

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Kershaw County

R. Knox McMahon, Circuit Court Judge

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S.C. Supreme Court

DONALD E. BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213436

APPENDIX

BENJAMIN J. TRIPP
Appellate Defender

ALAN WILSON
Attorney General

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

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

COURT OF GENERAL SESSIONS
05-GS-28-1372

STATE OF SOUTH CAROLINA :

-vs- :

DONALD E. BROWN :

TRANSCRIPT OF RECORD

MONDAY, APRIL 10, 2006
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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

BARNEY GIESE, SOLICITOR
JOHN MEADORS, DEPUTY SOLICITOR
ATTORNEYS FOR THE STATE

WILLIAM TETTERTON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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I N D E X

CERTIFICATE OF COURT REPORTER 22

E X H I B I T S

(NO EXHIBITS WERE INTRODUCED DURING THE PLEA.)

1 MR. MEADORS: MAY IT PLEASE THE COURT. YOUR HONOR, AT
2 THIS TIME, THE STATE WOULD CALL THE STATE OF SOUTH CAROLINA
3 VERSUS DONALD EARL BROWN, KERSHAW COUNTY TRUE BILLED
4 INDICTMENT 2005-GS-28-1372. THE DEFENDANT DONALD EARL
5 BROWN IS PRESENT WITH HIS ATTORNEY, I BELIEVE A FAMILY
6 MEMBER TO MR. WILLIAM TETTERTON.

7 YOUR HONOR, AT THIS TIME WE HAVE BEEN INFORMED THAT
8 THE DEFENDANT DOES WISH TO ENTER A PLEA OF GUILTY TO THIS
9 INDICTMENT. IT IS AN INDICTMENT FOR FELONY DRIVING UNDER
10 THE INFLUENCE WITH DEATH RESULTING.

11 THE COURT: ALL RIGHT, SIR.

12 (THE DEFENDANT WAS FIRST DULY SWORN.)

13 THE COURT: ALL RIGHT. MR. TETTERTON, DO YOU
14 REPRESENT DONALD BROWN?

15 MR. TETTERTON: YES, SIR, I DO, YOUR HONOR.

16 THE COURT: HAVE YOU EXPLAINED TO MR. BROWN THE CHARGE
17 CONTAINED IN THIS INDICTMENT, THE POSSIBLE PUNISHMENT, AND
18 HIS RIGHTS INCLUDING HIS CONSTITUTIONAL RIGHT TO A JURY
19 TRIAL?

20 MR. TETTERTON: I HAVE, YOUR HONOR.

21 THE COURT: IN YOUR OPINION DOES MR. BROWN UNDERSTAND
22 THE CHARGE, THE PUNISHMENT, AND HIS RIGHTS?

23 MR. TETTERTON: IN MY OPINION HE DOES.

24 THE COURT: HOW DOES HE INDICATE TO YOU HE WISHES TO
25 PLEAD, GUILTY OR NOT GUILTY?

1 MR. TETTERTON: GUILTY, YOUR HONOR.

2 THE COURT: DO YOU AGREE WITH HIS DECISION TO PLEAD
3 GUILTY?

4 MR. TETTERTON: YES, I DO, YOUR HONOR.

5 THE COURT: FROM YOUR INVESTIGATION OF THE FACTS AND
6 CIRCUMSTANCES SURROUNDING THIS CASE, DO YOU FEEL THAT THE
7 STATE COULD PRODUCE SUFFICIENT EVIDENCE TO CONVINCE A JURY
8 HERE IN KERSHAW COUNTY OF MR. BROWN'S GUILT BEYOND A
9 REASONABLE DOUBT AND IF HE WERE TO STAND TRIAL ON THIS
10 CHARGE, HIS CONVICTION WOULD BE PROBABLE?

11 MR. TETTERTON: I DO, YOUR HONOR.

12 THE COURT: HAS MR. BROWN BEEN ORDERED TO SUBMIT TO A
13 MENTAL EXAMINATION TO DETERMINE HIS COMPETENCY TO STAND
14 TRIAL?

15 MR. TETTERTON: HE HAS NOT BEEN ORDERED AND HE DOESN'T
16 NEED ONE, YOUR HONOR, IN MY OPINION.

17 THE COURT: ALL RIGHT. SO IN YOUR MIND, THERE IS NO
18 NEED FOR ONE; IS THAT ---

19 MR. TETTERTON: NO NEED.

20 THE COURT: --- CORRECT? FINE. YOU ARE DONALD BROWN;
21 IS THAT CORRECT?

22 MR. BROWN: YES, SIR.

23 THE COURT: MR. BROWN, BEFORE I CAN ACCEPT YOUR PLEA
24 OF GUILTY IT'S NECESSARY FOR ME TO MAKE SURE THAT YOU'RE
25 MAKING THIS PLEA FREELY AND VOLUNTARILY. TO DO THAT, MR.

1 BROWN, I NEED TO ASK YOU A SERIES OF QUESTIONS. AT ANY
2 POINT DURING MY QUESTIONING OF YOU IF YOU DO NOT UNDERSTAND
3 ANYTHING I SAY OR ANY WORDS THAT I USE, PLEASE STOP ME.
4 I'LL BE MORE THAN HAPPY TO REPEAT OR EXPLAIN ANYTHING I
5 SAY, MR. BROWN.

6 ADDITIONALLY, I'LL BE MORE THAN HAPPY TO STOP THIS
7 PLEA AND ALLOW YOU AS MUCH TIME AS YOU FEEL YOU MAY NEED TO
8 CONSULT WITH YOUR LAWYER, MR. TETTERTON. DO YOU
9 UNDERSTAND, SIR?

10 MR. BROWN: YES, SIR.

11 THE COURT: HOW OLD ARE YOU, MR. BROWN?

12 MR. BROWN: 43.

13 THE COURT: 43. HOW FAR DID YOU GO IN SCHOOL?

14 MR. BROWN: TWELFTH.

15 THE COURT: TWELFTH GRADE. WHAT KIND OF WORK DO YOU
16 DO?

17 MR. BROWN: I DRIVE TRUCK.

18 THE COURT: DRIVE TRUCK. MR. BROWN, HAVE YOU EVER
19 BEEN TREATED FOR THE ABUSE OF ALCOHOL OR DRUGS OR FOR
20 MENTAL ILLNESS?

21 MR. BROWN: NO, SIR.

22 THE COURT: ALL RIGHT. HAVE YOU TAKEN ANY
23 MEDICATIONS, DRUGS, OR ALCOHOL IN THE PAST 24 HOURS?

24 MR. BROWN: NO, SIR.

25 THE COURT: ARE YOU TODAY AWARE OF ANY PHYSICAL,

1 NERVOUS, OR EMOTIONAL PROBLEM THAT MIGHT KEEP YOU FROM
2 UNDERSTANDING WHAT YOU'RE DOING?

3 MR. BROWN: NO, SIR.

4 THE COURT: YOU KNOW WHAT YOU'RE DOING, MR. BROWN; IS
5 THAT CORRECT?

6 MR. BROWN: YES, SIR.

7 THE COURT: DO YOU AGREE, MR. TETTERTON, THAT MR.
8 BROWN KNOWS, UNDERSTANDS, AND APPRECIATES WHAT HE'S DOING
9 HERE TODAY?

10 MR. TETTERTON: YES, SIR, I DO.

11 THE COURT: ALL RIGHT. NOW, MR. BROWN, YOU HEARD YOUR
12 LAWYER, MR. TETTERTON, TELL ME THAT HE HAS EXPLAINED TO YOU
13 THE CHARGE CONTAINED IN THIS INDICTMENT, THE POSSIBLE
14 PUNISHMENT, AND YOUR RIGHTS, INCLUDING YOUR RIGHT TO A JURY
15 TRIAL, THAT YOU UNDERSTAND THESE THINGS; IS THAT CORRECT?

16 MR. BROWN: YES, SIR.

17 THE COURT: MR. BROWN, YOU'RE BEFORE ME ON INDICTMENT
18 NO. 05-1372, THE STATE VERSUS DONALD BROWN. THIS IS AN
19 INDICTMENT FOR FELONY DRIVING UNDER THE INFLUENCE INVOLVING
20 A DEATH. DO YOU UNDERSTAND THIS CHARGE?

21 MR. BROWN: YES, SIR.

22 THE COURT: THIS INDICTMENT, MR. BROWN, ALLEGES THAT
23 YOU DID HERE IN KERSHAW COUNTY ON OR ABOUT JUNE THE 19TH OF
24 2005 DRIVE A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL,
25 DRUGS, OR A COMBINATION OF ALCOHOL AND DRUGS, AND DID AN

1 ACT FORBIDDEN BY LAW AND/OR NEGLECTED A DUTY IMPOSED BY
2 LAW; THAT YOU WHILE OPERATING A MOTOR VEHICLE FAILED TO
3 EXERCISE DUE CARE THAT CAUSED AN ACCIDENT THAT RESULTED IN
4 THE DEATH OF Minor DO YOU UNDERSTAND THIS
5 ALLEGATION, SIR?

6 MR. BROWN: YES, SIR.

7 THE COURT: THIS IS WHAT YOU WANT TO PLEAD GUILTY TO?

8 MR. BROWN: YES, SIR.

9 THE COURT: MR. BROWN, DO YOU REALIZE THAT BY PLEADING
10 GUILTY TO FELONY DRIVING UNDER THE INFLUENCE WITH A DEATH
11 INVOLVED, SIR, THAT YOU CAN GO TO JAIL UP TO 25 YEARS AND
12 BE FINED UP TO \$25,000. THE STATUTE ACTUALLY SAYS BETWEEN
13 1 AND 25 YEARS. DO YOU UNDERSTAND THAT?

14 MR. BROWN: YES, SIR.

15 THE COURT: AND THE FINE CAN BE BETWEEN 10 AND
16 \$25,000. KNOWING THEN, SIR, MR. BROWN, THAT YOU COULD GO
17 TO JAIL FOR 25 YEARS AND BE FINED \$25,000 BY PLEADING
18 GUILTY TO THIS CHARGE, DO YOU STILL WISH TO PLEAD GUILTY TO
19 IT?

20 MR. BROWN: YES, SIR.

21 THE COURT: MR. BROWN, WHEN YOU PLEAD GUILTY, YOU HAVE
22 TO GIVE UP CERTAIN BASIC RIGHTS. FIRST OF ALL, YOU HAVE TO
23 GIVE UP YOUR RIGHT TO REMAIN SILENT. NOW, THIS IS YOUR
24 RIGHT AGAINST SELF-INCRIMINATION, MR. BROWN. THIS IS YOUR
25 RIGHT TO SAY NOTHING AT ALL. NO ONE CAN COMPEL YOU TO COME

1 INTO COURT AND PROVIDE EVIDENCE OR TO TESTIFY AGAINST
2 YOURSELF. DO YOU UNDERSTAND THIS, SIR?

3 MR. BROWN: YES, SIR.

4 THE COURT: SECONDLY, MR. BROWN, WHEN YOU PLEAD
5 GUILTY, YOU HAVE TO GIVE UP YOUR RIGHT TO A JURY TRIAL.
6 THAT IS YOUR RIGHT FOR A JURY HERE IN KERSHAW COUNTY TO
7 DECIDE WHETHER OR NOT YOU'RE GUILTY OF THIS CHARGE BEYOND A
8 REASONABLE DOUBT. A JURY WOULD BASE ITS DECISION ON
9 WHATEVER EVIDENCE THE STATE WOULD INTRODUCE AT TRIAL
10 AGAINST YOU AND ALSO ON WHATEVER EVIDENCE YOU AND YOUR
11 LAWYER, MR. TETTERTON, MAY WISH TO INTRODUCE.

12 NOW, MR. BROWN, I EMPHASIZE MAY WISH TO INTRODUCE,
13 SIR, BECAUSE IN A TRIAL YOU WOULD BE PRESUMED INNOCENT,
14 WOULD NOT HAVE TO PROVE ANYTHING, AND YOU COULD NOT BE
15 CONVICTED UNLESS THE STATE CONVINCED ALL 12 JURORS OF YOUR
16 GUILT BEYOND A REASONABLE DOUBT. THE JURY'S DECISION WOULD
17 HAVE TO BE UNANIMOUS, ALL 12 WOULD HAVE TO AGREE THAT YOU
18 WERE RESPONSIBLE FOR MR. SPRADLEY'S DEATH. DO YOU
19 UNDERSTAND THAT, SIR?

20 MR. BROWN: YES, SIR.

21 THE COURT: THIRDLY, MR. BROWN, WHEN YOU PLEAD GUILTY,
22 YOU GIVE UP YOUR RIGHT TO CONFRONT AND TO BE CONFRONTED BY
23 THE WITNESSES AGAINST YOU; THAT IS YOUR RIGHT TO SEE, HEAR,
24 AND CROSS EXAMINE ANY WITNESSES THE STATE MAY CALL TO
25 TESTIFY AGAINST YOU DURING THE TRIAL. AND ALSO, MR. BROWN,

1 BY PLEADING GUILTY YOU GIVE UP YOUR RIGHT TO SUBPOENA AND
2 CALL WITNESSES ON YOUR OWN BEHALF; THAT IS SOMEONE WHO MAY
3 TESTIFY FOR YOU. DO YOU UNDERSTAND THIS, SIR?

4 MR. BROWN: YES, SIR.

5 THE COURT: NOW, MR. BROWN, DO YOU UNDERSTAND THESE
6 RIGHTS I JUST MENTIONED TO YOU?

7 MR. BROWN: YES, SIR.

8 THE COURT: THESE RIGHTS I JUST MENTIONED TO YOU?

9 MR. BROWN: YES, SIR.

10 THE COURT: ALL RIGHT. DO YOU UNDERSTAND, SIR, THAT
11 WHEN YOU PLEAD GUILTY, YOU HAVE TO GIVE UP THESE
12 CONSTITUTIONAL RIGHTS?

13 MR. BROWN: YES, SIR.

14 THE COURT: NOW, IS THAT WHAT YOU WANT TO DO?

15 MR. BROWN: YES, SIR.

16 THE COURT: YOU WANT TO GIVE UP YOUR CONSTITUTIONAL
17 RIGHTS?

18 MR. BROWN: YES, SIR.

19 THE COURT: NOW, YOU KNOW YOU WILL NOT RECEIVE A JURY
20 TRIAL ON THIS INDICTMENT OR THIS CHARGE BY PLEADING GUILTY
21 TO IT, DO YOU UNDERSTAND THAT?

22 MR. BROWN: YES, SIR.

23 THE COURT: NOW, ONCE AGAIN, MR. BROWN, YOU'RE
24 PLEADING GUILTY TO FELONY DRIVING UNDER THE INFLUENCE WITH
25 A DEATH INVOLVED. THE PENALTY IS BETWEEN 1 AND 25 YEARS

1 AND BETWEEN 10 AND \$25,000 FOR A FINE. YOU'RE GIVING UP
2 ALL YOUR CONSTITUTIONAL RIGHTS. NOW, MR. BROWN,
3 CONSIDERING WHAT I JUST SAID TO YOU, I'LL ASK YOU ONCE
4 AGAIN: HOW DO YOU WISH TO PLEAD TO THIS CHARGE, GUILTY OR
5 NOT GUILTY?

6 MR. BROWN: I PLEAD GUILTY.

7 THE COURT: ALL RIGHT. REALIZE, MR. BROWN, THAT WHEN
8 YOU PLEAD GUILTY, YOU ADMIT THE TRUTH OF THE ALLEGATION
9 CONTAINED IN THIS INDICTMENT AGAINST YOU? DO YOU
10 UNDERSTAND THAT? WHAT I READ TO YOU, YOU'RE SAYING THAT I
11 DID IT, IT'S TRUE. YOU UNDERSTAND THAT?

12 MR. BROWN: YES, SIR.

13 THE COURT: NOW, I HAVE TO SAY THAT TO YOU, MR. BROWN,
14 BECAUSE YOU MAY HAVE SOME DEFENSES TO THIS CHARGE. OF
15 COURSE, I HAVE NO WAY OF KNOWING THAT. BUT YOU NEED TO
16 REALIZE THAT BY PLEADING GUILTY HERE TODAY, YOU GIVE UP ANY
17 DEFENSES YOU MAY HAVE. DO YOU UNDERSTAND THAT, SIR?

18 MR. BROWN: YES, SIR.

19 THE COURT: ADDITIONALLY, I TELL YOU THAT, MR. BROWN,
20 BECAUSE WHEN YOU WERE ARRESTED BY THE SOUTH CAROLINA
21 HIGHWAY PATROL, YOU MAY HAVE GIVEN SOME TYPE OF
22 INCRIMINATING STATEMENT; THAT IS, MADE SOME ADMISSION OR
23 CONFESSION ABOUT YOUR GUILT. YOU NEED TO REALIZE THAT BY
24 PLEADING GUILTY HERE TODAY, YOU WAIVE YOUR RIGHT TO LATER
25 ON CHALLENGE OR CONTEST IF YOU GAVE ANY STATEMENTS WHETHER

1 OR NOT THEY WERE TAKEN OR OBTAINED FROM YOU FREELY AND
2 VOLUNTARILY IN ACCORDANCE WITH YOUR CONSTITUTIONAL RIGHTS.
3 DO YOU UNDERSTAND THIS, SIR?

4 MR. BROWN: YES, SIR.

5 THE COURT: NOW, MR. BROWN, I'LL ASK YOU ONCE AGAIN.
6 DID YOU COMMIT THIS OFFENSE?

7 MR. BROWN: REPEAT THAT.

8 THE COURT: DID YOU COMMIT THIS OFFENSE?

9 MR. BROWN: YES, SIR.

10 THE COURT: SO ONCE AGAIN, MR. BROWN, YOU'RE TELLING
11 ME YOU'RE PLEADING GUILTY TO INDICTMENT NO. 05-1372, FELONY
12 DRIVING UNDER THE INFLUENCE WITH A DEATH INVOLVED BECAUSE
13 YOU DID IN FACT HERE IN KERSHAW COUNTY ON OR ABOUT JUNE
14 19TH OF 2005 DRIVE A VEHICLE WHILE UNDER THE INFLUENCE OF
15 ALCOHOL AND/OR DRUGS, AND DID AN ACT FORBIDDEN BY LAW OR A
16 DUTY IMPOSED BY LAW, THAT WHILE OPERATING A MOTOR VEHICLE
17 YOU FAILED TO EXERCISE DUE CARE THAT CAUSED AN ACCIDENT
18 THAT RESULTED IN THE DEATH OF Minor

19 YOU'RE PLEADING GUILTY TO THESE ALLEGATIONS ONCE
20 AGAIN, MR. BROWN, BECAUSE YOU ARE IN FACT GUILTY; IS THAT
21 CORRECT?

22 MR. BROWN: THAT'S RIGHT.

23 THE COURT: HAVE THERE BEEN ANY PLEA NEGOTIATIONS,
24 SOLICITOR?

25 MR. MEADORS: NO, YOUR HONOR.

1 THE COURT: ANYTHING ADDITIONAL AT ALL, MR. TETTERTON,
2 NEEDS TO BE ADDED TO THE RECORD IN CONNECTION WITH ANY PLEA
3 NEGOTIATIONS OR ANY RECOMMENDATION?

4 MR. TETTERTON: NO, SIR.

5 THE COURT: ALL RIGHT. DO YOU STILL WISH TO CONTINUE
6 AND PLEAD GUILTY, MR. BROWN?

7 MR. BROWN: YES, SIR.

8 THE COURT: NOW, SIR, HAS ANYONE PROMISED YOU ANYTHING
9 OR HAS ANYONE HELD OUT ANY HOPE OF REWARD IN ORDER TO GET
10 YOU TO PLEAD GUILTY?

11 MR. BROWN: NO, SIR.

12 THE COURT: HAS ANYONE THREATENED YOU OR USED FORCE TO
13 GET YOU TO PLEAD GUILTY?

14 MR. BROWN: NO, SIR.

15 THE COURT: HAS ANYONE USED ANY PRESSURE OR
16 INTIMIDATION THAT WOULD CAUSE YOU TO PLEAD GUILTY?

17 MR. BROWN: NO, SIR.

18 THE COURT: HAVE YOU HAD ENOUGH TIME TO MAKE UP YOUR
19 MIND AS TO WHETHER OR NOT YOU WANT TO PLEAD GUILTY?

20 MR. BROWN: YES, SIR.

21 THE COURT: MR. BROWN, ARE YOU PLEADING GUILTY OF YOUR
22 OWN FREE WILL AND ACCORD?

23 MR. BROWN: YES, SIR.

24 THE COURT: NOW, DO YOU HAVE ANY COMPLAINTS, MR. BROWN
25 -- LET ME ASK YOU THIS FIRST. ARE YOU SATISFIED WITH THE

1 MANNER IN WHICH YOUR LAWYER HERE, MR. TETTERTON, HAS
2 ADVISED AND REPRESENTED YOU ON THIS CHARGE?

3 MR. BROWN: YES, SIR.

4 THE COURT: HAVE YOU TALKED WITH HIM FOR AS LONG, AS
5 FOR AS OFTEN AS YOU FEEL IT NECESSARY FOR HIM TO PROPERLY
6 REPRESENT YOU?

7 MR. BROWN: YES, SIR.

8 THE COURT: YOU HAVE. DO YOU NEED ANY MORE TIME TO
9 TALK TO HIM?

10 MR. BROWN: NO, SIR.

11 THE COURT: HAVE YOU UNDERSTOOD YOUR TALKS WITH HIM?

12 MR. BROWN: YES, SIR.

13 THE COURT: MR. BROWN, HAS MR. TETTERTON DONE
14 EVERYTHING FOR YOU YOU FEEL HE SHOULD DO OR COULD DO ON
15 YOUR BEHALF IN ADVISING AND REPRESENTING YOU ON THIS
16 CHARGE?

17 MR. BROWN: YES, SIR.

18 THE COURT: HAS HE DONE ANYTHING YOU FEEL HE SHOULD
19 NOT HAVE DONE?

20 MR. BROWN: NO, SIR.

21 THE COURT: ARE YOU COMPLETELY SATISFIED WITH HIS
22 SERVICES?

23 MR. BROWN: YES, SIR.

24 THE COURT: NOW, DO YOU HAVE ANY COMPLAINTS, MR.
25 BROWN, AGAINST ANYONE AT THE SOUTH CAROLINA HIGHWAY PATROL?

1 MR. BROWN: NO, SIR.

2 THE COURT: ANY COMPLAINTS AGAINST ANYONE WHO WORKS
3 HERE IN THE SOLICITOR'S OFFICE?

4 MR. BROWN: NO, SIR.

5 THE COURT: HAVE YOU UNDERSTOOD MY QUESTIONS, MR.
6 BROWN?

7 MR. BROWN: YES, SIR.

8 THE COURT: IS THERE ANYTHING YOU WANT TO ASK ME ABOUT
9 WHAT I JUST WENT OVER WITH YOU, ANYTHING AT ALL?

10 MR. BROWN: NO, SIR.

11 THE COURT: ALL RIGHT. NOW, MR. BROWN, DO YOU REALIZE
12 THAT YOU HAVE A RIGHT TO APPEAL THIS GUILTY PLEA AND
13 WHATEVER SENTENCE I MAY IMPOSE UPON YOU, BUT IF YOU'RE
14 GOING TO APPEAL, YOU'LL NEED TO FILE A NOTICE OF INTENT TO
15 APPEAL WITHIN 10 DAYS OF THE DATE THAT YOU ARE SENTENCED.
16 YOU UNDERSTAND THAT?

17 MR. BROWN: YES, SIR.

18 THE COURT: YOU REMEMBER THAT. ADDITIONALLY, MR.
19 BROWN, ONCE YOU'RE IN THE DEPARTMENT OF CORRECTIONS, IF YOU
20 LATER ON FIND OR FEEL THAT YOU HAVE SOME COMPLAINTS AGAINST
21 THE HIGHWAY PATROL, AGAINST THE SOLICITOR'S OFFICE, AGAINST
22 YOUR LAWYER, MR. TETTERTON, OR ANYBODY ELSE INVOLVED IN
23 YOUR CASE, YOU NEED TO MAKE THOSE COMPLAINTS KNOWN BY
24 FILING A POST-CONVICTION RELIEF APPLICATION WITHIN 1 YEAR
25 OF THE DATE THAT YOU ARE SENTENCED. DO YOU UNDERSTAND

1 THAT, SIR?

2 MR. BROWN: YES, SIR.

3 THE COURT: VERY WELL. MR. GIESE, MR. MEADORS.

4 MR. GIESE: MAY IT PLEASE THE COURT, YOUR HONOR. VERY

5 BRIEFLY JUST TO PUT A FACTUAL BASIS ON THIS GUILTY PLEA.

6 YOUR HONOR, I GUESS I NEED TO START OUT BY SAYING THIS IS

7 AS TRAGIC A CASE AS I'VE SEEN IN OUR COMMUNITY HERE. THE

8 VICTIM IN THE CASE WAS Minor HE WAS 5 YEARS

9 OLD AT THE TIME OF HIS DEATH. Minor ALONG WITH HIS

10 FATHER, WHO IS IN THE COURTROOM TODAY, AND A COUSIN WERE

11 RIDING BIKES ON A SUNDAY EVENING ON JUNE 19TH OF 2005 ON

12 SHIVERS GREEN ROAD, WHICH IS HERE IN KERSHAW COUNTY. THEY

13 RODE THEIR BIKES DOWN TO THE INTERSECTION OF SHIVERS GREEN

14 AND SPRINGVALE. THERE'S A STOP SIGN AT THAT LOCATION.

15 THEY TURNED AROUND AND WERE RIDING BACK TOWARD THEIR HOUSE.

16 THEY ALSO LIVE ON SHIVERS GREEN FURTHER DOWN THE ROAD.

17 THEY TURNED AROUND, THEY WERE ON THEIR WAY BACK. GOT

18 SEVERAL HUNDRED YARDS DOWN BACK TOWARD THEIR HOUSE. ALL

19 THREE OF THEM WERE ON THE ROADWAY AT THAT POINT.

20 THE DEFENDANT WAS DRIVING A RED JEEP CHEROKEE, TOOK A

21 LEFT OFF OF SPRINGVALE ONTO SHIVERS GREEN. SO THE

22 DEFENDANT WAS GOING IN THE SAME DIRECTION THAT THE VICTIM

23 AND THE TWO OTHER BIKE RIDERS WERE GOING.

24 THE DEFENDANT DROVE UP BEHIND THEM, AND ACCORDING TO

25 CERTAIN WITNESSES THAT THE STATE WAS GOING TO PRESENT, CAME

1 UP BEHIND THEM -- CAME UP BEHIND THEM AND STRUCK Minor
2 SPRADLEY FROM BEHIND.

3 Minor WAS ON HIS BIKE AT THE TIME AND WAS
4 IN THE ROADWAY. THE POINT OF IMPACT WAS CLEARLY IN THE
5 ROADWAY WHERE HE WAS ALLOWED TO BE BECAUSE HE WAS A
6 BICYCLIST.

7 THE DEFENDANT AFTER STRIKING THE VICTIM -- OF COURSE,
8 THE VICTIM'S BODY -- Minor HIMSELF FLEW APPROXIMATELY 90
9 FEET. THE BIKE ITSELF WENT ABOUT 80 FEET. THE DEFENDANT
10 AFTER STRIKING THE VICTIM KEPT DRIVING DOWN THE ROAD AND
11 WENT 600 FEET -- ALMOST 200 YARDS BEFORE HE PULLED INTO A
12 DRIVEWAY AND STOPPED. THE DRIVEWAY JUST HAPPENED TO BE THE
13 VICTIM'S DRIVEWAY WHERE HE ACTUALLY LIVED.

14 HE GOT OUT OF HIS JEEP AND WENT BACK TO THE SCENE. OF
15 COURSE, EMS AND THE POLICE ARRIVED. THE HIGHWAY PATROL
16 INVESTIGATED THE CASE.

17 UNFORTUNATELY, Minor WAS AIR LIFTED FROM THE SCENE.
18 THEY TRIED TO AIR LIFT HIM TO RICHLAND MEMORIAL HOSPITAL.
19 WHEN HE GOT TO RICHLAND MEMORIAL HOSPITAL, UNFORTUNATELY
20 Minor DIED, OBVIOUSLY FROM THE WRECK THAT THE DEFENDANT
21 CAUSED.

22 YOUR HONOR, AT THE SCENE -- OF COURSE, THE HIGHWAY
23 PATROL INVESTIGATED. THE MAIT TEAM WAS CALLED OUT. BUT
24 BEFORE THE MAIT TEAM GOT THERE, THESE TWO TROOPERS WERE AT
25 THE SCENE. THEY NOTICED THAT THE DEFENDANT HAD BEEN

1 DRINKING AND WAS INTOXICATED.

2 THERE WERE SEVERAL CIVILIAN WITNESSES AT THE SCENE,
3 WHO, YOUR HONOR, WHEN WE HAVE THE NEXT PRESENTATION WE'RE
4 GOING TO PRESENT TO YOUR HONOR THAT OBVIOUSLY KNEW THAT HE
5 HAD BEEN DRINKING.

6 THE OFFICERS AT THAT POINT GAVE HIM SOME FIELD
7 SOBRIETY TESTS WHICH HE FAILED. HE WAS ARRESTED AT THAT
8 TIME FOR FELONY DUI, TAKEN TO KERSHAW HOSPITAL TO HAVE
9 BLOOD AND URINE DRAWN. AT THE HOSPITAL, THEY DREW THE
10 BLOOD, TOOK THE URINE FROM HIM. AND THE BLOOD ALCOHOL
11 LEVEL CAME BACK AS .22, OBVIOUSLY ABOVE THE LEGAL
12 PRESUMPTION HERE IN SOUTH CAROLINA.

13 YOUR HONOR, THE STATE WAS ALSO GOING TO PRESENT SOME
14 WITNESSES FROM THE HOSPITAL, SPECIFICALLY THREE NURSES AND
15 TWO DOCTORS WHO ALL FIVE WERE GOING TO SAY JUST HOW
16 INTOXICATED THE DEFENDANT WAS WHILE HE WAS AT THE HOSPITAL
17 AND TO HIS DEMEANOR AT THAT POINT, WHICH WAS WITHIN AN HOUR
18 OF WHEN THIS TRAGEDY TOOK PLACE.

19 YOUR HONOR, THAT'S BASICALLY THE FACTS OF THE CASE.
20 BUT JUST FOR THE RECORD, TO BE VERY, VERY CLEAR ON THIS,
21 THE VICTIM WAS LEGALLY ON THE ROAD. THE POINT OF IMPACT
22 WAS ON THE ROAD AND THE DEFENDANT DID NOT SHOW PROPER CARE
23 IN DRIVING HIS AUTOMOBILE. THE VISIBILITY WAS FINE. IT
24 WAS STILL LIGHT OUT. FROM THE INTERSECTION OF SPRINGVALE
25 TO WHERE THIS TOOK PLACE IS APPROXIMATELY 200 YARDS AND IS,

1 YOUR HONOR, JUST AS STRAIGHT AS AN ARROW. NO TREES TO
2 BLOCK VIEW. HE HAD AT LEAST 200 YARDS OF DRIVING BEFORE HE
3 HIT THE VICTIM.

4 THE COURT: WHAT ABOUT HIS PRIOR RECORD?

5 MR. GIESE: MR. MEADORS HAS THAT.

6 MR. MEADORS: YOUR HONOR, HE'S GOT A POSSESSION OF
7 CRACK COCAINE CONVICTION IN JANUARY OF 1997. AS FAR AS
8 CONVICTIONS, THAT IS HIS PRIOR RECORD.

9 THE COURT: ALL RIGHT. NOW, MR. BROWN, MR. TETTERTON,
10 YOU HEARD THE PRESENTATION BY THE SOLICITOR. DO YOU BOTH
11 AGREE THAT SUBSTANTIALLY, FACTUALLY THAT'S CORRECT?

12 MR. TETTERTON: SUBSTANTIALLY, YES, SIR, YES, THAT'S
13 CORRECT.

14 THE COURT: I KNOW THERE CAN BE SOME DIFFERENCES. BUT
15 BASICALLY, THAT'S THE UNDERLYING REASON FOR THE PLEA HERE.

16 MR. TETTERTON: YES, SIR.

17 THE COURT: AND YOU ALL AGREE, AND THAT'S YOUR PRIOR
18 RECORD, MR. BROWN?

19 MR. BROWN: YES, SIR.

20 THE COURT: ALL RIGHT. VERY WELL, SIR. I FIND THAT
21 THERE'S A SUBSTANTIAL FACTUAL BASIS FOR YOUR PLEA, MR.
22 BROWN. I FURTHER FIND YOUR DECISION TO PLEAD GUILTY TO BE
23 FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE, THAT
24 YOU HAVE HAD ADVICE OF COMPETENT COUNSEL WHOM YOU INDICATE
25 TO ME YOU'RE COMPLETELY SATISFIED WITH; THEREFORE, I'M

1 GOING TO ACCEPT THIS PLEA.

2 NOW, WHAT I'M GOING TO DO, GENTLEMEN, MR. TETTERTON
3 AND MR. BROWN AND SOLICITOR GIESE AND MR. MEADORS, I'M NOT
4 GOING TO IMPOSE SENTENCE ON MR. BROWN TODAY. I REALIZE HOW
5 IMPORTANT THIS CASE IS TO THE VICTIMS AS WELL AS MR. BROWN
6 AND HIS FAMILY, AND OBVIOUSLY THE VICTIM'S FAMILY OUT
7 THERE. AND IT'S NOT THAT I CAN'T IMPOSE SENTENCE TODAY,
8 BUT THESE ARE DIFFICULT CASES AND THEY REQUIRE THOUGHT AND
9 REFLECTION AT LEAST -- I'VE BEEN ON THE BENCH LONG ENOUGH
10 TO KNOW AT MY AGE THAT THEY REQUIRE THOUGHT AND REFLECTION,
11 AND THAT'S WHAT I INTEND TO DO.

12 AND IN AN EFFORT TO DO THAT AND TO BE AS FAIR AS I
13 POSSIBLY CAN TO EVERYBODY INVOLVED, I'M GOING TO ASK THE
14 LOCAL PROBATION OFFICE TO PROVIDE ME WITH A PRE-SENTENCE
15 INVESTIGATION. AND THEY USUALLY TAKE ABOUT A MONTH TO SIX
16 WEEKS TO COMPLETE -- SOMEWHERE IN THAT RANGE. SO I'VE
17 ACCEPTED THE PLEA.

18 I THINK MR. BROWN IS PREPARED TO BE REMANDED INTO
19 CUSTODY TODAY; IS THAT CORRECT, MR. TETTERTON?

20 MR. TETTERTON: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: AND IT'S GOING TO TAKE APPROXIMATELY A
22 MONTH TO SIX WEEKS TO GET THIS PRE-SENTENCE INVESTIGATION
23 PREPARED. I WILL TAKE EVERYTHING INTO ACCOUNT THAT I HEAR
24 ADDITIONALLY FROM THE STATE, THAT I HEAR FROM MR.
25 TETTERTON, AND THE CONTENTS OF THE PRE-SENTENCE

1 INVESTIGATION. WE'LL ALL RECONVENE AGAIN ON A DATE FOR
2 SENTENCING. AND LIKE I SAID, MY BEST GUESS IS SOMEWHERE
3 BETWEEN A MONTH AND SIX WEEKS, SOMEWHERE IN THAT RANGE.

4 YES, SIR, MR. TETTERTON.

5 MR. TETTERTON: I THINK THERE IS SOMETHING MR. BROWN
6 WOULD LIKE TO SAY, YOUR HONOR.

7 THE COURT: ALL RIGHT. MR. BROWN, I'D BE HAPPY TO
8 HEAR ANYTHING YOU'D LIKE TO TELL ME, SIR.

9 MR. BROWN: YES, I'D LIKE TO APOLOGIZE TO THE FAMILY.
10 THE SPRADLEY FAMILY, I HATE WHAT -- I'M SORRY AND HATE WHAT
11 HAPPENED. I WISH IT WOULD HAVE NEVER HAPPENED.

12 MR. TETTERTON: THANK YOU, YOUR HONOR.

13 MR. MEADORS: YOUR HONOR, COULD I JUST SAY ONE THING?

14 THE COURT: YES, SIR.

15 MR. MEADORS: I KNOW WE'RE SAVING THIS.

16 THE COURT: PLEASE TELL ME WHO IS HERE?

17 MR. MEADORS: TONYA AND TIM SPRADLEY, THE FATHER AND
18 MOTHER ARE HERE.

19 THE COURT: WHERE ARE THEY?

20 MR. MEADORS: RIGHT HERE, YOUR HONOR. THEIR PARENTS
21 ARE HERE. THEIR FAMILY AND FRIENDS ARE HERE. ALL THESE
22 FOLKS SITTING OUT HERE, YOUR HONOR, THEY HAVE BEEN FRIENDS
23 OF Minor OBVIOUSLY, THEY LOVE HIM. THEY MISS
24 HIM. THEY WISH HE WAS STILL HERE. AS WE'VE ALL THOUGHT,
25 JUDGE, WE'RE GOING TO SAVE OUR COMMENTS FOR WHEN WE COME

1 BACK FOR THE SENTENCING, YOUR HONOR.

2 THE COURT: AND TO THE SPRADLEY FAMILY, TO EVERYBODY
3 INVOLVED. I DON'T KNOW HOW MANY OF THESE I'VE BEEN
4 INVOLVED IN, BUT I'VE BEEN INVOLVED WITH A NUMBER OF THEM.
5 JUST TO HAVE AN IDEA OF WHAT I THINK IS THE BEST WAY TO
6 PROCEED, I THINK THE BEST WAY TO PROCEED IS TO ACCEPT THIS
7 PLEA, TAKE SOME -- YES, SIR.

8 MR. MEADORS: YOUR HONOR, JUST FOR THE RECORD, THE
9 SOLICITOR POINTED OUT, LANCE CORPORAL JASON MINKS IS ONE OF
10 THE LEAD ---

11 THE COURT: HE'S FROM SPARTANBURG OR HE CLAIMS TO BE
12 FROM SPARTANBURG.

13 MR. MEADORS: SERGEANT DONALD BRAHAM, SERGEANT JAMES
14 DAY, AND CORPORAL GRUBBS IS HERE, YOUR HONOR, ALL OF THEM
15 INTIMATELY INVOLVED. I JUST WANTED THE RECORD TO RECOGNIZE
16 THEM TOO.

17 THE COURT: ALL RIGHT. THAT'S MY DECISION. THE
18 SOLICITOR WILL INFORM THE SPRADLEYS AND THE FAMILY AND THE
19 VICTIMS WHEN WE WILL RECONVENE. AND, MR. TETTERTON, YOU
20 WILL KNOW ABOUT THE SAME TIME AS THEY DO.

21 THANK YOU ALL SO VERY MUCH.

22 --- END OF THIS PORTION OF THE TRANSCRIPT OF RECORD ---

23

24

25

1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF
6 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
7 COURT FOR KERSHAW COUNTY, SOUTH CAROLINA ON THE 10TH DAY OF
8 APRIL 2006.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11

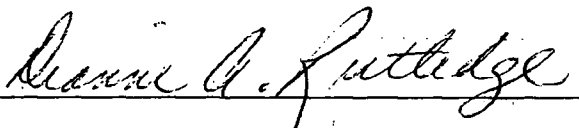
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AUGUST 12, 2008

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COURT REPORTER

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1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF KERSHAW) COURT
3)
4 STATE,)
5)
6 -V-) TRANSCRIPT OF
7) RECORD
8 DONALD E. BROWN)
9) 2007-CP-28-400
10 DEFENDANT.)

11

12

SEPTEMBER 19TH, 2006

13

KERSHAW, SOUTH CAROLINA

14

15 B-E-F-O-R-E:

16

HONORABLE CASEY L. MANNING, JUDGE;

17

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

19

FOR THE PLAINTIFF:

20

JOHN MEADORS, ESQ.

21

22

FOR THE DEFENDANT:

23

WILLIAM TETTERTON, ESQ.

24

25

I-N-D-E-X

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PG.

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SENTENCING:

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ORDER OF THE COURT:

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CERTIFICATE OF REPORTER:

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1 (The following proceedings were
2 held on September 19th, 2006.)
3 (Five Plaintiff's Exhibits were
4 premarked.)

5 Mr. Meadors: If it pleases, Your Honor.

6 THE COURT: Yes, sir.

7 Mr. Meadors: Your Honor, before you is Donald
8 Earl Brown, Kershaw indictment, true billed Indictment
9 2005-GS-28-1372 as, Your Honor, well remembers -- and he's
10 standing here with his counsel Mr. William Tetterton, member
11 of the Kershaw County.

12 On April 10th, Your Honor, of this year, the
13 defendant did enter a plead to felony driving under the
14 influence with death resulting before Your Honor. At that
15 time, Your Honor, did order a presentencing investigation,
16 that investigation was competed by the Kershaw County
17 Probation Office and we are now back before Your Honor for
18 sentencing.

19 THE COURT: All right, sir.

20 Mr. Meadors: Judge -- with judge's permission I
21 would like to give a -- give Your Honor a re --

22 THE COURT: A recap, maybe?

23 Mr. Meadors: Yes, sir.

24 THE COURT: All right, sir.

25 Mr. Meadors: Judge, it's Father's Day, April,

1 excuse me, June 19th, 2005 approximately 8:40 p.m. the
2 father in this case, Mr. Tim Spradley was out riding his
3 bikes with his son, the victim in this case, Minor
4 Minor who was five at the time and also with
5 their nephew Michael Post.

6 Judge, they lived on Shiver's Green. They went
7 down -- and we prepared a diagram, they went down from their
8 house down to an intersection Shiver's Green Road, turned
9 around and were coming back toward their home. As they're
10 heading back to their home a Mr. Darrell Moore, a neighbor
11 who also lives on Shiver's Green Road,
12 Road, was out in his yard I think they had been cleaning or
13 doing something, I'm not sure but he was outside. He gave a
14 statement. He said he sees the victim, the Minor he
15 sees his father Tim and Michael Post going down past them
16 and then coming back by his house northward on Shiver's
17 Green Road which is in Kershaw County. He also hears a
18 vehicle Mr. Moore said and he hears an engine, he hears the
19 engine, hears the car, goes back then he hears a thump.
20 Your Honor, he runs to the scene. And at this point I want
21 the record to reflect Mr. Moore says it was 8:40, he could
22 see, didn't have any trouble seeing and the weather was
23 fine. He goes to where he heard this sound and he finds Tim
24 Spradley down on the ground holding his son, he sees some
25 debris, the bicycle, Judge. He also comes into contact with

1 Donald Earl Brown. His first observations and I think if
2 Mr. Moore and I don't know if he's in the courtroom or not
3 today, he was here last time for sentences. His first
4 observation is -- his testimony was going to be that he
5 looked like he was drunk, I smelled alcohol on him. He even
6 said, You're drunk. You're drunk. Mr. Brown had left after
7 he'd hit the bicycle that young Minor -- Minor
8 was riding.

9 He went down several hundred feet and turned in.
10 the driveway, ironically of the Spradley. He gives
11 statements later that -- to the police officers a little
12 later on at the scene, he said, Well, I didn't go back
13 because I didn't real think I done anything.

14 Judge, thank goodness Darrell Moore was there a
15 natural witness initially right off the bat that would have
16 talked about how he thought -- how much he thought Mr. Brown
17 was intoxicated. Everybody responds as they do over here,
18 which is wonderful about this county, but the police
19 respond, the troopers respond there on the scene, EMS, the
20 sheriff's department, I think everybody responses. The
21 initially observations on the scene there with the troopers
22 are that they have him on tape, his actions and mannerisms
23 are on tape. Trooper Meets does two sobriety test, Your
24 Honor. His testimony would be the -- test and the one leg
25 stand, we viewed them on the videotape, his testimony would

1 be and I would concur after watching it that he failed those
2 field sobriety test. He was put in the patrol car at that
3 point on Shiver's Green Road and being transported back to
4 the Kershaw County Hospital. We have that on tape, Judge,
5 the actions, the mannerism of the defendant at that time and
6 with all do respect everybody it clearly shows in my opinion
7 based on my 20 years and my observations of that tape that
8 he was under the influence, he was intoxicated.

9 It goes back and forth from, I didn't mean to hit
10 anybody to at one point that I didn't hit anybody, some
11 other person was driving, actually says that on the tape.
12 In response to how many beers did you have, he initially
13 says, Well, I had two, two, beers that day. Judge, at this
14 point and if, Your Honor, will permit and we've -- there's
15 just a small position of this tape that we would like to
16 play for Your Honor.

17 THE COURT: All right, sir.

18 Mr. Meadors: It's just for.

19 (Whereupon, a videotape was
20 played.)

21 Mr. Meadors: Your Honor, that was part of the
22 tape when asked how much you had to drink and asked about
23 the driving he denied driving. And then the older I get I
24 guess sometime the facts speak for themselves and I think that
25 videotape pretty much speak for itself, Your Honor, as far

1 as his level of intoxication.

2 Judge, once they and they being the South Carolina
3 Highway Patrol get the defendant to the Kershaw County
4 Hospital when they pull up to the hospital he says, I'm,
5 I'm, not going in there, he says some un-heavenly -- let's
6 just say. And according to the Trooper Meets' notes, he's
7 belligerent. They take him inside, he refuses to give a
8 blood test, they get a search warrant. They were also
9 trying to get some urein from him and he refuses to do that.
10 And with all due respect to everybody but I just have to put
11 the facts on the record began urinating on himself I think
12 so they wouldn't be able to collect some urein, they collect
13 that urein from where he was urinating on himself.

14 Also after they got the search warrants they did
15 take his blood, Your Honor, and that blood did come back
16 point 225 and the urein was point 337 ethanol level.

17 Judge, after this he was transported to the
18 Kershaw County Detention Center at that point there's also a
19 tape of how he was acting and what he looked like down there
20 and how he did refuse the breathalyzer there.

21 Judge, the MATE Team did come out, did some
22 extensive work there diagrams, were able to determine the
23 speed was 46. Went through some calculations as to where
24 the moon rose was and what time of year it was and from
25 their conclusions the sights to the building was not an

1 issue in this case and was not a contributing factors based
2 on their finding and their testimony would have been.

3 And in addition to skid marks an impact of the red
4 1998 jeep the defendant was driving, all of that was
5 preserved for later use at trial in this court today and you
6 can clearly see the skid marks and the impact on the jeep
7 and on the bicycle. And we have what's Plaintiff's 5 that I
8 would offer it as State's 5 at this point and State's 4 as
9 shown to Mr. Tetterton, just these show the damage to the
10 bicycle of Minor He was riding along, Your

11 Honor, and a proper bicyclist when the victim himself went
12 approximately 91 feet in the air after he was struck by the
13 defendant's vehicle. And did -- this diagrams here
14 (indicating) does depict where not only the skid marks but
15 also it says center mark of the victim's body that he was
16 wearing a helmet, you can see how the bike was kind of
17 scattered around this was prepared by the MATE Team, Your
18 Honor, but he did go 91 feet at the point of impact, he
19 being the victim in this case.

20 Judge, the final thing I want to say before I turn
21 it over to my boss, we have some other State's 1, State's 2,
22 State's 3 which just show after Michael Post, Minor

23 and his father Tim Spradley turned around
24 and came back this would have been testimony and evidence
25 that it was a straight line of path, a clear line of path

1 and the evidence we believe that the defendant should have
2 seen and was driving too fast for the conditions with the
3 bicyclist on the road. And specifically State's Number 2,
4 Your Honor, you can see back from point of impact it goes
5 back to the intersection which they came from, which just
6 show there's no obstacles, nothing obstructing the view,
7 it's pretty much a straight path.

8 Judge, would this be the point that Your Honor
9 would like to hear, we've got three people I think that
10 would like to speak.

11 THE COURT: Will be happy to hear from them now,
12 sir.

13 Mr. Meadors: Your Honor, first is Michael Post's
14 mother how who is Tonya Spradley's sister.

15 THE COURT: Yes, ma'am.

16 MS. POST: Wendy Dough Post.

17 I felt the urge to speak today on behalf of my
18 family. On June 19th, 2005 our lives were changing
19 forever because of the lost of our prescious Minor

20 was born . He was my first
21 nephew. I brought him all of his baby first bibs. He was
22 such a prescious child. He never met a stranger. Minor
23 was a pure delight to be around.

24 My husband and I have four children; Michael 13,
25 being the oldest who was riding bikes with Minor on

1 Father's Day 2005. This tragic event has been a nightmare,
2 especially for Michael seeing the entire event. Michael has
3 had to go to counseling to try to deal with the lost of his
4 little cousin Minor He's had nightmare and to this day
5 doesn't want the clothes washed he wore that day because he
6 said that was the last thing he had on when he was with
7 Minor

8 Someone asked him what was one of his best
9 memories with Minor and he said, Our last bike ride.

10 Our three other children talk about Minor all
11 the time, they miss him dearly as well all do.

12 Children are not suppose to die, they're suppose
13 to live a long happy life and grow to be old.

14 Anytime you are around Minor he always told you
15 I love you and also have a hug a kiss for you. He was as
16 close to perfect as anyone could get. Our family will never
17 be complete again.

18 When we have our Sunday dinners together and our
19 other family get togethers, it's not the same. There will
20 always be an empty spot at the table where Minor is
21 suppose to be.

22 On Minor birthday we have to go to the
23 cemetery now instead of having a birthday party. And on
24 holidays we go to the cemetery, this has devastated our
25 family. Imagine your sister, bother-in-law, nephew,

1 parents, husband your own children, bother and sister-in-law
2 suffering and there's nothing you can do to fix what's
3 causing the suffering. Our lives will never be the same
4 again but Minor memory will live on forever. Thank
5 you.

6 THE COURT: Thank you, ma'am.

7 Mr. Meadors: Your Honor, over the past year and
8 half I've gotten to know mom, Tonya and Tim. They initially
9 worked with Mr -- who use to be with our office. And the
10 solicitor and I started working with them, we been to their
11 house a couple of times, we went to their place of business,
12 they have been suffering. They want to share with you now
13 their feelings. I think Tim Spradley, the father, would go
14 first, Your Honor.

15 THE COURT: All right, Mr. Spradley.

16 MR. SPRADLEY: Your Honor, my name is Tim
17 Spradley, I'm the father of Minor the victim. I never
18 imagined that I would be standing here today addressing the
19 court on lost of my son Minor

20 On June 19th, Father's Day 2005 my prescious son
21 was taken from me when we were enjoying a Sunday afternoon
22 bike ride. It is so very hard to put into words the
23 feelings that I have after such a tragic lost. I never
24 thought my time would be limited here on earth with my first
25 born son. I am not going to get to see him grow up and

1 fulfill all of his childhood dreams. I spend each and
2 everyday wishing that there was -- wishing that he was here
3 with me.

4 I know that we had many good times together in the
5 short five years but I can only imagine the happiness we
6 would have shared as he grew up. But now I just have an
7 empty bedroom that I have not opened the door on since
8 June 19th, 2005. The last time I went in his bedroom door
9 was to wake him up for church that Sunday morning. There's
10 an emptiness in my heart and I never imagined that I would
11 have to feel where I was once happy now anger in my heart.

12 Justice will never be served. Minor bother
13 Spencer also has to suffer; his big brother, his mentor, his
14 true best friend will not be here to help him through
15 school, teach him how to play ball or show him how to ride
16 his bike. To this day Spencer still does not want to ride
17 his bike and ask all the time, crying through tears, why did
18 Sulvie have to get hurt? How do you begin to explain to a
19 five year old this horrible tragedy? How am I suppose to do
20 little thing little boys are suppose to do, when some things
21 are not out of my control. As a father I suppose, I'm
22 suppose to be able to protect my family, especially my
23 children from harm. When this accident was completely out
24 of my control.

25 My son means the world to me. Given most

1 situations I am capable of fixing just about anything, but
2 there's just no way I can fix this. I cannot change the
3 events of this day to bring back my son. I can only hope a
4 lesson has been learned. It has taken a tragedy like this
5 to open the eyes of a family and a community that there are
6 no guarantees in life. I consider myself to be a good
7 father and a good citizen of this community. I am not
8 perfect but I try to do my best in all that I do. I tend to
9 put others needs a head of my own. I did not deserve this.
10 No father or mother deserve to go through losing a child
11 through senseless irresponsible act of an adult. Any father
12 should know better than to make the decision to do something
13 that could cause harm to someone else and especially an
14 innocent child.

