

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Feb 25 2025

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Edward W. Miller, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2024-000979

Thomas Stafford,.....Petitioner,

v.

State of South Carolina, ...Respondent.

APPENDIX

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*Attorneys for Respondent State of South
Carolina*

INDEX

Sentencing Sheets	1
Warrants	3
Indictments	5
Guilty Plea Transcript	9
PCR Application	57
Return to PCR Application	64
PCR Evidentiary Hearing	69
Applicant's PCR Exhibits	
Exhibit 1 (Affidavit of Dr. Maddox).....	201
Exhibit 2 (Report of Dr. Maddox dated 2/11/18)	202
Exhibit 3 (Report of Dr. Maddox Addendum dated 4/7/22).....	207
Exhibit 4 (Emails).....	212
Exhibit 5 (Emails).....	214
Exhibit 6 (Emails).....	217
Exhibit 7 (Emails).....	219
Exhibit 8 (Emails).....	222
Exhibit 9 (Emails).....	228
Exhibit 10 (Emails).....	230
Exhibit 11 (Emails).....	234
Exhibit 12 (Emails).....	239
Exhibit 13 (Emails).....	241
Exhibit 14 (Emails).....	242

Exhibit 15 (Emails).....	245
Respondent’s PCR Exhibits	
Exhibit 1 (Emails, Check, and Funding Order)).....	247
Exhibit 2 (Trial Counsels Plea Notebook).....	259
Exhibit 3 (Emails and Check).....	300
Applicant’s Post-Hearing Brief	302
Order of Dismissal	321
Rule 59(e), SCRCF Motion	346
Response to Rule 59(e), SCRCF Motion	382
Order Denying Rule 59(e), SCRCF Motion	398

The original PCR evidentiary hearing exhibits could not be located. Applicant’s Exhibits 1-15 and Respondent’s Exhibits 1-3 are included in the Appendix by agreement of the parties.

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Thomas Lee Stafford

AKA:

Race: White Sex: M Age: 39

DOB: SS#:Address: 462 Calcutta DrCity, State, Zip: West Columbia, SC 29172-2520DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Traffic / Hit and run, duties of driver involved in accident with death

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3200392A/W#: 2012A3210201149Date of Offense: 12/3/2012S.C. Code § : 56-05-1210(A)(3)CDR Code #: 2463

SENTENCE SHEET

NORTH CAROLINA V. ALFORD

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-1210(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2463

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

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

ATTEST:

Solicitor

68971

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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

for a determinate term of 17 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.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ 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	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def. Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 56-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ <u>130</u>

A TRUE COPY

Clerk of Court, Deputy Clerk

Court Reporter

SCCA 217 (03/2011)

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

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:

DRIVERS LICENSE SUSPENSIONS ARE CONSECUTIVE

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code:

Sentence Date:

Re Hood
2164
10-3-13

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Thomas Lee Stafford

AKA: _____
 Race: White Sex: M Age: 39
 DOB: _____ SS#: _____
 Address: 462 Calcutta Dr
 City, State, Zip: West Columbia, SC 29172-2520
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: DUI / Felony driving under the influence, death results

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3200393

A/W#: 2012A3210201150

Date of Offense: 12/3/2012

S.C. Code § : 56-05-2945(A)(2)

CDR Code #: 0395

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

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

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

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

ATTEST: [Signature] 68971 [Signature] Anna R. Hood 78808
 Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 17 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.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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
§ 56-5-2995 (DUI Assessment)	\$12	\$12
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-14 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)	\$	\$
TOTAL		\$542

_____ 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: _____

DRIVER LICENSE SUSPENSION AND
CONSECUTIVE

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Re Hood

Judge Code: 2164

Sentence Date: 10-3-13

A TRUE COPY
 Clerk of Court/Deputy Clerk
 Court Reporter
 Issued to C.C.P., G.S. & F.O.

ARREST WARRANT

2012A3210201149

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

ORIGINAL

THE STATE
against

Thomas Lee Stafford

Address: 462 Calcutta Dr

West Columbia, SC 29172-2520

Phone: _____ SSN: _____

Sex: M Race: W Height: 6 Weight: 170DL State: SC DL #: _____DOB: _____ Agency ORI #: SCSHP0000Prosecuting Agency: SC Highway PatrolProsecuting Officer: J R Blaylock - T432Offense: Traffic / Hit and run, duties of driver involved in accident with deathOffense Code: 2463Code/Ordinance Sec: 56-05-1210(A)(3)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant on _____

Signature of Constable/Law Enforcement Officer

RECEIVED

RETURN WARRANT TO:

General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072
Lex. Co. C.C.P., O.B. & F.C.

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

AFFIDAVIT

ORIGINAL

A. 3
Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant J R Blaylock whobeing duly sworn deposes and says that defendant Thomas Lee Stafforddid within this county and state on or about 12/ 3/2012 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington)

in the following particulars:

DESCRIPTION OF OFFENSE: Traffic / Hit and run, duties of driver involved in accident with death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 12-3-2012 at approximately 1333 Thomas Lee Stafford was operating a Nissan Pathfinder with SC Tag 1B1247 on I-20 at the 63mm in Lexington County. Mr. Stafford, under the influence of alcohol and/or drugs, traveled off the right side of the roadway striking a bridge wall before striking a pedestrian, Nicholas Zachary Johnson, lawfully on the shoulder doing work for SCDOT. Mr. Stafford continued without rendering aid or information fleeing the scene. Mr. Stafford was stopped by witnesses approx 1/2 to 1 mile from the collision. The affiant observed front end damage to Mr. Stafford's vehicle and matched the description of the fleeing vehicle. Mr. Stafford's showed signs of impairment and were confirmed through SFST's. Mr. Stafford admitted to taking Methadone. Thomas Lee Stafford was arrested for Felony DUI (Death) and Leaving the Scene resulting in Death.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address 111 Maiden LaneLexington 29072-

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/ 3/2012 defendant Thomas Lee Stafford

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Lexington) as set forth below:DESCRIPTION OF OFFENSE: Traffic / Hit and run, duties of driver involved in accident with death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on 12/ 4/2012

Signature of Issuing Judge

Gary W. Reinhart

Judge Code: 5059

(L.S.)

Judge's Address Lexington County Judicial CenterLexington, SC 29072-Judge's Telephone (803)785-2594Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

2012A3210201150

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE
against

ORIGINAL

Thomas Lee Stafford

Address: 462 Calcutta Dr

West Columbia, SC 29172-2520

Phone: SSN:

Sex: M Race: W Height: 6 Weight: 170

DL State: SC DL #:

DOB: Agency ORI #: SCSHP0000

Prosecuting Agency: S C Highway Patrol

Prosecuting Officer: J R Blaylock - T432

Offense: DUI / Felony driving under the influence, death results

Offense Code: 0395

Code/Ordinance Sec: 56-05-2945(A)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on

Signature of Constable/Law Enforcement Officer

RECEIVED

RETURN WARRANT TO:

General Sessions

Lexington County Judicial Center

265 East Main Street

Lexington, SC 29072

DEC 04 2012

Lexington Co. Sheriff's Dept.

ORIGINAL C.C.O.P., U.S. & F.C.

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant J R Blaylock

being duly sworn deposes and says that defendant Thomas Lee Stafford

did within this county and state on or about 12/3/2012

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington

in the following particulars:

DESCRIPTION OF OFFENSE: DUI / Felony driving under the influence, death results

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 12-3-2012 at approximately 1333 Thomas Lee Stafford was operating a Nissan Pathfinder with SC Tag IBI247 on I-20 at the 63mm in Lexington County. Mr. Stafford, under the influence of alcohol and/or drugs, traveled off the right side of the roadway striking a bridge wall before striking a pedestrian, Nicholas Zachary Johnson, lawfully on the shoulder doing work for SCDOT. Mr. Stafford continued without rendering aid or information fleeing the scene. Mr. Stafford was stopped by witnesses approx 1/2 to 1 mile from the collision. The affiant observed front end damage to Mr. Stafford's vehicle and matched the description of the fleeing vehicle. Mr. Stafford's showed signs of impairment and were confirmed through SFST's. Mr. Stafford admitted to taking Methadone. Thomas Lee Stafford was arrested for Felony DUI (Death) and Leaving the Scene resulting in Death.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address 111 Maiden Lane
Lexington 29072-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/3/2012

defendant Thomas Lee Stafford

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Lexington

) as set forth below:

DESCRIPTION OF OFFENSE: DUI / Felony driving under the influence, death results

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me on 12/4/2012

Signature of Issuing Judge

Gary W. Reinhart

Judge Code: 5059

(L.S.)

Judge's Address Lexington County Judicial Center

Lexington, SC 29072-

Judge's Telephone (803)785-2594

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

A.4

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 LEAVING SCENE OF AN ACCIDENT WITH
 DEATH

§ 56-05-1210

At a Court of General Sessions, convened on FEBRUARY 2013, the Grand Jurors of Lexington County present upon their oath:

That **Thomas Lee Stafford** did in Lexington on or about December 3, 2012, , being the driver of a vehicle involved in a motor vehicle collision which resulted in the death of Nicholas Johnson, did violate § 56-5-1210, to wit: the defendant:

1. Failed to remain at the scene of the accident/collision;
 2. Failed to give his name, driver's license information, address and registration number of the vehicle he was driving to:
 - a. the driver/victim, Nicholas Johnson;
 - b. the driver or occupant of the vehicle collided with; or
 - c. to any person attending any vehicle collided with;
 3. Failed to render aid to Nicholas Johnson or any other person(s) injured;
 4. Failed to provide reasonable assistance, including the carrying or making arrangements for the carrying of Nicholas Johnson to a physician, surgeon or hospital for medical or surgical treatment when such treatment was apparent and necessary;
 5. Failed to notify the proper authorities; and
 6. Failed to notify the proper authorities of the collision by the quickest means of communication available, whether oral or written,
- all in violation of Section 56-5-1210 of the 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.


 ASSISTANT SOLICITOR

WITNESSES

S.C. Highway Patrol Headquarters

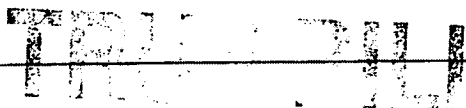
J R Blaylock

Law Enforcement Case #:

RCC

ARREST WARRANT NUMBER

2012A3210201149

ACTION OF GRAND JURY

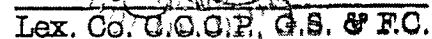
Foreperson of Grand Jury

Date: 2-4-13

VERDICT

Foreperson of Petit Jury

Date:


A TRUE COPY
Lex. Co. C.C.O.P., G.S. & F.C.DOCKET NO. 2013GS3200392

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

THE STATE

vs.

Thomas Lee Stafford

CDR #: 2463

Indictment for

LEAVING SCENE OF AN ACCIDENT
WITH DEATH

§ 56-05-1210(A)(3)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 FELONY DRIVING UNDER THE INFLUENCE
 RESULTING IN DEATH

§ 56-05-2945(A)(2)

At a Court of General Sessions, convened on FEBRUARY 2013, the Grand

Jurors of Lexington County present upon their oath:

That Thomas Lee Stafford, while driving a motor vehicle on or about December 3, 2012, in Lexington County, South Carolina, while under the influence of alcohol, drugs, or a combination of both, and did an act or acts forbidden by law and/or neglected a duty or duties imposed by law, to wit:

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

Which act or acts, omission(s) and/or neglect proximately caused the death of Nicholas Johnson, in violation of Section 56-5-2945(A)(2) of the 1976 South Carolina Code of Laws, as amended.

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


 ASSISTANT SOLICITOR

WITNESSES

S.C. Highway Patrol Headquarters

J R Blaylock

Law Enforcement Case #:

RCC

ARREST WARRANT NUMBER

2012A3210201150

ACTION OF GRAND JURY

R. Brasington
Foreperson of Grand Jury
Date: 2-4-13

VERDICT

Foreperson of Petit Jury

Date: *2-4-13*
A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

DOCKET NO. 2013GS3200393**The State of South Carolina****County of Lexington**

COURT OF GENERAL SESSIONS**FEBRUARY TERM 2013**

THE STATE**vs.****Thomas Lee Stafford**

CDR #: 0395

Indictment for**FELONY DRIVING UNDER THE
INFLUENCE RESULTING IN DEATH****§ 56-05-2945(A)(2)**

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON —) 2013-GS-32-00392
) 2013-GS-32-00393

STATE OF SOUTH CAROLINA)
)
) vs. TRANSCRIPT OF RECORD
)
THOMAS LEE STAFFORD)
)
) DEFENDANT —)

October 3, 2013
Lexington, South Carolina

B E F O R E:

THE HONORABLE ROBERT E. HOOD, JUDGE.

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

RICK COLLINS, ASSISTANT SOLICITOR
Attorney for the State

ANNA GOOD, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

DEFENDANT:	PAGE
THOMAS LEE STAFFORD	3

EXHIBITS

(There were no exhibits marked.)

1 THE CLERK: Thomas Stafford.

2 2013-GS-32-392, State versus Thomas Lee
3 Stafford, indicted for leaving the scene of an accident
4 with death. He is pleading as charged.

5 2013-GS-32-393, State versus Thomas Lee
6 Stafford, indicted for felony driving under the influence
7 resulting in death. He is pleading as charged.

8 Both indictments are true-billed and he is
9 represented by Ms. Good.

10 Please raise your right hand.

11 THOMAS LEE STAFFORD, after being duly sworn,
12 testified as follows:

13 THE COURT: Sir, is your name Thomas Lee
14 Stafford?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: Ninth grade.

18 THE COURT: What kind of work do you do?

19 THE DEFENDANT: Painting.

20 THE COURT: Today, that is right now, are you
21 under the influence of any alcohol or drugs?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you ever received any mental
24 health treatment?

25 THE DEFENDANT: No, sir.

1 THE COURT: They tell me you want to plead
2 guilty to one count of felony driving under the influence
3 where death results. That carries a mandatory one year in
4 prison, up to 25 years in prison; is that correct?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: They further tell me that you want
7 to plead guilty to hit and run involving a death and what
8 we sometimes call leaving the scene of an accident where a
9 death was involved. That also carries a mandatory one
10 year up to 25 years in prison. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Further, both of these offenses are
13 deemed by our legislature to be violent and serious.
14 Those are not my words, those are the classifications
15 given to them by the State legislature.

16 Those designations have meanings, one of those
17 meanings is that whatever prison you are in, you will
18 be -- your classification inside that prison will be
19 changed because of that designation.

20 Further, these are what we call strikes. So
21 under our laws, three serious offenses gets you life
22 without parole. So these are serious offenses and were
23 you to receive two more serious offenses throughout your
24 lifetime, you would be in mandatory life without parole.
25 Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Further, because of the facts, these
3 are violent and serious offenses, they are what we call
4 85 percent offenses, meaning whatever prison sentence I
5 give you today, you will be required to serve at least
6 85 percent of before you are ever released from the
7 Department of Corrections. Do you understand that?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: Now, both of these are driver's
10 license suspensions; is that right, Mr. Collins?

11 MR. COLLINS: That's correct, Your Honor.

12 THE COURT: And they're both five years?

13 MR. COLLINS: They are five years beginning from
14 the point of release. Your Honor has the discretion to
15 run those consecutive or concurrent.

16 THE COURT: Do you understand that I have the
17 discretion to run the driver's license suspensions
18 together, that means concurrent or consecutive, meaning
19 one of top of each other, upon your release from
20 incarceration?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you on probation or parole now?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: When you plead guilty, Mr. Stafford,
25 you give up certain important constitutional rights, the

1 first is your right to remain silent. Do you understand
2 that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you want to give up that right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Second is your constitutional right
7 to a jury trial. Do you understand what a jury trial is?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you want a jury trial or do
10 you want to plead guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: Now, my understanding is that your
13 leaving the scene of an accident, death involved, you wish
14 to plead under what is called North Carolina versus
15 Alford; is that true?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And tell me what North Carolina
18 versus Alford means to you. In your own words. I'm not
19 looking for legalese, I'm looking for what it means to
20 you.

21 THE DEFENDANT: So you're not -- the hit and
22 run?

23 THE COURT: Right. Directly referring to the
24 hit and run, my understanding is that you want to plead
25 under a United States Supreme Court case called North

1 Carolina versus Alford. What does that mean to you?

2 THE DEFENDANT: Is that if I'm found guilty or
3 not?

4 THE COURT: All right.

5 MS. GOOD: Your Honor, if I can say what
6 conversation we've had is basically I've explained to him
7 that he's not pleading guilty necessarily to the charge,
8 but he understands if we were to go to a jury trial, that
9 it's potentially possible based on the evidence that a
10 jury could find him guilty of that charge.

11 THE COURT: All right. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Now, I know what it means,
14 okay? But here's what I need to make sure you understand.
15 And I'm going to allow you to plead under North Carolina
16 versus Alford, and the Solicitor's office has no objection
17 to you pleading under North Carolina versus Alford, but
18 essentially what you're saying is that had you proceeded
19 to trial on the leaving the scene of an accident, death,
20 you would agree that you would more likely than not be
21 convicted of that crime. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, just because it's under North
24 Carolina versus Alford, that doesn't mean that the
25 sentencing is any different. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Further, that doesn't mean that your
3 classification in SCDC or when you get out or when you
4 don't get out or anything else is any better. Do you
5 understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Basically the only person in the
8 room that feels better after an Alford plea is you because
9 it has no other legal effect or consequence on this
10 criminal case. Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: As to the charge of leaving the
13 scene of an accident where a death was involved, do you
14 believe that the State could produce sufficient evidence
15 to prove your guilt on the charges beyond a reasonable
16 doubt, and that if you went to trial, a jury would most
17 probably find you guilty?

18 MS. GOOD: Your Honor, the reason we're pleading
19 under Alford, he believes that possibly they couldn't, but
20 he knows based on the evidence that they could.

21 THE COURT: All right. Do you believe that if
22 you went to a jury -- I'm not saying that you are
23 admitting to leaving the scene of an accident. What I'm
24 saying is, do you believe that if you went to trial, to a
25 jury trial on the leaving the scene of an accident where a

1 death was involved, that a jury would more likely than not
2 convict you of that charge?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Further, if you wanted a
5 trial on these charges, you would have the right to a
6 trial. During that trial you would have the right to
7 confront your accusers, call witnesses on your own behalf,
8 and present any defense you may have. If you plead
9 guilty, none of that is going to happen. Do you
10 understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Has anybody promised you anything to
13 get you to plead guilty?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Has anybody forced you or threatened
16 you to get you to plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you pleading guilty freely and
19 voluntarily?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Are you satisfied with the services
22 of your attorney?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you need any more time to meet
25 with her or talk to her about your case?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Are you pleading to the felony DUI,
3 death, because you are guilty of felony DUI, death?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you pleading under North
6 Carolina versus Alford to leaving the scene of an
7 accident, death?

8 THE DEFENDANT: Yes, I am.

9 THE COURT: You have ten days from today's date
10 to appeal this plea. If you choose to do so, you must do
11 so in writing to this court. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 MR. COLLINS: Thank you, Your Honor.

14 December 3, 2012, at 1:33 p.m., the defendant
15 was operating a 2003 Nissan Pathfinder westbound on I-20
16 near the 62 mile marker in Lexington County. At that same
17 time the Department of Transportation had deployed a
18 cleaning crew on the overpass, one of the employees of
19 which was Mr. Nicholas Johnson.

20 Your Honor, parked in the emergency lane up
21 against the barrier of the overpass were three Department
22 of Transportation vehicles. I will submit to Your Honor a
23 picture labeled as I-20 westbound, a picture from the
24 Highway Patrol's investigation.

25 THE COURT: All right. So if I'm driving, I'm

1 driving on the highway towards Aiken right before the
2 Saluda River overpass?

3 MR. COLLINS: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. COLLINS: You could see that picture would
6 depict a Department of Transportation vehicle in the far
7 right-hand lane. You would see that attached to the dump
8 truck is a trailer. On the back of the trailer is black
9 and yellow reflective paint. Also you see trailer lights
10 and reflectors. The sole purpose of that trailer is to
11 act as a crash barrier. Attached to the truck are its
12 lights and its reflectors, and on the top of the vehicle
13 were orange lights, which were working and illuminated at
14 the time. There were two other vehicles in front of that
15 Department of Transportation vehicle.

16 Mr. Stafford passed that particular vehicle with
17 all the warning signals and the other two vehicles,
18 swerved over to the right-hand side of the road and near
19 simultaneously struck the barrier and Mr. Johnson, who was
20 then shoveling debris off the side of the roadway.

21 Your Honor, that collision resulted in the
22 nearly instantaneous death of Mr. Nicholas Johnson, who
23 then was only 21 years old.

24 THE COURT: Mr. Collins, explain to me where the
25 wreck occurs in relation to this -- I'm going to call it

1 the crash -- the vehicle in the back with, it looks like,
2 a crash barrier on the back of it.

3 MR. COLLINS: Your Honor, that point of view on
4 that picture would have been the point of view that Mr.
5 Stafford would have seen approaching that clean-up site.

6 THE COURT: He's in lane three?

7 MR. COLLINS: He is in lane three.

8 THE COURT: The far right?

9 MR. COLLINS: The far right lane. And he passes
10 that vehicle, two other vehicles in the emergency lane,
11 and then approximately another 300 feet where he veers
12 into the emergency lane striking the barrier and
13 Mr. Johnson.

14 THE COURT: So he's traveling in lane number
15 three -- and, Sergeant Shelton, I see you out there, so if
16 I say this wrong I want you to tell me -- he's traveling
17 in lane number three like he's going towards Aiken; is
18 that right?

19 SERGEANT SHELTON: That's correct.

20 THE COURT: And so I have the dump truck with
21 a -- I don't know what the thing is called, but something
22 looks like it absorbs impact on the back of it.

23 MR. COLLINS: Correct.

24 THE COURT: He passes that and then there's
25 vehicles in front of that and then he swerves right into

1 the emergency lane in front of that dump truck.

2 MR. COLLINS: That's one hundred percent
3 accurate, Your Honor.

4 THE COURT: Okay. And that's where Mr. Johnson
5 is?

6 MR. COLLINS: That is -- Mr. Johnson is right
7 where the barrier meets the road, approximately three
8 hundred feet in front of those vehicles.

9 THE COURT: You're talking about the -- I don't
10 know the height of the three or four foot concrete barrier
11 on the right that would keep you from going off into those
12 woods.

13 MR. COLLINS: Correct.

14 THE COURT: Okay.

15 MR. COLLINS: That's correct.

16 THE COURT: All right. I'm sorry. I just
17 wanted to make sure in relation to the picture I
18 understood this.

19 MR. COLLINS: Thank you, Your Honor. I
20 apologize for the confusing.

21 THE COURT: That's okay.

22 MR. COLLINS: Your Honor, at that time in lane
23 number two, the middle lane, were two witnesses,
24 Mr. Charlie Bishop and Mr. Brett Blanks, who are in the
25 courtroom here today. They would likely testify that Mr.

1 Blanks saw the collision and Mr. Bishop saw the effects
2 immediately after the collision.

3 THE COURT: Are they working or are they
4 driving?

5 MR. COLLINS: They're just passersby.

6 THE COURT: They're just riding down the road?

7 MR. COLLINS: They are.

8 THE COURT: Okay.

9 MR. COLLINS: They're also continuing toward 378
10 exit, see the incident, and see that Mr. Stafford is
11 continuing behind them. Your Honor, they would likely
12 testify that they made an effort in an attempt to stop Mr.
13 Stafford. They would further testify that Mr. Stafford
14 changed lanes in an effort to get around them and then
15 they in turn changed lanes as well, ultimately bringing
16 him to a stop approximately one half mile up the road
17 right before the Highway 378 exit. There they exited the
18 vehicle, confronted Mr. Stafford.

