING

On May 11, 2018, Applicant filed an Application for Post-Conviction Relief, in which she alleged that he was being held in custody unlawfully based on her claims that her guilty plea was not knowingly and voluntarily given because she was "[m]isled" and that she was afforded the ineffective assistance of trial counsel due to his "[l]ack of research." In her amended return, Applicant alleged that she was entitled to relief on the following grounds:

1. "Counsel was ineffective which in turn lead the Applicant to involuntarily enter into a guilty plea for the following reasons:
 - a. "Failure to move for dismissal and/or suppression of blood alcohol evidence as a result of Law Enforcement's failure to comply with requirements that a Defendant is entitled to a private testing of any blood evidence.
 - b. "Failure to move Pre-trial to suppress video evidence.



- c. "Failure to move Pre-trial to suppress any and all statements made by the Petitioner.
- d. "Failure of Defense Counsel to advise the Petitioner that she should assert her Constitutional right not to incriminate herself in a civil disposition conducted by Attorney Rick Hall.
- e. "Failure of Defense Counsel to attend the civil disposition on behalf of the Applicant.
- f. "Failure to adequately advise the Petitioner regarding her rights at trial.
- g. "Failure to properly advise the Applicant about her guilty plea. More specifically that she would only receive five (5) years if she plead guilty or even the possibility of house/arrest.
- h. "That the Applicant was mistakenly advised that if she assisted in the civil case that she would be assisted in the criminal case. That the Applicant mistakenly believed that this would result in the receipt of less or no active prison sentence.
- i. "That Defense Counsel did not adequately consult with the Applicant regarding her case, the evidence the State had against her and any theory of Defense.
- j. "That the Applicant believes that all plea offers were not conveyed to her."

At the evidentiary hearing before the undersigned on June 28, 2018, Respondent requested at the start of the hearing that Applicant specify for the record the grounds upon which she would move forward. In response, PCR Counsel stated that Applicant would move forward solely upon the grounds alleged in the amended application, and reserved the right to address issues that may have arisen naturally in the course of the hearing. During that hearing, Applicant asserted a new ground for relief: that the solicitor bifurcated the plea and sentencing portions of Applicant's plea hearing so that Applicant could be sentenced before Judge Keesley rather than by Judge Hocker, who accepted the entry of her guilty plea. Applicant styled this allegation as one of "judge shopping" on the part of the prosecution. More testimony concerning this allegation was taken at the supplemental PCR hearing on September 9, 2019. All other



allegations are considered by this Court to have been waived by Applicant and they will not be addressed in this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to scrutinize their credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of

reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690. “A guilty plea is a solemn, judicial admission of the truth of the charges against an

individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea").

Based on this standard set forth above, and the reasoning below, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel. The allegations are addressed fully below:

Applicant was afforded the ineffective assistance of counsel because her defense attorneys did not move to suppress the State's blood-alcohol evidence.

Applicant argues that she was afforded the ineffective assistance of counsel because her defense attorneys were deficient in failing to move to suppress the results of a blood-alcohol test in reliance upon S.C. Code Ann. § 56-5-2950, and that she was prejudiced because she had to plead guilty because the evidence would have been used against her at trial.

Applicant crashed her vehicle into the rear of the victims' automobile at approximately 2:00 a.m. on I-26 shortly after one of the victims had completed a shift at a pizza restaurant. As a result of the crash, one of the two victims passed away. While Applicant was being treated at the hospital afterwards, she consented to a blood draw. The results of the blood analysis showed that Applicant's blood-alcohol content was over the legal limit at the time of the draw. Applicant testified at the PCR hearing that the blood draw was conducted almost five hours after the crash. Applicant testified that someone at the hospital destroyed the second blood sample that had been

drawn from her, which had been taken pursuant to her request to have the blood independently analyzed. Applicant testified that she and Williams discussed the prosecution's blood-alcohol evidence, and that she was unsatisfied with Williams' prediction that a motion to suppress the results of the blood test likely would be unsuccessful at trial. Theodore Williams, Applicant's father, testified at the PCR hearing that he witnessed a police officer drop one of the two vials of Mills' drawn blood, which then shattered on the floor.

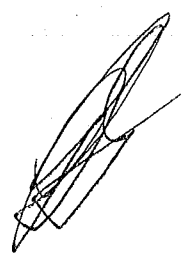
Wagoner testified at the PCR hearing that Applicant consented to having her blood drawn at the hospital after being read the implied consent statute. He testified that either a State Trooper or nurse dropped Applicant's blood sample after it was taken. He testified that the analysis of Applicant's blood showed that she had a blood-alcohol content of .127.

Mauldin testified at the PCR hearing that he would have attempted to pick apart the prosecution's case at trial any reasonable motion. He testified that he was aware that there would be suppression issues at Applicant's trial, but did not know if a suppression motion relating to the blood analysis would have been successful. He admitted that he did not do extensive research concerning the possibility of suppressing the analysis of Applicant's blood during his representation of her because the case was not yet up for trial, although he testified that he had done some research on other evidentiary issues relevant to her defense. When questioned on cross-examination about the extent of his research into the admissibility of the blood analysis, Mauldin testified that he had not done enough research to allow him to speculate as to whether the results of a blood draw could be suppressed if the police had broken the vial containing the blood sample that was meant to be used in an independent blood analysis conducted at a defendant's request, but he added that he would have done more research on the issue if the case had proceeded to trial.