15 My life will never be the same. I struggle each
16 day with the lost of my first born son. I still wish
17 everyday that when I come home from work that Minor
18 smiling face would greet me at the door with a big hug and
19 kiss. It's hard for me to get up each morning and go to bed
20 each night without Minor being there starting my day. I
21 believe in God and I know he has a plan for us, I never
22 imagine that this would be my plan all because of the wrong
23 decision of one person. In my life there once was joy and
24 now there's pain.

25 THE COURT: Thank you, Mr. Minor

1 Mr. Meadors: Your Honor, finally, Tonya, mother
2 of Minor a few words.

3 MS. SPRADLEY: Tonya Spradley. Our lives are
4 blessed with Minor on November 22nd, 1999
5 after 18 months of problems conceiving we were blessed with
6 a health baby boy. Every woman dreams of being a stay at
7 home mom but unlike most women I was blessed with the
8 opportunity to be a stay at home mom. I spend everyday with
9 my two boys. Minor was the oldest of our two children.
10 He was a wonderful child and a great big bother. He was
11 always looking out for his little brother. He was very
12 tender hearted and very well rounded. He didn't need a lot
13 of things to make him happy. He was content with whatever
14 he had. Minor was very compassionate and was always
15 helping others. He was never a vindicated child and was
16 never out to cause problems.

17 When he was around other children most of time he
18 was the leader always wanting to do the right thing. I
19 guess you can say that he was your typical energetic five
20 year old. Our lives were blessed with many happy memories.
21 We never imagined that our happy times would come to an end
22 so soon.

23 On June 19th, 2005 we started our Sunday as we
24 usually do by going to church. We teach our children right
25 from wrong and to believe in Jesus Christ. Our lives were

1 centered around our faith. After church we visited our
2 family and spent the day together celebrating Father's Day.
3 We never imagined that our day would end as it did. Tim,
4 Minor and Michael decided to go for a bike ride, Spencer
5 and I stayed back at the house. About 15 minutes later I
6 heard my name being yelled by Michael and then by Tim, I
7 could hear this sheer panic and terror in their voices. I
8 ran as fast as I could to see what happened. As I
9 approached the scene I could see Minor lying in the
10 ditch, Tim was with him. I could tell that Minor arm
11 was broken. I had no idea how serious his injuries were.
12 Minor was not breathing very well so I was holding him
13 around his back, begging him to breathe. He gasped for air
14 only once. When I looked into his eyes they seemed so
15 empty. I could tell that his sweet spirit was not there.
16 His face was without expression or pain. He did not cry or
17 say one word.

18 My aunt and a friend did CPR while waiting on the
19 ambulance. After what seemed like forever someone told us
20 that Minor would be air-lifted to Richland Memorial
21 Hospital. All along I thought that he had just a broken arm
22 and that he would get a cast and everything would be okay.

23 Little did I know, that I would never be able to
24 hold my son in my arms again.

25 When we arrived at the hospital we were escorted

1 to a room to wait for the doctor to give us an update. Two
2 doctors came in to talk to us. The first thing they said
3 was for us to sit down, then they gave us the devastating
4 news that our precious Minor did not make it. He never
5 stood a chance. The doctors did all that they could do but
6 they could not save him.

7 Walking into the room where Minor lay, he
8 looked as if he were asleep, his little face was so peaceful
9 and his hair had the same sweet smell that it always had.
10 We begged him to wake up and to let this be a miracle but he
11 didn't wake up. He never again opened his eyes.

12 It took us a few minutes to realize that he
13 couldn't wake up and open his eyes, his precious lips would
14 never again say I love you. Then we realized that we would
15 never be able to take our baby home. But it still didn't
16 seem real to us. We stayed with him until the warmth had
17 left his face. Someone came and told us that we had to
18 leave our precious baby alone in the hospital and until the
19 funeral home came to get him. They would not let us stay
20 with him. We never knew how hard our lives were going to be
21 in the coming days and weeks. We had a long drive home
22 without our precious Minor

23 As we walked into the house nothing was the same,
24 his room was so empty where there once was laughter and
25 giggles, now there's silence. His room is just as he left

1 it only the feeling of emptiness remains. We wake up
2 everyday hoping that Minor would walk into our room and
3 greet us with the cheeper of good morning but we know that
4 would not happen.

5 We struggle with our other son to explain to him
6 why Minor had to leave us. He ask us all the time why
7 did Minor have to get hurt. We send countless nights
8 with Spencer crying himself to sleep because he misses his
9 big brother. How can you explain to a five year old that he
10 will never be able to play with his bother again?

11 We have an emptiness in our hearts that will
12 remain there for the rest of our lives. We replay the
13 events of June 19th, 2005 everyday we wake up, every night
14 when we try to go to sleep and every minute in between.
15 It's hard to close our eyes without having painful flash
16 backs of this day. Unfortunately we have to drive by the
17 incident site every time we leave our home. Every time I
18 drive by I can help but see Minor broken body lying
19 there, helpless in that ditch. Every time I hear a
20 ambulance siren or a helicopter I get chills up and down my
21 spine and a sick feeling in my stomach. I never thought I
22 would be effected this way. I knew that it would hurt but I
23 never imagine that my heart could ache the way that it does.

24 My life will never be the same mentally or
25 physically. Minor was a special child and enjoyed being

1 with his family, playing with his bother, playing T-ball and
2 most of all riding his bike. He only had his bike for few
3 short mouths. We never thought his life would take such a
4 tragic turn while he was doing what he loved to do.

5 Minor often spoke of that things he wanted to do when he
6 grow up -- grew up. He loved school and loved to learn. He
7 loved going to church and learning about Jesus. He had such
8 a conviction of what he believed when it came to Jesus
9 Christ. Minor touch more lives in his short five years
10 than much adults touch in a lifetime. This was evidence to
11 us during the visitation at the funeral home at his funeral.
12 We spent six and a half hours receiving friends and family
13 at the funeral home and there was over 800 people at his
14 funeral.

15 We know that God has a plan for each of us and we
16 are not suppose to question him. But this is so hard for us
17 because of the decision of one person our lives will forever
18 be changed. We live each day in a personal hell that no one
19 will ever understood our hope is that the person responsible
20 for taking our son's life spending the rest of his life in
21 his own personal hell. Thank you.

22 THE COURT: Thank you, ma'am.

23 Mr. Meadors: Your Honor, before my boss closes
24 out, of course, after he was air-lifted, Minor to the
25 hospital he was pronounced dead as a result of the injures

1 he received in this incident.

2 Behind I think are majority if not all of these
3 folks are friends and family of the Spradley's and I know
4 they want to thank them and we want to thank them and
5 they're here and Your Honor can tell from the sniffing the
6 impact that it's had on them.

7 And in addition to that, we want to thank Troopers
8 Graspery, Grubs and Meets and the rest of the Kershaw County
9 Highway Patrol for their fine job.

10 I turn it over to my boss.

11 THE COURT: Yes, sir.

12 MR. GIESE: May it please the Court, Your Honor.
13 Just very briefly, I'd like to wrap this up. I say in a
14 couple of words. I've done this a long time and I've seen a
15 lot of tragedy. This is as tragedy a case as I've seen in
16 my career. And I've thought about it standing there
17 listening to the victims and the grief that they've gone
18 through. And it, occurred to me what my parents have always
19 said and that is that no parent should out live a child,
20 their own child. And watching this, I agree with them.

21 This tragedy that we just had and we've had here
22 in our community was caused by one man and one man alone and
23 that's the defendant, he's standing there today. He's plead
24 guilty. But for his actions, but for his actions Minor
25 isn't with us today.

1 Your Honor, I look back on my career and I think
2 of the felony DUI's that I've handled and the felonies DUI's
3 that my office has prosecuted and for the life of me I can't
4 think of the worse felonies DUI than this. This is as bad a
5 case a felonies DUI I've seen.

6 The defendant had the blood alcohol level of point
7 225 and, Your Honor, as you well know, that is -- that's not
8 just high, that's severely high. If you watched him on the
9 tape as I know Your Honor did, you tell how intoxicated he
10 was. And this man was driving on our roads here in Kershaw
11 County. Not only was he driving on our roads, he caused
12 this death, caused the death of an innocent five year old
13 riding down the road, a road he has the right to ride down
14 on his bike with his family. But for this man (indicating)
15 and his actions Minor would be with us today and we
16 wouldn't be here in this tragedy.

17 And, Your Honor, you know, it gets worse because
18 not only did he commit the offense but he denied driving for
19 a period of time. You saw it on the tape, he claimed
20 someone else had been driving.

21 And I understand that. I understand his
22 intoxication probably lead him to say someone else was
23 driving. I can understand that, potentially. But, Your
24 Honor, he fought this case up until we had this case ready
25 for trial. And it was ready for trial when he came in and

1 he plead.

2 Now, what really concerns me about this defendant
3 is the total lack of remorse that he has shown in this case.

4 And, Your Honor, as I know you've looked at the
5 presentence investigation that was done and one part jumped
6 out at me, and this was during his interview, he's talking
7 to the probation and parole people that was doing this
8 report. And it says, during the interview Brown, the
9 defendant, (indicating) kept saying that quote, he asked God
10 everyday why this happened to him, to him. Not to Minor
11 not to his family but to him. Why he's in jail. Why did
12 God do this to him. And it gets worse because then he said
13 he's also continuing to asking agent Jim Henry and myself if
14 we would leave a small children on the road alone on a bike,
15 no remorse. He didn't care. Then he says, having plead
16 guilty to felony DUI, I asked Brown whether he assumed any
17 responsibility for Minor death. He advised me that it
18 would have happened to any person traveling that way that
19 evening.

20 Your Honor, the state submits that shows no
21 remorse. He says anyone traveling down that road would have
22 killed him.

23 Brown did not verbalize or any manner related
24 blood alcohol level of point 225 to the events that unfolded
25 and resulted in the death of Minor Your Honor,

1 as of the date of this reporting and of that conversation or
2 the interview they had Mr. Brown still had not taken credit
3 for what he had done. Showed no remorse for the victim and
4 took no credit for the acts that he did and the fact that
5 his blood alcohol level had anything to do with this.

6 So, Your Honor, the state asks and as the
7 Solicitor I ask you please, sentence this man to everyday
8 that you can sentence him to, give him the maximum sentence
9 that he can receive. His penalty the state submits needs
10 to fit this crime. And the state submits this is as bad a
11 crime as you can have in this situation. The state's asking
12 for everyday that you can give him, Your Honor.

13 THE COURT: All right, sir.

14 MR. GIESE: Thank you.

15 THE COURT: Thank you, Solicitor.

16 Mr. Meadors: Your Honor, can we also mark this, I
17 left this out it's a picture of Minor

18 THE COURT: Mr. Tetterton, have you seen this
19 picture, sir?

20 MR. TETTERTON: Yes, sir.

21 THE COURT: All right, very well. Anything
22 further from the state?

23 MR. GIESE: Not at this time, Your Honor.

24 THE COURT: All right. Mr. Tetterton, I will be
25 happy to hear from you, sir.

1 MR. TETTERTON: Thank you, Your Honor. Your
2 Honor, I and Solicitor Giese and Solicitor Meadors have been
3 practicing for a long time. I guess if you add them all
4 together I guess it's probably close to hundred years. And
5 this has been a tragic accident. It's effected the Spradley
6 family and it's effected the Brown family.

7 At this time, Your Honor, I'd like to on behalf of
8 my client and myself thank several people. I'd like to
9 thank the solicitor's office for doing a good job. I
10 particularly would like to thank the highway patrol,
11 Sergeant J.D. Jay who was head of the MATE Team and did an
12 outstanding job in investigating this incident, this tragic
13 event. And it has made available to us as a result of this
14 investigation I'd like to thank Trooper Meets, Your Honor,
15 he's the one that carried Defendant Brown, Donald Brown,
16 that night to the demeanor born that night to the hospital
17 and later put hospital and then later put him in jail. And
18 on behalf of myself and Mr. Brown I'm going to tell you,
19 Your Honor, they did a professional job in this case.

20 I particularly like to on behalf of Donald Brown
21 express our condolences to the family, this has been a very
22 tragic, tragic, situation. But, Your Honor, with our almost
23 hundred years of experience we try to figure out why these
24 things happened and I'll get to think in a few minutes. But
25 Solicitor Giese and Solicitor Meadors and myself went to the

1 scene. And we walked that scene. Later on I walked that
2 scene with Donald Brown. I guess we were trying to find
3 answers, Your Honor.

4 But before I get into that, Your Honor, let me
5 tell you a little bit about Donald Brown. Donald Brown is
6 43 years of age. He comes from a large family, he has five
7 brothers and a sister. His father passed away. His mother
8 is in her late 80's she wanted to be here today, she was
9 here at the plea but she's not here today because of health
10 reasons. And in a few minutes I'll ask his wife to step up
11 here with me and some of his bothers. But he's been married
12 20 years, Your Honor and in that 20 years he has raised
13 three children. He's raised June who finished high school,
14 went to Central Carolina for a period time and now working,
15 full time employed. He's raised his son Shawn who is now a
16 senior in high school, 17 years of age, he's an outstanding
17 athlete in football and basketball, starting guard in
18 basketball. He plays quarterback -- football team and he
19 hopes to get a athletic scholarship to further his
20 education. And he has a daughter, Your Honor, age 9 that he
21 and his wife of 20 years have raised and that child now is
22 in Wateree Elementary. And the reason I tell you that, Your
23 Honor, is because Donald Brown, his 20 years of married to
24 his wife has tried to raise his children, has tied to
25 educated them and has tried to make them a good productive

1 member of society and to give them the best that he could.
2 He's been a productive employee all of his life. He's taken
3 care of his family. He's worked hard, his wife has worked
4 hard. And, Your Honor, because of their large family they
5 have -- they were very active in Rock Hill Baptist Church
6 and they made sure their children all attended church.
7 Donald was very active in the church. And the reason I tell
8 you that, Your Honor, is because and I guess when the
9 solicitor, when Solicitor Giese was referring to the
10 presentencing investigation report about Donald Brown was
11 asking God why this happened to him. He wanted to know
12 because he was a faithful member of his church and he loved
13 children. And he couldn't -- he didn't know why this was
14 happening to him and also to the young Spradley, young
15 Minor And I heard the family say it was God's plan,
16 we're going to have to accept that. We don't know what is
17 in his plan. But, Your Honor, when we look at Donald
18 Brown's family life, he lived next door to his mother. He's
19 cut her grass, taken her to buy grocery, make sure she got
20 to church on time and he was also there for his children and
21 his family. He's out of all of his sibling he's the only
22 one that has gotten in any kind of difficulty with the law.
23 His brothers have all work honorable jobs, have good
24 families and well raised children.

25 If we look at his driving record of this 20 years

1 of marriage to Lorein, Your Honor, his driving record
2 reflects something about the man standing before you.. One,
3 one, speeding under 10-miles an hour. One speeding ticket.
4 Note that the solicitor's office have not provided me with
5 any other driving record about Donald Brown. He's had one
6 speeding ticket that they have provided me. He's only been
7 in trouble one other time that we can call serious trouble.
8 Back several years ago, Your Honor, he experimented with
9 crack cocaine. He came up plead guilty, receive the five
10 year sentence, suspended upon two years probation and was
11 good on probation, learned he lesson about messing around
12 with drugs. And there's absolutely no evidence whatsoever,
13 Your Honor, that the MATE Team could find or anybody could
14 find that drugs were involved in this case. So from looking
15 at his record, Your Honor, of 43 years, 20 years of being
16 married to a good woman raising three good children you can
17 say he has paid attention to the laws of society. I think
18 that one other minor record they have that they probably
19 tell Your Honor about where he hit a sign on the side of the
20 road and paid the \$200 fine. But other than that, Your
21 Honor, in his 43 years he has complied with the rules and
22 order of society of laws to try to be a good father, a good
23 member to society.

24 Your Honor, I heard solicitor Giese say that
25 Donald Brown has not shown any remorse, I'm reflecting back

1 to the statement of an eyewitness who was there within
2 minutes of this accident happened, Darrel Moore. Darrel
3 Moore in his own statement to the police the highway patrol
4 says quoting Donald Brown, I'm sorry I hit that young boy.

5 Your Honor, I have looked at that tape many, many,
6 times. I've sheared it with the family. Throughout that
7 tape on that long ride from Shiver's Green Road to Kershaw
8 County Hospital he kept asking the officer how is that young
9 boy, how is that young child? I pray he's all right. I
10 pray he's all right. That is throughout that tape. I take
11 issue with presentence investigation, Your Honor. I can
12 tell this Court as an officer of the court, whoever did this
13 presentence investigation did not interview one single
14 person on the Brown's family or to find out what kind of
15 person he was in the community. I think Your Honor's
16 comments when he plead guilty was we going to have people go
17 out in the community and find out what kind of person he
18 was. If they had interviewed his wife, his bothers here's
19 what they would have found, Your Honor. If they would have
20 interviewed his wife, they would find out that he can't
21 sleep at night. He walks the floor. If they had
22 interviewed his brother they would have found out he calls
23 his bother crying at night. This is while he was out free,
24 Your Honor, not while he was behind bars and had jail house
25 religious. This is when he was suffering and showing

1 remorse for what happened to this young boy, as a father and
2 a person someone who loved children. So, Your Honor, he did
3 show remorse, it's all in the tape, it's in Darrel Moore's
4 statement and it's from his family.

5 Your Honor, we can't change what happened but I
6 can tell you that the Brown Family and they're sitting there
7 and they're good members of this community as are the
8 Spradley. It's one of the tragic things that happened in
9 this community.

10 His family shares their grief. The Spradley
11 Family is in their prayers, they live close by. I think
12 Mrs. Brown has attempted even probably went by to try to
13 speak to Ms. Spradley after the tragic incident happened.
14 And I think they even waved at each other as they passed on
15 the road greeting each other. But we can't change that,
16 Your Honor, but we can go back and look at the facts of this
17 case and try to find out what happened on that father's day.

18 Your Honor, I went to scene with Solicitor Giese
19 and I went there with John Meadors I went there with
20 Sergeant Day of the MATE Team and we walked. We walked the
21 path of that vehicle from the point of impact to where young
22 Spradley ended up. And I noticed the expression on
23 Solicitor Giese's face and John Meadors face and I knew what
24 they were thinking. Your Honor, they too was probably
25 thinking the same thing that I thought, how could this

1 happen. I had a little problem because I have a five year
2 old grandson. And I envisioned, Your Honor, him being out
3 there. But I also looked at -- as I walked and I watched
4 their expression I saw that what happened that particular
5 day that afternoon, it was after 8:30 at night. The sun set
6 at 8:38. It was getting dusk. Your Honor, this is Shiver's
7 Green Road it -- through to Lake Wateree over to Highway 34,
8 this time of year it's very busy with trucks pulling their
9 boats. It's also an unmarked road. And I will show this to
10 you, I will ask Your Honor to look at this in a few minutes.
11 There's no lines, there's no center lines, there are no fog
12 line, it's a -- market road. So, Your Honor, we have a
13 rural -- market road with no lines on it, it's 8:38, after
14 8:38. I think Darrel Moore, the witness, said it happened
15 at 8:40, the 911 tape said was 8:55. And as I walked the
16 area with the solicitor, both solicitors and we tried to
17 collect from the investigation by the MATE Team what went on
18 as Mr. Brown went down that road.

19 Darrel Moore testified -- not testify, but he
20 wrote a statement that said he had seen three of them riding
21 single file down the road. He didn't see them after they
22 passed through but then he said I heard a horn blow. And I,
23 and I -- as we walked that line from where impact was made,
24 Your Honor, to where young Spradley ended up on the side of
25 the road, I reflected back and I'm sure the senator -- as

1 the solicitors were about the statement given by
2 Mr. Spradley, the father. He said, we met a vehicle
3 traveling towards us, after the vehicle passed I moved over
4 to the other side of the road. Young Minor was
5 on the right-hand-side of the road on a 16 inch bicycle,
6 Your Honor, by himself and his first cousin -- his cousin.

7 That doesn't make what happened right, Your Honor,
8 but we tried to understand what causes these things. We
9 know that Donald Brown went down that straight stretched
10 road a car was approaching him. We know that a witness
11 heard a horn blow. We know, Your Honor, not as John Meadors
12 said that he was going 46 miles an hour, the MATE Team did
13 not say this, they said he was going between 41 and 46, the
14 speed limit is 55.

15 We know from the MATE Team investigation, Your
16 Honor, that the bicycle was only 16 inches high. We know
17 that there was only two reflectors on that bicycle on each
18 peddle. We know that Mr. Spradley did not see the incident,
19 he was not looking at his son when the collision took place.
20 His statement said, I heard a thump. And I think, maybe,
21 that might be something that God spared him. But we have to
22 -- as we walked that, as we walked that, impact area, Your
23 Honor, we have to think about young Minor on the
24 side of the road by himself, dusk, traffic hear the horn
25 blow and a car approaching him, lights.

1 We also have to think about Donald Brown who had
2 been out drinking that day on father's day with some of his
3 buddies. All of those set of facts happened for some reason
4 at the same period of time, a car approaching, horn blowing,
5 young five year old child on the side of the road, father on
6 the other side of the road, 16 inch bicycle with no
7 reflectors. That doesn't excuse what happened, Your Honor.
8 No one intend that. The father didn't intended to cross the
9 road and leave his son over there and let him get injured.
10 No one intended the -- we can't blame the highway department
11 for not putting center lines or fog lines on the road. But
12 Your Honor, there's a set of facts that we all have to
13 realize that happened on that particular day about 8:40 that
14 night. It's not for us to understand why they happened,
15 Your Honor, it's only for you and for us, Your Honor, to
16 explain them to the court and let the court understand that
17 this is not someone who's running down the road at a high
18 rate of speed, drunk, with a total disregard for the safety
19 of others. We know that the horn that was blowing was
20 Mr. Brown's horn blowing. We know he saw the child. We
21 know he blew the horn. We know he slowed down. We know he
22 had an approaching car ahead of us, it was approaching him.
23 We know he was under the influence of alcohol, all of that,
24 Your Honor, is what happened on father's day about 8:40 that
25 afternoon.

1 That might have been why the person who did the
2 presentencing investigation wrote the presentence
3 investigation that say it could have happened to anyone.

4 Maybe, Your Honor, if he had not had anything to
5 drink that day, maybe, it would have still happened. Maybe,
6 if he hadn't had as much to drink he would have slowed down
7 even more and, maybe, even stopped for that child and let
8 the car pass him. I don't know what would have happened,
9 Your Honor, if someone had not had anything to drink had
10 this happen to them. It would still be a tragic set of
11 circumstances that's going to be with Mr. and Mrs.
12 Spradley's for the rest of their life. It's also going to
13 be a tragic set of circumstances that are going to be with
14 Donald Brown for the rest of his life. I bet -- and he'll
15 tell you, Your Honor, he wish he had never taken a drink
16 that day and been on the highway. He would have never had
17 this to happen to him.

18 Your Honor, I think it's important because the
19 solicitor showed you a couple of photographs of the bicycle
20 and showed you some of the tape. Your Honor, I think it's
21 very important at this time that I show you the photographs
22 that the MATE Team provided me. And I put them on my
23 computer, Your Honor, it's a slide show type.

24 THE COURT: All right.

25 MR. TETTERTON: I think it's very important for

1 the court to see that.

2 THE COURT: All right.

3 MR. TETTERTON: So the court can get a picture in
4 its mind what I have just told you about being after 8:38,
5 the condition of the road. The fact that the jeep veered to
6 the left after he, after he, struck the small child, 91 feet
7 distance that young Mr. Spradley traveled. The damage done
8 to the right-hand-side of the jeep fender, showing that we
9 don't know what happened when Mr. Donald blew the horn. We
10 do not know what happened -- we do not know what young
11 Mr. Spradley did. Your Honor, but I think it's important
12 for the court to see this, because the court is going to
13 have to consider these facts in passing judgment on
14 Mr. Brown.

15 So at this time I would like -- but before I do
16 that, Your Honor, I'd also went back on the scene with
17 Mr. Brown. He and I too walked, walked, the point of impact
18 to where it happened. And when the solicitor says he shows
19 no remorse, Your Honor, I can tell you as an officer of this
20 court I saw him cry as he relived what happened that night.
21 And I think, Your Honor, when you hear from his family you
22 will find that he is a remorseful person, a good christen
23 man, with grief in his hart.

24 I feel the same pain the solicitor's office feels,
25 I feel the same pain that the family feels. But, Your

1 Honor, this is not the worse case in my judgment. It's a
2 case where everything happened at the same time and
3 unfortunately the young boy is taken.

4 So if; Your Honor, will.

5 THE COURT: Yes, sir.

6 (Whereupon, the photos on the
7 slide show were shown for the
8 judge.)

9 MR. TETTERTON: Your Honor, the solicitor and I
10 have agreed, we're going to ask you to mark this as a
11 Court's Exhibits, this is the actual scene that the MAT Team
12 provided me.

13 THE COURT: That's fine but it's probably more
14 properly as a defense exhibit.

15 MR. TETTERTON: Okay.

16 THE COURT: All right.

17 MR. TETTERTON: And, Your Honor, I think they're
18 going to allow us to use a copy, we don't have original
19 copy, we'll just make it as --

20 THE COURT: All right. That's fine.

21 All right, Crystal, make it defense --

22 COURT REPORTER: Okay.

23 (Defendant's Exhibit 1, admitted
24 into evidence.)

25 MR. TETTERTON: Your Honor, if I may, briefly in

1 closing going to ask you to listen to some of the members of
2 the family. It came to my attention that during the
3 presentencing investigation that there had been some letter
4 writing to the court and the court has been provided some
5 letters from the family and friends of the Spradley's, and
6 Your Honor, I thought it would only be appropriate that --

7 THE COURT: Well, let me stop you, I don't recall
8 reading any letters, some might have been presented during
9 the plea but I haven't seen any letters from anyone.

10 MR. TETTERTON: Your Honor, I have -- the family
11 and friends of Donald Brown have gotten together and they
12 want to express to the court what type of person Donald
13 Brown is, to show that he is a remorseful person, Your
14 Honor, even though that particular night it may not been --
15 may not come out. But they have some 58 letters, Your
16 Honor, I would like to make a defendant's exhibit also.

17 THE COURT: All right. Any objection?

18 Mr. Meadors: We haven't seen them, Your Honor.

19 (Defendant's Exhibit admitted
20 into evidence.)

21 THE COURT: Yes, sir.

22 MR. TETTERTON: Thank you, Your Honor. Your
23 Honor, I've explained to Donald Brown that the court has
24 wisdom and mercy and is going to have to impose sentence
25 on him and it could range anywhere from mandatory minimum of

1 one year to maximum 25 years.

2 Your Honor, we don't always have the wisdom to
3 know what to do in a case like this but I know that with
4 your judging experience and with your past experience of a
5 trial lawyer that you will take into consideration
6 everything that's going to be said today.

7 But, Your Honor, I look somewhere else for
8 something that may help you in imposing sentence on
9 Mr. Brown and I found where Shakespeare has defined the
10 quality of mercy and -- and if the court indulge I will give
11 you a brief --

12 THE COURT: Sure, Mr. Tetterton.

13 MR. TETTERTON: And that he says, Your Honor, the
14 quality of mercy is not strained, it as the gentle rain from
15 heaven upon the place beneath: it is twice blest; It
16 blesseth him that gives and him that takes: 'Tis mightiest
17 in the mightiest: it becomes the crown -- throned monarch
18 better than his crown; His sceptre shows the force of
19 temporal power the attribute to all and majesty. Wherein
20 doth sit the dread and fear of kings; But mercy is above
21 this sceptred sway; It is enthroned in the hearts of kings.
22 It is an attribute to God himself; and earthly power doth
23 then show likest God's when mercy seasons justice.

24 Your Honor, I'd like for you to listen to some of
25 the family members about the nature and charter of Donald

1 Brown. And when impose sentence, Your Honor, I'd ask that
2 you seasons justice here.

3 THE COURT: Thank you, Mr. Tetterton.

4 MR. TETTERTON: Your Honor, to my right is his
5 wife, Lorine, and I think she has a few words.

6 THE COURT: Ma'am.

7 MS. BROWN: Judge Manning, I'm Donald's wife,
8 Lorine. Donald is a good man and after the incident happen
9 he did not sleep. He could not sleep, the accident was
10 always on his mind. And we've here asking that you have
11 mercy on him when you decide to do the sentencing.

12 These are his sons (indicating) he's raised them
13 to be good boys. He kept them in education, they knew they
14 had to do their education before they could do anything else
15 because daddy said so. But please have mercy on his soul
16 when you decide to sentence him.

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

18 MS. BROWN: Thank you.

19 MR. TETTERTON: I'll ask his son Junior or either
20 Shane if they would like to make a few comments and then his
21 brother Gary, Your Honor, if they would like to make a few
22 comments about --

23 THE COURT: All right.

24 DONALD BROWN JR.: He was a good father, he stayed
25 on us about, you know, about getting our work done in school

1 and stuff. He always took time out to, you know, spend time
2 with us. And we sorry about what happened. He always tells
3 us how sorry he is, how sorry he is, about what happened.

4 MR. TETTERTON: Thank you.

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

6 MR. TETTERTON: Shank do you have anything you
7 would like to say?

8 Gary?

9 GARY BROWN: Good morning, Judge.

10 MR. TETTERTON: Gary Brown is his brother --

11 THE COURT: All right, Mr. Brown.

12 GARY BROWN: And how are you today?

13 THE COURT: Fine.

14 GARY BROWN: Good. Carolina basket ball, Casey
15 Manning, played for the Gamecocks.

16 THE COURT: I -- that's been told on me before.

17 GARY BROWN: Okay. Hey, good job.

18 Mr. Manning, I just want to say to the Spradley
19 family, we've sorry. Our thoughts and prayers are with you.
20 As long as we live you're always be on our minds.

21 Judge Manning, Donald Brown here, he's a good
22 bother, he's a good husband, father. He's always cared
23 about his family, friends, community. He's always taught
24 his boys about the church trying to do positive things in
25 life.

1 Once again, to the Spradley family, we're sorry.

2 Your Honor, I have no more to say.

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

4 GARY BROWN: Thank you, Your Honor.

5 MR. TETTERTON: Thank you, Your Honor, I
6 appreciate you giving us the attention in this matter.

7 THE COURT: All right. Thank you Mr. Tetterton.

8 MR. MEDDORS: Your Honor, we would just like to
9 say, possession of crack cocaine from 1/20/97 and 11/29
10 striking a fixture on the highway. We do show another
11 speeding offense that Mr. Tetterton had. All these records
12 were provided but we'll stand on it as it is.

13 THE COURT: All right.

14 Well, I don't like to say much. I won't be long,
15 I'll be brief. I can say this that there's two sides to
16 every story. If everybody here listens as intently as I
17 did, you heard both sides of a particular story. You've
18 heard the state's side presented through Solicitor Giese and
19 Mr. Madders and the Spradley family, it's a difficult side
20 to listen to and digest. I hate the thought of losing one
21 of my own children, I have three myself. You always wonder
22 why things happen to certain people. I can tell y'all this
23 from a victim's stand point about two months ago I had a
24 young third cousin and his mother, he's a Clemson student,
25 on their way to Clemson both of them lost their lives. So I

1 lost my second and third cousin in one failed swoop. And
2 we've all had personal tragedies in our life and heaven
3 knows why, only God can tell I imagine why these things
4 happen.

5 But like I said, there's two sides to every story.
6 The other side of the story if you back out the events of
7 Father's Day 18 months ago and you look at the life of this
8 Donald Earl Brown, the good and the bad you have to try to
9 blend. What we us to say back home in Dillon County where I
10 was born and raised, Justice and Mercy, it's not always an
11 easy thing.

12 I have to bear in mind that as long as I've known
13 Solicitor Giese and Meadors they're advocates. I also have
14 to bear in mind that as long as I've known Mr. Tetterton
15 he's an advocate. I am not an advocate of this situation.
16 I'm suppose to be neutral and impartial and that's what I'm
17 here to try to do is make a neutral and impartial decision.

18 I have to take into account the state's position,
19 I have to take into account Mr. Brown's position presented
20 by Mr. Tetterton. I have to take into account the
21 Spradley's, I have to take into account the Brown's. I've
22 tried to do all of that as fairly and as objectively as I
23 possibly could.

24 Richard Felids who was a judge from the ninth
25 circuit, Charleston, so many years ago when I use to be a

1 prosecutor once said actually when I was prosecuting I think
2 it was before we had the felony DUI where a young mother was
3 killed and a young father lost his unborn child. And Judge
4 Felids said to me as i was prosecuting this case that nobody
5 knows how it is to wear the robe until you wear it or how
6 difficult it is. It's not easy. This is one day that I
7 wish I didn't chosen another profession but that's life.
8 And life.

9 And like Judge Felids told me so many years ago
10 you do the best you can and that's what I'm here to do
11 today. And I say that because no matter what sentence I
12 impose not going to be enough for the Spradleys, it's going
13 to be too much for the Browns. What I have to do is come up
14 with a number that's what it boils down to that I can live
15 with myself. I thought about it enough. I've taken
16 everything into account, everything the solicitor said,
17 everything that presented by the statue. Everything
18 Mr. Tetterton said. I've considered the presentence
19 investigation the good and the bad about it.

20 Yes, sir.

21 MS.: Your Honor, I had, I hate to interrupt you,
22 in the emotions of presenting our side I failed to ask
23 Mr. Brown if he had anything he would like to say for the
24 record.

25 THE COURT: I will be happy to stop right now,

1 Mr. Brown.

2 MR. TETTERTON: I'm sorry, Your Honor. I just --

3 THE COURT: Mr. Tetterton, and ladies and
4 gentlemen, I had this plea sometime ago, I knew how
5 emotional it was, I knew how important it was to everybody
6 involved and that's why I didn't, that's why I didn't,
7 sentence Mr. Brown a couple of mouths ago.

8 MR. TETTERTON: Thank you.

9 THE COURT: I wanted everybody to have an
10 opportunity to do the best they could. And I think I've
11 gotten that. I think I've gotten the best from the
12 solicitor, like I said, he's an advocate, he's asked for the
13 maximum. I use to prosecute myself I don't know whether I'd
14 ask for anything different than what Solicitor Giese asked
15 for. But I got to balance that with the other side.

16 And that's your side Mr. Tetterton.

17 And at this time, Mr. Brown, I'll be happy to hear
18 anything you would like to tell me, sir.

19 MR. TETTERTON: And I apologize, Your Honor.

20 THE COURT: That's all right. But it's easy to
21 loose sight of these things in situation like this.

22 Yes, sir, Mr. Brown.

23 THE DEFENDANT: Yes, Your Honor. I just like to
24 apologize to the family, to the Spradley family, I hate this
25 ever happened in my life. I feel so sorry for what had

1 happened and anything, anything, that y'all ask me, whatever
2 y'all -- what you need just ask me I will be glad to help
3 you out because I'm very sorry. God help me I'm so sorry,
4 sorry.

5 THE COURT: All right. Anything further?

6 MR. TETTERTON: Thank you, thank you.

7 THE COURT: And like I said, I don't like to say
8 too much but I need to conclude my remarks. Regardless of
9 what sentence I impose, like I said the Spradley's will
10 think it's not enough the Browns will think it's too much
11 and probably if both sides go away feeling a little bit of
12 grief, maybe, I made the right decision it's not an easy one
13 but I have to made it.

14 And I congratulate and thank the state for their
15 presentation, it makes it a lot easier.

16 And for your fine presentation, Mr. Tetterton.

17 So on Indictment Number 2005 -- and bearing in
18 mind, ladies and gentleman, everyone out there in the
19 audience listen, this is an 85 percent sentence. Whatever
20 imposed upon Mr. Brown he's got to do at least 85 percent
21 before he's illegible for parole. In addition I think this
22 is a community supervision type case that when he is
23 released he's still subjected to being monitored for every
24 two years until he's successfully completes this matter.

25 So bearing all of these things in mind, his prior

1 record, what's been presented to me here today, the statue
2 and laws made provided for situations like this, on
3 Indictment Number 2005-1372, The State versus Donald Brown
4 this is an indictment for felony driving under the influence
5 involving a death the sentence is 13 years, credit for time
6 served.

7 And that concludes this hearing here today, ladies
8 and gentlemen, good luck to everyone, we will be at ease.

9 MR. MEDDORS: Your Honor, it's a condition of
10 parole can we have a condition that he stay away from the
11 victim?

12 THE COURT: Yes. I think that's Automatic. And
13 explain to the victims please what community service means.
14 It rotates every two years. And I wish you all the best.
15 God bless you.

16 MR. TETTERTON: Thank you, Your Honor.

17 THE COURT: All right.

18

19 END OF PROCEEDINGS

20

21

22

23

24

25

1 COUNTY OF LEXINGTON)

2 CERTIFICATE OF REPORTER

3 I, Crystal Roach, hereby certify that I reported
4 the preceding case entitled State V. Donald Brown,
5 Indictments No. 2007-CP-28-400, at the Kershaw County
6 Courthouse, September 19th, 2006.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 45 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 9th day of June, 2007.

15

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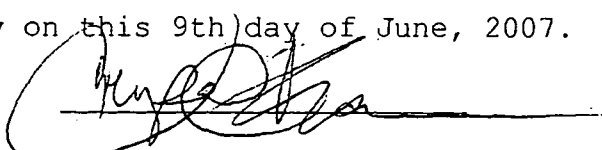
21

22

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Crystal Roach, Court Reporter
and Notary Public for the
State of South Carolina my
Commission Expires:
April 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The State of South Carolina,

Plaintiff,

v.

Donald Earl Brown,

Defendant.

COPY
 IN THE GENERAL SESSIONS
 FIFTH JUDICIAL CIRCUIT
 Indictment No: 2005-GS-28-1372

06 SEP 22 PM 3:37

CLERK OF COURT
KERSHAW COUNTY, S.C.**MOTION TO RECONSIDER**

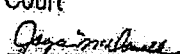
TO: THE HONORABLE L. CASEY MANNING

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his undersigned attorney, will move as soon as practicable before this Honorable Court pursuant to Rule 29 of the *South Carolina Rules of Criminal Procedure* for an alteration or amendment of the Court's Order dated September 19, 2006, sentencing the Defendant to 13 years imprisonment for Felony DUI. Defendant so moves on the ground that the Pre Sentencing Investigation did not include interviews with the Defendant's family or community members and further that the sentence was excessive under the facts and circumstances of the case. Defendant received written notice of entry of the Court's Order on or about September 19, 2006.


 William S. Tetterton
 Post Office Box 530
 Camden, South Carolina 29020
 (803) 432-1496
 Attorneys for Defendant

September 22, 2006

ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court


 Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

The State of South Carolina,)

Plaintiff,)

v.)

Donald Earl Brown,)

Defendant.)

IN THE GENERAL SESSIONS

FIFTH JUDICIAL CIRCUIT

Indictment No: 2005-GS-28-1372

CERTIFICATE OF SERVICE

I, Melissa Newman, being first duly sworn, state that I am an employee of the Law Office of William S. Tetterton, attorney for Donald E. Brown, in the case of State v. Donald E. Brown. I further state that on 9-26-06, I mailed first class via U. S. Postal Service with proper postage affixed a copy of the *Motion for Reconsideration* in the above captioned matter to the following, to wit:

The Honorable W. Barney Giese
Fifth Judicial Circuit Solicitor
P.O. Box 192
Columbia, SC 29202

Melissa Newman
Melissa Newman

SWORN TO BEFORE ME THIS

26th day of September, 2006

[Signature]
Notary Public for South Carolina

My Commission Expires: 8/22/13

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

DONALD E. BROWN, 317616,)
 Applicant,)
)
 v.)
)
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)

2007CP28400

APPLICATION FOR
 POST-CONVICTION RELIEF

FILED FOR RECORD
 07 APR 23 AM 9:35
 KERSHAW COUNTY, S.C.

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: McCormick Correctional Institution Fairfax, South Carolina
2. Name and location of Court which imposed sentence. Court of General Sessions Kershaw County Courthouse
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2005-GS-28-1372: Felony Driving Under the Influence, Death Results

(b) _____

(c) _____

ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court

Jaye McDaniel
 Clerk of Court Kershaw County

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 2005-GS-28-1372: September 19, 2006; thirteen (13) years

(b) _____

(c) _____

6. Check whether a finding of guilty was made

(a) after a plea of guilty yes

(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. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

iii. _____

(c) the date of each such result:

i. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

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07 APR 23 AM 9:35
CLERK OF COURT
KERSHAW COUNTY, S.C.

iii. _____

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

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The Applicant received ineffective assistance of counsel prior to and during his guilty plea proceeding in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution as well as Article I, Section 14 of the South Carolina Constitution.

(b) The Applicant's Plea of Guilty was not Voluntarily and Intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights pursuant to due process of law.

(c) _____

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

(a) Trial Counsel failed to adequately investigate the Applicant's charges, failed to investigate and interview potential witnesses and failed to give his client adequate legal advise prior to the Applicant's guilty plea proceeding. Trial counsel failed to fully advise the Applicant of all the consequences of this plea and further failed to investigate potential defenses against the charges against the Applicant.

(b) Counsel failed to provide client effective assistance of counsel prior to and during his guilty plea proceeding. The Applicant's pleas of guilty were coerced by counsel's failure to provide adequate representation.

(c) Counsel was ineffective for failing to adequately explore available defenses to the charge against the Applicant and for failing to explain those potential defenses to the Applicant before he was required to make a decision about a plea of guilty.

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

(a) any petitions in a State Court under South Carolina law? no

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?
no

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

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07 APR 23 AM 9:31
CLERK OF COURT
Kershaw County, S.C.

(d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. n/a

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

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07 APR 23 AM 9:35
CLERK OF COURT
KENTON COUNTY, S.C.

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State of 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. n/a

ii. _____

iii. _____

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

i. n/a

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) Collateral review through an Application for Post-Conviction Relief represents the first appropriate opportunity to address the allegations contained herein.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? n/a

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
n/a

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07 APR 23 AM 9:35
CLERK OF COURT
KENDALL COUNTY, S.C.

- (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. William S. Tetterton Post Office Box 530 Camden, South Carolina 29020

ii. _____

iii. _____

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CLERK OF COURT
KEROLAN COUNTY, S.C.

07 APR 23 AM 9:35

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

i. Guilty Plea, Sentencing and Motion To Reconsider which was filed but never heard

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application. Vacation of judgments and sentences. Applicant seeks a new trial.

20. Are you now under sentence from any other court that you have not challenged? no

NOTED
CLERK OF COURT
KERN COUNTY S.C.

07 APR 23 AM 9:35

FILED FOR RECORD

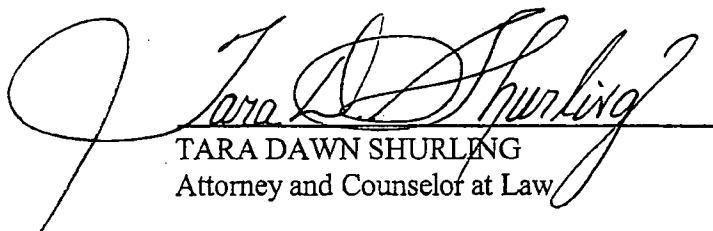
2007CP28400

STATE OF SOUTH CAROLINA

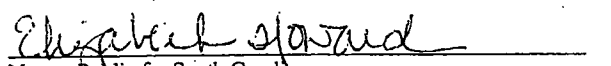
VERIFICATION

COUNTY OF KERSHAW

I, TARA DAWN SHURLING, *retained* counsel for the Applicant, 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.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 14th
day of April, 2007.


Notary Public for South Carolina
My Commission Expires: March 9, 2016

FILED FOR RECORD
07 APR 23 AM 9:35
KERSHAW COUNTY, S.C.

**Please note, this Applicant *does not* need
Court-Appointed Counsel**

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Donald E. Brown, #317616,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2007-CP-28-400

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 23, 2007, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. The Applicant was indicted at the April 2006 term of the Kershaw County Grand Jury for felony driving under the influence, death resulting (2005-GS-28-1372). He was represented by William Tetterton, Esquire. On September 9, 2006, the Applicant pled guilty as indicted. He was sentenced by the Honorable L. Casey Manning to confinement for a period of thirteen (13) years for felony driving under the influence, death resulting. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Kershaw County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any of the above not so attached will be

forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, and
2. Involuntary guilty plea.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR 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 that (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 his 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 he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. 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.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

[signatures continued on next page]

ROBERT L. BROWN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 29, 2007.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2007-CP-28-400

Donald E. Brown, 317616

Applicant,

vs

State of South Carolina,

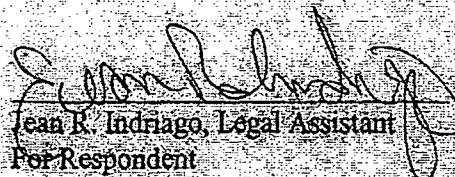
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)

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

Tara D. Shurling, Esquire
3614 Landmark Drive, Suite D
Columbia, SC 29204

DATED this 27th day of June, 2007.


Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

DONALD E. BROWN, 317616,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 07-CP-28-400

MOTION TO STAY POST-CONVICTION
RELIEF ACTIONJAN 11 11 21 AM
CLERK OF COURT
KERSHAW COUNTY, S.C.

08 JAN 11 11 21 AM

FILED - CIVIL RECORD

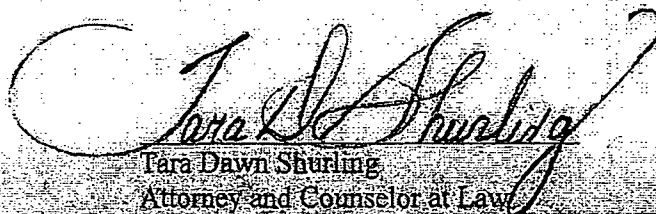
NOW COMES the Applicant in the above-captioned action, acting by and through his undersigned attorney, respectfully moving this Court to stay his Post-Conviction Relief action pending the outcome of his Motion to Reconsider Sentence. In support of this motion, the Applicant would show unto this Court the following.

On September 19, 2006, the Applicant was sentenced by the Honorable L. Casey Manning to a thirteen (13) year imprisonment term. On September 22, 2006, the Applicant, through his then-attorney William S. Tetterton, moved to reconsider his sentence. Since that date, no action has been taken on the Applicant's reconsideration motion. Inasmuch as the outcome of that motion may affect whether or not the Applicant wants to proceed with his Post-Conviction Relief action, it is the best interests of the parties and judicial economy that the PCR action be stayed to allow the reconsideration motion to be heard. Furthermore, since the Applicant has filed his PCR application against Mr. Tetterton, the Applicant requests that his current PCR counsel, Tara Dawn Shurling, represent him at the reconsideration hearing.

WHEREFORE, having set forth the grounds for his motion, the Applicant respectfully requests that this Court stay the PCR hearing pending the outcome of the reconsideration motion.

Additionally, the Applicant respectfully requests that the Court order that the reconsideration motion be scheduled at the earliest possible convenience for the State.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law
3614 Landmark Dr., Suite D
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@bellsouth.net
Attorney for the Applicant

This 7th day of August, 2008.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

DONALD E. BROWN, SR., 317616,)
 Applicant,)

07-CP-28-400

v.)

CERTIFICATE OF SERVICE

THE STATE,)
 Respondent.)

CLERK OF COURT
 KERSHAW COUNTY, S.C.

08 AUG 11 PM 2:48

The undersigned hereby certifies that one copy of the Motion to Stay Post-Conviction Relief
 as been served upon W. Barney Giese, Solicitor, Fifth Judicial Circuit, by depositing in the US Mail
 on this the 7th day of July, 2008.

Sharon McCollister
 Sharon McCollister
 Paralegal

SWORN TO BEFORE me this 7th day
 of August, 2008

Jeanne Graham
 Notary Public for South Carolina

My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

DONALD E. BROWN, SR., 317616,)
 Applicant,)
)
 v.)
 THE STATE,)
 Respondent.)

07-CP-28-400

CERTIFICATE OF SERVICE

FILED FOR RECORD
 08 AUG 11 11 2:48
 CLERK OF COURT
 KERSHAW COUNTY, SC

The undersigned hereby certifies that one copy of the Motion to Stay Post-Conviction Relief as been served upon opposing counsel, Brian T. Petrano, Assistant Attorney General, by depositing in the US Mail on this the 7th day of July, 2008.

Sharon McCollister
 Sharon McCollister
 Paralegal

SWORN TO BEFORE me this 7th day
 of August, 2008

Dunganne Shakas
 Notary Public for South Carolina
 My Commission Expires: 3/12/2013

1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF RICHLAND) COURT
3)
4 STATE,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 DONALD BROWN,)
9 DEFENDANT.)

10

11

JANUARY 5, 2011

12

RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15

HONORABLE CASEY L. MANNING, JUDGE;

16

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

18

FOR THE PLAINTIFF:

19

JOHN MEADORS, ESQ.

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RON MOAK, ESQ.

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FOR THE DEFENDANT:

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TARA SHURLING, ESQ.

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1 I-N-D-E-X

2 PG.

3 MOTION: 3

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5 CERTIFICATE OF REPORTER: 17

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10 COURT REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.

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1 (The following proceedings were
2 held on January 5, 2011.)

3 THE COURT: Yes, sir.

4 MR. MEADORS: If it pleases, Your Honor. Before
5 you is Donald Brown with his attorney Ms. Tara Shurling. We
6 are here on Kersahw County true Bill Indictment,
7 2005-GS-28-1372. Your Honor, this is actually a motion
8 filed by Mr. William Tetterteron, Mr. Brown's first
9 attorney, for a motion to reconsider. Your Honor accepted
10 Mr. Brown's plea on April 10th, 2006 was a plea to felony
11 DUI with death resulting after a presentence report on
12 September 19th, 2006 to 13 years.

13 THE COURT: All right, Ms. Shurling.

14 MS. SHURLING: Thank you, Your Honor. I was
15 originally hired by this family to potentially pursue post
16 conviction relief action and it was then that I discovered
17 that Mr. Tetterteron had filed this motion which had been
18 pending for sometime and I appreciate the Court hearing it.

19 Your Honor, we're here today to ask that Your
20 Honor reconsider the 13 year sentence imposed in this case.
21 There are a number of people that would like to speak very
22 briefly on behalf of Mr. Brown but first I'd like to tell
23 the court the reason that I would urge the court to
24 seriously reconsider the sentence imposed in this case.

25 THE COURT: All right.

1 MS. SHURLING: I know Your Honor -- I know you
2 very seriously considered the facts on both sides before
3 imposing the sentence. And I know you didn't pick the 13
4 year mark arbitrarily; however, I've had the opportunity
5 over the years to on sadly quite a few felony DUIs as I know
6 Your Honor has. And at least in the last five to eight
7 years there appears to have -- pattern where individuals
8 charged with felony DUI involving death have fairly
9 consistently received sentences in the rang of 12 to 18
10 years. In my experience that has been the sentencing range
11 indeed in many cases where there was absolutely no doubt
12 that the defendants gross intoxication had been the
13 proximate cause of the accident that resulted in the death
14 of the individual.

15 Now, the last thing in this world I would want to
16 do is cause the family of that precious little five year old
17 little boy any further heartache or discomfort and I'm going
18 to try to minimize that the best I can. But the reality in
19 this case, Your Honor, is that there is a difference between
20 when a grossly intoxicated person causes a wreck which
21 results in great bodily injury or death and when someone who
22 happens to be under the influence is involved in an accident
23 that is not necessarily approximately caused by his actions.

24 Now, my client pled guilty and Your Honor,'s
25 familiar with the Breathalyzer results. We're not here to

1 try the case and I know you wouldn't let me if I wanted to.
2 But my point being that my client did choose not to go to
3 the trial and not to argue to the jury that his actions were
4 not the proximate cause of the accident. He made the
5 decision to plead. But I'm urging Your Honor to take into
6 consideration that the facts as, as, Your Honor's heard them
7 before I will recap very quickly. There was a child riding
8 down the road with his father, his cousin; he was I believe
9 12 years old and the child himself was five. At some
10 juncture the father and the cousin crossed the road, went to
11 the other side riding and for whatever reason the little
12 five year old didn't follow suit quickly enough. He was
13 left on the side -- other side of the road by himself. And
14 the next thing we know that they're witnesses that say they
15 heard a horn blow and the child was thrown a great distance.
16 I believe it was 91 feet and died.