19 They would testify as to his condition of being
20 lethargic, slow, slurred speech, at one point making an
21 attempt to get back into the vehicle, at which point they
22 took the keys from the car, would not give him the keys
23 back, contacted law enforcement. Approximately 20 minutes
24 later the law enforcement officers did show up.

25 THE COURT: They see the accident and then they

1 see Mr. Stafford continue on?

2 MR. COLLINS: That's correct.

3 THE COURT: And then are these gentlemen in the
4 same car or different cars?

5 MR. COLLINS: They -- these two gentlemen,
6 Mr. Bishop and Mr. Blanks are in the same vehicle.
7 Mr. Bishop is driving.

8 THE COURT: So they make some form of a
9 conscious decision, for lack of a better term, to stop, to
10 try to stop Mr. Stafford?

11 MR. COLLINS: That's correct.

12 THE COURT: Okay.

13 MR. COLLINS: I would have a tendency to
14 characterize it from the way it was described as what we
15 would call a rolling roadblock, so to speak. But yes, it
16 was a deliberate effort to bring Mr. Stafford to a stop.

17 THE COURT: Okay.

18 MR. COLLINS: Your Honor, their conversation
19 with Mr. Stafford at that point would reveal that they had
20 inquired of Mr. Stafford if he realized what happened.
21 His responses to them would have been no, that he did not
22 know what happened. He couldn't understand why they were
23 stopping him at that point. As the conversation
24 progressed, that he began, well, I realized I hit
25 something, I didn't know what it was.

1 Your Honor, in layman's terms as we believe that
2 they would describe it, they would describe him as being
3 on something at that point.

4 Your Honor, as I stated before the Highway
5 Patrol and other emergency services were contacted.
6 Trooper Blaylock of the Highway Patrol did respond to the
7 scene approximately 20 minutes later. Once he arrived,
8 emergency services were already on scene, and according to
9 their report, again, resuscitative efforts were deemed
10 futile at that point, given the nature of the collision.

11 Your Honor, Trooper Blaylock began to interview
12 Mr. Stafford. There he noticed that his pupils were
13 constricted, that he seemed to sway, that he seemed
14 disoriented. Based on that, asked him a series of
15 questions and performed a series of standardized field
16 sobriety tests to which, according to Trooper Blaylock, he
17 performed poorly on. He was subsequently arrested.

18 He was transported to the Lexington ER where a
19 blood draw was performed. The blood was analyzed by SLED,
20 and that analysis revealed methadone and generic Xanax.

21 Your Honor, in statements taken from the
22 defendant by the Highway Patrol MATE team, Mr. Stafford
23 would admit at that current time he was undergoing
24 treatment from a methadone clinic. That on a daily effort
25 at approximately 4:30 to 5 o'clock in the morning, he

1 would attend the clinic, receive a dose of about 120
2 milligrams of methadone, continue on about the day.

3 Your Honor, the levels according to the forensic
4 toxicologist from SLED, the levels of methadone that were
5 revealed in the analysis would tend to suggest that they
6 were of therapeutic levels.

7 Your Honor, however, the Xanax that was
8 indicated, we believe the toxicologist would testify that
9 those levels were approximately three to four times what
10 could conceivably be a therapeutic level of the Xanax.
11 Moreover, it would be beyond comprehension in the
12 toxicologist's opinion that the two would ever be
13 prescribed together due to the additive or the synergistic
14 effect of both the medications being combined at once and
15 never would it be recommended that anyone drive after
16 consuming both of those medications.

17 THE COURT: So there was no alcohol in his
18 system?

19 MR. COLLINS: There was no alcohol in his
20 system, Your Honor.

21 THE COURT: There was what your forensic
22 toxicologist from SLED would testify to be a -- you said
23 the word therapeutic, but basically if somebody was
24 getting treatment via methadone, that would be what they
25 would expect to see had they received the treatment as

1 prescribed?

2 MR. COLLINS: That's correct.

3 THE COURT: Okay. As to the methadone, not to
4 the Xanax.

5 MR. COLLINS: That's correct.

6 Your Honor, as you may very well already know,
7 methadone is commonly used to, I think, wean people off of
8 an opioid based pain killer or heroin.

9 THE COURT: Right.

10 MR. COLLINS: And at the time I think Mr.
11 Stafford would admit that there was such an addiction.

12 Your Honor, it's again our contention that
13 Mr. Johnson's death was proximately caused by the driving
14 due to the ingestion of those substances, and the basic
15 facts of the case at issue.

16 I believe what is more concerning in this case
17 is that approximately 15 days before that, Mr. Stafford
18 had been arrested for a DUI 2nd offense under
19 circumstances which are strikingly similar to the facts in
20 this case.

21 It was about the same time in the afternoon,
22 1:30, 1:40 p.m., based on conversation with Officer Parker
23 of the Pine Ridge Police Department, the conversation with
24 Mr. Stafford would seem similar, that on that same day he
25 had received a dose of methadone. On the DUI 2nd, he

1 refused to submit a sample. However, in his vehicle that
2 day was a prescription for 60 generic Xanax, Your Honor,
3 only nine of those pills remained of a 60-day prescription
4 of having -- getting it filled seven days earlier.

5 Your Honor, that charge was pending obviously
6 two weeks prior to this incident. This charge is being
7 consumed in this plea. In exchange for his plea to these
8 charges, this DUI 2nd is being dismissed.

9 Your Honor, he does have a previous conviction
10 from 2008. The incident date was July 2008. He was
11 convicted in 2010.

12 It appears that between 2008 and 2010, he either
13 didn't complete or didn't to apply to the ADSAP program.
14 It was an unsuccessful attempt at it. However, there was
15 a follow-up attempt at it which he did successfully
16 complete. Your Honor, based on that he was able to get
17 his license back. However, due to the previous arrest of
18 the DUI 2nd in Pine Ridge on this day, December 3, his
19 license was under suspension.

20 THE COURT: Because he didn't blow?

21 MR. COLLINS: That is correct.

22 THE COURT: So he had his 2010 DUI conviction
23 from which he would have received a six-month suspension;
24 is that right?

25 MR. COLLINS: That's correct.

1 THE COURT: So he had done what he needed to do,
2 which is take a course, enroll in SR22 insurance to get
3 that license back. But, however, when he got arrested 15
4 days earlier on the DUI 2nd, because he refused to blow,
5 then there was a suspension for that, an administrative
6 suspension for that?

7 MR. COLLINS: He was immediately suspended.

8 THE COURT: He hadn't applied for a temporary
9 alcohol license by request at a hearing, so he was under
10 suspension at the time of this incident?

11 MR. COLLINS: That's correct.

12 THE COURT: Got it.

13 MR. COLLINS: At the time of this incident. Two
14 weeks prior he was not under suspension.

15 THE COURT: Right. Okay.

16 MR. COLLINS: Your Honor, the remainder of the
17 rap sheet would indicate traffic violations to include a
18 2008, September of 2008 leaving the scene of the accident.
19 Your Honor, we believe that's important because that would
20 suggest to us that this is at least the third time that
21 Mr. Stafford was involved in some sort of incident or
22 collision and left the scene.

23 The facts of the prior -- of the November 19th
24 DUI, the one two weeks before this incident, it's alleged
25 that a witness had seen Mr. Stafford driving the same

1 vehicle that was involved in today's incident, a blue
2 Pathfinder, and swerved, strike a mailbox, and leave the
3 scene. They called the police. Officer Parker
4 subsequently caught up with him and arrested him. Again,
5 nearly identical circumstances, but in that case, the
6 victim was a mailbox and in this case, it was 21-year-old
7 Nicholas Johnson.

8 THE COURT: The DUI 15 days prior to that was in
9 Pine Ridge?

10 MR. COLLINS: That's correct.

11 Your Honor, I count seven total suspensions that
12 have occurred on his license, two for failure to provide
13 proof of financial responsibility, one for DUI, one for
14 implied consent, one for DUS, and one for failure to pay
15 traffic tickets.

16 Your Honor, if I could show Your Honor a picture
17 labeled as finding number two.

18 Your Honor, this picture is a print from the
19 MATE team's animation, a still from the animation the MATE
20 team did on this incident. And what that picture would
21 indicate or seem to suggest is the distance to scale from
22 the vehicle to where Mr. Johnson was standing.

23 Your Honor, we believe that's important because
24 this isn't a case of he was standing right in front of the
25 vehicles and there's no way he could have seen it. It's

1 important because he had passed all of the emergency
2 equipment and still have ample opportunity to see
3 Mr. Johnson on the side of the road, who incidentally at
4 the time was also wearing an orange reflective vest.

5 It's difficult to imagine anything else that
6 could have been done to prevent what happened on the part
7 of the Department of Transportation. Given the equipment
8 they had out there, the lights, the vest, the only
9 possible way this collision happens is if you're under the
10 influence and you're simply just not looking in any manner
11 whatsoever. Mr. Stafford would have suggested further on
12 the audiotape he was simply looking for his cell phone.
13 Your Honor, we believe the evidence from the trooper
14 interviews and the blood analysis would definitely suggest
15 otherwise.

16 Your Honor, the victims are present today.
17 Ms. Renee Johnson would like to address Your Honor at this
18 time.

19 THE COURT: I will come back to you, okay.

20 All right. Mr. Stafford, do you materially
21 agree with the factual presentation and your prior record
22 that's been presented here today?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. I'll accept this plea. I
25 find there is a substantial factual basis for his plea. I

1 find that his decision to plea is freely, voluntarily,
2 knowingly, and intelligently made, that he's had the
3 advice of counsel, a very competent attorney with whom he
4 is satisfied. All right.

5 MR. COLLINS: I'm sorry, Your Honor.

6 THE COURT: Who would you like for me to hear
7 from?

8 MS. JOHNSON: Good afternoon, Judge.

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

10 MS. JOHNSON: My name is Renee Johnson. I'm the
11 mother of Nicholas Johnson. And this is my daughter
12 Natalie Johnson, which is his sister.

13 THE COURT: Okay. Let me --

14 MS. JOHNSON: Yes, sir, I'm sorry.

15 THE COURT: I just want to say thank you for
16 being here. I know that the Court always knows this is a
17 difficult time. It takes time for the court system to
18 process and I know it's a sacrifice for people to be able
19 to come up here and participate. I just want to say thank
20 you for your presence here today.

21 MS. JOHNSON: Thank you.

22 THE COURT: Happy to hear from you, ma'am.

23 MS. JOHNSON: Thank you. I just have just a few
24 things to say. I have one special letter of the many,
25 many letters I've received from all my family members.

1 This one actually touched my heart. It's from my
2 11-year-old nephew that wanted this to originally go to
3 our lawyer, but I thought today would be a good day to let
4 him speak while he's in school. And it's addressed to our
5 lawyer: Dear Natalie, I am Robert. You don't know me,
6 but I am Nick's cousin. You know my aunt, Renee Johnson,
7 and I'm writing this letter because I have held my mouth
8 too long.

9 Thomas Stafford, the defendant, killed my
10 favorite cousin. Now I was wondering if you could give
11 this to the judge. This man has many DUIs and then goes
12 and kills my cousin without a driver's license. I know a
13 fifth grader doesn't know everything, but I know for sure
14 this man should be in jail. Not a minute goes by without
15 me thinking of my favorite cousin in the world.

16 I remember on December 3, 2012, when my father
17 told me that Nicky was killed by a drunk driver. On that
18 prior Thanksgiving I and Nicky played X Box. We didn't
19 have a care in the world. And then we watched the Grinch
20 Who Stole Christmas. Isn't that funny, Thomas, you are
21 the one who stole the Grinch from my life and my cousin's.

22 Judge, I thank you for sticking by my family.
23 Thank you. Robert C. Levy.

24 And I just have a few things to address the
25 Court.

1 I stand here before you today as the mother of
2 Nicholas Johnson. My family and I have suffered such
3 great loss and pain that words cannot express. I would
4 like to take a moment to address the Court and the
5 citizens of South Carolina.

6 Under the DUI laws, alcohol and substance abuse
7 carry the same penalties. According to the Department of
8 Public Safety and South Carolina Highway Patrol, South
9 Carolina has the fourth highest rate of 6.7 percent
10 fatalities per one thousand residents. In 2012 in
11 Lexington County alone, they had 790 estimated DUI
12 arrests. Sixty percent were drug and alcohol related, and
13 out of that 48 were fatalities. From January 2013 to
14 October 2, 2013, an estimated 470 DUI arrests were made
15 with 86 percent drug and alcohol related and 28
16 fatalities. This not acceptable and should not be a
17 priority within our state government, and we should change
18 these laws to stop this continually from happening.

19 I'm not associated with any organization against
20 drunk drivers or substance abusers. I am a mother who
21 will continue to fight for moms and families who have
22 suffered the loss of loved ones in South Carolina due to
23 DUI. We have one of the nation's highest DUI statistics
24 with the most lenient laws. My daughter Natalie and I
25 will start our journey today to encourage these laws to be

1 changed to protect the citizens of South Carolina.

2 The State's workers motto is "let them work, let
3 them live." I say let's enforce our state roads workers'
4 mottos and adopt these words for all citizens.

5 On December 3 of 2012, Mr. Stafford, while
6 driving under the influence with a suspended license and
7 having just been granted bond for a prior DUI, committed a
8 horrendous crime when he struck and killed my son,
9 Nicholas, a 21-year-old Department of Transportation
10 worker, and tried to flee the scene of the accident.

11 Therefore, on behalf of my family and, most of
12 all, for my son Nicholas, I ask that Mr. Stafford not only
13 be sentenced the maximum allowed in this state and not a
14 slap on the hand and make him serve those years with no
15 parole until served at 85 percent.

16 To Mr. Stafford and his family, the choice you
17 made that day has caused a lot of pain and suffering for
18 both families. I hope that today you, too, start a
19 journey, one that will help you become clean and sober so
20 you will be able to make better choices for you, your
21 family and the citizens of South Carolina.

22 Thank you.

23 MR. COLLINS: Your Honor, 1st Sergeant Chris
24 Shelton on behalf of the South Carolina Highway Patrol.

25 SERGEANT SHELTON: Good afternoon, Your Honor.

1 THE COURT: Good afternoon.

2 SERGEANT SHELTON: Just on behalf of the South
3 Carolina Highway Patrol, we would ask that obviously the
4 sentence be given to the max. On that day, on December 3,
5 I was the supervisor on that scene. And as we all know, I
6 see things that probably people don't want to see. But at
7 the same time, Brett Blanks and Charlie Bishop that are in
8 this courtroom, they were heroes that day. They were the
9 ones that stopped Mr. Stafford. If it wasn't for them, we
10 don't know where we would be at today. But we know that
11 Nicholas Johnson would have lost his life.

12 We went above and presented both of them with
13 hero awards from our agency because they went above the
14 call of duty. They took the worrisome of their own safety
15 out in order get Mr. Stafford stopped.

16 He's done this once, he's done it twice, and
17 there's a point in time that obviously we ask that the
18 maximum sentence be given. And I appreciate you giving me
19 the opportunity to speak on behalf of the Johnson family.

20 THE COURT: Yes, sir. Thank you, sir.

21 MR. COLLINS: Your Honor, in closing, I think
22 Ms. Johnson both Sergeant Shelton have touched on it, that
23 each one of these cases presents its own unique
24 circumstances, and they all are critical and serious. I
25 think what we gleaned from this is the irony built into

1 it, is that on December 3, 21-year-old Mr. Johnson had
2 chosen a career, however temporary or permanent that was,
3 to make the road safer for other drivers, and then
4 performing those duties is ultimately what put him in the
5 position to lose his life.

6 Your Honor, I don't know whether he would have
7 continued to do that for the rest of his life or whether
8 it was temporary, but the sad part is that we'll never
9 know.

10 Thank you.

11 THE COURT: All right. Ms. Good, I'll be happy
12 to hear from you or anybody that would like to speak on
13 Mr. Stafford's behalf.

14 MS. GOOD: Thank you, Your Honor.

15 To begin, I would like to address Mr. Johnson's
16 family and let them know from me and Mr. Stafford and his
17 family, we really are truly very sorry for your loss.
18 Nothing we're going to say here today is going to change
19 any of that, and we understand that, but it is something
20 that's been on everybody's mind since December 3, 2012.

21 In fact, Your Honor, the first time I ever met
22 with Mr. Stafford was shortly after this occurred. And
23 when I went to the jail to meet with him, one of the first
24 things he said to me was "I wish I could trade places with
25 him, I wish it could have been me." From day one he's

1 been remorseful for this. He has thought about this. He
2 sees him in his dreams. And it's something that he's
3 going to see for the rest of his life.

4 In fact, there was a packet that we handed up to
5 Your Honor. There is a letter from --

6 THE COURT: For the record, I've received your
7 packet and I have reviewed it in full. I've read every
8 page of it. Thank you for providing that to me in enough
9 time to give me the opportunity to read it.

10 MS. GOOD: Thank you, Your Honor.

11 In that there was a letter from Mr. Stafford to
12 the Johnson family that he wrote a while ago while he was
13 incarcerated. It was a letter expressing his remorse for
14 that and again stating that he wished it had been him.

15 I did not allow him to send this letter to the
16 Johnson family because at this point we were not sure
17 whether it was going to be a trial or a plea, but in case
18 it did end up being a trial, I didn't want him
19 incriminating himself by sending a letter to the family
20 letting them know how truly sorry he was for this
21 accident.

22 Before I address the facts of the case, Your
23 Honor, I wanted to give you some background on Mr.
24 Stafford. He's 39 years old and he's worked as a painter
25 for the last 20 years. He's become so successful, Your

1 Honor, that he started his own painting company seven
2 years ago, and he's the CEO of that company.

3 In the packet that I handed up I provided some
4 of his work so that you can see this was a hard working
5 man, this wasn't somebody out on the streets doing
6 whatever he wanted to all the time. He worked hard every
7 day to try to help provide for his family.

8 There's also an affidavit from Amy Rushing in
9 there, Your Honor, who he has done numerous projects for
10 and she can attest to the work that he has done, the
11 impeccability of his work, and how trustworthy he was
12 inside of her home day in and day out while she was not
13 there and at work.

14 Mr. Stafford comes from a very supportive
15 family, Your Honor. He's had a very rough childhood which
16 he is not emotionally recovered for I still think to this
17 day. But with his family beside him he's managed to
18 overcome those things and not become a victim.

19 He's engaged to his fiancée who is here today,
20 Your Honor, and he has two young daughters, Leah who is
21 12, and Marissa who is 16. His oldest daughter has severe
22 Aspergers, Your Honor, and she has to be treated and
23 watched 24 hours a day for this disease that she does
24 have. He's embraced both of his daughters. He has tried
25 to provide for them throughout their entire life.

1 I say all this to try to help you understand
2 what happened on December 3. Back in 2011, Mr. Stafford
3 was in a car accident that wasn't related to anything
4 DUI-wise or anything like that, nor was he even cited for
5 the accident as it was not his fault. But as a result of
6 that car accident, he had a compressed disc in his back
7 which caused prescribed pain medication to be given to
8 him. Due to his back problem and the fact that he's a
9 painter and is constantly reaching, going to high spots in
10 buildings and trying to use his back to do his job, he
11 became addicted to pain medication. He soon realized that
12 this was a mistake. He did not need to be on pain
13 medication to this extent, and he began taking steps to
14 make himself a better person and get past this addiction.

15 He began going to the methadone clinic in
16 October of 2011 to kick this addiction to the pain
17 medication, and I've included those in the packet, that he
18 went faithfully every day since October 2011, a little
19 over a year before this happened, so that he could take
20 care of that addiction and try to better himself and work
21 for his daughters.

22 Then what kind of put this all into a tailspin,
23 Your Honor, is a couple of months before this happened,
24 Mr. Stafford and his fiancée lost a child, so it has
25 really hit home to him that he has caused somebody else to

1 lose a child because he does know how it feels when it's
2 something that is out of your hands and not something that
3 you did to make it happen. So he understands how the
4 Johnsons feel, that he has caused the death of Mr. Johnson
5 for something they had no control over. That caused him
6 to go into depression, Your Honor, and have extreme
7 anxiety, and Dr. Dawn Giegner in dealing with those two
8 things prescribed medication for him for those conditions.
9 As a result of that this accident occurred which cost
10 Mr. Johnson his life.

11 We're obviously here today pleading to the
12 felony DUI involving death. There is no doubt that he was
13 under the influence and he was overmedicating himself to
14 try to help him work and get over his anxiety and his
15 prescribed medication in excess of what it should have
16 been.

17 We do have a different opinion, Your Honor, of
18 how the accident happened that day. We do believe there's
19 inconsistencies regarding the flashing lights and how the
20 accident actually happened as a result of our
21 investigation into the case. But it's very clear that
22 even if it happened exactly the way we had said it
23 happened at a trial, Mr. Stafford was still under the
24 influence and it could have been avoided if he wasn't
25 under the influence.

1 As to the prior DUIs, Your Honor, I do want to
2 address those because I do think they're significant in
3 this case.

4 His first DUI was not pain medication related or
5 anything in that sense. It was actually alcohol related.
6 And not to excuse what happened that day, but he was on
7 his way home from his best friend's funeral. And as a
8 result he made a mistake and he was arrested for DUI and
9 convicted of that. Since that day he has not had a drop
10 of alcohol. He has tried to make himself better so that
11 that would not occur again.

12 As to the DUI 2nd, Your Honor, I do want to
13 touch on a couple of things with that. It is being
14 dismissed as a result of this plea; however, we do believe
15 if we took that to trial, and I know this is not a trial
16 on facts of any other case, but we do believe that would
17 have been dismissed on legal bases due to video issues as
18 well as the fact that there was no evidence to show that
19 he was under the influence that day.

20 As for the suspension from that one and him
21 driving on the day of December 3, he did actually blow
22 that day. He blew a 0.0. And according to the discovery,
23 his license was suspended because he failed to give a
24 urine test at the hospital. In fact, on the day of this
25 incident, though, Your Honor, of the felony DUI, his

1 driver's license was in his possession. The officer never
2 took his license from him on the day of the DUI 2nd, so he
3 did not realize that he was under suspension until he
4 thought he was going to be convicted of DUI 2nd. There's
5 no doubt he was under suspension, but he did not realize
6 that because he still had his license, the officer didn't
7 take it from him, so he thought he could still drive until
8 the conclusion of that case.

9 As for the leaving of the scene, Mr. Stafford --
10 we obviously are pleading under North Carolina versus
11 Alford. This is something he disagreed with, but we
12 understand at a trial he could be found guilty of it. He
13 has sworn to me from day one that he was not trying to
14 flee the day of this accident. You heard the testimony
15 and the statements of Mr. Collins. He was half a mile
16 down the road. If you think about it, Your Honor, you're
17 driving on an interstate with a speed limit of 60 miles
18 and you hit something. Did he slow down immediately, no,
19 but it does take a little bit of time to slow down. He
20 could have sped up and gone around Mr. Blanks and
21 Mr. Bishop, but he didn't. If he was truly trying to flee
22 the scene of this, he would have done whatever he could
23 have done to get away from them. In fact, on their video
24 where the MATE team did their investigation, you can
25 actually see the scene of the accident from where Mr.

1 Stafford's car is. So he's close enough to the scene that
2 it wasn't like he was driving home and he was three or
3 four miles down the road. He is only half a mile down the
4 road at this point, Your Honor. I'm not trying to say
5 this to minimize what happened that day, but I'm trying to
6 think -- trying to let you know it's important, I think,
7 to take into consideration to look at everything involved.

8 You kind of hear the phrase every day in your
9 life that people do the right thing but for the wrong
10 reasons. In this case, Mr. Stafford did the wrong thing
11 but he's a good person and he's doing it for the right
12 reasons. And as a result of that, Mr. Johnson was killed
13 and Mr. Stafford's going to have to pay the consequence
14 for that, Your Honor. He was overmedicating himself to
15 try to help make extra money for his daughter, to help
16 send her to her special school and trying to get over the
17 loss of his child during the pregnancy with his fiancée.