Williams testified as a witness for Respondent at the PCR hearing. He testified that he had attempted to suppress the results of a blood analysis for a client he represented before being hired by Applicant in which the blood sample meant for that defendant's independent analysis had been destroyed by the State, and that his efforts to suppress in that case had been unsuccessful. He testified that he would have attempted to suppress the results of the State's analysis of Applicant's blood had the case proceeded to trial.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).



This Court finds that neither Mauldin nor Williams performed deficiently with respect to a motion to suppress the blood-alcohol evidence. Mauldin's testimony indicates that he would have challenged the prosecution's case on every available front had the case gone to trial. He testified that he did not do enough preparation to speculate as to the outcome of a motion to suppress the prosecution's blood-alcohol evidence due to the fact that the case was not up for trial in the near future, but added that he would have done more preparation on the issue as trial approached. This Court finds that Mauldin's lack of detailed research into the admissibility of blood analysis when Applicant had been denied the chance to independently test her the second sample of her blood was excusable and reasonable at that early stage of the criminal case. At any rate, Applicant had hired Williams by the time of her trial, so Mauldin's performance with respect to trial motions is irrelevant. Williams and Applicant both testified that they discussed the issue of the illegally high alcohol content in Applicant's blood. Williams testified that he would have moved to suppress the blood evidence at trial if Applicant had not first pleaded guilty. This Court finds that Williams' testimony that he would have moved to suppress had the case gone to trial is credible. Applicant may have been dissatisfied with Williams' assessment that the motion would have been unsuccessful, but she waived her right to have him make the motion on her behalf by pleading guilty. Applicant affirmed to Judge Hocker that she wanted to waive her trial rights by pleading guilty.

This Court finds that Applicant did not suffer prejudice due to the performance of either Mauldin or Williams with respect to the suppression of the blood-alcohol evidence. To demonstrate prejudice, Applicant would have to show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires



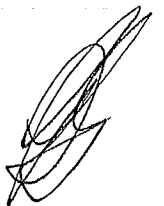
more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). In this instance, because Applicant pleaded guilty before the obligation of Mauldin or Williams to move to suppress the results from the blood test would have applied, she prevented them from taking an action that could be evaluated as either competent or deficient under the prejudice prong of Strickland and Hill. Therefore, Applicant has failed to show prejudice.

This Court finds that neither Mauldin nor Williams was constitutionally ineffective with respect to his treatment of the results of the analysis of Applicant's blood because Applicant has failed to demonstrate any deficiency in the performance of either attorney and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Applicant was afforded the ineffective assistance of counsel because her defense attorneys did not move to suppress the prosecution's video evidence.

Applicant argues that she was afforded the ineffective assistance of counsel because her defense attorneys were deficient in failing to move to suppress video recordings that showed her on the night of the crash. Applicant testified at the PCR hearing that there was a video recording taken of her at the hospital following the crash. Although she testified that she had never seen the video, she speculated that she would have appeared therein as sober rather than drunken. She testified that she had heard that there were videos from the bars at which she had been drinking before the crash.

Wagoner testified that the attorneys representing the father of the deceased victim in the dram shop civil suit against the bars at which Applicant had been drinking had discovered a video recording of Applicant drinking alcohol. He testified that the video recording taken of Applicant at the hospital showed Applicant appearing to be "stunned and dazed."



This Court finds that neither Mauldin nor Williams performed deficiently with respect to a motion to suppress the video recordings of Applicant. Mauldin's testimony indicates that he would have challenged the prosecution's case on every available front had the case gone to trial. At any rate, Applicant had hired Williams by the time of her trial, so Mauldin's performance with respect to trial motions is irrelevant. Williams testified that, if Applicant had proceeded to trial, he would have moved to suppress the video recordings of Applicant. This Court finds that Williams' testimony that he would have moved to suppress had the case gone to trial is credible.

This Court finds that Applicant did not suffer prejudice due to the performance of either Mauldin or Williams with respect to the suppression of the video recordings. To demonstrate prejudice, Applicant would have to show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). In this instance, because Applicant pleaded guilty before the obligation of Mauldin or Williams to move to suppress the recordings would have applied, she prevented them from taking an action that could be evaluated as either competent or deficient under the prejudice prong of Strickland and Hill. Even if such an obligation had attached, Applicant's testimony indicated that she did not believe that the video recording from the hospital would have been harmful to her defense at trial. When testifying regarding the hospital video, Applicant offered that she believed that video recording from the hospital would have shown her to be sober. Presumably, evidence of any sobriety on Applicant's part would have been welcome to Applicant had she proceeded to trial. Applicant has failed to show prejudice.



This Court finds that neither Mauldin nor Williams was constitutionally ineffective with respect to his treatment of the video recordings of Applicant because Applicant has failed to demonstrate any deficiency in the performance of either attorney and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Applicant was afforded the ineffective assistance of counsel because her defense attorneys did not move to suppress her statements.

