

STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals
(In the Supreme Court)

APPEAL FROM LEXINGTON COUNTY
General Sessions Court

William P. Keesley, Presiding Circuit Court Judge

Indictment No. 09-GS-32-2398

State of South Carolina,

Respondent


vs.

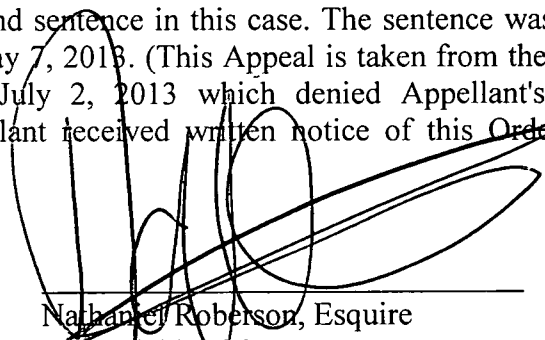
Terence Hayes,

Appellant

NOTICE OF APPEAL

Terence Hayes, appeals his conviction and sentence in this case. The sentence was imposed by the Honorable William P. Keesley on May 7, 2013. (This Appeal is taken from the Order of the Honorable William P. Keesley dated July 2, 2013 which denied Appellant's Motion for Reconsideration of the Sentence. Appellant received written notice of this Order on July 9, 2013).

September 6, 2013


Nathaniel Roberson, Esquire
1708 Richland Street
Columbia, South Carolina 29201
(803) 252-4449
Attorney for Appellant

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SEP 06 2013

SC Court of Appeals

Other Counsel of Record:

Dayton Riddle, Assistant Solicitor
Eleventh Judicial Circuit
Lexington County Courthouse
205 E. Main Street
Lexington, S.C. 29072

cc: Salley W Elliot
Robert Michael Dudek

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,)
)
-vs-)
)
TERENCE O. HAYES,)
)
Defendant.)

ORDER REGARDING MOTION
FOR RECONSIDERATION

Warrant No.: I-0206772

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CLERK OF COURT
LEXINGTON

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The defendant has filed a motion for reconsideration of sentence. Rule 29(a), SCRCrimP, provides that the court may decide the motion on briefs, in its discretion, rather than allowing a hearing. The court elects to proceed in that fashion.

Written submissions are not required by the non-moving party, but will be considered. The moving party may choose to rely upon what has already been filed or may supplement it.

The defendant is granted until 5:00 p.m., June 2, 2013, in which to file with the Lexington County Clerk of Court's office written briefs and any supporting affidavits or documentation. The Solicitor has until 5:00 p.m., June 6, 2013, in which to file any responsive briefs or documents. A copy of any documents filed must be forwarded immediately to the undersigned judge and to opposing counsel. The copies to the judge shall be sent by mail to Post Office Box 10, Edgefield, South Carolina 29824, and by email to wkeesleyj@sccourts.org and wkeesleylc@sccourts.org.

AND IT IS SO ORDERED.

May 24, 2013


William P. Keesley, Judge

A TRUE COPY


Lex. Co. C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals
(In the Supreme Court)

APPEAL FROM LEXINGTON COUNTY
General Sessions Court

William P. Keesley, Presiding Circuit Court Judge

Indictment No. 09-GS-32-2398

State of South Carolina,

Respondent

vs.

Terence Hayes,

Appellant

203 (d) (1) (B) (iv)

STATEMENT OF CASE FOR AN APPEAL

The Defendant, Terence Hayes and a twin brother and they are the stepsons of the aggressive victim who was married to their mother.

There had been some animosities in the household belonging to the mother who allowed the step-father to move in with herself and her twin sons.

The aggressive victim, over time, developed a strategy of intimidation, embarrassment and harassment toward the two step-sons so as to make it terribly uncomfortable for them to be in the presence of their mother and to enjoy the home for which they lived.

The defendant and his brother lived in the upper floors of the home so that they were on some rare occasions able to avoid any contact with their mother and their step-father.

They attempted to conduct themselves in a fashion so that the mother would not be required to make choices between themselves and the step-father given the hostilities that were being created and built by the step-father. The defendant and his brother, as a consequence, made a decision that they would leave home early in the mornings before their mother and their step-father arose for the day and would not return home until they could safely avoid contact with the step-father and the mother after they had retired for the evening.

In spite of their efforts to avoid having any contact with the step-father and the mother, and as a result of them attempting to avoid the contact, the aggressive victim would, at every occasions he could, continue his subtle ways of intimidation and terrorism towards the twins in spite of the mother being present. As the efforts intensified to always embarrass or humiliate the twins, they became more and more dissatisfied with their home life and even further alienated themselves away from the family and the home. They at some times worked two jobs to avoid contact with the step-father.

The major complaint on the part of the aggressive victim was that these twins did not keep an orderly bedroom.

On the day of this incident that led to the death of the step-father, the mother was out of town for the weekend. The twin brothers, being aware that the mother was out of town, and being aware of the potential for conflict, came home later than usual expecting not to have contact with the step-father. As the defendant and his brother entered the home, the brother went to the kitchen to fix a sandwich and the defendant went upstairs to play with some swords that he had began to collect as a hobby. After being in his room for a short period of time, the defendant

heard a noise emanating from the kitchen/family room combination and without thinking, he proceeded down the stairs through the family room toward the kitchen area and he immediately saw the step-father and his brother engaged in a verbal dispute. The defendant told his brother to cease the argument and to call 911. The brother proceeded to make the phone call and the step-father lunged at the defendant who attempted to back away and the step-father's hand hit the knife and therefore cut the hand. The step-father continued to engage the defendant at which time they fell to the floor in the family room area breaking the coffee table and therefore it is believed that the victim/aggressor also hit his head on the side of the coffee table. The victim continued to struggle and because of the struggle, the defendant held and used whatever pressures he felt were necessary so as to not allow the victim to come to his feet and continue with the fight. During the course of this struggle, the brother is in contact with the 911 Dispatcher and there is a blow by blow account of the incidents between the victim and the defendant that was placed in the evidence after the undersigned ask the judge to make it an exhibit and read it to understand the confusion the incident generated. (See Exhibit A) The court read the transcription of the 911 call. Some time shortly after the 911 call was made, officers from the Irmo Police Department responded to the home and were allowed into the area for which the defendant was still holding the victim in a position so that he could not cause further problems between the two of them. Officers from the Irmo Police Department demanded that the defendant release the victim at which the defendant responded. The defendant was removed from the home and was placed in one of the patrol vehicles, separated from his brother who was also placed in a separate patrol vehicle. Both of the twins gave video-taped statements concerning the incident.

Almost simultaneously with the arrival of the Irmo Police Department, EMS personnel responded to the scene. They thought it was necessary to try to revive the victim/ aggressor for which they were unsuccessful in so doing. The victim was pronounced dead at the home following this encounter.

The defendant, of course, was subsequently, charges with murder.

The defendant, after having been explained the complexities of his case and the application of the law of self defense, the duty to retreat, mutual combat, use of force, The Castel Doctrine where applicable, a trial or a guilty plea and the possible result the decisions he would need to make. Understanding the difficulties he might face, the defendant gave his blessings so that the State and the defense could work out a proper disposition of his case. This information was conveyed to the defendant.

The state and the defense engaged in many intense sessions over the next four years in a serious attempt to resolve this case. The undersigned shared case law with the defendant and kept the defendant informed about progress of the case. Ultimately the state and the defense came to the conclusion that the State would reduce the charge from murder to voluntary manslaughter.

The agreement was offered to the defendant and he accepted the offer. The State and Defendant also agreed that the plea would be based on the case of North v. Alford. The defendant and the undersigned had, on several occasions, discussed the Alford case as one fitting the facts and circumstances of his case. He was given a full explanation of the impact of the Alford case and that he would be sentenced the same as if he pled guilty to the manslaughter charge.

On the day of the Alford Plea, the State presented its case and their theory of what happened inside the home on that night. Three of the victims relative addressed the court on behalf of the victim.

The defendant, in turn, was allowed to make his presentation to the court concerning the facts and circumstances and the history of the relationship between the victim and the deceased as herein mentioned, and the defendant as well as his mother and his brother made a plea to the judge to be lenient toward the defendant in light of the circumstances that led to his death.

At the end of the presentation by the mother and the brother, and a statement from the defendant, the undersigned attorney made an appeal to the court to consider the intent of the North Carolina v. Alford guilty plea. The defendant's argument in the sentencing phase of the North Carolina v. Alford plea was to urge the court to consider all of the circumstances, including the fact that the defendant and his brother went to every conceivable effort, to avoid any conflict with the victim over a substantial period of time after suffering humiliation, embarrassment, and terrorism so as not to create problems within the home. Also, whether or not there was any criminal intent on the part of this defendant when he was engaged by the deceased in an aggressive, threatening and forceful manner. Further, the case involves men of similar size and stature.

The undersigned also urged the court to use its wisdom, its understanding of the law, its understanding of the facts, the conduct on the part of the defendant to avoid any and all physical contact with the victim and that he used only the force that was reasonably necessary to arrest the aggression.

The undersigned relayed to the court that when the officers entered the home on the night in question, the defendant was still using only the force that was necessary to stop the aggression to which the State replied by calling one of the officers who entered the home, stated that he

had to yell on several times to let the victim go, to which the defendant responded and he did so.