18 In the notebook I handed up, there are many
19 family and friends who are very supportive of him, and I
20 would look all them to stand up here today that are here
21 on his behalf. A couple of them would like to speak, Your
22 Honor.

23 THE COURT: Thank you for being here.

24 MS. GOOD: Mr. Stafford's aunt as well as his
25 mother and Mr. Stafford would like to address the Court.

1 If you would like to hear from them now, then I can
2 briefly conclude after that.

3 First Ms. Lillian Williford, Mr. Stafford's
4 aunt, would like to address the Court.

5 THE COURT: What is your last name, ma'am?

6 MS. WILLIFORD: Williford.

7 THE COURT: Thank you for being here.

8 MS. WILLIFORD: Thank you.

9 THE COURT: I'm happy to hear from you.

10 MS. WILLIFORD: All right. I'm writing on --
11 I'm sorry?

12 THE COURT: This young lady can only type so
13 fast. So I understand you may be nervous, that's okay,
14 just don't read too fast because she can only type so
15 fast, okay?

16 MS. WILLIFORD: All right.

17 THE COURT: Thank you.

18 MS. WILLIFORD: I am writing on behalf of Thomas
19 Stafford, my nephew, who is appearing before you today on
20 the charge of felony DUI. The only time during his entire
21 life I can say without hesitation that he is truly
22 inconsolable. He is overly despondent when he thinks of
23 the catastrophic tragedy he caused. I can say "he caused"
24 because he knows the loss of this young man's life is his
25 fault. Tom has stated to me, "I see him every day." I am

1 seeing the look of remorse in his eyes when he recalls the
2 tragic event. Tom relates the age of this young man
3 killed as his cousin, my son Matthew, is the same age and
4 he grasps the intense sorrow and heartache he has caused.

5 Tom in the past desired one thing from his life,
6 and that was to have a relationship with his father.
7 Unfortunately, his father is a true deadbeat dad. He left
8 when Tom was four. His father's life continues to be
9 riddled with unemployment, drugs, and debt, and he remains
10 only a detriment to him today.

11 By the grace of God, Tom was influenced when my
12 sister married her then husband Mark. Through him, Tom
13 learned what it meant to be a father, how to love, and how
14 to provide for your children. Through his painting
15 business, welding, and numerous side jobs, Tom has
16 provided financially for his daughters. More importantly,
17 a strong bond of love exists between Tom and each of his
18 girls.

19 His oldest daughter Marissa struggles with a
20 disability that causes her difficulties when requiring
21 knowledge and skill expected of those her age. She
22 remains confused and upset because her disability doesn't
23 allow her to understand why she can't be with her dad.

24 Leah is a bright young girl who misses her
25 daddy. She is coming to the age when a father's presence

1 is so very important.

2 Tom is a family man. He loves Sunday dinners
3 with friends and family around the table. He is a great
4 cook and loves our family's cooking competitions and
5 chilly cookoffs.

6 The horrific result of the accident that day
7 cannot be minimized. I understand the seriousness of the
8 charge and I must therefore stress how Tom's behavior on
9 that day deviates from his normal actions and temperament.
10 Tom has never been malicious, violent or cruel to anyone.
11 He made a dreadful mistake that negatively impacts many
12 lives. Tom accepts full responsibility for his part in
13 what happened and will be haunted for the rest of his life
14 with the thoughts of the victim.

15 I know Tom to be a kind, giving and loving man
16 with much to offer his girls in society. I pray that you
17 will give heartfelt consideration to who Tom is and not
18 only to the circumstances of that day.

19 Thank you.

20 THE COURT: Thank you for being here, ma'am.

21 MS. WILLIFORD: Thank you.

22 MS. GOOD: Next I believe his mother, Lisa
23 Kornmeyer, would like to address the Court.

24 THE COURT: Would you spell your last name for
25 us, ma'am?

1 MS. KORNMEYER: K-O-R-N-M-E-Y-E-R.

2 THE COURT: Thank you, ma'am. Thank you for
3 being here.

4 MS. KORNMEYER: First of all, words cannot
5 express the heartfelt sympathy to the two families that
6 are in the courtroom today. My deep felt sorrows and
7 apology goes to the Johnson family. My son tells me how
8 much his heart hurts for what happened and he truly
9 understands how the Johnson family feels, having lost a
10 child and having children of his own.

11 Tom's daughter and I went down to the accident
12 scene and Leah prayed at the scene that when daddy and
13 Nicholas meet in heaven, they will be friends.

14 Tom wants the family to know that he's not a
15 drug dealer, he's not an alcoholic, he's not a drug
16 addict, he's not a deadbeat dad, a gang member, or loser.
17 He's just a regular guy whose decision that day has and
18 will continue to be overwhelming for so many.

19 It is a fact that he's a business owner, a
20 loving father, a good friend, and a son, and he would
21 often help those down and out in his business by hiring
22 them. Then he would go down to the river and he would
23 build a grill that he would feed the homeless guys down
24 there.

25 He's lived in Lexington for over 25 years, and

1 as you heard, he comes from a large family with strong
2 values and he has a great business and he's developed his
3 craft. His website has photos of his work sites and what
4 a strong work ethic that he had and the fact that people
5 have employed him because of that.

6 Unfortunately, his childhood experiences has
7 caused him much pain at times and the memories sometimes
8 he has to struggle with. But he's become a loving father
9 and a good family man in spite of it. And many have
10 written letters on his behalf.

11 Tom is not cruel, malicious; in fact, he's just
12 the opposite, which makes this so difficult.

13 His daughters Marissa and Leah have suffered the
14 great impact of their dad's absence. So that's when I ask
15 you for mercy when you do sentence him.

16 The price to pay for life is hard to say. I
17 grieve with the Johnson family. As Tom's mom, I
18 experience the loss of a different kind, so I ask you to
19 consider all you've come to know about Tom.

20 Thankfully, Lisa Kornmeyer.

21 THE COURT: Thank you, ma'am.

22 MS. GOOD: Your Honor, I believe Mr. Stafford
23 would like to address the Court.

24 THE COURT: Yes, sir.

25 THE DEFENDANT: I'm so sorry. I'm so sorry. I

1 can only imagine what you're feeling. It's a very, very
2 bad accident. If I could trade places, I would.

3 That day I left work earlier -- I don't know
4 why -- why -- I've been trying to figure that out for the
5 last year. My heart was heavy with pain.

6 I think of Nicholas and his family every day. I
7 hate that his family and my family have go through this.
8 Being a daddy and husband I pray that they will be okay,
9 and I'm sorry.

10 THE COURT: Thank you, Mr. Stafford.

11 MS. GOOD: Your Honor, I would like to conclude
12 with something Eleanor Roosevelt once said. She said
13 justice cannot be for one side alone but must be for both.
14 Nothing you do here today is going to bring Mr. Johnson
15 back, and it's something everyone involved in this case,
16 whether it be the Johnson family, Mr. Collins, law
17 enforcement involved, Your Honor, myself or Tom and his
18 family are going to think about for the rest of their
19 lives.

20 He realizes he's going to have to have some
21 punishment for his actions on December 3 of last year.
22 He's not a calculating criminal and he did not set out
23 potentially that day to hurt anybody.

24 We're respectfully asking the Court to take
25 everything you've heard this afternoon into consideration.

1 He wasn't taking drugs for recreational purposes such as
2 cocaine or methamphetamine or marijuana. He wasn't out
3 drinking at the bar with his buddies and deciding just to
4 drive home. This was prescribed medication that just got
5 out of control, Your Honor, while he was trying to help
6 his family. So we're respectfully asking you to render a
7 sentence that is just for all and we believe, Your Honor,
8 if you could have mercy on him, give him somewhere between
9 two and five years.

10 THE COURT: Anything further, Mr. Collins?

11 MR. COLLINS: Nothing further, Your Honor.

12 THE COURT: Anybody have anything else they want
13 to say?

14 We'll take about a ten-minute break, ten or
15 fifteen-minute break. Court's in recess.

16 (A break was taken.)

17 THE COURT: Any time you do one of these cases,
18 it's probably the most difficult case that you sentence.
19 I think most of the circuit court judges in this state
20 would agree with that. I have a victim who was doing a
21 job on the side of a road that most people in this room
22 wouldn't even want to do. He was out there working with
23 his hands, minding his own business, pulling his shift,
24 all to make our highways and our roads safer and better
25 for all of us as a community to enjoy.

1 And this was about the time where there was
2 major work on that road and there in that stretch; isn't
3 that correct, Sergeant Shelton?

4 SERGEANT SHELTON: That's correct, Your Honor.

5 THE COURT: And my memory of that from my days
6 as a criminal defense attorney were that the Highway
7 Patrol even saw necessary to assign a trooper to that
8 area -- I see him in the back of the room -- to monitor
9 that area for fear of the number of DOT workers that would
10 be out there and to try to increase the presence of law
11 enforcement in the area to control the speed and the
12 danger already in place from the nature of the work that
13 our state employees do on the side of the road.

14 I remember having that conversation with that
15 trooper in the back of the room one day. We were probably
16 sitting in DUI court together.

17 And that brings me to another issue with these
18 DUI cases is we've all done them, we've all handled them.
19 I mean, the assistant solicitor when he was a local
20 magistrate we worked on them together. Sergeant Shelton
21 and I have worked on many DUIs together. Ms. Good and I
22 have sat in the courtroom together waiting for our
23 client's cases to be called. And we've all done these
24 cases, and we all know that with the extreme amount of
25 technicalities in DUI cases, DUI cases get worked out and

1 pled down all the time; sometimes rightly so, sometimes
2 just to get a conviction for something. And that's almost
3 the nature of our DUI practice in this state today.

4 And I say all that to say this: That absolutely
5 nothing that I can do here today will bring your son and
6 your brother back. But I can tell you that I've handled a
7 lot of cases this week and a lot of cases have been a lot
8 older than this case. The victims have been waiting
9 around, through no fault of the solicitor, through no
10 fault of the defense attorney, through no fault of anyone,
11 just the nature of our criminal justice system in this
12 state, for a lot longer than this case has been pending.
13 And part of the reason -- not the whole reason, but part
14 of the reason why this case had the resolution that it did
15 in the time frame that it did is Mr. Stafford's
16 willingness to accept responsibility for his actions, and
17 that is something that certainly the Court takes into
18 consideration in crafting a sentence in this case.

19 The other thing that I want to say before I
20 render sentence is this: These gentlemen that were in
21 this car who ended up stopping Mr. Stafford, it takes a
22 lot of character to do that. And in this day and age and
23 in the dangers that we all face living in a community,
24 your willingness to put yourself on the line and put
25 yourself at risk, your car at risk, your own persons at

1 risk, if nothing less is a glimmer of hope in this case as
2 to people in our community that are willing to do the
3 right thing under extremely dangerous situations. They
4 didn't know who they were going to encounter. They didn't
5 know what, if anything, he would have on him or if he was
6 dangerous or he had a violent history or anything else,
7 nor did they know in what state they would find Mr.
8 Stafford, and still they chose to make the right decision
9 that day. I would like to personally say thank you to
10 them for doing that.

11 Mr. Stafford, I have been doing this a long time
12 and this is one of the more what I would call emotional
13 cases that I've had to handle. For all intents and
14 purposes you have a true victim on the side of the road
15 minding his own business working who is killed for no
16 reason at all other than your abuse of prescription drugs.
17 The other side of that is you have two daughters that
18 obviously love you, care about you, and you obviously are
19 the type of father in the letters that I have seen and the
20 correspondence that I have been given and the character of
21 the testimony that's been provided today that loves his
22 family, cares about his family, and wants to provide for
23 his family. But I have no doubt on that day that you made
24 the decision to drive even though you had been arrested
25 just a few weeks before and you knew that you were abusing

1 Xanax mixed with the methadone because you were going to
2 the job site to work and you've got to get there somehow.

3 So as your attorney says, it wasn't the middle
4 of the night, you weren't out drinking with your friends,
5 you weren't out behaving inappropriately. It was
6 essentially the middle of the day and you had abused
7 prescription pills and knew that you were on methadone and
8 had been on methadone for sometime because of an issue you
9 had with some form of an opiate, more than likely a pain
10 pill. So I take all this into consideration in this case
11 in trying to figure out what the right thing to do is.

12 I want to remind the Johnson family that in
13 considering the sentence that I give, one of the things
14 that you said to me, Ms. Johnson, was for me to make sure
15 or that you'd ask me that it be a 85 percent crime.
16 That's not something that I control, but by statute it is
17 an 85 percent crime. So when I factor that into the
18 sentence, I factor into the fact that I know based upon
19 the classifications of the crime that he has entered pleas
20 to, that he will serve at least 85 percent of this before
21 he is released.

22 I further note that based upon the
23 classification of the crime, that when he is released, he
24 will be under something called a community supervision
25 program, which is almost like probation for lack of a

1 better term, and that is mandatory upon his release due to
2 the nature of the classification of the crime.

3 As to that issue that you raised, Ms. Johnson, I
4 want to make sure that you understand that, and that is
5 also something that I consider in coming up with the
6 appropriate sentence for this situation.

7 Two of the major factors in this sentence -- and
8 I know you all don't come to court every day, but I
9 usually don't explain myself like this when someone pleads
10 guilty, but I think it's important so that you know and
11 that you understand, two of the major factors of this case
12 to me are the DUI arrest 15 days prior and the prior DUI
13 from 2008 which he was convicted on in 2010.

14 The sentence of this Court on the felony DUI,
15 death is that you be committed to the State Department of
16 Corrections for a determinate term of 17 years. The
17 sentence on the DUI, death, is the same. These are to be
18 run concurrent. You're to be given credit for time
19 served. Substance abuse counseling, random alcohol and
20 drug testing. Your driver's license suspensions are to be
21 run consecutive.

22 Good luck to you.

23 (The proceedings were concluded.)

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
25

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF LEXINGTON)
6
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 3rd day of
15 October, 2013.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
19

20 June 10, 2014

21 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

ORIGINAL
JM

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Thomas Lee Stafford, SCDC # 357279
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015 CP3201888

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institute
2. Name and location of Court which imposed sentence The Honorable Robert E. Hood, Presiding Judge, Lexington County Court of General Sessions.
3. Name(s) of co-defendant(s) (if any) None.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-32-00392 -- Leaving the Scene of an Accident, Death Resulting
 - (b) 2013-GS-32-00393 -- Felony Driving Under the Influence
5. The date upon which sentence was imposed and the terms of the sentence: On October 3, 2013, Judge Hood imposed sentences of 17 years, concurrent for each offense.
6. Check whether a finding of guilty was made:

- (a) after a plea of guilty Aplicant plead guilty to felony DUI and entered an Alford Plea to Leaving the Scene of an Accident, Death Resulting.
- (b) after a plea of not guilty n/a
- (c) after a plea of nolo contendere n/a
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed: S.C. Court of Appeals.
- (b) the result in each such Court to which you appealed: Voluntarily dismissed as no issues preserved for appeal.
- (c) the date of each such result: The Remittitur issued on September 30, 2014.
- (d) if known, citations of any written opinion or orders entered pursuant to such results: n/a
9. If you answered "no" to (7), state your reasons for not so appealing: n/a
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
Mr. Stafford was denied effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution.
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 investigate, discover, and/or present information that would have provided a defense to the charges.
- (b) Trial counsel failed to investigate, discover, and/or present infomraiton that would have led to the suppression of Applicant's statements.
- (c) Trial counsel allowed the guilty plea to go forward and/or otherwise failed to withdraw the guilty plea when the prosecution changed the plea negotiations at the last moment.
- (d) Trial counsel failed to investigate, discover, and/or present information that would have mitigated and reduced the sentence imposed.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.

- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (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: n/a
- (b) the name and location of the Court in which each was filed: n/a
- (c) the disposition thereof: n/a
- (d) the date of each such disposition: n/a
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: n/a
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No.
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented: n/a
- (b) the proceedings in which each ground was raised: n/a
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: No issues preserved for appeal.
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? Yes.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No, other than the preparation of this PCR Application.
18. If you answered "yes" to one or more parts of (17), list:

(a) Anna Good, PO Box 7284, Columbia, SC 29202, represented Applicant at his guilty plea and sentencing.

(b) Charles Grose, 404 Main Street, Greenwood, SC 29646, represented Applicant in his appeal to the Court of Appeals and in preparation of this PCR Application.

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

New trial and/or new sentencing hearing.

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

No.

Respectfully submitted,

By



E. Charles Grose, Jr.
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BETH A. CARRICO
CLERK OF COURT
JULY 1, 2015

2015 MAY 22 A 8:57

FILED

2015 CP3201888

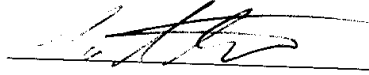
ORIGINAL
A. 61

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION)

I, Thomas Lee Stafford, 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.



SWORN to and subscribed before me this 29th
day of Apr. 7, 2015

 (L.S.)
Notary Public

My Commission Expires: 5/31/23

DETH A. CARRICO
CLERK OF COURT
16740000000000000000

2015 MAY 22 A 8:57

FILED

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

Thomas Lee Stafford, SCDC # 357279

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP -

vs.

State of South Carolina

Submitted By: Charles Grose

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case #
20 -NI- -
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions

- ☒ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief

- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

Judgments/Settlements

- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)

Appeals

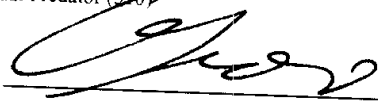
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Submitting Party Signature:



Date: May 18, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

2015 CP 3201888

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Thomas Stafford,
S.C.D.C. No. 357279,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-32-1888

RETURN¹

ORIGINAL

Respondent, making its Return to the Application for Post-Conviction Relief filed May 22, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. In February 2013, the Lexington County Grand Jury indicted Applicant for leaving the scene of an accident with death (2013-GS-32-0392) and felony driving under the influence (DUI) resulting in death (2013-GS-32-0393). He was represented by Anna Good, Esquire. On October 3, 2013, Applicant pleaded guilty as indicted on the charge of felony DUI resulting in death and entered an Alford² plea to leaving the scene of an accident with death. The Honorable Robert E. Hood sentenced Applicant to a term of imprisonment for seventeen years for each charge. These sentences were to be served concurrently.

A timely notice of appeal was filed. Charles Grose, Esq. represented Applicant on appeal. In an Order filed September 11, 2014, the Appeal was dismissed, noting Applicant voluntarily withdrew and dismissed his appeal. The Remittitur was issued on September 30, 2014.

II.

¹ Charles Grose has been retained as counsel.

² North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970).

ETHEL A. CANNING
CLERK OF COURT
LEXINGTON, SC

2016 DEC -5 A 11:29

FILED

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

1. Ineffective Assistance of Counsel
 - a. "Trial counsel failed to investigate, discover, and/or present information that would have provided a defense to the charges"
 - b. "Trial counsel failed to investigate, discover, and/or present information that would have led to the suppression of Applicant's statements"
 - c. "Trial counsel allowed the guilty plea to go forward and/or otherwise failed to withdraw the guilty plea when the prosecution changed the plea negotiations at the last moment"
 - d. "Trial counsel failed to investigate, discover, and/or present information that would have mitigated and reduced the sentence imposed"

Attached to this return and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, appellate documents, and the guilty plea transcript. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at

687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments well in advance of the PCR hearing will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRCP. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. Rule 15(a), SCRCP. Because Applicant has been appointed an attorney, the attorney is the only individual authorized to file amendments to this application, and filings by Applicant will not be considered at the PCR hearing. See Rule 11, SCRCP.

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

By: Johanna C. Valenzuela
ATTORNEYS FOR RESPONDENT

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

1 Dec., 2016

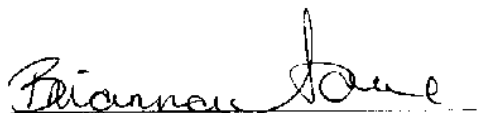
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2016 DEC -5 A M 26
BETH A. ORRIS
CLERK OF COURT
COLUMBIA, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2015-CP-32-1888
THOMAS STAFFORD, #357279,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

E. Charles Grose, Jr., Esquire
Grose Law Firm
404 Main Street
Greenwood, SC 29646

DATED this 1st day of December, 2016.


 Brianna Arnone, Legal Assistant
 For Respondent

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

2016 DEC -5 A 11:26

FILED

1	STATE OF SOUTH CAROLINA	TRANSCRIPT OF RECORD
2	COUNTY OF LEXINGTON	CASE NO.:2015-CP-32-01888

3 **** TRANSCRIPTION OF VIDEO COURTROOM ****

4 _____

5 June 22, 2023

6 **BEFORE:** The Honorable Edward W. Miller

7 _____

8 THOMAS STAFFORD,

9 Applicant,

10 || vs.

11 STATE OF SOUTH CAROLINA,

12 Respondents.

13 -----

14

15 || APPEARANCES:

16

17 Charles Grose, Esq.
Appearing for the Applicant.

19 Donald Zelenka, Esq.
 Appearing for the State of SC.

20

21

22 Recorded by: Video Courtroom

23 Transcriber: Natalie Dahl, RPR
 SC Official Court Reporter

24

25

NOTE: Pursuant to Rule 607 (h) (1) (B), SCACR "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

INDEX

WITNESSES:

7	DR. DONNA SCHWARTZ MADDUX	
	Direct Examination by Mr. Grose.....	6
8	Cross-Examination by Mr. Zelenka.....	22
	Redirect Examination by Mr. Grose.....	37
9	Recross-Examination by Mr. Zelenka.....	44
10	ALISTA "LISA" KORNMEYER.	
	Direct Examination by Mr. Grose.....	45
11	Cross-Examination by Mr. Zelenka.....	56
	Redirect Examination by Mr. Grose.....	60
12	JAMES "JIM" KORNMEYER	
13	Direct Examination by Mr. Grose.....	64
14	LILLIAN WILLIFORD	
	Direct Examination by Mr. Grose.....	67
15	TINA ORLOWSKI	
16	Direct Examination by Mr. Grose.....	69
17	THOMAS STAFFORD	
	Direct Examination by Mr. Grose.....	70
18	Cross-Examination by Mr. Zelenka.....	73
	Redirect Examination by Mr. Grose.....	77
19	ANNA GOOD BROWDER	
20	Direct Examination by Mr. Zelenka.....	82
	Cross-Examination by Mr. Grse.....	100
21	RICK COLLINS	
22	Direct Examination by Mr. Zelenka.....	111
	Cross-Examination by Mr. Grose.....	119
23	REPLY TESTIMONY - ANNA GOOD BROWDER	
24	Direct Examination by Mr. Grose.....	125
	Cross-Examination by Mr. Zelenka.....	128
25	Examination by The Court.....	129

EXHIBITS

APPLICANT'S

ADMITTED

1-3

22

4-15

50

16

55

RESPONDENT'S

1-3

98

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality

P R O C E E D I N G S

THE COURT: This is Thomas Stafford versus the State of South Carolina 2015-01888; is that correct?

MR. ZELENKA: That's correct, Your Honor. This application involves an indictment for leaving the scene of an accident and felony driving under the influence resulting in death.

At the time of the trial, he was represented by Anna Good Browder. On October 3rd, 2013, he pleaded guilty, was indicted on the charge of felony DUI resulting in death, and entered an Alford plea to leaving the scene of the accident. This was before Judge Hood, and Judge Hood sentenced the applicant to 17 years concurrent on each charge. There was an appeal made. Current counsel, Charles Grose, represented him on appeal. On September 11, 2014, the appeal was dismissed voluntarily by the applicant at that time.

The application was filed May 22, 2015 alleging ineffective assistance of counsel. At that time, there were four specifications. Mr. Grose has indicated to our office early on that he's just proceeding on Items C and D.

Is that correct?

1 MR. GROSE: Actually, we may be proceeding
2 and have a little testimony with regards to a
3 defense for the leaving the scene of an accident.