Applicant argues that she was afforded the ineffective assistance of counsel because her defense attorneys were deficient in failing to move to suppress statements that she made to police. Applicant testified at the PCR hearing that she gave multiple statements to law enforcement after the crash. She testified that she gave a statement to the police officer who responded to the scene of the crash, in which she claimed that she was on the way home from a friend's residence after drinking a single beer. She testified that she gave a second statement at the hospital after discovering that one of the victims had died. In that statement, she told police that she had had four beers over a five-hour period. She testified that, before she had been given warnings pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), she told a police officer that she had a "buzz". She testified that she later regretted making that last statement because it was cited in her arrest warrant.

Wagoner testified at the PCR hearing that a State Trooper talked with Applicant in the back of an ambulance shortly after the crash, and that she told that Trooper that she had had one beer. He testified that she later admitted to drinking alcohol at the Wild Wing Cafe, Applebee's, and the British Bulldog Pub. He testified that she admitted to the MAIT team that she had consumed alcohol. He testified that Applicant told varying stories once she arrived at this hospital, including that the crash happened because she was manipulating her car's stereo system at the time of the crash and that she crashed in the victims' car because her passenger was

distracting her at the time of the crash by trying to get amorous with her. He testified that the prosecution had two witnesses who would have testified at trial that Applicant was drinking alcohol on the night of the crash.

This Court finds that neither Mauldin nor Williams performed deficiently with respect to a motion to suppress Applicant's statements to law enforcement. Mauldin's testimony indicates that he would have challenged the prosecution's case on every available front had the case gone to trial. At any rate, Applicant had hired Williams by the time of her trial, so Mauldin's performance with respect to trial motions is irrelevant. Although Williams did not specifically testify about his intention with respect to Applicant's statements to law enforcement if the case had gone to trial, his answer to similar questions at the PCR hearing is instructive. Respondent asked for an explanation as to why Williams did not move to suppress the blood-alcohol evidence, and Williams answered, "Because she was pleading." Williams' explanation that he did not move to suppress the blood-alcohol evidence since Applicant decided to plead guilty instead of proceeding to trial likewise serves as a reasonable rationale for his not filing a motion to suppress Applicant's statements to police.

This Court finds that Applicant did not suffer prejudice due to the performance of either Mauldin or Williams with respect to the suppression of Applicant's statements. To demonstrate prejudice, Applicant would have to show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). In this instance, because Applicant pleaded guilty before the professional obligation of



Mauldin or Williams to move to suppress her statements would have applied, she prevented them from taking an action that could be evaluated as either competent or deficient under the prejudice prong of Strickland and Hill. Applicant waived her right to have an attorney make the motion on her behalf by pleading guilty.

This Court finds that neither Mauldin nor Williams was constitutionally ineffective with respect to his treatment of Applicant's statements because Applicant has failed to demonstrate any deficiency in the performance of either attorney and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Applicant was afforded the ineffective assistance of counsel by Mauldin because he did not advise her to assert her right not to testify at the civil deposition. Applicant was afforded the ineffective assistance of counsel by Mauldin because he did not attend the civil deposition with Applicant. Applicant was afforded the ineffective assistance of counsel by Mauldin because he advised her that the deceased victim's family would assist her in her criminal case if she cooperated with the dram shop suit.

Applicant argues that she was afforded the ineffective assistance of counsel because she Mauldin did not properly advise her regarding the dram shop action, and that her participation harmed the strength of her case at trial. The allegations all concern the advice that Mauldin gave Applicant about the dram shop suit, her participation in a civil deposition in that action, and the consequences thereto. For this reason, these allegations will be considered together.¹

Applicant testified that she was named as a defendant in a civil suit brought against her and the bars at which she had been drinking on the night of the crash, and that the deceased victim's family was bringing the suit. She testified that she felt that the family was pursuing the bars for responsibility rather than her, even though she was a party. She testified that she had been served on the day of her release from the detention center with a subpoena requiring her

¹ These allegations concern events that occurred before Applicant retained Williams, and can therefore only be reasonably construed as allegations regarding Mauldin's performance.

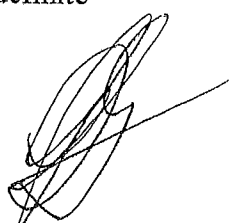
attendance at a deposition in the civil case. She testified that she felt that she was required to participate in the deposition since she had only just been released from detention. She testified that, when she discussed it with Mauldin, he told her that she would not attend the deposition with her because he was not being paid to represent Applicant in a civil suit. She testified that Mauldin described the civil suit as a "help me, help you situation". She testified that Mauldin shared this opinion with one of the civil attorneys involved in the dram shop action. She hired a civil attorney to represent her in the civil case. When asked on direct examination at the PCR hearing if Mauldin had ever discussed with Applicant the possibility of her refusing to be deposed or advising her that it was not a good idea to give testimony at the deposition, Applicant answered that she could not remember. She testified that he did not explain that she had a constitutional right to remain silent in a civil deposition, and that she did not know that statements she made during the deposition could be used against her later at trial. She did participate in the civil deposition. She testified that the civil attorney conducting the deposition later gave a transcript of it to Wagoner. The transcript from that deposition was admitted into evidence at the PCR hearing without objection as Applicant's Exhibit One. She testified that the civil attorney representing the deceased victim's family was Frederick Ivey Hall, III, Esquire, and that he showed up to make a statement at her sentencing hearing on behalf of the deceased victim's family. She testified that her understanding from Hall that the family could help Applicant if she helped them in the civil case, but that there were no direct promises.