17 The MATE Team's analysis of the case indicated
18 their belief that the defendant was traveling somewhere
19 between 41 and 46 miles an hour when this accident occurred.
20 It's a 55 mile an hour zone. My client had no previous
21 DUIs. Now, I recognize the level of his intoxication as
22 would be indicated by the blood test and the BA in this
23 case; however, this is someone with no significant prior
24 criminal record, we have one drug charge that was old, other
25 than that one speeding ticket; no prior DUIs. There's every

1 reason to believe that the physical evidence supports the
2 notion that this child may have darted into the road in an
3 effort to rejoin his father and his cousin who had already
4 crossed to the other side. And so that leaves my client in
5 the position of being involved in a very tragic accident and
6 at a time when he was on the road and should not have been.
7 And all I'm urging the court to consider is that there
8 should be in terms of a benchmark in sentencing some
9 distinction between that set of circumstances and a case
10 where someone who is drunk, runs a red light or loses
11 control of a car and goes head on into an oncoming vehicle
12 situations where it is absolutely unequivocally clear that
13 the actions of the individual acting under the influence of
14 alcohol were the direct proximate cause of the individual's
15 death. What happened with this child is tragically -- and I
16 am not here to dispute that. My client has to live with
17 that the rest of his life. But I'm urging the court to
18 realize he's grateful you sentenced him. I told him
19 that the range I've seen in the last eight years as I've
20 already stated somewhere between 12 and 18 years and Your
21 Honor sentenced him on the low end of that, you gave him 13.
22 But in the majority of those cases that I've been witnessed
23 to there was absolutely no question that a drunk caused a
24 wreck that resulted in death. And in this case I beg the
25 court to consider that the facts as tragic as they are

1 support the idea that my client traveling comfortable below
2 the speed limit driving when he shouldn't have been driving
3 was in a situation where if he had had a zero BA this would
4 have been declared an accident. And we ask Your Honor to
5 consider that based on that that it would be appropriate and
6 fair if his sentence reflected the fact that this was not a
7 clearcut case of proximate causation that notwithstanding
8 that he decided to plead guilty and not put everybody
9 through the trial and that he is not someone with a long
10 history of DUIs or alcohol related bad behavior.

11 Now, in addition to my argument which I tried to
12 keep as brief as I can. There are a number of people here
13 that didn't get a chance to speak at the last sentencing
14 that have wanted very badly to have a chance to briefly tell
15 the court --

16 THE COURT: I think technically the motion to
17 reconsider only what I've considered no additional evidence
18 but I'll be a little bit liberal and allow you to present
19 whatever you're inclined to do so. But the reconsider is to
20 consider the record as it is not to add additional
21 information to the record, Ms. Shurling, I do believe -- at
22 least that's my understanding of how reconsider goes.

23 MS. SHURLING: I understand. Your Honor, if I
24 might briefly present his sister Kathy Samuels.

25 Ms. Samuels. I'm going to call several of you, if

1 you can walk on down so we save time please. Kathy Samuel,
2 Alozno Brown, Donald Junior, Jarome Brown, Tameka Debose,
3 Mandy Belton and Moses Brown, if you would line up here or
4 on this side, (indicating) perhaps. If you could stop, one
5 at a time identify yourself, tell what your relationship is
6 to Donald Brown and what it is about him as a person, his
7 character, his background that you wish the court to
8 consider in deciding whether or not to reconsider sentence.
9 Please be consider of other people here with business to do
10 and be as brief as you can and still make the point you're
11 here to make, thank you.

12 DONALD BRWON, JR: Donald Brown, Junior, I'm his
13 son. And my father is a very hard working young man. He's
14 always been there, never been in any kind of trouble, you
15 know, if I need somebody to talk to about anything he was
16 always there. Very respectable, kind, get along with
17 everybody.

18 MS. SHURLING: Thank you very much.

19 MS. SAMUELS: Kathy Samuels, his sister. My
20 brother, Donald Brown, is a hard worker, provider for his
21 family. He's a good person. He's just a good person
22 overall.

23 MS. SHURLING: Thank you.

24 ALONZO BROWN: Alonzo Brown, his brother. I want
25 to say he's a hard working guy, my brother, and he was a

1 good churchgoing guy. He was respected in the neighborhood.
2 He was good. A lot of people knowed him. He worked all of
3 his life. And like I said -- grief to his family; real
4 sorry about what had happened.

5 MS. SHURLING: Thank you.

6 JAROME BROWN: My name is Jarome Brown. Donald's
7 the baby. I'm the oldest. And I would like to say just
8 like everybody else say he's hard working and this thing did
9 devastated our family and I know how the little boy family
10 are because, you know, I seen this before and I know what
11 they going through and we deeply sad about this, you know.

12 THE COURT: Thank you.

13 TAMEKA DEBOSE: Tameka Debose. Donald is my uncle
14 he's a very hard worker. He's always been there for his
15 family. I just don't want to see --

16 MOSES BROWN: Moses Brown, Donald's brother. I'd
17 like to say about the same thing they said, Donald's a hard
18 working person and I just want to say I'm sorry about what
19 happened to their family.

20 MANDY BELTON: Mandy Belton, a church member.
21 Nice friend and hard worker.

22 MS. SHURLING: Is Pastor Robinson here? Was he
23 able to make it?

24 Your Honor, the only other person that had asked
25 if he could speak on his behalf was Pastor Robinson who is

1 very familiar with his active church life and again he had a
2 conflict unfortunately was unable to make it today.

3 THE COURT: All right.

4 MS. SHURLING: Thank you.

5 THE COURT: Anything further?

6 MS. SHURLING: No, sir.

7 THE COURT: All right, Mr. Moak.

8 MR. MOAK: Your Honor, the facts when this
9 happened --

10 MR. MEADORS: Your Honor, we have the victim's
11 parents who would briefly like to address Your Honor.

12 THE COURT: Yes.

13 MR. MOAK: This is Tonya Spradley.

14 TONYA SPRADLEY: We stood before you in 2006 to
15 explain our feelings for the lost of our son^{Minor} At
16 that time we thought we knew pain and heartache but little
17 did we know the pain and agony that we would suffer in the
18 days ahead. The emptiness we feel in our heart and our home
19 does not go away with time. Although it has been five
20 years, six months and 17 days our hearts break all over
21 again. Every aspect of our life revolves around our
22 children. They are our reason for living and our purpose in
23 life. They are what forces us to face a grief filled life
24 and cope as best we can. I wish that my precious baby could
25 have a reconsideration for his young life. I wish also that

1 my family might have a reconsideration of the constant pain
2 in our heart so that we may trust in safety and balance
3 again. As a mother, I realize that my heart is forever
4 captive and that the law of God rules over our existence. I
5 also know that the law of this land controls the consciences
6 of the thoughtless actions of the citizens with poorest
7 judgment with the essential of our existence having been
8 ripped from our world. You can surely see that reconsider of
9 his sentence -- of such an event should stand as an unspoken
10 testimony that we will not allow our precious treasures to
11 be plucked from our sight without due consequence. Thank
12 you for hearing us.

13 MR. MEADORS: Your Honor, her husband Tim is here
14 also. And obviously, they're -- and Ms. Cheryl Jones who --
15 with MADD who held with this originally. I want to thank
16 her also for being here today. Obviously, Your Honor can
17 continue to see their pain.

18 Judge, I told them that I'd convey. They came in
19 the courthouse Your Honor remembers was packed last time
20 with folks from both sides. They -- I told them not to call
21 anybody to be here today. I thought it would -- just them
22 being here today. They had other people that wanted to be
23 here but --

24 THE COURT: If I recall --

25 MR. MEADORS: I guess they're here in the spirit --

1 THE COURT: If I recall they had t-shirts with a
2 picture with Mr. Spradley on it.

3 MR. MEADORS: Judge, I -- before Mr. Moak -- let
4 me say one thing, Judge.

5 THE COURT: Yes, sir.

6 MR. MEADORS: Judge, thought about this with, you
7 know, five months and with the presentence investigation. I
8 don't know how many years I've been in front of you but I
9 know that you consider all factors and I know you did in
10 that case. It's a tragedy to both families. Obviously, to
11 point you to -- I respectfully disagree with there being
12 evidence that young Minor who was five at the time darted
13 out in the road. He was -- clearly his dad and his cousin
14 was on the other side but he was on the side of the road and
15 the impact I think was there.

16 Judge, if, if, and I'll be brief, and if Mr. Moak
17 wants to add something, after the incident there was
18 evidence that Mr. Brown started to leave but somebody who
19 there knew him said, No, we know who you are. You need to
20 stay. And then there was a video afterwards and all due
21 respect to everybody, I think we showed it to Mr -- to Your
22 Honor. I'm positive we did. Mr. Tetterton was there. That
23 showed Mr. Brown and his state at the time and clearly,
24 respectfully, he was under the influence. I think it this
25 was clear. It's a tragedy. Judge, we thought 13 was fair.

1 We thought that was a fair sentence to everybody. Some
2 wanted more. Some wanted a lot more. Some wanted less but
3 we truly thought 13 was a sentence that in your wisdom you
4 gave and we respected it. We still respect that sentence,
5 Your Honor, and we're going to respectfully ask that you
6 keep the sentence at 13 years.

7 THE COURT: All right. Thank you.

8 MR. MOAK: And, Your Honor, a brief factual basis.

9 MR. MEADORS: Your Honor, his prior is a
10 possession of crack in 1996.

11 MS. SHURLING: Your Honor, I would be remised, I
12 apologize. I did not ask my client if he wanted to address
13 the court.

14 THE COURT: He's invited to do so.

15 MS. SHURLING: Would you?

16 THE DEFENDANT: Yes, Your Honor. I have -- for
17 the family and there's not a day, there's not a day, that go
18 by that I do not -- tears do not come out my eyes. I'm just
19 so sorry for what happened. It's just a tragic accident.

20 THE COURT: All right, sir.

21 MR. MEADORS: Your Honor, Mr. Moak wants --

22 THE COURT: Yes, sir.

23 MR. MOAK: Your Honor, the only thing is, when
24 Mr. Brown was arrested by the trooper in this case, Your
25 Honor, the trooper turned his camera around in the car and

1 there was a conversation and a lot of demeanor evidence of
2 Mr. Brown from the trooper's in car video. At one point
3 during the video he's begging the trooper not to arrest him,
4 not to take him to jail. The trooper tells him he's going
5 to jail. And just to show the remorse, his state of mind
6 the night or the day that this happened, he actually told
7 the trooper, If I'm going to jail I hope I hit the blank out
8 of that kid. I mean, this child like she says he's actually
9 leaving the roadway. The point of impact at the fog line
10 where he's leaving the roadway when he hit this child. And
11 he blew a -- or his blood alcohol was a point 22, Your
12 Honor. So I think that we would strongly disagree that
13 there's no compelling evidence that this was a felony DUI
14 death, he choose to plead guilty to it.

15 THE COURT: All right. Anything further?

16 MS. SHURLING: Nothing, Your Honor.

17 THE COURT: Let me say this to everybody involved.

18 There's an old expression, I may be in error but I'm not in
19 doubt. And I recall when Mr. Brown pled guilty there was
20 approximately -- there was over 200 might have been three or
21 400 people. It was very crowded and represented both sides
22 of this issue the defendant as well as the victim. I took
23 into account every single detail that was presented to me.
24 I took into account the excellent presentation made by Mr.
25 Tetterton, the solicitor's office, from Mr. Moak and Mr.

1 Meadors I do believe. I listened to every painful word from
2 the mother and the father and the grandparents were also
3 present. Like I said, I considered every single detail not
4 just for five minutes, not for five days, not for five
5 weeks. I think it was about five months if I recall. And
6 when you have to make a decision like it's my job to do,
7 it's not a decision that effects Mr. Brown as a defendant.
8 It's not a decision that effects Mr. Spradley, the five year
9 old as a dead victim or the solicitor's office. It's a
10 decision that effects me too. And regardless of how
11 Mr. Brown feels or the Spradley's feel or the solicitor
12 feels or Mr. Tetterton feels or how you feel, Ms. Shurling.
13 The one person I always have to satisfy is myself. It was a
14 sentence on the low end a fair one I thought considering all
15 the circumstances. There's nothing I could say or do to
16 bring back this five year old child. I have three children
17 myself. I would hate to think -- that I would have to live
18 with the thought for the rest of my life that I would never
19 see my child again. I would hate to think or ever have the
20 thought for the rest of my life I wouldn't see my father for
21 ten or 12 years, whatever it might be he has to serve. But
22 the decision I made then I thought was fair. I think is
23 fair now and upon my death I still believe it would be a
24 fair sentence. Your motion is respectfully denied. Thank
25 you all for your presentations.

1 MR. MOAK: That's Your Honor.

2 MS. SHURLING: Thank you, Your Honor.

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END OF PROCEEDINGS

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1 COUNTY OF RICHLAND)

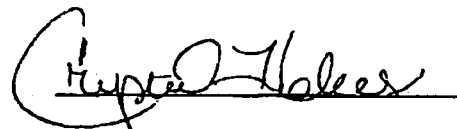
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled State V. Donald Brown,
5 2007-CP-40-28-400, at the Richland County Courthouse,
6 January 5, 2011.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 17 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 18th day of December,
15 2011.

16 

17 Crystal Holmes, Court Reporter
18 and Notary Public for the
19 State of South Carolina my
20 Commission Expires:
21 April 21 2014
22
23
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)
)

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-28-400

DONALD E. BROWN,

 Plaintiff,

-vs-

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,

 Defendant.

August 14, 2012
Columbia, South Carolina

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, Judge

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

TARA DAWN SHURLING, Esquire
Attorney for the Plaintiff

ROB CORNEY, Esquire
Office of the Attorney General
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 AUGUST 14, 2012

2 (WHEREAS, this matter was scheduled for a PCR hearing,
3 the plaintiff appeared along with his counsel of record.
4 The hearing began at 2:44 p.m.)

5 MR. CORNEY: We'll next go forward with the PCR
6 application of Donald E. Brown.

7 THE COURT: All right.

8 MR. CORNEY: Your Honor, if I may approach, I'll bring
9 the packet up for you.

10 THE COURT: All right.

11 MR. CORNEY: I just want to double-check and make sure
12 you have the whole transcript. May it please the Court, Your
13 Honor.

14 THE COURT: Yes, sir.

15 MR. CORNEY: Your Honor, the State would call the PCR of
16 Donald E. Brown. It's Docket Number 2007-CP-28-0400. Mr.
17 Brown was true bill indicted at the April 2006 term of the
18 Kershaw County Grand Jury for felony DUI with death resulting.
19 He was represented by Mr. William Tetterton on the charge. He
20 pled guilty April 10th, 2006, before Judge Manning to the
21 charge as indicted without recommendations or negotiations and
22 sentencing was deferred at that time, Your Honor.

23 Mr. Brown appeared September 19th, 2006, before Judge
24 Manning for a sentencing hearing, at which time he was
25 sentenced to 13 years imprisonment. A motion for

1 reconsideration was filed on his behalf and at some point in
2 time Ms. Shurling was actually retained in the PCR action, as
3 well as this outstanding motion for reconsideration that
4 hadn't been heard. I don't know if that's something she can
5 delve into a little bit more just for procedural background,
6 but the motion -- the motion was heard January 5th, 2011,
7 before Judge Manning on the reconsideration at which time
8 Judge Manning denied that motion.

9 Mr. Brown did not file a direct appeal, but had a timely
10 PCR application filed April 23rd, 2007. That was actually
11 before the reconsideration was heard, but we held onto the
12 reconsideration and just used that application to let it come
13 forward after that, Your Honor. That's why it's a 2007 case
14 going forward kind of late at this point in time.

15 For purposes of the record, Your Honor, the respondent
16 does submit that I believe because Mr. Brown has decided to
17 pursue this application with Ms. Shurling as his PCR counsel,
18 we would oppose any -- any allegations of ineffectiveness
19 regarding the -- the reconsideration hearing as Ms. Shurling
20 did represent him at the reconsideration hearing and is here
21 today to represent him on his PCR application. So just for
22 purposes of the record, I just wanted to place that on there
23 that any allegations regarding the reconsideration hearing
24 would be something the State would oppose at this point in
25 time because of conflict.

1 We do have Mr. Tetterton here today and we are prepared
2 to go forward, Your Honor.

3 THE COURT: Thank you.

4 MR. CORNEY: Thank you.

5 THE COURT: All right. Ms. Shurling?

6 MS. SHURLING: Thank you, Your Honor. I will cover the
7 issue concerning my brief representation of Mr. Brown in
8 General Sessions Court on the motion to reconsider when I
9 question my client on the record.

10 Generally, for the record, Your Honor, my client does
11 allege that his right to effective assistance of counsel as
12 guaranteed by the Sixth and Fourteenth Amendments to the
13 United States Constitution was violated both prior to and
14 during his guilty plea proceeding. It is his position, Your
15 Honor, generally that he did not understand the law as it
16 relates to proximate causation and the operation of proximate
17 causation with regard to the offense of felony DUI.

18 It is also his position that certain promises and
19 recommendations were made not only -- pardon me. Certain
20 promises and assurances were made not only to my client, Mr.
21 Donald Brown, but were also made to certain family members
22 with regard to what the consequences of a plea would be and it
23 is his position that his plea of guilty was accordingly not
24 voluntarily and intelligently entered in as much as it is his
25 position that but for those promises and assurances, he would

1 not have waived his constitutional right to a jury trial by
2 entering this plea of guilty.

3 Additionally, it's his position that trial counsel failed
4 to adequately advise him concerning the probable sentencing
5 consequences of proceeding with a jury trial and at this time,
6 Your Honor, I would call Mr. Donald E. Brown, the applicant,
7 as our witness and I would ask, Your Honor, if it is
8 permissible for my client to have at least one hand uncuffed
9 so that when I'm referring to documents he can ---

10 THE COURT: No, ma'am. I won't allow that.

11 MS. SHURLING: Yes, sir. Mr. Brown?

12 THE COURT: Come around, please, Mr. Brown.

13 THE BAILIFF: If you would, place your left hand on the
14 Bible for me, raise your right hand, and face the judge for
15 me.

16 THE COURT: Do you solemnly swear the testimony you give
17 before the Court today will be the truth, the whole truth, and
18 nothing but the truth, so help you God?

19 THE APPLICANT: Yes, Your Honor.

20 THE COURT: Thank you. Thank you very much. If you
21 will, come around.

22 THE BAILIFF: Right here.

23 THE COURT: Once you're comfortably seated, please state
24 your full name for the record, spelling your last. State your
25 full name for the record.

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 THE APPLICANT: Donald Earl Brown.

2 THE COURT: And spell your last name.

3 THE APPLICANT: B-R-O-W-N.

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

5 Ms. Shurling?

6 MS. SHURLING: Thank you.

7 DONALD E. BROWN, being first duly
8 sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MS. SHURLING:

11 Q: Mr. Brown, let's start at the beginning. When I was
12 initially hired, I was hired by you and your family to pursue
13 collateral review through a post-conviction relief
14 application; correct?

15 A: That's correct.

16 Q: And at first, I was rather panicked when I found out how
17 long your case had been pending since your sentencing; wasn't
18 I?

19 A: Yes, ma'am.

20 Q: Okay and ultimately, didn't you and your family advise me
21 that Mr. Tetterton had actually filed a motion to reconsider
22 sentence that had never been heard?

23 A: Yes, ma'am.

24 Q: And at that point, we agreed to have me represent you at
25 the motion to reconsider sentence rather than Mr. Tetterton?

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 A: Yes, ma'am.

2 Q: Okay. Now, I have explained to you that through the
3 post-conviction relief process that among the many issues you
4 have a right to raise is the question -- pardon me -- of
5 whether you received effective assistance of counsel from your
6 trial lawyer; correct?

7 A: That's correct.

8 Q: And I explained to you that that right to effective
9 assistance of counsel extends to the sentencing proceeding,
10 that you have a right to effective assistance of counsel
11 during your sentencing and before your sentencing preparing
12 for sentencing. We discussed that; correct?

13 A: That's correct.

14 Q: Okay and I explained to you, did I not, that if I took
15 over the motion to reconsider sentence and represented you in
16 that proceeding that if at a later date when we went forward
17 with the PCR you would not be able to, if you chose, to raise
18 any kind of complaints about the way I handled the hearing on
19 the motion to reconsider sentence? Do you remember that
20 discussion with me?

21 A: That's right.

22 Q: And did I clearly explain to you that if you had any
23 problems about the manner in which I handled the motion to
24 reconsider sentence that you would -- you could and should
25 raise those in your PCR case before the Court of Common Pleas,

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 but that I couldn't be your PCR lawyer if you did that?

2 A: That's right.

3 Q: Okay and -- and did you indicate to me then and is it
4 still your position that you wanted to waive any claims of
5 ineffective assistance of counsel against me for anything
6 concerning the way I represented you on the motion to
7 reconsider sentence?

8 A: No, ma'am.

9 Q: Okay. Do you want to waive any complaints about the way
10 I handled the case?

11 A: Yes.

12 Q: You do want to waive them?

13 A: Yes.

14 Q: And you understand that you are affirmatively waiving any
15 PCR claims against me for any reason -- any reason you might
16 would argue that I didn't do a good enough job in the motion
17 to reconsider sentence?

18 A: No, ma'am.

19 Q: Okay. As long as we're clear on that.

20 A: Okay.

21 Q: Now, let's go forward with the issues concerning your
22 representation by Mr. William Tetterton.

23 A: Okay.

24 Q: I am sure you recall the time period surrounding this
25 accident and the time period after that very clearly given the

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

- 1 consequences it's had in your life, but can you recall for us
2 when you were arrested how long after your arrest you hired
3 Mr. William Tetterton to be your lawyer?
- 4 A: Repeat that, Shurling?
- 5 Q: After the accident ---
- 6 A: Right.
- 7 Q: --- the incident when the child was killed?
- 8 A: Mm-hmm.
- 9 Q: You were arrested?
- 10 A: Right.
- 11 Q: How long after you were arrested did you hire William
12 Tetterton?
- 13 A: I hired -- I hired him right after that.
- 14 Q: Right after that? Can you tell us ---
- 15 A: About a week.
- 16 Q: A week?
- 17 A: Yes, ma'am.
- 18 Q: Approximately. I'm not asking ---
- 19 A: Approximately about a week.
- 20 Q: A week to ten days to be safe?
- 21 A: Yes, ma'am.
- 22 Q: Okay and were you on bond?
- 23 A: Yeah, I was on -- I got out on bond a week after I stayed
24 in.
- 25 Q: Okay and was Mr. Tetterton representing you when you made

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

- 1 bond or did you make bond and then hire Mr. Tetterton?
- 2 A: He -- he -- Mr. Tetterton helped me get a bond.
- 3 Q: Helped you get a ybond?
- 4 A: Yes, ma'am.
- 5 Q: Okay and did some of your family help you hire Mr.
- 6 William Tetterton?
- 7 A: Yes, ma'am.
- 8 Q: Who would have been involved in your family with the
- 9 selection and hiring of William Tetterton?
- 10 A: I went through Gary Brown.
- 11 Q: Your brother, Gary Brown?
- 12 A: Yeah.
- 13 Q: And was your brother, Jerome Brown, also involved?
- 14 A: Jerome was involved, too. Gary and Jerome.
- 15 Q: Okay and after you made bond, did you have meetings with
- 16 Mr. Tetterton at his law firm concerning your case?
- 17 A: Yes. I had a couple. I had about three -- three
- 18 meetings with him.
- 19 Q: And in those meetings, did you go by yourself or did you
- 20 take family members with you?
- 21 A: Me and my wife and -- and -- it was just me and my wife.
- 22 Q: Just you and your wife?
- 23 A: And Gary. I think Gary went by.
- 24 Q: Okay and did Mr. Tetterton review the discovery materials
- 25 in this case with you?

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 A: He -- he came up with the -- he went over and he came up
2 to say that I -- he said that I should have come up with a
3 plea deal.

4 Q: Okay. Let's back up for just a minute.

5 A: Okay.

6 Q: Did Mr. Tetterton explain to you that the prosecution
7 would be asked through motions to turn over their evidence to
8 him in preparing your case for court?

9 A: Yes.

10 Q: And when he got those documents from the Solicitor's
11 Office, did he sit down with you and go over those documents?

12 A: Yes.

13 Q: He did?

14 A: Yes.

15 Q: Okay and did he explain to you the law as it applied to
16 the charge of felony DUI involving death?

17 A: Yes.

18 Q: Okay. Do you recall conversations with Mr. Tetterton
19 concerning the concept of proximate causation?

20 A: I did. I went over it with him, but he -- he say that --
21 I asked him could I -- could I just plea to a DUI and he told
22 me I could plead to a DUI. So it would have been better -- it
23 would be better for me to go ahead and plea.

24 Q: Okay. Did Mr. Tetterton ever explain to you that the
25 crime of felony DUI involving death ---

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

- 1 A: Mm-hmm.
- 2 Q: --- required the State to prove more than just that you
3 were drunk?
- 4 A: No, he didn't.
- 5 Q: Did you understand at the time of your plea that the
6 State would have to prove beyond a reasonable doubt (a) that
7 you were driving under the influence?
- 8 A: Right.
- 9 Q: And (b) that your actions were the proximate cause of the
10 wreck that caused the child's death? Did you understand that
11 the State had to prove both of those to convict you?
- 12 A: No. I just thought it was just -- just that one drinking
13 would have covered the whole thing.
- 14 Q: Okay. Based on your discussions with Mr. Tetterton prior
15 to the time of your plea ---
- 16 A: Mm-hmm.
- 17 Q: --- what did you think would happen if you went to trial
18 and the jury decided that you were drunk?
- 19 A: It would have just been a DUI.
- 20 Q: Okay. Did -- when you went to trial ---
- 21 A: Mm-hmm.
- 22 Q: If you had gone to trial, what was your understanding
23 would happen if the jury concluded that you were driving under
24 the influence of alcohol?
- 25 A: It just would have been an accident, a DUI.

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 Q: A DUI?

2 A: Right, DUI accident.

3 Q: Okay. Well, if they decided that you were driving under
4 the influence, did you understand what else they would have to
5 prove if they were going to convict you of felony DUI?

6 A: They had to prove that I caused the accident.

7 Q: Did you understand that at the time of your guilty plea?

8 A: No, I didn't.

9 Q: Okay. So you understand that today?

10 A: Yes, I do.

11 Q: But at the time of your plea, you thought what?

12 A: I thought that because I was drinking, if I was charged
13 with DUI death, I would have been charged with both. I didn't
14 know.

15 Q: So at the time of your plea, you thought that if they
16 proved you were drunk, you were guilty?

17 A: Yes, that's right.

18 Q: Is that -- is that accurate?

19 A: (Nods.)

20 Q: Okay.

21 A: Yes.

22 MR. CORNEY: Your Honor, I'm going -- I'm going to just
23 ask you to please caution her against leading a little bit.
24 Let him -- let him give his own testimony.

25 MS. SHURLING: Thank you, Your Honor. I'll ---

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 THE COURT: I didn't quite understand what you said, Ms.
2 Shurling.

3 MS. SHURLING: Well, I ---

4 MR. CORNEY: We'll -- I think it's handled. I'll just
5 sit down.

6 MS. SHURLING: And I apologize. I'm trying to keep us
7 from being here all day, but I'll word my questions more
8 carefully.

9 Q: At the time you were making the decision ---

10 A: Mm-hmm.

11 Q: --- about whether to go to trial or to plead guilty ---

12 A: Mm-hmm.

13 Q: --- did you think that you would be found guilty as
14 charged if the jury decided you were drunk?

15 A: That's right.

16 Q: Okay and did you understand that the jury would have to
17 find beyond a reasonable doubt something in addition to the
18 fact that you were drunk? Did you understand that at the
19 time?

20 A: Yes. You're saying now?

21 Q: Not now.

22 A: No.

23 Q: Not now.

24 A: No, no.

25 Q: At the time you were deciding about whether to plead or

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 not.

2 A: No, I didn't. I didn't.

3 Q: You did not understand?

4 A: No, ma'am.

5 Q: Okay. You understand that the toxicology reports in this
6 case showed that your blood alcohol level was well over the
7 presumptive level for being inebriated; you understand that?

8 A: Yes, ma'am.

9 Q: And I believe that in your case there was actually a
10 urine test and a blood test?

11 A: Yes, ma'am.

12 Q: Is that correct?

13 A: That's correct.

14 Q: And did your lawyer discuss with you that he was also
15 sending the extra sample that was taken to an independent
16 laboratory for testing?

17 A: Yes.

18 Q: And did he discuss with you the fact that the results
19 from that independent laboratory were consistent within a
20 certain minor variation with what the State's evidence showed?

21 A: Yep.

22 Q: Okay. So at some point in this process, did Mr.
23 Tetterton go over with you something we call the MAIT report?

24 A: Could you explain that?

25 Q: It's a report done by a team of law enforcement officers

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 that -- that examine accidents and issue reports about the
2 probable causes of accidents. Did he ever discuss something
3 with you called a MAIT report?

4 A: Yes.

5 Q: Okay and when you discussed the facts of the case with
6 the -- with your lawyer, did you tell him that you didn't
7 believe you were responsible for the accident?

8 A: I told him that.

9 Q: And did the two of you discuss alternate theories for how
10 this accident might have not been your fault? Did you talk
11 about that?

12 A: Yes.

13 Q: And did you have discussions with Mr. Tetterton about how
14 you might present that argument at a jury trial in defense if
15 you went to trial?

16 A: I had discussed that with him because I had told him at
17 first that I -- I didn't cause -- I didn't cause the accident,
18 but he told me that I had to plea to it -- to it because I was
19 drunk and I had to plea to it and he had made me a deal --
20 came up with a deal of one to three years.

21 Q: Okay. Let's -- let's slow down and we got some more
22 territory to cover ---

23 A: Okay.

24 Q: --- first. Okay?

25 A: Okay.

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 Q: Did Mr. Tetterton explain to you that if you went to
2 trial ---

3 A: Mm-hmm.

4 Q: --- you would have a chance to present a defense?

5 A: Yeah.

6 Q: And did he explain to you that you would get a chance to
7 argue that you were not responsible for the young boy's
8 death?

9 A: Repeat that, Shurling?

10 Q: Pardon?

11 A: Repeat that?

12 Q: Did you understand that if you went to trial ---

13 A: Mm-hmm.

14 Q: --- that even if the State proved that you were drunk
15 that you would have a chance to argue that the wreck still
16 wasn't your fault?

17 A: They didn't prove it, no.

18 Q: Okay.

19 A: No.

20 Q: All right. Did you go over the physical evidence in this
21 case with your lawyer? The photographs of the bicycle and the
22 photographs of your ---

23 A: Yes.

24 Q: --- car and ---

25 A: Yes.

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 Q: --- that sort of thing?

2 A: Yes.

3 Q: Okay. How did you tell your lawyer this accident
4 happened? Recall for us how you believe the accident happened
5 as you explained it to your lawyer.

6 A: Okay. I was coming down -- I was coming down the road
7 and I was approaching a car and the little child he -- when I
8 seen him, he darted out in the road and I blowed my horn.
9 When I tried to miss him, he ran in the side of my Jeep.

10 Q: So it was your position that the child darted in front of
11 you?

12 A: That's right.

13 Q: And you blew the horn?

14 A: Yes, ma'am.

15 Q: And tried to avoid hitting him and hit him anyway?

16 A: Yes, ma'am.

17 Q: And is it true that the MAIT report issued in this case
18 estimated your speed at well below the speed limit?

19 A: Yes, ma'am.

20 Q: And is that consistent with what you recall about the
21 incident?

22 A: The speed limit?

23 Q: When you say you -- you say you tried to avoid hitting
24 the child. How did you try to avoid hitting the child?

25 A: I -- when I -- when he darted out in the road, I dodged.

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 I was approaching a car and the car had the lights on bright
2 and when he -- when he darted, I tried to dodge him. I hit --
3 I blew the horn and hit the brakes and so he hit the side.
4 He hit the side of me.

5 Q: Okay. So you told them that you hit your brakes?

6 A: Yeah.

7 Q: And the evidence in the MAIT report in fact showed that
8 you were going below the speed limit?

9 A: That's right.

10 Q: Okay. Do you remember there being anything in the MAIT
11 report ---

12 MS. SHURLING: And, Your Honor, I'll be happy to move a
13 copy of the MAIT report into evidence so that I won't be
14 referring to ---

15 MR. CORNEY: Your Honor, I don't have a problem with it..
16 I've got a copy of it and I believe Mr. Tetterton will be able
17 to ID it when he gets on the stand. So I don't have a problem
18 with that.

19 THE COURT: Okay.

20 MR. CORNEY: I don't know if you want to do it for ID
21 first or I don't have an objection to it being all the way in
22 as part of the record.

23 THE COURT: Thank you, Mr. Attorney General.

24 MS. SHURLING: A moment's indulgence, Your Honor.

25 (Whereupon, the attorneys confer.)

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 MS. SHURLING: Your Honor, we'll put a -- the respondent
2 and I will -- Your Honor, we'll put a copy of the MAIT report
3 in evidence at this time.

4 THE COURT: All right.

5 MS. SHURLING: Thank you.

6 (Whereupon, the MAIT report is marked and admitted
7 without objection as Plaintiff's Exhibit Number 1.)

8 Q: Mr. Brown, will you take a look at this document? Does
9 it look ---

10 THE COURT: Do you have a copy of that?

11 MR. CORNEY: I don't have another copy of it on me. I
12 mean if we can share yours, I'm okay with it. I could run
13 down and ---

14 MS. SHURLING: We'll share it, Your Honor.

15 THE COURT: I don't know if you can maybe make a copy of
16 it. I'm okay just sharing one for right now. I -- I know
17 what's in it.

18 THE COURT: All right.

19 MS. SHURLING: I'll take responsibility for getting
20 another copy back to you.

21 THE COURT: Thank you.

22 Q: Does this document look familiar to you, Mr. Brown?

23 A: Yes, yes, ma'am.

24 Q: And do you recall looking over this document with your
25 attorney, Mr. Tetterton?

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

- 1 A: Yes, ma'am.
- 2 Q: At one point in this document on page 18, it references
3 red paint on a nut and bolt on the mechanism that would have
4 held the seat on the bicycle.
- 5 A: Mm-hmm.
- 6 Q: And there's a note at the bottom that says at the time of
7 this report, the South Carolina Law Enforcement Division Trace
8 and Paint Department had not completed the analysis requested
9 by the Midlands MAIT. Do you recall observing that?
- 10 A: Yes. I -- yes.
- 11 Q: Okay.
- 12 A: Yes.
- 13 Q: After reviewing the MAIT report with your lawyer, did he
14 ever come back to you at a later date and tell you what the
15 results of that paint comparison were? Did you ever find out
16 what the results of that comparison of that red paint to your
17 car were?
- 18 A: Yes.
- 19 Q: How did you find out?
- 20 A: He had -- the red paint? I can't -- I don't understand
21 what you're saying.
- 22 Q: Okay.
- 23 A: I don't understand.
- 24 Q: This report ---
- 25 A: Right.

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 Q: --- says that they found a little teeny bit of red paint

2 ---

3 A: Mm-hmm.

4 Q: --- on the nut and bolt to the seat of the bicycle.

5 A: Right.

6 Q: And it says that that had been sent to SLED for analysis.

7 A: Mm-hmm.

8 Q: Okay? Did your lawyer ever tell you what the outcome of
9 that test was?

10 A: No. No.

11 Q: So to the best of your knowledge, you didn't have that
12 information at the time you entered your plea?

13 A: No, ma'am.

14 Q: Okay. Now, at some point, there came a time when you and
15 your family and Mr. Tetterton were having to decide whether
16 you were going to go to trial or whether you were going to
17 enter a plea.

18 A: Mm-hmm.

19 Q: Do you remember that?

20 A: Yes.

21 Q: Do you remember ---

22 A: Yes.

23 Q: --- at some point ---

24 A: Yes.

25 Q: --- entering into discussions with Mr. Tetterton ---

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 A: Yeah.

2 Q: --- about whether you should plead or whether you should
3 go to trial?

4 A: Yeah.

5 Q: Did Mr. -- Mr. Tetterton discuss with you what the
6 penalty for felony DUI death was?

7 A: He said one to 25.

8 Q: So you knew that you could get up to 25 years for this
9 crime if you went to trial and were convicted?

10 A: That's right.

11 Q: Did he discuss with you what the average penalty range
12 had been in his experience in felony DUI cases in Kershaw
13 County?

14 A: No, ma'am.

15 Q: Did he have any discussions with you about the types of
16 factors that in his experience had been present in cases where
17 people got on the high end of the average versus the low end
18 of the average? Did he talk to you about that?

19 A: No.

20 Q: Did he -- what, if anything, did he tell you would happen
21 to you in terms of your sentence if you went to trial and were
22 convicted?

23 A: He said I'd probably get the max.

24 Q: When he talked to you about pleading guilty ---

25 A: Mm-hmm.

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 Q: --- what did he tell you would happen if you pled guilty?

2 A: He told me that -- he told me if I plead guilty, he -- he
3 said if I plead guilty, I would get one to three years.

4 Q: So he told you that if you -- that the crime carried one
5 to 25 years?

6 A: Yeah.

7 Q: And he told you that he thought if you were convicted at
8 a jury trial, you'd probably get the maximum?

9 A: I'd probably get the maximum.

10 Q: And what did he tell you was going to happen if you pled
11 guilty?

12 A: He told -- he told me -- well, this -- this is what he
13 promised me. I mean he told me ---

14 Q: He had ---

15 A: He told me -- he promised me I would get one -- if I
16 plea, I'd get one to -- he come up with a deal. I'd get one
17 to three years.

18 Q: One to three years?

19 A: Yes, ma'am.

20 Q: And did -- was that promise made in the presence of
21 anyone else in your family?

22 A: Yes, ma'am.

23 Q: Who would that be?

24 A: That would be Jerome, Gary, and -- Jerome and Gary. Our
25 other brother, he's not here.

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 Q: Okay. After hearing that you could plead guilty and
2 receive no more than three years, did you decide to plead
3 guilty?

4 A: No, ma'am.

5 Q: Okay. You did plead guilty?

6 A: I plead guilty.

7 Q: And why did you plead guilty?

8 A: Because he promised me one to three.

9 Q: So once he promised you you would get no more than three
10 years, that's when you decided to plead guilty?

11 A: Yes. Yes, ma'am.

12 Q: Okay. Would you have pled guilty if you had understood
13 that the judge could give you anything within the statutory
14 range? That he could give you anywhere from one to 25 years
15 if you pled guilty? Would you have pled guilty if you'd known
16 that?

17 A: No, I wouldn't have pled.

18 Q: Okay. Would you have pled guilty if you had not been
19 relying on the three year promise? If he hadn't promised you
20 one to three, would you have pled guilty?

21 A: Yes, I would have pled. If he'd have promised me one to
22 three?

23 Q: No, sir. If Mr. Tetterton ---

24 A: Mm-hmm.

25 Q: --- had not promised you -- if he'd never told you ---

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 A: Oh.

2 Q: --- one to three ---

3 A: Mm-hmm.

4 Q: --- would you have pled guilty?

5 A: No, ma'am.

6 Q: Okay. Now, I want to show you a document and ask you if
7 you recognize this affidavit that was signed by you on the
8 date of your plea?

9 A: Yes, ma'am.

10 MS. SHURLING: Your Honor, I would move this in as
11 Applicant's 2.

12 THE COURT: Any objection?

13 MR. CORNEY: No objection from the State, Your Honor.

14 MS. SHURLING: Here's an extra copy, Your Honor.

15 THE COURT: Applicant's 2 is in evidence without
16 objection.

17 (Whereupon, the affidavit is marked and entered as
18 Plaintiff's Exhibit Number 2.)

19 Q: Do you recognize this document, Mr. Brown?

20 A: Yes, ma'am.

21 Q: Let me draw your attention -- well, first off, let's --
22 let's establish something. Was this signed by you before you
23 went to court for your guilty plea?

24 A: Yes, ma'am.

25 Q: So you hadn't been to court yet when you signed this?

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 A: No, ma'am.

2 Q: Okay. If we look at page 3 in the last paragraph and I'm
3 reading, it says:

4 No one has promised me anything except whatever
5 negotiations are placed on the record as part of this guilty
6 plea.

7 At the time you signed this ---

8 A: Mm-hmm.

9 Q: --- there hadn't been a hearing yet; right?

10 A: That's right.

11 Q: So there hadn't been an opportunity for anything to be
12 placed on the record yet; had there?

13 A: That's right.

14 Q: What did you think were the negotiations that would be
15 placed on the record? What did you think that was referring
16 to?

17 A: My guilty plea.

18 Q: Right.

19 A: One to three years.

20 Q: The one to three years that Mr. Tetterton had told you?

21 A: Yes, ma'am.

22 Q: If this document had simply said no one has promised me
23 anything as part of this guilty plea and not had that language
24 in there about except whatever negotiations are placed on the
25 record ---

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 A: Yes, ma'am.

2 Q: --- would you have signed it? If it had not had that
3 language in there ---

4 A: No, ma'am. No, ma'am.

5 Q: --- would you have signed it?

6 A: No, ma'am.

7 Q: Okay. When you got to court -- we might as well cover
8 the hard stuff now. When you got to court during the guilty
9 plea, do you recall the judge talking about whether or not
10 there had been any promises made in this case? Do you
11 remember that part of the plea?

12 A: Yes.

13 Q: Okay. Well, let's -- let's -- do you have a copy of your
14 guilty plea with you?

15 A: It's up there. I left it up there.

16 Q: Okay.

17 A: It's in the front section. That's it right on the front.

18 Q: I'm getting it. It doesn't look like it's complete, but
19 it looks like it's got the pages I need. So I'm going to hand
20 you your copy.

21 A: Okay.

22 Q: At the top of -- well, actually, let's start at the
23 bottom of page 11.

24 A: Okay.

25 Q: You got it?

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 A: Yes, ma'am.

2 Q: Okay. At the bottom of page 11, the Court, Judge
3 Manning, asked the prosecutor:

4 "Have there been any plea negotiations, Solicitor?"

5 And Mr. Meadors says what?

6 "No, Your Honor."

7 A: Mm-hmm.

8 Q: Do you remember that?

9 A: Right.

10 Q: And then going over to the top of page 12, the Court
11 asked Mr. Tetterton:

12 "Anything additional at all, Mr. Tetterton, needs to be
13 added to the record in connection with any plea negotiations
14 or any recommendation?"

15 And Mr. Tetterton says:

16 "No, sir."

17 Doesn't he?

18 A: Yes, ma'am.

19 Q: At that point, the Court asked you if you still wanted to
20 plead guilty and you say:

21 "Yes, sir."

22 Don't you?

23 A: Yes.

24 Q: And the next thing, the judge comes right out and asks
25 you if anybody has promised you anything to get you to plead

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 guilty and you say:

2 "No, sir."

3 Do you see that in the record?

4 A: Yes.

5 Q: If Mr. Tetterton had promised you that if you pled
6 guilty, you weren't going to get any more than a three year
7 sentence, why didn't you speak up when Judge Manning
8 questioned you about whether or not you had been promised
9 anything?

10 A: Because I thought -- I thought my lawyer and the
11 solicitor -- I thought my lawyer and the solicitor had -- had
12 came up with an under the table agreement and -- and I didn't
13 want to mess it up.

14 Q: Okay. You thought your lawyer and the solicitor had an
15 agreement, but they just weren't putting it on the record?

16 A: That's right.

17 Q: And what reason did you think they might have had for not
18 putting it on the record?

19 A: My -- my lawyer told me to say if -- to say if anybody
20 promised me anything to say no. No.

21 Q: So you were afraid if you said what you'd been told, you
22 might be messing up some off the record agreement?

23 A: Yes.

24 Q: Okay. When the judge sentenced you and gave you this
25 long sentence, 13 years, why didn't you speak up then and say,

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 Your Honor, that's not what I was promised?

2 A: Because my lawyer had -- because I was going on the
3 advice of my attorney.

4 Q: Did you know that you could speak up and tell the judge,
5 wait a minute, this isn't what I was promised?

6 A: I thought they might have had a deal. My lawyer and the
7 solicitor might have had a deal and I didn't want to mess it
8 up.

9 Q: After you were sentenced to 13 years, did you complain
10 loud and clear to Mr. Tetterton about what -- that that was
11 not what you had been led to expect?

12 A: No, ma'am. He -- he told -- he told my family that's --
13 that's -- he told my family that -- that's -- that wasn't
14 right. He called them over there after that.

15 Q: Okay.

16 A: Over to his office.

17 Q: And after discussions with you and your family, Mr.
18 Tetterton filed a motion to reconsider sentence?

19 A: That's right.

20 Q: And after we argued the motion to reconsider sentence in
21 front of Judge Manning, Judge Manning refused to reduce the
22 sentence at all; didn't he?

23 A: No, ma'am.

24 Q: So you still got a 13 year sentence?

25 A: Yes, ma'am.

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 Q: Okay. Just so the record is -- is clear on this, did --
2 I'll rephrase that. When you pled guilty ---

3 A: Mm-hmm.

4 Q: --- did you understand that the State had to prove that
5 you caused the wreck in addition to proving that you were
6 drunk?

7 A: I didn't understand that.

8 Q: If you had understood that, would you have pled guilty or
9 gone to trial?

10 A: I would have -- I would have went to trial.

11 Q: If you had understood that if you were convicted at a
12 jury trial, any question about proximate causation could be
13 argued by your lawyer as a basis for begging for a sentence on
14 the low end?

15 A: Yes, ma'am.

16 Q: Did you understand that?

17 A: Yes. Yeah.

18 Q: I'm not asking what you understand today.

19 A: Okay.

20 Q: At the time you were deciding whether or not to plead
21 guilty ---

22 A: Mm-hmm.

23 Q: --- did you understand that if you went to trial by jury
24 and were convicted that your lawyer would have the chance to
25 argue whatever reasons he thought were appropriate why you

DIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 should get a sentence on the low end instead of the high end?

2 Did you understand that?

3 A: Yes.

4 Q: You did?

5 A: Oh, no, I didn't understand. You're talking about back

6 then?

7 Q: Yes, sir.

8 A: No. I didn't ---

9 Q: Okay.

10 A: --- understand that.

11 Q: And did you understand that if there was any question as

12 to proximate causation that your lawyer might could use that

13 as a factor to try to get you a lower sentence?

14 A: That's right.

15 Q: Okay and you understand that now?

16 A: Yes, ma'am.

17 Q: Did you understand it back then?

18 A: No, ma'am, I didn't.

19 Q: If -- if your lawyer had never promised you a sentence in

20 the one to three range, would you have pleaded guilty?

21 A: No, ma'am, I wouldn't have.

22 Q: Even though you knew you could get up to 25 years, would

23 you have gone to trial by jury?

24 A: Yes, ma'am, I would have went to trial.

25 Q: I want you to listen very carefully to the questions that

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 are put to you by the State's lawyer, ---

2 A: Okay.

3 Q: --- Mr. Corney, and answer them truthfully. Okay?

4 A: Okay.

5 THE COURT: Thank you. Thank you very much, Ms.

6 Shurling. Mr. Attorney General?

7 MR. CORNEY: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. CORNEY:

10 Q: All right, Mr. Brown, you said your family met with Mr.
11 Tetterton and some -- and they attended some of the meetings
12 with your -- with you when you met with Mr. Tetterton; is that
13 correct?

14 A: Yeah.

15 Q: Okay. Were they able to see some of the evidence and
16 review some of these things with Mr. Tetterton like you were
17 -- like you were able to?

18 A: Yeah.

19 Q: Okay and what did your family say about pleading guilty?
20 Did they say, yeah, you definitely need to plead guilty? Did
21 they say you should go to trial? I mean what was their
22 response to seeing all this evidence?

23 A: They said that Mr. Tetterton came up with a deal.

24 Q: Okay. I believe it was your testimony earlier when you
25 were talking to Ms. -- Ms. Shurling that -- that -- I'm trying

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 to find the exact thing what exactly you said. It happened
2 that night that -- that the boy had -- had darted in front of
3 you in the middle of the road and he hit the side of your car.

4 Is that what your testimony was?

5 A: He dart -- he darted out in the road and I tried to dodge
6 him and he hit -- he hit the right side. I blew the horn
7 and he ran into the side of me.

8 Q: Is that what ---

9 A: Front.

10 Q: --- you told the officers that night right after it
11 happened? And those investigative ---

12 A: I ---

13 Q: --- reports are part of that MAIT report you have up
14 there if you want to take a flip through it and look and I
15 believe some of those investigator reports are part of that.

16 A: Repeat that again?

17 Q: Is that what you told the investigators, the officers
18 that arrived on the scene that night? Is that what you told
19 them had happened also?

20 A: No.

21 Q: Okay. What did you tell them that night?

22 A: I told them that -- I told them that it was an accident
23 and I wasn't at fault though.

24 Q: Did you tell them you didn't see the child until you were
25 already on top of him?

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 A: No. I said -- I told them that some -- that something
2 hit me in the side. I tried to -- I blew the horn and --
3 and -- and turned to the left and something hit me in the
4 side.

5 Q: Hit you in the side? Okay. So if those investigative
6 reports that are included in the packet you're holding up
7 there, the MAIT report, if the law enforcement agents put down
8 that you had said you didn't even see the child until you were
9 on top of him, that's incorrect? Those -- those are not
10 correct statements?

11 A: No. I didn't say that.

12 Q: Those officers put down something false in the -- in
13 their investigative reports?

14 A: I didn't say that.

15 Q: Okay.

16 A: I didn't say I was on top of the child.

17 Q: Okay. So they -- they made that up and put it in the
18 investigative reports is what you're saying? If you didn't
19 say it, they just wrote that down?

20 A: I didn't say it.

21 Q: Okay and you said you were able to review the discovery
22 and you went through a lot of those things with Mr. Tetterton.
23 Wasn't the paint marking on the back of the child's car
24 [sic.], not on the side or the front or anything that would
25 indicate that -- that he had turned into your car? It was

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 actually at the back of the car [sic.]; wasn't it? On the
2 back of the bike; wasn't it?

3 A: That he turned into me?

4 Q: No. I'm saying wasn't the paint and all the indications
5 from the MAIT report that the bike was hit from behind?

6 MS. SHURLING: Your Honor, I would object unless the
7 respondent can point to some portion of the MAIT report that
8 says that. The only reference in the MAIT report to paint is
9 reference to a small sample of red paint taken from the nut
10 and bolt mechanism that held the seat on the bicycle.

11 THE COURT: Show him what part. It's in evidence; isn't
12 it?

13 MR. CORNEY: It is. It will be something -- I'll
14 withdraw the question, Your Honor. The MAIT report is part of
15 the record at this point in time for Your Honor to review so
16 I'll withdraw the question. I was just asking based on his
17 knowledge, but I will.

18 Q: Mr. Brown, what color Jeep were you driving that night?

19 A: Sir?

20 Q: What color Jeep were you driving that night?

21 A: Red.

22 Q: It was red?

23 A: Yeah.

24 Q: Okay and you said that Mr. Tetterton had told you that he
25 was certain you were going to get 25 years, the maximum, if

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 you went to trial?

2 A: Yes.

3 Q: Okay, but you wouldn't have pled if you were offered
4 anything more than three years?

5 A: That's -- that's what he promised me.

6 Q: Okay and you said a minute ago -- I think several times
7 Ms. Shurling asked you if you hadn't been promised one to
8 three years, you wouldn't have pled guilty, you would have
9 gone to trial; correct?

10 A: No. I -- she said -- I didn't say -- I mean I told her
11 that was -- that what my lawyer promised me, one to three.
12 That's why I pleaded.

13 Q: Okay and -- but it was your testimony that you wouldn't
14 have pled guilty if you weren't promised a one to three year
15 range and that's what you said I think three or four times on
16 direct examination.

17 A: I said I wouldn't have pled guilty if it had been 13
18 years.

19 Q: Okay. So you would have gone to trial for that certain
20 25 that Mr. Tetterton had all but promised you if you went to
21 trial rather than take the 13 on the plea?

22 A: Well, if I -- if I'd have knowed it was 13 years, I
23 wouldn't have. I would have went to trial, but my lawyer ---

24 Q: And you seemed to -- that -- that waiver form that you
25 signed, I know Ms. Shurling indicated to you a portion that

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 talks about negotiations and recommendations, you know,
2 anything placed on the record and you seemed to understand
3 what that meant when she was asking about that; right?

4 A: Yeah. He had promised me that -- that one to three
5 years. That's why I signed it.

6 Q: Okay and you saw that in that waiver form that it said
7 that and you -- you indicated that you thought maybe those
8 were things that they were going to talk about after the plea
9 hearing, whether you had negotiations or recommendations. Was
10 that your testimony?