4 MR. ZELENKA: Okay.

5 MR. GROSE: I don't remember if that is A or
6 B, but....

7 MR. ZELENKA: Okay. That would be A. So
8 proceeding on Item A: Trial counsel failed to
9 investigate, discover, or present information that
10 would have provided defense to the charges.

11 Trial counsel allowed the guilty plea to go
12 forward or otherwise failed to withdraw the guilty
13 plea when the prosecution changed the plea
14 negotiations at the last minute.

15 And trial counsel failed to investigate,
16 discover, or present information that would have
17 mitigated or reduced the sentence imposed.

18 The return in this matter was filed through
19 our office on December 1, 2016 by Assistant
20 Attorney General Johanna Valenzuela, who is no
21 longer with the office. I'm here representing the
22 State in the matter, and we're ready to proceed in
23 this proceeding.

24 THE COURT: Okay.

25 Mr. Grose?

1 MR. GROSE: May it please the Court. At this
2 time I call Dr. Donna Schwartz Maddox.

3 (DONNA SCHWARTZ MADDUX, having been duly
4 sworn, testified as follows:)

5 THE WITNESS: Donna, S-C-H-W-A-R-T-Z, last
6 name Maddox, M-A-D-D-O-X.

7 **DIRECT EXAMINATION**

8 **BY MR. GROSE:**

9 **Q** Dr. Maddox, what is your profession?

10 **A** Forensic psychiatrist and physician licensed
11 to practice medicine in South Carolina.

12 **Q** And can you summarize your training and
13 education and experience for that position?

14 **A** Sure. I graduated from Furman University in
15 1985 with a bachelor's of arts degree in
16 psychology. I graduated from medical school in
17 1989, University of South Carolina School of
18 Medicine, with a doctorate of medicine. I
19 completed a four-year residency in general
20 psychiatry in Columbia, and at that time the
21 residency was sponsored by the University of South
22 Carolina in the Department of Mental Health. And
23 then I took an additional year of forensic
24 fellowship, and I completed that in 1994 in
25 Columbia with the Department of Mental Health and

1 USC. I'm licensed to practice medicine. I was
2 board certified in forensic psychiatry and general
3 psychiatry for 20 years, but I did not retake my
4 recent boards.

5 MS. ZELENKA: Your Honor, we stipulate that
6 she's an expert in forensic psychiatry.

7 THE COURT: Okay.

8 Q Dr. Maddox, did you have any occasion to be
9 involved in Thomas Stafford's case prior to his
10 guilty plea?

11 A Yes.

12 Q How did that come about?

13 A Ms. Anna Good -- I believe at the time I was
14 still at the University of South Carolina School of
15 Medicine here in Columbia. I've since moved to
16 Anderson for the past ten years, but I was at the
17 Medical School at the time. And I was a forensic
18 psychiatrist there, and the University would bill
19 for my services. So she contacted me, I believe it
20 was, 2012/2013. Mr. Stafford was at the Lexington
21 County Detention Center. I went there and examined
22 him and made some recommendations after my exam.

23 Q Okay. I'm going to show you what's been
24 premarked as Applicant's Exhibit No. 1.

25 MR. ZELENKA: No objection.

1 **Q** **(BY MR. GROSE)** Do you recognize that?

2 **A** Yes.

3 **Q** And what is it?

4 **A** It is an affidavit I made. At the time
5 that -- Your Honor -- I saw Mr. Stafford, I felt
6 like he was at risk for neurological and cognitive
7 deficits, so we needed some additional testing. So
8 I prepared an affidavit for Ms. Good so that she
9 could get neuropsychological testing paid for, I
10 believe by the court. He may have been indigent.
11 But I wrote this affidavit to support why I wanted
12 the consultation.

13 **Q** Okay. And so can you tell us a little bit
14 about the examination you had with Thomas? Was
15 that January 13th, 2013?

16 **A** Yes. That's correct. I saw him at the
17 detention center in Lexington. I was concerned. I
18 got a history from him and, basically, he
19 complains, Your Honor, that he could not remember a
20 lot of the events, specifically that he could not
21 remember the time -- I believe it was once he was
22 off the scene of the accident -- until the
23 detention center. He had generally just complaints
24 of poor memory. There is usually two or three
25 reasons why people have poor memory: Number one,

1 it can be psychiatric reasons. You can be abused,
2 those sorts of things. When you have been
3 traumatized, you may have difficulty recalling
4 things during an event like this.

5 Secondly, it could be brain damage, something
6 happened to his brain, or it could be substances.
7 Because of those reports, I did some testing of him
8 while I was there in the detention center, and he
9 did have some findings and, in my opinion, they
10 were consistent with the cognitive disorder. So
11 because of that, I needed further testing,
12 neuropsychological testing, which is much more
13 specific and sensitive than what I did.

14 **Q** And can you explain what those findings were
15 that led to you wanting to have more testing done?

16 **A** Yes. The first thing he did is he
17 confabulated, and what that means -- I gave him
18 five words to remember. Back then, the words would
19 have been face: Velvet, church, daisy, red. What
20 happened is when he recalled them, his brain made
21 up a new word. Sorry, I don't have those notes, so
22 I don't know -- actually, I may have them. I can
23 tell you exactly what he did. But when I asked him
24 to recall the word, he gave a different word, but
25 it was in a similar category. So you usually see

1 that when people have memory deficits. It is a way
2 that your brain tries to fill in the gap, so to
3 speak. So he had that finding, which was very
4 significant.

5 When I had him reproduce a visual design, I
6 had him draw two pentagons that intersect, he had
7 difficulty there, so that is a separate area of the
8 brain.

9 Finally, on a verbal fluency test, which is I
10 give you a minute and you have to name every word
11 that you can think of that begins with a certain
12 letter, and he did very poorly. To pass, you need
13 11, and I believe he only got seven. So that was
14 the frontal lobe area, memory impairment, and
15 visual design. So that was three areas of
16 cognitive dysfunction that he was experiencing.

17 I also do a neurological exam on him, and he
18 had nystagmus, which is -- it's -- it's a finding
19 you can see in cognitive dysfunction. It doesn't
20 mean that if you have nystagmus that you have a
21 certain condition, but it was just one of the
22 findings. So it was a little bit, again, of
23 physical evidence as well.

24 Q Okay. And based on those findings, what
25 recommendations did you make for additional

1 studies?

2 **A** I wanted him to have some blood tests.
3 Sometimes there is reversible reasons for those
4 things. You could have a B-12 deficiency or some B
5 vitamin problems that make you present that way,
6 and they are easily fixed. You can have thyroid
7 problems. So I wanted some blood tests done.

8 I wanted an EEG to make sure that he had not
9 had a seizure. Sometimes you can have brief
10 seizures that could have accounted for his memory
11 problems.

12 I also asked for neuropsychological testing,
13 which is a gold standard. If you are looking to
14 quantify what someone's brain deficits are, that is
15 the gold standard.

16 **Q** And so that would involve seeing,
17 potentially, two other provisions?

18 **A** That's right. An EEG specialist or
19 neurologist and neuropsychologist, yes.

20 **Q** And at that time was there a consultation
21 with a neuropsychologist?

22 **A** Yes. I think Ms. Good was able to obtain the
23 services of Dr. Tora Brawley.

24 **Q** What happened with that?

25 **A** I don't -- I'm sorry, if you all have it, I'm

1 glad to refer to it, but I don't have her original
2 report. I don't have the original report, but
3 Dr. Brawley saw him, evaluated him, and she found
4 he did not give a good effort. She performed tests
5 to see -- for effort testing, and her results
6 indicated that he was not being forthcoming, and he
7 was not giving a good effort, so she did not
8 continue testing.

9 Q And is that common or is that unusual?

10 A Unusual. Usually, by the time I'm involved,
11 the client would be cooperative. I don't have that
12 happen -- I can't -- I don't know if I can think of
13 another case where I've been retained and referred
14 someone for testing and had that happen. There may
15 be one other, but it's not coming to mind.

16 Q What are some of the reasons as to why that
17 could happen?

18 A The person, obviously, could be faking, and
19 the history they gave, they could be malingering.
20 Two, they may be tired. There could be psychiatric
21 reasons if they weren't giving a good effort. They
22 are being protective. They don't want people to
23 know that there is something wrong with them.

24 Q At that time, was any neurological evaluation
25 done?

1 **A** I don't know. After that, I know -- once he
2 was, in my opinion, malingering -- because the
3 history he gave me was very consistent, but once he
4 did not give a good effort -- again, Dr. Brawley,
5 that has not normally happened with her. She would
6 not have aborted testing, but if someone is not
7 going to give a good effort, there is no reason to
8 proceed.

9 Ms. Good, in her defense, she asked me to
10 please come back and see him. She felt that he had
11 psychiatric issues that could have been explored
12 that may have been pertinent, but at that point I
13 refused to see him anymore because I wasn't sure
14 that he would be giving me credible information.

15 **Q** Since you have been re-involved in this case,
16 in the PCR, has neuropsychological testing been
17 completed?

18 **A** Yes.

19 **Q** And did Mr. Stafford give good effort on
20 that?

21 **A** Yes, he did. Dr. Brawley saw him again
22 before she moved and before she left -- I believe
23 it was in 2019 -- and he gave adequate effort.
24 Yes, he did.

25 **Q** And what were the results of that

1 examination -- that is something you rely on as an
2 expert in forensic psychiatry; is that fair?

3 **A** Absolutely. Yes. Her testing did confirm my
4 findings. He absolutely had deficits, and she
5 found more than -- of course my tests were just
6 screening tests. She found that he had difficulty
7 in memory, in motor testing, and his verbal memory
8 was severely impaired, and that he had his speed
9 and dexterity were impaired on his right hand. So
10 there were definitely asymmetries in the brain and
11 some concerns that she had that were not
12 psychiatrically related.

13 **Q** And since you have been re-involved -- or
14 since the PCR has taken place, has a neurologist
15 been involved?

16 **A** Yes.

17 **Q** Who is that?

18 **A** Dr. Pritchard at the Medical University of
19 South Carolina.

20 **Q** And what were the results of that
21 examination?

22 **A** Dr. Pritchard evaluated him in 2017. He also
23 performed an EEG on him, which was normal. But
24 Dr. Pritchard felt that his memory dysfunction, and
25 that he had amnesia for the events of 2012, he felt

1 that was genuine. You know, it was not him not
2 being cooperative. I felt there was a medical
3 basis for that, and that he had some back pain,
4 which was the reason he had been prescribed opiates
5 in the first place, and later became addicted.

6 Q So let's transition and talk about that. As
7 part of your evaluation, do you learn about
8 somebody's medical and social history?

9 A Yes.

10 Q And why is that important?

11 A Well, it can explain behaviors. Part of what
12 I do -- my methodology is try to determine if there
13 is a diagnosis, and if that diagnosis has any
14 pertinence to the legal issue.

15 Q Okay. And what was the history that you
16 obtained on Mr. Stafford?

17 A He had a very unstable childhood and
18 significant exposure to trauma. He, for example,
19 attended 19 different schools in his lifetime. He
20 had numerous moves. His mother had some unstable
21 relationships, and he witnessed domestic violence.
22 He was a victim of sexual abuse, so he had a very
23 traumatic history.

24 His family history was also significant,
25 things past down in the family that are

1 inheritable. His biological father was an opiate
2 addict, and I thought that was significant. He had
3 some siblings that I believe had multiple
4 scoliosis, and a daughter with Autism Spectrum
5 Disorder.

6 Q In order to obtain that history, who did you
7 obtain that from?

8 A I spoke with his mother, Lisa Kornmeyer, and
9 also through Mr. Stafford.

10 Q And as far as your evaluation, did you
11 ultimately come to any opinions?

12 A Yes.

13 Q And what were those?

14 A Your Honor, I think he had two reasons for
15 memory impairments. The first certainly is -- we
16 know now that on the neuropsychological testing his
17 brain really is impaired in terms of forming verbal
18 new memories and recalling them. It is not only
19 forming them, but also keeping them in his brain.
20 So we know there is a biological reason why he had
21 difficulty.

22 Also, in my opinion, he has Post-traumatic
23 Stress Disorder. We know that when people with
24 that illness, when you are traumatized or
25 re-traumatized, you have autonomic arousal. You

1 have other systems working in your brain at the
2 same time. So people with that disorder, both the
3 PTSD and the cognitive disorder, they are not going
4 to make the best decisions in a traumatic time. So
5 it would have explained some of his behaviors.

6 **Q** I want to come back to that, but before I do
7 that, you mentioned that Dr. Pritchard noted the
8 back pain, and that the back pain is the reason
9 that he has been prescribed certain medications?

10 **A** That's correct. He had a -- he was addicted
11 to opiates, and on his own, he went to the
12 methadone clinic. He wanted to get off of these
13 drugs. He had been compliant and going to
14 treatment to get off of the opiates.

15 **Q** Was he also taking other medications at the
16 same time?

17 **A** Yes. He was prescribed Klonopin,
18 1 milligram, twice a day for anxiety.

19 **Q** And you reviewed records, and both of those
20 were prescribed by doctors?

21 **A** That's correct. Both of the medications that
22 he was prescribed were legal. He was being
23 followed medically and had been compliant with his
24 treatments, other than -- I think on a few
25 occasions he told me he took more Klonopin than was

1 prescribed, but generally he was compliant.

2 Q Should Klonopin and methadone be prescribed
3 at the same time?

4 A I read some articles. I wouldn't do it, but
5 it was being done.

6 Q Why wouldn't you? Why do you say you
7 wouldn't do it?

8 A Well, you know, they have side effects, and
9 one is sedation. It can be -- it can slow your
10 motor speed, and now that we know he has impaired
11 motor speed, Klonopin would have slowed it even
12 more, perhaps making his reflexes slower. That
13 would be an area more for a psychopharmacologist.
14 But as a psychiatrist, I have had patients on
15 methadone and Klonopin, and I would have tapered
16 the Klonopin had they been on my service.

17 Q And both doctors were aware that the other
18 was prescribing the medication?

19 A That's correct.

20 And if I can go back? The other thing, if
21 maybe the person needed a benzodiazepine, I would
22 have used something quicker acting, not something
23 like Klonopin that lasts for about 12 hours.

24 Q You indicated that, based on your evaluation,
25 you can explain some of Thomas' behavior at the

1 time of the incident?

2 **A** Yes.

3 **Q** And what are the -- can you explain that?

4 **A** Sure. And they would not have risen to a --
5 I don't believe there is a mental defect that would
6 have rendered him not criminally responsible, and I
7 don't think it impaired his capacity to conform,
8 but the way it affected him, if you take the
9 Klonopin, it can cause sedation. He was tired. He
10 had gone that morning -- his report to me was that
11 at 5:30 in the morning or 6:00 a.m. he had already
12 been to the methadone clinic. He worked, and he
13 had a very light lunch. So that medication,
14 depending on what you eat, your hours, so he was
15 probably at a baseline of being tired anyway from
16 working, and then this medication. Now that we
17 know he has some motor dysfunction, that could have
18 impaired the speed of his reflexes when his brain
19 processed the DOT worker on the side of the road.

20 But, also, more importantly, it explains -- I
21 understood he drove about an eighth of a mile, he
22 says, after the wreck and pulled over. It could
23 also explain why it took him a minute to process
24 what happened and pull over.

25 **Q** I'm going to show you what's been premarked

1 as Applicant's Exhibits 2 and 3.

2 MR. ZELENKA: No objection.

3 Q (BY MR. GROSE) Can you identify those,
4 please?

5 A Yes. Number 2 is the report I issued on
6 February 11th, 2018 after I evaluated him at
7 Kirkland. And then the Exhibit 3 is an addendum
8 report that I completed on 4/7/22 after evaluating
9 him at Tyger River.

10 Q Were there some times during the pendency of
11 the PCR where there was questions about
12 Mr. Stafford's competency?

13 A Absolutely.

14 Q And can you tell the judge a little bit about
15 that?

16 A Yes. I was very surprised, Your Honor. I
17 saw him originally on July 14, 2017 at Kirkland,
18 and he was doing very well. He was adjusting well.
19 He gained weight. He had a very happy affect. He
20 was working. He had gotten off of all of the
21 psychiatric medications because he wanted to work.
22 He was adjusting very well.

23 Then, I got -- his mother, I believe, or
24 you -- someone contacted me, and he had
25 deteriorated. Your Honor, I went and saw him again

1 in, looks like, 2018, September 21st, 2018. And
2 then I saw him again, it looks like, in June. He
3 had been threatened by inmates. They were
4 extorting food from him. This was also the time at
5 Kirkland where the inmates had cell phones, and
6 they found out personal information about
7 Mr. Stafford's family, and they were threatening to
8 kill his family. So he had become acutely
9 paranoid. He felt the whole prison was involved in
10 this.

11 We had to meet in a special area when I saw
12 him. I immediately contacted mental health at the
13 prison, and after that evaluation, he was moved.
14 But he was -- he was very paranoid. He was so
15 disorganized -- the reason why I would say I
16 thought he was not competent at that time is his
17 thought processes was so disorganized, he wasn't
18 able to coherently relate what was going on to me.
19 He was very distracted, very vigilant, very sick.

20 **Q** And moving forward, did that resolve?

21 **A** Yes. I followed up. He got moved to Tyger
22 River where he was still baseline paranoid. He
23 never got back to the level of functioning that I
24 saw him originally at Kirkland in 2017. But, yes,
25 he definitely stabilized and was able to function

1 again, and he felt safer at the other institution.

2 Q And just to, sort of, close the loop, did you
3 see him this morning to make sure there was no
4 issues with competency?

5 A I did.

6 Q And there are none?

7 A No. He still has some paranoia, and there is
8 some things going on in the institution that alarm
9 him and scare him and he's fearful, but he's
10 competent, in my opinion, today.

11 MR. GROSE: Your Honor, I would move
12 Applicant's Exhibits 1, 2, and 3 into evidence.

13 MR. ZELENKA: No objection.

14 THE COURT: Admitted.

15 (Applicant's Exhibits 1-3 admitted.)

16 Q (BY MR. GROSE) Is there anything else that is
17 significant that you think we need to relate to
18 Judge Morris?

19 A Not that I can think of.

20 MR. GROSE: Answer any questions that Zelenka
21 has.

22 **CROSS EXAMINATION**

23 **BY MR. ZELENKA:**

24 Q Dr. Maddox, on affidavit -- what you -- what
25 has been identified as Exhibit 1, an affidavit,

1 that is not really an affidavit because it is not
2 sworn -- signed and sworn. Did you give this
3 particular document to Anna Browder?

4 **A** Yes, I would have. I probably e-mailed it
5 through the department. And, I'm sorry, since I
6 left, I don't have access to those e-mails. But,
7 actually, you showed me an e-mail, I think it was
8 my personal account, so I probably did it from my
9 house.

10 **Q** And at the time that this was prepared was
11 before there had been any (inaudible)
12 neuropsychological testing?

13 **A** That's correct.

14 **Q** When you -- how often did you meet with
15 Mr. Stafford in the proceedings?

16 **A** I believe I only saw him that one occasion,
17 and then I was waiting for the neuropsychological
18 test results, and they would have come in again.
19 After he malingered -- as I said, Ms. Good, she
20 asked me -- Ms. Browder at the time -- she asked me
21 to come back, and I told her there was no sense in
22 doing that.

23 **Q** When you got the information by Dr. Brawley's
24 neuropsychological testing, she did not give you a
25 written report, did she?

1 **A** I don't have one, and I would think she would
2 not be asked to write one given that it wasn't
3 helpful.

4 **Q** Okay.

5 **A** But I had a verbal report.

6 **Q** It was unhelpful because she opined there was
7 malingering?

8 **A** Yes.

9 **Q** And what is malingering usually referred to
10 as?

11 **A** And, Mr. Zelenka, she may not have -- I can't
12 remember if she said malingering. I thought he was
13 malingering, but I think she said he was not giving
14 a good effort.

15 If I may, what those tests are, it is called
16 the test of malingered memory, and Dr. Brawley
17 routinely gives those at the beginning of a test.
18 And what it is, is you look at 50 different faces,
19 and then in a few minutes you are given a
20 fourth choice and asked to pick the face you would
21 have seen. So he scored below what people with
22 dementia score. So in her opinion, it was poor
23 effort. I think I probably gave the diagnosis of
24 malingering at that time, so I'm not sure if she
25 did or not.

1 But, anyway, malingering is the intentional
2 feigning of symptoms for a secondary gain, to get
3 out of legal problems, get money from Social
4 Security, or those sorts of things.

5 Q But, generally, that is something that is not
6 considered good to a defense lawyer?

7 A No, not at all.

8 Q So it is nothing that the defense lawyer
9 would generally want to present evidence or
10 information on?

11 A That's correct.

12 Q And failing to have that neuropsychological
13 testing completed, how did that impact on your role
14 in the case?

15 A Again, I felt like I couldn't be of much
16 help, number one, because that would have been
17 brought out probably in his proceedings. And,
18 number two, I didn't feel if he was not putting
19 forth a good effort, I couldn't trust the
20 credibility of the information he was giving me.

21 Q Okay. And, at that time, you were generally
22 asked to determine his competency to stand trial or
23 plead guilty?

24 A I recall -- and Ms. Browder can correct me if
25 I'm wrong -- Ms. Good, I'm sorry -- I think it was

1 for competency, criminal responsibility, and
2 mitigation, if there was something I could perhaps
3 say at sentencing.

4 Q And did you have an opinion on criminal
5 responsibility?

6 A I didn't complete the evaluation, but based
7 on what I had, I would have been able to say he was
8 criminally responsible. Because the idea is if you
9 are feigning symptoms, that means that you knew
10 something you did was wrong. Again, I would like
11 much more evidence before I would testify to
12 something like that in court. But at that point, I
13 had no reasons --

14 Q That was your diagnostic impression at that
15 time?

16 A Correct. Correct.

17 Q Has that diagnostic impression changed after
18 these new evaluations that you've done?

19 A Yes -- yes and no. He still malingered at
20 that time, so that would not change. Malingering
21 doesn't mean you do it all the time, but certainly
22 for that period of him not giving a good effort,
23 that would be malingered deficits.

24 Since then, we had the same doctor test him,
25 and he gave valid results. So, yes, when I

1 originally saw him in 2013, those deficits, indeed,
2 turned out to be true, and they were validated with
3 testing and a good effort.

4 Q Okay. But do you have an opinion whether he
5 would meet the -- not in terms of criminal
6 responsibility?

7 A Yes. He would have been criminally
8 responsible. Even though he has these cognitive
9 deficits and PTSD, he certainly didn't have urges
10 to run over people. His frontal lobe wasn't
11 instructing him to hurt people or do careless
12 things.

13 Q Okay. In your first report and second report
14 that you've done for this proceeding, you indicated
15 that Stafford was concerned about the length of the
16 sentence he received?

17 A Yes.

18 Q How was that information presented to you?

19 A Again, I wasn't at the trial, so I don't
20 know, but his understanding was that he had a plead
21 for lesser time, and he believed he was going to
22 get a nine- or ten-year sentence, and received a
23 17-year sentence.

24 Q So that was, basically, a self-report through
25 him about -- in 2017 or 2018 --

1 **A** Yes, sir.

2 **Q** -- what his impressions were at that point?

3 **A** Yes.

4 **Q** What are benzodiazepines?

5 **A** That is a class of medicines called sedative
6 hypnotics. Those are things like Valium, Librium.
7 They are used for the treatment of anxiety, or
8 sometimes they are sleeping medicines. There is
9 another class of them with shorter half lives that
10 are used to help people with insomnia.

11 **Q** Could those have an effect on one's driving?

12 **A** Absolutely.

13 **Q** Do you know, based upon the records you
14 reviewed, how much he had, if he had any?

15 **A** Yes. His report to me was that he took 1
16 milligram that morning, but I think we have -- I
17 think there is a tox screen. I'll look. For some
18 reason -- I had a SLED report. He was negative for
19 alcohol. Actually, here we go. His -- there was
20 methadone in his system, .3 milligrams per liter,
21 and he had alprazolam, which was probably
22 consistent with his Klonopin, of .25 milligrams per
23 liter. So both of those drugs were found in his
24 drug screen.