Applicant testified that the results from the blood analysis were "the only evidence . . . against [her]." When asked at the PCR hearing how the prosecution would have proven at trial that she was guilty of felony DUI, Applicant answered, "Pretty much with the blood work." Applicant affirmed that the "blood work was controlling in this case."



Wagoner testified at the PCR hearing that the victims' civil representation acted as quasi-victim advocates in the case, and allowed him to look at their case file. He testified that he shared a copy of the file with Williams since he had viewed it. He testified that the file included Applicant's deposition transcript and a transcript from the deposition of the passenger in Applicant's car at the time of the crash, copies of the surveillance videos from the bars at which Applicant had been drinking, and receipts of Applicant's purchases at those bars. He testified that the deposition transcript indicated that Applicant was a defendant in the civil action. He testified that the testimony provided by Applicant at the deposition was similar to her previous statements to law enforcement, except that she went into more detail about who paid for her drinks. He testified that her deposition testimony indicated that Applicant's passenger, Bonner, paid the bar tabs. He testified that, had Applicant proceeded to trial, the prosecution would have used the blood-alcohol test results, the testimony of Applicant's passenger, the testimony of the surviving victim, the testimony of emergency medical personnel and law enforcement officers who responded to the scene of the crash, and the report from the MAIT analysis of the crash.

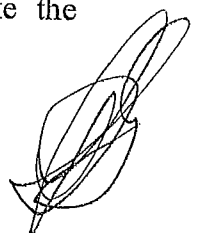
Mauldin testified at the PCR hearing that he informed Applicant that she would need to hire a civil lawyer if she needed representation in the dram shop suit because Mauldin's employment as a public defender precluded him from representing her in a civil action. He testified that he explained to Mills that he was aware of other felony DUI cases in which the family members of victims made beneficial statements on behalf of the defendants at sentencing when the defendants had cooperated in the dram shop suits against the bars that had overserved the defendants. He testified that he warned Applicant that, if she cooperated in the dram shop suit and gave any statements, the statements could be used against her in her own criminal trial. He described his approach to the dram shop suit as a "let's wait and see thing. It wasn't a definite



yes, cooperate or a definite no, not cooperate." He elaborated on his advice to Applicant, testifying that he would have needed to do a balancing test to see if any cooperation on Applicant's part would have provided the prosecution with more evidence of Applicant's guilt than it already had, and whether Applicant's cooperation would have been damaging to her defense. When asked on cross-examination if he would ever advise a defendant to give a deposition in a civil case while the defendant was awaiting trial, Mauldin answered that his advice to the defendant would depend on the facts and circumstances of the individual case.

Mauldin testified that he received a call from Applicant in which she informed him that she had participated in a deposition in the dram shop suit the preceding week, and that she had taken a civil attorney with her to that deposition. He testified that this phone call was the first occasion on which he had been made aware by Applicant that the attorneys in the dram shop suit were attempting to depose her. He testified that, had he known of the deposition beforehand, he would have asked Applicant's civil attorney for information about the attitude of the deceased victim's family before advising Applicant whether or not she should cooperate in the dram shop suit. He testified that the testimony that Applicant provided during the deposition was generally consistent with the statements that she had already given to police officers following the crash.

Williams testified that Applicant was not a party in the dram shop suit. He testified that his assessment of the testimony that Applicant gave at the deposition was that it did not afford the prosecution with "a bunch of additional information" since most of the information supplied by Applicant during the deposition was otherwise accessible to the prosecution. He testified that Applicant's deposition testimony was consistent with statements that she had already made to police after the crash, but added that he believed that the deposition testimony contributed to the trustworthiness of her statements to police because the deposition testimony, unlike the



statements to police, was given while Applicant was under oath. He testified that it was his opinion that the prosecution had sufficient evidence to convict Applicant, even without the deposition transcript.

This Court has reviewed Applicant's Exhibit One. This Court finds that Applicant was not a party to the civil action by the deceased victim's family and estate against the bars at which Applicant was drinking on the night of the crash. The transcript indicates that Applicant was represented at that civil deposition by Wesley William Waites, Jr., Esquire. At the civil deposition, Applicant testified that she had been to Carolina Ale House, Applebee's, Wild Wing Café, and the British Bulldog Pub on the night of the crash. She testified that she drank two cranberry vodkas with Red Bull at the Wild Wing Café, half a beer at the British Bulldog Pub, and two beers and a split shot of a drink named screaming orgasm at Carolina Ale House. She testified that she did not consume any alcoholic drinks at Applebee's, but ate a steak and mashed potatoes there. She testified that she had not had any alcoholic drinks on the afternoon of the crash. She testified that, all together, she had had around four-and-a-half alcoholic drinks on the night of the crash. She testified that she gave two statements to law enforcement officers on the night of the crash, and that her second statement was truthful, whereas her first statement had not been truthful. She testified that the second statement had been that she had drank four beers and either a full or half shot on the night of the crash. She denied that she had told one of the law enforcement officers that she had drank Grand Mariner on the night of the crash. She testified that Tripp Graham was her passenger after she left the bars to drive home, and that he was distracting her by trying to kiss her while she drove her car. Applicant answered questions at her deposition about her knowledge as to her personal tolerance to alcohol. She testified that she did not believe that her ability to drive was impaired on the night of the crash due to her