11 A: Say that again? I can't hear so -- so good.

12 Q: I'm sorry. I'm asking you kind of a compound question.
13 I'm going to try to -- try to think of a way to phrase that a
14 little more eloquently to you. You were aware that that was
15 in the waiver form talking about the negotiations and
16 recommendations ---

17 A: Mm-hmm.

18 Q: --- Ms. Shurling pointed out to you?

19 A: Right.

20 Q: Okay and you understood what that meant obviously. She
21 was pointing it out to you and you said you saw that part and
22 you had seen it before you signed it?

23 A: Yeah. It -- it was meant because he supposed to have put
24 it on the record.

25 Q: Okay and at your April 10th plea hearing, as Ms. Shurling

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 pointed out on pages 11 -- 11 and 12, Mr. Tetterton and the
2 solicitor both said there were no recommendations and no
3 negotiations; correct?

4 A: Eleven and 12?

5 Q: Yes, sir, on the bottom of page 11 starting at line 20 --
6 23.

7 A: Mm-hmm.

8 Q: The Court asked have there been any plea negotiations and
9 the solicitor says no?

10 A: No.

11 Q: And then he asked Mr. Tetterton the same and Mr.
12 Tetterton says no?

13 A: Yeah.

14 Q: Right? And then the Court asks you if you still want to
15 go forward with that plea hearing and your guilty plea and you
16 said yes; right?

17 A: Mm-hmm.

18 Q: Okay and I guess you said it was something that you
19 didn't want to mess up your plea deal, that -- that, you know,
20 you didn't want to -- you didn't want to say anything because
21 it was an agreement between the solicitor and Mr. Tetterton?

22 A: That's right because it might have messed me up.

23 Q: Okay.

24 A: I mean messed -- I might have messed it up.

25 Q: I'm sure -- I'm sure him asking or saying those things on

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 the record probably had you at least a little bit confused
2 thinking I thought I had a deal here. I mean is that fair to
3 say? That was a little bit different than what he had told
4 you when he said there was no negotiations?

5 A: Yeah, but I didn't want to mess anything up. I thought
6 they had an undercut -- an undercut deal and I didn't want to
7 mess it up.

8 Q: Okay, but I mean at the very beginning of that plea
9 hearing, Judge Manning said to you -- on page 5, it says at
10 any point during my questioning you don't understand
11 something, stop me. I'll give you time to talk to your
12 attorney about it, you know, before we go forward with it and
13 you said you understood that; right?

14 A: Where that? Five?

15 Q: Yes, sir, page 5 right there at line 6 where Judge
16 Manning says:

17 "Additionally, I'd be more than happy to stop this plea
18 and allow you as much time as you feel you need to consult
19 with your lawyer, Mr. Tetterton. Do you understand that?"

20 And you said:

21 "Yes, sir."

22 Right there on line 10.

23 A: Yes.

24 Q: Okay. So right after Mr. Tetterton said there's no
25 negotiations, no recommendations, we're entering this plea

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 straight up, you didn't think that would be a good point to
2 stick your hand up and say, whoa, whoa, whoa, I need to talk
3 to my attorney, that's not my understanding here?

4 A: No, because I figured -- I thought that was still -- I
5 thought it was in the deal. Like I said, it would have messed
6 -- it would have messed everything up and I didn't want to
7 mess it up.

8 Q: Okay and you didn't get sentenced that day you entered
9 the plea; right?

10 A: No.

11 Q: Okay. You came back on September the 19th before Judge
12 Manning?

13 A: Yes.

14 Q: Okay and I don't think you've got a copy of that
15 transcript in front of you or not, the plea -- the sentencing
16 transcript, but do you have a copy of that up there with you?

17 A: No, I don't. I guess I've got to get the plea
18 transcript.

19 Q: Okay and I'll just reflect that the record will speak for
20 itself. I don't think we've got another copy that I can hand
21 up just ---

22 MS. SHURLING: I don't think I do.

23 THE COURT: You may use my copy if you want.

24 MR. CORNEY: If I may approach? Just very briefly.

25 THE COURT: September 19th?

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 MR. CORNEY: Yes, sir. Thank you very much, Judge.

2 Q: I'm going to go ahead and flip to I believe it's page 35
3 in this transcript right here. So this is April you entered
4 your plea. You come back -- just let me know if you can see
5 that; all right?

6 A: Yeah.

7 Q: And we're talking right here at the bottom and you might
8 be able to flip through it. So April you entered your plea.
9 You come back in September. That's April to May to June to
10 July to August so we're talking -- we're talking five, six
11 months there in-between. They're going through the plea
12 hearing. Down there at the bottom, Mr. Tetterton gets an
13 opportunity to address the Court. He says:

14 "Your Honor, I've explained to Donald Brown that the
15 Court has wisdom and mercy and is going to have to impose a
16 sentence on him. It could range anywhere from the mandatory
17 minimum of one year to the maximum of 25 years."

18 A: Mm-hmm.

19 Q: Look over to page 42, which is six pages after that. The
20 Court says, down at the bottom starting at page 22. This is
21 after Mr. Tetterton just said he's going to get somewhere
22 between the minimum and the maximum. He doesn't say a word
23 about one to three years. It says:

24 "All right, Mr. Brown, you're going to get the
25 opportunity to speak."

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 Starting right there at line 23, you go through and
2 make a statement. You apologize to the family.

3 A: Mm-hmm.

4 Q: Don't say a word about anything about a one to three year
5 negotiated plea, that that was something promised to you, and
6 this is right after Mr. Tetterton says he's going to get
7 somewhere between one and 25 years. Why didn't you speak up
8 and say something to the Court at that point in time?

9 A: Because, like I said, he had made a promise that it was
10 in a deal that I didn't want to mess him and the solicitor up.
11 I thought they had an under the table deal.

12 Q: Okay. So you just didn't want to speak up because you --
13 you thought there was this unspoken deal there?

14 A: That's right.

15 MR. CORNEY: I beg the Court's indulgence for just one
16 minute, Your Honor.

17 THE COURT: Certainly.

18 MR. CORNEY: I apologize, Judge.

19 THE COURT: Certainly.

20 Q: All right. Judge Manning also at the plea hearing on
21 April the 10th let you know that you were going to waive your
22 right to present any defenses that you had on page 10 of that
23 -- that plea transcript; right?

24 A: Page 10?

25 Q: Mm-hmm, page 10, lines 13 through 18, and I think he says

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 it again right there on page 12, lines 5 through 7. So
2 starting on page 10 at line 13.

3 A: Okay, 10, 13?

4 Q: Mm-hmm.

5 A: Okay.

6 Q: Lines 13 through 18 and I believe it's again on page 12.

7 A: Okay.

8 Q: And Judge Manning tells you -- advises you essentially
9 any defense you've got out there in the world you're going to
10 be waiving by entering this guilty plea and you said you still
11 wanted to go forward with the plea; right?

12 A: Mm-hmm.

13 Q: And you told Judge ---

14 A: Wait a minute. Excuse me, sir. Are you on page -- on
15 10? I'm on 10 and I'm not reading that.

16 Q: And I might be citing the wrong page for you.

17 THE COURT: He might be -- he might be looking at the
18 September transcript.

19 A: Ten?

20 Q: This is the April transcript.

21 THE COURT: He's back to the April transcript.

22 MR. CORNEY: I'm sorry to jump you back and forth, Your
23 Honor.

24 MS. SHURLING: He might not have the April transcript up
25 there. Here's an extra copy of it.

CROSS EXAMINATION OF DONALD E. BROWN BY MR. CORNEY

1 MR. CORNEY: I've got it right here and -- and I don't
2 mean to belabor the point, Your Honor.

3 THE COURT: No. You -- you go right ahead.

4 MR. CORNEY: Okay.

5 Q: Here it is. This is the April one and I'll just keep
6 handing them up to you. Excuse me. Starting right here at
7 page -- at line 13 and I don't have a copy in front of me so
8 if you would, read it out loud for me just very quickly.
9 Judge Manning advised you that you'd be waiving your defenses
10 by pleading guilty; correct?

11 A: Yeah.

12 Q: Okay and over on page 12 on lines 5 through 7 ---

13 A: Twelve, 5 through 7.

14 Q: I believe he says something along those lines again and
15 asks you if you still want to continue at that point and you
16 say, yeah, you still want to go forward with that guilty plea
17 knowing you're going to waive your right to any defense that
18 may be out there?

19 A: That's right.

20 Q: Okay and as long as you're in that transcript, on page 12
21 starting at line 24 through the next page at line 23, that's
22 where you start to tell Judge Manning you were satisfied with
23 Mr. Tetterton's representation of you, of everything he had
24 done in your case ---

25 A: Mm-hmm.

REDIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 Q: --- and everything he had done. You told the judge at
2 that point in time you were satisfied and you were ready to
3 plead guilty, that Mr. Tetterton had done all he could do for
4 you; right?

5 A: Mm-hmm.

6 Q: Okay. Did you ever go out and walk the scene of this
7 accident with Mr. Tetterton?

8 A: Yes.

9 Q: You did? Okay and you said you went through the
10 discovery with him as well?

11 A: I went over and I showed him the skid mark. We went at
12 the -- at the scene where it happened at.

13 Q: Okay.

14 MR. CORNEY: Your Honor, I believe that's -- that's all
15 the questions that I have for Mr. Brown.

16 THE COURT: Thank you.

17 MR. CORNEY: Thank you.

18 THE COURT: Redirect, Ms. Shurling?

19 REDIRECT EXAMINATION

20 BY MS. SHURLING:

21 Q: Mr. Brown, at the time Judge Manning was telling you
22 about your right to raise defenses if you went to trial ---

23 A: Mm-hmm.

24 Q: --- did you understand that it would be a defense if you
25 could prove that you didn't cause the wreck?

REDIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

- 1 A: He didn't go -- he didn't -- no, ma'am.
- 2 Q: So you didn't know that was a defense?
- 3 A: That's right.
- 4 Q: Okay and again, it was your belief, if I understood your
5 earlier testimony, that if you were drunk and had a wreck ---
- 6 A: Mm-hmm.
- 7 Q: --- and somebody died, that's all they had to prove for
8 felony DUI?
- 9 A: That's right.
- 10 Q: Okay and you -- there's no question this -- this
11 transcript clearly shows that you were asked whether you were
12 satisfied with Mr. Tetterton's representation; right?
- 13 A: Right.
- 14 Q: At the time when you said you were, was that based on
15 your knowledge and understanding of the law back then? When
16 you said you were satisfied with Mr. Tetterton ---
- 17 A: Mm-hmm.
- 18 Q: --- at the time, were you?
- 19 A: Yes.
- 20 Q: Have you subsequently learned things about the law
21 relating to your case that you didn't know back then?
- 22 A: I didn't know back then. That's right.
- 23 Q: And if you'd known those things at the time you asked --
24 were asked those questions, would you have said you were
25 satisfied with Mr. Tetterton?

REDIRECT EXAMINATION OF DONALD E. BROWN BY MS. SHURLING

1 A: No, ma'am.

2 Q: Thank you.

3 MS. SHURLING: No further questions.

4 THE COURT: Thank you very much, Mr. Brown. You may step
5 down.

6 (Whereupon, the witness leaves the stand at 3:40 p.m.)

7 THE BAILIFF: Watch your step.

8 THE COURT: All right. Ms. Shurling?

9 MS. SHURLING: Your Honor, I would call Mr. Gary Brown to
10 the stand.

11 THE COURT: All right. Mr. Brown, if you would, come
12 around to be sworn for me, please.

13 THE BAILIFF: If you would, place your left hand on the
14 Bible and raise your right hand and face the judge for me,
15 please, sir.

16 THE COURT: Do you solemnly swear the testimony you give
17 before the Court today will be the truth, the whole truth, and
18 nothing but the truth, so help you God?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. Thank you. If you would, please
21 come around and be seated. Once you are comfortably seated,
22 state your full name, spelling your last.

23 THE WITNESS: Gary Brown, B-R-O-W-N.

24 GARY BROWN, being first duly sworn,
25 testifies as follows:

DIRECT EXAMINATION OF GARY BROWN BY MS. SHURLING

DIRECT EXAMINATION

2 BY MS. SHURLING:

3 Q: Mr. Brown, what is your relationship to Donald Brown?

4 A: He's my brother.

5 Q: Big brother or little brother?

6 A: Little brother.

7 O: Little brother? Okay. How many children in your family?

8 A: It was six boys and one girl, but we have one brother
9 that passed.

10 Q: Okay and you, in fact, hired me to represent your
11 brother, Donald; isn't that ---

12 | A: Correct.

13 Q: --- accurate? Okay.

14 A: Correct, yes.

15 Q: Were you also involved -- back at the time of this
16 tragedy, were you involved in getting a lawyer for Donald?

17 A: Yes, ma'am.

18 Q: And who else in your family participated in the decision
19 to hire Mr. Tetterton and pay you for Mr. Tetterton?

20 A: My brother, Jerome; my brother, Alonzo; my sister, Cathy.

21 Q: Okay and are any of them here today?

22 A: Yes, my brother, Jerome, and sister, Cathy.

23 Q: Okay and at some point, did there come a time when Mr.

24 Tetterton was talking to your brother and your family about

25. whether it might be advisable for him to plead guilty instead

DIRECT EXAMINATION OF GARY BROWN BY MS. SHURLING

1 of going to trial?

2 A: Yes.

3 Q: And when you had those discussions with Mr. Tetterton,
4 where did they take place?

5 A: The last time was at the Bank of Ridgeway.

6 Q: Okay and did you also discuss the advisability of a plea
7 with Mr. Tetterton the day of the actual guilty plea
8 proceeding?

9 A: Yes.

10 Q: Okay and did Mr. Tetterton ever tell you that he had
11 worked out any kind of plea negotiation in your brother's
12 case?

13 A: He did.

14 Q: And describe for us in your own words what Mr. Tetterton
15 told you concerning his discussions with the Solicitor's
16 Office about your brother?

17 A: Mr. Tetterton had told me that, you know, he had worked
18 out a plea deal with the Solicitor's Office. If Donald
19 pleaded guilty, he would get one to three years.

20 Q: And who else was present when those statements were made
21 by Mr. Tetterton?

22 A: My brother, Jerome, there and then my brother, Alonzo,
23 but he's not here.

24 Q: Okay and is -- is your brother, Alonzo, the one that
25 passed?

DIRECT EXAMINATION OF GARY BROWN BY MS. SHURLING

1 A: No, ma'am, no.

2 Q: Okay. He's just not here today?

3 A: He's not here.

4 Q: Okay and -- and, of course, your baby brother, Donald,
5 was there?

6 A: Yes, ma'am.

7 Q: Okay. Had Mr. Tetterton told you in earlier discussions
8 or even in that same one what the maximum penalty your brother
9 could get if he went to trial and was convicted would be?

10 A: He did.

11 Q: And what did you understand that to be?

12 A: It was like he could get one to 25 years.

13 Q: Okay and did you have any discussions with him about the
14 range of sentences he had seen in felony DUI cases in Kershaw
15 County in his experience? Did he discuss that with you at
16 all?

17 A: No, ma'am.

18 Q: What did he tell you he thought your brother would get as
19 a penalty if he went to trial and was convicted?

20 A: He said he would get one to 25 years.

21 Q: Okay. He didn't make any representations to you about
22 what he thought the sentence would be if he went to trial?

23 A: No, ma'am.

24 Q: Okay. Any question in your mind that your brother was
25 promised one to three if he pled guilty?

DIRECT EXAMINATION OF GARY BROWN BY MS. SHURLING

- 1 A: There's no question. That's what he was promised, you
2 know.
- 3 Q: Okay. Let's get just a little bit about you on the
4 record. What is your employment, sir? What do you do for a
5 living?
- 6 A: Kershaw Health.
- 7 Q: Kershaw Health?
- 8 A: Yes.
- 9 Q: And how long have you worked there?
- 10 A: Eighteen years.
- 11 Q: Eighteen years? Do you have any prior criminal record at
12 all?
- 13 A: No, ma'am.
- 14 Q: I'm sorry to ask embarrassing questions.
- 15 A: That's all right.
- 16 Q: But credibility is an issue here.
- 17 A: Okay.
- 18 Q: I know you love your brother. I assume you do.
- 19 A: I do.
- 20 Q: But would you lie under oath for him?
- 21 A: No, ma'am.
- 22 Q: Under any circumstances?
- 23 A: No circumstances.
- 24 Q: Okay. How heavily did the representations of Mr.
25 Tetterton concerning this deal weigh on your discussions with

DIRECT EXAMINATION OF GARY BROWN BY MS. SHURLING

1 your brother about what he ought to do?

2 A: To me, like when Mr. Tetterton first starts saying that,
3 you know, it was kind of shocking, you know, because it was
4 always, hey, I'm ready to go to trial, you know. I've got
5 physical evidence showing what happened. You know, it was one
6 of those things that I didn't feel that was right. Family
7 didn't feel that was right, but, you know, like I believe
8 Donald in my personal opinion just wanted to bring closure,
9 you know, just get it out the way.

10 Q: Okay and did you advise your brother to plead based on
11 that representation by Mr. Tetterton?

12 A: Yes. That's -- he said one to three and, you know, that
13 was it.

14 Q: Okay. Now, I want to be real clear here.

15 A: Yes, ma'am.

16 Q: Did Mr. Tetterton tell you that he had a deal worked out
17 for one to three?

18 A: His ---

19 Q: What did he say? We need the exact language ---

20 A: His terminology ---

21 Q: --- as to your recollection.

22 A: I believe his terminology was like, you know, I've worked
23 out a plea deal with the solicitor where Donald's going to get
24 one to three years if he plead guilty.

25 Q: Okay. So you were clearly told that this one to three

DIRECT EXAMINATION OF GARY BROWN BY MS. SHURLING

1 was something that had been discussed with the solicitor and
2 it was your understanding agreed to by the solicitor?

3 A: Yes, ma'am.

4 Q: Okay. Do you -- you were present during the guilty plea;
5 weren't you?

6 A: Yes, ma'am.

7 Q: Do you recall hearing His Honor, Judge Manning, ask both
8 the solicitor and Mr. Tetterton questions about whether or not
9 there were any deals, any negotiations?

10 A: I remember that.

11 Q: And were you surprised to hear them say there were not?

12 A: I was real surprised.

13 Q: In between that hearing and the September 19th proceeding
14 when your brother was actually sentenced, did you have an
15 opportunity to discuss with Mr. Tetterton what had happened at
16 the guilty plea?

17 A: The only thing he was telling me, he said you're not my
18 client. You don't have anything to do with this now, you
19 know.

20 Q: Okay.

21 A: And we just kind of got pushed aside.

22 Q: Okay. So did you attempt to bring to his attention that
23 you were concerned that what you heard in the courtroom didn't
24 appear to match what your family had been told?

25 A: Yes, ma'am. That -- that -- right after that April the

DIRECT EXAMINATION OF GARY BROWN BY MS. SHURLING

1 10th guilty plea date, I went to his office, you know, and I
2 had a few words. I mean it wasn't nothing bad, but, you know,
3 just had a few words, you know. Hey, this is not what we
4 talked about, what you had said was going to happen, you know,
5 and it was frustrating, you know, I must say.

6 Q: Okay. Thank you. I have no further questions. If you
7 will, please listen to the questions put to you by the State's
8 attorney and answer them truthfully, please.

9 A: I will.

10 THE COURT: All right. Mr. Attorney General?

11 MR. CORNEY: Yes, sir, Your Honor, just very briefly.

12 CROSS EXAMINATION

13 BY MR. CORNEY:

14 Q: At any time between that April and September -- the April
15 entering of the plea and September sentencing hearing, did you
16 ever tell your brother, you know, you might want to talk to
17 Mr. Tetterton? He won't talk to me. I mean there was no deal
18 on the table according to what happened at the plea hearing.

19 A: Excuse me? Could you repeat that?

20 Q: Did you ever -- between the April plea hearing when --
21 when your brother entered his plea ---

22 A: Mm-hmm.

23 Q: --- and the September hearing when he was sentenced, that
24 five or six months there, did you ever go talk to your brother
25 on the phone, go visit him at the -- at the county jail,

CROSS EXAMINATION OF GARY BROWN BY MR. CORNEY

1 anything along those lines -- or the Department of
2 Corrections, wherever he was, and tell him he needed to
3 discuss with Mr. Tetterton the fact that there had been no
4 negotiations or recommendations mentioned at his plea hearing?

5 A: I just went by Mr. Tetterton's office and spoke with him,
6 you know, because after April the 10th, Donald went to the
7 detention center. He didn't go to the Department of
8 Corrections at the time.

9 Q: So you didn't think it was worth bringing to his
10 attention, hey, you know, he won't talk to me. He's your
11 attorney. You're his client and you can probably say
12 something to him?

13 A: Donald?

14 Q: Yes. Did you ever say that to Donald? Ever tell him
15 about that?

16 A: I never said that. I mean how could he? I mean the deal
17 was sealed right then, you know.

18 Q: You knew he was facing one to 25 years when he went back
19 in September to get sentenced and you never went to him and
20 said you might want to make sure this is the deal you have?
21 Otherwise, you need to say something at the sentencing
22 hearing.

23 A: We had talked about it, you know, during that time
24 because my family and I, we didn't like it, you know, because
25 we were promised a -- he was going to represent Donald, you

CROSS EXAMINATION OF GARY BROWN BY MR. CORNEY

1 know, based on evidence.

2 Q: Okay. You never put anything in writing with Mr.

3 Tetterton; did you? Anything, any letters, any

4 correspondence, e-mails, anything along those lines that say,

5 hey, this is what we agreed upon?

6 A: No, no e-mails or anything.

7 Q: Nothing you could show to the Court today that you ---

8 A: No, sir.

9 Q: --- had contacted him?

10 A: No, sir.

11 Q: Okay. I believe you said earlier that you had -- that

12 you were testifying as to this conversation you had with Mr.

13 Tetterton and your family had with him. Where did that take

14 place when he made this promise to Donald?

15 A: The last time was at the Bank of Ridgeway and before that

16 it was like leading up to the April the 10th time, you know,

17 sometime in that time frame before April the 10th.

18 Q: Okay.

19 A: It might have even been that same morning, but it was

20 somewhere in that neighborhood.

21 Q: In the courthouse? At the Bank of Ridgeway? I mean

22 where did it take place?

23 A: At his office.

24 Q: At his office?

25 A: Yes.

CROSS EXAMINATION OF GARY BROWN BY MR. CORNEY

1 Q: Okay. Were you there when Mr. Brown and your brother
2 signed that affidavit that was introduced earlier? I don't
3 know if you're familiar with that document. Were you there?

4 A: I didn't see it.

5 Q: You didn't see it? Okay.

6 A: No.

7 Q: Do you remember him signing an affidavit of any sort?

8 A: I heard about it.

9 Q: You heard about it, but you don't know if you were there
10 that day? It was signed earlier that day, April the 14th,
11 [sic.] on the day he entered the plea.

12 A: No, I don't.

13 Q: Okay. You obviously love your brother very much?

14 A: I do.

15 Q: Okay and you'd like to have him back home I imagine?

16 A: Yes, yes.

17 MR. CORNEY: That's all the questions I have, Your Honor.
18 Thank you.

19 THE COURT: Redirect, Ms. Shurling?

20 REDIRECT EXAMINATION

21 BY MS. SHURLING:

22 Q: You're not a lawyer; are you, Gary?

23 A: No, no.

24 Q: Do you have any legal training at all?

25 A: No, ma'am.

REDIRECT EXAMINATION OF GARY BROWN BY MS. SHURLING

1 Q: Did you have any idea that once your brother entered his
2 plea there might be a way he could move to withdraw his plea?
3 Did you know anything about that?

4 A: No, ma'am.

5 Q: Okay. So as far as you knew, once he entered his plea,
6 it was a done deal?

7 A: It was. It was over.

8 Q: Okay. Did you ever consider the possibility that maybe
9 there was a -- a deal that was not one that Mr. Tetterton and
10 the Solicitor's Office chose to make public in the courtroom?

11 A: I just thought it was under the table. You know, it was
12 their private deal.

13 Q: Okay. You've mentioned Bank of Ridgeway a couple of
14 times. I guess I want you to clarify that. You had gone to
15 the Bank of Ridgeway for what purpose, sir?

16 A: We went by. We were going to secure the -- the remainder
17 of the funds for Mr. Tetterton.

18 Q: For his fee?

19 A: For his fee. Yes, for his fee. Yes.

20 Q: Okay.

21 A: Yes.

22 Q: And was Mr. Tetterton at the bank?

23 A: No. He -- he was actually at his office and we were on
24 the phone with him inside the bank.

25 Q: And at some point, did the banker actually get on the

REDIRECT EXAMINATION OF GARY BROWN BY MS. SHURLING

1 phone and talk to Mr. Tetterton?

2 A: I can't remember if they had a conversation or not, but I
3 know ---

4 Q: Okay.

5 A: --- it was like just family members. We were in there on
6 the phone and I think we were using Jerome's cell phone inside
7 the bank to talk with Mr. Tetterton.

8 Q: Okay and that was one of the occasions that you can
9 recall that Mr. Tetterton assured you that it would be a
10 sentence of one to three if he pleaded?

11 A: Yes, ma'am.

12 Q: Okay. Thank you. No further questions. Thank you for
13 being here.

14 A: Thank you and thanks for everything you're doing.

15 Q: Thank you.

16 THE COURT: Thank you. Thank you, Mr. Brown. You may
17 step down.

18 (Whereupon, the witness leaves the stand at 3:53 p.m.)

19 THE COURT: All right.

20 THE BAILIFF: Watch your step for me, please.

21 THE WITNESS: Thank you, sir.

22 MS. SHURLING: Your Honor, our next witness would be Mr.
23 Jerome Brown.

24 THE COURT: All right. If you would, come around and be
25 sworn for me, please, Mr. Brown.

DIRECT EXAMINATION OF JEROME BROWN BY MS. SHURLING

1 THE BAILIFF: If you would, place your left hand on the
2 Bible and raise your right hand and face the judge for me,
3 please.

4 THE COURT: Do you solemnly swear the testimony you give
5 before the Court today will be the truth, the whole truth, and
6 nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 THE BAILIFF: Watch your step for me, please, and speak
9 into the microphone.

10 THE COURT: All right. If you would, come around and be
11 seated. Once you're comfortably seated, you can state your
12 full name for the record.

13 THE WITNESS: Jerome Brown, B-R-O-W-N.

14 JEROME BROWN, being first duly sworn,
15 testifies as follows:

16 DIRECT EXAMINATION

17 BY MS. SHURLING:

18 Q: Mr. Brown, are you one of the Brown brothers?

19 A: Yes, ma'am.

20 Q: And where do you fall in the pecking order? Are you
21 older than Gary?

22 A: I am the older of the crop, yes, ma'am.

23 Q: You're the oldest boy?

24 A: Yes, ma'am.

25 Q: All right. Were you involved in the decision to hire Mr.

DIRECT EXAMINATION OF JEROME BROWN BY MS. SHURLING

1 Tetterton as your baby brother's lawyer on this case?

2 A: Yes, ma'am. Well, first of all, this is the way it went
3 down. I heard about what happened. I was living in Florence,
4 South Carolina, at the time and -- and recommended we get a
5 lawyer, you know, so we went -- I went -- I got to South
6 Carolina at Camden that weekend and I talked to lawyer Sheehan
7 at first and he told -- recommended Mr. -- recommended Mr.
8 Tetterton.

9 Q: Okay.

10 A: You know, that's okay. You know, I went by to talk to
11 Mr. Tetterton and, yes, ma'am, that what happened, yes.

12 Q: Okay and did you take part in any meetings where Mr.
13 Tetterton was talking to your brother, Donald, and other
14 family members?

15 A: Yes, ma'am. You know, we went over and talked to Mr.
16 Tetterton and everything like my brother, Gary, say, but I
17 drive truck and I wasn't there at every meeting. But I was at
18 I guess two meetings and I recall Mr. Tetterton saying, yeah
19 -- You know, I can't remember was it that day of the trial or
20 what, but it was -- I think it was at the courthouse and he
21 said, you know, it's better that your brother go ahead on and
22 plead guilty. That way I can probably get him one to three
23 years. Yes, ma'am.

24 Q: Okay.

25 A: I can remember that, yes.

DIRECT EXAMINATION OF JEROME BROWN BY MS. SHURLING

1 Q: So you recall Mr. Tetterton telling him that -- your
2 brother that -- I don't want to put words in your mouth.

3 A: Okay.

4 Q: What specifically do you recall Mr. Tetterton telling you
5 would be the sentencing consequences if your brother pled
6 guilty?

7 A: Okay. He said, well, he don't see no sense to we going
8 to trial because that would put the family in a deep grief and
9 I understood that and he said it be better your brother go
10 ahead on and plead guilty and I probably could get him one to
11 three years.

12 Q: Okay.

13 A: You know and, you know, I agree with everything he said
14 and I said I'm the older brother. I went along with that.
15 You know what I mean? Yes.

16 Q: And based on that information from Mr. Tetterton, did you
17 advise your brother, Donald, to plead?

18 A: Well, we discussed it amongst each other and I said,
19 well, yeah, you know, and I had an uncle said, well, you know,
20 he's like -- that's like he proving hisself guilty if he plead
21 to, you know, like go ahead and plead guilty, you know, and
22 so, you know, like I didn't know too much about the court
23 system myself because I never been in no trouble or nothing
24 like that, you know. So we discussed it and I said, okay,
25 let's go on and plead guilty because I was thinking in my mind

DIRECT EXAMINATION OF JEROME BROWN BY MS. SHURLING

1 one to three year thing, you know.

2 Q: Okay. Do you recall whether or not Mr. Tetterton told
3 you that he had had any discussions with the Solicitor's
4 Office about the penalty if he pleaded?

5 A: No. Mr. Tetterton don't discuss anything to me about the
6 Solicitor's Office or what his chances would be if he go to
7 trial or bang, bang, nothing. He just told me the one to
8 three year deal if he go ahead and plead guilty, you know.

9 Q: Okay.

10 A: Yeah.

11 Q: So you didn't hear anything about the -- any discussions
12 about the plea negotiations. You just heard the one to three?

13 A: Yes.

14 Q: Okay and, again, you weren't present at all the meetings?

15 A: Oh, I mean yes because I'm on the road most of the time.
16 Yes, ma'am.

17 Q: Okay. So there were other meetings that your brother,
18 Gary, would have been at that you weren't at?

19 A: Yeah. Gary would be -- Gary would go to all the
20 meetings, yes, ma'am.

21 Q: Again ---

22 A: He could go to all the meetings, yes.

23 Q: He lives right there in the community with your brother?

24 A: Right, right.

25 Q: Okay. Thank you. If you would, please listen to the

DIRECT EXAMINATION OF JEROME BROWN BY MS. SHURLING

1 questions put to you by the State's attorney and answer them
2 please.

3 A: Yes, ma'am. Yes, ma'am.

4 THE COURT: All right. Yes, sir?

5 MR. CORNEY: No questions of this witness, Your Honor.

6 THE COURT: Thank you. Thank you very much.

7 THE WITNESS: Yes, sir.

8 THE COURT: You may step down.

9 THE WITNESS: Okay.

10 THE BAILIFF: Watch your step, sir.

11 (Whereupon, the witness leaves the stand at 3:58 p.m.)

12 MS. SHURLING: No further witnesses for the applicant,
13 Your Honor. I would -- I'll save that for reply. Nothing
14 further.

15 THE COURT: All right. I'm going to take about a ten
16 minute recess.

17 MR. CORNEY: All right, Your Honor. I was about to ask
18 for one. Thank you very much.

19 THE COURT: Thank you very much. Court will be in recess
20 about ten. Thank you.

21 (Whereupon, there is a break in the proceedings from 3:58
22 p.m. until 4:13 p.m.)

23 MS. SHURLING: Your Honor, just for the record, I did
24 provide the respondent a copy of the proposed order in advance
25 and it's my understanding he has no objection to it.

1 MR. CORNEY: None at all.

2 THE COURT: Madam Court Reporter, the clerk, Mr. Truett,
3 said he would sign for the exhibits and they will have them
4 transported back to Kershaw.

5 All right. All right. I see the applicant has rested.
6 All right, Mr. Attorney General, you may call your -- call
7 your first witness.

8 MR. CORNEY: Yes, sir. At this time, the State would
9 call Mr. William Tetterton to the stand, please.

10 THE COURT: All right. If you would, come around, Mr.
11 Tetterton.

12 THE BAILIFF: If you would, place your left hand on the
13 Bible, raise your right, and face the judge for me, please.

14 THE COURT: Do you solemnly swear the testimony you give
15 before the Court today will be the truth, the whole truth, and
16 nothing but the truth, so help you God?

17 THE WITNESS: Yes, sir.

18 THE BAILIFF: If you will, just watch your step there for
19 me, please.

20 THE COURT: Please be seated and once you're comfortably
21 seated, state your full name for the record, spelling your
22 last.

23 THE WITNESS: My name is William Tetterton. You spell my
24 last name T-E-T-T-E-R-T-O-N.

25 THE COURT: Mr. Attorney General?

DIRECT EXAMINATION OF WILLIAM TETTERTON BY MR. CORNEY

1 MR. CORNEY: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 WILLIAM TETTERTON, being first duly
4 sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. CORNEY:

7 Q: Mr. Tetterton, thank you for being here with us today.

8 Do you recall Mr. Brown's case?

9 A: I do.

10 Q: And do you recall how you became involved in his case?

11 A: I was approached by some members of the family about
12 representing him in a felony DUI sometime in June of '05 I
13 think it was. It was an accident that happened or something
14 that happened right after Father's Day. Mr. Brown was accused
15 of being -- driving under the influence and hitting a small
16 male child aged five years old, Minor on Shivers
17 Green Road. He was in jail on a \$75,000 bond and I met with
18 some members of the family.

19 Q: All right and have you had an opportunity I'm assuming to
20 look through your file a little bit before you came in here
21 today?

22 A: Yes, sir, I have.

23 Q: All right. I just want to briefly touch on some of the
24 meetings that you might have had with Mr. Brown. You said Mr.
25 Brown was released on bond while awaiting trial?

DIRECT EXAMINATION OF WILLIAM TETTERTON BY MR. CORNEY

1 A: Yeah. Let me tell you how that happened. Members of the
2 family, some of them sitting right there, I think his wife and
3 his mother, some of this brothers, they couldn't get -- get
4 him out on bond so I explained to them that if they had
5 property, they could put property up and get him out. They
6 indicated to me they had some heir property in Kershaw County
7 and as well as Fairfield County.

8 So we had to go to a lot of trouble to have title checked
9 in both counties, who had to get the different heirs to all --
10 I think -- I'm doing this from memory -- put it all I think in
11 the mother's name. So we had to get the truck driver, Jerome,
12 to come in when he was in town to sign a deed deeding it all
13 to his mother. And anyway, we got it all back in the mother's
14 name and the mother was able to -- after we got the Clerk of
15 Courts in both counties to verify and certify title and
16 whatever, we was able to put the property up as collateral as
17 bond and he got out.

18 Q: All right. So ---

19 A: And that -- and that took us a pretty good while to do
20 that.

21 Q: All right. Him being out on bond, does that make it
22 easier to facilitate meetings with Mr. Brown?

23 A: Oh, absolutely. He came in my office. He and I met
24 several different times, many different times. A lot of times
25 he'd bring his wife with him and I met his children on a

DIRECT EXAMINATION OF WILLIAM TETTERTON BY MR. CORNEY

1 couple times. I was very pleased with his wife's attitude
2 about me representing Mr. Brown. She seemed to be an
3 extremely nice lady and Mr. Brown, as expected, was a little
4 bit concerned about his future and then he and I started
5 working together on his case.

6 Q: All right. During your meetings with him when you
7 initially started representing him, did you have the
8 opportunity to review the indictments and the charges he was
9 facing?

10 A: Yes, I did.

11 Q: Now, you would have explained to him kind of the
12 statutory requirements and what the -- the felony DUI death
13 resulting what -- what the indictment sets forth and what has
14 to be proven?

15 A: Well, I didn't necessarily use the indictment to go by
16 every time, but I pulled the statute out and gave him a copy
17 of the statute. I wanted him to understand fully that there
18 were three elements of a felony DUI: one of them that he was
19 driving while under the influence -- number one, that he was
20 driving; number two, he was under the influence; and number
21 three, that he proximately caused the death of young -- the
22 young man, Mr. Spradley, Minor

23 Q: All right. Did you ---

24 A: And he and I went over that many times.

25 Q: Okay. Did he seem to understand those three kind of

DIRECT EXAMINATION OF WILLIAM TETTERTON BY MR. CORNEY

1 requirements and what they meant and what kind of proof could
2 be offered to prove those statutory requirements?

3 A: Did he -- did he understand them? Absolutely. After
4 several different explanations, he understood them. Then we
5 had to figure out and he and I went over this and I can get
6 into details, as much detail as you want. We went over it
7 many times about how we was going to prove -- how we was going
8 to hold the State's feet to the fire to prove the three
9 elements of the crime of felony DUI.

10 Q: Okay and we'll get to that. I don't want to -- I don't
11 want to jump the gun. Did you ever have any concerns about
12 his competence or ability to understand your conversations
13 during the meetings?

14 A: None.

15 Q: Okay. Were you able to discuss his version of the facts
16 and what he had kind of set forth as to what he thought
17 happened that night?

18 A: Yeah. We went over his version of the facts many times
19 because I wanted to make sure that I understood what he was
20 trying to tell me. I wanted to make sure if we went to trial
21 he would -- I would understand what he was going to tell the
22 jury and be cross examined by the solicitor and, yes, we went
23 over it many times and I understood his version of the facts
24 and he also -- I can get into detail about that. He
25 understood what the State was going to prove against him or

DIRECT EXAMINATION OF WILLIAM TETTERTON BY MR. CORNEY

1 attempt to prove against him.

2 Q: Were you able to review his -- his prior criminal record
3 and how it might affect your decisions if you were to go to
4 trial?

5 A: Oh, yeah, and that really wasn't -- that really didn't
6 impact a whole lot in his decision to go to trial or to plead
7 guilty.

8 Q: Okay. Throughout the course of these meetings, were you
9 able to discuss his expectations of your representation and
10 what -- what he was seeking to gain from your representation
11 as his attorney, whether it be the least amount of time, an
12 acquittal at trial? Any idea what his expectations were?

13 A: Well, let me tell you how I represent a defendant. Okay?
14 When he came in, I explained to him what he's been charged
15 with. He already knew that. I explained to him that he was
16 being charged with the responsibility of driving on the
17 highways in Kershaw County on Shivers Green Road in June of --
18 Father's Day, Sunday, Father's Day 2005, and that the young
19 boy was hit while riding a bicycle and knocked approximately
20 91 feet and that he was charged with killing that -- with the
21 -- responsible for -- he was responsible for the -- for the
22 death of that young boy.

23 Now, then we went into what the State had. Now, during
24 the course of my representation of Mr. Brown, I told him I had
25 to get everything that the State was going to throw against

DIRECT EXAMINATION OF WILLIAM TETTERTON BY MR. CORNEY

1 him. I told -- I explained to him I would do a discovery
2 motion, Rule 5 and Brady motion, and that that would get a
3 package from the Solicitor's Office and when I got that
4 package that he and I would go over every -- every piece of
5 information that they had during their investigation to show
6 what they was going to use against him if the case went to
7 trial.

8 But in the meantime, he and I had discussed the facts of
9 the case, what happened, where he was, and what he was doing
10 on that particular Father's Day, that Sunday about four thirty
11 in the afternoon. Well, it was later in the afternoon.

12 Q: Okay. Along those lines with your Rule 5 and Brady
13 motions and receiving back the discovery file, do you remember
14 receiving a discovery file or it trickling -- it trickling in
15 part by part?

16 A: At that time, Zach Atkinson was the Assistant Solicitor.
17 Zach -- and I provided this to Ms. Shurling and also Mr. Brown
18 about two or three times. The discovery package I got from
19 Zach Atkinson and as soon as I got it in, of course, I
20 reviewed it myself and I decided what I need to do about it
21 and then I -- what plans I need to form my defenses and then I
22 called Mr. Brown in and he and I went over it and I gave him a
23 copy of it at that time.

24 Q: Okay. So you did give him a copy and reviewed it all
25 with him in your office?

DIRECT EXAMINATION OF WILLIAM TETTERTON BY MR. CORNEY

1 A: Absolutely.

2 Q: Okay.

3 A: And later on during the course of events before he ended
4 up pleading a year later, I went over it with Gary, I went
5 over it with his wife, and I went over it with the other
6 members of his family.

7 Q: It's fair to say his family was pretty involved in this
8 whole process?

9 A: Well, I would say his wife was definitely involved in it.
10 She stood behind him. She was a little bit ashamed of what he
11 did, embarrassed about it. She was friends or knew the family
12 of the -- knew the Minor family. They lived down the road
13 from each other and she felt very badly about what had
14 happened on that particular Father's Day. So she was involved
15 in it.

16 Gary was involved in it up to a point when after a while
17 he got a little disappointed with the way things were going
18 and what it looked like Donald had done and he sort of got out
19 of it, but he wasn't involved in too much in the negotiations
20 or with Mr. Brown about whether or not he should plead guilty
21 or not or whatever.

22 His wife was primarily the person that was there with me.
23 I think his mother might have been there whenever we went over
24 all the testimony, all the evidence. We reviewed all the BSS
25 tapes which reflected how -- how he behaved himself and his

DIRECT EXAMINATION OF WILLIAM TETTERTON BY MR. CORNEY

1 conduct after he got arrested and we all reviewed that
2 together.

3 Gary didn't want to -- want to get involved in it too
4 much after he saw the tape of his brother in the police car
5 telling the police officers some B-I-T-C-H was driving. He
6 wasn't even driving. This woman had four warrants against her
7 and she jumped out and ran. So after that, Gary didn't --
8 Gary didn't too much get involved in helping me with getting
9 involved with this case.

10 Q: And along those lines, I just want to kind of go through
11 the discovery, some of the noteworthy things that were
12 included in there. There was I believe a statement from a
13 Darrell Moore. Is that something you recall in the -- in the
14 discovery?

15 A: Darrell Moore was in the yard, if I recall correctly,
16 sitting on the porch right -- right before the -- before the
17 incident happened and, if I recall correctly, he saw the three
18 young -- three bicycle riders on the right hand side of the
19 road going with the -- going with the flow of traffic. Then I
20 think he -- yeah, I read his statement. I went over his
21 statement with Mr. Brown and his family members and he said
22 that he heard a horn blow, if I remember correctly, and he
23 went down there and he confronted Mr. Brown, smelled the odor
24 of alcohol about him, and told him he was drunk. It's -- it's
25 all in his statement.

DIRECT EXAMINATION OF WILLIAM TETTERTON BY MR. CORNEY

1 Q: All right. The victim, Minor his -- his dad
2 gave a statement as well and that was part of your discovery
3 file; do you recall?

4 A: That was part of the discovery file and Mr. Brown and I
5 discussed that and that gave a little bit of -- a little bit
6 of concern to Mr. Brown later on there in the course of my
7 representing him in this case as to the role Mr. Spradley
8 played, his son being -- being hit by Mr. Brown.

9 Q: All right and do you recall his dad mentioning anything
10 in that statement about Minor had already been riding at
11 the time he was hit, anything about the actual factual
12 background of what happened?

13 A: That ---

14 Q: And I know you mentioned it.

15 A: His statement -- I mean his statement is right here and
16 we can all read the statement. If I recall correctly, Mr.
17 Spradley, his son -- five-year-old son, and a nephew was
18 riding on the right-hand side of the road with traffic on
19 Shivers Green Road right before dusk. Mr. Spradley and the
20 nephew, if I recall correctly, crossed over to the other side
21 of the road approaching traffic leaving young Mr. Spradley on
22 the right-hand -- on the road by himself. That was verified I
23 think also by -- by Mr. Darrell Moore -- Darrell Moore.

24 And then I think Mr. Spradley -- Mr. Spradley said he
25 heard a thump or something and turned around and looked and

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1 that's when he realized that his son had been hit by Mr. Brown
2 and I think his statement went further on to say that he went
3 up to his son and realized what had happened to his son.

4 Q: Was that someone that you had anticipated would testify
5 at trial if it happened at that point?

6 A: Sure. I mean Mr. Darrell Moore was going to testify and
7 -- I mean I was assured Mr. Moore was going to testify and
8 that Mr. Spradley, who was there at the scene an eyewitness,
9 was going to testify.

10 Q: Okay and I think you mentioned the video a minute ago.
11 If you could, just tell us a little bit about the background
12 of the video, where it came from, and -- and what it reflected
13 from what you remember from viewing it?

14 A: If I recall, there were three videos. Number one was an
15 in-car video done at the scene where Mr. Brown was interviewed
16 by law enforcement. What had happened was he had -- the
17 collision between Mr. Brown and the young boy had occurred.
18 Mr. Brown did not stop. He went down the road several hundred
19 feet and pulled into a driveway -- it might have been in the
20 driveway of the Minor residence -- and walked back up to
21 the scene and I think that's when someone on the scene
22 identified him as being the driver of the red Jeep. Law
23 enforcement told him to stay there. So they videotaped him.
24 I think they did some field sobriety tests and that was the
25 first video.

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1 The second video is when Captain -- he might not have
2 been a captain. Sergeant Meeks took him into custody and he
3 was being transported from the hospital where he had given
4 blood and had a urine test and was taken -- was taken to the
5 Datamaster and during that video -- I mean he -- during that
6 video, he -- he denied hitting the little boy. Then he said
7 he was sorry he hit the little boy. Then he said this B-I-T-
8 C-H was driving; he wasn't even driving.. That she had four
9 warrants against her. That she jumped and ran.

10 And then the third video was the Datamaster video in the
11 Datamaster room. Each one of those videos I showed the family
12 members in my office before we decided to make a plea. I
13 wanted them to understand and look at those videos to see the
14 conduct of her husband and his brother or their brother after
15 he was arrested to help me decide whether or not the State
16 could prove whether or not he was under the influence of
17 alcohol.

18 As I showed the video to the family members in my
19 conference room prior to deciding whether to plea or not plea,
20 the wife hung her head and the young son I think was there and
21 he -- he hung his head, too, and they all after that agreed
22 that Donald Brown was definitely under the influence of
23 alcohol.

24 Q: Okay and this MAIT report has been referenced a couple
25 times. Is that something you recall getting as part of your

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1 discovery or thereafter and being able to review it with Mr.
2 Brown?

3 A: I got the MAIT report. I went over it with Mr. Brown.
4 Not only did I go over it with Mr. Brown, but I hired Greg
5 Pendleton, who was certified in doing accident reconstruction.
6 Gary -- Gary said he knew Mr. Pendleton when I mentioned it to
7 him. He said, yeah, he knew Greg Pendleton. Greg Pendleton
8 was a former city police officer there in the city of Camden.
9 I had him to review the MAIT report with me, go over the
10 calculations and the formulas, and based on his representation
11 to me that everything was in order, then I accepted the MAIT
12 report.

13 Then after I got the MAIT report, I met with Captain --
14 with Sergeant Day, Barney Giese, and John Meadors at the
15 scene. Captain -- Sergeant Day was the one that was the
16 sergeant on the MAIT report team. He's the one that did all
17 the investigations. Barney Giese, the solicitor, John
18 Meadors, the assistant solicitor, Sergeant Day, and myself
19 walked the scene. We reviewed the gouge marks in the
20 pavement. We looked at the location where the young body was
21 knocked about approximately 91 feet. We looked at where the
22 rear wheels landed on the other side of the pavement. We
23 looked at the pieces and parts of the red Jeep that had fallen
24 off. We looked at where his helmet landed.

25 And then I went to Columbia to the -- on Bluff Road where

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1 Sergeant Day keeps -- kept the bicycle and parts of the Jeep
2 and whatever. I was able at that time to look at the bicycle,
3 match it up, look at the paint on the Jeep, and in my
4 determination it was that this red Jeep made a collision with
5 the bicycle.

6 I came back and discussed that with Donald Brown. I told
7 Donald what I had found over there and what I was -- my
8 opinion and my impressions from the MAIT team report and the
9 physical evidence I looked at. I reviewed the photographs. I
10 think there's some 57 or more than 57 photographs. I went
11 over the photographs with him.

12 I had two of his brothers -- I can't remember which one.
13 I got a photograph of the two that came to my office. They
14 brought me pieces -- the fenders off the red Jeep that I was
15 able to keep for a while and to show that the scuff marks on
16 the bicycle were on -- on the -- on the Jeep.

17 So at that time, Mr. Brown and I concluded that there
18 definitely was a collision between his red Jeep and the
19 bicycle and there was never -- there was never any question
20 about the red Jeep coming into contact with the bicycle.
21 There was never any -- there was never any discussion or
22 concern by Mr. Brown that the bicycle was traveling with the
23 flow of traffic in the proper lane of traffic. There was
24 never any -- never any concern by any family members that:
25 number one, Donald Brown was driving in Kershaw County on

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1 Shivers Green Road when this happened; number two, there was
2 never any concern by the family members or anybody else, even
3 Mr. Brown or myself, that there was a -- there was a contact
4 between the red Jeep and the little boy's bicycle.

5 There was never any concern that the cause of the death
6 of the young boy was coming in contact with that -- with that
7 red Jeep. I mean nothing else could explain how the young boy
8 got knocked 91 feet in the air, landed on the side of the
9 road, and died en route to the hospital. So we all -- family
10 members, Gary and everybody, we all agreed that the accident
11 did happen in Kershaw County, that Donald Brown was driving
12 the red Jeep, the red Jeep hit the -- came in contact with the
13 bicycle, the young boy died because of the impact.

14 Q: Okay and along those regards -- and I don't mean to be
15 redundant with it, but based on your investigation and
16 discovery, your discussions with Mr. Brown, were you able to
17 start formulating an opinion on the State's ability to prove
18 his guilt beyond a reasonable doubt at trial?

19 A: Yeah. I had three things I had to look at. Number one,
20 was he driving? No doubt about that. He admitted he was
21 driving. In fact, he admitted it on the tape. At first, he
22 denied he was driving, but then he said he was sorry. I mean
23 he said several things on the tape. I'm sorry I hit the
24 little boy. Is the little boy still alive? God, I hope he's
25 still alive.

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1 But there's no -- there's no doubt that we were -- that
2 the State would be able to prove that Donald Brown was driving
3 the red Jeep that came in contact with young Mr. Minor So
4 that part I didn't have to do a whole lot of proof on that. I
5 mean I didn't have to do a whole lot of work on that.

6 Number two, was he under the influence? Mr. Brown and I
7 -- Donald and I looked at the tape several different times.
8 We looked at his conduct on the tape. We looked at how he
9 behaved even to the extent where when he was carried to the
10 hospital, we talked about how he urinated all over himself at
11 the hospital, how they drew blood, and I explained to him that
12 I was going to have the blood sent to Charleston for analysis
13 to make sure that the hospital had not misanalysed the blood.
14 I sent it down to Dr. John Bennett, paid him to analyze the
15 blood. It came back with a report just like the hospital. I
16 explained that to Mr. Brown.

17 So after looking at the tape and the blood -- the blood
18 analysis and the urine -- the urine analysis, Mr. Brown and I
19 pretty well concluded after what he told me about how many
20 beers he had that Sunday afternoon up there underneath the oak
21 tree at the corner of Longbranch -- I mean the Longtown Road
22 and Shivers Green Road drinking with the boys up there, I felt
23 like the jury -- he and I understood this and the family
24 understood this -- the jury could prove beyond a reasonable
25 doubt that he definitely was under the influence of alcohol.

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1 So that was the two main things that we had to get out of
2 the way and I don't think the family can contest and I don't
3 think any member of the family can tell me after looking at
4 that tape, the blood and the urine and his conduct on those
5 tapes that Mr. Brown was not under the influence of alcohol.
6 They all agreed with me that he was under the influence. They
7 all agreed that he was driving.

8 So I go to the third element. What was the proximate
9 causation of the wreck? Well, we had to determine whether or
10 not the little boy caused the wreck or Donald Brown caused the
11 wreck. We looked at the speed. First of all, it's a 55 speed
12 limit. It's unposted. It's a farm to market road. There's
13 no fog line and there is no center line in the -- in the road.

14 Mr. Brown had told me that he was driving, had gone to
15 the BP station and gotten a pack of cigarettes, and he was
16 driving back towards home. He was approaching and saw a car
17 approaching him with the lights -- it had the lights on. He
18 slowed down and he saw the little boy. He slowed down and
19 then he went past the little boy and didn't realize he hit
20 him. He did blow the horn.

21 So we knew that he slowed down to about 41 to 46 miles an
22 hour, as the MAIT team said, and I figured that was probably
23 -- probably correct. He blew the horn. I take his word that
24 he blew the horn, but then the little boy was hit and then he
25 said he didn't realize he had hit the little boy. The father

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1 said he heard a thump. Mr. Brown said he didn't realize he
2 hit the little boy. He went down there, stopped and parked
3 his car about 300 feet away and walked back up to the scene.