25 **Q** Okay. What were the benzodiazepines based

1 upon the tox report that he had?

2 **A** It said Xanax.

3 **Q** Okay. Did it reflect oxazepam? I'm not sure
4 if that is the right way to say it. Was there any
5 information about that, triazolam and triazolam
6 metabolite?

7 **A** You and I have different ones. The one I
8 have, Mr. Zelenka, is dated January 29, 2013. It
9 says "partial report."

10 **Q** Okay.

11 **A** Mine just has -- looks like mine just has the
12 analytes of methadone and alprazolam.

13 **Q** Okay. And you may have already answered
14 this, but could benzodiazepine combined with
15 methadone have an effect on one's driving skills?

16 **A** It could. Again, I would defer -- if a
17 psychopharmacologist says otherwise, but I would
18 have concerns about combining. The reason being is
19 that both of those can have somewhat of a sedating
20 effect, and they certainly -- all medicines have
21 side effects, and when you combine them, there is
22 always a concern.

23 **Q** Are you aware of information at the time that
24 -- well, are you aware of Dr. Alexander Morton?

25 **A** Yes.

1 **Q** Who is Dr. Morton?

2 **A** He is retired now, but he was a
3 psychopharmacologist. I think he was at the
4 Medical University of South Carolina, and I've had
5 -- we had been involved and worked together over
6 the years, and he was certainly one of the
7 resources I would use if I had one of those types
8 of questions.

9 **Q** And are you aware whether or not Anna Browder
10 had retained Alex Morton for any reason?

11 **A** I don't know.

12 **Q** Are you aware of any information that Alex
13 Morton gave Dr. Browder (sic)?

14 **A** Not that I know of.

15 **Q** I mean not Dr. Browder -- Anna Browder.
16 You're not aware?

17 **A** No, not that I recall.

18 **Q** When did you get the information that
19 Stafford had been sexually and physically abused?

20 **A** From his report, and also his mother
21 certainly confirmed that she had been abused by her
22 former -- a former spouse and that --

23 **Q** She had been abused. Did her report confirm
24 that he had been sexually abused?

25 **A** I'm not sure if she did the sexual abuse. I

1 don't recall. But I consider those -- I consider
2 his reports credible at that point. That is not
3 something a man will typically volunteer. It is
4 not an easy thing to talk about. By the time I saw
5 him -- and he was very -- you know, his paranoia
6 that he had in the Department of Corrections is
7 certainly consistent with someone who has been
8 harmed. It was very consistent with someone who
9 had prior trauma. But, yes, I don't recall if
10 Ms. Kornmeyer confirmed that, but I may not have
11 asked her, because I believed it.

12 **Q** Let me inquire about this a little bit. You
13 said they are consistent with someone who had
14 previously experienced trauma?

15 **A** Yes.

16 **Q** Wouldn't the vehicular accident, wouldn't
17 that fit in as trauma?

18 **A** Sure. Absolutely.

19 **Q** So the fact that he has trauma, which may
20 impact the way you saw him in 2018, that trauma may
21 not be related to any sexual abuse that he may have
22 had as a child? You can't pinpoint, can you?

23 **A** I can give a pretty good opinion based on my
24 history and the history from him, because I saw it.
25 What happens is this level of disorganization is

1 not someone with typical PTSD. This is someone
2 with long-standing, long periods of abuse by males,
3 so he is in an unsafe environment.

4 Now, yes, had I seen him and he had just
5 gotten in a car wreck, and the context was similar
6 to the trauma he had experienced, I might expect
7 that. But given the context of where we were -- he
8 got psychotic, and you don't see that very often in
9 persons with Post-traumatic Stress Disorder. They
10 have to be severely regressed.

11 **Q** So you are saying, in your professional
12 opinion, you can pinpoint whether that trauma is
13 sexual abuse as opposed to physical abuse?

14 **A** No. No. I can't pinpoint, but it certainly
15 is consistent with my clinical experience.

16 MR. GROSE: I hate to interrupt, but one of
17 the officers from SCDC is telling me they need a
18 bathroom break.

19 THE COURT: Well, does that mean we have to
20 stop the whole thing, or can you excuse yourself?

21 DEPUTY: Can I just be excused?

22 THE COURT: Yeah. Sure.

23 MR. GROSE: Sorry for the interruption.

24 **Q (BY MS. ZELENKA)** At the time, he indicated
25 that he had no previous mental health treatment; is

1 that correct?

2 **A** That's correct.

3 **Q** And that's consistent with the medical
4 records, you say?

5 **A** As I recall. But I believe he was on
6 Vivarin, which is a selective serotonin reuptake
7 inhibitor. It is an antidepressant that you use
8 for PTSD. So at the time of the offense, he was
9 undergoing treatment, but I believe his doctor -- I
10 don't -- he was a psychiatrist, but he was on an
11 antidepressant and the benzodiazepine.

12 **Q** When he made his explanation to you about the
13 incident that we're here today about, did he
14 indicate to you or was there any information that
15 he actually attempted to flee the scene?

16 **A** He denies that, but he states what happened
17 is he drove up, he saw the DOT, I guess the
18 vehicle, and that he doesn't remember anything. He
19 remembers looking in his rearview mirror and seeing
20 the man, I believe, fall through the grass,
21 something similar to that.

22 But, in his opinion, he did not flee. He
23 drove down, and when he realized what had happened,
24 he pulled over.

25 **Q** You don't know whether that theory was

1 presented to the judge at the time of the plea,
2 because you weren't there?

3 **A** That's right.

4 **Q** But that is reflective in the record whether
5 it was or wasn't, correct?

6 **A** Yes, sir.

7 **Q** He self-reported the head injury that he had
8 early on; is that correct?

9 **A** Yes.

10 **Q** And how did he report that head injury to
11 you, if you recall?

12 **A** 2011 -- let's see -- he recalled looking at
13 his dog and next being in the hospital. He told
14 Dr. Brawley that, and a similar story to me, and I
15 believe he told Dr. Pritchard.

16 Let's see. Dr. Pritchard, it doesn't look
17 like he mentioned that. So it was just a similar
18 wreck. In my opinion, though, I didn't put the
19 ideology of his cognitive disorder. I don't know
20 if it could have come from that car wreck. He
21 certainly had been drinking heavily in the past.
22 He had been using some drugs in the past that could
23 have accounted for it as well.

24 **Q** And that is reflective in your report?

25 **A** Yes, sir.

1 **Q** But the difference between the first report
2 and the second report, what is the change?

3 **A** Dr. Brawley had seen him in the interim, and
4 so I put her results in.

5 **Q** You just added that in?

6 **A** Yes. It was new information.

7 **Q** Your opinions were exactly the same with or
8 without Dr. Brawley's added information?

9 **A** Correct. But it certainly strengthened them,
10 and it gave more detail. You know, I had ideas
11 that those were the areas of his deficits, but I
12 did not know about the motor deficits or the manual
13 dexterity deficits.

14 **Q** And the other thing in the reports is -- or
15 both reports -- you indicated that the EEG was
16 still pending. Have you ever gotten results from
17 that?

18 **A** Yes. It was normal.

19 **Q** Normal?

20 **A** Yes. And that would have been an issue.
21 Now, if that had been abnormal, we would be here on
22 a mental defect issue if he had been having
23 seizures, but that's correct, it was normal.

24 **Q** What an EEG shows -- what is its purpose?
25 And when you said it's normal, what does that mean

1 to you as a professional?

2 **A** Yes. Basically, what I was looking for is
3 did he have seizures? Was there a chance he had
4 what is called an absence seizure. Those are
5 seizures where you would lose attention for three
6 or four seconds. It's not paying attention, and
7 you could have numerous seizures. So Dr. Pritchard
8 was concerned about that, too.

9 It also can explain memory loss. Sometimes
10 people are having seizures and they lose memory for
11 a period of time before and after the seizure, and
12 that's why he also had recommended the same tests.
13 And it was -- normal means there was no evidence of
14 seizure activity. That doesn't mean that he
15 doesn't have them, but on that date and time, it
16 was normal. There was no evidence of seizures. In
17 my opinion, that's enough for me to determine that
18 he did not have an underlying seizure disorder.

19 **Q** Going back to Dr. Brawley, the fact that
20 Dr. Brawley was aware when she did her testing of
21 Mr. Stafford in preparation for this case, and did
22 not determine that he was malingering at that time,
23 that doesn't mean to you as a professional that he
24 wasn't malingering back in 2013?

25 **A** That's correct.

1 **Q** So he very easily could have been malingering
2 back then, correct?

3 **A** Certainly on that date and time. When she
4 went to give him tests, he did not pass the first
5 test, which somebody with dementia could pass. So
6 he was not giving a good effort, for whatever
7 reason.

8 **Q** So the impact of that failure to complete the
9 neuropsychological testing at that time impacted
10 upon your ability to give further opinions and have
11 further testing done; is that correct?

12 **A** Correct.

13 MR. ZELENKA: All right. No further
14 questions.

15 THE COURT: Redirect?

16 MR. GROSE: Thank you.

17 **REDIRECT EXAMINATION**

18 **BY MR. GROSE:**

19 **Q** On the issue of malingering, can malingering
20 exist at the same time that somebody has a medical
21 or mental health condition?

22 **A** Absolutely. And that is how it commonly
23 occurs. That is the issue. Especially with people
24 with seizures, that have pseudo seizures, people
25 with schizophrenia. That's correct. And it is

1 very difficult and very complicated because that
2 commonly happens.

3 **Q** And people with PTSD who have paranoia, can
4 it happen that way, too?

5 **A** Absolutely. If Mr. -- Mr. Stafford does not
6 trust the situation he's in, if he does not trust
7 the examiner or the reasons for being tested, those
8 sorts of things, that could absolutely affect his
9 performance.

10 **Q** And when you are consulting or consulting
11 with -- you've consulted with the prosecution as
12 well?

13 **A** Sure.

14 **Q** And in civil cases, too, right?

15 **A** In defense for civil cases, yes.

16 **Q** So when you consult for, like -- in a case
17 like this, where the lawyer for the client retains
18 you, what role does that lawyer play in helping to
19 facilitate your evaluation?

20 **A** Well, usually, I have the lawyers instruct
21 the client, and I tell them when we have
22 neuropsychological testing. Sometimes I -- if I
23 know ahead of time, I'll do it. I'll explain it to
24 the client as well, because I don't want to waste
25 the neuropsychologist's time. But what I typically

1 instruct is to please give your best effort. This
2 is like a
3 the-harder-you-try-the-more-we're-able-to-see-what-
4 is-wrong-with-your-brain. So, usually, you would
5 hope that the client is prepared to give forth a
6 good effort on that test.

7 Q Did you rely on the lawyers and the lawyers'
8 role to help in that preparation?

9 A Sure. Absolutely.

10 Q You were asked about Dr. Morton. Did you
11 make an effort to get in touch with Dr. Morton in
12 this case?

13 A I absolutely did, yes. He's retired. I know
14 he was living in the mountains in North Carolina.
15 We used to be Facebook friends. I messaged him.
16 We used to message back and forth occasionally, and
17 I have not heard from him. I have tried numerous
18 times.

19 Q But you did talk about the role of
20 Dr. Brawley and Dr. Pritchard in this case?

21 A Yes. And I spoke with them. I may have
22 spoken with Dr. Pritchard, too. I think we were on
23 a conference call, but I did have his report as
24 well.

25 Q Through consultations, did those both confirm

1 things sometimes and rule out things other times?

2 **A** Yes.

3 **Q** And can you explain the significance of that?

4 **A** Yes. Well, the bottom line for me, Your
5 Honor, one of the issues in his case was why he
6 couldn't remember things. I didn't want the Court
7 to just think that that was deliberate, that he was
8 trying to cover up. He has two sets of reasons for
9 having poor memory and poor responses under stress,
10 and that is number one, the cognitive disorder and
11 the PTSD.

12 So for both of those, for me, it was -- those
13 consultations were important, because when you have
14 memory loss, the first thing you have to do is rule
15 out cognitive reasons or organic reasons. So that
16 consult was important. And then also it lets me --
17 when I know what someone's function is, I can
18 determine whether the mental illness also is in
19 play there.

20 **Q** And then, in this case, you were asked some
21 questions about criminal responsibility?

22 **A** Yes.

23 **Q** You know, in this case did the consultation
24 help you rule out -- I may not be asking it very
25 well -- but conclude that he was criminally

1 responsible at the time?

2 **A** Yes. Dr. Pritchard's evaluation to show --
3 you know, had he had seizures, it would have been a
4 different story. I would have opined that he had a
5 mental defect that made him not pay attention that
6 was not in his control. But because the EEG didn't
7 show evidence of that, we were able to rule that
8 out.

9 **Q** And we're not saying that there is a criminal
10 responsibility defense. We're not saying that here
11 today, are we?

12 **A** No.

13 **Q** And we're not saying that Mr. Stafford wasn't
14 under the influence at the time of the accident,
15 are we?

16 **A** Correct.

17 **Q** Okay. Your evaluation does help explain, at
18 least in part, why he might not have stopped right
19 away?

20 **A** In my opinion, correct. Those were based on
21 both his cognitive function and his PTSD. His
22 frontal lobe -- when you're under stress, his
23 frontal lobe already is not working well. That is
24 his memory deficits, and those sorts of things, and
25 then you add stress to it. It would certainly

1 explain why he blanked out, and why he may not have
2 reacted as quickly as other people in that
3 situation.

4 Q And you've worked on other cases where
5 somebody who is accused of a crime had symptoms of
6 malingering?

7 A Yes.

8 Q At various stages; is that right?

9 A Yes. Yes.

10 Q And when that occurs, are there ways to get
11 past that and keep going with the evaluation?

12 A Well, maybe for the lawyer. In my opinion,
13 not at that point, for me, not at that time.
14 Because if I didn't believe in the credibility of
15 someone, it would be difficult.

16 Now, of course, situations can change, but
17 maybe -- it would depend on the person's
18 relationship with the lawyer. If the lawyer
19 contacted me again and said, look, we've had a
20 meeting, he's going to give a good effort, you
21 know, I maybe would see him again, depending how
22 busy I am.

23 Q And while an episode of malingering can be a
24 negative fact, it's also -- can be outweighed by
25 other factors, too?

1 **A** Sure. Sure. In this case, I mean -- right.
2 My findings back then are consistent with the
3 findings now, except what the intervening variable
4 is, is we have the gold standard, the level of
5 sensitivity I needed, and his history was
6 consistent, and the effort that I had at that time
7 in my findings were confirmed.

8 **Q** Okay. You were asked a question about why
9 you were contacted to do the evaluation. I believe
10 you mentioned three things: Competency, criminal
11 responsibility, and mitigation?

12 **A** Yes.

13 **Q** Is it fair to say that throughout a lot of
14 the evaluations that you do, you more often provide
15 evidence or testimony or reports on mitigation?

16 **A** A good majority of them, yes.

17 **Q** And can you explain why that is?

18 **A** Well, I think if it helps a judge or a jury
19 understand what someone's mental state is, why they
20 did what they did, it is information that they
21 could consider in sentencing.

22 **Q** When you are talking about a jury, you are
23 talking about in capital cases, but in other
24 sentencing matters, it's the judge?

25 **A** Yes.

1 MR. GROSE: That is all I have. Thank you,
2 Dr. Maddox.

3 MR. ZELENKA: Just one follow-up.

4 **RECROSS EXAMINATION**

5 **BY MR. ZELENKA:**

6 **Q** Dr. Maddox, did Anna Browder, even after Dr.
7 Brawley's impressions were given, did she try to
8 get you continue with an evaluation?

9 **A** Yes, she did. She begged me on one of the
10 e-mails, and I just told her I couldn't help her.
11 Yes.

12 MR. ZELENKA: No further questions.

13 THE COURT: Thank you, Doctor.

14 THE WITNESS: May I be excused?

15 MR. GROSE: No objection.

16 MR. ZELENKA: No objection.

17 MR. GROSE: At this time I call Lisa
18 Kornmeyer.

19 (ALISTA "LISA" KORNMEYER, having been duly
20 sworn, testified as follows:)

21 THE WITNESS: Alista Kornmeyer, but you can
22 call me Lisa.

23 MR. GROSE: Can you spell that?

24 THE WITNESS: A-L-I-S-T-A, Kornmeyer,
25 K-O-R-N-M-E-Y-E-R.

DIRECT EXAMINATION

BY MR. GROSE:

Q Are you related to Thomas Stafford?

A Yes.

Q And how is that?

A Excuse me?

Q How are you related?

A I'm his mom. Sorry. I didn't want this to happen. Sorry. I got it. (Witness crying)

Q Were you in the courtroom when Dr. Maddox testified a few minutes ago?

A Yes.

Q Did you -- did she interview you as part of her evaluation?

A Yes.

Q And what was -- in general, what was the information that you provided to her?

A I gave her the information regarding Thomas' childhood, some of the situations that had happened to Thomas while he was younger, very specific details, names of individuals, specific times. I also told her that I had a twin sister who can validate some of the information regarding this one person. There was always situations of abuse with Tom. That was here in Lexington County.

1 Everything else was prior to Lexington County. I
2 gave her pretty good details of what had happened
3 to Tom and the trauma he experienced as a young
4 boy, very detailed.

5 I remember, early on, he was raped and
6 sodomized by a boyfriend of mine. And
7 statistically -- this is what I found out.
8 Statistically, parents don't typically know that
9 their children are abused until after.

10 MR. ZELENKA: I object to the expertise.

11 THE COURT: Yeah. I'll --

12 **Q (BY MR. GROSE)** But were you aware -- did you
13 become aware of the abuse, sexual abuse?

14 **A** I did. At some point, I did. I can't recall
15 exactly when. Certain behaviors, certain things,
16 maybe I didn't know. I don't know. It was so
17 hard, to be honest with you. I have gone through
18 therapy myself to forget this. So a lot of --
19 yeah, so a lot of times I have to regurgitate it
20 all back up, you know, to try to remember. Having
21 gone to counseling about it, having to throw it all
22 out there for someone else to hear it. I mean, I
23 can give you a timeline if you want to know
24 specifics. I can give you a timeline.

25 **Q** Well, what I want to know is were you aware

1 of the sexual abuse prior to the automobile
2 accident in this case?

3 **A** Yeah.

4 **Q** Okay. Is that something you shared with Dr.
5 Maddox?

6 **A** Yes.

7 **Q** I want to shift gears and talk about were you
8 aware of some of the medications that Thomas was
9 taking?

10 **A** Yes.

11 **Q** And did you have -- had you observed any
12 changes in him when he was on those medications?

13 **A** I think he would be sleepy. He worked a lot.
14 He had his own business, so he was constantly
15 working, picking up supplies. You know, constantly
16 working. He had just purchased a new house --
17 actually, a HUD home, and he was renovating that,
18 and he was working. There was just a lot going on,
19 so I don't know if I contributed his tiredness to
20 the drugs or just that he was physically exhausted
21 because he worked all the time.

22 **Q** And was he also taking care of children?

23 **A** Yes. Yes. His daughter. He has -- he would
24 get custody of his children every other weekend.
25 They would come to the house where he was. His

1 oldest daughter had a disability, and the youngest
2 daughter was fine. So, yes, he got them
3 frequently.

4 **Q** So he has two daughters?

5 **A** Yes.

6 **Q** Is one of them here today?

7 **A** Yes.

8 **Q** How would you describe his relationship with
9 his daughters prior to the accident?

10 **A** Oh, it was flawless.

11 **Q** And has he maintained that relationship
12 during the incarceration?

13 **A** As best that he can.

14 **Q** And we've been through a pandemic?

15 **A** Yes.

16 **Q** When the -- when the accident happened, what
17 did you -- did you do anything as far as, you know,
18 legal representation was concerned?

19 **A** Hired Anna.

20 **Q** Did you have -- have interactions with her
21 during the course of that representation?

22 **A** Yes, because the contract we signed with her
23 was between myself and Thomas and Anna. So because
24 of his inability to understand a lot of things, it
25 was typical for her to go through me. That was how

1 we set it up from the beginning.

2 Q Can you explain that a little bit more, why
3 it was helpful for her to go through you?

4 A Because his inability to understand what was
5 going on. And I tried to explain it to her over
6 and over again, he doesn't understand what you are
7 saying. I have e-mail after e-mail in this file of
8 things I would try to tell her that he's not
9 understanding what you are saying, and she would
10 comment, Well, I'm doing everything I can do. I
11 don't understand why he's not getting it. That's
12 your job. You need to sit down with him and you
13 need to spend time with him. You need to find out
14 why he's not getting it. You need to talk a
15 different way or say it in a different manner or do
16 something, because he's not understanding what you
17 are saying. And that was pretty much the gist of
18 it.

19 There was several times I even said to her,
20 If you can't handle this, if this is too much for
21 you and you don't want to do this, I'll get
22 somebody else. If this is too much for you, if you
23 don't think you can handle this -- all of this is
24 in all of the e-mails, because it was that
25 important.

1 **Q** I'm going to hand you what is premarked as
2 Applicant's Exhibit 4 through 15. Would you take a
3 minute or two and look through those? The question
4 I'm going to ask you is: Do you recognize each of
5 those? Are you able to identify them?

6 **A** Yes. So far, yes.

7 (A brief pause in the proceedings.)

8 **A** Yes.

9 **Q** **(BY MR. GROSE)** Let me know when you have been
10 through all of them.

11 **A** There's an awful lot here. I mean, I'm not
12 reading every one of them. I see, but I have an
13 e-mail of my own as well that is the one that kind
14 of sums it all up for me.

15 **Q** All right. Do you recognize those as
16 e-mails --

17 **A** Yes.

18 **Q** -- that were between you and Anna?

19 **A** Yes.

20 **Q** Okay.

21 MR. GROSE: I would move 4 through 15 into
22 evidence, Your Honor.

23 MR. ZELENKA: No objection.

24 THE COURT: Okay, 4 through 15.

25 (Applicant's Exhibits 4-15 admitted.)

1 **Q** **(BY MR. GROSE)** Given the role that you were
2 playing in the case, were you aware of any efforts
3 of plea negotiations?

4 **A** I'm sorry?

5 **Q** In the role you were playing in the case,
6 were you aware of any efforts regarding plea
7 negotiations?

8 **A** Yes.

9 **Q** And what were you aware of?

10 **A** The awareness that I was told by Anna, via
11 the e-mails I received, is that she was going to --
12 that the prosecuting attorney at the time agreed to
13 drop, quote, the hit-and-run, and go before the
14 judge with the thought of, I think, nine to ten or
15 something along that line, which is in this e-mail
16 I brought with me. But she mentioned that that was
17 the reason that she insisted that Tom go at that
18 time before the judge. How she explained it was
19 this was his only chance, that he had to take this
20 plea and do it at that time, because the prosecutor
21 agreed to drop the leaving the scene of the
22 accident.

23 So we went into this in mind that that is
24 what was going to happen, that he was going to plea
25 to, obviously, the accident in and of itself, but

1 not leaving the scene of the accident; therefore,
2 we all agreed that that is what we were going to
3 do.

4 Q Did that change?

5 A Yes, it changed.

6 Q And tell us how it changed and how you
7 learned about it changing?

8 A Actually, it changed the day of the plea in
9 front of the judge, to my surprise. When everybody
10 came out -- it was a similar situation. Things
11 were going, things were being said back and forth,
12 back and forth. I remember Anna asking -- they
13 asked Tom to stand up, and they were talking about
14 what the plea was, and the judge said, Tom, do you
15 understand? And all of the sudden, we hear the
16 leaving the scene of the accident back on the
17 table, and everybody is like, Where the heck did
18 this come from?