consumption of alcohol. She told Hall that he could check the video cameras at the bar if he needed corroboration as to the number of alcoholic drinks she had. Hall asked many questions regarding the actions of Applicant's drinking partners on the night of the crash.

Phillip E. Reeves, Esquire, who represented Applebee's, questioned Applicant briefly during the deposition about her claim not to have consumed any alcohol at Applebee's. J. Eric Cavanaugh, Esquire, represented Wild Wing Café at the deposition. He questioned Applicant about her use of social media, whether she had reached a plea deal in her criminal case. She reiterated the number and types of drinks that she had had on the night of the crash. She testified that her cell phone at the time of the crash had since been wiped in a factory reset by her sister at Applicant's request during Applicant's first week in jail. She testified that her first statement to police contained false information, but that her second statement was accurate.

William O. Sweeny, IV, Esquire, was representing Carolina Ale House at the deposition, and he questioned Applicant. He questioned Applicant about her driving record and past speeding tickets, and a ticket for minor in possession of alcohol. Applicant testified that Graham's attempts to kiss her distracted her while driving, leading to the crash. Warren C. Powell, Jr., Esquire, was representing the British Bulldog Pub at the deposition, and he also questioned Applicant. In response to his questions, Applicant testified that she drank only half a beer at the British Bulldog Pub because Graham caused her to spill the remaining half of her beer, and that she did not get another drink.

Hall then questioned Applicant again. She testified that she have a drinking problem before the crash and that she would drink alcohol as a way to cope with her anxiety and depression. He asked more questions about Applicant's estimation of the drunkenness of her drinking friends on the night of the crash. She testified that the receipts from the bars would have

provided an accurate accounting of the amount of alcohol served to Applicant and her drinking friends on the night of the crash, but that the receipts would not necessarily indicate which specific drinks had been consumed by each member of the group. Cavanaugh questioned Applicant again briefly about whether she or Graham had purchased drinks. Sweeney questioned Applicant again about her reason for thinking that Graham was intoxicated on the night of the crash.

This Court finds that Mauldin's testimony about his advice to Applicant about the potential consequences of her cooperating with the plaintiffs in the dram shop suit and about Applicant's failure to notify him that she was being subpoenaed for a deposition is more credible than Applicant's. Although his testimony at the PCR hearing does not indicate that Mauldin provided Applicant with the blanket advice that she should not cooperate with the deceased victim's family in the dram shop suit or make any statements, his testimony indicates that he would have employed a balancing test in order to ascertain whether or not Applicant's cooperation would have been beneficial to her defense rather than harmful had he had more information about the dram shop suit. At the time, he advised that cooperation could potentially be beneficial but could also be harmful, and exercised caution. Mauldin credibly testified that Applicant did not alert him to the fact that she was being deposed until after she had already participated in the deposition. Applicant kept Mauldin the dark about the deposition until afterwards, and thereby deprived him of the opportunity to provide advice as to whether or not she should assert her right not to testify therein. Applicant's contention that she believed that she would receive a favorable sentence due to her cooperation with the plaintiffs in the dram shop suit could not have naturally been a consequence of Mauldin's advice to her, which was that he would not advise her on the issue until he had more information. Even if she did hold such a

belief, Williams credibly testified at the PCR hearing that he had advised her of the potential sentence that she could face if she pleaded guilty and such a belief would have been cured by the court's colloquy during her plea hearing.

This Court finds that Applicant has failed to show that she suffered prejudice from the performance of Mauldin with respect to her not exercising her right to remain silent during the civil deposition. At the PCR hearing, Applicant emphasized the significance of the results from the State's analysis of her blood to the prosecution's case. In contrast, when asked if she believed that she suffered prejudice from the prosecution's possession of the transcript from his deposition testimony, Applicant's only response was, "Yes." When her testimony is taken as a whole, this Court finds that Applicant put more weight on the prosecution's blood-alcohol evidence than she did on the prosecution's possession of the transcript from the civil deposition when she was considering whether to proceed to trial or to plead guilty.