4 So then we had to prove whether or not he caused the
5 wreck or the little boy caused the wreck. I went over the
6 photographs. I'd gone over to the MAIT team at Bluff Road at
7 their evidence warehouse. I had looked at -- and also had
8 looked at the under frame of the Jeep. They brought the Jeep
9 by to me. I looked at all the photographs of the under frame
10 of the Jeep.

11 I looked at the marks on the side of the right fender
12 where it looked to me -- and I pointed this out to Mr. Brown.
13 It looked like the little boy's helmet had come across the
14 right fender of the Jeep as he was hit. We looked at the
15 damage to the back of the 16 -- 15 inch bicycle and it looked
16 like -- and he and I went over all this. It looked like --
17 from the marks on the back of the bicycle and the marks on the
18 undercarriage of the red Jeep, it appeared that the Jeep did
19 in fact run over the bicycle from backward to forward.

20 I looked at the angle of -- and the MAIT team -- I looked
21 at the angle that the young boy's body was thrown away from
22 the Jeep. It was ten degrees. Mr. Brown and I looked at the
23 gouge marks in the road and the skid marks that was left and I
24 pointed out to him that my opinion the skid marks -- and, of
25 course, I had Greg Pendleton review it, too -- that the skid

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1 -- that the marks on the highway was caused by the bicycle
2 being hung up underneath the undercarriage of the Jeep.

3 Now, bear in mind that I had shown Mr. Brown all the --
4 all these photographs and the MAIT team report, but I wanted
5 him to go out there with me and walk the scene. He parked his
6 car at a church because he didn't want -- we didn't want his
7 car parked out there at the scene because we thought it might
8 upset the Minor if they happened to be riding by to see
9 him out there. So he got in my vehicle and we drove to the
10 scene and we walked the scene just as Barney Giese did, John
11 Meadors and Sergeant Day and I did. We walked the scene and
12 we tried to put together what happened.

13 When we looked at the gouge marks in the pavement -- and
14 they're on the MAIT team report -- showing where the
15 undercarriage of the Jeep came in contact with the bicycle,
16 it's obvious that the -- that the young boy was on the highway
17 on the -- on the paved portion of the road and that the gouge
18 marks went pretty much straight forward, not to the side, not
19 to the right, not to the left, but I refer back to the MAIT
20 team.

21 And then it looks like the right front tire of the Jeep
22 hung up on the bicycle and the -- there was a mark on the
23 pavement. It looked like that tire might have been to the
24 left a little bit after -- after the impact. He and I walked
25 over all that and then I explained to him that it was going to

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1 be hard to explain to a jury that the little boy caused the
2 wreck.

3 Well, he wasn't -- he wasn't exactly excited about that,
4 but he kept telling me that what caused the wreck was Mr.
5 Spradley leaving his young son on the wrong side of the road
6 by himself and that was a point of contention for many -- for
7 several meetings with Mr. Spradley [sic.] and even Gary, too,
8 and some of his family members. They wanted to put the blame
9 on Mr. Spradley saying he shouldn't have left his young son
10 over there. In fact, if you look at the pre-sentence
11 investigation report, I think it was mentioned when he was
12 interviewed by whoever did that report, he was interviewed and
13 he made mention that it wasn't his fault, it was Mr.
14 Spradley's fault for leaving his son on the side of the road
15 riding down -- riding down the highway.

16 Well, I explained to him that, you know, I would try to
17 -- I would try to work that into our defense as best we could,
18 but I didn't think it would be advantageous to him or of
19 benefit to him to say no, my drinking didn't have anything to
20 do with me hitting the young boy. It's all Mr. Spradley's
21 fault. It wasn't my fault. In fact, I think he said that a
22 couple times to an officer that it wasn't his fault, that it
23 was the young boy's fault or either Mr. Spradley's fault.
24 Well, we got over that eventually. I said, no, I just don't
25 think we can blame it on the father. The father wasn't

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1 driving. The father wasn't on the bicycle.

2 So then we started figuring out what really caused the
3 wreck and we -- we came to -- we came to several -- one
4 scenario was -- and this was my idea and maybe I -- maybe I
5 did too good a job when I said when you slowed down and blew
6 the horn, the little boy could have very easily have turned
7 around to look and see who was blowing the horn and y'all
8 collided together, but then I explained to him that under the
9 rules of the road -- I think it's Section 3220. It's 56-5-
10 3220 -- that every driver is charged with responsibility of
11 exercising due care in the presence of a child or a pedestrian
12 or whatever and he had to exercise due care and that would be
13 a jury question to determine whether or not he exercised due
14 care with a child present on a bicycle while he'd been
15 drinking.

16 He fully understood that that was -- that was going to be
17 a problem with trying this case. They could have very easily
18 said, well, you know, you didn't slow down fast enough, you
19 should have come to a stop, whatever, and I explained all that
20 to him. I told him it wasn't my decision. It was the jury's
21 decision to decide whether or not he exercised due care.

22 So we got that. We got rid of the first two elements,
23 which was pretty -- pretty easily. The third element, we had
24 a little problem working through, but he fully understood
25 causation because I mean he and I went over causation many,

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1 many different times and even Gary even mentioned to me that
2 he thought it was Mr. Spradley -- Mr. Spradley's fault for
3 leaving his child over there and Gary got a little upset with
4 me when I said no, no, no. I don't think we're going to pick
5 on Mr. Gary -- I mean Mr. Spradley in this case and point the
6 finger at him.

7 We only -- we only had two people that were involved in
8 this -- in this incident. We had Donald Brown and we had
9 young Minor The father -- we can't hold the
10 father at fault. We can't. We can't go there and Gary -- I
11 think that's when Gary got a little upset with me and -- and I
12 didn't see too much of him after that. Then it was just me
13 and Mr. Brown and I think his wife was pretty well involved in
14 deciding whether or not to plead guilty or not.

15 So that's how -- that's how the case developed and then
16 whenever you want me to tell you about how the plea got
17 developed, I'll be glad to.

18 Q: That's the next line of questioning I'm going down or the
19 next line of a question. If you would, just discuss --
20 discuss the plea negotiations and -- and how that unfolded and
21 what offers were extended to you?

22 A: Okay. Let me -- let me explain to you, first of all,
23 Barney Giese and John Meadors and Ron Moak were -- were pretty
24 adamant about putting Mr. Brown in jail as long as they could.
25 They had met with the -- they -- they made -- they made it --

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1 they made no bones about it to me that they thought Mr. Brown
2 was drunk, that he was driving, and that he hit a small child
3 on a bicycle on Father's Day. There would be no plea
4 negotiations. There would be -- I mean that was unequivocal.
5 There was no plea negotiations in this case and when Barney
6 Giese tells you there's no plea negotiations in a felony DUI
7 when a 5-year-old kid got killed on Father's Day, there are no
8 plea negotiations.

9 And I'm a former prosecutor of 16 years prosecuting and I
10 understand that when a family tells you there are no plea
11 negotiations, there are no plea negotiations. So there were
12 no plea negotiations, absolutely none, nor were any ever
13 discussed. Not one time did I ever discuss with the
14 Solicitor's Office, Ron Moak, Zach Atkinson, John Meadors or
15 -- or Barney Giese that I would be willing to plead him even
16 to a DUI 1st. That was just never discussed. There was
17 absolutely zero plea negotiations and the Solicitor's Office
18 made that known to me. So I knew I had -- I had expressed
19 that to Mr. Brown.

20 He wanted to plea to a DUI 1st and he wanted probation.
21 Well, I told him, number one, that the Solicitor's Office
22 would have to agree to that and they had already told me there
23 would be no plea negotiations. Number two is I said this is
24 not a probation case. The statute very simply says one to 25,
25 \$10,100 to \$25,100. You're going to have to be sentenced. If

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1 you plead or go to trial, you're going to get one year. I
2 can't do anything about it. The judge can't do anything about
3 it. Well, the judge can do something about it, but nobody can
4 do anything about you getting the maximum -- I mean the
5 minimum, mandatory minimum.

6 I even gave him a copy of the statute to make sure he
7 understood that because I understood that this was a very
8 serious case and I understood that the Solicitor's Office had
9 victims that were very distraught, upset, as well as Mr.
10 Brown's family being distraught and upset about a young kid
11 being killed on Father's Day. So I knew that I had to do
12 everything possible so everybody would have an informed -- to
13 have the information or enough information to do an informed
14 decision. That's why I went to extra precautions to make sure
15 that Donald Brown understood this. So there were no plea
16 negotiations.

17 So as the case progressed and I went over the MAIT report
18 with him, I walked the scene with him, I hired an accident
19 reconstructionist, and I hired a doctor to -- to analyze the
20 blood. I gave all this information to them. I did it in my
21 conference room on a couple of different -- several different
22 occasions. I made sure everybody understood what the State
23 was going to proceed with at trial.

24 I advised them that I thought it would be in -- in Mr.
25 Brown's interest to plead. I told them that it wasn't their

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1 decision; it was Mr. Brown's decision. He kept wanting -
2 said, well, can you get me probation. I said, Mr. Brown, I
3 cannot get you probation. There is no way you're going to get
4 probation in the case. I am not going to tell you what you're
5 going to get. In a case like this, I am not going to stick my
6 neck in the noose and tell you you're going to get one year to
7 three years. That's -- that's totally wrong and I'll tell
8 Gary right here that never -- that never was said to Gary and
9 never was said to Jerome.

10 After 16 years as a prosecutor and now 42 years of
11 practicing law, I know you don't tell -- you don't try to tell
12 Mr. Brown on a felony DUI case where a small kid was killed on
13 -- on Father's Day that I'm going to get him three years or I
14 negotiated an under table deal with the Solicitor's Office,
15 Barney Giese and John Meadors for three years. That's totally
16 ludicrous and Mr. -- Mr. Brown and Gary Brown and Jerome are
17 -- are wrong when they say that I told them that.

18 I did tell him this, that he had a mandatory minimum one
19 year and a monetary fine. I did tell him he was facing a
20 maximum 25 years and that I could not predict -- predict what
21 Judge Manning was going to give to him. I did tell him that
22 Judge Manning was a good, fair judge and I mentioned to him
23 that if this case was plead in front of some of the other
24 judges that the range would probably be anywhere from 15 to 18
25 years and sometimes under these circumstances it could be even

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1 higher than that.

2 But I was not going to tell him -- and he did ask me. He
3 said what do you -- if I plead, do you think I'm going to get
4 the one year? I said I cannot tell you that. I would not go
5 there and would not go there today to tell him he would get
6 one year in front of even Judge Manning or Judge Kinard or any
7 one of the judges who have a reputation of maybe being a
8 little bit on the lighter side of sentencing.

9 So for him -- for them to say that I told -- I didn't
10 tell him a range. I didn't tell him a range, but I did tell
11 him that if it was judge -- some of these other judges that it
12 would be 15 to 18. But as to the range of what he was going
13 to get, I told him I could not predict what a judge will do.
14 The judge would have to listen to both sides.

15 I did tell him that at the sentencing part of it I would
16 show Judge Manning a slide show of the accident scene, which I
17 did. I put it all on my computer and I carried it up there
18 with -- I think John Meadors and I agreed to let Judge Manning
19 look at it to show how the accident in our opinion happened or
20 how the incident happened to try to show that this young boy
21 was on the right-hand side of the road by himself without
22 pointing a finger at Mr. -- Mr. Spradley. I wanted the judge
23 to understand that and I wanted him to understand that it was
24 a straight, narrow road. I wanted him to understand that
25 there is no fog line and no dividing line and so we did that

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1 and Donald sat there when I showed that to Judge Manning.

2 Q: All right and between his April plea date and his
3 September sentencing date, did any of the family members ever
4 contact you or did -- did Mr. Brown contact you about the
5 negotiations ---

6 A: Let's ---

7 Q: --- or ---

8 A: Let's go back to the affidavit he signed. Knowing that
9 Gary was a little upset that his brother is going to have to
10 go to jail for running over this young boy on Father's Day and
11 knowing that he wasn't particularly excited about his brother
12 going to jail -- Gary didn't think that his brother did
13 anything wrong. He didn't think his brother was drunk. He
14 would admit that his brother was driving, but he didn't think
15 his brother was drunk even after I showed him the tape.

16 So Gary didn't think -- Gary wanted to just keep blaming
17 it on -- on the little boy. Well, I explained to him that all
18 the physical evidence that I examined, gone over with the
19 experts and everything. So I felt that -- I felt compelled to
20 get the family in my conference room and go over it with them
21 one more time before they decided to plea.

22 That's when I thought it was very advisable for me to
23 again go over everything with Donald and his family -- his
24 wife was there -- and let them read this affidavit and if they
25 had any problem with it, not sign it, saying that I had gone

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1 over everything with them. There is no promises made. They
2 knew they had a right to trial. Everything that we normally
3 do when a judge takes a plea that he wants to make sure that
4 later on there won't be any questions about a free and
5 voluntary plea.

6 So that's when I had the affidavit signed and I've given
7 a copy to Ms. Shurling and Mr. Brown kept a copy of it and at
8 no time after the plea -- at no time during the plea was there
9 a tug on my -- on my shirt sleeve or my coat sleeve telling
10 me, oh no, you know, you told me I had -- I was going to get
11 three years. At no time did I hear from Gary. At no time did
12 I hear from his wife. At no time did I hear from his mother
13 or Jerome or any other member of that family that said wait a
14 minute, I thought he was going to get three years or you told
15 me he was going to get three years. The first time I heard of
16 one to three was when I heard it today and I'm a little
17 astounded by that because that just flat did not happen and
18 I'll tell them that it just didn't happen.

19 Q: All right.

20 A: Oh, and the Bank of Ridgeway, it couldn't happen at the
21 Bank of Ridgeway because at the Bank of Ridgeway is where I
22 had negotiated with them to get a -- to put the property up
23 and get a clear title to get the property up and that took
24 place long before the plea ever took place. There's no way I
25 could have told them that I negotiated a deal with -- with the

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1 Solicitor's Office for one to three years when we were at the
2 bank. The Bank of Ridgeway was long gone. That was back in
3 2005 and the plea didn't take place until 2006. So this thing
4 about being at the Bank of Ridgeway being on a cell phone or
5 something, that just -- just didn't happen.

6 Q: And ultimately, it was Mr. Brown's decision whether or
7 not to enter this plea?

8 A: Absolutely.

9 Q: All right.

10 MR. CORNEY: I believe that's all the questions I have,
11 Your Honor.

12 THE COURT: Thank you. Thank you very much.

13 MR. CORNEY: Thank you, Mr. Tetterton.

14 THE COURT: Ms. Shurling?

15 MS. SHURLING: A moment's indulgence, Your Honor.

16 THE COURT: Certainly.

17 MS. SHURLING: Thank you.

18 CROSS EXAMINATION

19 BY MS. SHURLING:

20 Q: Mr. Tetterton, I'm not an engineer or accident
21 reconstructionist, but can you explain for me for the Court
22 how you could tell the difference between the impact that
23 would have happened if the child turned into the Jeep versus
24 the Jeep hitting the child?

25 A: Well, what Mr. Brown and I looked at on the photographs

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1 and what I looked at at the bicycle over at the MAIT team
2 warehouse, it looked like that the major damage to the bicycle
3 was from the rear. If you look at the MAIT team photographs,
4 you can look at it and it looks like the major damage was done
5 at the back of the bicycle. If you look at the undercarriage
6 of the Jeep, you can see where that back part of the bicycle
7 -- the scrape marks on the back of the bicycle, if I remember
8 correctly, matched up with the -- the scratches or scrape
9 marks done to right where the tire rod end is and that part of
10 the Jeep.

11 And also on the right-hand side of the roadway, there was
12 a wheel liner that came from underneath the Jeep. The wheel
13 liner is what separates the fender well from the tire.
14 There's like a mud guard there and it was on the right-hand
15 side of the road.

16 So he and I looked at that and we determined -- we
17 decided that it might have been a good -- it might have been a
18 good thought that the little boy ran into the Jeep, but from
19 the gouge marks also on the highway which went straight ahead
20 it looked like that the -- that the bicycle was hit from
21 behind.

22 Q: Okay.

23 A: And all the marks on the -- if you -- if you look at the
24 marks on the red Jeep, all the damage was done to the right
25 undercarriage -- the majority of it to the right undercarriage

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1 of the Jeep. So there's no doubt that part of the Jeep ran
2 over the bicycle.

3 Q: My question is how could you be certain that the little
4 boy's bicycle had not veered into the front right corner of
5 the Jeep and been pulled under the car?

6 A: Nobody can be certain of what happens in a -- in a wreck.
7 The physics of a wreck, nobody can be certain. They can only
8 offer opinions. The MAIT team Sergeant Day was going to offer
9 opinions just as what I told you. I'm sort of paraphrasing
10 what his opinion would have been if he had been asked for an
11 opinion on how the accident happened at trial.

12 Q: I understand. Do you have your copy of the MAIT report
13 up ---

14 A: I do.

15 Q: --- there with you? Okay. If you look at the
16 photographs on page 14 of the Jeep and actually then skip a
17 page and look at the photograph on page 16, the point of
18 impact on the Jeep is very clearly very far forward on the
19 right fender of the Jeep; correct?

20 A: I cannot tell if that's the point of impact or not. I
21 wasn't -- I mean again, I -- I can't explain the physics of
22 what was there. I can't tell you what happened and the only
23 thing I can tell you is that the sergeant of the MAIT team,
24 Sergeant Day, was going to form opinions that the point of
25 impact was on the back of the bicycle on the right-hand side

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1 of the Jeep.

2 Q: I understand.

3 A: Now, can I tell you whether or not it was? No. I'm not
4 going to sit here and tell you that I can tell you ---

5 Q: Well, let me rephrase it. Judging by the photographs,
6 the place where there's damage on the Jeep is the front right-
7 hand corner?

8 A: Of the -- of the ---

9 Q: Jeep.

10 A: Of the -- no. Well, underneath and on top, yes.

11 Q: Yes. I meant on these photographs on page 14.

12 A: Yes. On page 14, it shows the right front fender damage
13 and on page 15, it shows the undercarriage where the black
14 fender liner is missing I told you.

15 Q: Correct.

16 A: And also the right corner of the bumper missing and also
17 on the right quarter panel it looks like where Mr. -- Sergeant
18 Day was going to say he thought the helmet was.

19 Q: I understand and on page 16 on close up, it's showing
20 that the headlight is broken, but the actual -- the plastic
21 rim around the headlight is actually intact; isn't it?

22 A: It looks like from my copy yes.

23 Q: Okay. So at least looking at the photographs external --
24 I'm not talking about the undercarriage for a moment -- the
25 damage to the Jeep is on the front right corner, the very

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- 1 front right of the Jeep?
- 2 A: Looking at the photograph on page 16 you referred me to?
- 3 Q: Yes, sir.
- 4 A: I'm looking at the right front corner of the bumper ---
- 5 Q: Yes.
- 6 A: --- and that looks like there's all kind of marks on the
- 7 right front corner of the bumper and I think, if I recall
- 8 correctly, that's where Sergeant Day said that the bumper hit
- 9 the back of the bicycle.
- 10 Q: Okay and again, there -- looking directly at the
- 11 photographs and this is in -- in evidence ---
- 12 A: Which page are you talking about?
- 13 Q: Page 14 currently.
- 14 A: Okay.
- 15 Q: My point is the damage is slightly to the front of the
- 16 tire on the right side of the Jeep.
- 17 A: Yeah. The bumper is in the ---
- 18 Q: Okay.
- 19 A: The bumper is in front of the tire and that's where --
- 20 that's where the impact took place.
- 21 Q: And so the point I'm trying to make is how can you
- 22 determine whether the child trying to rejoin the father and
- 23 the cousin across the street had pulled into the Jeep or
- 24 whether the Jeep hit the child?
- 25 A: Of course, now like I told you, Ms. Shurling, no one can

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1 accurately describe the physics of what happens in a -- in a
2 automobile accident or a collision. However, you have to rely
3 on the -- the opinions of experts. Sergeant Day is an expert
4 and he was going to offer an opinion that I expressed to Mr.
5 Brown. He was going to offer an opinion that's what I told
6 you that Mr. Brown ran over the back of the Jeep [sic.] and
7 knocked the little boy 90 feet at a ten degree angle.

8 So the ten degree angle in his opinion would show that
9 the little boy was going straight forward whenever and based
10 on the distance that the little boy traveled -- if you look at
11 the rest of the MAIT team report, the distance that the little
12 boy traveled based on the speed also would be consistent with
13 Mr. Brown running over the little boy from the back.

14 Q: And I don't -- I'm not addressing the findings of the
15 MAIT report. I'm addressing the fact that it sounded as
16 though that once you had reviewed the physical evidence and
17 the photographs that you shared the view that the evidence
18 conclusively showed that Mr. Brown hit the child as opposed to
19 the child hitting Mr. Brown.

20 A: Ms. Shurling ---

21 Q: Is that not accurate?

22 A: I shared it after I had this MAIT report reviewed by my
23 expert that I hired and paid for ---

24 Q: Okay.

25 A: --- to make sure that I was on the right track, that I

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1 was not missing anything. Greg Pendleton, who was certified
2 -- I can't -- I can't remember the certification you get for
3 doing the actual reconstruction. He reviewed the photographs,
4 he reviewed the MAIT team report, and he found his opinion was
5 consistent with Sergeant Day's opinion. So I had a choice:
6 either fire him and go hire somebody else and pay him to say
7 what I wanted him to say or tell Mr. Brown that my expert was
8 consistent with the opinion of the State's expert.

9 Q: Did you ask your expert whether any of the physical
10 evidence that was being pointed to by MAIT as being consistent
11 with your client hitting the child could also be explained by
12 the child's bicycle making impact with the Jeep and being drug
13 under the carriage of the car?

14 A: There is no doubt that the child's bicycle made impact
15 with the Jeep. Is that what you're asking me?

16 Q: I understand. No. Did you ask your expert whether any
17 of the physical evidence that you've been referring to and
18 that is referred to in the MAIT report, the gouge marks on the
19 pavement, the marks on the -- on the undercarriage of the SUV,
20 whether any of those pieces of evidence could be equally
21 accounted for ---

22 A: Okay.

23 Q: --- if the child had turned into the Jeep and been thrown
24 under the car by the momentum?

25 A: Yeah, I understand what you're asking me. You're asking

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1 me whether or not I asked my expert was the little boy at
2 fault or whether Mr. Brown was at fault by turning into the
3 Jeep. I did ask him that.

4 Q: All right. You're a very skillful litigator, Mr.
5 Tetterton, but that wasn't my question.

6 A: What ---

7 Q: I asked you if you discussed with your expert whether any
8 of this physical evidence that was being pointed to as
9 evidence that Mr. Brown hit the child, as opposed to the child
10 potentially having hit Mr. Brown's Jeep, whether any of that
11 evidence, the marks on the undercarriage of the Jeep, the
12 marks on the road, whether any of that could equally be
13 explained by a scenario whereby the child turned into ---

14 A: Yeah.

15 Q: --- the Jeep instead of the Jeep hitting the child?

16 A: The question is did I ask my expert was was it
17 conceivable that the evidence presented to us by the MAIT team
18 and photographs and all this other stuff, was it consistent
19 with the little boy turning into the Jeep?

20 Q: Correct.

21 A: I asked him that question. He said no. He said that, in
22 his opinion, the -- the physical evidence was consistent with
23 the opinion that the MAIT team came up with that Mr. Brown ran
24 over this little boy on his bicycle, both of them going in a
25 forward direction.

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1 Q: Okay. Now, the MAIT report also refers to Mr. Brown
2 traveling too fast for condition -- not conditions, but too
3 fast for condition -- at one point while alternately finding
4 that -- that it was believed that he was traveling between 41
5 and 46 miles an hour at the point of impact. The speed limit
6 on an unmarked road is a presumptive 55 miles an hour;
7 correct?

8 A: Yes, that's correct and it's -- it's 55 on this -- on
9 this highway.

10 Q: Do you understand and can you explain for us where the
11 theory that he was traveling too fast for conditions would
12 come from if he was going arguably as much as 14 miles an hour
13 under the speed limit?

14 A: Ms. Shurling, number one, I didn't make -- I didn't make
15 that assumption that he was going too fast for conditions. Of
16 course, if we had gone to trial and Sergeant Day had said in
17 his opinion that he was going too fast for the condition, the
18 condition being that Mr. Brown was under the influence of
19 alcohol reading .225, three times the legal limit and also .30
20 something in his urine, based on the fact that he had that
21 alcohol in his blood plus the young boy on the side of the
22 road, would -- would it have been too fast for conditions for
23 him to be going 41 to 46 miles an hour? That's a jury
24 question and I explained that to Mr. Brown.

25 Q: Okay.

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1 A: I mean if you're asking my opinion, I'm not -- I can't
2 give you an opinion on that because I never -- I don't know
3 because I never -- I don't think I've ever had that much
4 alcohol in my system and meeting a little kid on the side of
5 the road. I don't know.

6 Q: Mr. Tetterton, I've known you a long time. I wouldn't
7 take that bet. All right.

8 A: Well, you and I are there together.

9 Q: Now, you referred to Mr. Darrell Moore's statement.

10 A: Yes, ma'am.

11 Q: And he refers to having seen the bicycles traveling down
12 the road and -- and having ---

13 A: May -- may I have a -- may I look at his statement right
14 quickly?

15 Q: You certainly may.

16 A: I'm looking at it. Yes, ma'am.

17 Q: It's dated June -- I believe 19th of '05.

18 A: Yes, ma'am.

19 Q: And he's referring to bicycles in a single file and he
20 refers to seeing a red Jeep SUV and estimating -- he says
21 guessing -- that his speed was at least 65 miles an hour. Do
22 you see that?

23 A: Yes, I do.

24 Q: Okay and at some point he says he heard a horn blow and
25 there was a thump, which he interpreted as someone had been

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1 hit. Do you see that in his statement?

2 A: He said I knew -- I knew someone had just been hit.

3 Q: Sure. So although Mr. Moore's statement is certainly
4 graphic and upsetting for those involved in this case, he
5 doesn't represent to anybody that he saw the impact. He
6 didn't see how it happened; right?

7 A: I don't read that in his statement that he saw the
8 impact.

9 Q: No and even the father's statement indicates that he
10 heard the thump and looked and tragically saw his son off to
11 the side of the road; correct?

12 A: I'd have to look at the father's statement again and see
13 what it said.

14 Q: Okay. I'll find it for you.

15 A: I've got it right here. It says -- it says the sound of
16 the motor sounded as if it were speeding faster than when it
17 approached us. Then I saw the vehicle was a red Jeep
18 Cherokee. I heard the Jeep strike my son's bicycle and I saw
19 the bicycle land in a ditch along the side of the road. I ran
20 to my son and he was lying face up in the ditch.

21 Q: So like Mr. Moore -- unfortunately, a horribly tragic
22 situation and I'm not trying to make it any more difficult for
23 the family, but like Mr. Moore, he recalls hearing the impact
24 and -- and seeing the aftermath, but he doesn't even claim to
25 have seen the Jeep hit his son?

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1 A: Neither one of them claimed they saw the Jeep hit the
2 little boy on the bicycle, but I don't think that was an issue
3 to be determined because there's no doubt that Mr. Moore -- or
4 Mr. Brown driving his red Jeep Cherokee on this particular
5 afternoon hit the little boy on the bicycle. I don't think
6 that was a point to be really, you know, contested.

7 Q: Well ---

8 A: In fact, Mr. Brown admitted he hit the little boy
9 eventually.

10 Q: My point being there was no eyewitness account to
11 establish whether the child in an effort to rejoin his father
12 and cousin had darted into the Jeep or whether the Jeep had
13 hit the child. There were no -- there was not an eyewitness
14 account ---

15 A: There was ---

16 Q: --- of it happening either way?

17 A: There was not an eyewitness account to see the impact
18 between the red Jeep Cherokee and the little boy on the
19 bicycle except for Mr. Brown.

20 Q: Mm-hmm.

21 A: And the little boy and the little boy can't testify, of
22 course.

23 Q: Okay and, you know, law school examples always help me
24 out here for a minute. If -- if -- if I'm traveling down the
25 road and I've been drinking and I'm drunk, but I go through an

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1 intersection when I clearly have the green light and someone
2 traveling from the other direction runs a red light and hits
3 me and they're killed, I can be charged -- if I'm found to
4 have blood alcohol level over a certain limit, I can be
5 charged with DUI no question, but can I be charged with felony
6 DUI?

7 A: Law enforcement can charge you with DUI and you hire good
8 lawyers and show that you had the green light, it wasn't your
9 fault, that you weren't the proximate causation of that wreck.
10 You've got a good chance of a jury finding you not guilty.

11 Q: Okay. I was going to say you're correct, but I chose my
12 words poorly. If it is established regardless of how drunk I
13 was that when I went through that intersection I had the right
14 of way on a green light and the person responsible for the
15 accident is the one that was killed, I can be guilty of DUI,
16 but not felony DUI.

17 MR. CORNEY: Your Honor, I'm going to object to these. I
18 don't think it's relevant. The Court understands proximate
19 causation in the statute. I don't think we need to go down
20 that line of questioning.

21 THE COURT: I'll allow it. Rephrase the question,
22 please, Ms. Shurling.

23 MS. SHURLING: I ---

24 A: I think I understand the question, if you don't mind. If
25 you're going through a green light and you're over the -- over

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1 the legal limit, let's just say you're at .225 like Mr. Brown
2 did, and some car ran a red light and careened into you and
3 killed themselves.

4 Q: Right.

5 A: Could you be charged with DUI? Yes. Could you be
6 charged with felony DUI? Yes. Could you get a conviction? I
7 don't know.

8 Q: Well ---

9 A: I wouldn't think so. I mean ---

10 Q: Under the ---

11 A: --- you'd have to -- we all know proximate causation and
12 I think the issue here is, Ms. Shurling, did I explain
13 causation to Mr. Brown. How many times did I explain it to
14 him? Many, many different times and we came to the conclusion
15 that a jury could very simply find that he was the proximate
16 cause of that young boy's death on June 19th, 2005, and that's
17 when he decided that he wanted to plea. I didn't make that
18 decision. He made that decision with his family advising it.

19 Q: Okay. You anticipated my next ---

20 A: Does that answer your question?

21 Q: --- my next couple of questions and that is, are you
22 confident that you thoroughly explained the concept of
23 proximate causation to Mr. Donald Brown?

24 A: Probably about -- probably about five times plus and many
25 times with his family members present.

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1 Q: And ---

2 A: And because -- get back to remember when I told you there
3 was discussion just like you were asking me now. There was
4 discussion after discussion about did the little boy hit the
5 Jeep or did the Jeep hit the little boy and we had that
6 discussion with Donald Brown and his family members and Gary
7 and that was -- that was my idea to come up with that that
8 could be a possibility. They didn't even think about that
9 because I had to look at proximate causation myself.

10 The little boy is on the side of the road by himself.
11 Daddy was on the left-hand side. Donald Brown was driving
12 under the influence. That's a given. Then a horn blew. We
13 don't know what happened after that so we have to rely on
14 experts and the accident reconstructionists. He understood
15 that and that's when I explained it to him several different
16 times and gave him the opportunity to let a jury decide
17 proximate causation and I chose not -- he chose not to do
18 that.

19 Q: How long have you been practicing law in Kershaw County?

20 A: Well, let's see. What is this? August? Come September,
21 42 years.

22 Q: And you said about the first 15 and a half of it you were
23 a prosecutor; is that right?

24 A: No, not the first 15 and a half. I practiced private
25 practice the first four years and then 16 years as a

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1 prosecutor and then after that private practice.

2 Q: Okay. Do you do a good bit of criminal work? How --
3 what percentage of your practice is criminal law?

4 A: Money-wise or case-wise?

5 Q: Does it matter?

6 A: Criminal don't pay very well, but it -- I'd say probably
7 my criminal practice case load would probably be 60 percent.
8 My private practice case load would be 40 percent and that's
9 just a guess. That's been pretty consistent.

10 Q: Do you -- have you had occasion to be familiar with a
11 fairly large number of felony DUI cases in Kershaw County over
12 say the ten year period preceding this accident?

13 A: Fortunately, we haven't had a large number of felony DUIs
14 in Kershaw County. I just recently tried a double felony DUI
15 and that was with Ron Moak back there and got a -- the jury
16 did not convict my client. There was a death and also a
17 bodily injury so that would probably be the first felony DUI I
18 tried -- we might try one every two years maybe in Kershaw
19 County.

20 Q: And in your experience, do you have a feeling for what
21 the average sentencing range has been in felony DUI cases in
22 Kershaw?

23 A: Yes, ma'am. I subscribe to Lawyers Weekly and maybe you
24 do, too, and I keep up with what judges give. I can tell you
25 that Judge Tommy Cooper was going to pretty well make you

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1 realize the error of your ways. I understand that Judge
2 Kinard and Judge Manning may be a little more lenient in the
3 sentencing based on the circumstances as you present them to
4 them at sentencing. Yes, I know and I think maybe you just
5 got one 18 years not long ago, that got 18 years on a felony
6 DUI. So I thought 13 years in this one probably saved him a
7 minimum five years.

8 Q: Okay.

9 A: So I'd say whatever county you got your 18 years in,
10 Kershaw County is probably the same. Eighteen years would
11 probably have been ---

12 Q: Did you ---

13 A: I don't know. It would be hard to say. That's why you
14 have trials. It could -- could be a long plea.

15 Q: Well, did you have discussions with your client -- with
16 Mr. Brown about the kinds of sentences you had seen in other
17 felony DUI cases?

18 A: Absolutely. I wanted him to understand that it could be
19 Judge Cooper trying this case at a trial. Judge Cooper would
20 sentence him harsher -- more harsher than maybe Judge Manning
21 or Judge Kinard or resident judges over there. Yeah, I told
22 him the range. I told him that the least I had seen was
23 probably 8 to 10 years; the most I had seen was probably 20
24 years..

25 And then I just saw where a veteran in Richland County

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1 only got 6 years for a double felony DUI, which I'm sure the
2 facts of that were a lot different than this one. But you
3 can't really -- you can't really predict what's going to
4 happen in a felony DUI case.

5 Q: Okay.

6 A: You got the victims up there who are going to present
7 their side and then you have the emotional side of the
8 victims. You have the emotional side of Mr. Brown's family,
9 which I had there when they were -- when he was -- he was
10 pleading. His family was there. They never said a word to me
11 about a three year. They were there at the sentencing. They
12 spoke to the judge and, yes, he understood the range. He
13 understood the range being a mandatory one and maximum 25.

14 Q: Okay.

15 A: Somewhere in-between.

16 Q: I'm trying not to interrupt you, Mr. Tetterton, but you
17 keep going on.

18 A: Well, you asked me a question. I want you to understand.

19 Q: Did you ---

20 A: Go ahead. I'm sorry.

21 Q: Did you discuss with him the kinds of factors that could
22 be argued in mitigation of sentence even if he was convicted
23 at a jury trial?

24 A: Yes, I did.

25 Q: And did you discuss with him the fact that you -- you

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1 have -- have -- back up for a second. You said that you did a
2 slide show presentation I believe for Judge Manning in the
3 sentencing proceeding in this case to illustrate the way the
4 accident happened. Did you have discussions with Mr. Brown
5 about using such techniques to argue in mitigation of sentence
6 even if he was convicted at a jury trial?

7 A: Sure. I -- I -- Mr. Brown got a law school education on
8 trying a DUI -- felony DUI case, he and his family both, and
9 I've learned that from experience you've got to tell your
10 client from the time he's charged and gets ready to make bond
11 until he walks out of the courtroom free, acquitted, on
12 probation, or going to the Department of Corrections for a
13 period of time. They understood that fully.

14 Q: In the beginning, you said that the incident at the Bank
15 of Ridgeway that they were discussing was so early on that
16 there couldn't have been any kind of plea negotiations at that
17 stage anyway, that it was too early on in the process. Is
18 that -- have I understood your testimony correctly?

19 A: As best as I remember, our first priority was to get him
20 out of jail. They had no money. They had land. They had
21 heir land, heir property, but about six or eight different
22 people was involved that owned it. We had to get it all in
23 one name because the bank was not going to loan anybody any
24 money to six or eight people. So that's what we did first and
25 that took a while to do that and I had already filed my Rule 5

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1 and Brady motions to get this information and I don't know
2 what date the MAIT team is dated, but it was -- it's dated --
3 I'm sorry. I don't have a date on it, but I didn't get this
4 until later on.

5 Q: Okay, but my question is: you said that once you started
6 discussing this case with Ron Moak and Barney Giese that it
7 became readily apparent that there would be no deals, no plea
8 negotiations in this case; is that correct?

9 A: Absolutely correct.

10 Q: Well, early on before you had those discussions with the
11 Solicitor's Office about this case, did you make any
12 representations to the family about the kind of sentencing
13 range you thought you would be looking at on the facts of this
14 case?

15 A: Early on, I told them what he was charged with, the
16 elements of felony DUI, and his possible sentence. I could
17 not have discussed with him -- discussed with him what I
18 thought a range would be or anything else until I got all the
19 -- all the MAIT team reports, until I hired my -- my -- my
20 expert on accident reconstruction. So that didn't come until
21 probably a year later.

22 Q: Okay.

23 A: It took -- it takes that long to get all this
24 information.

25 Q: How well I know.

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1 A: Exactly.

2 Q: So early on before you had the discovery materials and
3 the MAIT report and so forth, you didn't engage in any general
4 discussions with the family about the kind of sentencing range
5 you thought you could get ---

6 A: Right.

7 Q: --- for the defendant based on what you knew about the
8 case?

9 A: The only thing I knew about the case at that time I
10 reviewed the tapes of Mr. Brown in the -- in the car with the
11 officers and, you know, you've seen those tapes. And I
12 discussed that with him, but no, I did not tell them what a
13 range was or what the possible sentence was other than one to
14 15 -- one to 25.

15 MS. SHURLING: A moment's indulgence, Your Honor.

16 THE COURT: Yes, ma'am.

17 Q: Did you hire a private investigator in this case?

18 A: Did I hire a private investigator? No, ma'am, I did not.

19 Q: So discussions you would have had with the family about
20 hiring a private person to look into this case, that would
21 have been in reference to the accident reconstruction person
22 I've heard you discussing ---

23 A: Correct, yes.

24 Q: --- in your earlier testimony?

25 A: That would -- that would have been the only person I

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1 would have been referring to.

2 Q: Pardon?

3 A: That would have been the only expert or investigator I
4 would have been referring to when I talked with them.

5 Q: And did he prepare a report?

6 A: He did not.

7 Q: And I presume that would be at your request?

8 A: Absolutely not. I didn't ask him to prepare one or not
9 prepare one.

10 Q: All right.

11 A: And in fact, Mr. -- I think Gary Brown knew -- knew Greg
12 Pendleton. He worked with ---

13 Q: Pardon?

14 A: Mr. Brown worked at the hospital and represented to me
15 that he knew Gary -- Greg Pendleton when he was a city
16 policeman and had a lot of respect for Mr. Pendleton.

17 Q: Okay.

18 A: So I felt comfortable that I didn't need to go outside
19 and fire him and hire another expert.

20 Q: Did Mr. Pendleton ever meet with you with Gary Brown and
21 Donald Brown? Did he meet with any -- with your client and
22 any of his family?

23 A: No, ma'am.

24 Q: So he gave all of his findings directly to you and you
25 shared them with the family?

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1 A: Correct.

2 MS. SHURLING: A moment's indulgence, Your Honor.

3 THE COURT: Yes, ma'am.

4 Q: Mr. Tetterton, did you ever express the view to your
5 client that if he went to trial, he would get the maximum
6 penalty?

7 A: Did I ever tell Donald Brown, my client, if he went to
8 trial that he was going to get the maximum sentence?

9 Q: Did you ever tell him that if he went to trial and were
10 convicted that in your opinion he would get the maximum
11 sentence?

12 A: Absolutely not.

13 Q: Did you ever ---

14 A: I had already told him the range. I wouldn't tell him
15 the maximum. No, I told him what the range was.

16 Q: And did you ever express the view to your client that if
17 you had had this case when you were a prosecutor, you would
18 have pushed for the maximum?

19 A: No. I did tell him about the Victim's Bill of Rights in
20 South Carolina, that we was going to have the Spradleys up
21 there talking to the judge and it wasn't going to be pretty.

22 Q: Thank you.

23 MS. SHURLING: One more moment, Your Honor. Nothing
24 further, Your Honor.

25 THE COURT: Redirect?

REDIRECT EXAMINATION OF WILLIAM TETTERTON BY MR. CORNEY

1 MR. CORNEY: One question, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. CORNEY:

4 Q: Mr. Tetterton, the solicitors did, in fact, request the
5 maximum sentence at the plea hearing; didn't they? I mean at
6 the sentencing hearing; didn't they?

7 A: I would have to go back and read the transcript.

8 Q: If the record reflects that, that's what you would ---

9 A: If they did, then they did. I don't know. That's not
10 unusual.

11 MR. CORNEY: That's all the questions I have, Your Honor.

12 THE COURT: Thank you. Thank you very much, Mr.
13 Tetterton.

14 WITNESS: Thank you, Your Honor.

15 MS. SHURLING: Your Honor?

16 THE COURT: Yes, ma'am? Do you have another question,
17 Ms. Shurling?

18 MS. SHURLING: Briefly.

19 RECROSS EXAMINATION

20 BY MS. SHURLING:

21 Q: You indicated a moment ago that you had reviewed all the
22 discovery with Mr. Brown and including the MAIT report?

23 A: That's what I -- I think that's what I said and that's
24 what I did. Yes, ma'am.

25 Q: The portion of the MAIT report that -- and if we have

RECROSS EXAMINATION OF WILLIAM TETTERTON BY MS. SHURLING

1 covered this and I'm -- I may be being redundant. I can't
2 recall whether you answered the question. The MAIT report
3 refers to red paint on a bolt mechanism that held the seat on
4 the bicycle and it specifically states that at the time of the
5 MAIT report, SLED had not returned the results of that test.
6 Do you recall that from the MAIT report?

7 A: Yes, ma'am.

8 MR. CORNEY: That's pretty far outside my redirect
9 question. I don't know if you limited it to my ---

10 THE COURT: I'll allow it under these circumstances.

11 A: Yes, ma'am. Ms. Shurling, you and I discussed that and I
12 told you that I did not get -- I never got or never did I
13 review a MAIT team -- I mean -- I'm sorry -- a SLED report
14 where they matched the paint up on the bicycle with the Jeep.
15 I think that's what you're asking is whether or not they
16 matched the paint up with the Jeep to the bolt and nut on the
17 seat.

18 Q: And at -- at -- I think I can anticipate your answer to
19 this, but you weren't concerned about your client entering a
20 plea without those test results?

21 A: Well, I think the ---

22 THE COURT: You're talking about the SLED paint results?

23 MS. SHURLING: Yes, sir.

24 A: Was I concerned about not having the SLED report matching
25 the red paint up on the Jeep to the bicycle before I offered

RECROSS EXAMINATION OF WILLIAM TETTERTON BY MS. SHURLING

1 him ---

2 Q: Correct.

3 A: Oh, no. I mean we discussed whether or not his red Jeep
4 made contact with that bicycle. That was not an issue.

5 Q: And in your judgment the -- the location of that paint on
6 the bicycle was -- was there any possibility of -- of that
7 information casting any light on how the accident happened?

8 A: Not really, no.

9 Q: Okay.

10 A: No. I mean ---

11 Q: I didn't word that very articulately. Let me say it
12 again. I understand that -- that from the majority -- from
13 the evidence presented at trial, you felt that the question
14 that the child and your client's vehicle making contact in
15 some manner was apparent, that you weren't concerned there was
16 any question about the fact that your client's car and that
17 child's bicycle had hit in some fashion. That was fairly well
18 established by the evidence; correct?

19 A: There was definitely a collision between Mr. Brown's red
20 Jeep that he was driving and the little boy's bicycle. That
21 was not an issue.

22 Q: And my question is: was there any question in your mind
23 whether the presence of that red paint on that particular part
24 of the bicycle had any significance with regard to the issue
25 of probable cause?

1 A: No.

2 Q: Thank you.

3 MS. SHURLING: No further questions, Your Honor.

4 THE COURT: You want another bite?

5 MR. CORNEY: No, sir. That's -- that's going to be it
6 for this case.

7 THE COURT: I think everybody had a full bite or two.
8 Thank you. Thank you, Mr. Tetterton. You may step down.

9 (Whereupon, the witness leaves the stand at 5:22 p.m.)

10 MR. CORNEY: No further witnesses on behalf of the State,
11 Your Honor.

12 THE COURT: Do you have any witnesses in reply, Ms.
13 Shurling?

14 MS. SHURLING: I do not, Your Honor. I would be glad to
15 give a summary closing argument or if Your Honor prefers, we
16 could present memorandums in support in the form of proposed
17 orders.

18 THE COURT: That would be my preference.

19 MS. SHURLING: Thank you, Your Honor.

20 THE COURT: Memorandums in proposed orders.

21 MS. SHURLING: Thank you, Your Honor.

22 THE COURT: How much time do y'all need?

23 MS. SHURLING: I'm in court pretty much the next two
24 weeks solid so can we have 30 days?

25 THE COURT: Any objection to that, Mr. Attorney General?

1 MR. CORNEY: No, sir, not at all.

2 THE COURT: All right. Let's see. Today is the 14th so
3 that would be the middle of September?

4 MS. SHURLING: Yes, sir.

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

6 MS. SHURLING: Thank you, Your Honor.

7 THE COURT: It's 30 days on the memorandums and proposed
8 orders e-mailed simultaneously to each other and to my law
9 clerk. The Court is in recess until nine thirty tomorrow
10 morning. Good luck to you, Mr. Brown.

11 MS. SHURLING: Thank you.

12 Mr. Spradley and family, sorry for your loss.

13 MR. CORNEY: Thank you, Judge.

14 (Whereupon, the proceedings end at 5:23 p.m.)

15

16 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 Common Pleas for Richland/Kershaw County, South Carolina, on
12 the 14th day of August, 2012.

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

15
16 Krystal J. Smith

17 Court Reporter

18
19 Florence, South Carolina

20 March 12, 2013
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	FIFTH JUDICIAL CIRCUIT
	)	
DONALD E. BROWN, 317616,	)	CASE NO.: 07-CP-28-400
Applicant,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	PCR APPLICATION IN THE
	)	FORM OF A PROPOSED ORDER
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 23, 2007. The Respondent filed a Return and Motion to Dismiss dated June 27, 2007. An evidentiary hearing was convened in this case on Tuesday, August 14, 2012, at the Richland County Courthouse. The Applicant was present at this hearing along with counsel, Tara Dawn Shurling, Esquire. The Respondent was represented by Robert D. Corney, Assistant Attorney General.

At the PCR hearing, the Applicant testified on his own behalf. Also testifying was the Applicant's plea counsel, William Tetterton, Esquire, hereafter Counsel, and two of the Applicant's brothers; Gary Brown and Jerome Brown. This Court also has before it a copy of the transcript of the guilty plea proceeding, a transcript of the subsequent sentencing proceeding, the records of the Kershaw County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections. In addition, this Court has reviewed the exhibit introduced by the Applicant at the evidentiary hearing.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. He was indicted during the April 2006 term of the Kershaw County Grand Jury for Felony Driving Under the Influence- Death Resulting (2006-GS-28-01372). He was represented in the Court of General Sessions by William Tetterton, Esquire. On September 19, 2006, the Applicant pleaded guilty as charged before the Honorable L. Casey Manning, presiding circuit court judge. There were no sentencing recommendations or negotiations addressed on the record at that proceeding. Sentencing was deferred until a Pre-sentence Report could be prepared for the Court. The sentencing proceeding took place on September 19, 2006, at which time Judge Manning sentenced the Applicant to thirteen (13) years imprisonment. At the Applicant's request, A Motion for Reconsideration of Sentence was filed by Counsel.

The Applicant subsequently hired Tara Dawn Shurling, Esquire to represent him in a Post-Conviction Relief action. On January 5, 2011, Attorney Shurling represented the Applicant at a hearing on the Motion for Reconsideration which she had discovered was still pending before the trial court.¹ At the conclusion of that hearing, Judge Manning declined to alter the sentence as originally imposed. Applicant did not file a direct appeal from his judgment or sentence.

In his current Application, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

¹ Prior to the hearing on the Motion to Reconsider, PCR Counsel filed a Motion to Stay the pending PCR action pending a ruling on the outstanding post-trial motion.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) The Applicant received ineffective assistance of counsel prior to and during his guilty plea proceeding in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution as well as Article I, Section 14 of the South Carolina Constitution.
- (b) The Applicant's Plea of Guilty was not Voluntarily and Intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights pursuant to due process of law.
- (c) _____

At the evidentiary hearing held in this matter the Applicant specifically argued,

1. That he received ineffective assistance of counsel prior to and during his guilty plea proceeding in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution as well as Article I, Section 14 of the South Carolina Constitution.
2. That his plea of guilty was not knowingly, voluntarily and intelligently entered inasmuch as said pleas were entered in reliance upon promises made by his defense attorney which were not kept.

At the outset of his PCR hearing, the Applicant expressly waived any allegations of ineffective assistance of counsel against Tara Dawn Shurling concerning her representation of the Applicant in his motion for the reconsider of his sentence.

DISCUSSION

The Court has reviewed the testimony, evidence and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (1985), the Court makes the following findings of fact and conclusions of law. Having reviewed all the testimony and evidence in this case, this Court finds that the Applicant has met his burden of proof with regard to his allegation that his plea of guilty was not knowingly and voluntarily entered inasmuch as it was entered

without an adequate understanding of what the State's burden of proof would be concerning the crucial issue of proximate cause if he proceeded to trial.

RELEVANT FACTS

On June 19, 2055, at approximately 8:40 p.m. a father was out riding bicycles with his five year old son and a nephew. The trio was traveling on Shiver's Green Road in Kershaw County when at some point the father and the nephew crossed the road leaving the five year old alone on the other side of the road. The Applicant, who was traveling in the same direction as the five year old, at some point came into contact with the child's bicycle and the child was killed. In the trial court it was the State's position that the Applicant, who was under the influence of alcohol at the time, ran into the child from the rear thereby causing his death. The Applicant maintained that the child had apparently been trying to cross the street to join his father when he ran into the Applicant's vehicle causing the accident. The MAIT Report issued in this case determined the Applicant had been traveling at approximately 46 miles per hour at the time of this incident. Inasmuch as there was no speed limit posted on this road, the lawful speed limit would have been 55 miles per hour. The Applicant, who was arrested near the scene, was subsequently determined to have a blood alcohol limit well above the lawful limit.

In his PCR testimony the Applicant did not dispute the fact that he was driving under the influence on the night of this incident. He indicated however, that he had consistently asserted that his actions did not cause the impact between his vehicle and the bicycle ridden by the deceased child. The Applicant testified that the advice he received from Counsel led him to believe that if he proceeded to trial on the charge of Felony DUI he

would be found guilty if the jury concluded that he was driving under the influence at the time the child's bicycle collided with his vehicle. He testified that after extensive conversations with his PCR Counsel he now understood that if he had gone to trial by jury the State would have to have proven, not only that he was driving under the influence, but that his actions caused the impact with the child's bicycle in order to convict him of Felony DUI. He unequivocally testified that if he had understood the law of proximate causation prior to his plea proceeding he would not have pleaded and would have exercised his right to trial by jury. He asserted that his trial attorney simply never explained to him, in terms he could understand, that the State would have had the burden of proof at trial of establishing beyond a reasonable doubt, not just that he was operating a vehicle while under the influence but also, that his actions were the proximate cause of the victim's death. In support of this position, the Applicant testified that trial counsel repeatedly told him that once they jury heard the evidence that he was drunk at the time the child was struck, he would be convicted.

The Applicant testified that the other reason he pleaded guilty rather than go to trial was Counsel's repeated promise that if he pleaded guilty he wouldn't get more than three (3) years in prison. He testified that Counsel had told him almost from the beginning that he could "get him" a sentence of no more than three (3) years. When the time came to decide whether to go to trial or plead guilty Counsel once again assured him he would get a sentence between one and three years if he pleaded guilty but that, if he went to trial he was likely to get a twenty-five (25) year term. The Applicant acknowledged that he knew he would get at least a one (1) year sentence if he pleaded guilty to Felony DUI but, firmly

stated that he would not have waived his right to trial by jury had he know that he might get more than a three (3) year sentence as a consequence of his plea of guilty.