The defendant, through his counsel, further proffered, that the court could properly give a sentence that was adequate but not greater than that which was necessary to perform the sentencing function. The defendant, through his attorney, read statements into the record from employers, neighbors, friends, family, and associates who spoke of the defendant's character for peace and tranquility. The court was asked to consider that the defendant had no substantial criminal record.

The court, seemed to only be interested in whether or not the police officer who entered the home made several requests, in order to what he believed, would cause the defendant to remove himself from the victim.

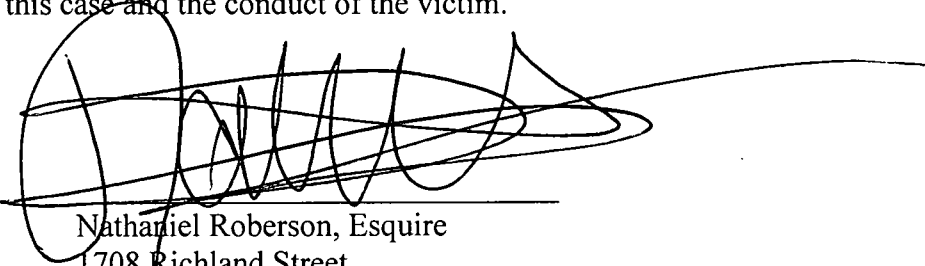
Before the court passed sentence, the court emphatically stated that it did not have any greater wisdom than anyone involved in this case and that no one would be satisfied in the end and he therefore passed a sentence of twenty-two (22) years, giving the defendant credit for the time he had served pre-trial which was almost four and one half (4 1/2) years before the date of the sentence.

The defendant filed a motion asking the court to reconsider its sentence of which the court responded by ordering the parties to file written briefs concerning their position relative to sentencing. The court was notified by the attorney for the defendant that he would request a transcript of the proceedings so that I might prepare my arguments in writing. The court did respond that he was somewhat confused as to why a transcript would be ordered and this was after it was explained to him that I would need the transcript in order to prepare my written arguments.

The undersigned ordered the transcript which did not take a substantial amount of time and the court continued to be aggressive in wanting to end the matter of the motion to reconsider. The court appear to have little patience in waiting for a competent brief on the issue to reconsider a 22 year sentence. See *Roper v. Simmons*, 543 U.S. 551, 560, " The Eight Amendment's prohibition of cruel and unusual punishment " guarantee individuals the right not to be subjected to excessive sanctions." That right "flows from the basic precept of justice that punishment for crime should be graduated and proportioned" to both the offender and the offense. *See also Miller v. Alabama, 10-9646 (U.S.6-25-2012) 132 5. ct. 2455 For a discussion on proportionate punishment.*

The undersigned attaches as "Exhibit B", The Motion to Reconsider, and the transcript of the Alford plea as Exhibit C to demonstrate how unusual and cruel this sentence is given the totality of the circumstances that led to this case and the conduct of the victim.

September 6, 2013



Nathaniel Roberson, Esquire
1708 Richland Street
Columbia, South Carolina 29201
(803) 252-4449
Attorney for Appellant

Other Counsel of Record:

Dayton Riddle, Assistant Solicitor
Eleventh Judicial Circuit
Lexington County Courthouse
205 E. Main Street
Lexington, S.C. 29072

cc: Salley W Elliot
Robert Michael Dudek

EXHIBIT

A

OPEN INCIDENT REPORT

DATE 10/23/08	TIME 00:43:46	EVENT ID 081023-214958P	PHONE (803)781-1164	ESN 066	Police IRPD	Fire 17B	EMS
OWNER FAVOR, MELINA	ADDRESS 124 FALLSBURY RD.	CITY IR	GRID D7W1	CODE			

CALLER : FAVOR, MELINA
 LOCATION : 124 FALLSBURY RD
 BUSINESS : NONE
 CROSS 1 : FRIARSGATE BLVD
 CROSS 2 : NONE
 NATURE : S6 HOMICIDE/ MURDER
 LAT/LON : 34 5 30 N 81 11 30 W

***** REMARKS *****

00:44:48 MEA NATURE CHANGED FROM UNCON BY MEA
 00:44:57 MEA EVENTCALLER CHANGED FROM FAVOR, MELINA BY MEA
 00:45:22 MEA STATES THIS MAN JUST THREATENED HIM AND HIS BROTHER....
 00:45:28 MEA SO HE FAUGHT WITH HIM
 00:45:38 MEA AND 1ST REPORTED HE IS DEAD
 00:45:46 MEA NOW THINKS HE MAY BREATHING A LITTLE
 00:46:10 MEA PT BLEEDING FROM THE HAND
 00:46:44 MEA STATES THAT THE PT HAD A GUN
 00:47:10 MEA *****
 00:47:22 MEA STORY IS NOT ADDING UP
 00:47:25 MEA *****
 00:47:34 MEA CONTINUING TO CONTRADICT HIMSELF
 00:47:49 TAH OFFICER(S) ASSIGNED TO UNIT 1 : JOHNSON, CRAIG; MYERS, KIM
 00:47:50 MEA NOW STATES THAT THE PT NEVER GOT TO THE GUN
 00:48:06 MEA PT LAYING ON FLOOR
 00:48:21 MEA BUT BROTHER IS RESTRAINING THE SO CALLED DEAD GUY
 00:48:27 MEA BUT NOW HE IS BREATHING A LITTLE
 00:48:29 TAH NATURE CHANGED FROM ASSLTM BY TAH
 00:48:31 TAH NATURE CHANGED FROM ASSLTM BY TAH
 00:48:52 MEA NOW STATES THIS MAN IS MARRIED TO HIS MOM.... BUT HE DONT KNOW HIM
 00:48:57 MEA MOM IS OUT OF TOWN
 00:49:01 JMK OFFICER(S) ASSIGNED TO UNIT 842 : DENNIS, COURTNEY
 00:49:12 MEA PAUL FAVOR..... IS PT NAME
 00:49:23 MEA NO DRINKING
 00:49:31 TAH NATURE CHANGED FROM ASSLTM BY TAH
 00:49:37 JMK OFFICER(S) ASSIGNED TO UNIT 843 : PD, IRMO
 00:49:41 MEA FRONT DOOR IS BEING UNLOCKED
 00:49:49 TAH OFFICER(S) ASSIGNED TO UNIT 215 : HENTZ, JASON
 00:49:51 MEA STAYING ON THE LINE
 00:50:18 MEA CALLER ADVISE HE LIVES HERE.....
 00:50:30 MEA SO DOES PAUL..... THE PT
 00:50:35 MEA BUT THE CALLER DONT KNOW HIM
 00:50:59 MEA CANT TELL IF HES BREATHING NOW
 00:51:21 MEA STATES HE ONLY FAUGHT HIM FOR A FEW MIN
 00:51:29 MEA NOW HE STATES HIS BROTHER ALSO FAUGHT HIM
 00:51:40 MEA SO THEY BOTH FAUGHT HIM
 00:51:50 MEA STATES HE WILL NOT FIGHT THE OFFICERS
 00:52:18 MEA MOTHER IN FL. SHE IS UNAWARE OF THIS INCIDENT
 00:52:39 MEA LAYED PHONE DOWN
 00:52:43 MEA HEARD A CAR PULL UP
 00:52:46 TAH CALL (081023-214958P) CLOSED BY TAH
 00:52:47 MEA USE CAUTION
 00:53:00 JMK RADIO CLRD FOR UNITS ON SCENE
 00:53:12 MEA HEAR VOICES IN BACKGROUND
 00:53:37 JAB OFFICER(S) ASSIGNED TO UNIT L257 : REDDING, CHAD
 00:53:40 TAH EMS STANDING BY AT WENDYS IRMO DR
 00:55:25 JMK 843 SEND IN EMS
 00:55:39 JMK ONE DOWN W/ SWORD, CUT PRETTY BAD
 00:57:01 JMK ONE DOWN DOES NOT APPEAR TO BE BREATHING
 00:57:21 JMK 840 COUNTY STILL NEEDED
 00:57:42 JMK SUBJ UNRESPONSIVE, NOT BREATHING, 2 DETAINED
 00:58:07 TAH SCENE SECURE
 00:59:51 TAH S09 - NOTIFY CORONER
 01:05:21 JMK 843 OK TO CLR RADIO
 01:05:25 JMK RADIO CLR
 01:09:32 JMK OFFICER(S) ASSIGNED TO UNIT 002 : WILSON, RYAN
 01:11:41 JAB OFFICER(S) ASSIGNED TO UNIT L251 : WEED, JEFF
 01:14:52 JMK OFFICER(S) ASSIGNED TO UNIT 840 : GATTI, KENNETH
 01:22:54 JAB NATURE CHANGED FROM SEC BY JAB
 01:22:55 JT 215 AVAIL
 01:22:57 JAB NATURE CHANGED FROM SEC BY JAB
 01:24:40 JMK 843 HAYES, TERENCE 1-13-84
 01:25:21 JMK 842 BRANDON LAMAR HAYES 1-13-84
 01:27:29 JMK BRANDON DL 11561614
 01:27:49 JMK TERENCE DL 11561635
 01:28:57 JMK 840 WEED SLED CRIME SCENE