This Court further finds, based upon its review of Applicant's Exhibit One, that the testimony Applicant gave at her deposition was substantially similar to the statements that she made to law enforcement after the crash, and that the prosecution would likely have attained no more benefit from her deposition testimony at trial than it would have from cross-examining her on her multiple statements to law enforcement. The testimony from both Mauldin and Williams was in agreement that anything that Applicant said during her deposition in the dram shop suit was not all that harmful to her criminal case. The prosecution had access to all of the evidence that it would have used at Applicant's trial independently of Applicant's deposition testimony, and Wagoner testified that he would have not been able to use the transcript from the deposition at trial for any purpose other than impeachment of Applicant, if she had decided to take the



stand. Wagoner also testified that Applicant's testimony during the deposition was mostly consistent with the statements that she had given to law enforcement after the crash.

This Court finds that Mauldin was not constitutionally ineffective for not advising Applicant to assert her right to remain silent at the civil deposition because Applicant has failed to demonstrate any deficiency in his performance and any resulting prejudice. This Court finds that, since Williams had not yet been hired by Applicant at the time of her deposition, he could not have been ineffective with respect to the civil deposition, and to the extent that this allegation is meant to be directed at his conduct, it is denied. As such, this allegation is denied and dismissed with prejudice.

Applicant was afforded the ineffective assistance of counsel by her defense attorneys because she was not advised of her trial rights.

This Court finds that Applicant's contention that she was not informed of her trial rights is without merit. Williams testified that he discussed evidentiary issues, among other things, with Applicant in preparation for trial. He testified that he and Applicant discussed one of his previous cases, in which there was an issue regarding the admissibility of blood-alcohol evidence due to the defendant's inability to independently test his blood after the State failed to preserve the second blood sample. Applicant testified at the PCR hearing about this conversation with Williams, further lending credibility to his testimony as to his informing Applicant of her trial rights. This Court finds that Williams' testimony about his informing Applicant of her trial rights is more credible than Applicant's testimony on this point.

At Applicant's plea hearing, Judge Hocker informed Applicant that, by pleading guilty, she would waive her right to a jury trial, her right to remain silent, her right to have Williams challenge the prosecution's case, her right to the presumption of innocence, and her right to be proven guilty beyond a reasonable doubt. Applicant affirmed that she understood these rights and

that she wanted to waive them and plead guilty. At the PCR hearing, Applicant explicitly affirmed that she understood that she was waiving her right to have her defense counsel move before the court on her behalf and cross-examine the prosecution's witnesses at trial by pleading guilty. Even if Williams had not adequately informed Applicant of her trial rights, Judge Hocker's colloquy would have cured the deficiency.

This Court finds that neither of Applicant's attorneys was constitutionally ineffective for not advising Applicant of her trial rights because Applicant has failed to demonstrate any deficiency in their performance and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Applicant was afforded the ineffective assistance of counsel by her defense attorneys because she was advised that she would receive a five-year sentence if she pleaded guilty or perhaps be sentenced to house arrest only.

Applicant testified at the PCR hearing that she was told before entering her guilty plea that she was to be sentenced to house arrest. She testified that she was told that she had been overcharged and that she would probably be sentenced to house arrest if she pleaded guilty. She did not identify the source of these statements in her testimony.

Williams testified that he advised Applicant of the potential sentences she could face and that he did not promise any particular sentence to her. Applicant did not testify that Williams had promised her house arrest, but even if she mistakenly did not attribute during her testimony the promise to Williams, this Court finds that Williams' testimony about his advice to Applicant is more credible than hers. However, even if Williams had not properly informed Applicant of the potential penalty she could face after pleading guilty, Judge Hocker's colloquy would have cured the deficiency. At her plea hearing, Applicant affirmed to Judge Hocker that she could be sentenced to as many as twenty-five years in prison. Applicant affirmed at the PCR hearing that



Judge Hocker had explained to her the potential sentence to which she would be exposed after pleading guilty, had not told her that she would be sentenced to house arrest, and admitted that she affirmed Judge Hocker that no one had promised her that she would receive any particular sentence by pleading guilty.

This Court finds that Applicant was adequately informed about the potential sentence she could receive if she pleaded guilty. The transcript from Applicant's plea hearing and the testimony from the PCR hearing shows that Applicant knew that she could be sentenced a prison term after pleading guilty. This Court finds that neither of Applicant's attorneys was constitutionally ineffective with respect to advice about potential sentences because Applicant has failed to demonstrate any deficiency in their performance and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.

Applicant was afforded the ineffective assistance of counsel by her defense attorneys because they did not adequately consult with her.

Applicant argues that she was afforded the ineffective assistance of counsel because her defense attorneys were deficient in not adequately consulting with her about her case and that she was prejudiced thereby. She testified at the PCR hearing that, if Mauldin and Williams had explained to her that legal issues surrounding the blood-alcohol evidence, that she would not have pleaded guilty and would have insisted on proceeding to trial.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Id.* at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for

reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions. . ." Strickland, 466 U.S. at 691. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014). A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. See Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997).

This Court finds that neither Mauldin nor Williams was constitutionally ineffective for failing to adequately consult with Applicant. Both attorneys testified as to their conversations with Applicant about the evidence in her case and potential defenses. Mauldin's conversations with Applicant about her case were appropriate for the procedural posture of Applicant's case at the time of his representation of her. Williams' conversations with Applicant were appropriate in light of the approaching trial and Applicant's decision to plead guilty rather than proceeding to trial. Applicant's own testimony indicates that the attorneys had multiple discussions with her about the evidence and her defense thereto. As such, this allegation is denied and dismissed with prejudice.