19 I had seen Anna the night before. She had my
20 son, and his two daughters and myself were in the
21 courtroom -- conference room. They allowed Tom to
22 see his daughters that night before court. So if
23 there was going to be any change to the plea,
24 surely she would have said something to me that
25 night. No. Nothing happened.

1 So off we go to court the next morning, and
2 everything is strange because, all of the sudden,
3 now leaving the scene of the accident is back on
4 the table.

5 If I can demonstrate for just a minute, Your
6 Honor, my son. If he -- he's facing the judge in
7 this position, and he is standing up, and Anna is
8 by his side. The judge then says, you know, Do you
9 agree with this plea, or something like that, and
10 Tom turns around in total, like, What the heck is
11 going on here? He is looking around like, What is
12 going on? He was so confused.

13 We, as a family, were like, What is going on?
14 This is not what we were told. And then, you know,
15 he just looks at me and my sisters and my husband
16 is there. We're all looking at each other like,
17 What the heck just happened? That blew our minds,
18 because leaving the scene was never supposed to be
19 entered in. It was agreed by the prosecutor and
20 Anna and everybody else that that was not supposed
21 to happen, because Tom kept telling her he was
22 innocent. And that is all we ever wanted from
23 Anna, to explain what had happened, that he didn't
24 leave the scene of the accident. He takes
25 responsibility for what happened, but not leaving

1 the scene of that accident, because that is not
2 what he did, and then it changed. That simple.

3 So I don't understand if she was
4 communicating with me via e-mail this whole time,
5 that I was in the courtroom the day before -- in a
6 conference room, why didn't she come to me and say,
7 Listen, something else has come up? I don't know
8 why.

9 Q Right. And did you speak at the plea?

10 A No.

11 Q Did anyone from the family speak at the plea?

12 A I think my sister, Lillian -- yeah, I did
13 briefly about Tom's character. I think my sister,
14 Lillian, as well about Tom's character, but that
15 was it.

16 Q Okay. You mentioned that you had a
17 particular e-mail with you that you wanted the
18 judge to know about?

19 A Right here.

20 (A brief pause in the proceedings.)

21 A I'm sorry it's so small.

22 MR. GROSE: We'd like to admit this as
23 Applicant's Exhibit No. 16.

24 MR. ZELENKA: No objection.

25 THE COURT: What's the date of that e-mail,

1 Charles?

2 MR. GROSE: July 22, 2016.

3 THE COURT: Thank you.

4 (Applicant's Exhibit 16 admitted.)

5 Q (BY MR. GROSE) I'll show you what is now
6 marked as Applicant's Exhibit No. 16. Is that the
7 e-mail that you were just talking about?

8 A Yes.

9 Q And can you read that into the record,
10 please?

11 A This is Anna's e-mail to me. It says, Hey,
12 they will not agree to time served. I know just
13 from talking to him that they will be asking for
14 prison time. But as of now, they are agreeing to
15 dismiss the DUI second and the hit-and-run, which
16 opens him up to another 25 years exposure.

17 Q All right. Is there anything else you want
18 to tell the judge about the relationship -- or what
19 happened at the plea proceeding rather?

20 A There was just not any objection with what
21 the prosecution was saying regarding the situation.
22 I guess that's the real thing, in addition to the
23 plea being changed at the last minute with specific
24 situations regarding Tom because -- that weren't --
25 that weren't objected to. She didn't object to,

1 really, anything. I guess Tom would know that more
2 than I. And my sisters can testify; they were
3 there. My husband was there. I can't think
4 specifically, you know. It was just no objections
5 to anything. The prosecutor rattled on with all of
6 these things, and she just sat and didn't object to
7 anything. And the fact is that this poor boy's
8 obituary has that he was hit by a drunk driver --

9 MR. ZELENKA: Object, Your Honor, not
10 first-hand knowledge.

11 A I didn't say anything. It's on a website.

12 MR. GROSE: Answer any questions Mr. Zelenka
13 has.

14 THE WITNESS: Sure.

15 **CROSS EXAMINATION**

16 **BY MR. ZELENKA:**

17 Q Ms. Kornmeyer, you were at the guilty plea,
18 correct?

19 A Yes.

20 Q And you made a statement to the judge in
21 mitigation of the guilty plea, correct?

22 A I don't understand what you are saying.

23 Q You made a statement to the judge after the
24 plea was entered about the family, didn't you?

25 A I can't remember if I did it after. I know I

1 remember reading something to the judge about Tom.

2 Q Right.

3 A But I don't recall if that was -- I don't
4 know when the charges actually came up, to be
5 honest. Because if the charge of the leaving the
6 scene of the accident was said, then I could tell
7 you right now I would not have gone forward. I
8 probably would have stopped everything.

9 Q The transcript, Page 39 through 40, you made
10 a statement to the judge, and that was after the
11 plea was entered, after the plea was accepted,
12 after your son had pled under Alford to leaving the
13 scene of the accident, and after he says that there
14 are no promises made, correct? You just don't
15 recall?

16 A I don't recall, but if you say so.

17 Q Just a couple of questions on the information
18 that you gave Dr. Maddox. Did you give Dr. Maddox
19 specific information when your son was sexually
20 abused?

21 A I gave her ages that Tom was about, yes.

22 Q Did you --

23 A Not the time.

24 Q Did you describe to her who the perpetrator
25 was in the sexual abuse?

1 **A** Yes. Yes.

2 **Q** Okay. And was the perpetrator the same on
3 the sexual abuse as the physical abuse?

4 **A** Yeah. On one occasion I know for....

5 **Q** Well, that was direct information basically
6 reporting a crime against your son, correct?

7 **A** As a matter of fact, if I can, the one
8 incident where Tom was -- it was -- I don't even
9 know how to say this. Tom was sexually abused by,
10 again, a boyfriend of mine, whose name was Richard
11 Sasser. He was a paranoid schizophrenic that I
12 found out later on. He committed suicide at the
13 hospital in Florida.

14 Previous to that, when we were together, he
15 took Tom and another little girl that he was
16 baby-sitting -- her name was Brianna -- in the
17 apartment we were living in in Florida. It was
18 Claudmore (ph) Country Club. But I was working for
19 (inaudible) at the time, and he would watch Tom and
20 Leah -- Tom and Brianna. He took them out on a
21 golf cart or car somewhere to the golf club,
22 because we lived on a golf club, you know. He hit
23 -- he hit somebody on a bicycle, and he buried her.
24 Tom and Brianna witnessed this. When I called --
25 when he got back to the house, he was so freaked

1 out. I didn't know about this until this man over
2 here was like -- I don't know how old before he
3 told me that. I didn't know that that is what
4 happened. They were full of dirt. They were
5 freaked out. I ended up calling the police. The
6 police came to the house, you know. They took
7 Richard to the mental hospital, and the kids
8 wouldn't say anything until after. They were
9 freaked out, nervous wreck, full of mud. I didn't
10 find out about that particular situation until he
11 was older.

12 **Q** Okay. Did you report it to the police?

13 **A** Yes, I did. But, of course, they couldn't
14 validate anything because Richard went to the
15 mental institution. They weren't really going to
16 take anything he said to be valid. And I even
17 said, listen -- you know, I didn't know that they
18 actually buried somebody. I didn't know that. It
19 was like freaked out. And then Tom told me about
20 it, and I was like, you know, what happened? He
21 said, Mom, I don't know. I don't remember what
22 happened.

23 **Q** Did you tell that to Anna Browder?

24 **A** Oh, yeah, it's in e-mails. I told her that
25 specific incident about that. I detailed

1 everything, all of the abuse, detailed it, uh-huh.

2 Q Okay.

3 A That is just one of them.

4 Q Thank you.

5 With respect to your son entering an Alford
6 plea to leaving the scene of the accident on the
7 day of the plea, is it your testimony that that was
8 never stated to you until after the plea, that he
9 was going to be pleading Alford to leaving the
10 scene?

11 A There might have been mention of that at some
12 point in conversations with her previous to the
13 final agreement. I don't know anything about what
14 that even means, you know. If you ask me what that
15 means, I can't even tell you because -- she may
16 have mentioned it, but if that is something that
17 she was going to do, I would assume she would have
18 explained it to us, and of course it just kind of
19 got on the table, and then left the table.

20 MR. ZELENKA: Okay. I have no further
21 questions.

22 **REDIRECT EXAMINATION**

23 **BY MR. GROSE:**

24 Q Do you still have the exhibit in front of
25 you?

1 **A** Yes.

2 **Q** Can you go to Exhibit No. 15?

3 **A** Okay. Really -- 15? Eleven, 12, 10, 9 --
4 15.

5 **Q** This actually is an e-mail between you and
6 your husband?

7 **A** Uh-huh.

8 **Q** Is that a yes?

9 **A** Yes.

10 **Q** Can you read that first paragraph?

11 **A** "She told me in the courtroom minutes before
12 the judge was to come out that Rick decided to put
13 leaving the scene back on the table. She told me
14 her and Rick talked about it in the back of the
15 room while we were visiting Tom the day before.
16 She did not go to the jail to talk to Tom. I think
17 she told him minutes before the judge was to come
18 out, and she had him sign a paper. Tom did not
19 understand any of that."

20 **Q** What's the date of that e-mail?

21 **A** October 6, 2013.

22 **Q** They asked you some questions about speaking
23 at Tom's sentencing hearing. Do you recall those?
24 Do you recall him asking questions?

25 **A** Yes. Yes. Yes.

1 **Q** I'm going to show you the transcript of the
2 guilty plea. If you can, read Page 39 through 40
3 where you are talking.

4 **A** 39?

5 **Q** Yeah. Beginning at 39 on Line 4, and going
6 through 40 on Line 19.

7 **A** That is here?

8 **Q** Yeah. Just read it to yourself.

9 (A brief pause in the proceedings.)

10 **Q** **(BY MR. GROSE)** You finished?

11 **A** Yes.

12 **Q** If you would, just look at the first
13 paragraph -- actually, the first two paragraphs,
14 39, Lines 4 through 13. That was about the
15 sympathy towards the family in talking about Tom's
16 remorse?

17 **A** Correct.

18 **Q** And, actually, the third paragraph is a
19 little bit about Tom, Lines 14 through 18; is that
20 right?

21 **A** Yes.

22 **Q** All right. You do acknowledge the decisions
23 that you made that day will continue to be
24 overwhelming for so many?

25 **A** Yes.

1 **Q** And that hasn't changed, has it?

2 **A** No.

3 **Q** Then on 39, Lines 19 through 24, that's a
4 little bit about his business; is that right?

5 **A** Yes.

6 **Q** And then 39, Line 25, to 40, Line 5 is a
7 little bit about family and also about work ethic?

8 **A** Uh-huh.

9 **Q** Is that right?

10 **A** Yes.

11 **Q** All right. And on Page 40, Line 6 through
12 10, it says, "Unfortunately, his childhood
13 experiences caused him much pain at times, and the
14 memory sometimes he has to struggle with, but he's
15 become a loving father, good family man in spite of
16 it, and many have written letters on his behalf."

17 That's all that came from you in that hearing
18 about the childhood trauma?

19 **A** Yes, that's it.

20 **Q** Okay.

21 MR. GROSE: That is all the questions I have,
22 but before I sit down, can you check your folder
23 and make sure that you didn't slip one of those
24 exhibits in there by mistake? We need to make sure
25 it goes to the court reporter.

1 THE WITNESS: Oh, okay. This one comes out.

2 MR. ZELENKA: I have no further questions.

3 THE COURT: Thank you. You may step down.

4 THE WITNESS: What do I do with all of these
5 exhibits?

6 THE COURT: Just leave them right there.

7 MR. GROSE: At this time, I call Jim
8 Kornmeyer?

9 (JAMES "JIM" KORNMEYER, having been duly
10 sworn, testified as follows:)

11 THE WITNESS: James, J-A-M-E-S, Kornmeyer,
12 K-O-R-N-M-E-Y-E-R.

13 **DIRECT EXAMINATION**

14 **BY MR. GROSE:**

15 **Q** Are you married to Lisa?

16 **A** I am.

17 **Q** And how long have you and Lisa been married?

18 **A** Since 2009.

19 **Q** So you knew Tom prior to the accident?

20 **A** I did.

21 **Q** Were you aware of the medications that he was
22 on?

23 **A** I wasn't aware exactly on what he was on, but
24 I was aware he was on medications.

25 **Q** Do you know if they were having any kind of

1 effect on him?

2 **A** Yes, they were.

3 **Q** What did you observe?

4 **A** Drowsiness, primarily.

5 **Q** Despite all of that, did Tom work?

6 **A** He did.

7 **Q** And what was his work? What was his
8 employment?

9 **A** Professional housepainter.

10 **Q** And did he own his own business?

11 **A** Uh-huh, he did. Yes.

12 **Q** Was he a hard worker?

13 **A** He had a very strong work ethic, yes.

14 **Q** And were you able to observe the relationship
15 that he had with his children?

16 **A** Yes. He had a good relationship with his
17 kids, both daughters.

18 **Q** Okay. Were you at the guilty plea?

19 **A** Yes.

20 **Q** And prior to the guilty plea, did you have an
21 understanding about what the charges were supposed
22 to be?

23 **A** Yes.

24 **Q** And what was your understanding prior to the
25 plea?

1 **A** That he was going to agree to the accident,
2 that it had happened, you know, there was a death,
3 and that the hit-and-run was going to be dropped as
4 part of the plea bargaining.

5 **Q** And did that change?

6 **A** It did, on the day of court.

7 **Q** And what can you tell the judge about how you
8 found out that it changed?

9 **A** Well, it was kind of like Lisa said. It was
10 kind of a surprise when we were at the courtroom.
11 I didn't realize that it had not been dropped until
12 it was acknowledged in the courtroom.

13 **Q** And then during the plea, was there a time
14 that you thought that Tom was confused?

15 **A** Absolutely. He looked -- like Lisa
16 mentioned, he was standing and looked around, and
17 it was obvious he was confused. I think we were
18 all confused on what was going on.

19 **Q** All right. Did you speak at the plea?

20 **A** Excuse me?

21 **Q** Did you speak at the plea?

22 **A** No.

23 MR. GROSE: Can you answer any questions that
24 Mr. Zelenka might have?

25 THE WITNESS: Absolutely.

1 MR. ZELENKA: No questions.

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

4 MR. GROSE: I call Lillian Williford.

5 (LILLIAN WILLIFORD, having been duly sworn,
6 testified as follows:)

7 THE WITNESS: Lillian Williford.

8 MR. GROSE: Spell your last name for the
9 court reporter, please.

10 THE WITNESS: W-I-L-L-I-F-O-R-D.

11 **DIRECT EXAMINATION**

12 **BY MR. GROSE:**

13 **Q** And how do you know Thomas Stafford?

14 **A** He's my nephew.

15 **Q** And are you -- are you Lisa's sister?

16 **A** I'm Lisa's twin sister, yes.

17 **Q** And what I want to ask you is: Were you at
18 the guilty plea?

19 **A** Yes, I was.

20 **Q** And did you have an understanding when you
21 went there that day as to what the plea was
22 supposed to be?

23 **A** Not a complete understanding. I just kind of
24 got an overview from what was going on. I had
25 flown in the night before from Texas, so I was just

1 there supporting, there for support.

2 **Q** Okay. What I want to ask you about is during
3 the plea, was there a point that what you observed
4 in the courtroom with Tom being confused?

5 **A** Yes.

6 **Q** And can you tell the judge about that?

7 **A** So what I can relate it to is the majority of
8 my life I've been a nurse and educating patients on
9 surgery and different aspects of discharge and
10 whatnot. I can educate them, but I can see they
11 are not getting it, okay. They have a blank look
12 on their face, okay. And then I say, Can you tell
13 me, and usually they can't. Tom had that look. He
14 turned around and he just had a look of, I don't
15 know what you are saying. I can't understand. I
16 just don't know. So, to me, that is what I related
17 it to. It was just a look of complete lack of
18 understanding, so....

19 **Q** All right. Thank you.

20 MR. GROSE: Would you answer any questions
21 that Mr. Zelenka might have?

22 MR. ZELENKA: No questions.

23 THE COURT: Thank you. You may step down.

24 MR. GROSE: Tina Orłowski. I probably didn't
25 say that right.

1 THE WITNESS: You did.

2 (TINA ORLOWSKI, having been duly sworn,
3 testified as follows:)

4 THE WITNESS: Tina Orłowski.

5 MR. GROSE: Can you spell your last name for
6 the court reporter?

7 THE WITNESS: O-R-L-O-W-S-K-I.

8 **DIRECT EXAMINATION**

9 **BY MR. GROSE:**

10 **Q** And how do you know Thomas Stafford?

11 **A** He's my nephew.

12 **Q** What is that connection? Are you Lisa's
13 sister?

14 **A** I'm her oldest sister.

15 **Q** Her other sister?

16 **A** Yeah.

17 **Q** Were you at the guilty plea?

18 **A** Yes.

19 **Q** Did you address the Court?

20 **A** No.

21 **Q** And did you have an observation about Tom
22 being confused at some point during the guilty
23 plea?

24 **A** Yes.

25 **Q** And can you tell the judge about that?

1 **A** Well, we were just sitting there, and Tom was
2 standing there, and they said that they were going
3 to use that plea, and I was surprised because he
4 turned around and looked at us like, What? Like
5 this (indicates). And I was confused because I
6 didn't know everything that they were going to
7 charge him with, but I knew about that.

8 **Q** Okay. Thank you.

9 MR. GROSE: Answer any questions that
10 Mr. Zelenka may have.

11 MR. ZELENKA: I have no questions.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you, Judge.

14 MR. GROSE: I call Thomas Stafford.

15 THE COURT: Come on around.

16 (THOMAS STAFFORD, having been duly sworn,
17 testified as follows:)

18 THE WITNESS: Thomas Stafford,
19 S-T-A-F-F-O-R-D.

20 **DIRECT EXAMINATION**

21 **BY MR. GROSE:**

22 **Q** I think it goes without saying that you are
23 the applicant in this case; is that right?

24 **A** Yes, sir.

25 **Q** What I want to ask you about is -- well, with

1 regard to this accident, what were you charged
2 with?

3 **A** Felony DUI and hit-and-run.

4 **Q** And did you have a position about which
5 charges you wanted to plead to versus not plead to?

6 **A** I said -- the day I was arrested, the next
7 day, I met with her. I said I was guilty of felony
8 DUI, but the hit-and-run, I was not.

9 **Q** So you didn't feel like you were guilty of
10 that?

11 **A** No.

12 **Q** Okay. And you do feel bad about what
13 happened as far as a man losing his life?

14 **A** Oh, yes. That's why I said I was guilty of
15 that.

16 **Q** When you were in plea negotiations, what were
17 you expecting that the guilty plea was going to be?

18 **A** Guilty of the DUI, and that's all.

19 **Q** You weren't expecting the plea to be leaving
20 the scene of the accident?

21 **A** No.

22 **Q** At some point, did that change?

23 **A** I just know I was going in on the felony DUI.
24 Things were dropped, but if I wanted five to nine,
25 I had to go right then.

1 **Q** Where did the five to nine come from?

2 **A** Ms. Good.

3 **Q** Tell the judge about that.

4 **A** She came up to one of the meetings in
5 Lexington County and said if you want a five to
6 nine, we had to go right now, if you wanted that
7 deal. They wouldn't bring up your past. They will
8 drop the leaving the scene, but if you wanted that,
9 we had to go right now.

10 **Q** And at what point did it change that the plea
11 involved leaving the scene?

12 **A** I don't know. That day of court.

13 **Q** Okay. And do you remember your guilty plea?

14 **A** Yes (inaudible).

15 **Q** I'm sorry?

16 **A** When they asked me?

17 **Q** Yes.

18 **A** Yes.

19 **Q** And then was there a period during the guilty
20 plea that you were confused about what was
21 happening?

22 **A** Yes.

23 **Q** Tell the judge about that.

24 **A** I think the judge asked me three or four
25 times if I understood, and I just -- I didn't

1 understand what was going on, that's why I was kind
2 of confused and looking around. I kind of felt
3 like I was in a twilight zone, really. I didn't
4 know what to do or say.

5 Q All right. Thank you.

6 MR. GROSE: If you could answer any questions
7 Mr. Zelenka has.

8 **CROSS EXAMINATION**

9 **BY MR. ZELENKA:**

10 Q Mr. Stafford, at the time that you entered
11 the plea before the court, (inaudible) it was clear
12 at that time that you were going to enter a plea,
13 an Alford plea, for leaving the scene of the
14 accident? That was clear in the (inaudible) and
15 asked by the Court; isn't that true?

16 A You mean afterwards? After I was confused?

17 Q Had you spoken with Anna Browder before that
18 about what an Alford plea was?

19 A I can't recall.

20 Q Do you recall being informed about an Alford
21 plea? You were not officially saying you were
22 guilty, but you are acknowledging that the State is
23 going to have enough evidence to likely convict you
24 of that?

25 A No. I just remember not bringing up the past

1 and dropping....

2 Q And you knew at the time you could have said
3 I'm not going to plea to leaving the scene,
4 correct?

5 A I didn't know that.

6 Q You could have said that to the judge?

7 A Yeah, I didn't know. I was terrified. I
8 didn't know you could do that. If I knew that, I
9 would have stood up and walked out. I didn't know.

10 Q Why did you think he was asking you those
11 questions?

12 A I can't tell you that.

13 Q You just don't know?

14 A I'm sure they have to ask you that.

15 Q And they told you before, Had anybody made
16 you any promises? And you said, No. So you
17 weren't expecting anything?

18 A Just what she said, that's it.

19 Q Just what who said?

20 A I knew the plea was for a certain amount, so
21 I didn't know if everyone was in conversation
22 before court about what was going to happen about
23 what she said.

24 Q Do you recall --

25 MR. ZELENKA: I can't get used to these new

1 systems.

2 THE COURT: I know. I know.

3 Q Let me hand you a copy of the plea
4 transcript.

5 A I don't have my glasses. I can't see this.

6 Q Let me ask you to review Page 6 --

7 A I don't have my glasses, so I can't --

8 Q Up there.

9 A I can't see.

10 MR. GROSE: Do you need readers? You can
11 borrow my readers, if that will help.

12 A Sorry. Okay.

13 Q Okay. Let me ask you to read those, and then
14 I'll ask you some questions about them. Page 6
15 through Page 8.

16 (A brief pause in the proceedings.)

17 A I read this last night. I mean, I read it a
18 lot.

19 Q Isn't it true that in that portion the judge
20 specifically is asking you if you understood what
21 pleading under Alford to leaving the scene of the
22 accident meant, correct?

23 A Right.

24 Q And you indicated to him that you understood
25 that by your response "yes," correct?

1 **A** After four times I said I didn't, yeah.

2 **Q** And if you look at Page 7, your lawyer
3 described a conversation he had with you -- she had
4 with you earlier about what Alford pleas meant, and
5 you said you understood that; isn't that correct?

6 **A** I said that right here, yes.

7 **Q** Then the clerk went through it again, and you
8 said, basically, yes, I understand?

9 **A** I did say that.

10 **Q** That was a page --

11 **A** I don't know if I was in shock or what, but,
12 yes, I said it.

13 **Q** Whether you were in shock?

14 **A** I just didn't know what was going on. Maybe
15 I shut down.

16 **Q** But the judge at the time who was evaluating
17 you, he then, basically, accepted the plea,
18 correct?

19 **A** Yes, sir.

20 **Q** All right. Now, you had discussions with
21 your lawyer about the negotiations prior to the
22 time you walked in that courtroom, correct? And
23 when you were standing before the judge, you knew
24 that you were going to enter a plea of not only
25 felony DUI, but to leaving the scene of the

1 accident, correct?

2 **A** Not of leaving, no.

3 **Q** Well, you said you did.

4 **A** Yes.

5 **Q** And that is what you told the judge at that
6 time?

7 **A** Right.

8 **Q** And you were there, certainly?

9 **A** Right.