During his PCR testimony the Applicant was asked to identify a document, drafted by Counsel, concerning his decision to plead guilty. In that document, introduced as an exhibit during the PCR hearing, it is stated that there had been no plea negotiations in the case, *except those placed on the record during the plea proceeding*. The Applicant explained that at the time he signed the document at the request of Counsel, *the plea proceeding had yet to take place*. The Applicant stated that he signed the statement in good faith believing that the "deal" for *no more than a three (3) year sentence* would be placed on the record during the proceeding. He further explained that just before the entry of his plea, Counsel advised him not to say anything if he was asked if he had been promised anything in exchange for his plea. He acknowledged that he should have spoken up during the proceeding when the Judge in fact did ask him about any promises that might have been made in exchange for his plea but, asserted that he was afraid he would "blow the deal" if he spoke up. He testified that he put his faith in his lawyer and when nothing was said in court about the three year cap he concluded that Counsel and the State must have had a deal worked out under the table so to speak. The Applicant further explained that he was taken into custody after the initial plea proceeding and did not have the opportunity to discuss this issue with his attorney before the sentencing hearing. When asked why he did not speak up and advise the Court about the promises that had been made to him after he received a sentence of thirteen (13) years, the Applicant indicated that he thought it was too late at that point because the judge had already accepted his plea and sentenced him. In response to his shock and disappointment, the Applicant and his family proceeded to hire PCR Counsel to

pursue the Applicant's complaints concerning the disparity between what Counsel had advised him and what had actually taken place in his plea hearing and at the subsequent sentencing proceeding.

The Applicant's brother, Gary Brown, testified that he was involved in the discussions with Counsel concerning a possible plea and that Counsel had assured the Applicant that he would not get more than a three (3) year sentence if he agreed to plead guilty. Like the Applicant, Gary Brown testified that Counsel had actually assured him and the Applicant from the beginning that he could get the Applicant a deal for no more than three (3) years. The testimony of the Applicant's other brother, Jerome Brown, mirrored that of the Applicant and Gary Brown. Gary Brown testified that between the initial plea proceeding and the sentencing hearing he attempted to talk with Counsel about the fact that the remarks made during the plea proceeding indicated that there were no agreements made in exchange for his brother's guilty plea, but that Counsel had declined to talk with him about the case and stated that he was not the client, his brother was.

RELEVANT LAW

It is well established that guilty pleas effectively waive all non-jurisdictional errors. State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985); Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981). In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea. State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). A guilty plea may not be accepted unless it is voluntarily entered

with a full understanding of nature of the charge and the consequences of a plea. State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976).

[A] plea is more than an admission of conduct; it is a conviction which leaves only the punishment to be determined. A defendant who pleads guilty simultaneously waives several constitutional rights, including the privilege against self-incrimination, the right to trial by jury and the right to confront his accusers. For such a waiver to be valid under the due process clause, it must be an intentional relinquishment or abandonment of a known right or privilege. Further the record must clearly establish waiver.

State v. Patterson, 278 S.C. 319, 295 S.E.2d 264, 265 (1982), citing, Boykin v. Alabama, 395 U.S. 238 (1969).

The Sixth Amendment guarantees every criminal defendant the right to effective assistance of counsel. In order to establish a violation of the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, the Applicant in a Post-Conviction Relief proceeding must show (1) that Counsel's performance was deficient, and (2) that he was prejudiced by the errors and omissions of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In Post-Conviction Relief proceedings, the Applicant has the burden of proof to establish that he is entitled to relief by a preponderance of the evidence. Rule 71.1(e), S.C.R.Civ.P.

In order to prevail in a PCR action, the Applicant must demonstrate that counsel failed to render reasonably effective assistance under prevailing professional norms. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). In the context of a guilty plea, the operative question becomes whether a defendant, but for counsel's errors and omissions, would have exercised his right to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Further, the applicant must show that there is a reasonable probability that he would have insisted on proceeding to trial on the matter instead of pleading guilty. Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006). In other words, a defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing (1) that counsel was ineffective, and (2) that there is a reasonable probability that, but for counsel's errors, he defendant would not have pleaded guilty. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (S.C. 1997). A guilty plea, along with the resulting waiver of fundamental constitutional rights, is valid only if made voluntarily, knowingly, and intelligently. Boykin v. Alabama, *supra*, Pittman v. State, 337 S.C. 597, 534 S.E.2d 623 (1999).

CONCLUSION

As a threshold matter, this Court wishes to note that Counsel in this case is a respected defense lawyer in Kershaw County with a good reputation for competence well know to this Court. On the facts of this case however, it is apparent to this Court that Counsel failed to adequately explain to the Applicant the concept of proximate causation in a manner that could be readily understood by his client. In what was no doubt a simple case of miscommunication, Counsel's view that a jury would convict the Applicant once they heard the State's evidence that he was driving drunk, translated in the Applicant's mind into a belief that *all the State had to prove was that he was driving while under the influence in order to convict him of Felony DUI*. On the facts of this particular case, where there were facts that could have arguably been used to cast doubt on the question of proximate causation, it was crucial that the Applicant understand the law relating to that element of the

offense of Felony DUI before making a decision whether to plead guilty or proceed to trial. "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). Where in the view of this Court, the Applicant did not have the requisite understanding of the proximate causation element of the offense to which he pleaded guilty, this Court is constrained to find that his plea of guilty was not voluntarily and knowingly entered and that it was the product of Counsel's failure to provide him reasonable professional assistance of counsel on this issue.

Inasmuch as this Court finds that a new trial is warranted on the Applicant's claim relating to Counsel's advice concerning proximate causation, this Court finds it unnecessary to address the Applicant claim that his plea was entered in reliance upon a promise by Counsel that his plea of guilty to Felony DUI would result in a sentence of no more than three (3) years. Accordingly, this Court orders the following:

- 1) The Applicant's judgment and sentence are hereby reversed,
- 2) The Applicant's case is remanded to the Court of General Sessions for a new trial,
- 3) The Applicant is remanded to the custody of Kershaw County pending trial.

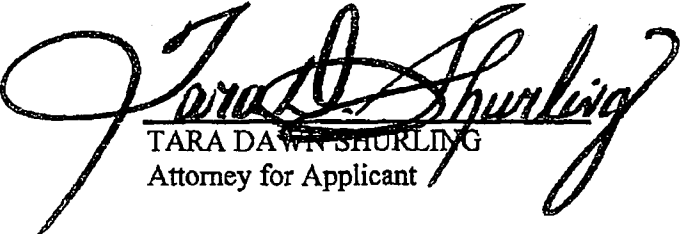
IT IS SO ORDERED.

R. Knox McMahon
 Presiding Judge
 Fifth Judicial Circuit

This ____ day of _____, 2012

Columbia, South Carolina

Proposed Order above respectfully
Submitted by Counsel for the
Applicant


TARA DAWN SHURLING
Attorney for Applicant

This 8th day of November, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

DONALD E. BROWN, 317616,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

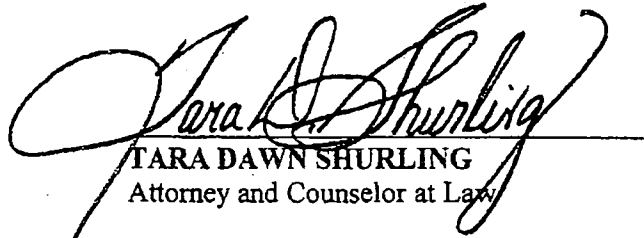
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 07-CP-28-400

CERTIFICATE OF SERVICE

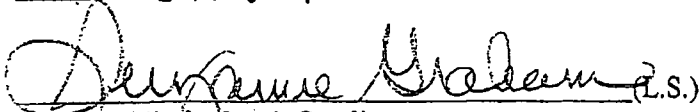
The undersigned attorney hereby certifies that one copy of the Applicant's proposed order in the above-entitled cause was served upon, Robert Corney, Assistant Attorney General, by E-mail on the 21st day of September, 2012.



TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 8th day ofNovember 2012.


(S.)

Notary Public for South Carolina

My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

DONALD E. BROWN, 317616,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

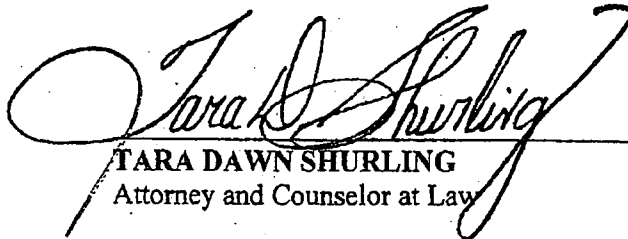
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 07-CP-28-400

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that one copy of the Applicant's proposed order in the above-entitled cause was served upon, The Honorable R. Knox McMahon, Circuit Court Judge by E-mail on the 21st day of September, 2012.



TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 8th day ofNovember 2012.


(L.S.)

Notary Public for South Carolina

My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Donald E. Brown, #317616,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2007-CP-28-00400

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 23, 2007. An evidentiary hearing into the matter was convened on Tuesday, August 14, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Tara D. Shurling, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Williams Tetterton, Esquire ("counsel"), and two of Applicant's family members. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Kershaw County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. Applicant was true bill indicted at the April 2006 term of the Kershaw County Grand Jury for Felony Driving Under the Influence – Death Resulting (2006-GS-28-01372). He was represented by William Tetterton, Esquire, on the charges. On September 19, 2006,

Applicant appeared before The Honorable L. Casey Manning where he pled guilty as indicted without recommendations or negotiations, and sentencing was deferred. On September 19, 2006, Applicant came back before Judge Manning for his sentencing hearing at which he was sentenced to thirteen (13) years imprisonment. A Motion for Reconsideration was filed on Applicant behalf by Tetterton. On January 5, 2011, Tara D. Shurling, Esquire, having originally been retained to represent Applicant on his post-conviction relief application, appeared at a hearing as counsel for Applicant at which she presented the Motion for Reconsideration to Judge Manning. The motion was denied. Applicant did not appeal his plea or sentences.

In his current Application, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) The Applicant received ineffective assistance of counsel prior to and during his guilty plea proceeding in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution as well as Article I, Section 14 of the South Carolina Constitution.
- (b) The Applicant's Plea of Guilty was not Voluntarily and Intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights pursuant to due process of law.
- (c) _____

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

- (a) Trial Counsel failed to adequately investigate the Applicant's charges, failed to investigate and interview potential witnesses and failed to give his client adequate legal advise prior to the Applicant's guilty plea proceeding. Trial counsel failed to fully advise the Applicant of all the consequences of this plea and further failed to investigate potential defenses against the charges against the Applicant.
- (b) Counsel failed to provide client effective assistance of counsel prior to and during his guilty plea proceeding. The Applicant's pleas of guilty were coerced by counsel's failure to provide adequate representation.
- (c) Counsel was ineffective for failing to adequately explore available defenses to the charge against the Applicant and for failing to explain those potential defenses to the Applicant before he was required to make a decision about a plea of guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. 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).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Waiver of Reconsideration Hearing Allegations

As a preliminary matter, this Court notes Applicant expressly waived his ability to raise any challenges to the effectiveness of counsel at his January 2011 reconsideration motion hearing as a condition of proceeding in the current action with Ms. Shurling as his attorney. Applicant was represented at both the reconsideration hearing and the current post-conviction relief hearing by the same counsel, Ms. Shurling. Applicant was specifically advised of the consequences of such a waiver including his inability to raise such issues at a later date, and ultimately opted to waive them in favor of proceeding on the current application.

Failure to Adequately Advise Applicant of "Proximate Cause" Element

The first allegation raised by Applicant at the hearing was that counsel was ineffective for failing to adequately advise him of the "proximate cause" requirement of S.C. Code Ann. § 56-5-2945(a)(2) and the ability to challenge that proximate cause element at trial.

Applicant testified he and his family retained counsel to represent him on the current charge roughly one (1) week after he was arrested. He stated counsel helped him secure release on bond, after which Applicant and his family met with counsel three (3) times at counsel's law firm. Applicant said counsel reviewed the discovery with him and explained the law of Felony DUI to him, including proximate causation, but he did not understand that the State would be required to prove more than the fact that he was drunk at the time of the accident. Applicant said he thought if the jury believed he was drunk at the time, then "they'd say [he'd] just get DUI". Applicant went on to say his toxicology reports (both urine and blood) showed that his alcohol levels were well above the legal limit at the time of the accident, but he did not feel he was responsible for the accident. Applicant said he and counsel discussed alternate theories of how the accident may have happened, including Applicant's theory that the child "darted in front" of him, hitting the side of his car. Applicant specifically noted he had understood his ability to present a defense at trial, but asserted counsel never discussed the ability to challenge proximate cause at trial with him.

On cross-examination, Applicant conceded that Judge Manning had advised him several times at the plea hearing that, by entering a plea, Applicant would be waiving his ability to present defenses at trial on his behalf. He also stated he could not recall whether he had told police directly after the accident that he "did not see Victim [riding his bike] until he was already

on top of him"; however, the records introduced to this Court during the hearing clearly indicate he did make such a statement.

Counsel testified he was retained by Applicant's family in June of 2005, at which time he started working on securing Applicant's release on bond which followed shortly thereafter. Counsel stated he reviewed the three elements¹ of the statute with Applicant many times during the course of his representation, and he felt that Applicant fully understood each of the three elements based on their discussions. He went on to say he reviewed Applicant's version of the fact with him many times during their meetings, as well as the discovery materials which included, among other things, damaging witness statements from a nearby neighbor (Darryl Moore) and the victim's father, three extremely detrimental videotapes of Applicant taken by law enforcement after the accident, fifty seven (57) photographs, several officers' incident reports, and the South Carolina Highway Patrol's MAIT ("Multidisciplinary Accident Investigative Team") report. Counsel stated he hired an independent expert in accident reconstruction to review the case, but the expert only confirmed the findings of the MAIT report. Counsel also had independent toxicology evaluations done on Applicant's urine and blood as well, with both finding Applicant's intoxication levels to be well over the legal limit at the time of the accident.

Counsel explained that, after his thorough review and investigation of the facts and evidence in the case, there was no question as to the State's ability to prove the first two elements of the statute, i.e. Applicant was driving; and Applicant was in fact under the influence at the time of the accident. From there, counsel said, his preparations turned to the issue of whether Applicant could realistically challenge whether his "act or neglect proximately caused" the victim's death. Counsel stated there was no posted speed limit sign on the road, nor any

¹ Counsel noted the "three elements" of the statute to be: (1) Applicant was driving; (2) Applicant was under the influence; and (3) his intoxication was the proximate cause of the accident that resulted in death.

center line separating the two lanes of traffic. Applicant told counsel he was driving home when he saw an on-coming car approaching with its lights on; he slowed down briefly as the car passed, but never saw Victim or even realized he had hit Victim until a moment afterwards. Counsel said he accompanied the MAIT team investigators to the evidence room where they reviewed the detached fender of Applicant's car, and the photographs of Applicant's car and the crime scene, and the Victim's bike. Counsel noted that it appeared Victim's helmet had gone under the car's fender and the marks on Victim's bike from impact were on the direct back, indicating Victim had been hit from behind. The MAIT team concluded based on their exhaustive review that Victim had been hit at a ten (10) degree angle and was thrown roughly ninety-one (91) feet on impact, after which the bicycle was momentarily caught under Applicant's car. They were also able to conclude Applicant was traveling between forty-one and forty-six (41 - 46) miles per hour at the time of impact. Counsel took Applicant to the scene of the accident where he was able to review the MAIT report with him, including the gouge and car tire marks in/on the pavement which the MAIT team had used in their calculations. Based on the MAIT report and his extensive investigation, counsel said it was clear that Victim was riding his bike on the edge of the road and was thrown forward upon impact.

With all of this in mind, counsel advised Applicant he believed it would be in his best interest to enter a guilty plea as it "would be hard to convince a jury it wasn't his fault". He told Applicant he would certainly try to work a defense at trial that the accident was Victim's fault as Victim swerved in front of the car when he heard Applicant blow his horn. Counsel also advised Applicant "it would be a jury question" as to whether they believed Applicant had exercised "due care" under the S.C. Code Ann. § 56-5-3435. Counsel reiterated his belief that Applicant fully understood the causation requirement of the statute "entirely", saying Applicant "got a law



school education [from me] on trying a felony DUI case" during their in-depth discussions. He advised Applicant it was "absolutely" his decision whether to plead or go to trial, and informed Applicant there were no plea negotiations from the State under which he could plead. Counsel also ensured Applicant understood the State would request the court impose the maximum twenty-five (25) year sentence.

On cross-examination, counsel said that while he initially thought it may be a strong defense against the proximate cause element to argue Victim had swerved into Applicant's car, the damage to Victim's bike and gouge marks in the pavement refuted that theory, a fact the Captain of the MAIT team was prepared to testify to at trial. Counsel also noted he had asked both the MAIT team investigators and his privately hired accident reconstruction expert whether the evidence could be consistent with Victim having swerved into Applicant's car, but both parties explicitly said no; rather, it was their opinion the evidence was consistent with Applicant having run Victim over. Counsel conceded Applicant had been traveling below the speed limit at the time of the accident despite the MAIT report's finding that Applicant had been "traveling too fast for conditions". Counsel finished by saying Applicant was aware it would ultimately be a jury question at trial whether his actions were the proximate cause of Victim's death in this case.

Based on the testimony presented at the hearing in conjunction with a thorough review of the plea transcript, this Court finds Applicant failed to carry his burden in proving counsel was ineffective for failing to adequately advise Applicant of the proximate causation element of the statute and the ability to challenge that element at trial. Further, this Court finds counsel's testimony to be credible, while conversely finding Applicant's testimony to be incredible. With that in mind, the credible testimony presented to this Court clearly refutes any allegation that Applicant was not sufficiently informed of the requirement or meaning of "proximate cause" as



it relates to the Felony DUI charge he was facing. Therefore, this Court finds Applicant was fully and adequately advised of the meaning of "proximate cause", and the State's burden of proving such as a necessary element of the statute. Further, this Court finds counsel undertook an extensive independent investigation to obtain all of the facts and details necessary to provide Applicant with a meticulous breakdown of exactly how the evidence would be used by the State in an attempt to prove proximate cause. Applicant was fully aware he could challenge the State's theories at trial (including proximate causation), but after reviewing the entirety of the evidence with counsel made the voluntary, informed and intelligent decision to waive his right to challenge such in order to enter a guilty plea. Having considered all of the testimony and the record, this Court finds counsel's performance did not fall below an objective standard of reasonableness in this regard and, therefore, was not deficient.

Further, this Court finds Applicant has failed to prove resulting prejudice as there is no reasonable likelihood that, but for counsel's alleged deficiency, Applicant would not have pled but would have insisted on going to trial. See Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The testimony and record before this Court indicate a considerable amount of evidence that would have been presented by the State at trial prove Applicant's failure to exercise due care was in fact the proximate cause of Victim's death. In addition to the detrimental findings of the MAIT report and anticipated supporting testimony of the MAIT team Captain explicitly concluding Applicant was the at fault party in the accident, numerous photographs of the five (5) year old victim's contorted bicycle, Victim's father's testimony, three videotapes showing Applicant's clearly intoxicated condition, and numerous other reprehensible pieces of evidence would have been introduced to the jury in what certainly would have been an emotionally driven trial. Additionally, according to counsel's credible testimony, Applicant's family members urged



him to enter a guilty plea after reviewing the evidence themselves. This Court finds Applicant has failed to sufficiently establish that, but for counsel's alleged failure to adequately explain proximate cause to him, he would not have pled guilty but would have insisted on going to trial in this matter.

Involuntary Guilty Plea

Applicant also contends his counsel was involuntarily entered as a result of counsel's erroneous assurance that Applicant would receive a sentence between one (1) and three (3) years if he entered a guilty plea.

Applicant testified he was aware that his plea was entered for a sentencing range between the mandatory minimum one (1) year in prison and the maximum twenty-five (25) years in prison, but alleged counsel said he would get a sentence between one and three years under a plea. He went on to say counsel advised he would get the maximum twenty-five year sentence if he went to trial to challenge the charge. Applicant said he and counsel never discussed the average sentences received in South Carolina for Felony DUI – Death Resulting cases, but had he known he wasn't going to receive a sentence between one and three years, he would never have pled guilty. Applicant said he believed there would be negotiations put on the record at his plea concerning the alleged one to three year sentencing range, but conceded that the plea judge specifically noted there were no plea negotiations at the plea hearing and he told the plea judge he had not been promised anything to induce the plea. Applicant alleged he didn't speak up at any point during the plea, including when the thirteen year sentence was handed down, because he "believed the solicitor and counsel had an agreement", and he "was acting on the advice of [counsel]". Applicant said at some point thereafter, his family met with counsel at his office

where they told him the thirteen year sentence "wasn't right" and asked him to file a motion to reconsider the sentence, which counsel filed September 22, 2006.

Also testifying at the PCR hearing was Gary Brown ("Gary"), Applicant's older brother². Gary testified he helped retain counsel with his family members on Applicant's behalf, after which he attended several meetings between counsel and Applicant. Gary alleged counsel told them Applicant would get the maximum twenty-five year sentence if he went to trial, but he had worked out a deal with the solicitor for Applicant to receive one to three years imprisonment if he pled guilty. Gary testified he was at the plea hearings, but was unable to ask counsel about not putting the negotiations on the record between the April plea and September sentencing hearing as counsel told Gary "he was not the client, so he didn't have to tell [Gary] anything." Gary stated he was very surprised when the judge imposed the thirteen year sentence at the September sentencing hearing. On cross-examination, Gary stated between the April plea hearing and the September sentencing hearing, he never contacted Applicant to talk to him about potentially asking to withdraw his plea, or otherwise bringing to the Court's attention at the sentencing hearing, that the alleged one to three year "agreement" had not been placed on the record at the plea. Gary likewise admitted there was no written agreement or other tangible evidence to prove counsel had made such a promise to Applicant.

Thereafter, Applicant's oldest brother, Jerome Brown ("Jerome") testified. He said after Applicant's arrest, he traveled to Camden to ask around about retaining an attorney and was recommended to speak with counsel. After retaining counsel, Jerome said, he attended several of Applicant's meetings with counsel, but not all of them. Jerome stated counsel told him that he could "probably get [Applicant] one to three years" if Applicant pled guilty to the charge. Jerome

² The Court will reference Gary and Jerome Brown by first name only as a means to differentiate between the two "Mr. Browns".

said they discussed this option as a family and, in an effort to avoid dragging Victim's family through a trial, advised Applicant to enter the plea. Jerome conceded there were no plea negotiations placed on the record at the plea or sentencing hearings, and that he had not attended all of the meetings between Applicant and counsel.

Counsel testified he reviewed the discovery materials with Applicant's family members during the meetings they attended, and stated Applicant's wife was very involved in the case as she was embarrassed by what had happened. Counsel also noted Applicant's brother, Gary Brown, was initially very involved in the case until he viewed the police videotapes showing Applicant's behavior immediately following his arrest, at which time Gary "backed off" and didn't want to be involved in Applicant's case. Counsel went on to specifically say after Applicant's family viewed the videotapes in discovery, they "hung their heads" and all agreed Applicant was clearly intoxicated at the time of the accident.

From there, counsel testified there were never any plea negotiations with the state as they had made it clear they would be requesting the maximum sentence for Applicant. This was a point counsel said he stressed to Applicant. Counsel said Applicant at one point said he wanted to plead to DUI – First Offense for probation, which counsel immediately advised him was not going to happen. Counsel said he gave Applicant a copy of the statute and made it clear to him that the absolute minimum sentence he would receive if he pled or was convicted at trial would be one year imprisonment.

Counsel plainly and adamantly testified he never told Applicant he should expect to receive a particular sentence, other than advising him of the mandatory minimum and statutory maximum penalties the charge carried. He went on to say the first time he had ever heard anything about a one to three year sentence agreement was during Applicant's testimony at the

PCR hearing. Counsel acknowledged he had told Applicant Judge Manning was a more lenient sentencing judge than others in the Fifth Circuit, but never once predicted what particular sentence Judge Manning would impose on Applicant.

On cross-examination, counsel testified he generally tries one or two Felony – DUI cases a year, and that he was very familiar with the range of sentences the particular judges in the Fifth Circuit generally impose on a defendant when convicted of Felony – DUI. He stated he made Applicant very aware of those averages, telling Applicant the last Felony – DUI case he had represented, the client received eight to ten years imprisonment, while he had seen some receive as much as twenty years imprisonment. Counsel plainly testified he never told Applicant he would receive the maximum twenty-five year sentence if he went to trial, and maintained that he was certain Applicant was aware of the potential range of sentences he was facing under the open ended plea he decided to enter.

This Court finds counsel was not ineffective in this regard. This Court reiterates its credibility findings as set forth above, and additionally finds both Jerome and Gary Brown's testimonies to be incredible. Counsel's credible testimony reveals he fully advised Applicant of the potential range of sentences he was facing, but never so much as hinted that Applicant should expect to receive a particular sentence. The record before this Court confirms that testimony, as counsel explicitly noted there were no negotiations or recommendations being made as part of the plea. Applicant readily admitted his understanding of the potential sentencing range he was facing and specifically told the plea judge he wanted to continue with his guilty plea directly after hearing counsel inform the court that there were no negotiations or recommendations. (Plea Tr. p. 12, ll. 1 – 7); see Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (Ct. App. 2007) (*Statements made during a guilty plea should be considered conclusive unless Applicant presents*



valid reasons why he should be allowed to depart from the truth of his statements); Crawford v. United States, 519 F.2d 347 (4th Cir. 1975).

After a thorough review of the testimony presented at the PCR hearing and record, this Court finds Applicant entered his plea voluntarily and intelligently after being more than sufficiently informed of all potential consequences and the details of the charges against him by competent counsel acting within the objective range of reasonableness demanded of defense attorneys. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct.1709 (1969) (*To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him*); see also Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (*"The voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing."*). Applicant was fully aware of the potential sentencing range he was facing and that he was entering an open-ended plea without any State negotiations, under which he could receive anywhere from the mandatory minimum one year sentence, up to the maximum twenty-five year sentence. Additionally, he was advised that the State would be requesting the Court impose the maximum sentence. Therefore, Applicant's contention that he entered the plea only as a result of counsel's promise for a particular sentence is wholly unfounded and without merit. Accordingly, Applicant has failed to carry his burden in proving counsel's performance was deficient in this regard.

Further, this Court finds no resulting prejudice as a result of the alleged promise made by Applicant. As set forth above in the prejudice analysis for first allegation, this Court finds no reasonable likelihood that, but for counsel's alleged promise for a one to three year sentence,

Applicant would not have pled guilty, but rather would have gone to trial where the State would request the maximum sentence after presenting the trial judge with the tragic facts and evidence against Applicant.

CONCLUSION

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

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR

AL

counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

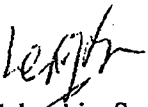
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 18 day of Oct, 2012.



R. Knox McMahon
Presiding Judge
Fifth Judicial Circuit


Columbia, South Carolina.

WITNESSES

Weeks, SCHP

ARREST WARRANT NUMBER

C106041

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury

APR 05 2006

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2005-GS-28-1372

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

April TERM 2006

THE STATE

vs.

Donald Earl Brown

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

JOYCE HODGKINS
CLERK OF COURT
KERSHAW COUNTY, S.C.

06 APR -5 PM 1:12

FILE FOR RECORD

Amended Indictment for

FELONY DRIVING UNDER THE INFLUENCE
(DEATH)

Section 56-5-2945 (A) (2)
Class B Felony
CDR Code 0395

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Deane M. McCall
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

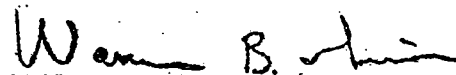
AMENDED INDICTMENT

FELONY DRIVING UNDER INFLUENCE (DEATH)

At a Court of General Sessions, convened on April 5, 2006, the Grand Jurors of Kershaw County present upon their oath:

That Donald Earl Brown did in Kershaw County on or about June 19, 2005, drive a vehicle while under the influence of alcohol, drugs, or the combination of alcohol and drugs, and did an act forbidden by law and/or neglected a duty imposed by law, to wit: subject, while operating a motor vehicle, failed to exercise due care (SC Code Section 56-5-3230), caused an accident that resulted in the death of Minor in violation of Section 56-5-2945, Code of Laws of South Carolina, (1976), as amended.

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



Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Kershaw

STATE

VS
Donald Earl Brown

2005

INDICTMENT/CASE#:

-GS-

28

1372

AW#:

C106041

Date of Offense:

June 19, 2005

S.C. Code §:

56-5-2945(A)(2)

CDR Code #:

013915

AKA:

Race:

B

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

0

1

☐ CASE RESTORED

SENTENCE

☒ PLEA☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Pelony Driving Under the Influence, Death resultingin violation of §56-5-2945 of the S.C. Code of Laws, bearing CDR Code # 013915☐ NON-VIOLENT ☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 13 days/months/years or ☐ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$100.00
§56-5-2995 (DUI Assessment)	\$12	\$12.00
§ 35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$7.11
TOTAL		\$724.11

PTUP

_____ 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

pmts. of \$_____ beginning _____

\$_____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

ATTEST: True, Correct & Certified

Copy of Original to be File in this

Court 1/19/06

Clerk of Court

Kershaw County

UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
Donald	Earl	Brown
STREET AND NO.	CITY	STATE

STATE LICENSED Sc	DRIVER'S LICENSE NO.	DR. LIC. CLASS A

VEH. LIC. NO.	STATE	MAKE OF VEH	YEAR	COMM. VEH.	<u>AUTO</u>	TRUCK	COPIB.
4	SC	KOD	7	HAZ. MT.	MOPED	MTRCYCL.	OTHER.

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER <i>Col. G. G. Galt</i>	STREET AND NO. <i>1121 Broad St.</i>

DATE	OF	TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE
		20		Camden	SC	29020

VIOLATION - COURT APPEARANCE REQUIRED YES NO		VIOLATION SECTION NO.
Felonv DUT (Death)		53-5-2945-

OWNER OF VEHICLE	DATE OF ARREST
1. Brown, [illegible]	6/10/95

ADDRESS OF OWNER Ridgeway, SC	DATE OF VIOLATION 6/19/07

BAIL DEPOSITED	NAME OF ARRESTING OFFICER	RANK
Tail	M. T. Mink	Det

RACE		SEX	DESCRIPTION OF ACCUSED				COUNTY	NUMBER
B		M	3	HT	HAIR	WT	EYES	Kern
				5'11"	Brown	150	Blue	28

DATE BAIL REC'D.	BY	BADGE	DISTRICT
		782	1

	20			D	S	M	T	W	T	F	S
CASE BEFORE		MAGISTRATE	☐	MUN. COURT	☒						

CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER _____

Y	1	2	3	4	5	6	7
TIME OF VIOLATION MILITARY TIME						WEATHER	

IF DIFFERENT FROM ABOVE.

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐ 2055

DISPOSITION					
GURTY ☐					
FORFEITED BOND ☐	PLED: NOLO CONTENDERE ☐	I	U	P	S
		O	HWY. NO.		

TRIAL BY: TRIAL OFFICER ☐ JURY ☐		1	2	3	4	5	6	7	8	9	10	11	12
DATE OF TRIAL IF ANY		MILES											

VERDICT OF TRIAL IF ANY		GUILTY ☐		DATE OF TRIAL IF ANY		MILES		N		E		S		W	
		NOT GUILTY ☐		20		12		a		2		3		a	
NAME OF SURETY		FEE		NAME OF COLLECTOR		NAME OF SURETY									

JAIL	SUSPEND	FINE	AMT. COLLECTED	AMT. SUSPENDED	CITY	CODE
					London	1

COMMITTED TO:	Arrest as Result of Accident <i>yes</i>	OFFENSE CODE <i>99</i>	B.A. LEVEL <i>Pending</i>

CERTIFIED CORRECT	DATE	C 106041

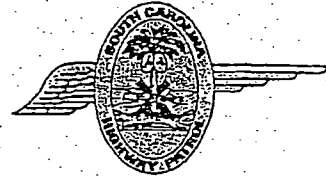
TRIAL OFFICER'S COPY

CLERK OF COURT
KERSHAW COUNTY, S.C.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
Jayme L. Jones
Clerk of Court Kershaw County

SCHP-M-001
EFFECTIVE 8-02

SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM



COVER SHEET

<u>TEAM</u>	<u>DATE OF COLLISION</u>	<u>TIME (2400)</u>
TROOP 9 / MIDLANDS	JUNE 19, 2005	2045 - 2055 HOURS

PRIMARY INVESTIGATING AGENCY

SCHP / TROOP 1 / POST B / KERSHAW

PRIMARY INVESTIGATING OFFICER

L/CPL. M.J. MEEKS

CASE NUMBER

ML-027-05

GPS COORDINATES

LATITUDE: 34° 17' 00.90" N
LONGITUDE: 080° 47' 48.60" W

TEAM LEADER

SERGEANT J.D. DAY

SCDOT ENGINEER(S)

N/A

MECHANICAL SPECIALIST

N/A

OTHER TEAM MEMBERS

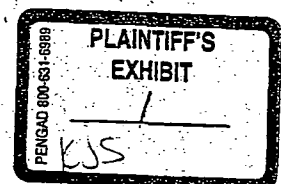
CORPORAL JOHNNY ROSADO
L/CPL. J.C. RIKARD JR.

FREEDOM OF INFORMATION ACT REQUEST SHOULD BE DIRECTED TO:

FOIA INFORMATION OFFICER
SCDPS, OFFICE OF GENERAL COUNSEL
P.O. BOX 1993
BLYTHEWOOD, SOUTH CAROLINA 29016

APR - 8 2013

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APPELLATE, ETC.



INTRODUCTION

This limited report will outline the findings of the Midlands Multidisciplinary Accident Investigation Team relating to the traffic collision that occurred on June 19, 2005, Kershaw County, State of South Carolina. The collision occurred between 2045 - 2055 hours on Secondary 28 - 303 (hereafter Shriver's Green Road) approximately 12 miles west of Camden, South Carolina. The collision involved a bicycle and vehicle.

Vehicle # 1 (bicycle) was a black and yellow Magna GridIron, model number 8511-69. The rider of the bicycle was Minor of Road in Ridgeway, South Carolina. He was a 5-year old white male. He died as a result of injuries sustained in the collision.

Vehicle # 2 was a 1998 Jeep Cherokee Classic 4-door SUV, red in color, vehicle identification number 1J4FT685WL267665. Vehicle # 2 displayed South Carolina license plate . Vehicle # 2 was operated and owned by Donald Earl Brown of 1017C Shriver's Green Road in Ridgeway, South Carolina. Donald Brown received no injuries from the collision with vehicle # 1.

The events of the collision are as follows: vehicle # 1 (bicycle) was traveling north on Shriver's Green Road next to the edge of the roadway.

Vehicle # 1 was following two other bicycles. Vehicle # 2 was traveling north also on Shriver's Green Road. The driver of vehicle # 2, not recognizing vehicle # 1 and its rider in time, struck the rear of the bicycle and rider. The rider was knocked forward to the right, and off of the roadway into a ditch. The bicycle initially was tangled with the right front wheel of vehicle # 2 and eventually was thrown off the right side of the roadway. Both rider and bicycle came to rest off the northbound shoulder within 15 - 20 feet of each other (See detailed map in appendix section of the report). Vehicle # 2 continued down Shriver's Green Road for approximately 625 feet before backing into the driveway at 249 Shriver's Green Road.

L/Cpl. M.J. Meeks / South Carolina Highway Patrol / Troop 1 / Post B was dispatched to the collision scene. He is the primary investigating officer of this collision.

NOTIFICATION

On June 19, 2005, Sgt. J.D. Day of the Midlands MAIT / Troop 9 received a call from Lt. T.B. Collins of the SCHP / Troop 1 / Headquarters requesting assistance in this collision. Sgt. Day responded to the collision scene and arrived at approximately 2311 hours. The following agencies were on the scene upon MAIT arrival:

South Carolina Highway Patrol – Lt. Collins, Sgt. D.E. Branham

Kershaw County Sheriff's Department

Kershaw County Fire/EMS Department

Upon arrival at the scene, MAIT met with Lt. Collins and Sgt. Branham, the supervisors on the scene. MAIT walked through the collision scene with them, and was updated on the investigation to that point. MAIT began documenting the evidence found at the scene.

ISSUES

After consulting with Lt. Collins and examining the collision scene, the Midlands MAIT would address the following issues:

- Provide a Scale Diagram of the collision scene;
- Document all evidence found at the collision scene;
- Determine the speed of vehicle # 2, if possible;
- Document physical evidence from both vehicles to determine how the collision occurred.

This limited report will focus only on the issues mentioned above and all other aspects of the investigation will be handled by the primary investigating officer.

METHODOLOGY

Using accepted collision reconstruction principles and techniques, the Midlands Multidisciplinary Accident Team will attempt to determine previous issues mentioned in this investigation. The findings, inferences, and conclusions will be based on the review, analysis, and/or study of the following:

- South Carolina Uniform Traffic Collision Report;
- South Carolina Advanced Collision Report;
- Personal examination of the collision scene on June 19 & 20, 2005;
- Photographs of the collision scene on June 19 & 20, 2005;
- Photographs of the vehicles on June 19 & 20, 2005;
- State of South Carolina Search Warrant – Kershaw County
- Personal examination of the Jeep Cherokee on June 20, 2005;
- South Carolina Law Enforcement Division – Toxicology Report;
- Affidavits taken from witnesses.

ROADWAY EXAMINATION

On June 19, Sgt. Day and again on June 20, 2005 with L/Cpl. J.C. Rikard, examined the collision scene and completed a Forensic Mapping of the collision area. The collision site is located approximately 12 miles west of the city of Camden, South Carolina. The road the collision occurred on is identified as Secondary Road 28 - 303 (Shriver's Green Road). The following photographs depict the roadway and physical evidence found in the area of the collision.



Figure 1: Southbound view of Shriver's Green Road at the Collision site.

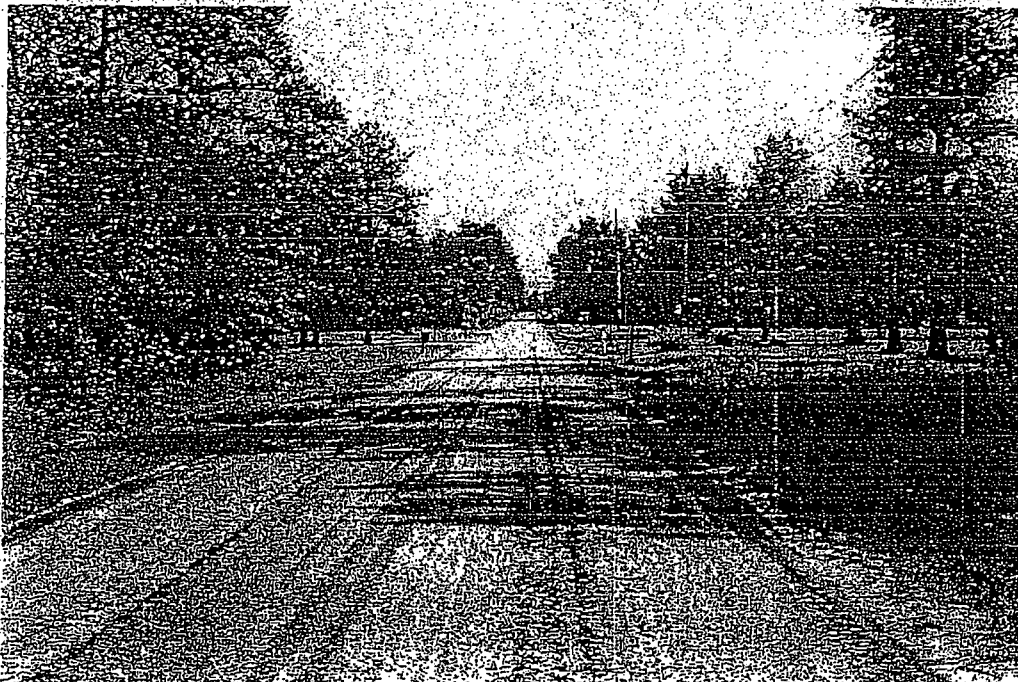


Figure 2: Northbound view of Shriver's Green Road just north of area of impact.



Figure 3: Area of impact and maximum engagement with both vehicles.

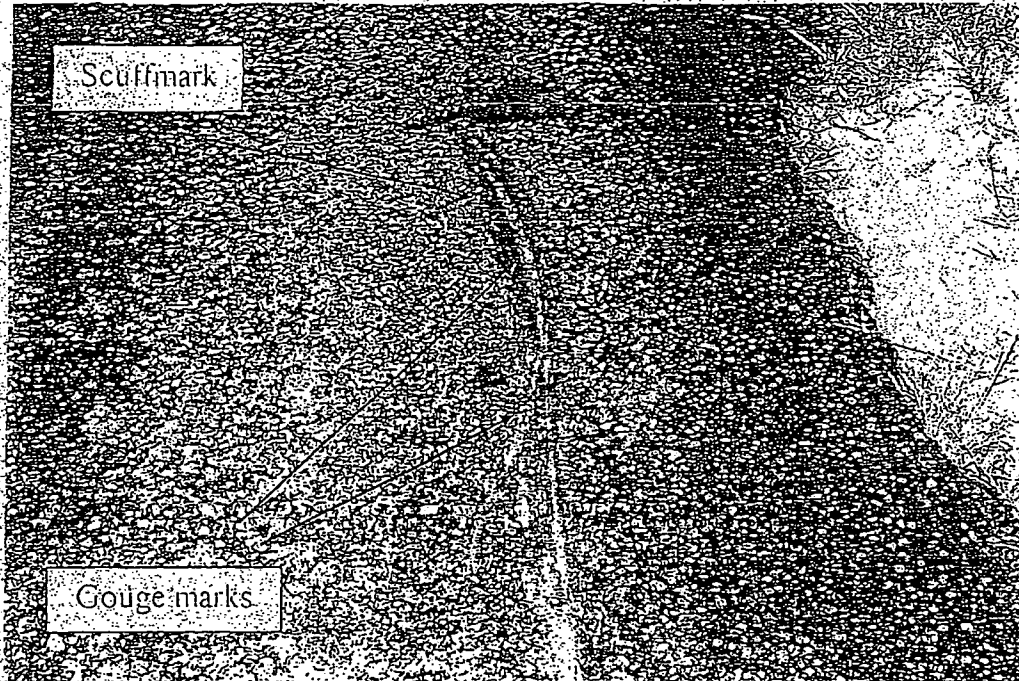


Figure 4: Scuff and gouge marks from vehicle # 1 (bicycle) at maximum engagement.



Figure 5: Scuff mark from vehicle # 2 (locked wheel due to bicycle)

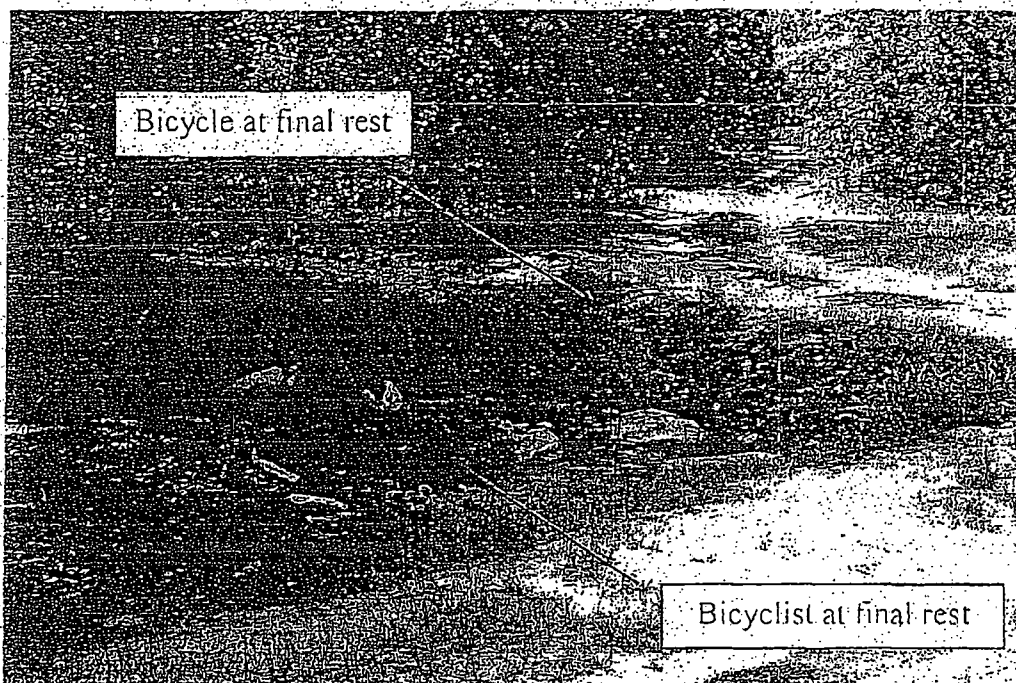


Figure 6: Northbound shoulder of roadway at dirt driveway.



Figure 7: Fender Liner and bumper corner located on northbound shoulder between impact and final rest of the bicycle.

VEHICLE EXAMINATION

Vehicle # 1 (bicycle) was a black and yellow 16" Magna GridIron, model number 8511-69. On June 20, 2005, Sgt. Day examined all of the physical evidence from vehicle # 1 at the collision scene. The physical evidence was photographed and then collected. The following photographs depict the damage observed by MAIT.



Figure 3: View of the bicycle from the left side.

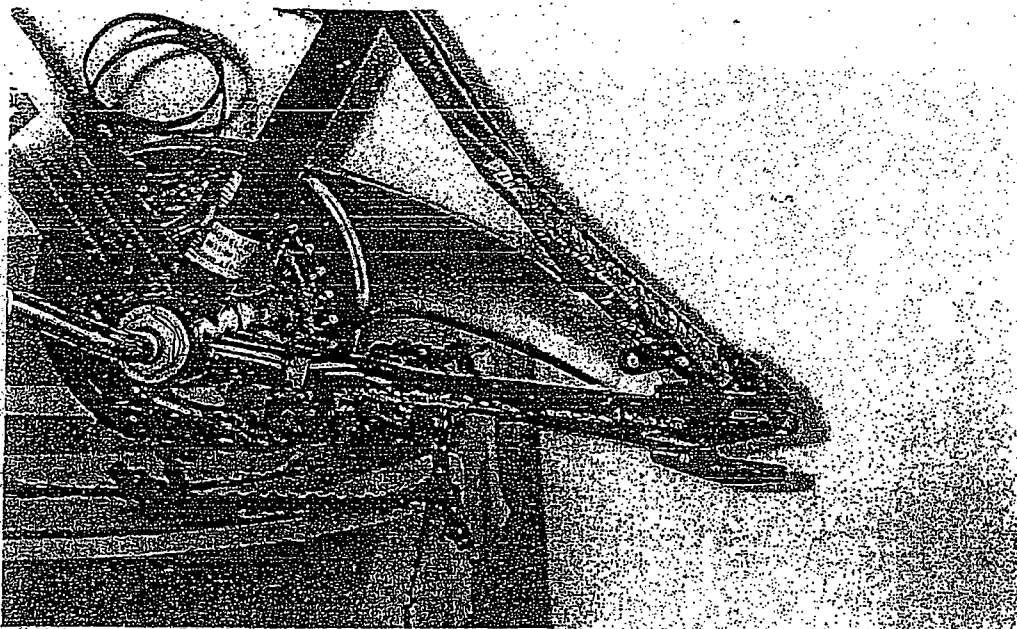


Figure 9: Close-up view of the rear fork area from the bicycle.

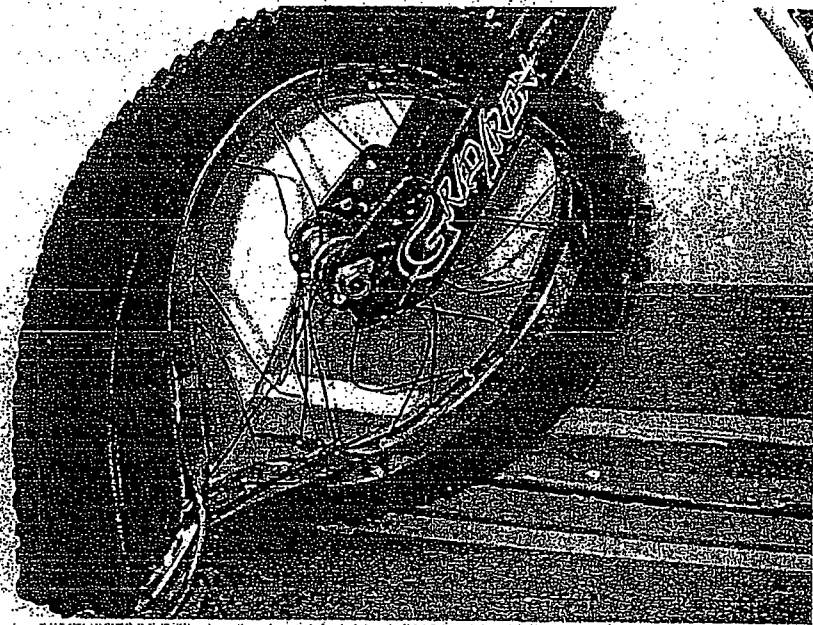


Figure 10: Front wheel of the bicycle.

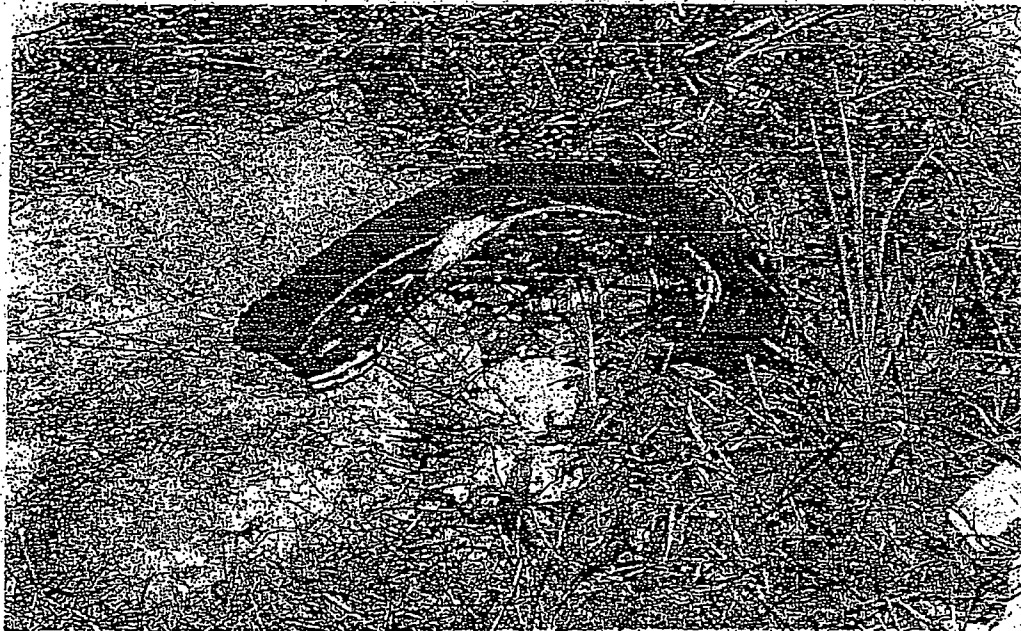


Figure 11: Rear wheel from the bicycle located on the southbound shoulder.

Vehicle # 2 was a 1998 Jeep Cherokee Classic 4-door SUV, red in color, vehicle identification number 1J4FT685WL267665. On June 20, 2005, Sgt. Day briefly examined vehicle # 2 at the collision scene. Sgt. Day photographed the exterior of vehicle # 2. The vehicle was towed and secured at Kershaw County Public Works Storage Facility. On June 21, 2005, Sgt. Day and L/Cpl. Rikard performed a follow-up examination of vehicle # 2 and removed physical evidence (car parts) from the right front corner area. The following photographs depict the damage observed by MAIT investigators.



Figure 12: View of the right front corner of vehicle # 2.