Applicant was afforded the ineffective assistance of counsel by her defense attorneys because they did not convey to her all plea offers extended by the prosecution.

“[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms a conditions that may be favorable to the accused.” Missouri v. Frye, 566 U.S. 134, 145, 132 S.Ct. 1399, 1408 (2012); see Davie v. State, 381 S.C. 601, 610, 675 S.E.2d 416, 421 (2009) (finding that counsel’s failure to communicate a plea offer was deficient), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Applicant testified at the PCR hearing that Williams had her sit outside a courtroom while he met with Wagoner, and that he told her afterwards that he would not allow Applicant to accept a plea offer that is not expressly conveyed, and she testified that she did not know what was said in the courtroom; later, Applicant testified that “[t]here were no plea offers.” Wagoner testified that the prosecution did not extend any plea offers to Applicant, other than offering that he would not request a specific sentence while simultaneously allowing law enforcement officers and the victims speak freely at Applicant’s sentencing, if Applicant were to plead guilty. Williams testified at the PCR hearing that the prosecution did not extend any plea offers to him during the course of his representation of Applicant, and that he did not believe that any were extended before he was retained. This Court finds that no plea offers were extended to Applicant. This Court finds that neither Mauldin nor Williams was constitutionally ineffective with respect to the communication of plea offers to Applicant because Applicant has failed to demonstrate that any were extended. As such, this allegation is denied and dismissed with prejudice.

The prosecution engaged in inappropriate “judge shopping.”

During the PCR hearing, Williams produced a printout of an email chain, which was then admitted into evidence as Applicant’s Exhibit Two. It showed a series of emails between Wagoner, Williams, and Judge Keesley’s law clerk about the bifurcation of Applicant’s plea

hearing into a portion for the entry of the guilty plea and another for sentencing. At the supplemental PCR hearing, Williams testified that he was not particularly concerned about the fact that Applicant would be sentenced by a judge other than the one who accepted the entry of her guilty plea. He testified that he believed that Wagoner was more concerned with the role of the various judges than he. When asked on cross-examination whether he had objected to the sentencing of Applicant by Judge Keesley, Williams testified that he had not done so. Williams also addressed Wagoner's testimony about the general policy of the Eleventh Circuit Solicitor's Office that a defendant who pleads guilty after his case has been set for trial go before the assigned trial judge to enter the guilty plea, testifying that he believes that there have been instances in which the Solicitor's Office has departed from that practice.

Applicant testified at the PCR hearing that she believes that she should have been sentenced by Judge Hocker since he accepted the entry of her guilty plea. She speculated that she was prejudiced by the bifurcation, which she described as "judge shopping." She testified that the deceased victim's father had made statements to her that she believes would have helped her had Judge Keesley heard them before sentencing her, but that the father was present only at the plea hearing and not the sentencing hearing.

Wagoner testified that it is the general policy of the Eleventh Circuit Solicitor's Office that, once a case has been set on the trial roster, if the defendant thereafter decides to plead guilty before trial is called is taken before the trial judge to plead. In this case, Applicant was set for trial before Judge Keesley when Applicant indicated that she had decided to plead guilty instead of proceeding to trial. Wagoner's testimony was that he deviated from the general practice of the Solicitor's Office by scheduling Applicant's plea hearing before Judge Hocker, who was the judge presiding over the plea roster, because Wagoner was worried that Applicant would change



her mind by deciding to proceed to trial if she were not allowed to plead guilty quickly. He testified that the purpose of having Applicant enter her guilty plea before Judge Hocker was to save the victims and surviving family members from the stress of a trial. He testified that the parties agreed to bifurcate the plea hearing.

The Court of Appeals has had the chance to consider a case in which there were accusations that the solicitor had engaged in judge shopping. State v. Cheatem, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002). Although the issue in Cheatem was whether the trial court erred in refusing to recuse himself after the solicitor called the case to trial before him when a different judge had given an impression to the parties that the other judge would rule in favor of the defendant on evidentiary matters, the Court reasoned that, because the defendant did not allege or demonstrate that the trial court had engaged in any impropriety, the trial court did not err in refusing to recuse himself. Id. at 111-12, 561 S.E.2d at 624. Applicant did not object to the bifurcation at the time of her plea hearing or during her sentencing. During her plea hearing, Applicant affirmed to Judge Hocker that she knew that the parties had agreed to defer sentencing and that a judge other than Judge Hocker would sentence Applicant.

This Court finds that Williams was not deficient in not objecting to the bifurcation of Applicant plea hearings. His testimony indicated that he was not concerned by the bifurcation at the time of Applicant's plea, and that he did not believe that Applicant's sentence was greater due to her being sentenced by Judge Keesley than Judge Hocker. Further, the record shows that Applicant did not raise any objections to the bifurcation at the time, indicating her acceptance of the bifurcation.