OPEN INCIDENT REPORT

01:31:43 JMK SLED NOTIFIED
 01:31:52 IAH CALL (081023-214958M) CLOSED BY IAH
 01:37:06 JMK 843 1 BM IN CUSTODY ENROUTE TO PD
 01:37:26 JMK 842 1 BM IN CUSTODY ENROUTE TO PD
 01:40:21 JMK 843 OUT AT PD, 842 OUT AT PD
 01:49:11 JMK SLED CONFERENCED TO 840
 02:17:09 JAB PER L251 IRPD REQUESTING OUR ID
 02:23:22 JAB OFFICER(S) ASSIGNED TO UNIT L342 : PHIPPS, MICHAEL
 02:24:09 JAB ATTEMPTED TO CONTACT CSI ROSS AT HOME AND CELL.. NEGATIVE CONTACT
 02:24:29 JAB PER SHIFT SUPERVISOR CONTACTED L342 WHO ADVISED HE WOULD BE GETTING READY

**** COMPLETED UNITS ****

LE UNIT	DISP	ENRT	ONSC	AVAIL	RUN NUMBER
L257	00:53:37	00:53:37	00:00:00	01:00:51	08-095791

**** IN WORK UNITS ****

LE UNIT	DISP	ENRT	ONSC	AVAIL	RUN NUMBER
843	00:49:37	00:49:37	00:52:25	00:00:00	1008-011554
802	01:09:32	01:09:32	01:16:57	00:00:00	1008-011554
840	01:14:52	01:14:52	00:00:00	00:00:00	1008-011554
842	00:49:01	00:49:01	00:52:21	00:00:00	1008-011554
L251	01:11:41	01:11:41	01:11:41	00:00:00	08-095791
L342	02:23:22	00:00:00	00:00:00	00:00:00	08-095791

***** PEOPLE *****

#	NAME	RACE	S	DOB	ST	OLN	SSN
0	HAYES, BRANDON L	B	M	01/13/1984	SC	0011561614	459672534
0	HAYES, TERENCE O	B	M	01/13/1984	SC	0011561635	459673784

SHIPPED 10/23/2008 00:44:	ADVISED	DISPATCHED 10/23/2008 00:53:	ON SCENE 1900	CLEARED 10/23/2008 01:00:
DISPOSITION				CT MEA DP IAH

EXHIBIT

B

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FILED

STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2013 MAY 17 ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)

State of South Carolina,) BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC) Warrant No(s): I-0206772

vs.)

Terence O. Hayes,)

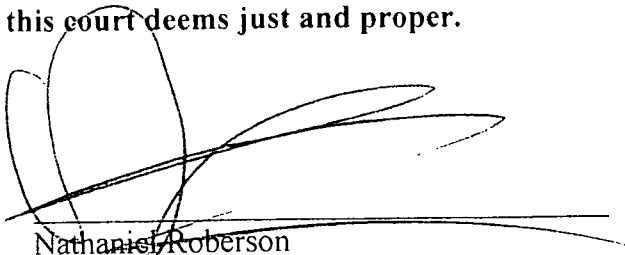
Defendant.)

MOTION TO RECONSIDER
SENTENCE

TO: Dayton Riddle, Assistant Solicitor, Lexington County Solicitor's Office:

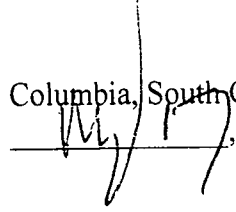
YOU WILL PLEASE TAKE NOTICE that the Undersigned Attorney for the defendant will move before the Trial Judge for an Order reducing the sentence imposed upon the defendant on May 8, 2013, in the forenoon on the fourth day of service or as soon thereafter as counsel may be heard on the grounds that the sentence imposed was unduly harsh, excessive and inconsistent with the factor before the court at the time of sentencing.

And for such other and further relief as this court deems just and proper.



Nathaniel Roberson
Attorney for Defendant
1708 Richland Street
Columbia, South Carolina 2901
803-252-4449

Columbia, South Carolina
_____, 2013



EXHIBIT

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State of South Carolina
County of Lexington

Court of General Sessions

State)
)
 v.)
 Terence Omar Hayes)
)
 Defendant.)

Transcript of Record
09-GS-32-2398

May 7, 2013
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

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

C. Dayton Riddle, III, Deputy Solicitor
Attorney for the State

Nathaniel Roberson, Esquire
Attorney for the Defendant

Stacy L. Sheppard, RPR
Circuit Court Reporter

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WITNESSES DIRECT CROSS REDIRECT RECROSS

(There were no witnesses.)

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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3	Court's 1	Photograph	49	
4	Court's 2	Record of 9-1-1 Call	49	
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1 (The following proceedings were held on May
2 7, 2013.)

3 **THE CLERK:** 2009-GS-32-2398, State versus
4 Terence Omar Hayes, indicted for murder. He is
5 pleading to voluntary manslaughter. The
6 indictment -- under North Carolina versus Alford.
7 The indictment has been true billed and he's
8 represented by Mr. Roberson.

9 TERENCE OMAR HAYES,
10 having been duly sworn, testified as follows:

11 **THE COURT:** You're Terence Omar Hayes, sir?

12 **DEFENDANT:** Yes, Your Honor.

13 **THE COURT:** This indictment charges that in
14 Lexington County, on or about October the 23rd,
15 2008, you willfully, feloniously and with malice
16 aforethought killed Paul Favor by means of
17 strangulation and that Mr. Favor died in Lexington
18 County on or about the same date as a result of you
19 placing your hands and arms around his neck and
20 applying pressure to such an extent that he lost
21 consciousness and died.

22 Upon your arraignment on this charge of murder,
23 it appears that you wish to enter a plea of guilty
24 under North Carolina versus Alford to the lesser
25 included offense of voluntary manslaughter; is that

1 correct?

2 **DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** Mr. Roberson, have you fully
4 explained to your client the nature and elements of
5 the offense, the possible punishment and his
6 constitutional rights, including trial by jury?

7 **MR. ROBERSON:** Yes, I have, Your Honor.

8 **THE COURT:** Have you explained to him the
9 nature and ramifications of an Alford plea?

10 **MR. ROBERSON:** Yes, I have.

11 **THE COURT:** Do you believe it's an appropriate
12 case for an Alford plea?

13 **MR. ROBERSON:** I do think so.

14 **THE COURT:** Mr. Hayes, today are you under the
15 influence of any medicine, alcohol, drug or anything
16 affecting your thinking?

17 **DEFENDANT:** No, Your Honor.

18 **THE COURT:** Do you have physical or mental
19 problems affecting your thinking?

20 **DEFENDANT:** No, Your Honor.

21 **THE COURT:** You're clearheaded, you know what
22 you're doing?

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

24 **THE COURT:** Is that a bandage around your head?

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

1 **THE COURT:** Why?

2 **DEFENDANT:** Leakage of keloids.

3 **THE COURT:** So you didn't have any brain trauma
4 or anything?

5 **DEFENDANT:** No, sir.

6 **THE COURT:** Okay. North Carolina versus Alford
7 is a case that stands for the proposition that
8 someone can enter a plea of guilty without admitting
9 the truth of the underlying charge. Do you
10 understand that?

11 **DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** In order for me to allow anybody to
13 plead guilty under North Carolina versus Alford,
14 certain things have to exist:

15 The first is that you know what information the
16 State claims to have against you, what it is that
17 they would intend to present as evidence in your
18 trial if you went to trial. After reviewing that
19 evidence, you have decided that there's a
20 substantial likelihood that if you went to trial,
21 the jury would convict you. Instead of running that
22 risk, you choose to take the benefit of some plea
23 bargain that the State has offered to you, the
24 obvious one so far is that they're dropping murder
25 to a voluntary manslaughter, reducing it. Do you

1 understand all that?

2 **DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** Is that what's happening in your
4 case?

5 **DEFENDANT:** Yes, Your Honor.

6 **THE COURT:** Now, you need to understand that
7 North Carolina versus Alford, a plea under that
8 case, is a conviction. It goes against your
9 criminal record. It has all the same consequences
10 as a regular guilty plea. You understand that?

11 **DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** When you plead under Alford, you
13 give up very important rights, including your right
14 to remain silent and your right to a jury trial. Do
15 you know that?

16 **DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** If you wanted a jury trial, you
18 would be presumed to be innocent. The State would
19 have to prove you guilty beyond a reasonable doubt
20 in order to convict you of anything. They would
21 have to satisfy all 12 jurors that you are guilty
22 beyond a reasonable doubt in order for you to be
23 convicted of anything. Do you understand that?

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

25 **THE COURT:** In a jury trial, you have the right

1 to confront the witnesses against you, that means
2 you get to see, hear and have your lawyer
3 cross-examine every witness who testifies against
4 you. Do you understand that?

5 **DEFENDANT:** Yes, Your Honor.

6 **THE COURT:** You get to help select the jury.
7 You would have so many challenges that you could
8 exercise to set aside possible jurors. You
9 understand that?

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

11 **THE COURT:** If you wanted to present evidence
12 in your case, you could call witnesses, subpoena
13 evidence. If you, yourself, chose to testify, you
14 would certainly be given that opportunity. If you
15 chose not to testify, the trial judge would tell the
16 jury they could not hold your silence against you in
17 any way at all. Do you understand all that?

18 **DEFENDANT:** Yes, Your Honor.