10 **Q** And he was asking you if you were pleading,
11 and you said, "Yes." You did not say "no." You
12 weren't in a state of shock then, were you?

13 **A** Yes. I'm in one now.

14 MR. ZELENKA: I have no further questions.

15 THE COURT: All right. Anything else?

16 MR. GROSE: Briefly.

17 **REDIRECT EXAMINATION**

18 **BY MR. GROSE:**

19 **Q** Tom, you said that you read over that
20 transcript often?

21 **A** Yes. Especially about the leaving the scene.

22 **Q** Why do you do that?

23 **A** Because a lot of what Mr. Collins said didn't
24 happen. As soon as the accident happened, I pulled
25 over in less than ten seconds. All I remember is

1 pulling back in traffic and screaming at everyone
2 to call 911, do what they had to do, and that is
3 when I seen Charlie, and we both pulled over.
4 There was no -- it happened so fast. And when I
5 was walking towards Mr. Johnson, I was told to
6 stop -- or someone yelled something. And that's
7 the last thing I remember was him giving me some
8 kind of test where I had to walk, and that's the
9 last thing I remember.

10 **Q** Do you still have that transcript in front of
11 you?

12 **A** Yes.

13 **Q** If you could, look at Page 6, Line 17. Do
14 you see where the judge says, "And tell me what
15 North Carolina versus Alford means for you in your
16 own words. I'm not looking for legalese. I'm
17 looking for what it means to you."

18 And on Line 21 to 22, what was your answer?

19 **A** So you're not -- it says, "The hit-and-run.
20 It really doesn't make sense."

21 **Q** Right. And then Line 23 going through Line 1
22 on Page 7, the judge says, "Right. (inaudible) to
23 the hit-and-run, I understand that you want to
24 plead guilty under the United States Supreme Court
25 case called North Carolina versus Alford. What

1 does that mean to you?"

2 Page 7, Lines 2 and 3, what is your answer?

3 **A** "Is that if I'm found guilty or not?"

4 **Q** Line 4, the Court says, "All right." Do you
5 see that?

6 **A** Yes.

7 **Q** At Lines 5 through 10 is your lawyer
8 speaking; is that right?

9 **A** Yes, sir.

10 **Q** And you speak again at Line 12, and that is
11 just a "yes, sir". Is that right?

12 **A** Yes.

13 **Q** Lines 13 through 21 is the Court speaking.
14 Do you see that?

15 **A** Yes.

16 **Q** Line 22 you speak again, and all you say is,
17 "Yes, sir." Is that right?

18 **A** Yes.

19 **Q** And Line 23 on Page 7 -- through 25 -- that's
20 the judge speaking; is that right?

21 **A** Yes.

22 **Q** Your answer on Page 8, again, all it says is,
23 "Yes, sir." Is that right?

24 **A** Yes.

25 **Q** And Lines 2 through 5, that is the judge

1 speaking; is that right?

2 **A** Yes, sir.

3 **Q** And your answer is "yes, sir" at Line 6?

4 **A** Yes.

5 **Q** And at Line 7 through 10, that is the judge
6 speaking again; is that right?

7 **A** Yes.

8 **Q** And Line 11 is your answer of "yes, sir." Is
9 that right?

10 **A** Yes.

11 **Q** All right. Now, in that -- those pages we
12 just went through, the judge asked you twice to
13 explain what North Carolina versus Alford means in
14 your own words. We just saw that, right?

15 **A** Yes, sir.

16 **Q** Did you ever explain that in your own words
17 in that transcript?

18 **A** No.

19 MR. GROSE: Thank you. That is all I have.

20 MR. ZELENKA: Nothing further.

21 THE COURT: You may step down.

22 MR. GROSE: At this time, we rest, Your
23 Honor.

24 THE COURT: Are you going to put something
25 up?

1 MR. ZELENKA: Yes.

2 THE COURT: Okay.

3 MR. ZELENKA: I have two witnesses.

4 THE COURT: How long will they be?

5 MR. ZELENKA: Between the two of them, not
6 counting the cross examination, I would guess about
7 45 minutes, max.

8 THE COURT: All right. Not including cross?

9 MR. ZELENKA: I think 45 would --

10 THE COURT: Let's take a short recess and
11 come back within ten minutes, okay. Great.

12 (A recess was taken.)

13 THE COURT: All right.

14 MR. ZELENKA: State calls Anna Good Browder.

15 (ANNA GOOD BROWDER, having been duly sworn,
16 testified as follows:)

17 THE WITNESS: My name is Anna Browder,
18 formerly Anna Good.

19 **DIRECT EXAMINATION**

20 **BY MR. ZELENKA:**

21 **Q** Ms. Browder, state your name -- you did.

22 How are you currently employed?

23 **A** I'm employed at Richland County Solicitor's
24 Office as an assistant solicitor team leader there.

25 **Q** Provide the Court a little bit of your

1 background as a lawyer in this state.

2 **A** I graduated law school from the University of
3 South Carolina in 2005. I then clerked for James
4 Johnson for a year. I then worked for the Richland
5 County Solicitor's Office from July of 2006 until
6 December of 2009. Then I was in private practice
7 from January of 2010 until March of 2018. Then I
8 went back to the solicitor's office in 2018.

9 **Q** When you were in private practice, what was
10 the percentage of your work that was involved in
11 the criminal cases?

12 **A** 60 to 70 percent.

13 **Q** Okay. How many of those cases involved DUIs
14 or vehicular cases, if you have an estimate?

15 **A** I couldn't tell you. Probably about 25 to
16 30 percent.

17 **Q** Okay. Had you ever, as a prosecutor,
18 prosecuted felony DUI cases?

19 **A** As a prosecutor, no.

20 **Q** How did you become involved in this case?

21 **A** I was contacted by Mr. Stafford's mother,
22 Lisa Kornmeyer.

23 **Q** And as part of your practice, did you meet
24 with the defendant?

25 **A** I did.

1 **Q** Approximately, how many times did you meet
2 with the defendant?

3 **A** I will have to look. I think approximately
4 18 to 20ish times. It was more than normal, my
5 normal defendants, because this was a more involved
6 case.

7 **Q** Okay. Why do you say it was a more involved
8 case?

9 **A** It was a lot more legal issues, more serious
10 charges because there was a death involved. We had
11 experts involved. So it was more complicated than
12 your typical DUI.

13 **Q** Okay. In those meetings with Mr. Stafford,
14 how would you describe his demeanor and ability to
15 communicate and rationally or lucidly communicate
16 with him?

17 **A** I was able to communicate with him. He had
18 given me information and from his mother about some
19 of his prior history regarding depression, anxiety,
20 bipolar meds. So, of course, I had concerns just
21 because I wanted to make sure that everything was
22 on the up-and-up. But he was able to communicate
23 with me. I would have to repeat some things
24 sometimes to him, but he was able to talk to me
25 about the accident, talk to me about what happened,

1 how he felt about the accident, that sort of thing.

2 **Q** Okay. Was he able to communicate in writing
3 with you during your meetings that he -- that he
4 described the location, his location, things like
5 that?

6 **A** Yes. He didn't write letters to me since I
7 went to see him a good bit, but when I was there,
8 he would give me papers sometimes with names or
9 phone numbers or describing the accident, that sort
10 of thing, things he wanted me to check on.

11 **Q** Did you have the opportunity to either go
12 over with him the State's evidence that had been
13 provided to you through either Brady or Rule 5?

14 **A** Yes, I did.

15 **Q** Did he seem to understand what the State's
16 theory was in the case, why he was being charged
17 with both felony DUI death and the leaving the
18 scene of the accident charges?

19 **A** Yeah. He knew what the evidence was and what
20 the State was going to present. He did not agree
21 with the leaving the scene because he said he had a
22 different story of how that occurred than what the
23 state was going to provide, which I know we'll get
24 to later with the Alford. But he was adamant that
25 that part was different than what the State's

1 evidence was.

2 Q At some point in time, as we've heard
3 earlier, you contacted Dr. Donna Maddox?

4 A Yes.

5 Q What was your reasoning for doing that?

6 A Just because I -- I did know he had a history
7 of the Klonopin and being on medication, and in
8 addition, he said he might have had some memory
9 lapses. I just wanted to make sure with her and
10 get him evaluated.

11 Q Okay. And what did you do to get Donna
12 Maddox involved in the case?

13 A I e-mailed her, contacted her saying -- you
14 know, getting a quote how much it would cost. At
15 that point, since I was retained, I don't think I
16 got funding for him to become indigent yet. I
17 think -- I would have to check, but I think that
18 was still being paid by his family. So I got a
19 quote for how much it would cost and what she would
20 need from me, and then set up a time for her to go
21 meet with him.

22 Q After you began your discussions with
23 Dr. Maddox, did she give you an initial impression
24 as to what her thoughts were about Mr. Stafford?

25 A Yes, she did.

1 **Q** And based upon that impression, was that
2 consistent with the way she testified earlier?

3 **A** Yes.

4 **Q** And based upon that impression, did you seek
5 out some experts: Tora Brawley, Alexander Morton?

6 **A** With regards to Dr. Maddox -- I reached out
7 to Dr. Brawley. Dr. Morton didn't have anything to
8 do -- that was something I was doing separately.
9 But Dr. Maddox, she had wanted the
10 neuropsychological evaluation or whatever -- the
11 additional testing she needed, and I asked her who
12 would you refer me to to do that, who would do
13 that, and she said Tora Brawley. So that is when
14 we got Tora Brawley involved, and she went and met
15 with Mr. Stafford.

16 **Q** Okay. Let me provide you a copy of what is
17 premarked as State's Exhibit 1.

18 MR. GROSE: Yeah.

19 **Q** **(BY MS. ZELENKA)** I'll ask you if you can
20 identify that?

21 **A** Yes, sir, I can. It is an e-mail from
22 Dr. Schwartz to me dated January 15th, 2013.

23 **Q** And what information did she give you at that
24 time? And that is the January 15th, 2013 e-mail?

25 **A** Yes. She gave me information that she found

1 some cognitive deficits on his mental status
2 examination, but she needed blood tests, and at a
3 minimum, neuropsychological testing to determine
4 the extent of what she had found before she could
5 go further.

6 Q Okay. As a result of that, is that why you
7 communicated with Dr. Brawley?

8 A Yes.

9 Q What did you learn from Dr. Brawley?

10 A Dr. Brawley called me after she met with
11 Mr. Stafford and stated that she found him to be
12 malingering. So I indicated, obviously, we did not
13 want a report, because that is something we would
14 potentially have to turn over to the State in a
15 Rule 5 reciprocal. I let Dr. Maddox know what
16 Dr. Brawley had found, and Dr. Maddox indicated
17 that she wouldn't see him again.

18 Q Did Dr. Brawley give you a written report?

19 A No.

20 Q And the reason for the written report is that
21 you didn't want to make it discoverable for the
22 State?

23 A Correct.

24 Q So you could not have been similarly provided
25 a written report to Dr. Maddox for her review,

1 correct?

2 **A** Correct.

3 **Q** And why was that important to you as a
4 defense lawyer at that time, that that written
5 report not be done?

6 **A** Because it would not have been helpful to
7 Tom. It basically would have said that he was
8 malingerer or lying to her, and we didn't want --
9 that would hurt any defense we would potentially
10 have if we had a trial. We didn't want something
11 to give ammunition to the State for.

12 **Q** Okay. And as a result of that, what
13 communications did you have with Dr. Maddox about
14 completing -- further completing her examination?

15 **A** I asked her -- or I let her know what
16 Dr. Brawley said and asked her if she would go back
17 and finish, and she indicated that she would not or
18 could not because based on Dr. Brawley's findings
19 of the malingerer, she couldn't take any
20 statements that he had given her as credible
21 regarding the testing she had done.

22 **Q** So even though you protested and wanted her
23 to give you more --

24 MR. GROSE: Object to the leading.

25 **Q** **(BY MS. ZELENKA)** Even though she communicated

1 that way to you, you still tried to pursue with her
2 to still give you a more complete evaluation on his
3 mental state; is that correct?

4 **A** Correct. Yes.

5 **Q** All right. And she never provided you any
6 written report, correct?

7 **A** Not that I can recall.

8 **Q** Okay. You also indicated you contacted Dr.
9 Alexander Morton?

10 **A** Yes.

11 **Q** Why did you do that?

12 **A** During this time, this was kind of all prior
13 to plea versus trial. We were preparing everything
14 we potentially could for a trial, if we would have
15 any defense, and of course one thing would be the
16 toxicology, what was in his blood, in his system at
17 the time of the accident. So we contacted Dr.
18 Morton -- he was considered an expert in
19 toxicology -- to review SLED's notes, bench notes,
20 when they got that report.

21 **Q** Let me show you what's been premarked as
22 Exhibit 3. July 24, 2013. I'll see if you can
23 identify that?

24 **A** Yes. There is an e-mail from Dr. Morton to
25 me, July 24, 2013, in response to an e-mail I had

1 sent him.

2 Q Okay. And what information did State's
3 Exhibit No. 3 give you?

4 A Prior to the e-mail, Dr. Morton had done his
5 evaluation. We had spoken on the phone, and he had
6 let me know what his results were. So I had sent
7 an e-mail to him, because I had a follow-up
8 question after we had gotten off the phone
9 indicating that when we spoke, he mentioned that in
10 addition to the methadone, Xanax, and Klonopin that
11 were found in his system, he had found other benzos
12 that were not on the SLED report that didn't meet
13 the threshold, but also in his system. So I was
14 asking if he knew what those were, and it's his
15 response to me of what the other benzos were in his
16 system.

17 Q What were the other benzos that his study of
18 the toxicology test revealed?

19 A Sure. I'm going to butcher this, but
20 Zoxipan, Triazolam, and Triazolam metabolite.

21 Q With the information you received from Dr.
22 Morton, how did you -- how did that impact your
23 defense and the steps you took with respect to him
24 and your defense?

25 A Well, it was obviously not something we were

1 going to use at a trial, him as an expert, because
2 he had given -- basically said that the tox is
3 actually worse than what SLED said it was. So
4 there was nothing we could use that he could
5 testify to, and of course I let Mr. Stafford and
6 family know the results of that.

7 **Q** Okay. Now, with that information that you
8 got from Dr. Maddox, Dr. Brawley, and Dr. Morton,
9 what did you see as your defense in this case?

10 **A** Well, I also had another expert. I got a
11 MAIT expert, Dave Muthers (ph). He had basically
12 said the same thing. He said that the MAIT, he
13 thought, was done wrong. They had done like a
14 throw versus a drag evaluation when they did the
15 MAIT, but he said he couldn't help us at a trial
16 either because it is the same result. So we
17 started talking once we got all of the testing
18 done, all of our experts to look at everything,
19 plea versus trial.

20 We had a couple potential legal matters,
21 whether Miranda had been -- they hadn't given
22 Miranda at the beginning of the tape, even though
23 he was clearly in handcuffs right from the start
24 when troopers got on scene. A potential motion to
25 dismiss on the DUI second. So there was some stuff

1 we were talking about, plea versus trial. If we
2 wanted to push a trial, what his exposure would
3 have been at a trial versus if we would have worked
4 out a plea. So, at that point, that is when we
5 started talking about those things.

6 **Q** For clarity, you mentioned a DUI second. Was
7 that a different accident the defendant had, or was
8 that a DUI second you are talking about from this
9 incident?

10 **A** It was a separate one 15 days prior to this
11 accident.

12 **Q** And his license had been suspended for that
13 one automatically, or not?

14 **A** I don't think it had been suspended yet, but
15 I'm not sure.

16 **Q** But you were dealing with both of those cases
17 in your representation?

18 **A** Correct.

19 **Q** What communication did you have with the
20 defendant then about what his options were and
21 steps to take with plea negotiations? How did that
22 play out?

23 **A** We started talking in our meetings about it,
24 the different ways to go and negotiating. I think
25 they were potentially trying to set a trial for

1 October of that year, so we knew if we wanted to
2 work out pleas, it would have to be earlier or else
3 we would be pushed towards a trial pretty quickly.

4 **Q** Who was the prosecutor in the case?

5 **A** Rick Collins.

6 **Q** Is he here?

7 **A** He is.

8 **Q** And how did you begin the communications with
9 him, or did he initiate them to you?

10 **A** I don't remember who initiated, but we
11 started talking about it, and we had -- we were
12 discussing pleading to the felony DUI. It was
13 going to be dismissing the hit-and-run and the DUI
14 second. Part of the plea negotiation -- we were
15 talking about that. We knew they were not going to
16 be making a recommendation as to sentencing, that
17 it was pretty much going to be a straight-up plea.
18 So we were talking about what we wanted to ask for
19 between me and Tom, what we wanted to ask for at a
20 sentencing.

21 And part of agreeing to a plea as well -- it
22 wasn't part of the negotiations, but we had asked
23 that Tom get to see his daughters the day before
24 the plea, because he had been incarcerated the
25 entire time. His older daughter could not come --

1 she was old enough to come to the jail, but she
2 could not come because of her disability, and his
3 youngest daughter wasn't old enough to come to the
4 jail. So he wanted to see them before going to
5 prison, because he knew, most likely, he would go
6 to prison for a good amount of time -- or at least
7 for some time.

8 And so Mr. Collins helped settled that up
9 here up at the courthouse the day before the plea
10 so he could -- I believe it was his two girls, his
11 mom, and fiancée at the time.

12 Q Okay. With respect to the plea negotiations,
13 which obviously evolved based upon what you said,
14 how did it end up being a situation where he was
15 going to plead to leaving the scene?

16 A The day that we were doing the meeting with
17 his daughters, the day before, Mr. Collins
18 approached me and said, hey, you know, we've talked
19 to the family. They are not going to agree to the
20 plea unless he pleas to the hit-and-run. I
21 indicated to him that that might be a problem
22 because Tom had always said he didn't do the
23 hit-and-run portion of it. We had a different
24 version of events. That if we were going to do
25 that, which I would talk to Tom about it the next

1 morning before the plea, but if we were going to do
2 that, one, we would have to agree it would be
3 concurrent time. Because that was a big portion of
4 it, too, was his exposure was cut from a
5 potentially 75 years down to 25 years. And then it
6 would have to be under North Carolina versus
7 Alford, because there is no way he would say he was
8 guilty of that because he didn't -- he had a
9 different version of events. It would have to be
10 that a jury could have found him guilty based on
11 the evidence the State presented, but he wasn't
12 going to agree to guilt on it.

13 Q Okay. And on the day that the plea was
14 entered, did you share that information with
15 Mr. Stafford?

16 A I did. We met before the plea because, of
17 course, he had to sign plea paperwork. So he had
18 the two separate plea paperwork sentencing sheets.
19 We went over that portion of it, and he understood
20 that portion of it. And then he had asked me -- we
21 were going to ask for somewhere between two and ten
22 years to the judge for time, based on my notes from
23 the plea that I had to -- when I spoke to the
24 judge, the ten years. He had asked me, I want to
25 do a two to five instead, and I indicated I didn't

1 think it was realistic. It might lose a little
2 credibility for us, but if that is what he wanted
3 to do, we would do it. He said that is what I
4 want, so I scratched the ten on my little notes,
5 and put five, and we asked for two to five instead.

6 Q Based upon what you were asking for, how did
7 you advise him of what he could actually receive?

8 A He knew he could receive up to 25. We,
9 obviously, were hoping for much less. The reason
10 We were asking for the two to ten was even if the
11 judge went potentially over what we asked for, we
12 maybe could stay below 15. That was our goal. We
13 knew, obviously, that he could go up to 25, but we
14 were trying to keep it under 15, if we could.

15 Q Did your client understand that?

16 A Yes.

17 Q Now, going back to leaving the scene. Was he
18 advised of his option to not plead under Alford, to
19 basically plead not guilty, and what impact that
20 would have on the whole case?

21 A Yes. He understood that if the plea didn't
22 go through that day, that they were going to put us
23 up for trial, and he was looking for a lot more
24 time.

25 Q Was there a trial date expected for the case?

1 **A** I can't remember if it was actually set, but
2 they were talking about maybe sometime in -- I
3 can't remember if it was August or October, but it
4 was coming up sometime soon that they wanted to set
5 it, if we weren't going to plead.

6 **Q** The plea was on October 3rd.

7 **A** It might have been in October then is when
8 they were looking to potentially do the plea -- I
9 mean the trial.

10 **Q** Prior to the plea, did you provide additional
11 information to the judge?

12 **A** I did. I created, which is very unusual, I
13 didn't normally do this in my pleas, but I created
14 a plea notebook for the judge because there was a
15 lot of family and a lot of information we wanted to
16 give the judge, but we didn't want it to get
17 diluted in a long colloquy during the plea, so we
18 created a plea notebook with letters from family,
19 letters from friends showing the work he did,
20 pictures of his daughter to give a full overview of
21 who he was so the judge would have an idea.

22 **Q** Let me ask you if you can identify what I
23 just provided to you?

24 **A** This is Exhibit 2. It is a copy of the plea
25 notebook that we gave to the judge. Can't remember

1 if it was the week before or several days before,
2 but we gave it to him prior to the plea so he would
3 be able to have time to review it.

4 Q By giving it to the judge, you mean you
5 provided it to Judge Hood?

6 A Yes.

7 Q And in reviewing that document, it doesn't
8 include any information from Donna Maddox, it
9 doesn't include any information from Tora Brawley,
10 and it doesn't include any information from Alex
11 Morton; is that right?

12 A That's correct.

13 Q Was that intentional on your part?

14 A Yes. Because it would not have helped us
15 paint the picture we wanted to paint for
16 Mr. Stafford.

17 Q Okay.

18 MR. ZELENKA: Your Honor, at this time we
19 would move into evidence Respondent's Exhibits 1,
20 2, and 3.

21 MR. GROSE: No objection.

22 THE COURT: All right. Without objection.

23 (Respondent's Exhibits 1-3 admitted.)

24 Q (BY MS. ZELENKA) During the plea, did you see
25 or notice any confusion by your client concerning

1 the charges he was being faced with?

2 **A** No.

3 **Q** Did he indicate to you any time outside of
4 the hearing of the court reporter, during that
5 time, that he wanted to step down, didn't want to
6 continue the plea, or that he wanted further
7 information coming from you related to what was
8 going on?

9 **A** No.

10 **Q** Prior to the entry of the plea, did you ever
11 have discussions on the day of the plea, after the
12 Alford determination had been made, with any of the
13 family members of Mr. Stafford about the change
14 that had occurred between Mr. Stafford and the
15 State and you, related to what those charges were
16 going to be?

17 **A** I don't remember if I did or not. I know I
18 talked to Tom about it, because we met in the
19 holding cell. But I don't remember if I spoke to
20 his family about it or not.

21 **Q** When you met with him in the holding cell, it
22 is just the two of you?

23 **A** Correct.

24 MR. ZELENKA: Court's indulgence.

25 (A brief pause in the proceedings.)

1 **Q** **(BY MS. ZELENKA)** The record itself did not
2 reflect that there was any agreement, any
3 requirement, for a concurrent sentence to be given.
4 How, if at all, did that information get related to
5 Mr. Stafford or the Court?

6 **A** To Mr. Stafford, I spoke to him about it and
7 let him know we were going into chambers with the
8 judge to let him know.

9 Prior to the plea, Mr. Collins and I went
10 into chambers with Judge Hood. Mr. Collins had
11 victims that were going to be present. So his
12 position was that he would be silent on sentencing.
13 He would not say anything on the record, but he did
14 not have a problem with it being run concurrent.
15 So the judge was aware of that, but he knew he
16 would not be able to say that on the record because
17 the victims wanted the maximum amount of time.

18 **Q** All right.

19 MR. ZELENKA: I think that is all the
20 questions I have. Thank you.

21 Please answer any questions by Mr. Grose.

22 **CROSS EXAMINATION**

23 **BY MR. GROSE:**

24 **Q** The package, the plea note, is that Exhibit
25 No. 3?

1 **A** Two.

2 **Q** Two, I'm sorry. Okay.