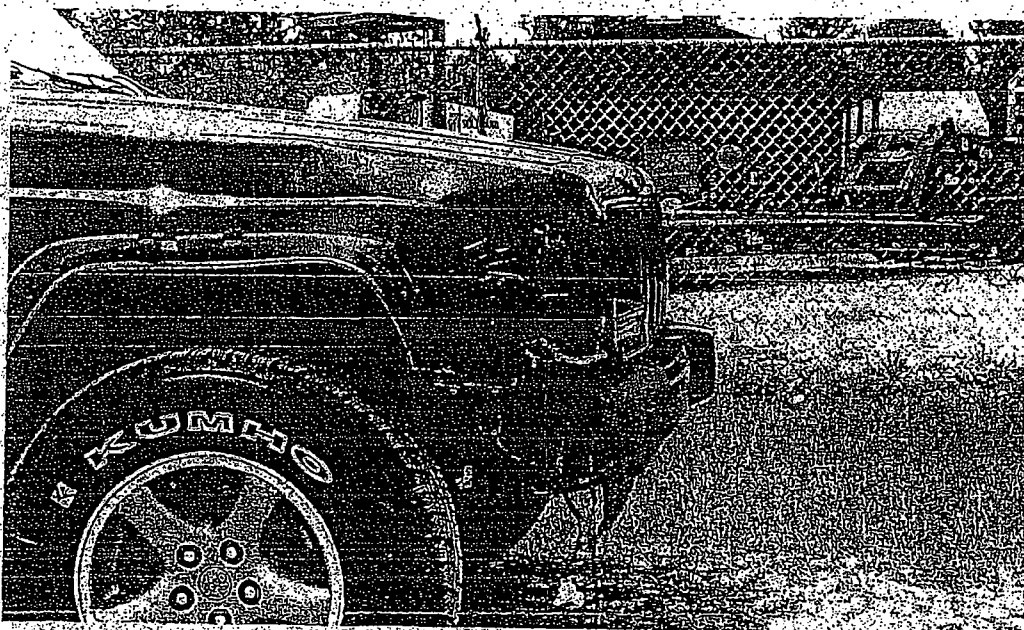


Figure 13: Close-up view of right side quarter panel of vehicle # 2.

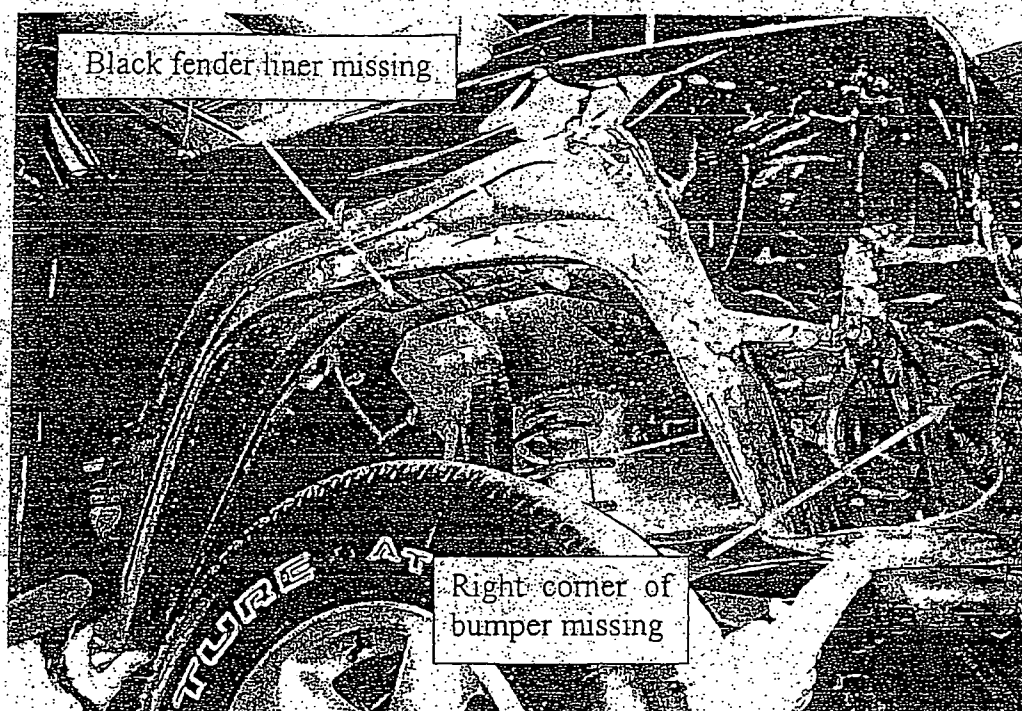


Figure 14: View of the area missing a fender liner and corner of bumper from vehicle #2.

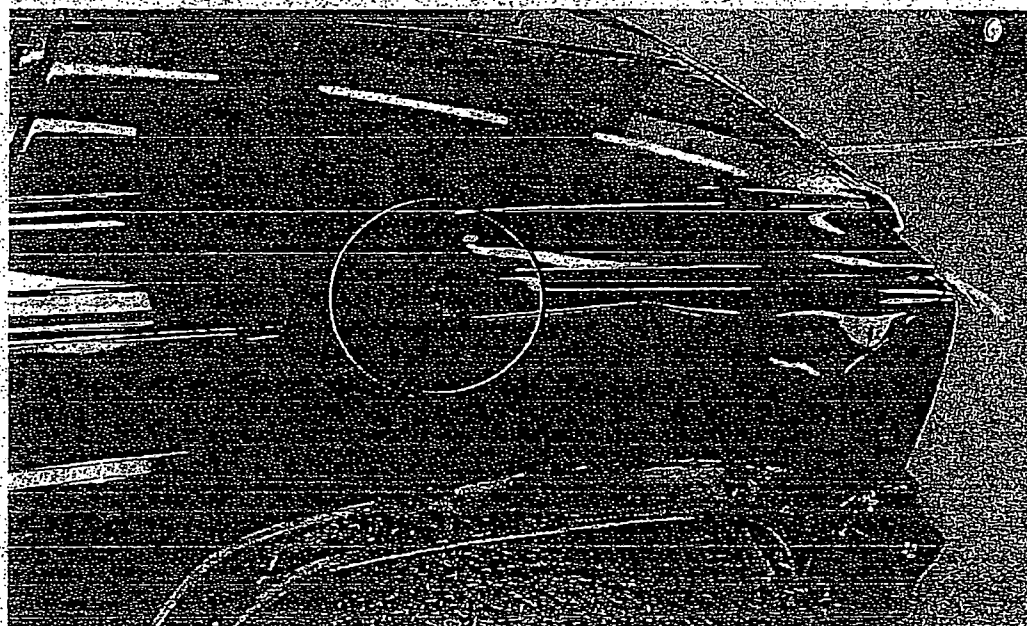


Figure 15: Black scuff mark on top of quarter panel.

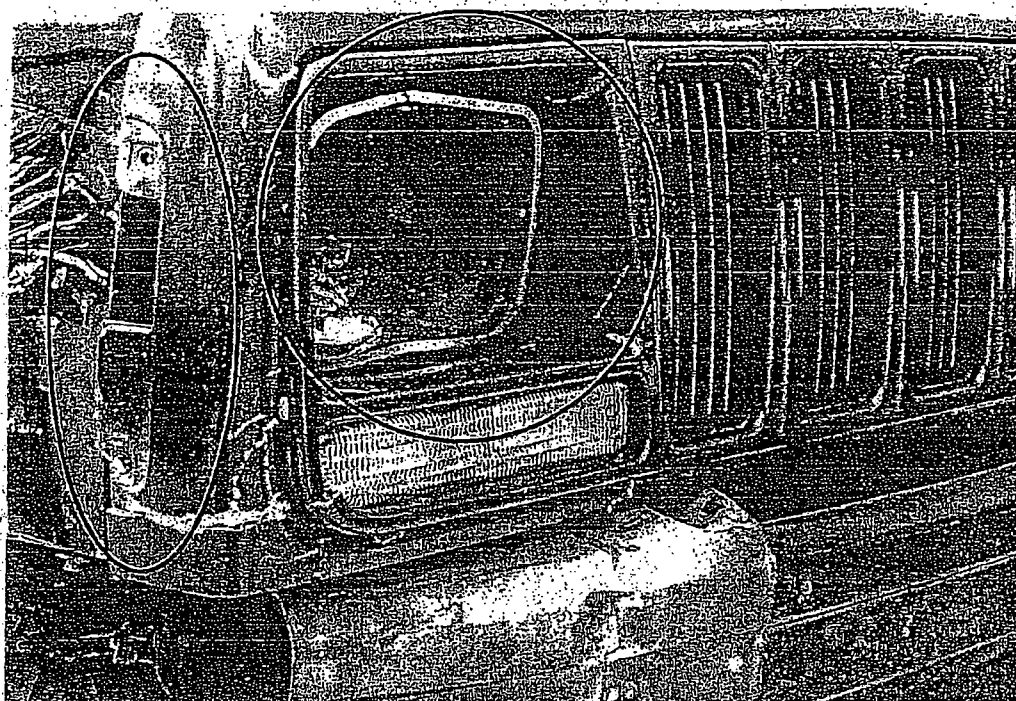


Figure 16: Side marker Lamp and headlamp broken during impact.

CALCULATIONS

The Midlands MAIT was requested to determine the speed of vehicle # 2. Based on the physical evidence left by vehicle # 1 (the bicycle) and vehicle # 2, MAIT was able to determine the area of impact. Midlands MAIT calculated the speed with the Searle's motorcycle/pedestrian formula.

Using the Searle's formula, the first information needed was the total distance the bicyclist traveled from impact to final rest. The distance measured was 91 feet. The author's friction value used in this formula is .79 for grass/dirt. The last variable in this formula is determining the bicyclist takeoff angle. Due to the center mass height of the bicyclist, this collision would be described as a forward trajectory (most common trajectory with children). MAIT has concluded that the angle that the bicyclist departed would be less than 10 degrees. The speed of vehicle # 2 was calculated in a range from 41 to 46 miles per hour.

Calculations were made using the computer software program *AR PRO*. All calculations were confirmed using hand computations. A copy of the calculations can be found in the Appendix section of this report.

FORENSIC ANALYSIS

On June 21, 2005, Sgt. Day and L/Cpl. Rikard of the Midlands MAIT inspected and examined vehicle # 2 for physical evidence that could be compared to physical evidence removed from vehicle # 1(bicycle). The following items were removed or cut away from vehicle # 2 and submitted to SLED for analysis:

- Black scuff (transfer evidence) off the right front quarter panel (See figure # 15)
- Right front grille around the headlamp – red in color
- Portion of the right front quarter panel – red in color
- Right front corner of bumper from the collision scene – red in color

Along with above items, MAIT submitted the following items from vehicle # 1:

- Magna Bicycle (vehicle # 1) that had red paint on the nut and bolt that secures the seat. (See figure # 8)
- Bicyclist helmet that is made with black foam.

At the time of this report, the South Carolina Law Enforcement Division – Trace and Paint Department had not completed the analysis requested by the Midlands MAIT.

TOXICOLOGY

Blood and urine sample were obtained and submitted to the South Carolina Law Enforcement Division - Toxicology Department. Donald Earl Brown's toxicology report indicates a blood alcohol result of .225 %. The alcohol in the urine yielded a blood alcohol result of .337 %. Both samples were above the inferred level of impairment in the state of South Carolina, which is .08 %. The report had a negative result for Cocaine and/or Cocaine metabolites. No other drug testing was performed.

CONCLUSION

Based upon the Midlands Multidisciplinary Accident Investigation Team's investigation, analysis, and review, we offer certain facts, inferences and conclusions. The facts, inferences, and conclusions stated in this report are based on information available to the Midlands MAIT at the time this report was written. If additional information becomes available, it may bear on these inferences and conclusions. Therefore, the Midlands MAIT reserves the right review all inferences, conclusion, or opinions at any future point in time.

FINDINGS

1. The weather at the time of the collision was clear and the road was dry. The tar and gravel roadway surface was in good condition; therefore the environmental factors did not contribute to this collision.
2. According to the U.S. Naval Observatory Astronomical Applications Department, sunset was 2038 hours (8:38 p.m.). The moon rose at 1816 hours (6:16 p.m.) with a waxing

gibbous and 91 % of the Moon's visible disk illuminated (See article in Appendix).

3. Based on the Kershaw County Communications / 911 CAD systems, the first call was received at 2055 hours (8:55 p.m.).

Therefore, the collision would have occurred at or near the time of sunset and was not a contributing factor.

4. The bicyclist (vehicle # 1) was riding on the proper side of roadway near the pavement edge.

5. The minimum speed of vehicle # 2 was calculated in a range from 41 to 46 miles per hour. Shriver's Green Road had no posted speed limit sign and is classified as a 55 speed zone. The speed of vehicle # 2 did contribute to the severity of the collision.

6. The driver of vehicle # 2 failed to slow down behind vehicle # 1 and struck the bicyclist from the rear. Driving too fast for the condition was a contributing factor.

7. The driver of vehicle # 2 was under the influence of alcohol according to the toxicology report from SLED. Operating a motor vehicle while under the influence of alcohol was a contributing factor in this collision.

MEDIA LOGPHOTOGRAPHS

Sgt. J.D. Day of the Midlands MAIT took a total of 48 color, 35 mm photographs of the scene and vehicles on June 19 & 21, 2005. Sgt. Day took 57 digital photographs of the scene and vehicles on June 21, 2005 and August 17, 2005. Troop 1 / Post B took a total of 42 color, 35 mm photographs of the scene and vehicle on June 19, 2005. Photograph negatives are on file at the Midlands MAIT office.

VIDEO

No video footage was taken during the investigation of this collision.

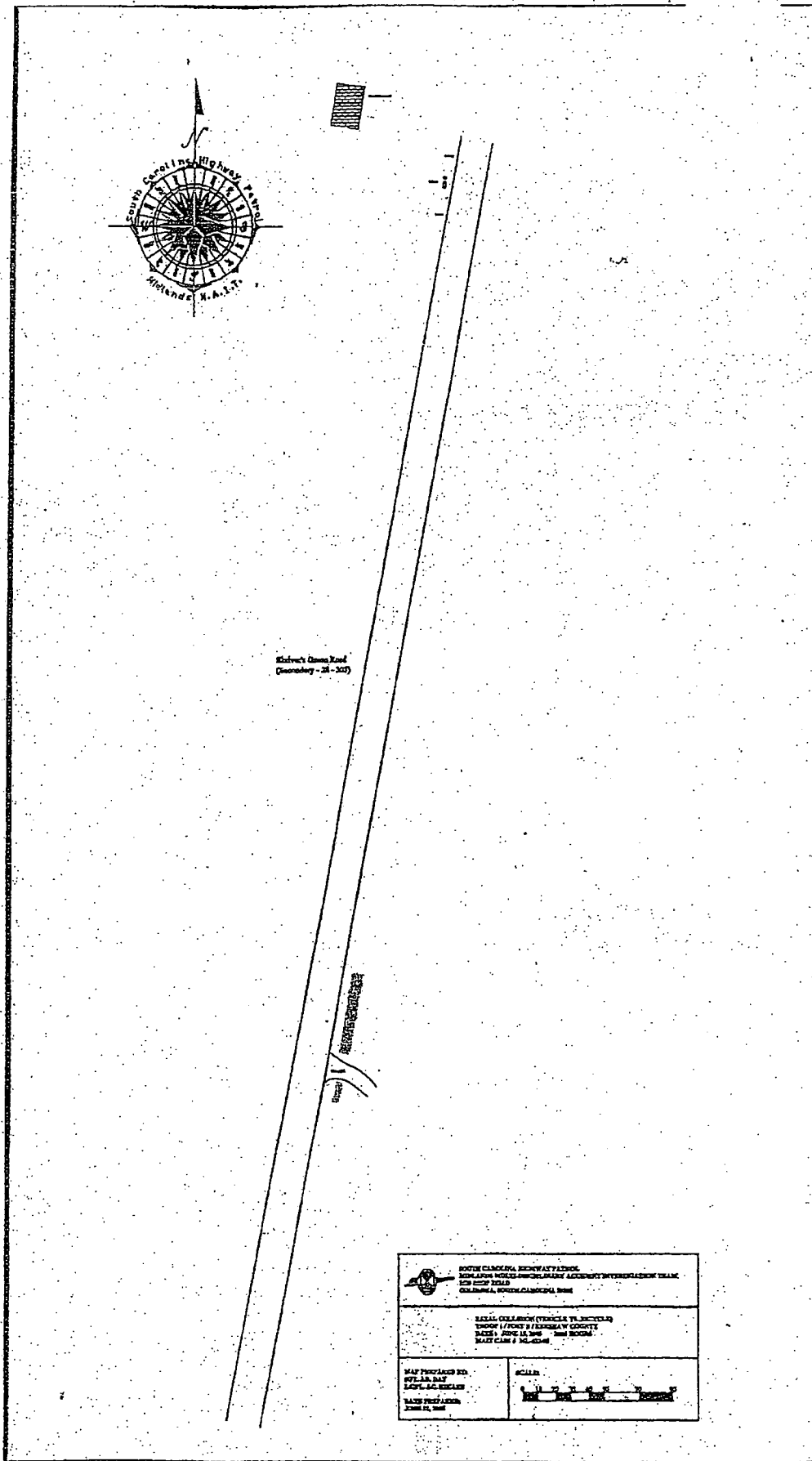
AUDIO

No audio recordings were taken during the investigation of this collision.

APPENDIX

The following pages contain copies of documents pertinent to this investigation. The appendix section includes but is not limited to the following:

- Scale diagrams of the collision scene;
- Copies of South Carolina map sections taken from *Street Atlas*;
- South Carolina Uniform Collision Report;
- State of South Carolina Search Warrant – Kershaw County;
- SCDPS affidavit taken from Timothy Spradley on June 27, 2005;
- SCDPS affidavit taken from Darryl Moore on June 19, 2005;
- South Carolina Law Enforcement Division – Toxicology Department;
- U.S. Naval Observatory Astronomical Applications Department;
- Printout from Kershaw County Communication / 911 Report;
- Expert AutoStats printouts for a 1998 Jeep Cherokee;
- Calculations from *AR PRO 7.5*.



IMPACT AND PHYSICAL EVIDENCE

Shriver's Green Road
(Secondary - 28 - 303)

Rear Wheel

Ditch (grass and dirt)

Seat

Seat Post

Helmet (location after removed from rider)

Coccyx of Man (victim's body)

Glass from vehicle

Bicycle

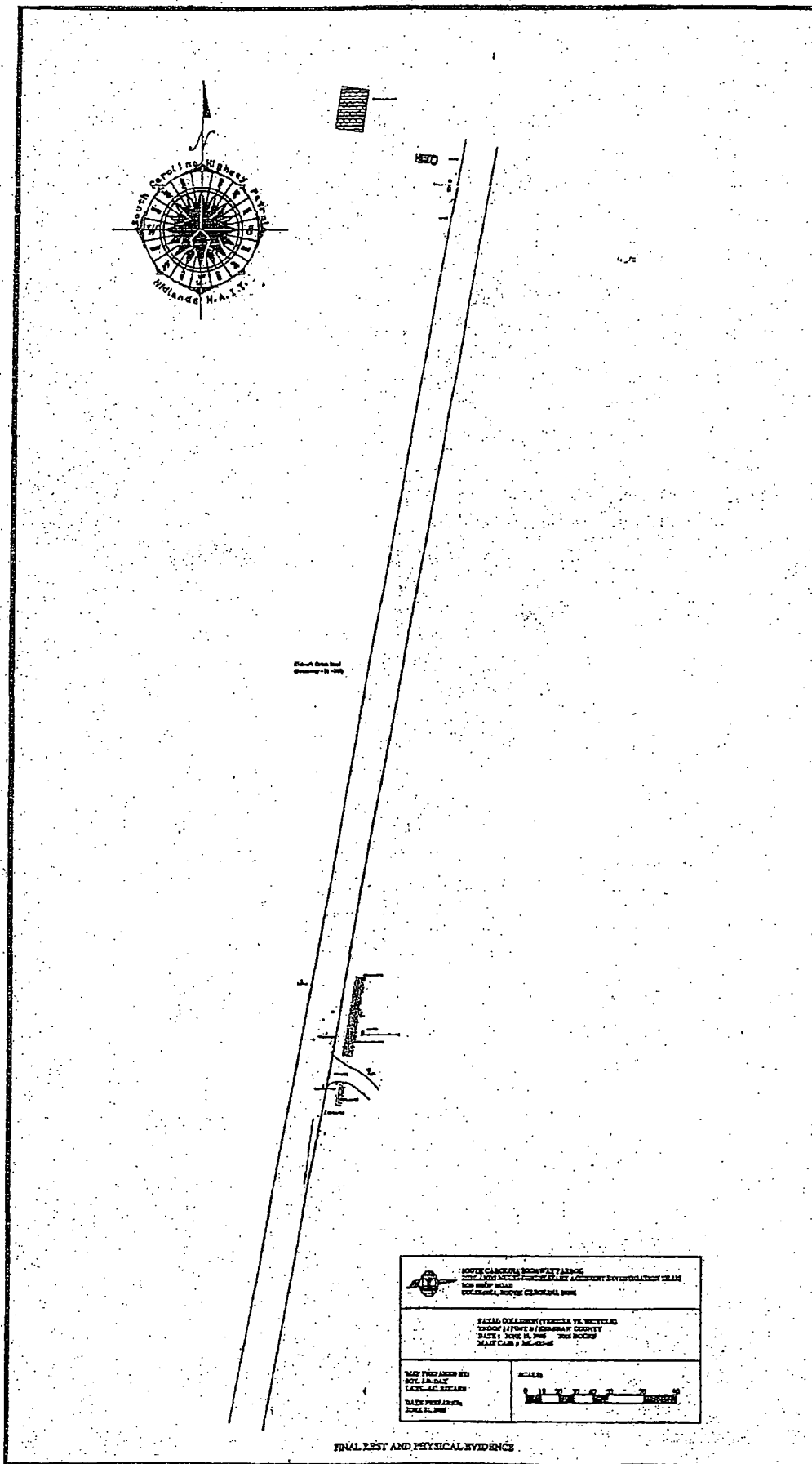
Driveway (Dirt)

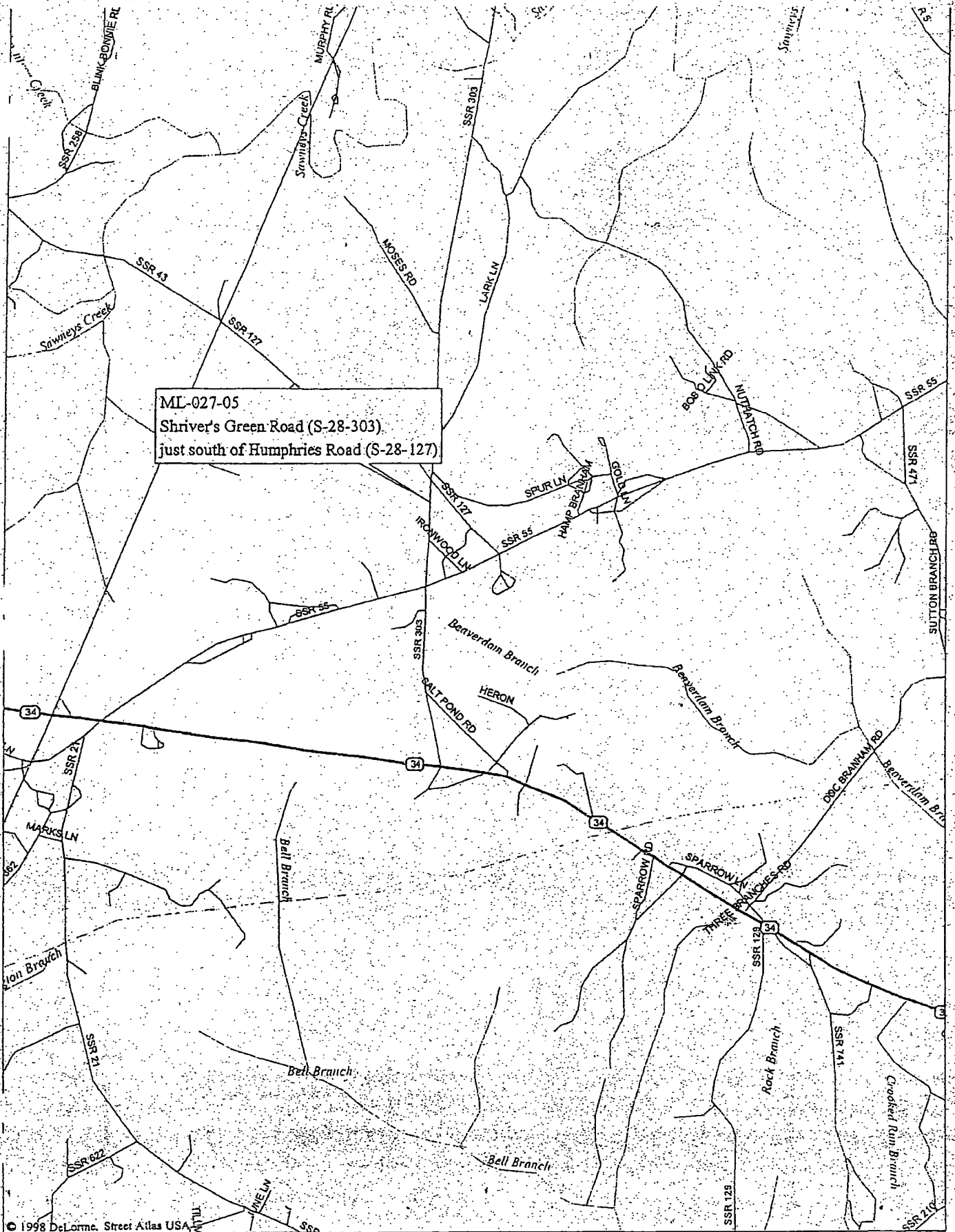
Bumper / Fender Liner

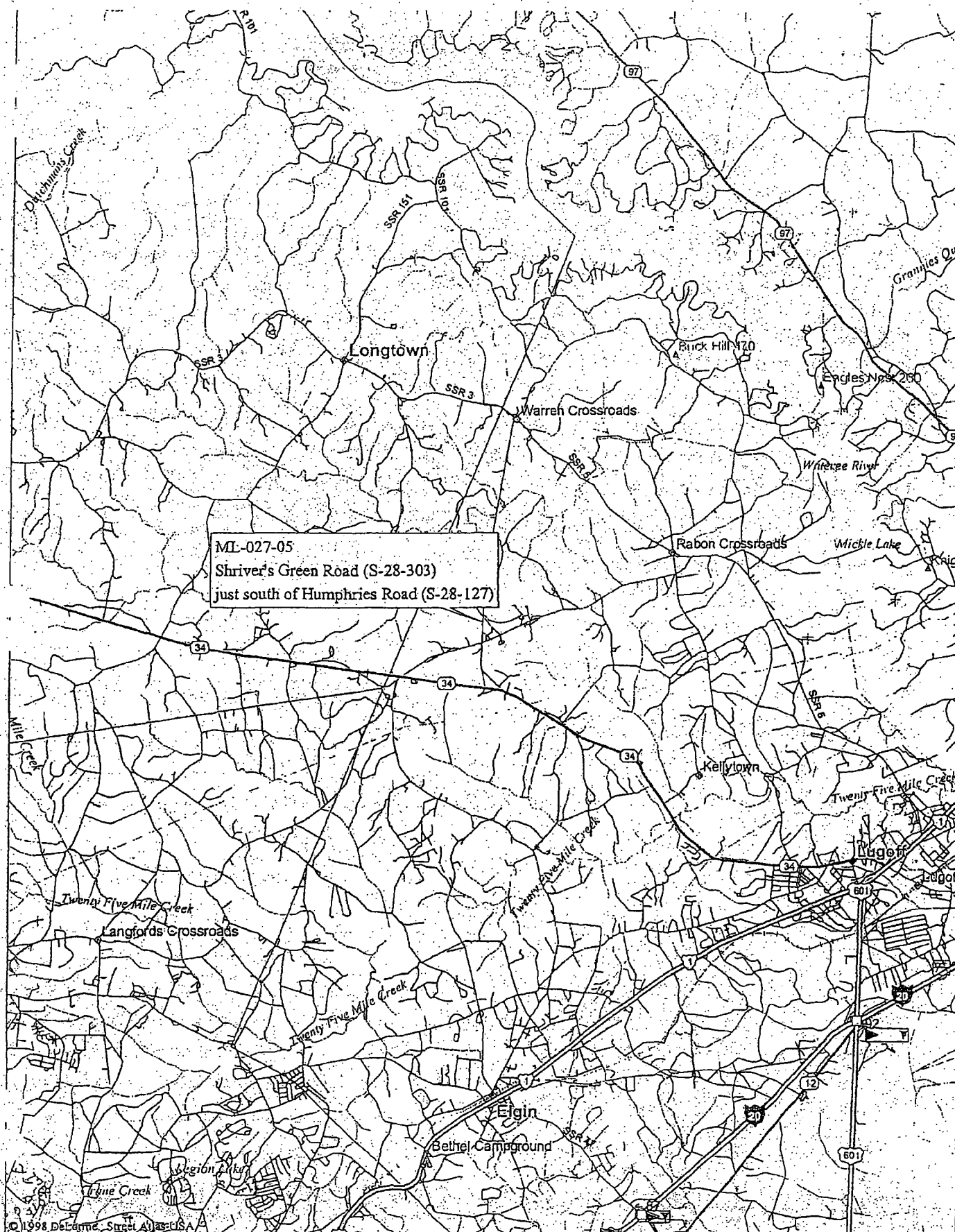
Ditch (grass and dirt)

Side Marker Cover









ORIGINAL

D.P.S. USE ONLY				Page #	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM		# Of Units	Amended - Attach Copy of Original Report	Notified	Arrived																	
				1	TR-310 (REV. 01/2001)		2	Corrected	2058	2:15																	
Date	Time	County	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Collision Location (RL # / Name)		0- Main 1- Alternate 2- Spur	3- Connection 4- Business 5- Other	Miles	Dir.	Near City or Town of																
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Lane # / Dir.	Distance Offset	Direction	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Base Intersection (RL # / Name)		0- Main 1- Alternate 2- Spur	3- Connection 4- Business 5- Other	ASRU code	MP/Grd.																	
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n/a	N E S W	1- Entrance 2- Exit	N E S W			55			34.170090	80.474860																	
S-294004 Driver/Pedestrian's Full Name						S-294005 Driver/Pedestrian's Full Name																					
Sradley - Sullivan, Arnold Daniel						Brown - Donald Earl																					
Unit #	Sex	Race	Street/V.R.F.D.	City, State, & Zip		Unit #	Sex	Race	Street/V.R.F.D.	City, State, & Zip																	
1	M	W		Camden, SC 29130		2	M	B	10176 Shriener Green Rd	Ridgeway, SC 29130																	
Birth Date						Birth Date																					
1						2																					
State	Unver's License #	Insurance Company	Year		Body	Vehicle Make	VIN #	State	Unver's License #	Insurance Company	Year																
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Home Telephone	Owner's Full Name		Home Telephone		Owner's Full Name																						
()			()		Brown - Donald Earl																						
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Contributed To Collision	Yes	No	City, State, & Zip	Contributed To Collision	Yes	No	City, State, & Zip																				
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Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Org Info (see back): Yes No	Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Org Info (see back): Yes No																		
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1	M	W		Camden, SC 29130		2	M	B		Camden, SC 29130																	
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1						2																					
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Contributed To Collision	Yes	No	City, State, & Zip	Contributed To Collision	Yes	No	City, State, & Zip																				
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Dir. of Travel: Unit 1: (N) S E W Unit 2: (N) S E W Unit 3: N S E W																											
<table border="1"> <thead> <tr> <th>Unit 1 Dam.</th> <th>Unit 2 Dam.</th> <th>Unit 3 Dam.</th> <th>Prop. Dam. 1</th> <th>Prop. Dam.</th> </tr> </thead> <tbody> <tr> <td>\$ 60.00</td> <td>\$ 2,000.00</td> <td>\$ n/a</td> <td>\$ n/a</td> <td>\$ n/a</td> </tr> </tbody> </table>												Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam.	\$ 60.00	\$ 2,000.00	\$ n/a	\$ n/a	\$ n/a						
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<table border="1"> <thead> <tr> <th>Property Owner/Witness</th> <th>Address</th> <th>State</th> <th>Zip</th> <th>Phone</th> </tr> </thead> <tbody> <tr> <td>Monica - Dacely</td> <td>221 Shriener Green Rd</td> <td>SC</td> <td>29130</td> <td>438-3639</td> </tr> </tbody> </table>												Property Owner/Witness	Address	State	Zip	Phone	Monica - Dacely	221 Shriener Green Rd	SC	29130	438-3639						
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Unit #1 a pedal cycle was traveling north on Secondary 303. Unit #2 was traveling north on Secondary 303. The driver of Unit #2, driving under the influence, struck the rear of Unit #1, causing the death of Unit #1.																											
NOTICE: THE TRAFFIC COLLISION REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION. NO WARRANTY IS MADE AS TO THE ACTUAL ACCIDENT THEREOF.																											
<table border="1"> <thead> <tr> <th>Investigating Officer's Name</th> <th>Rank</th> <th>Badge #</th> <th>Code</th> <th>Date</th> <th>Reviewer's Name</th> <th>Rank</th> <th>Internal Agency Code</th> </tr> </thead> <tbody> <tr> <td>Moore - M. T.</td> <td>6601</td> <td>282</td> <td>440100</td> <td>06-19-2005</td> <td>OC B. R. R. R.</td> <td>Sgt.</td> <td></td> </tr> </tbody> </table>												Investigating Officer's Name	Rank	Badge #	Code	Date	Reviewer's Name	Rank	Internal Agency Code	Moore - M. T.	6601	282	440100	06-19-2005	OC B. R. R. R.	Sgt.	
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Ice</td> </tr> <tr> <td>06 - Movements Essentially Straight Ahead</td> <td>13 - Walking, Playing, Cycling</td> <td>26 - Working</td> <td></td> <td>2 - Wet</td> <td>4 - Slush</td> <td>6 - Contaminants</td> </tr> <tr> <td>07 - Overtaking/Passing</td> <td>18 - Other</td> <td>27 - Working</td> <td></td> <td>01 - Stop and Go Light</td> <td>21 - Officer or Flagman</td> <td>22 - Oncoming Emergency Vehicle</td> </tr> </table> </td> </tr> <tr> <td colspan="9"> <table border="1"> <tr> <td>Weather Condition</td> <td>3 - Cloudy</td> <td>6 - Fog, Smog, Smoke</td> <td>02 - Flashing Traffic Signal</td> <td>11 - RR (X-bucks, Lights & Gates)</td> <td>31 - Pavement Markings (only)</td> <td>43 - Yield Sign</td> <td>51 - Flashing Beacon</td> </tr> <tr> <td>1 - Clear (no adverse conditions)</td> <td>4 - Sleet, Hail</td> <td>7 - Blowing Sand</td> <td>12 - RR (X-bucks & Lights)</td> <td>41 - Stop Sign</td> <td>44 - Work Zone</td> <td>45 - None</td> <td></td> </tr> <tr> <td>2 - Rain</td> <td>5 - Snow</td> <td>8 - 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04 - Head On	11 - Separation of Units	23 - Motor Veh. (Other Roadway)	31 - Motor Veh. (Other Roadway)	43 - Bridge Rail	51 - Guardrail Face	59 - Other (Wall, Building, Tunnel, Etc.)																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
05 - Other Non-collision	12 - Split (Two-Wheel Vehicle)	24 - Motor Veh. (Other Roadway)	32 - Motor Veh. (Pushed)	44 - Culvert	52 - Highway Traffic Sign Post	60 - Tree																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
	13 - Other Non-collision	25 - Motor Veh. (Pushed)	33 - Unknown	45 - Guard	53 - Impact Attenuation/Crash Cushion	61 - Utility Pole																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
	14 - Unknown Non-collision	26 - Pedestrian	34 - Unknown	46 - Other	54 - Light/Luminance Support	62 - Work Zone Mark. Equipment																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
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D.P.S. USE ONLY										Page #										SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM										# Of Units										Amended - Attach Copy # Original Report										Notified										Arrived																																							
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Lane # / Dir.										Distance Offset										Direction										1- Interstate 2- US Primary 3- SC Primary										4- Secondary 5- County 6- Other										Base Intersection (Rt. # / Name)										0- Main 2- Alternate 5- Spur										6- Connection 7- Business 8- Other										ASRUCODE																			
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Dir. of Travel										Unit 1: N S E W										Unit 2: N S E W										Unit 3: N S E W										Unit 1 Dam.										Unit 2 Dam.										Unit 3 Dam.										Prop. Dam. 1										Prop. Dam. 2																			
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Investigating Officer's Name										Rank										Badge #										Code										Date										Reviewer's Name										Rank										Internal Agency Code																													
20-11-11										11/11										772										11/11										11/11										11/11										11/11										11/11																													

[illegible]

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

205

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME <i>Donald</i>	MIDDLE NAME <i>Earl</i>	LAST NAME <i>Brown</i>
STREET AND NO. <i>P. Highway 112</i>		CITY <i>Camden</i>
STATE <i>SC</i>		STATE <i>SC</i>

STATE LICENSED <i>SC</i>	DRIVER'S LICENSE NO. <i>5</i>	DRI. LIC. CLASS <i>A</i>
VEH. LIC. NO. <i>SC 169</i>	STATE <i>SC</i>	MAKE OF VEH. <i>Volvo</i>
YEAR <i>87</i>	HAZ. MT. <i>HAZ. MT.</i>	TRUCK <i>HAZ. MT.</i>
HAZ. MT. <i>HAZ. MT.</i>	MOPED <i>HAZ. MT.</i>	MTRCYCL. <i>HAZ. MT.</i>
HAZ. MT. <i>HAZ. MT.</i>	HAZ. MT. <i>HAZ. MT.</i>	HAZ. MT. <i>HAZ. MT.</i>

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER.

NAME OF TRIAL OFFICER <i>General Burr</i>	STREET AND NO. <i>1121 Broad St</i>

DATE <i>7/19/87</i>	TIME OF TRIAL <i>1400</i>	CITY <i>Camden</i>	STATE <i>SC</i>	ZIP CODE <i>29520</i>

VIOLATION - COURT APPEARANCE REQUIRED YES NO <i>1st Party Bill Death</i>	VIOLATION SECTION NO. <i>56-5-241</i>

OWNER OF VEHICLE <i>P. Brown</i>	DATE OF ARREST <i>6/17/87</i>
ADDRESS OF OWNER <i>P. Highway 112</i>	DATE OF VIOLATION <i>6/17/87</i>

BAIL DEPOSITED <i>500</i>	NAME OF ARRESTING OFFICER <i>M.T. MULLY</i>	RANK <i>1st Lt</i>

DESCRIPTION OF ACCUSED <i>5'11" 160 lbs 150 lbs 150 lbs 150 lbs</i>	COUNTY <i>Richland</i>	NUMBER <i>1</i>

DATE BAIL REC'D. <i>7/19/87</i>	BY <i>12</i>	BADGE <i>182</i>	DISTRICT <i>1</i>

CASE BEFORE MAGISTRATE ☐ MUN. COURT ☐	CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE	TIME OF VIOLATION MILITARY TIME <i>2055</i>	WEATHER <i>Clear</i>

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐	DISPOSITION GUILTY ☐ PLEA: NOLO CONTENDERE ☐

FORFEITED BOND ☐	PLEA: NOLO CONTENDERE ☐	HWY. NO. <i>12</i>

TRIAL BY: TRIAL OFFICER ☐ JURY ☐	DATE OF TRIAL IF ANY <i>7/20/87</i>	MILES <i>12</i>

VERDICT OF TRIAL IF ANY GUILTY ☐ NOT-GUILTY ☐	DATE OF TRIAL IF ANY <i>7/20/87</i>	MILES <i>12</i>

JAIL ☐ SUSPEND ☐ FINE ☐ AMT. COLLECTED ☐ AMT. SUSPENDED ☐	CITY <i>Camden</i>	CODE <i>1</i>

COMMITTED TO: <i>112</i>	Arrest as Result of Accident <i>112</i>	OFFENSE CODE <i>112</i>	B.A. LEVEL <i>112</i>

CERTIFIED CORRECT	DATE <i>7/20/87</i>	C 106041

ENFORCEMENT RECORDS COPY

ORIGINAL

D.P.S. USE ONLY				Page #		SOUTH CAROLINA				# Of Units		Amended - Attach Copy of Original Report		Notified		Arrived							
				Of 1		TRAFFIC COLLISION REPORT FORM				2		Corrected		2058		2115							
Date		Time		County		1- Interstate 4- Secondary		Collision Location (Rt. # / Name)		0- Main 6- Connection		Miles: 1 Dir. 1		Near City or Town of:									
9/20/2005		2:05		24		2- US Primary 5- County		5 303		2- Alternate 7- Business		12.0 N E		Camden									
Lane # / Dir.		Distance / Offset		Direction		1- Interstate 4- Secondary		Base Intersection (Rt. # / Name)		0- Main 6- Connection		ASRU code		MP/ Grid									
# 1 2		.30		N E		2- US Primary 5- County		127		2- Alternate 7- Business													
R.R. Id.		From		Ramp Only		1- Interstate 4- Secondary		Second Intersection (Rt. # / Name)		0- Main 6- Connection		Latitude		34° 17' 00" 90									
n/a		N E		S W		2- US Primary 5- County		55		2- Alternate 7- Business		Longitude		80° 47' 48" 60									
S- 294004				Driver/Pedestrian's Full Name				S- 294005				Driver/Pedestrian's Full Name											
Unit # 1				Sex M Race W				Unit # 2				Sex M Race B											
Street/R.F.D.				rd.				Street/R.F.D.				cu rd.											
Birth Date				City, State, & Zip				Birth Date				City, State, & Zip											
Ridgeway SC 29150								Ridgeway SC 29130															
State				Driver's License #				State				Driver's License #											
Year				Body				Year				Body											
Vehicle Make				VIN #				Vehicle Make				VIN #											
1998				VLT				1998				VLT											
License Plate #				Owner's D.L. #				License Plate #				Owner's D.L. #											
2005								2005															
Home Telephone				Owner's Full Name				Home Telephone				Owner's Full Name											
()								()															
Bus. Telephone				Street/R.F.D.				Bus. Telephone				Street/R.F.D.											
()								()															
Contributed To Collision				City, State, & Zip				Contributed To Collision				City, State, & Zip											
Yes				Ridgeway SC 29150				No				Ridgeway SC 29130											
Estimated Speed		Speed Limit		C.D.L. Req: Yes () No ()		T/B S Req: Yes () No ()		Alc/Drg Info (see back): Yes () No ()		Estimated Speed		Speed Limit		C.D.L. Req: Yes () No ()		T/B S Req: Yes () No ()		Alc/Drg Info (see back): Yes () No ()					
n/a		n/a		n/a		n/a		n/a		55		55		n/a		n/a		n/a					
S- 294006				Driver/Pedestrian's Full Name				State				Year				License Plate #				Owner's D.L. #			
Unit # 1				Sex M Race W				Home Telephone				Owner's Full Name											
Birth Date				City, State, & Zip				Bus. Telephone				Street/R.F.D.											
State				Driver's License #				Contributed To Collision				City, State, & Zip											
Year				Body				Yes															
Vehicle Make				VIN #				No															
Dir. of Travel: Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Estimated Speed		Speed Limit		C.D.L. Req: Yes No		T/B S Req: Yes No		Alc/Drg Info (see back): Yes No									
Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
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Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
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Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
Unit 1: (N) S E W		Unit 2: (N) S E W		Unit 3: N S E W		Summons #		Code		Summons #		Code		Towed By									
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FORM: TOX-001
July, 1998
(Formerly LAB-001)

SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: Brown David Forrest 21
Last Name First Name Middle Name County of Arrest

Address of Subject: 1111 Highway 101

Driver's License Number: State: SC DOB: Sex: M Race: E

Arresting Officer: Officer [Signature] Agency:

Address of Arresting Officer:

Date of Arrest: 6-17-95 Time of Arrest: 2:40 AM/PM Traffic Ticket Number: 210641

Date of Test: 6-17-95 Time of Test: 3:15 AM/PM Location of Collection: Arresting Officer's Vehicle

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- ☐ Subject is under arrest for 56-5-2930, 56-5-2945, 56-1-2120, 50-21-110, 50-21-112 or 23-31-415; or is in violation of 56-5-2945 or 56-1-286 of the South Carolina Code of Laws.
- ☒ Subject has been advised in writing of his/her Implied Consent Rights (Form No. IC-001 for 56-5-2930, 56-5-2945 or 56-1-286)

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- ☐ Subject had a Datamaster reading of less than 0.10%, and a urine sample is requested. Datamaster reading: (optional)
- ☐ Subject is unconscious or otherwise incapable of refusal and is considered Informed, therefore a blood sample is requested.
- ☒ A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.

Name and title of licensed medical personnel: Dr. [Signature]
(Please Print)

Signature of licensed medical personnel: [Signature]

- ☐ A blood sample is requested by the subject for his/her own independent test.

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

- ☒ Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- ☒ A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name and title of licensed or trained collector: Frederick Reese, EMT Supervisor
(Please Print)

Signature of licensed or trained collector: [Signature]

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

- ☒ Sample collection was under my direct supervision.
- ☒ Sample container is properly labeled with the subject's name and time of collection.
- ☒ Sample container is properly sealed and ready for transport.

Signature of Officer: [Signature] Date: 6-17-95

I, [Signature] received a copy of this report on
(Subject's signature) (Date)

White copy: Arresting Officer Canary copy: Hospital Pink copy: Subject Goldenrod copy: SLED

RETURN

I received the attached Search Warrant June 12, 20 85, and have executed it as follows:
 On 6/19, 20 85 at 11:43 o'clock P M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with DONALD E. BROWN
 Name of person searched or "at the place of search" with.
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1 VIAL OF URINE

2 TUBES OF BLOOD

This inventory was made in the presence of M. J. MEERS, TR. COCCINE
 AND T. A. BOROWSKI

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____
 day of _____, 20 _____

Signature of Judge

(L.S.)

Thomas B. Coccine
 (Signature of Officer Executing Warrant)

AGENCY I.D.
SC0280000

DATE/TIME OF ARREST
6/20/05 0042

BOOKING REPORT
Kershaw County
Sheriff's Department

CASE NUMBER
No Case # 5900

DEFENDANT NAME (LAST, FIRST, MIDDLE) Brown, Donald Earl										403177KA4		RACE B	SEX M	DATE OF BIRTH 11-3	DOCKET NUMBER	
AGE 42	ETH N	HEIGHT 507	WEIGHT 150	HAIR Black	EYES Brown	SOCIAL SECURITY NUMBER		VEHICLE SCARS AND MARKS None		MOB Blair 351	ID NUMBER					
ADDRESS (NUMBER AND STREET) en Rd. Ridgeway						CITY SC	STATE SC	ZIP CODE 29130	PRESIDENT J.S.O.U.	PHONE NUMBER						
ALLIES None						PLACE OF BIRTH South Carolina		DRIVERS LICENSE NUMBER SC		STATE SC						
EMPLOYER OR OCCUPATION GCI (Truck Driver)						NEXT OF KIN Laurean Brown (Wife)		ADDRESS (CITY AND STATE) Same								
BOOKING OFFICER'S NAME Cpl. S. Armentrout						NUMBER 351		ARRESTING OFFICER M.J. Meeks		AGENCY SCHP		NUMBER 782				
ARRESTEE ARMED ☐ YES ☒ NO						WEAPON TYPE		O SEMI-AUTO O FULL-AUTO		NON-VIEW ARREST ☒ SUMMONED ☐ CUSTODY ☐						
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED 2. ☐ REFERRED TO OTHER AUTHORITY																
ADDITIONAL CASE NUMBERS																
IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C																
CHARGE I.D. C 10.041 A		CHARGE Felony DUI (Death)			STATUTE Central Court			BOND AMOUNT \$75,000			BOND TYPE C/S			RET. DATE CALL OR CASH		
DISPOSITION		DAYS			AMOUNT			DAYS			AMOUNT			DAYS		
NTENCE																
TIME SERVED																
GOOD TIME																
BALANCE																
PAID																
RECEIPT NUMBER																

RELEASE DATE	TIME	RELEASING OFFICER	NUMBER	AGENCY RELEASED TO
SIGNATURE OF RECEIVING OFFICIAL X ~~SS~~ Cpl. S. Armentrout LIST ANY REMARKS BELOW.				
REMARKS: Victim will not attend				
PICTURE TAKEN Yes				
FINGER PRINTS TAKEN Yes				
COMPUTER CHECK None				
MOC CHECK Clear				
CITY CHECK YES ☒ NO ☐				
HIT YES ☒ NO ☐				
HOLD YES ☒ NO ☐ SCHP 6/28/05				

DEFENDANTS PERSONAL PROPERTY RECEIPT				TOTAL CASH AT TIME OF ARREST → \$ 11.55			
QUANTITY	ITEM	QUANTITY	ITEM	QUANTITY	ITEM	QUANTITY	ITEM
	Book						
	GO						

I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X R.B.B. DEFENDANT'S SIGNATURE AT TIME OF ARREST

S. Armentrout OFFICER

I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON

STATE OF SOUTH CAROLINA

SEARCH WARRANT
COUNTY OF KERSHAWTO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF CAMDEN, SOUTH CAROLINA

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)
TO BE SEARCHED

One 1998 Jeep Cherokee vehicle, Red in color displaying a SC License Plate o
on it located at Kershaw County Public Works Storage Facility belonging to
Donald Earl Brown.

Now therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

ANY AND ALL TRACE EVIDENCE BUT NOT LIMITED TO BLOOD, HAIR,
FIBERS, CLOTHING, TIRES AND ANY ALL DOCUMENTS AND LETTERS (MISC.
PAPERWORK).

This Search warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search warrant shall be made to

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Camden S.C.
June 20, 2005

[Signature] (L.S.)
Signature of Judge

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF KERSHAW

Personally appeared before me, one, F/Sgt. T.A. Borowski who, being duly sworn, says that there is probable cause to believe that certain property, subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all Trace Evidence but not limited to Blood, Hair, Fibers, Clothing and Tires, and any and all Documents and letters (misc. paperwork).

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)
TO BE SEARCHED

One 1998 Jeep Cherokee vehicle, Red in color displaying a SC License Plate of on it located at Kershaw County Public Works Storage Facility belonging to Donald Earl Brown.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Due to an ongoing investigation into the Death of Sullivan David Spradley. It has been determined that Donald Earl Brown was involved in a traffic collision which resulted in the death of Minor David Spradley. Donald Earl Brown being the operator of a 1998 Jeep Cherokee, Red in color and displaying a SC License Plate of

1. Affiant's belief is that Trace Evidence left on or in the vehicle maybe connected to the deceased located/found in or on Donald Earl Brown's vehicle.

Sworn to and Subscribed before me

This 20 day of June, 2005

[Signature]
Signature of Judge

[Signature]
Affiant

Address: 1054 Ehrenclou drive
Camden, South Carolina 29020

Phone (803) 432-6980

RETURN

I received the attached Search warrant 6/21, 2005, and have executed it as follows:

On 6/21, 2005 at 11 o'clock A M, I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with 1998 Jeep
Name of person searched or "at the place of search" with. Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- ① Photographed vehicle before, during examination
- ② Removed Rt front Headlight frame & partial Headlight
- ③ Removed Rt front Quarter panel pieces (cut out) (Standard paint)
- ④ Removed Rt front Grille (Headlight assembly)
- ⑤ Removed Rt front turn signal Assembly (bulb, lens)
- ⑥ Removed Black scuff sample from Rt Quarter panel (Black in color)

This inventory was made in the presence of Sgt. J.D. Day

AND WOPL J.C. R. Kard

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 21st

day of June, 2005

Signature of Judge

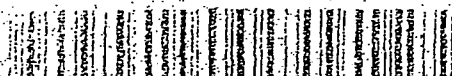
(Signature of Officer Executing Warrant)



Quest
Diagnostics
800-877-7484

ics
184

QUEST DIAGNOSTICS AND CONTROL FORM



200690 2245066 SPECIMEN ID NO.

1 COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

LAB ACCESSION NO.

Employer Name, Address, ID No.
KENTON CO. CORP. 1000 10TH ST. S.W.

B. MRO Name, Address, Phone and Fax No. FORM ID: SAP50002

ALL SPECIMENS MUST BE

IN THE FOLLOWING ORDER

1. URINE (IF REQUIRED)

2. BLOOD (IF REQUIRED)

Donor SSN or Employee I.D. No.

Donor Name: Last: SCOTT First: DAVID

Donor ID Verified: ☒ Photo ID ☐ Emp. Rep.