19 **THE COURT:** Now, if you enter this plea under
20 Alford, you're giving up those rights. You're
21 giving up your right to remain silent. You're
22 giving up your right to a jury trial to confront the
23 witnesses against you. You're giving up the
24 presumption of innocence. And if you have any
25 defenses in your case like self-defense or you have

1 any challenges to the evidence, if any of the
2 evidence was obtained improperly, you're giving up
3 those defenses and challenges if you plead under
4 Alford. Do you understand all that?

5 **DEFENDANT:** Yes, Your Honor.

6 **THE COURT:** Do you want a jury trial or do you
7 want to enter this plea under Alford?

8 **DEFENDANT:** I want to enter the plea under
9 Alford.

10 **THE COURT:** All right. I need you to listen to
11 Mr. Riddle, please. When he finishes, I'm not going
12 to ask you if what he said is true, but I'm going to
13 ask you if that's what you understand the State
14 would intend to prove if you went to trial.

15 **DEFENDANT:** I understand, Your Honor.

16 **THE COURT:** All right. Mr. Riddle.

17 **MR. RIDDLE:** Your Honor, if it pleases the
18 Court. This incident took place at 124 Fallsbury
19 Road, that's in the Friarsgate subdivision in the
20 Lexington County portion of the Town of Irmo. It
21 happened on October 23rd of 2008, Your Honor. At
22 that time, at about quarter of 1:00 in the morning,
23 law enforcement received a phone call, a 9-1-1 call,
24 telling them to report to the Fallsbury Road address
25 that there was an ongoing altercation at that time.

1 The altercation involved, Your Honor, Mr. Terence
2 Hayes and his stepfather, Paul Anthony Favor.

3 Your Honor, Mr. Favor was born on October --
4 November 29th of 1954. He has multiple siblings,
5 Your Honor, three of whom are in the courtroom here
6 today, one of whom would like to address the Court
7 at the appropriate time. Those siblings are
8 Ms. Geneva Favor Mitchell, Pamela Favor Sims and
9 Robert Peter Favor. Also present in the courtroom,
10 Your Honor, are three of Mr. Favor's cousins,
11 Melvina Hagler, Beatrice Wilson and Regina Brown.

12 Your Honor, there's a couple of other people
13 that are here that I'd like to tell the Court are
14 here, too, in case Your Honor has any questions,
15 that would be Chief Brian Buck with the Irmo Police
16 Department and also Detective Hendricks with the
17 Irmo Police Department. Your Honor, Detective
18 Hendricks was a line officer on October the 23rd,
19 2008, and was one of the officers dispatched to the
20 Fallsbury Road address.

21 Your Honor, as I indicated, the Fallsbury Road
22 address is the home of Mr. Favor. It was also the
23 home, at that time, of Terence Hayes and his twin
24 brother, Brandon Hayes, who was the individual that
25 called 9-1-1. Their mother also lived at the

1 residence, but was not in town at the time, as well
2 as a younger sibling of the twins. And the mother
3 and the younger sibling were out of town at the time
4 this happened. The three people who were there at
5 the house that night were Brandon Hayes, the twin
6 brother, the defendant, Terence Hayes, and the
7 victim Mr. Favor.

8 Your Honor, as I indicated, it happened about
9 quarter of 1:00 in the morning. Irmo police
10 received a 9-1-1 call. Officer Hendricks and
11 another officer responded to the scene. When they
12 responded to the scene, they were, I want to say,
13 confronted, but the situation that they confronted
14 was Mr. Brandon Hayes, he was on the phone with the
15 9-1-1 dispatcher. They got there. They went into
16 the house.

17 At that time, Your Honor, they walked into the
18 den area of the house and they saw Mr. Terence
19 Hayes, and if I could get Officer Hendricks to step
20 up here for just a minute, they saw Terence Hayes on
21 the back of Mr. Favor. Mr. Favor was laid out on
22 the floor prone, facedown.

23 And I wanted Your Honor to see what
24 Mr. Hendricks saw when he walked in. Terence Hayes
25 was on the back, if I'm Mr. Favor, Terence Hayes was

1 in this position (indicating).

2 **THE COURT:** All right. So something like a
3 choke hold.

4 **MR. RIDDLE:** It's a choke hold with the forearm
5 across the throat and then the other arm pushing the
6 head down.

7 Your Honor, when the officers walked in, they
8 did not have Brandon Hayes secured at that time.
9 They gave Terence Hayes verbal commands to get off
10 of Mr. Favor. Mr. Terence Hayes did not comply with
11 the verbal commands.

12 At that point, Your Honor, the two officers
13 felt like they needed to secure Brandon Hayes to
14 eliminate any threat that he could potentially be.
15 They took the time to secure Brandon Hayes. Then
16 Officer Hendricks and the other responding officer
17 literally had to go over there and peel Terence
18 Hayes off of Mr. Favor. They had to physically
19 extract him from around Mr. Favor's throat. He
20 would not comply with verbal commands to let him go.
21 Once they had Mr. Terence Hayes off of Mr. Favor,
22 Your Honor, they secured him as well.

23 They called the EMTs. The EMTs came to the
24 scene, but Mr. Favor was already deceased there in
25 the living room.

1 He was subsequently autopsied, Your Honor.
2 They found the cause of death being manual
3 strangulation. They found all of the signs and
4 symptoms that go along with manual strangulation.
5 They found petechial hemorrhages in his eyes and
6 also on his face. They found congestion of the head
7 and neck. And they found damage to the muscles in
8 the neck and throat area of Mr. Favor. He also had
9 certain other smaller injuries that were indicative
10 of a fight having occurred, the most significant of
11 which, Your Honor, was an incised wound to his left
12 hand.

13 Also found at the scene was a sword. That
14 sword was broken, broken in the sense that the
15 handle had become separated from the blade of the
16 sword. Mr. Favor had a wound across the palm of his
17 left hand.

18 Officers were later able to figure out through
19 interrogation of Mr. Brandon Hayes and of
20 Mr. Terence Hayes, after the advice of Miranda,
21 essentially what they believe occurred in this case.
22 And what I'm fixing to tell Your Honor is
23 essentially information gleaned from the statements
24 of Mr. Brandon Hayes and from Mr. Terence Hayes.

25 Those statements indicated that Mr. Favor and

1 Brandon Hayes had become involved in a verbal
2 altercation. That altercation started shortly
3 before quarter of 1:00 in the morning. It started
4 because Mr. Brandon Hayes apparently was cooking and
5 making noise in the kitchen and woke Mr. Favor up
6 where he had been sleeping. During the course of
7 that altercation, Your Honor, Brandon Hayes and
8 Mr. Favor got loud.

9 Your Honor, at some point, Mr. Terence Hayes,
10 who was not present during that time period, came
11 downstairs where the altercation was taking place in
12 the living room, in the kitchen. When he came
13 downstairs, Your Honor, he brought a samurai sword
14 with him. Mr. Hayes apparently collected samurai
15 swords and a number of them were found in the house
16 in Mr. Hayes's bedroom and, of course, the one was
17 found in the den where the assault took place.

18 Mr. Terence Hayes brought the sword into the
19 verbal altercation. The sword was swung at
20 Mr. Favor. Mr. Favor caught the blade of the sword
21 in his hand and ended up breaking the sword off
22 where the handle connects to the blade itself. It
23 was at that point that we believe Mr. Terence Hayes
24 got on his back and started choking him.

25 Mr. Brandon Hayes called 9-1-1. Again, Mr. Hayes

1 was physically removed from Mr. Favor at the time
2 the police arrived.

3 That would be the extent of what the State
4 would intend to prove at trial.

5 The one other thing that I would like to point
6 out is that a toxicology report was done on
7 Mr. Favor. He was negative for everything.

8 **THE COURT:** All right. Mr. Hayes, is that what
9 you understand the State would intend to prove if
10 you went to trial?

11 **DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** Has anybody forced you, threatened
13 you, coerced you in any way to get you to plead
14 against your will?

15 **DEFENDANT:** No, Your Honor.

16 **THE COURT:** Any plea bargains the State might
17 have made with you, that includes any agreements
18 about dropping a charge, reducing a charge,
19 recommending a sentence, anything like that, they
20 have to say to me in open court on the record or it
21 has to be in a written plea agreement that's entered
22 into the record or you lose what's not told to me on
23 the record or not put into the record in writing.
24 Do you understand all that?

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

1 **THE COURT:** Now, the only thing I have in front
2 of me is that they're reducing murder to voluntary
3 manslaughter.

4 Any other charges that you're dropping,
5 possession of a weapon during a violent crime,
6 anything like that?

7 **MR. RIDDLE:** No, sir, no other charges, and
8 that is the entirety of the plea agreement.

9 **THE COURT:** Mr. Roberson, that's your
10 understanding, too?

11 **MR. ROBERSON:** That's correct, Your Honor.

12 **THE COURT:** So, Mr. Hayes, other than what's on
13 the record, has anybody promised you anything to get
14 you to plead?

15 **DEFENDANT:** No, Your Honor.

16 **THE COURT:** Are you fully satisfied with your
17 attorney?

18 **DEFENDANT:** Yes, Your Honor.

19 **THE COURT:** Anything else you want him to do on
20 your case that he hasn't done, any witnesses you
21 want him to talk to, experts you want him to
22 consult, any investigation or explanation about
23 facts or law, anything at all that you need him to
24 do that he has not done for you?