This Court finds that Wagoner's testimony about the general practice of the Eleventh Circuit Solicitor's Office regarding having defendants plead guilty before the assigned trial judge



is credible. This Court finds that Wagoner's testimony about the departure from that general practice in Applicant's case is credible. He testified that the exception to the general practice was in having Judge Hocker accept Applicant's guilty plea, and that this exception was made because he feared that Applicant would change her mind and decide to proceed to trial if the plea was not accepted earlier than it would be if the parties were to wait for the original trial date. This Court finds that Wagoner is in a better position to testify as to the general practice of the Eleventh Circuit Solicitor's Office's with regard to the roster and the reasons for exceptions thereto than Williams. This Court finds that Applicant has failed to demonstrate that the solicitor behaved inappropriately in suggesting the bifurcation.

This Court finds that Applicant has failed to demonstrate that she suffered prejudice by the bifurcation of her plea hearing. Applicant did not produce any evidence that the sentence imposed by Judge Keesley was harsher than a sentence that she would have received from Judge Hocker's bench, or that Judge Keesley's sentence was inappropriate in any respect. Even though Applicant's hearing was bifurcated, she received substantial support at her sentencing before Judge Keesley. Two witnesses made statements on Applicant's behalf at sentencing. Williams presented Judge Keesley with multiple letters written to court on Applicant's behalf.

This Court finds that neither Mauldin nor Williams was constitutionally ineffective with respect to the bifurcation between the entry of Applicant's guilty plea and her sentencing because Applicant has failed to demonstrate any deficiency in their performance and any resulting prejudice. As such, this allegation is denied and dismissed with prejudice.



CONCLUSION

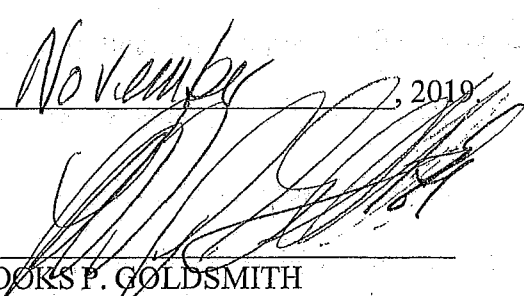
Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant her Application for Post-conviction Relief. Therefore, this application is denied and dismissed with prejudice.

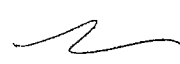
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 9 day of November, 2019


 BROOKS P. GOLDSMITH
 Presiding Judge


 _____, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JAN 06 2020

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

Brooks P. Goldsmith, Circuit Court Judge

Lower Court Case No.: 2018-CP-32-01575

Destiny H. Mills #374576, ... Appellant,

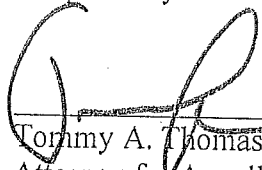
vs.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

The Appellant, Destiny H. Mills #374576, appeals the Order of Dismissal signed by the Honorable Brooks P. Goldsmith, dated November 9, 2019 and filed on November 26, 2019. Appellant received written notice of entry of this order on December 4, 2019.

Respectfully submitted,



Tommy A. Thomas
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

January 3, 2020

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

Brooks P. Goldsmith, Circuit Court Judge

Lower Court Case No.: 2018-CP-32-01575

Destiny H. Mills #374576,..... Petitioner,

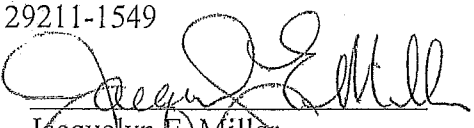
vs.

State of South Carolina, ...Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Petitioner hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to Janell Gregory, Esq. of the Attorney General's Office, at:

Janell Gregory, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549


Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
January 3, 2020

RECEIVED

JAN 06 2020

S.C. SUPREME COURT

Linda Cook

From: Theo Williams
Sent: Wednesday, November 8, 2017 12:15 PM
To: Linda Cook
Subject: Fwd: Sentencing
Attachments: image005.png; image003.png

Sent from my iPhone

Begin forwarded message:

From: "Wagoner, Todd" <TWagoner@lex-co.com>
Date: November 8, 2017 at 12:10:57 PM EST
To: "Keesley, William P. Law Clerk (Clarke W. McCants)" <wkeesleylc@sccourts.org>
Cc: Theo Williams <twilliams@wsblegal.com>, "FRICK, HOPE" <HFRICK@lex-co.com>, "Hubbard, Rick" <RHubbard@lex-co.com>
Subject: Re: Sentencing

After speaking with Rick, we feel that with the case being off of the trial list, the trial judge should be the sentencing judge.

It is my understanding that Theo may have a magistrate trial Thursday PM, so I am willing to do the matter first thing Thursday morning (or any other time next week).

Thanks,

Todd

Sent from my iPhone

On Nov 8, 2017, at 12:07 PM, Keesley, William P. Law Clerk (Clarke W. McCants) <wkeesleylc@sccourts.org> wrote:

Good morning.

Mr. Williams: Could you please tell me your position on holding this hearing next week. You indicated on a prior email that you would like the hearing postponed to a later date, yet Mr. Wagoner's email indicates you were fine with having it later in the week.

Mr. Wagoner: Judge Keesley would like to know why Judge Cooper cannot hear this.

Thank you.

Clarke