Reason for Test: ☐ Pre-employment (1) ☐ Random (3) ☐ Reasonable Suspicion/Cause (5) ☒ Post-Accident (2) ☐ Promotion (22)
☐ Return to Duty (6) ☐ Follow-up (23) ☐ Other (specify) (99)

Drug Tests to be Performed:

25193M SAF 10-50/2005 W/HIT

Collection Site Name: KCMC

Collection Site Code:

Address: HARRIS BERKIS

Collector Phone No.: 813-777-6146

City, State and Zip: CANDLER, SC 29620

Collector Fax No.:

COMPLETED BY COLLECTOR

Specimen temperature within 4 minutes. Is temperature in 90° and 100° F? ☒ Yes ☐ No, Enter Remark

Specimen Collection:

☒ Split ☐ Single ☐ None Provided (Enter Remark) ☒ Observed (Enter Remark)

USPS FE LIMITED WITH SCHED. DELIVERY. NURSING SUPERVISING PERSON

Donor affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5.

CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY LABORATORY

is the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed, and released to the Delivery Service noted in accordance with applicable requirements.

SCOTT

Signature of Collector

2245 AM

Time of Collection

6/19/2005

Date (Mo./Day/Yr.)

SPECIMEN BOTTLE(S) RELEASED TO:

☐ Quest Diagnostics Courier ☐ FedEx

☐ Airborne

☒ Other SCHP

Name of Delivery Service Transferring Specimen to Lab

1/ED

SCOTT

Signature of Accessioner

6/19/2005

Date (Mo./Day/Yr.)

Primary Specimen Bottle Seal Intact

☒ Yes

☐ No, Enter Remark Below

SPECIMEN BOTTLE(S) RELEASED TO:

(Print) Accessioner's Name (First, MI, Last)

COMPLETED BY DONOR

as I provided my urine specimen to the collector, that I have not adulterated it in any manner, each specimen bottle used was sealed with a tamper-evident seal in my presence, and that the information and provided on this form and on the label affixed to each specimen bottle is correct.

Signature of Donor

(PRINT) Donor's Name (First, MI, Last)

Date (Mo./Day/Yr.)

Phone No.

Evening Phone No.

Date of Birth

Mo. Day Yr.

South Carolina Department of Public Safety Chain Of Custody & Evidence Destruction

Case Number 05-28-HP1B-85

Evidence Type Blood/ Urine

Date Impounded: 06/20/2005

☐ Highway Patrol☐ Transport Police☐ Bureau of Protective Service☐ Other

Status Check One Only

☒ General Session Evidence☐ Magistrate Evidence☐ Found☐ Recovered☐ Safe Keeping☐ Other

I hereby acknowledge that the listed items represent monies/ property taken from my possession and that I have received a copy of this report. Signature _____

Court Date: 07/14/2005

Summons /Warrant Number: C106041

Officer: M.J. Meeks

Date of Incident:

06/19/2005

Time of Incident:

2055

Subject / Violator's Name: Brown- Donald Earl

Phone Number : ()

Violator's Address: 1017 C Shivers Green rd
Ridgeway SC 29130

License Number (Tag /State) 869-EDY

Item #	Quantity	Description (include make, Model and serial Numbers if applicable)	Field weight	NCIC	
				Yes	No
1	1	1 Tube of Blood			
1	1	1 Tube of Urine			

DISPOSITION OF ITEM (S) ABOVE: (The item(s) above have been received in substantially the same condition as when seized.)

From	To	Location	Date
M.J. Meeks	Post B Refrig	Kershaw Patrol Office	06/20/2005
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

We have further inspected such Conveyance as to condition and contents, including glove compartment, trunk, or any other applicable storage areas and do certify that all contents and condition of such conveyance, except contraband items, if any have been satisfactorily accounted for to me/us with this conveyance, or that such items have been disposed of in accordance with my/our instructions, except: (If no exceptions, have recipient write "None" in ink, in his/her handwriting)

It is my/our full understanding that this conveyance and it's contents, except contraband items, if any, are being returned to me/us by the South Carolina Department of Public Safety because such police agency has no interest in proceeding legally to have the conveyance declared forfeit, and that it's return is in no degree an implication or admission that its seizure was unlawful. With the foregoing clearly understood, I/we acknowledge receipt of such conveyance and its contents from: _____ on the _____ day of _____.

Signature (Individual Receiving Property) _____

Signature (Individual Returning Property) _____

Witness: _____

Disposition of the above cases was disposed of in General Sessions/ Magistrate's court on: _____

DESTRUCTION OF EVIDENCE

This is to certify that I, _____ destroyed / relinquished the above described evidence on _____ (Date)

at _____ (Where destroyed)

(Witness)

Person destroying evidence

STATE OF SOUTH CAROLINA

County of Kershaw

SEARCH WARRANT

Date 6/19/05
Officer T. S. Collins

STATE OF SOUTH CAROLINA

COUNTY OF

Kershaw

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF South Carolina

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

DONALD EARL BROWN BLACK MALE 4-7-63

SC

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Blood and urine

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Judge F.E. James, Magistrate Camden, SC

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Elgin

, S.C.

June 19

25

F. E. James

Signature of Judge

(L.S.)

STATE OF SOUTH CAROLINA

COUNTY OF Kershaw

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
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Elgin

, S.C.

June 1985F. E. James

Signature of Judge

(L.S.)

South Carolina Department of Public Safety Chain Of Custody & Evidence Destruction

Case Number 05-28-hp1b85 Evidence Type clothes Date Impounded: 6/20/2005

☒ Highway Patrol ☐ Transport Police ☐ Bureau of Protective Service ☐ Other

Status Check One Only

☒ General Session Evidence ☐ Magistrate Evidence ☒ Found ☐ Recovered ☐ Safe Keeping ☐ Other

I hereby acknowledge that the listed items represent monies/ property taken from my possession and that I have received a copy of this report. Signature

Court Date: Pending Summons /Warrant Number:

Officer: T B Collins Date of Incident: 6/19/2005 Time of Incident: 2055

Subject / Violator's Name: S D Spradley Victim Phone Number: ()

Violator's Address: License Number (Tag /State)

Item #	Quantity	Description (include make, Model and serial Numbers if applicable)	Field weight	NCIC	
				Yes	No
1		Clothes from car vs. ped. victim			

DISPOSITION OF ITEM (S) ABOVE: (The item(s) above have been received in substantially the same condition as when seized.)

From	To	Location	Date
T B Collins	Drop Box	Kershaw Office	6/27/2005
DROP BOX	ADAM W. ROSARIO	KERSHAW OFFICE	7/1/05

We have further inspected such conveyance as to condition and contents, including glove compartment, trunk, or any other applicable storage areas and do certify that all contents and condition of such conveyance, except contraband items, if any have been satisfactorily accounted for to me/us with this conveyance, or that such items have been disposed of in accordance with my/our instructions, except: (If no exceptions, have recipient write "None" in ink, in his/her handwriting)

It is my/our full understanding that this conveyance and its contents, except contraband items, if any, are being returned to me/us by the South Carolina Department of Public Safety because such police agency has no interest in proceeding legally to have the conveyance declared forfeit, and that its return is in no degree an implication or admission that its seizure was unlawful. With the foregoing clearly understood, I/we acknowledge receipt of such conveyance and its contents from: on the day of

Signature (Individual Receiving Property)

Signature (Individual Returning Property)

Witness:

Disposition of the above cases was disposed of in General Sessions/ Magistrate's court on:

DESTRUCTION OF EVIDENCE

This is to certify that I, destroyed / relinquished the above described evidence on (Date)

(Person destroying/relinquish evidence)

at (Where destroyed)

(Witness)

Person destroying evidence



SLED LABORATORY FORENSIC SERVICES REQUEST

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

Smith, D

TF

E 232207

FORM: LAB-003
NOVEMBER 1993
Previous Editions
May Be Used

CB

Name of Investigating Officer M. J. Meeks Rank Lt. Col Sled Lab No. 10507037
 Department SCHP Kershaw Telephone Number 4326980 Contributing Agency ORI SC
 Street Address or Post Office Box 1054 Ehrlich Dr Telephone Number 29020 Contributing Agency Case No.
 City Common State SC Zip Code 29020 County Kershaw
 Incident Date 6/19/05
 CC: Related Lab No.

Subject # 1 Victim # 1 Sex: M ☒ F ☐ SID/FBI
 Last Name Brown First Name Donald Middle Name Earl DL/SS NO. 10507037
 Race: Cau ☐ Blk ☐ Other ☐ DOB: 10/1/50

Subject # 2 Victim # 2 Sex: M ☐ F ☐ SID/FBI
 Last Name Smith First Name David Middle Name Michael DL/SS NO. 10507037
 Race: Cau ☐ Blk ☐ Other ☐ DOB: 10/1/50

Subject # 3 Victim # 3 Sex: M ☐ F ☐ SID/FBI
 Last Name Smith First Name David Middle Name Michael DL/SS NO. 10507037
 Race: Cau ☐ Blk ☐ Other ☐ DOB: 10/1/50

Subject # 4 Victim # 4 Sex: M ☐ F ☐ SID/FBI
 Last Name Smith First Name David Middle Name Michael DL/SS NO. 10507037
 Race: Cau ☐ Blk ☐ Other ☐ DOB: 10/1/50

*Could any subjects or victims have the following: (circle) AIDS VD Hepatitis Tetanus TB Lice

Comments:

COMPLETE THIS SECTION ON ALL CASES: (Circle Appropriately)

Homicide Suicide Accidental Death Natural Death Child Fatality Autopsy Performed: Yes No
 (A) Gunshot (B) Stabbing (C) Beating (D) Strangulation (E) Drug/Poison (F) Alcohol (G) Carbon Monoxide (H) Fire (I) Hanging (J) Electrocution
 (K) Heart Related (L) Disease (M) Other

Accident Fatality Victim: (A) Driver (B) Pedestrian (C) Motorcyclist (D) Bicyclist (E) Passenger (F) Swimming/Boating
 TYPE OF CASE: (IF NOT DEATH) (A) Drugs (B) CSC (C) Burglary (D) Larceny (E) Other

FOR TOXICOLOGY CASES: (Circle Appropriately)

DUI ☒ Felony DUI ☐ Was a Breath Test given? Yes ☒ No ☐ If Yes, Reading Return
 Number of Specimens Enclosed: Blood 1 Urine 1 Ocular Fluid 1 Other 1

Examination Requested: Blood Alcohol ☒ Drug Screen ☒ CO ☐ Blood Type ☐ Other ☐

Drugs Suspected: Yes ☒ No ☐ List Drugs COCAINE

FOR SEROLOGY/DNA/HAIR/FIBER CASES: (Circle Appropriately)

Was the subject(s) bleeding? Yes ☐ No ☐ Unknown ☐ Have any of the victims / subjects been transfused in the last 120 days? Yes ☐ No ☐ Unknown ☐

Crime occurred: Suspect's residence Victim's residence Suspect's vehicle Victim's vehicle Other ☐

Was a weapon involved? Yes ☐ No ☐ Unknown ☐ Type of weapon: ☐

9 standards from all possible bleeders or body fluid donors been submitted? Yes ☐ No ☐ Unknown ☐ Comments: ☐

Submission of victim and suspect standards is necessary before complete analysis can be performed.

THE ITEMS SUBMITTED WILL BE EXAMINED WITH YOUR ASSURANCE THAT THE SUBMITTED SPECIMENS HAVE NOT NOR WILL BE SUBMITTED TO ANY OTHER LABORATORY FOR TECHNICAL OR SCIENTIFIC EXAMINATION. THIS STATEMENT WAS READ BY OFFICER

Print Name of Delivering Officer T.A. Borowski

Signature of Delivering Officer T.A. Borowski

Print Name of Delivering Officer

Signature of Delivering Officer

ADVISEMENT OF IMPLIED CONSENT RIGHTS

Person - David E. Jr.
Subject's Name (Print)



Date of Birth
SC

Driver's License Number

State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be videotaped? If answer is Yes, Start here → ♦ Inform subject he/she is being videotaped.
♦ Advise subject of Miranda rights.
If answer is No, Start here → ♦ Inform subject of the type (breath, blood, urine) samples requested.
- (B) Then read the following advisement to subject:
- ♦ You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
 - ♦ The arresting officer has directed that samples be taken for alcohol and/or drug testing.
 - ♦ The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
 - ♦ You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least ninety (90) days and your refusal may be used against you in court.
 - ♦ If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
 - ♦ If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least thirty (30) days.
 - ♦ You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
 - ♦ You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
 - ♦ If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
(D) Time stamp Breath Alcohol Analysis Test Report. (Not required if a refusal has occurred.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)
(F) Enter biographical data into BAC DataMaster. (Required for all tests, including refusals.)

FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be videotaped? If answer is Yes, Start here → ♦ Inform subject he/she is being videotaped.
♦ Advise subject of Miranda rights.
If answer is No, Start here → ♦ Inform subject of the type (breath, blood, urine) samples requested.
- (B) Then read the following advisement to subject:
- ♦ You are under arrest for Felony Driving Under the Influence (Felony DUI), Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section.
 - ♦ The officer has directed that samples be taken for alcohol and/or drug testing.
 - ♦ The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
 - ♦ Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs.
 - ♦ The resistance, obstruction, or opposition to testing pursuant to Section 56-5-2946 is evidence admissible at trial.
 - ♦ If your tests or samples have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least thirty (30) days.
 - ♦ You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
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 - ♦ If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material.
(D) Time stamp Breath Alcohol Analysis Test Report.
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample.
(F) Enter biographical data into BAC DataMaster.

David E. Jr.
Officer's Name (Print)

David E. Jr.
Subject's Signature (Received Copy)

David E. Jr.
Officer's Signature

6-12-05
Date

2:15
Time

SLED Form 6-1 (2-9-01, June 2005) (Revised August 2005)

ADVISEMENT OF IMPLIED CONSENT RIGHTS

Bruce David Ford
Subject's Name (Print)



5/6
Date of Birth

Driver's License Number

State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

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- (A) Will test be videotaped? If answer is Yes, Start here → ♦ Inform subject he/she is being videotaped.
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(D) Time stamp Breath Alcohol Analysis Test Report.
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample.
(F) Enter biographical data into BAC DataMaster.

Det. M. T. Moore
Officer's Name (Print)

Subject's Signature (Received Copy)

Det. M. T. Moore
Officer's Signature

6-19-2005
Date

2216
Time

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

SEARCH WARRANT

Date: JUNE 20, 2005

Officer: F/Sgt. T.A. Borowski
Highway Patrol

STATE OF SOUTH CAROLINA
 SEARCH WARRANT
 COUNTY OF KERSHAW

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
 MUNICIPALITY OF CAMDEN, SOUTH CAROLINA

It appearing from the attached affidavit that there are reasonable grounds to believe that certain
 property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina,
 as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)
 TO BE SEARCHED

One 1998 Jeep Cherokee vehicle, Red in color displaying a SC License Plate of
 / on it located at Kershaw County Public Works Storage Facility belonging to
 Donald Earl Brown.

Now therefore, you are hereby authorized to search the subject premises for the property described
 below, and to seize such property if found:

DESCRIPTION OF PROPERTY

ANY AND ALL TRACE EVIDENCE BUT NOT LIMITED TO BLOOD, HAIR,
 FIBERS, CLOTHING, TIRES AND ANY ALL DOCUMENTS AND LETTERS (MISC.
 PAPERWORK).

This Search warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search warrant shall be made to

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this
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A copy of this Search warrant shall be delivered to the person in charge of the premises searched
 at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in
 the event the identity of the person in charge is not known or if such person cannot be found after
 reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on
 such premises.

Camden S.C.
June 20 2005

[Signature] (L.S.)
 Signature of Judge

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF KERSHAW

Personally appeared before me, one, F/Sgt. T.A. Borowski who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all Trace Evidence but not limited to Blood, Hair, Fibers, Clothing and Tires, and any and all Documents and letters (misc. paperwork).

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)
TO BE SEARCHED

One 1998 Jeep Cherokee vehicle, Red in color displaying a SC License Plate of [redacted] on it located at Kershaw County Public Works Storage Facility belonging to Donald Earl Brown.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Due to an ongoing investigation into the Death of Sullivan David Spradley. It has been determined that Donald Earl Brown was involved in a traffic collision which resulted in the death of Sullivan David Spradley. Donald Earl Brown being the operator of a 1998 Jeep Cherokee, Red in color and displaying a SC License Plate of [redacted]. Affiant's belief is that Trace Evidence left on or in the vehicle maybe connected to the deceased located/found in or on Donald Earl Brown's vehicle.

Sworn to and Subscribed before me

This 22 day of June, 2005

Signature of Judge

T.A. Borowski
Affiant

Address: 1054 Ehrenclou drive
Camden, South Carolina 29020

Phone (803) 432-6980

RETURN

I received the attached Search warrant 6/21, 2005, and have executed it as follows:

On 6/21, 2005 at 11 o'clock A M, I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with 1998 Jeep
Name of person searched or "at the place of search" with. Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- ① Photographed vehicle before, during examination
- ② Removed Rt front HeadLight frame & partial HeadLight
- ③ Removed Rt front Quarter panel pieces (Cut out Standard paint)
- ④ Removed Rt front Grille (HeadLight assembly)
- ⑤ Removed Rt front turn signal Assembly (bulb, lens)
- ⑥ Removed Black scuff sample from Rt Quarter panel (Black in color)

This inventory was made in the presence of Sgt. J.D. Day

AND WCP J.C. R. Kard

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 21st

day of June, 2005

Signature of Judge

(Signature of Officer Executing Warrant)

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

TOXICOLOGY DEPARTMENT

July 18, 2005
SLED Lab No: L05-07037
Your Case No: Not Listed
Incident Date: 06/19/05
(S) Brown, Donald Earl

L/CPL Michael Meeks
S.C. Highway Patrol District #1
1626 Shop Road
Columbia, SC 29201

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 1: Serum labeled "Brown, Donald Earl"

RESULTS:

0.225 % (w/v) Ethanol found in blood (Calculated from serum/plasma ethanol level).

Negative screen for Cocaine and/or Cocaine metabolites.

(Cocaine, Benzoylcegonine, et al.)

Urine threshold 0.3 mg/L; blood threshold 0.1 mg/L.

Item 2: Urine

RESULTS:

0.337 % (w/v) Ethanol found in urine.



L05-07037
Page 2 of 2

Forensic Toxicologist


Dustin Wilson Smith

DWS/dlj

Biological specimens processed for testing which are not consumed during analysis will be maintained for 180 days from the completion date of the analysis and then destroyed unless otherwise notified.



U.S. Naval Observatory
Astronomical Applications Department

Sun and Moon Data for One Day

The following information is provided for Camden, Kershaw County, South Carolina (longitude W80.6, latitude N34.3):

Sunday
19 June 2005 Eastern Daylight Time

SUN	
Begin civil twilight	5:42 a.m.
Sunrise	6:11 a.m.
Sun transit	1:24 p.m.
Sunset	8:38 p.m.
End civil twilight	9:07 p.m.

MOON	
Moonrise	5:05 p.m. on preceding day
Moonset	3:39 a.m.
Moonrise	6:16 p.m.
Moon transit	11:21 p.m.
Moonset	4:20 a.m. on following day

Phase of the Moon on 19 June: waxing gibbous with 91% of the Moon's visible disk illuminated.

Full Moon on 22 June 2005 at 12:14 a.m. Eastern Daylight Time.

Census Bureau [map](#) of Camden area

U.S. Naval Observatory

Astronomical Applications Department

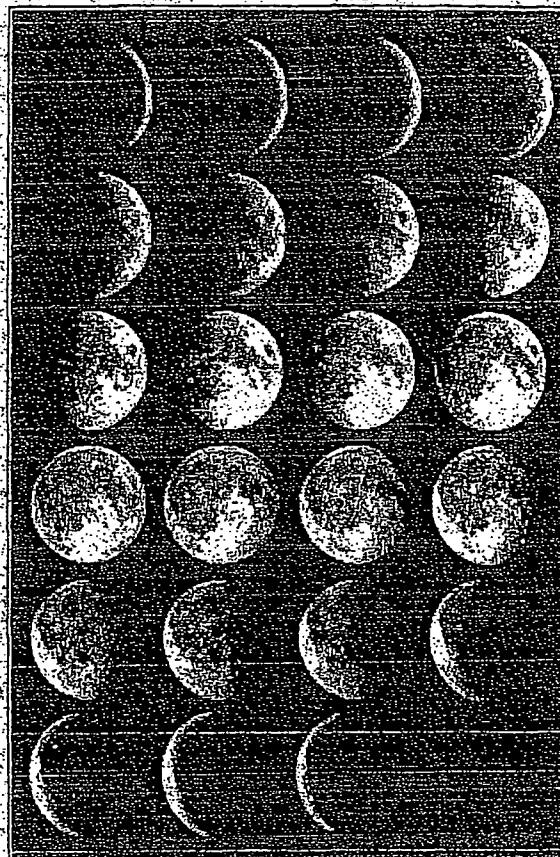


Phases of the Moon and Percent of the Moon Illuminated

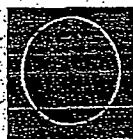
Note: For Moon phase information specific to a particular date, see

[Dates of Primary Phases of the Moon](#),
[Complete Sun and Moon Data for One Day](#),
[Fraction of the Moon Illuminated](#), or
[What the Moon Looks Like Today](#)
in Data Services.

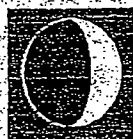
From any location on the Earth, the Moon appears to be a circular disk which, at any specific time, is illuminated to some degree by direct sunlight. Like the Earth, the Moon is a sphere which is always half illuminated by the Sun; but as the Moon orbits the Earth we get to see more or less of the illuminated half. During each lunar orbit (a lunar month), we see the Moon's appearance change from not visibly illuminated through partially illuminated to fully illuminated, then back through partially illuminated to not illuminated again. Although this cycle is a continuous process, there are eight distinct, traditionally recognized stages, called phases. The phases designate both the degree to which the Moon is illuminated and the geometric appearance of the illuminated part. These phases of the Moon, in the sequence of their occurrence (starting from New Moon), are listed below.



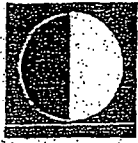
Copyright Antonio Ciudadano. Used by permission. Click on picture to see large version.



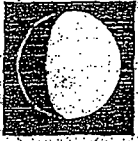
New Moon - The Moon's unilluminated side is facing the Earth. The Moon is not visible (except during a solar eclipse).



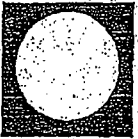
Waxing Crescent - The Moon appears to be partly but less than one-half illuminated by direct sunlight. The fraction of the Moon's disk that is illuminated is increasing.



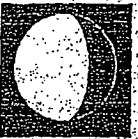
First Quarter - One-half of the Moon appears to be illuminated by direct sunlight. The fraction of the Moon's disk that is illuminated is increasing.



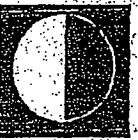
Waxing Gibbous - The Moon appears to be more than one-half but not fully illuminated by direct sunlight. The fraction of the Moon's disk that is illuminated is increasing.



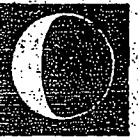
Full Moon - The Moon's illuminated side is facing the Earth. The Moon appears to be completely illuminated by direct sunlight.



Waning Gibbous - The Moon appears to be more than one-half but not fully illuminated by direct sunlight. The fraction of the Moon's disk that is illuminated is decreasing.



Last Quarter - One-half of the Moon appears to be illuminated by direct sunlight. The fraction of the Moon's disk that is illuminated is decreasing.



Waning Crescent - The Moon appears to be partly but less than one-half illuminated by direct sunlight. The fraction of the Moon's disk that is illuminated is decreasing.

Following waning crescent is New Moon, beginning a repetition of the complete phase cycle of 29.5 days average duration. The time in days counted from the time of New Moon is called the Moon's "age". Each complete cycle of phases is called a "lunation".

Because the cycle of the phases is shorter than most calendar months, the phase of the Moon at the very beginning of the month usually repeats at the very end of the month. When there are two Full Moons in a month (which occurs, on average, every 2.7 years), the second one is called a "Blue Moon". See the article "Once in a Blue Moon" for the story of how the usage of this term has evolved (Ref: Philip Hiscock, *Sky & Telescope*, March 1999, pp. 52-55.).

The first time that the thin waxing crescent Moon is visible after New Moon (low in the evening sky just after sunset) marks the beginning of a month in the Islamic Calendar - see the FAQ [Crescent Moon Visibility and the Islamic Calendar](#).

Although Full Moon occurs each month at a specific date and time, the Moon's disk may appear to be full for several nights in a row if it is clear. This is because the percentage of the Moon's disk that appears illuminated changes very slowly around the time of Full Moon (also around New Moon, but the Moon is not visible at all then). The Moon may appear 100% illuminated only on the night closest to the time of exact Full Moon, but on the night before and night after will appear 97-99% illuminated; most people would not notice the difference. Even two days from Full Moon the Moon's disk is 93-97% illuminated.

New Moon, First Quarter, Full Moon, and Last Quarter phases are considered to be primary phases and their dates and times are published in almanacs and on calendars. (Click [here](#) for a list.) The two crescent and two gibbous phases are intermediate phases, each of which lasts for about a week between the primary phases, during which time the exact fraction of the Moon's disk that is illuminated gradually changes.

The phases of the Moon are related to (actually, caused by) the relative positions of the Moon and Sun in the sky. For example, New Moon occurs when the Sun and Moon are quite close together in the sky. Full Moon occurs when the Sun and Moon are at nearly opposite positions in the sky - which is why a Full Moon rises about the time of sunset, and sets about the time of sunrise, for most places on Earth. First and Last Quarters occur when the Sun and Moon are about 90 degrees apart in the sky. In fact, the two "half Moon" phases are called First Quarter and Last Quarter because they occur when the Moon is, respectively, one- and three-quarters of the way around the sky (i.e., along its orbit) from New Moon.

The relationship of the Moon's phase to its angular distance in the sky from the Sun allows us to establish very exact definitions of when the primary phases occur, independent of how they appear. Technically, the phases New Moon, First Quarter, Full Moon, and Last Quarter are defined to occur when the excess of the apparent ecliptic (celestial) longitude of the Moon over that of the Sun is 0, 90, 180, and 270 degrees, respectively. These definitions are used when the dates and times of the phases are computed for almanacs, calendars, etc. Because the difference between the ecliptic longitudes of the Moon and Sun is a monotonically and rapidly increasing quantity, the dates and times of the phases of the Moon computed this way are instantaneous and well defined.

The percent of the Moon's surface illuminated is a more refined, quantitative description of the Moon's appearance than is the phase. Considering the Moon as a circular disk, the ratio of the area illuminated by direct sunlight to its total area is the fraction of the Moon's surface illuminated; multiplied by 100, it is the percent illuminated. At New Moon the percent illuminated is 0; at First and Last Quarters it is 50%; and at Full Moon it is 100%. During the crescent phases the percent illuminated is between 0 and 50% and during gibbous phases it is between 50% and 100%.

For practical purposes, phases of the Moon and the percent of the Moon illuminated are independent of the location on the Earth from where the Moon is observed. That is, all the phases occur at the same time regardless of the observer's position.

Lunation Movie

If you click on either of the two images on the right, you will see a time-lapse movie of the appearance of the Moon over one lunation. A lunation is a lunar month, during which time the Moon completely circles the Earth in its orbit. The complete cycle of phases is obvious. Two other effects can be easily seen. First, due to the elliptical shape of the Moon's orbit, the apparent size of the Moon's disk changes as its distance from Earth varies (the closest and farthest points do not always



[Small movie](#)
(134k)

occur at the same phases, however). Second, although the Moon's near side directly faces the Earth on average, we get to view the Moon from slightly different angles as it orbits us. This effect, called libration, is caused partly by the tilt of the Moon's rotation axis with respect to its orbital plane and partly by the fact that the Moon's speed in its orbit varies but its rotation rate does not.



[Large movie](#)
(493k)

The movie is an animated GIF created by Antonio Cidadao from a sequence of still images taken during March and April 1998.

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Last modified September 23, 2003 at 16:03

06/15/2005 03:20 803-484-6962
06/15/2005 03:47 4257598

LEE COUNTY HWY PAT
KERSHAW COMM

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PAGE 01

06/15/2005

KERSHAW COUNTY SE911

PAGE 1

04:26:33

CAD Incident Detail

USER: SONIA

CAD Incident: 2003-00028064
Phone : 803 438-3639
Name : MOORE, DUSTIN
Address : 221 SHIVERS GREEN RD
Community: RIDGEWAY
Jurisdctn:
Intersect:
SubDivisn:

ESN : 0280 SO 16 MS
Law : SHERIFF 01
Fire : STATION 16 07
EMS : KERSHAW EMS 03
Rescue:
Disp : 1
Source: 911

CAD Call Times

Incoming 911 :	06/19/2005 20:55:14	Created By: TESSS	Pos:004 DISPATCH
Call Created :	06/19/2005 20:55:19	Sent By : TESSS	Action:
Call Send Time :	20:58:19	Event : 1057 2	Language:
Call Dispatch Time:	20:56:59	Law : 1057 1	
Call Enroute Time :	20:56:59	Fire : 1057 2	
Call Arrival Time :	21:03:28	EMS : 1057 2	
Call Clear Time :	01:51:37	Rescue: 1057 2	
Call Closed :	06/20/2005 01:51:37		

Original Dispatch Remarks:

MALE , CAR HIT SUBJ , UN IF CONS / VEH LEFT THE SCENE , TRYI
NG TO GET FURTHER//5YOM 249 SHIVERS GREEN RD XFER TO SCHP

Narratives

Narrative By: TESSS 06/19/2005 21:00
HE IS CONC , BLINKING IN AND OUT OF CONS

Narrative By: TESSS 06/19/2005 21:01
RED JEEP CHEROKEE , RICKY BROWN

Narrative By: TESSS 06/19/2005 21:02
SUBJ IS POSSIBLY 10-55

Narrative By: TESSS 06/19/2005 21:02
BABY POSSIBLY HAS BROKE ARM

Narrative By: TESSS 06/19/2005 21:03
5 YEAR OLD

Narrative By: TESSS 06/19/2005 21:03
HAS 2 NURSES ON SCENE , BABY IS VOMITING UP SOME TYPE ACID

Narrative By: TESSS 06/19/2005 21:05
CHILD HAS LABORED BREATHING , HAVE EMS STEP

Narrative By: TESSS 06/19/2005 23:08
VICTIM SULLIVAN DAVID SPRADLEY, 5 YEAR OLD

Narrative By: TESSS 06/19/2005 23:09

06/15/2005 08:47 003-484-6962
06/15/2005 08:47 4257698

LEE COUNTY HWY PAT
KERSHAW COMM

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06/15/2005 KERSHAW COUNTY SE911
04:26:34 CAD Incident Detail

PAGE 2
USER SONYA

TX JOHNNY TO JAMIE AT RICHLAND ER 434-1663

Narrative By: TESSS 06/19/2005 23:34
TO: KERCC4-04002 Sun Jun 19, 2005 23:38:36 DHPXPPFB8KQK
FROM: DMV-00965 Sun Jun 19, 2005 23:38:36
XTAG
2000 VALIDATION TAG EXP 09/2006 DECAL EXP 09/2005
1998 CHEV SU CHKSPC VIN 1J4FT68S9WL267665 EMPT WGT 003 GVM 000000
BROWN, DONALD EARL

RIDGEWAY SC 291309224 KERS CNTY
ALTERNATE TAG YEAR
TTL: 000000028405737 A TTL ISSUE DT: 07/31/2002 SALES PRICE: \$0.00
1ST LIEN: DAIMIER CHRYSLER SERVICES NA L LIEN DT: 10/08/1998
ADDR1: PO BOX 977
CITY: ROANOKE ST: TX ZIP: 762620977
IN Sun Jun 19, 2005 23:38:36 000504543723/3547
OUT Sun Jun 19, 2005 23:38:36 KERCC4 MSG# 04002 SAN: DHPXPPFB8KQK
CC

Narrative By: TESSS 06/19/2005 23:35
TO: KERCC4-04003 Sun Jun 19, 2005 23:38:38 DHPXPPFB8KQK
FROM: NC2K-00966 Sun Jun 19, 2005 23:38:38
12015DD800536C2QV
SC028013P
NO RECORD LIC/869EDY LIS/SC
IN Sun Jun 19, 2005 23:38:38 000504550012/3547
OUT Sun Jun 19, 2005 23:38:38 KERCC4 MSG# 04003 SAN: DHPXPPFB8KQK
CC

Narrative By: TESSS 06/20/2005 00:10
00:10 REQUEST FOR VEH TO BE PLACED IN THE LANDFIELD

Narrative By: TESSS 06/20/2005 00:11
PER SCHP ETA FOR LANDFIELD APPR 30 MIN

Narrative By: STEWART 06/20/2005 00:12
PER JASON WITH THE LANDFIELD, HE WILL MEET THEM THERE TO SECURE THE VEHICLE

Narrative By: TESSS 06/20/2005 03:52
TO: KERCC4-04037 Mon Jun 20, 2005 03:55:53 OV6XPPFC6Q56
FROM: DMV-01063 Mon Jun 20, 2005 03:55:45
XENC
DL NO 0008249456
BROWN, DONALD EARL

RD
RIDGEWAY SC 291309224 KERS CNTY
WGT 150 BIRTH
RACE BLACK
STATUS-DL NO SUSPENSION CDL NO DISQUALIFICATION
**** COMMERCIAL DRIVER LICENSE ****

08/15/2005 03:47 803-484-6952
08/15/2005 03:47 4257698

LEE COUNTY HMX PAT
KERSHAW COMM

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USER SONYA

COMMERCIAL BP CLASS A ISSUED 04/01/2004
**** COMMERCIAL DRIVER LICENSE ****
COMMERCIAL DL CLASS A ISSUED 01/31/2003
BEGINNERS PERMIT CLASS M ISSUED 03/09/1994
** MORE **

IN Mon Jun 20, 2005 03:55:45

000065772461/3347

OUT Mon Jun 20, 2005 03:55:53

KERCC4 MSG# 04037

SAN: 0V6XPPFC6QS6

□

Narrative By: TESSS 06/20/2005 03:52

TO: KERCC4-04038 Mon Jun 20, 2005 03:55:55 0V6XPPFC6QS6

FROM: DMV-01064 Mon Jun 20, 2005 03:55:45

STIC

OLN = 0008249456

SUSP CAUSE BEGIN END

36 09/01/1996 01/20/1997 01/20/1998

17 04/23/1988 07/02/1988 07/31/1988

** END OF INQUIRY **

IN Mon Jun 20, 2005 03:55:45

000065777306/3547

OUT Mon Jun 20, 2005 03:55:55

KERCC4 MSG# 04038

SAN: 0V6XPPFC6QS6

□

Vehicle Information

UNIT	DEPT	STATUS/DSP/CASE	LOCATION/REMARK	USER	DATE	TIME
44	L01	1017		TESSS	06/19	20:56:59
45	L01	1017		TESSS	06/19	20:57:26
EMS3	E03	DSP		REESE	06/19	20:58:02
EMS3	E03	1017		REESE	06/19	20:59:15
ST16	F07	1017	1644	REESE	06/19	20:59:44
EMS3	E03	LOG	CK FLT STATUS	REESE	06/19	20:59:50
1610	F07	1017		REESE	06/19	21:00:13
EMS3	E03	LOG	LAUNCH IF POSSIBLE	REESE	06/19	21:02:41
44	L01	1023		TESSS	06/19	21:03:28
45	L01	1023		TESSS	06/19	21:03:31
1606	F07	1017		REESE	06/19	21:04:31
1608	F07	1017		REESE	06/19	21:04:40
1608	F07	LOG		REESE	06/19	21:05:13
45	L01	1017	NOT 10-23	TESSS	06/19	21:05:26
44	L01	LOG	OPEN CONTAINER	TESSS	06/19	21:05:37
EMS3	E03	1023		REESE	06/19	21:07:32
EMS3	E03	LOG	CAREFORCE LAUNCHED	REESE	06/19	21:07:52
ST16	F07	1023	1601 1604	REESE	06/19	21:09:19
EMS3	E03	LOG	ON SCEN	REESE	06/19	21:09:23
1606	F07	1023		REESE	06/19	21:09:33
41	L01	1017		STEW	06/19	21:13:45
EMS3	E03	EMS#	0600000369	REESE	06/19	21:13:59
1610	F07	FIRE#	0000000130	REESE	06/19	21:14:15
41	L01	1023		STEW	06/19	21:14:42

08/15/2005 23:47

003-484-6962
4257698LEE COUNTY HWY PAT
KERSHAW COMMPAGE 05/05
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USER SONYA

1606	F07 LOG	PEA38 HAVE DRUGS READY//	REESE 06/19 21:15:12
EMS3	E03 1017	LZ C3 SIG 83//	REESE 06/19 21:18:58
EMS3	E03 1006	LZ	REESE 06/19 21:19:57
1604	F07 1023	CAREFORCE ON GROUND	REESE 06/19 21:35:33
EMS3	E03 1007	FOR AWHILE CAREFORCE HAS PAT	REESE 06/19 21:41:28
1606	F07 LOG	LZ WAS #131	STEW 06/19 22:02:51
1604	F07 1008		STEW 06/19 22:03:57
1606	F07 1008		STEW 06/19 22:03:58
1608	F07 1008		STEW 06/19 22:03:58
1610	F07 1008		STEW 06/19 22:03:58
EMS3	E03 1007	ER	REESE 06/19 22:09:45
41	L01 LOG	THEY ARE GOING TO SHUT DOWN	TESSS 06/19 22:22:07
41	L01 LOG	THE WHOLE ROAD	TESSS 06/19 22:22:17
41	L01 1028	869EDY	TESSS 06/19 22:37:42
41	L01 LOG	869EDY	REESE 06/19 22:53:08
EMS3	E03 1008		REESE 06/19 22:59:05
90	L11 DSP		TESSS 06/19 23:05:06
90	L11 1023	CALLING JAMIE AT RICHLAND	TESSS 06/19 23:05:13
90	L11 LOG	TX TO RICHLAND / HE WILL BE EN	TESSS 06/19 23:06:08
90	L11 OCA#	0000000083	TESSS 06/19 23:06:28
90	L11 1017	RICHLAND	TESSS 06/19 23:12:42
45	L01 1012	BLK RD FOR HWY	TESSS 06/19 23:23:55
44	L01 1008		TESSS 06/19 23:24:04
41	L01 1008		TESSS 06/19 23:24:05
90	L11 1006	OUT OF THE COUNTY	TESSS 06/19 23:27:02
45	L01 1008		TESSS 06/20 00:03:39
90	L11 1008	BACK IN THE CO	TESSS 06/20 01:20:06
90	L11 1017	SCHP OFFICE	TESSS 06/20 01:22:07
90	L11 1008	10-24	TESSS 06/20 01:51:35

EXPERT AUTOSTATS
Ver. 4.5.1w
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LT. MATT SIMMS
SC HIGHWAY PATROL - PIEDMONT M.A.I.T. TEAM
24 VARDRY STREET (0060)
GREENVILLE SC 29601-3528

08-04-2005

1998 JEEP CHEROKEE 4DR 4X2 UTILITY

CURB WEIGHT:	3045 lbs.	1381 kg.
Curb Weight Distribution -	Front: 56 %	Rear: 44 %
Gross Vehicle Weight Rating:	4900 lbs.	2223 kg.
Number of Tires on Vehicle:	4	
Drive Wheels:	REAR	

HORIZONTAL DIMENSIONS

	Inches	Feet	Meters
Total Length	167	13.92	4.24
Wheelbase:	101	8.42	2.57
Front Bumper to Front Axle	30	2.50	0.76
Front Bumper to Front of Front Well	14	1.17	0.36
Front Bumper to Front of Hood	6	0.50	0.15
Front Bumper to Base of Windshield	52	4.33	1.32
Front Bumper to Top of Windshield	70	5.83	1.78
Rear Bumper to Rear Axle	36	3.00	0.91
Rear Bumper to Rear of Rear Well	22	1.83	0.56
Rear Bumper to Rear of Trunk	3	0.25	0.08
Rear Bumper to Base of Rear Window	4	0.33	0.10

WIDTH DIMENSIONS

	Inches	Feet	Meters
Maximum Width	71	5.92	1.80
Front Track	58	4.83	1.47
Rear Track	58	4.83	1.47

VERTICAL DIMENSIONS

	Inches	Feet	Meters
Height	64	5.33	1.63
Ground to:			
Front Bumper (Top)	24	2.00	0.61
Headlight - center	32	2.67	0.81
Hood - top front	39	3.25	0.99
Base of windshield	44	3.67	1.12
Rear Bumper - top	26	2.17	0.66
Trunk - top rear	42	3.50	1.07
Base of rear window	43	3.58	1.09

Reg. To: SC HIGHWAY PATROL - PIEDMONT M.A S/N:05R-941129AQ03401

1998 JEEP CHEROKEE 4DR 4X2 UTILITY

INTERIOR DIMENSIONS

	Inches	Feet	Meters
Front Seat Shoulder Width	55	4.58	1.40
Front Seat to Headliner	38	3.17	0.97
Front Leg - seatback to floor (max)	41	3.42	1.04
Rear Seat Shoulder Width	55	4.58	1.40
Rear Seat to Headliner	39	3.25	0.99
Rear Leg - seatback to floor (min)	35	2.92	0.89

Seatbelts: 3pt - front and rear

Airbags: FRONT SEAT AIRBAGS

STEERING DATA

Turning Circle (Diameter)	432	36.00	10.97
Steering Ratio:	___:1	___	___
Wheel Radius:	___	___	___
Tire Size (OEM):	P225/70R15	___	___

ACCELERATION & BRAKING INFORMATION

Brake Type: FRONT DISC - REAR DRUM

ABS System: ALL WHEEL ABS - OPTIONAL

Braking, 60 mph -> 0 (Hard pedal, no skid, dry pavement):

d = 146 ft t = 3.3 sec. a = -26.5 ft/sec/sec G-force = -0.82

ACCELERATION:

0->30 mph	t = ___ sec.	a = ___ ft/sec/sec	G-force = ___
0->60 mph	t = 8.4 sec.	a = 10.5 ft/sec/sec	G-force = 0.33
45->65 mph	t = ___ sec.	a = ___ ft/sec/sec	G-force = ___

Transmission Type: 4spd AUTOMATIC

NOTES:

Federal Bumper Standard Requirements = NO REQUIREMENT

N.S.D.C. = 1997 - 2001

Reg. To: SC HIGHWAY PATROL - PIEDMONT M.A S/N:05R-941129AQ03401

EXPERT AUTOSTATS

Pg. 3

1998 JEEP CHEROKEE 4DR 4X2 UTILITY

OTHER INFORMATION

TIP-OVER STABILITY RATIO = 1.14 REASONABLY STABLE
 NHTSA Star Rating (calculated) ***

CENTER OF GRAVITY (No Load):

Inches behind front axle = 44.44
 Inches in front of rear axle = 56.56
 Inches from side of vehicle = 35.50
 Inches from ground = 25.54
 Inches from front corner = 82.47
 Inches from rear corner = 99.13
 Inches from front bumper = 74.44
 Inches from rear bumper = 92.56

MOMENTS OF INERTIA APPROXIMATIONS (No Load):

YAW MOMENT OF INERTIA = 1793.35 lb-ft-sec²
 PITCH MOMENT OF INERTIA = 1753.40 lb-ft-sec²
 ROLL MOMENT OF INERTIA = 434.90 lb-ft-sec²

FRONT PROFILE INFORMATION

ANGLE FRONT BUMPER TO HOOD FRONT = 68.2 deg
 ANGLE FRONT OF HOOD TO WINDSHIELD BASE = 6.2 deg
 ANGLE FRONT OF HOOD TO WINDSHIELD TOP = 19.8 deg
 ANGLE OF WINDSHIELD = 45.0 deg
 ANGLE OF STEERING TIRES AT MAX TURN = 26.8 deg

FIRST APPROXIMATION CRUSH FACTORS:

Speed Equivalent (mph) of Kinetic Energy (KE) used in causing crush or indentation may be evaluated using the following formula, the appropriate Crush Factor (CF), and Maximum Indentation Depth (MID), in feet:

$$V(\text{mph}) = \text{Sqr root of } (30 * CF * MID)$$

KE Equivalent Speed (Front/Rear/Side) = 21 CF

Bullet vehicle IMPACT SPEED estimation
 based on TARGET VEHICLE damage ONLY = 27 CF
 (Tested for Rear/Side Impact only)

These CF values are based upon analysis of NHTSA Barrier Crash data, and from over 1000 vehicle accidents where independent evaluation of speed was possible. (These are NOT 'A', 'B', 'C', or 'G' values)

The Rear Impact data with more than 2-3 inches of crush damage should be looked at carefully, since some vehicles have very weak trunk & fender strength. Therefore, on some cars, esp. GM, your estimate from the rear crush data may be high by as much as 4-5 mph (on a crush of 18 inches).

Reg. To: SC HIGHWAY PATROL - PIEDMONT M.A S/N: 05R-941129AQ03401

CASE NUMBER: ML-027-05

Item # 2: 1998 Jeep Cherokee Classic, vin: 1T4FT6859WL267669

** SEARLE/MOTORCYCLE/PEDESTRIAN THROW **

$$V = \frac{\sqrt{2 \times g \times f \times D}}{\cos \Theta + (f \times \sin \Theta)}$$

$$V = \frac{\sqrt{2 \times 32.2 \times 0.79 \times 91.00}}{0.98 + (0.79 \times 0.17)}$$

$$V = \frac{\sqrt{4629.71}}{0.98 + 0.13}$$

$$V = \frac{68.04}{1.11}$$

$$V = 60.75$$

f = The Acceleration/Drag Factor

V = The Velocity in FPS

2 = A Constant

g = Gravity, a Constant at 32.2 fps²

D = The Distance in Feet

Θ = The Departure Angle in Degrees

INPUTS		RESULTS	
The Acceleration/Drag Factor is:	0.79	The Speed in MPH is:	41.42
The Depart. Angle is:	10.00	The Velocity in FPS is:	60.75
The Distance in Feet is:	91.00		

Angle	Velocity	INCREMENTATION CALC's:	Angle	Velocity
0.00	68.04			
1.00	67.36			
2.00	66.70			
3.00	66.05			
4.00	64.80			
5.00	64.18			
6.00	63.58			
7.00	63.00			
8.00	61.85			
9.00	61.29			
10.00	60.75			

Sgt. James D. Day
 SCHP Midlands MAIT
 1620 Shop Road
 Columbia, SC 29201
 Phone: 803-737-6788
 Fax: 803-737-6738

E-Mail: jday@schp.org
 Printed: 8/19/2005

ML-027-05

13012

CASE NUMBER: ML-027-05

Item # 2: 1998 Jeep Cherokee Classic, vin: 1T4FT6859WL267669

* * SEARLE/MOTORCYCLE/PEDESTRIAN THROW * *

$$V = \frac{\sqrt{2 \times g \times f \times D}}{\cos \Theta + (f \times \sin \Theta)}$$

$$V = \frac{\sqrt{2 \times 32.2 \times 0.79 \times 91.00}}{1.00 + (0.79 \times 0.00)}$$

$$V = \frac{\sqrt{4629.71}}{1.00 + 0.00}$$

$$V = \frac{68.04}{1.00}$$

$$V = 68.04$$

f = The Acceleration/Drag Factor.

V = The Velocity in FPS.

2 = A Constant.

g = Gravity, a Constant at 32.2 fps².

D = The Distance in Feet.

Θ = The Departure Angle in Degrees.

INPUTS	
The Acceleration/Drag Factor is:	0.79
The Depart. Angle is:	0.00
The Distance in Feet is:	91.00

RESULTS	
The Speed in MPH is:	46.39
The Velocity in FPS is:	68.04

Angle	Velocity
0.00	68.04
1.00	67.36
2.00	66.70
3.00	66.05
4.00	64.80
5.00	64.18
6.00	63.58
7.00	63.00
8.00	61.85
9.00	61.29
10.00	60.75

INCREMENTATION CALC'S:

Angle Velocity

Sgt. James D. Day
 SCLP/Midlands MAIT
 1620 Shop Road
 Columbia, SC 29201
 Phone: 803-737-6788
 Fax: 803-737-6738

E-Mail: jday@sclp.org
 Printed: 8/19/2005

ML-027-05

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

The State of South Carolina,)

Plaintiff)

v.)

Donald Earl Brown,)

Defendant.)

IN THE GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

Indictment No: 2005-GS -28-1372

AFFIDAVIT

Personally appeared before me Donald Earl Brown, who being duly sworn, deposes and says:

My case of Felony Driving Under the Influence has been called for trial on Monday, April 10, 2006 at 2:00 p.m. in Kershaw County, Court of General Sessions.

This Affidavit is to acknowledge that my attorney William S. Tetterton has advised me of the following:

That I have been charged with and am indicted in an Amended Indictment returned by the Grand Jury for Kershaw County. That Indictment alleges that I did on June 19, 2005 drive a vehicle while under the influence of alcohol, drugs or the combination of alcohol and drugs and did an act forbidden by law, to wit: failed to exercise due care resulting in an accident that resulted in the death of Minor I have been advised that this offense is a Class B felony, the penalty of which is one-year to 25 years and \$10,100.00 to \$25,100.00. This is a serious offense; no suspended sentence, no probation, no parole and a loss of driver's license for 3 years. I have been provided with a copy of the statutory offense. I understand the nature of the charges and the indictment and the penalties that I may receive.

Prior to my making a decision to go forward with a jury trial or a guilty plea, my attorney and I have reviewed all of the evidence that the State intends to introduce against me including



but not limited to the contents of the MAIT Team Report including the measurements, photographs, calculations, the statements obtained from witnesses Daryl Moore and Timothy B. Spradley, the urine blood collection report performed by Gregory M. Berger, RN Supervisor and Cindy Burris on June 19, 2005, the independent laboratory report of Dr. Robert Bennett performed at the request of my attorney, the chain of custody reports, the implied consent form, and the search warrants.

I have also visited the scene and examined the physical evidence on the roadway with my attorney and viewed the videotapes taken at the incident site as well as the Datamaster test site. I met with my attorney along with my wife to view these tapes and I again met with my attorney along with my wife and my brother Gary Brown to again go over the evidence the state intended to introduce against me. I also reviewed with my attorney the SLED Laboratory Forensic Toxicology Report, which indicated a blood alcohol result of .225% and a blood alcohol in the urine result of .337%

I have also discussed with my attorney any possible witnesses that may have been witnesses to the incident.

After reviewing all of the testimony and evidence that the State intends to introduce against me, I have carefully considered a guilty plea to the Indictment. Prior to me making that decision, Mr. Tetterton explained the controlling law, the favorable and unfavorable points of the testimony and evidence, and the immediate collateral consequences of a guilty plea. I understand that if I enter a plea there is no recommendation to be made by the State that I must enter a guilty plea freely and voluntarily.

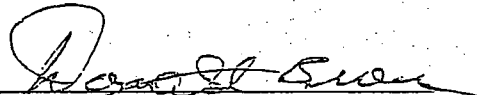
I understand that by pleading guilty I am giving up the right to a trial by jury. At a trial, I would have:

- a. The right to be presumed innocent, and that presumption of innocence would stay with me during the entire trial and throughout the jury's deliberation.

- b. The right to require the State to bear the burden of proving my guilt beyond a reasonable doubt.
- c. The right to have my lawyer cross-examine the witnesses against me.
- d. The right to subpoena witnesses to come to court and give testimony in my favor.
- e. The right to testify myself, or the right to remain silent, and if I chose to remain silent, the right to have the jury instructed that they could not use my silence against me.
- f. The right to be found not guilty, unless the State could prove my guilty beyond a reasonable doubt.

I understand that by pleading guilty, I am forever giving up all the rights that accompany a trial. That I will be found guilty by the Court based on my own admission of guilt. No one has threatened me or coerced me into entering this guilty plea. No one has promised me anything, except whatever negotiations are placed on the record, as part of this guilty plea. I am pleading guilty of my own free will. I have met with my lawyer on sufficient occasions so that he has explained the State's evidence against me, and we have discussed all available defenses. I have provided my lawyer with the names of all witnesses known to me, and my lawyer has investigated this case to my satisfaction. My lawyer has done everything necessary to prepare my case, and I am satisfied with my lawyer's services. I understand that I have the right to appeal any conviction and sentence, but I must do so within 10 days.

Client:



Date:

4-10-06

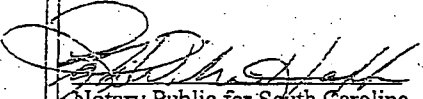
Attorney:



Date:

4-10-06

SWORN TO BEFORE ME THIS
10th day of April, 2006


Notary Public for South Carolina
My Commission Expires: 8/22/13