25 **DEFENDANT:** No, sir.

1 **THE COURT:** All right. Have you had enough
2 time to meet with Mr. Roberson and speak with him so
3 that he can represent you properly?

4 **DEFENDANT:** Yes, Your Honor.

5 **THE COURT:** Have you had enough time to make up
6 your own mind about all of this?

7 **DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** And do you have any complaint of
9 any kind against anybody who's dealt with your case,
10 your attorney, law enforcement officials, anybody at
11 all?

12 **DEFENDANT:** No, Your Honor.

13 **THE COURT:** Okay. Now, Mr. Hayes, voluntary
14 manslaughter is a felony and it carries up to 30
15 years in prison. Do you know that?

16 **DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** It is classified by the Legislature
18 as a violent crime. Do you know that?

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

20 **THE COURT:** Do you have a prior criminal
21 record?

22 **DEFENDANT:** No, Your Honor.

23 **THE COURT:** On a second violent crime, the
24 person has to do all the time without any
25 possibility of early release. You understand that?

1 **DEFENDANT:** Yes, Your Honor.

2 **THE COURT:** The Legislature's also classified
3 certain offenses under what's commonly called two
4 strikes, you're out and three strikes, you're out.
5 Those things are really called most serious offenses
6 and serious offenses. This crime of voluntary
7 manslaughter is a most serious offense. If you get
8 the right combination of strikes, you have to do
9 life in prison without the possibility of parole.
10 Do you understand that?

11 **DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** Do you understand that violent
13 offenders are treated differently than nonviolent
14 offenders by the department of corrections?

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

16 **THE COURT:** You won't be eligible for certain
17 placement in certain institutions, you won't be
18 eligible for certain programs that a nonviolent
19 offender would be eligible for. You understand?

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

21 **THE COURT:** Now, this is a felony and I'm
22 specifically finding that and I've told you that..
23 And this is a violent crime. I'm specifically
24 finding that and I've told you that. I've written
25 that on the sentence sheet. The reason I'm doing

1 that is because there is a statute in South Carolina
2 that prohibits someone convicted of a violent felony
3 from possessing any firearm or any ammunition.

4 So you understand that if you go forward with
5 this plea, you will be barred from possessing a
6 firearm or ammunition in the future, you understand?

7 **DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** Now, there are also -- some of
9 these things are certainly not as significant as
10 others, but I need to go over with them -- them with
11 you so that I make sure you know it. If you need to
12 stop and talk to Mr. Roberson at any time, that's
13 fine.

14 When you get out of prison, they're going to
15 put a special code on your driver's license so that
16 if you hand a license to an officer, that officer's
17 going to know that you have a violent conviction on
18 your record. You understand that?

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

20 **THE COURT:** The Legislature's also classified
21 this under what's commonly called two strikes,
22 you're out and three strikes, you're out. I'm
23 sorry, I said it wrong. I've already covered that.

24 They've also classified this under what's
25 commonly called truth in sentencing. And if --

1 those things are really called no parole offenses.
2 Voluntary manslaughter is a no parole offense. Now,
3 what that boils down to is that a person who is
4 sentenced on a no parole offense must do at least 85
5 percent of the time day for day before that person
6 can possibly be released from prison. You
7 understand that?

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

9 **THE COURT:** So any sentence I give you you have
10 to do at least 85 percent of it. You know that?

11 **DEFENDANT:** Yes, Your Honor.

12 **THE COURT:** That's no guarantee that you will
13 get out in 85 percent, that's the least time you can
14 possibly do. You understand that?

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

16 **THE COURT:** When you come out, you
17 automatically come out on a period of community
18 supervision. You have to successfully complete the
19 community supervision. If you don't, you can get
20 sent back to prison. You understand that?

21 **DEFENDANT:** Yes, Your Honor.

22 **THE COURT:** And you'll have to provide a DNA
23 sample. Your DNA profile will be put in a central
24 computer registry. You know that?

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

1 **THE COURT:** All right. Mr. Hayes, have you
2 understood everything I've been over with you now?

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

4 **THE COURT:** You sure you want to give up your
5 rights and enter this plea of guilty under North
6 Carolina versus Alford?

7 **DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** That's your own decision, made of
9 your own free will?

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

11 **THE COURT:** Mr. Hayes has made a free, knowing,
12 voluntary and intelligent decision to waive his
13 rights and plead guilty under North Carolina versus
14 Alford. He has done so upon the advice of counsel
15 with whom he's fully satisfied. The case is an
16 appropriate one for an Alford plea. He's getting
17 the benefit of the bargain from dropping this --
18 reducing it from murder to manslaughter. There's a
19 substantial, factual basis for the plea. He
20 understands the nature and the ramifications of the
21 Alford plea. The Court finds a factual basis for
22 the plea specifically.

23 Now, who wishes to be heard?

24 **MR. RIDDLE:** If you want us to go now, Your
25 Honor, Ms. Geneva Favor Mitchell would like to be

1 heard on behalf of the family. She is Mr. Favor's
2 sister.

3 **THE COURT:** I need you to come up here, please,
4 ma'am.

5 **MR. RIDDLE:** And also one other individual that
6 I neglected to mention, Ms. Shamonique, who is the
7 daughter of Mr. Favor, would also like to address
8 the Court.

9 **THE COURT:** You're Geneva Favor --

10 **MR. RIDDLE:** This is the daughter, and I
11 apologize if I'm butchering the name, it's
12 Shamonique Favor.

13 **THE COURT:** Would you spell your first name for
14 me, please, ma'am?

15 **MS. FAVOR:** S-h-a-m-o-n-i-q-u-e.

16 **THE COURT:** Okay. Ms. Favor, what is it you'd
17 like to tell me?

18 **MS. FAVOR:** This impact changed my life. I
19 will never hear his voice. I will never hug him
20 again. My daughter will never see him or know who
21 he was.

22 And this is really hard for me because we
23 wasn't the world greatest family, but at the end of
24 the day, we were a family. We were a family. I
25 remember the good, the bad, the happy and the sad.

1 It's just weird, you know. This is my brother.
2 I remember going -- having great times like -- I
3 don't know what happened. I don't know. But I
4 forgive because that's what my father would want me
5 to do, he would want me to forgive, and so I just
6 needed to allow him to hear that. I do forgive him,
7 but I do feel wrong is wrong and right is right and
8 everybody knows right from wrong.

9 **THE COURT:** How old is your daughter, ma'am?

10 **MS. FAVOR:** She's three.

11 **THE COURT:** Three years old?

12 **MS. FAVOR:** I conceived right after my father's
13 murder.

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

15 **MR. RIDDLE:** Your Honor, this is Ms. Geneva
16 Favor Mitchell. She is Mr. Favor's sister.

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

18 **MS. MITCHELL:** Your Honor, every day and
19 especially every holiday and every birthday of my
20 brother I remember the horrific way in which he
21 died. And we all miss him. He was our oldest
22 brother.

23 And I would like to say to Terence that I do
24 forgive him. And my only prayer is that Terence
25 gets the help that he needs because I'm sure his

1 family misses him as well. But I pray that he gets
2 the help that he needs so that he can, when he gets
3 out, be a productive member of society. I used to
4 look at Terence as a murderer, a mean person, but I
5 don't see him like that anymore, Your Honor. And I
6 just want to say thank you for allowing us to say a
7 few words.

8 **THE COURT:** Thank you very much, ma'am.

9 **MR. RIDDLE:** Your Honor, I apologize. I
10 thought there was going to be two speakers, but
11 Mr. Robert Favor would also like to address Your
12 Honor.

13 **THE COURT:** I'll be happy to hear from anybody
14 who wants to speak.

15 All right. Mr. Favor, what do you want to tell
16 me?

17 **MR. FAVOR:** I would like to say that I really
18 miss my brother. My brother was a very good man and
19 I believe that he was a good husband and stepfather.
20 And I don't know what could have happened that day,
21 but his daughter and my sister see things different.

22 But when it comes to somebody killing somebody
23 like that, I just see it as a real evil person and
24 they need to be in prison and they need to stay in
25 prison because I feel that he might get out and do

1 the same thing again. I have seen this in my 66
2 years, people get to the court, they're nice. Once
3 they get out, they turn to the monster that they
4 always were. I don't see him changing.

5 My brother's supposed to be here today. He's
6 supposed to be able to speak. He should be seeing
7 his granddaughter. He should be with us, but he's
8 in a grave and that man put him there and that's
9 what he intended to do.

10 And I don't even know whether he asks for
11 forgiveness or not. They forgive, but did he ever
12 ask for forgiveness? Maybe he didn't, maybe he did,
13 I don't know. All I know, I hope the Court do what
14 they're supposed to do and do their job and not let
15 the wrong man walk out on the street again.

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

17 **MR. RIDDLE:** That would be all we have at this
18 time, Your Honor.

19 **THE COURT:** He has no prior criminal record?

20 **MR. RIDDLE:** No record.

21 **THE COURT:** Mr. Roberson.

22 **MR. ROBERSON:** Please the Court, Your Honor.

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

24 **MR. ROBERSON:** Your Honor, Mr. Hayes was born
25 to a military family on January 13th, 1984. As a

1 result of being born to that family, they moved
2 around the country and sometimes outside of the
3 United States. But on their last tour outside the
4 country, they came back to Virginia where they
5 stayed for a while. Then they did some military
6 time in North Carolina and they finally settled down
7 here in South Carolina as their permanent home.

8 His mother is originally from South Carolina
9 and his father is from Louisburg, North Carolina.
10 Your Honor, he's not here today and I want to share
11 with you why. This is a letter from the Department
12 of Veteran Affairs, Durham, North Carolina:

13 Dear, sir, I follow Mr. Jerry Lee Hayes in the
14 cardiology clinic at the Durham VA Medical Center.
15 Mr. Hayes has severe congestive heart failure which
16 causes extreme fatigue with light activity,
17 shortness of breath on exertion and fluid retention.
18 He is currently undergoing evaluation for a heart
19 transplant and is completely disabled and unable to
20 work at this time.

21 That is the reason why Mr. Jerry Hayes is not
22 here, Your Honor.

23 Your Honor, my client lives at the family
24 residence that he moved back to. While he was in
25 Texas, he attended the Perry Terrace {phonetic}

1 Elementary School in Texas. He came back to South
2 Carolina. He went to Gibbs Middle School, Hopkins
3 Middle School, Lower Richland High, Dutch Fork High.
4 He finally graduated from Irmo High.

5 While in high school, he worked at McDonalds,
6 Pizza Hut, Kentucky Fried Chicken, Zaxby. And
7 during a few summer -- during summer vacations, he
8 did volunteer work at the Lexington Medical Center
9 in the dietary department.

10 His mother and father divorced when he was in
11 middle school. And as I've already mentioned, his
12 father moved back to Louisburg, North Carolina,
13 where he currently lives. His father is a Vietnam
14 veteran and he currently suffers from this cardiac
15 problem and he is on the heart transplant list. I
16 spoke to him the other day. He was so weak, he
17 could scarcely speak. But he had sent us a letter,
18 which I will read to the Court at the proper time.

19 The Court has already heard that Mr. Hayes does
20 not have a criminal record. He's never been
21 accosted by the police for any activity consistent
22 with violence or with violating the kings pace.

23 He was -- the stepfather and his mother married
24 and Mr. Favor moved into the family home that was in
25 existence at the time they were married and that's

1 in Irmo where they currently live. The family did
2 separate during some periods because of conflicts,
3 which was of no major consequences, but it was
4 enough that they did separate. However, they were
5 reunited and I suppose the family tried to make a go
6 of it.

7 Your Honor, during the last year and a half or
8 so of the stepfather being reunited with the mother,
9 there were, like, arguments that involved things of,
10 when you look back at it, insignificance. It had
11 more to do with Terence and his brother having junky
12 rooms where they live. And on some occasions, you
13 know, when they fixed themselves supper or they had
14 dinner, they would not fix the table, would not
15 clean behind themselves.

16 For some reason, that became a major issue with
17 these minor things that didn't impact the quality of
18 life that these two young men lived. What they did
19 to avoid those conflicts was that they would leave
20 early in the morning before mom and stepfather arose
21 and they would come back at night after they felt
22 they were in bed so that they would not have to be
23 confronted or that they would not put their mother
24 in a position where the mother had to make choices
25 between them and the stepfather.

1 On the day in question -- and, Your Honor, I
2 must say my discussions with the family in the home
3 and the neighbors, that Mr. Favor would say some
4 real mean things to these two young men.

5 **THE COURT:** Which Mr. Favor?

6 **MR. ROBERSON:** Beg your pardon?

7 **THE COURT:** Which Mr. Favor?

8 **MR. ROBERSON:** The deceased Mr. Favor.

9 And, obviously, being 25 years of age, they had
10 the wherewithal to try to find ways so as to avoid
11 having any real conflict, which is what they did to
12 the best of their ability.

13 On the day in question -- talk about the
14 swords. During the course of them working and not
15 enjoying the fruits of their home, Terence started
16 collecting these little beautiful knives. And the
17 pictures were taken at the scene that night that had
18 about eight or nine of these little knives where one
19 of them he took downstairs when this thing happened.

20 But the day of this incident Ms. Favor went out
21 of town. These two young men came home after
22 midnight as they were customarily doing for the past
23 year, year and a half or so to avoid any conflicts.
24 Brandon went into the kitchen to make him a sandwich
25 or whatever it is he was going to do. Terence went

1 upstairs. He was just sitting there playing with
2 his knife not anticipating any problem and he heard
3 the loud noise as the government stated.

4 Unconscious of what was going on, he just walked
5 downstairs with the knife.

6 You come down the steps, turn left, down the
7 hallway. You walk into a sitting area and you walk
8 out of the sitting area into the kitchen. When he
9 got into the kitchen area, he saw Mr. Favor and
10 Brandon -- and Brandon having this argument. He
11 walked in and he tried to tell them to stop it and
12 it didn't cease.

13 What Terence did was, to put an end to it, he
14 told Brandon to call 9-1-1. When he told Brandon to
15 call 9-1-1, that is when Mr. Favor charged him. He
16 did not expect that he would do so. He did not take
17 his hand with the knife in an attempt to cut
18 Mr. Favor. Mr. Favor charged him and he grabbed the
19 knife. As a consequence of that physical contact,
20 the two of them fell to the floor. There's a T.V.
21 on a stand. There's a night table in front of the
22 T.V. When they went to the floor, apparently
23 Mr. Favor's head hit the corner of the coffee table.
24 And the pictures will show that there was some blood
25 coming from his mouth.

1 While this is going on, Brandon and the 9-1-1
2 operator is giving a blow-by-blow account of what's
3 going on. Terence, when they have the encounter and
4 they fell to the floor, he tried to get up and
5 Mr. Favor went back at him. And this happened over
6 a short period of time. Mr. Favor kept fighting him
7 and he did everything he could to stop Mr. Favor
8 from continually coming at him.

9 When the police arrived, Brandon was -- I'm
10 sorry -- Terence was still trying to stop Mr. Favor
11 from fighting. When the police ordered him to
12 release him, he was still fighting. He was just
13 holding on to him on the floor. When he was
14 satisfied that the police were going to take the
15 man, he backed off.

16 Your Honor, his only intention was, holding on
17 to Mr. Favor, was to stop him from fighting. There
18 was no intention on the part of Terence to cause any
19 harm to Mr. Favor other than to address the
20 aggression in a way that brought about no harm to
21 himself and Mr. Favor.

22 Eventually, the police was able to get the two
23 of them separated. They ordered Brandon -- they
24 took Brandon and Terence to their automobiles and
25 I'm sure, at that point, they started to process the

1 scene.

2 Your Honor, when they were taken to the
3 headquarters at Irmo, Brandon gave a full confession
4 on video. Terence gave a full confession on the
5 video about what happened. There was no attempt on
6 their part to disguise anything about what had
7 happened because the 9-1-1 operator could hear the
8 exchange of what was happening at that time.

9 Your Honor, this is a very, very unfortunate
10 event. Mr. Favor was in a position where had he
11 used a little more discernment and not be so
12 aggressive toward these young men about things of
13 almost independent significance, this encounter
14 never would have happened. Brandon was not the
15 aggressor and Terence was not the aggressor.

16 This has brought some serious pain to their
17 mother. It has brought some serious pain to
18 Brandon.

19 Never in his life did he imagine that he would
20 hurt someone. When I first met him, our first
21 conversation had to do with how sorry he was that it
22 happened, that he and his brother collectively had
23 done everything they could to avoid this kind of
24 situation. And they had removed themselves from the
25 family so much to avoid it, the mother thought that

1 they were trying to avoid her. They were simply
2 trying to be peacemakers.

3 Your Honor, my client has been sitting in jail
4 for four and a half years. He has never wavered
5 from a disposition of this case that was consistent
6 with the facts and the law. Myself and the
7 government had many rounds {sic} about what we
8 think is appropriate under these circumstances. We
9 finally came to this conclusion.

10 Terence understands that this plea carries with
11 it some minimum and maximum sentences. At 25 years
12 of age and never having had any encounters with the
13 law, it's indicative of a person who respects the
14 law, who respects other people and it shows what he
15 had in mind for himself.

16 And, Your Honor, I have, that I want to share
17 with the Court, some letters from some people who,
18 for various reasons, could not be here today. And
19 this one is from Ms. Sally Hayes:

20 Terence's family move across the street from me
21 when he was 16 or 17 years old. He was always very
22 nice and his manners were impeccable. He always
23 said yes, ma'am and no, ma'am to me. I am an older
24 lady and I appreciate that he showed me great
25 respect. Terence and his twin brother were always

1 together. All my interactions with Terence made me
2 think of him as a kind, gentle and well-mannered
3 young man. I consider him to be an asset to my
4 neighborhood. That's from Ms. Sally Hayes.

5 This is from Ms. Emily Lanham: I've had the
6 pleasure of knowing Terence Hayes for the majority
7 of his life. Terence has been interacting with my
8 children since they were toddlers. I have observed
9 his interactions with my children and friends at
10 different venues, including Saluda Shoals and the
11 Frankie's Fun Park. While at the different venues,
12 Terence's demeanor toward me and my family were
13 delightful. My children have enjoyed the time they
14 have spent with Terence and he is a pleasure to be
15 around. Terence is a friendly, nice, caring young
16 man that has an excellent rapport with people of all
17 ages. In the years I've known Terence, I have never
18 observed any kind of inappropriate behavior or
19 disrespect for his peers, family or the community.

20 Your Honor, this is from Ms. Willie Lawrence.
21 It's the aunt of Terence Hayes:

22 My name is Willie Lawrence and I am Terence
23 Hayes' aunt. I would like to express my sympathy to
24 the family of Mr. Favor for their loss. It is hard
25 to lose a loved one regardless of the circumstances.

1 Terence spent time in our home as a young boy
2 and as a young man. He is a kind and caring person.
3 He spent the Christmas holidays helping to care for
4 our parents and his grandparents. I have never
5 known him to be a violent person and he hasn't been
6 in any trouble before this incident. He was taught
7 to do what is right and he always done his best to
8 do this. He was always a very well-mannered and
9 respectful young man. I truly believe that he is
10 more than sorry that he was placed into this
11 situation. I ask you, the Court, to please have
12 mercy and consideration on my nephew. I believe he
13 will be an asset to the community. I trust that
14 your compassion will manifest in your decision.

15 Your Honor, this is from Terence's father,
16 Mr. Jerry Hayes: My name is Jerry Hayes. Terence
17 Hayes is my youngest son, one of my twins. I wanted
18 to express to the family of Mr. Favor my deep
19 sympathy for their loss. I also want the Court to
20 know that my son has never been a violent person.
21 He's always thoughtful of others and he was raised
22 and trained by me and his mother to be that.

23 Over the years leading to this incident, I
24 talked to my son about how to avoid trouble and to
25 walk away whenever possible. They were able to do

1 so on many occasions and avoid conflict. In spite
2 of this, he tried to be a good stepson and was
3 successful except for this incident. My son is more
4 than sorry that he had to be placed in this
5 situation. His faith has kept him strong and he
6 will continue to be a good person.

7 Finally, please have mercy on my son. I am
8 convinced that he will be a model citizen as he's
9 always been and we thank you for your consideration.
10 My health will not allow me to travel to South
11 Carolina to court. I trust that your compassion
12 will manifest itself in your decision.

13 Your Honor, this is from one of his managers at
14 Zaxby's: My name is Tim Pushic. I am the general
15 manager of --

16 **THE COURT:** Spell the last name.

17 **MR. ROBERSON:** P-u-s-h-i-c.

18 **THE COURT:** Go ahead.

19 **MR. ROBERSON:** I have been employed here for 11
20 years. Terence Hayes was my employee for five
21 years. I feel we are very close friends as well.
22 Terence is a wonderful young man and a great asset
23 to our community. Other local businesses I spoke
24 with feel the same about Terence Hayes. We know he
25 will continue to be a great asset to the community.

1 Your Honor, I want to make this appeal to the
2 Court. This Court has the discretion between three
3 years and 30 years as a sentence. I believe this
4 Court has the wisdom, the experience and the
5 understanding to know how things can get out of
6 control on the part of many people where there are
7 no real intentions to bring about some kind of harm.
8 These are the fallacies of human nature.

9 I believe that Terence Hayes, in his wisdom,
10 did everything he could to avoid this circumstance.
11 Even when, in the midst of this, he still did
12 everything he could to mitigate the actions that he
13 took. I believe this Court has the authority to
14 give a sentence that is sufficient, but render some
15 compassion to ensure that the sentencing function is
16 proper.

17 And I believe I want to share with the Court
18 what I see is some of the things that I'd like this
19 Court to consider: The nature and circumstances of
20 an offense; how this came about; for lack of a
21 better word, who is responsible; and how should a
22 person respond under these circumstances; a
23 reflection on the seriousness of the offense.

24 It's unfortunate it ended the way that it did.
25 The factors will mitigate in Terence's behalf

1 because he was not the aggressor. He even tried to
2 deescalate the situation before he became involved
3 by asking his brother to call law enforcement to put
4 an end to it. That wasn't sufficient.

5 Next is the sentence ought to be sufficient to
6 deter criminal conduct. Twenty-five years of a life
7 where there was no encounters with the law, no
8 infraction showing any intentions or manifestations
9 of the intention to breach the peace of this
10 community and its surroundings.

11 To protect the public from the crimes of the
12 defendant. There's never been any propensity on the
13 part of this young man to be a criminal, a stellar
14 record. Listen at what the people who know him had
15 to say, people who saw him as a, almost an infant,
16 watch him develop into an adult and still live
17 within the same spear for which he was taught by his
18 parents.

19 And then last, Your Honor, the kind of
20 sentences that are available. Whatever sentence
21 this Court give will be an 85 percent sentence
22 service time. We'd like to think that part of the
23 reason for sentencing is for rehabilitation. I
24 believe he's lived the quality of life where
25 rehabilitation is a -- ought to be a marginal

1 concern. While in prison, he will experience some
2 things that as he tried to resist in his earlier
3 life, he will have to continue to do so. We have
4 been successful in seeing him navigate through all
5 of those temptations.

6 Lastly, Your Honor, is I spoke with some of the
7 corrections officers at the detention center and
8 there were many who had the opportunity to see him
9 over the past four and a half years. Your Honor,
10 sometimes when I went to his cell block so that we
11 could discuss cases and other things and that kind
12 of thing, sometimes the correctional officer
13 wouldn't even know who he was.

14 There's trouble inside the jails. There's that
15 idle gossip and all that chatter that leads to
16 further problem with those who have been housed
17 there. None of that has ever occurred since Terence
18 Hayes has been there. That takes a concerted
19 effort.

20 Your Honor, I don't know what I can say other
21 than in all my years of the difficult, terrible
22 cases that I've had, this is probably in the top
23 five of things that strain what I see as human
24 problems that we all wish had never come about, but
25 because we sometimes act in ways that are not

1 consistent with that which is expected of us as
2 grown men and we depart from that and we cause other
3 people to react in ways that bring about harm, then
4 there has to be that intermediary that makes sense
5 out of it.

6 And what I'm asking this Court to do is to make
7 sense out of a young man who lived a good life, a
8 perfect life, kept a nasty room, sometimes wouldn't
9 wash dishes, 'but there are many parents who would
10 give their right eye to have a son without -- where
11 the only thing he did, didn't clean up his room or
12 he didn't wash his dishes. The climax of all of
13 that is what happened on that night.

14 Your Honor, I think his mother would like to
15 address the Court.

16 **THE COURT:** What's your name, ma'am?

17 **MS. FAVOR:** My name is Melina Favor.

18 **THE COURT:** Spell your first name.

19 **MS. FAVOR:** M-e-l-i-n-a.

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

21 **MS. FAVOR:** Okay. I just wanted to say that
22 this incident that concerned my husband and my son
23 has caused so much pain. No one could have ever, I
24 couldn't have ever believed that this situation
25 would have ever happened in our lives. I believe

1 that it was a matter that just got out of hand. My
2 husband and my son was truly about my affection and
3 this tragedy should have never happened.

4 I hope that this will bring closure for myself,
5 my family and for the Favor family as well. I wish
6 that the Court would give me back my son and bring
7 this to an end for all of us. Thank you.

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

9 Anything else, Mr. Roberson?

10 **MR. ROBERSON:** Your Honor, I ask that your
11 sentence be appropriate. Thank you.

12 **THE COURT:** Thank you.

13 Mr. Hayes, do you want to say anything?

14 **DEFENDANT:** Yes, sir, Your Honor.

15 **THE COURT:** Yes, sir, go ahead.

16 **DEFENDANT:** I am real sorry to cause grief and
17 suffering to the Favours, the Martins and the Hayes
18 family. And I hope that they'll be able to forgive
19 me because some of -- suffering for them and pain
20 for putting them through what they had been through
21 for four and a half years that I've been locked
22 down, sir. That's all I have to say.

23 **THE COURT:** All right. This 9-1-1 tape.

24 **MR. RIDDLE:** Yes, sir.

25 **THE COURT:** Mr. Roberson said the other

1 brother's describing what's going on?

2 **MR. RIDDLE:** Yes, sir, he was. I've got the
3 CAD report here with me. I can show it to Your
4 Honor or I can just read you some of the excerpts
5 from it. Mr. Roberson has a copy of it.

6 **MR. ROBERSON:** I have it.

7 **MR. RIDDLE:** When Mr. Brandon Hayes first
8 called 9-1-1, he first reported that Mr. Favor was
9 dead. That was at 0045, Your Honor, a quarter of
10 1:00 in the morning. First reported that he was
11 dead and that Mr. Favor was bleeding.

12 The initial report of Brandon to law
13 enforcement was that Mr. Favor had a gun. Then
14 there is a notation by the 9-1-1 operator that the
15 story isn't adding up and that he continues to
16 contradict himself. Then he stated that Mr. Favor
17 never had a gun. And then at 0048, Your Honor, he
18 indicated that, they've got him listed as patient,
19 PT, was laying on the floor, but brother is
20 restraining the so-called dead guy, but now he is
21 breathing a little.

22 **THE COURT:** This is all before the police get
23 there?

24 **MR. RIDDLE:** This is all before the police get
25 there, Your Honor.

1 **OFFICER HENDRICKS:** Myself and another officer
2 by the name of Evan Deigle.

3 **THE COURT:** What did you see?

4 **OFFICER HENDRICKS:** I saw the defendant on top
5 of the victim. He had him pinned to the floor in a
6 choke hold. The victim was unresponsive. He was
7 not fighting. He was not trying to get the
8 defendant off of him. After repeated verbal
9 commands for him to get off of Mr. Favor, eventually
10 we had to force compliance by pulling him off of his
11 back.

12 There was no signs of life or other type of
13 activity from the time we arrived on scene till we
14 were able to detain both the defendant and his
15 brother.

16 **THE COURT:** So where was Paul Favor bleeding
17 from that you could see?

18 **OFFICER HENDRICKS:** At the time, Your Honor, we
19 didn't see that he was bleeding from anywhere. Our
20 main concern was obviously when we made contact with
21 the defendant's brother at the door, there was a lot
22 of blood. We did see a sword. You know, there were
23 various reports of a gun and other weapons involved.
24 So just attempting to control the scene, we took
25 them both into investigative detention. It wasn't

1 till later that we saw the blood.

2 **THE COURT:** Where was Brian?

3 **OFFICER HENDRICKS:** I'm sorry?

4 **THE COURT:** The other brother, was his name
5 Brian?

6 **OFFICER HENDRICKS:** Brandon. Your Honor, he
7 actually opened the door when we got there.

8 **THE COURT:** Where was the sword?

9 **OFFICER HENDRICKS:** The sword was in the corner
10 of the room, Your Honor.

11 **THE COURT:** How far away from them?

12 **OFFICER HENDRICKS:** Within a reach, arms length
13 maybe.

14 **THE COURT:** All right. Mr. Riddle, when you
15 gave your recitation of facts, you said there was a
16 cut.

17 **MR. RIDDLE:** Yes, sir.

18 **THE COURT:** Is that from hitting his head on
19 the table or --

20 **MR. RIDDLE:** No, sir. There was some small
21 wounds to Mr. Favor's lips and mouth. The cut that
22 I was referring to was an incised cut caused by a
23 blade on the palm of his left hand, that is, we
24 believe, a defensive wound where he got the sword
25 away from Mr. Terence Hayes. He grabbed the sword

1 by the blade. And during the struggle over that, he
2 got his hand cut, number one. And, number two, the
3 sword was broken. The sword -- and I've got a
4 picture over here that I'd hand up to the Court.

5 **THE COURT:** Have you seen this, Mr. Roberson?

6 **MR. ROBERSON:** Yes, sir.

7 **MR. RIDDLE:** This is the sword itself, Your
8 Honor. There's a telephone and that's the handle to
9 the sword where you can see where the blade gets
10 skinny, that's the part that goes up into the
11 handle. So that's a photograph of a telephone by
12 way of reference for size, the blade of the sword
13 and then the, what was at one time, the handle of
14 the sword prior to it becoming separated. And, of
15 course, Your Honor can see all the blood on the
16 blade there.

17 **THE COURT:** Did they test the blood, any DNA or
18 blood type?

19 **MR. RIDDLE:** No, sir, I don't believe they did.
20 There was nobody else at the scene bleeding.
21 Neither Mr. Brandon Hayes nor Mr. Terence Hayes had
22 any injuries.

23 **THE COURT:** How old was Paul Favor?

24 **MR. RIDDLE:** He was born in 1954, Your Honor.
25 He would have been 54, maybe 55.

1 **THE COURT:** He's my age. I know how old that
2 is. I'm a little bit older than that, but I know
3 how old that is.

4 And what size man was he?

5 **MR. RIDDLE:** Your Honor, he was five foot
6 seven, 67.5 inches tall, and weighed 195 pounds.

7 **THE COURT:** Do you have anything else from the
8 State?

9 **MR. RIDDLE:** No, sir, other than I disagree
10 with the characterization of it being a little knife
11 and Your Honor sees the photograph now. And I just
12 disagree with the characterization that it's not too
13 much to ask for people that are 25 years old and are
14 allowed to live in your house that they clean up
15 after themselves and don't wake you up in the middle
16 of the night.

17 **THE COURT:** All right. Anything else from the
18 defense?

19 **MR. ROBERSON:** Your Honor, I have the 9-1-1
20 recordations. If you'll read it, it's just about a
21 page and a half.

22 **THE COURT:** I'll be happy to read it.

23 **MR. ROBERSON:** You can see there's massive
24 confusion that's going on. They talk about hearing
25 noises in the background and all that kind of stuff.

1 (Pause.)

2 **THE COURT:** So you don't have a transcript of
3 it. This is just --

4 **MR. RIDDLE:** I've got a CAD report. I've got
5 an audio copy of it. I don't have a transcribed
6 copy. I've got a C.D. with the actual call on it.

7 **THE COURT:** The notes start at 44:48, that's
8 12:44 a.m.?

9 **MR. RIDDLE:** Yes, sir.

10 **THE COURT:** Almost 12:45 a.m. And the officer
11 is there -- the officers are there within five
12 minutes. They're opening the door at 49:41.

13 **MR. RIDDLE:** No, that's Mr. Hayes unlocking the
14 door.

15 Your Honor, the officers actually arrive at
16 53:12 where the voices are heard in the background.

17 **THE COURT:** I see it.

18 **MR. RIDDLE:** Mr. Brandon Hayes was unlocking
19 the door following the instruction of the 9-1-1 --

20 **THE COURT:** So less than ten minutes -- about
21 nine minutes.

22 **MR. RIDDLE:** Nine minutes, yes, sir.

23 **THE COURT:** Stacy, would you make both of these
24 court's exhibits?

25 Let me see the attorneys up here, please.

1 (Whereupon, a bench conference was held off
2 the record.)

3 (Court's Exhibit Number 1, photograph, and
4 Court's Exhibit Number 2, record of 9-1-1 call, were
5 marked for identification purposes.)

6 **THE COURT:** All right. Anything else from the
7 defense?

8 **MR. ROBERSON:** Your Honor, I believe that there
9 may be some reference in that recordation of the
10 events that somebody may have alleged that a gun was
11 involved, that was them saying -- trying to describe
12 what the situation was. According to them,
13 Mr. Favor was known to carry an ankle gun and they
14 didn't know what was going on. They were surprised
15 by the aggression. But that was just in keeping
16 with the total confusion of what was going on at
17 that time.

18 **MR. RIDDLE:** And, Your Honor, I don't know
19 about that. I know that it was reported at 46:44
20 that he had a gun and then it was reported at 47:50
21 that he never got to the gun. That's just what was
22 being told to law enforcement by Mr. Brandon Hayes.

23 **THE COURT:** So he was arrested on the scene?

24 **MR. ROBERSON:** Yes, sir.

25 **MR. RIDDLE:** Yes, sir, he was.

1 **THE COURT:** Did the victim have a criminal
2 record?

3 **MR. RIDDLE:** Not that I'm aware of, Your Honor.

4 **MR. ROBERSON:** Did you run it?

5 **MR. RIDDLE:** I'm not aware of one. I'll be
6 glad to go run one if you want me to.

7 **THE COURT:** Do y'all know if he had a criminal
8 record?

9 **MR. ROBERSON:** I don't know of him having one.
10 Beg the Court's indulgence.

11 (Pause.)

12 **MR. ROBERSON:** Your Honor, my client tells me
13 that there might be a history of some arrest about
14 some little infraction at the house. Whether or not
15 they went into convictions, I don't think we can
16 honestly say that without having to check.

17 **THE COURT:** Sentencing's always a difficult
18 thing. I don't expect anybody to be satisfied with
19 this sentence. Nothing I can do or undo. Nothing
20 anybody else can do or undo it. I've got to make a
21 call. I don't have any greater wisdom than anybody
22 else.

23 The Court accepts the plea. The sentence is
24 you be committed to the South Carolina Department of
25 Corrections for 22 years plus costs and assessments.

1 Credit jail time under 24-13-40 from October the
2 28th, 2008. I've made the findings that I recited
3 also that there was no criminal sexual conduct or
4 additional violent crime involved in this. Pay your
5 court costs within 180 days from release from
6 maximum confinement in prison. Good luck, sir.

7
8 END OF PROCEEDINGS
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C E R T I F I C A T E

RECEIVED

SEP 06 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 7th of May, 2013.

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

June 10, 2013

Stacy L. Sheppard, RPR
Circuit Court Reporter

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STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals
(In the Supreme Court)

APPEAL FROM LEXINGTON COUNTY
General Sessions Court

William P. Keesley, Presiding Circuit Court Judge

RECEIVED

SEP 06 2013

SC Court of Appeals

Indictment No. 09-GS-32-2398

State of South Carolina,

Respondent

vs.

Terence Hayes,

Appellant

203 (d) (1) (B) (iv)

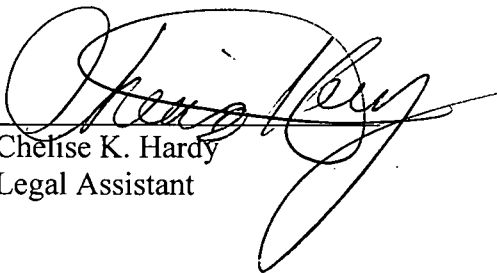
CERTIFICATE OF SERVICE

This is to certify that I, **Chelise K. Hardy**, have this day served the foregoing **Statement of Case for an Appeal and Notice of Appeal**, in connection with the above-captioned case, by placing said document in the United States Mail with proper postage affixed thereto, upon the following person(s) at the following address(es):

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Chelise K. Hardy
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Columbia, South Carolina
September 6, 2013