3 Towards the back of that you have some
4 medical records -- medication records in there?

5 **A** Yes.

6 **Q** Crossroads Treatment Center; is that right?

7 **A** Hold on. Yes. Yes.

8 **Q** Have you found them?

9 **A** Yes, sir.

10 **Q** Okay. The -- I guess the first one in the
11 packet that I have is a date of 12/4 -- yeah,
12 12/4/2012. Are we looking at the same one?

13 **A** Yes, sir.

14 **Q** And then there's the next page, 11/1 of 2012?

15 **A** Yes.

16 **Q** 10/2 of 2012?

17 **A** Yes.

18 **Q** 9/7 of 2012?

19 **A** Yes, sir.

20 **Q** 7/31 of 2012?

21 **A** Yes, sir.

22 **Q** 7/6 of 2012?

23 **A** Yes, sir.

24 **Q** 6/1 of 2012?

25 **A** Yes.

1 **Q** May 3rd of 2012?

2 **A** Yup.

3 **Q** April 4 of 2012?

4 **A** Yes, sir.

5 **Q** March 3 of 2012?

6 **A** Yes.

7 **Q** February 2nd of 2012?

8 **A** I have that one as February 1st, 2012.

9 **Q** I'm sorry, my bad. Thank you for correcting
10 me.

11 January 3 of 2012?

12 **A** Yes.

13 **Q** And then December 1st of 2011, and
14 November 4 of 2011?

15 **A** Correct.

16 **Q** And these were -- these were records that
17 were given to the judge?

18 **A** Yes. They are his methadone clinic records.

19 **Q** And every one of these on the bottom has a
20 total number of drug screens that he had been
21 given?

22 **A** Yes.

23 **Q** And so, for example, the December 4 of 2012
24 says that there had been one drug screen, and the
25 dates are reflected on that?

1 **A** Yes.

2 **Q** For the November record, on the next page,
3 there had been two drug screens?

4 **A** Yes.

5 **Q** And it's your understanding that Tom passed
6 every one of the drug screens that they gave him at
7 the methadone clinic?

8 **A** As far as I'm aware, yes.

9 **Q** Well, you gave this to the judge. You
10 wouldn't give the judge any failed drug screens?

11 **A** Correct.

12 **Q** Okay. With regards to -- I don't know where
13 the Applicant's exhibits are.

14 MR. GROSE: Judge, did you have those?

15 Thank you.

16 **Q** **(BY MR. GROSE)** Let me start with Exhibit 1.
17 Do you recognize that?

18 **A** Yes. That is the affidavit that Dr. Schwartz
19 Maddox had given me so we could get funding -- or
20 get Dr. Brawley involved.

21 **Q** I want to show you Applicant's Exhibit No. 5.

22 **A** Okay.

23 **Q** Do you recognize that as an e-mail from Lisa
24 Kornmeyer to you?

25 **A** Yes. Dated January 4, 2013.

1 **Q** So that was fairly early in the case?

2 **A** Yes.

3 **Q** And in that e-mail -- well, what we have --
4 where it ends, there is three pages attached in
5 that exhibit?

6 **A** Correct.

7 **Q** And is it fair to say that this is where she
8 went through a lot of the history of Tom's
9 problems?

10 **A** Yes.

11 **Q** And that she, in fact, reported multiple
12 times that Tom had been sexually abused?

13 **A** Yes.

14 **Q** I'm going to hand you what is marked as
15 Applicant's Exhibit No. 11. On there -- there's a
16 -- about several inches down the page it says on
17 July 19, 2013, 4:39 p.m., Lisa Kornmeyer. Do you
18 see that?

19 **A** Yes.

20 **Q** Did she report to you about her observations
21 about Tom's stress level?

22 **A** Yes.

23 **Q** What did she report to you?

24 **A** She said that it was high. He was losing his
25 hair in spots; that he as alopecia. His anxiety

1 (inaudible) is indicated by his doctor records, and
2 he is having nightmares and can't sleep.

3 Q I want to show you Applicant's Exhibit No.
4 12. Do you recognize that as an e-mail from Lisa
5 Kornmeyer to you?

6 A Yes. And then my response to it.

7 Q All right. Actually, at the top, that is
8 your response?

9 A Correct.

10 Q Yeah. At that point you were talking about a
11 plea to one charge; is that right?

12 A Yes.

13 Q There's reference to reckless homicide?

14 A Yes.

15 Q And assault and battery of a high and
16 aggravated nature?

17 A Yes.

18 Q Tom was -- was that the common law statute?

19 A That was common law back then, I think -- or
20 I can't remember.

21 Q (Inaudible) I think was 2010.

22 A Then it would be the new ABHAN.

23 Q Okay. And reckless homicide?

24 A Correct.

25 Q Is it your belief that Tom has been convicted

1 of felony DUI, reckless homicide, and ABHAN out of
2 the same --

3 **A** I don't think it could have been out of the
4 same. I think if we were going to go to trial, the
5 intention was that Mr. Collins was going to
6 directly present those to the Grand Jury. Because
7 they are not lesser includeds, necessarily, that
8 the jury would have options if they didn't believe
9 it was a felony DUI.

10 **Q** So he was doing that because they might not
11 believe it was a felony DUI; is that what you are
12 saying?

13 **A** I mean, I don't know what Mr. Collins -- that
14 is what -- that is what I would assume that's why
15 he was going to directly present them.

16 **Q** But Tom couldn't have been convicted of all
17 of them?

18 **A** Correct. It would only have had to be one of
19 them.

20 **Q** Okay. But at that point -- this is all
21 August 14th. At that point, we're just talking
22 about felony DUI, not talking about a plea to
23 leaving the scene of the accident?

24 **A** Correct.

25 **Q** I'm going to hand you what is in evidence as

1 Applicant's Exhibit No. 3. At the top part of
2 that, that is an e-mail of August 20th from you
3 to Lisa Kornmeyer?

4 **A** Yes.

5 **Q** And what does it reflect at that point that
6 the plea was going to be?

7 **A** At that point it was our understanding it was
8 going to be the one charge of felony DUI for one to
9 25 years, and the other charges were going to be
10 dismissed so that we could keep his exposure to 25
11 years and not more.

12 **Q** Okay. And the e-mail expressly states that
13 leaving the scene of the accident, death resulting,
14 and DUI second would be dismissed?

15 **A** Yes.

16 **Q** In that e-mail, did you put any
17 qualifications on that offer that -- as far as
18 (inaudible)?

19 **A** No. That was my understanding of what the
20 plea was going to be.

21 **Q** I'm going to hand you what is in evidence as
22 Applicant's Exhibit No. 14. That looks like a
23 three-page e-mail. It looks like it came from
24 (inaudible) Kornmeyer to you, and then your
25 response?

1 **A** Yes.

2 **Q** Is that right?

3 **A** Yes.

4 **Q** He indicates that everyone is very surprised
5 and very disappointed by the sentence that was
6 given. And then in the next, he said he was under
7 the impression (inaudible), but that's not the
8 case. Can you explain why this wasn't dismissed?

9 In your answer, that was a decision that was
10 made by the prosecutor and discussed with you the
11 night before?

12 **A** The day before, yeah.

13 **Q** When Tom was meeting with his children, that
14 we talked about earlier?

15 **A** Yes.

16 **Q** And I think you already testified that you
17 discussed that change with Tom's mother?

18 **A** I can't remember if I did or not.

19 **Q** So you can't say one way or the other?

20 **A** Right. I know I did with Tom, but I don't
21 know about Ms. Kornmeyer.

22 **Q** All right. And in the second paragraph there
23 is an expression about the fact that the DUI second
24 hadn't been dismissed, and then Applicant's Exhibit
25 4.

1 **A** How can I explain that? They were, I guess,
2 confused as to why it wasn't dismissed prior to the
3 plea. We had filed -- I can't remember if we
4 actually filed a motion to dismiss or talked about
5 filing a motion to dismiss on the DUI second,
6 because there were some legal issues with that
7 where I think it could have been dismissed based on
8 the statute and the law. But if we tried to push
9 that and did that, we would have lost our plea
10 negotiation leverage because they would have then
11 pushed us to trial on the felony DUI. But it was
12 being dismissed as part of the plea.

13 **Q** As Applicant's Exhibit No. 9, on Page 2, did
14 you, in fact, indicate that you would move forward
15 with the motion to dismiss the DUI second?

16 **A** Those were things that we discussed, yeah.
17 And, like I said, I can't remember if I actually
18 filed one or not. That was in April of 2013 prior
19 to negotiations.

20 **Q** All right. It's not unusual for there to be
21 bad facts in almost any case (inaudible); is that
22 correct?

23 **A** Bad? You mean bad for the defense, or bad
24 for the State?

25 **Q** Bad for the defense.

1 **A** Correct. Yes.

2 **Q** And, you know, have you heard, you know, the
3 statement (inaudible) sometimes you just have to
4 embrace the bad facts?

5 **A** Yes.

6 **Q** And you have to try to put context to it?

7 **A** Correct.

8 **Q** Do you think that -- had you been able to
9 recover with the evaluation process, do you think
10 some information that Dr. Maddox testified to today
11 would be helpful?

12 **A** Based on my review of the transcript, I mean,
13 obviously, I don't know what Judge Hood would have
14 done, but based on my review of the transcript, the
15 reason for his sentencing the way he did was
16 because of the prior 15 days before, and he had a
17 prior DUI in 2010. So his history with DUI -- and
18 there was another reason, if I could look at the
19 transcript. They didn't have anything to do -- I
20 think it was because it was during the day, and it
21 was really just -- he was aware of his
22 prescriptions and how they interacted, because he
23 had been using them.

24 **Q** Was that made real clear to him for both the
25 prescriptions and the toxicology report?

1 **A** Clear to who? The judge? Yes. I talked
2 about his prescription medication. This wasn't
3 somebody doing meth. It wasn't somebody drinking
4 after a long night with his buddies at the bar.
5 This is him trying to take medicine so he could
6 work.

7 **Q** So when Judge Hood was given those
8 explanations, he didn't have any information from
9 Dr. Maddox that she testified to about today?

10 **A** Not Dr. Maddox, no.

11 MR. GROSE: That is all I have. Thank you.

12 THE COURT: Anything else?

13 MR. ZELENKA: No further questions.

14 THE COURT: All right. You may step down.

15 MR. ZELENKA: State calls Rick Collins.

16 (RICK COLLINS, having been duly sworn,
17 testified as follows:)

18 THE WITNESS: Rick Collins.

19 **DIRECT EXAMINATION**

20 **BY MR. ZELENKA:**

21 **Q** Mr. Collins, how are you currently employed?

22 **A** I'm currently the project manager for a
23 construction company running across four states
24 right now.

25 **Q** You still a practicing member of the bar?

1 **A** I am an active member of the bar, although
2 I'm not practicing at the moment. You could say
3 some of the duties that I do now as a project
4 manager do entail practicing law to a certain
5 degree, but none to the extent of, you know, what
6 Ms. Browder does or what the Solicitor's Office
7 does.

8 **Q** Briefly, describe your history as a lawyer.

9 **A** Well, my career -- entire career has been in
10 law enforcement and the law. It began as a police
11 officer and sheriff's deputy in Rock Hill, moved on
12 to law school, spent three years as a defense
13 attorney from 2001 to 2003. From 2004 to 2009, I
14 was at the Solicitor's Office here in Lexington.
15 2009 to 2011 I was the magistrate in Oak Grove here
16 in Lexington County. I came back to the
17 Solicitor's Office, and then '16 to '18 I was a
18 security clearance background investigator at a
19 Tier 5 top secret security clearance issued by the
20 Department of Defense, and that was the last job I
21 had before I became a project manager.

22 **Q** All right. In your role with the Solicitor's
23 Office back in 2012, through that period of time,
24 did you do general prosecutions or did you
25 specialize in traffic prosecutions? How did that

1 work out in that office?

2 **A** Well, we all had our fair share of all of the
3 cases that came in. The traffic-related
4 fatalities, those offenses, I believe I got them
5 all, all the felony DUIs, leaving the scenes,
6 deaths, reckless homicides. If I'm not mistaken,
7 that is pretty much where my niche was.

8 **Q** Okay. And this case was assigned to you at
9 some point. Was it -- shortly after the accident,
10 did you become the prosecutor in the case after the
11 warrants were written?

12 **A** It would have been after the warrants were
13 served. They would have come up. I would have
14 known about the case within the first month, and we
15 would have scheduled the first appearance and
16 second appearance. I mean, work on the case, you
17 know, would have began immediately.

18 **Q** Okay.

19 **A** Particularly -- probably first became aware
20 of the case is probably the newspaper, quite
21 actually, and I would see that, and I would know
22 it's coming to me.

23 **Q** Right. Describe your interaction and
24 negotiations with Ms. Browder, because that seems
25 to be the focus of this case at this time.

1 **A** Well, every month at the Solicitor's Office
2 we would have both a first and second appearance.
3 We would have numerous encounters with the defense
4 attorneys from all over the state, really, who are
5 coming to represent their clients, who are both,
6 you know, free, out on a PR, or incarcerated.

7 So during those opportunities -- say if
8 Ms. Browder came in and represented Mr. Stafford,
9 that doesn't mean that's the only case that we have
10 to discuss. I mean, I may have discussed this case
11 with her twice a week, you know, for, I mean, the
12 ten months it took to get in the courtroom. I
13 mean, it was very good back and forth. The
14 relationship, there was no animosity. I mean, it
15 went pretty smooth, quite honestly.

16 **Q** Okay. How did -- once those discussions got
17 involved and looked like it was leaning towards a
18 plea as opposed to a trial, how did the leaving the
19 scene of the accident and the DUI second that was
20 still pending, how did that play in the
21 negotiations that you presented to Ms. Browder as
22 the way the State was looking at those cases?

23 **A** Well, the first time I had heard there being
24 an issue with leaving the scene is when we began
25 talking about this hearing. Those particular types

1 of cases -- I mean, not that any one case is any
2 more deserving than the other, because in my case
3 somebody or some persons have always,
4 unfortunately, passed away. So all of those are
5 under the microscope, everyone is looking.

6 In a case like that where two offenses would
7 carry the same sentence, 25 years each, the pending
8 DUI second, I think at the time -- I mean, I don't
9 remember what it was -- it was still, I think, in a
10 lower level court. That would have been brought up
11 as a part of our package just to give him a line of
12 demarcation. This is where it ends, and this is
13 where this next section of my life begins.

14 Otherwise, I mean, he is looking at 50 years,
15 and then get out and have to worry about the
16 six-month DUI. So we did it all in a package to
17 try to clean up the trail left behind.

18 The leaving the scene, it was never going to
19 just go away. That was something I know that they
20 had asked for, and they asked for a number of
21 things. My personal position as a prosecutor
22 was -- I always treated that like the attorneys do
23 in the private sector. I would take their offer to
24 the victim, kind of give them the pros and the cons
25 of what that particular offer may bring, what it

1 would cost, what the benefits are, and not put it
2 on them. I mean, I wouldn't want to put the weight
3 of that decision on them, but definitely give them
4 some input. Because, you know, victims react
5 differently in those types of circumstances and
6 situations. Some don't want to be here
7 four-and-a-half hours, and the others are ready to
8 camp out for the next six years because they don't
9 care.

10 So once we get that feedback, that is how I
11 would move forward. I mean, what Ms. Browder asked
12 for on behalf of her client, like any other ask, I
13 will ask the family and, you know, we'll see. It
14 was a no. It was a no. And then I think, if I
15 correctly recall, that would be the point where the
16 discussion of not opposing a concurrent or pleading
17 to Alford in exchange, you know.

18 But I never -- I don't think I -- I didn't
19 have any intention of dropping either charge, but a
20 further benefit was just me not saying anything
21 about the sentence, good or bad. The State didn't.
22 The victims and the highway patrol, I mean, they of
23 course did. I figured they would, but our position
24 was put it on the judge's desk.

25 Q And in talking about that, were you aware

1 that the victims were going to separately ask for
2 the maximum sentence, and the highway patrol was
3 going to come in and ask for the maximum sentence
4 on those cases?

5 **A** Was I aware beforehand? I'm sure I wasn't
6 aware that -- well, it was Lieutenant Shelton. He
7 was kind of our court liaison. Sometimes he would
8 get up and speak on behalf of the highway patrol.
9 I'm not sure that I knew he was going to ask for
10 the max. I mean, my position would have been to
11 Ms. Browder -- or any other attorney -- that I
12 don't know what they are going to say. I'm not
13 telling them what to say. I mean, they are just
14 going to -- it's out there. Whatever they say is a
15 surprise. I don't steer them or guide them, I
16 mean, in any of the cases. I would have made a
17 recommendation. It would already have been at
18 least given the stamp of approval by them, is the
19 only time I would even discuss it.

20 **Q** Were you aware that Ms. Browder was going to
21 ask or request a sentence of two to five years?

22 **A** I wasn't going to be opposed to anything she
23 had asked the judge for. I just wasn't
24 recommending anything. And, usually, that is just
25 -- whenever a prosecutor places a recommendation,

1 it's just, you know, a signal to the entire planet
2 that we really discussed this, it is a nice, middle
3 ground place to land. Sometimes the judge takes it
4 into consideration, and sometimes they say I don't
5 care what you say. At any point in time, he or she
6 could do whatever they want to, regardless of the
7 recommendation.

8 Q Okay. But you hadn't agreed to a two- to
9 five-year sentence or a two- to ten-year sentence,
10 or anything else, in any discussion you had with
11 her; is that correct?

12 A No. I mean, I took -- I mean, I took --
13 asked the victim, and it was just an adamant "no."
14 It wasn't "tell me more." I felt that we had a
15 very strong basis to make that case, and I
16 understand that Mr. Stafford would disagree with
17 those facts. But our facts -- I was confident we
18 could convict him, and he was looking at 50 years.
19 So when he got 17 with good time, even though it's
20 violent, I mean, he is still getting less on one
21 than he could on both of them. I feel confident we
22 would have won that trial.

23 MR. ZELENKA: Okay. I have no further
24 questions. Please answer any Mr. Grose may have.

25 THE WITNESS: Yes, sir.

CROSS EXAMINATION

BY MR. GROSE:

Q You testified that the leaving the scene of the accident was never going to go away?

A Most likely, it was not. The victims were never going to say, yes, you can dismiss it. I was -- I was that confident in that not occurring.

Now, if they would have said, yeah, that's great, we don't mind, then we'll see.

Q Well, did you ever convey that to Ms. Browder, that leaving the scene was never going to go away?

A I mean, is that's not the case. If the victims would have said, yes, if that means we do not have to come back to court and relive this over and over and over, please do dismiss the leaving the scene, I would have complied with that request from the victim.

That was a -- I'll present it to them, and I'll let you know. It was probably like other offers that I had presented. I'll offer it to you. I won't hide an offer. I'll let you know what it is they are asking.

Q And that's -- and I appreciate that. I

1 really do. What I'm trying to just pin down -- to
2 make sure that we all understand -- was, you know,
3 it appears -- I don't want to get into an argument.
4 I'm not trying to do that. But we've had some
5 testimony that there was an understanding that
6 leaving the scene was going to be dismissed until
7 the day before the plea. And your name -- you are
8 not on any of those correspondence, and so I'm not
9 attributing that to you, necessarily. What I'm
10 trying to get an understanding of is what you were
11 conveying to Ms. Browder in August when some of
12 these e-mails were going back and forth?

13 **A** I understand. I mean, I heard the content
14 and context of some of those e-mails. The way that
15 was described -- the only way I could reconcile,
16 you know, what I'm telling you versus what they are
17 telling you the e-mail said from Ms. Browder, was
18 there was perhaps -- there was -- and this is pure
19 conjecture. I mean, if you will let me explain,
20 because I'm trying to draw that line, too. How are
21 we -- because there is definitely two sides of
22 that.

23 My guess is that us, being attorneys and one
24 of caution, just laid open the gate on the possible
25 outcomes of what could happen here, because there

1 was a number of things that could happen here. It
2 just very well could be the highlights of one of
3 the possibilities maybe seemed to sink in a little
4 bit deeper as a possibility maybe than a hope. I'm
5 sure I would feel the same way if it was my son or
6 my daughter, and I would hope that that's what I
7 would get.

8 Q And I appreciate that and respect that
9 answer.

10 Did you -- am I correct in understanding that
11 you never conveyed to Ms. Browder --

12 A It was never a formal offer --

13 Q Did you convey that in any way?

14 A It was never a formal offer. Only in the
15 extent that prior to talking to the family --
16 because we had everybody there. I will bring it to
17 them, let's see. All of that happened within 10,
18 15, 20, 30 minutes that day. And the plea was that
19 day probably because it was a term of court, and we
20 would have started the trial had he not accepted
21 the plea.

22 So, at that point, you know, with the
23 11th hour, you know, he's at the 11th hour, the
24 family is at the 11th hour, everybody is. It's
25 just time to come together on this. Now is the

1 time to play the hand that we're dealt. That is
2 when that was taken to them. I give them the pros
3 and cons again of dismissing it. They tell me
4 their answer. I relay the answer.

5 But there was never an offer. There was
6 never an offer, because I hadn't even spoken to the
7 family about leaving the scene at that point. I
8 mean, I'm not -- I'm sure it came up in the
9 discussion. I was just fairly confident that that
10 might not be how the case ended, you know, a year
11 earlier.

12 **Q** All right. Did -- was there a meeting in
13 chambers with the judge prior to the plea?

14 **A** Yes. I mean, I recalled the highlights of
15 that with Judge Hood.

16 **Q** What are those highlights?

17 **A** I mean, that would have been exactly the way
18 it went down. I mean, it would have been a plea
19 straight-up, the terms of what we were pleading to,
20 offer, recommendation. On the other flip side of
21 that, you know, non-lawyers are not opposed. And
22 at that point, I would have told them I'm not going
23 to recommend. Whatever she asked for, I'm not
24 opposing. It's just one of those hot-button items
25 that we put in front of a judge, and that's why

1 they make the big bucks and make big decisions like
2 that.

3 Q Was there an understanding between you,
4 Ms. Browder, and Judge Hood that the sentences
5 would be concurrent?

6 A I don't know that that was a specific
7 agreement, but that would have fallen under, you
8 know, the same umbrella. If he wanted to make it
9 concurrent, I wouldn't have been opposed. I
10 wouldn't oppose it.

11 Q All right. I'm about to wrap up. And I
12 understand your agreement with Ms. Browder was --
13 is that the State is going to remain silent on
14 sentencing?

15 A As to the recommendation, yes. And we did
16 not recommend anything.

17 Now, everybody that got up there, I was not
18 in a position to bind any of them, and I would make
19 that very well-known.

20 Q Okay. A lot of people view the highway
21 patrol as part of the state.

22 A And I would agree that they are. In the
23 context of our conversation, it would have been,
24 Are you recommending anything? You know, just
25 having being a prosecutor for so long, I mean,

1 sometimes the judge listens to the law enforcement
2 officer, maybe because he or she has boots on the
3 ground, maybe -- you know, I don't want to say more
4 deference or more intently. It is not something --
5 I'm giving 17 pleas that day of recommendations
6 and, you know, if one officer comes for one case,
7 it probably will get some attention. But we're
8 always very well aware that the victim or law
9 enforcement officers, I just assume that if they
10 are standing up talking, they are going to ask for
11 whatever it is they want. It is not always the
12 max. It's not always the max.

13 I'm not even sure if all of the family
14 members in this particular case -- I don't think
15 all of them asked for the max. It seems like there
16 may have been one. I think was Sergeant Shelton --
17 I believe it was Sergeant Shelton -- just from
18 reviewing of the transcript, that's all I recall.
19 But I would not have reeled that in and say, Don't
20 say anything. Because in my experience, the next
21 day (inaudible) not to talk about stuff. So I just
22 don't get into all of that. You can say whatever
23 you want to say.

24 Q I appreciate that answer.

25 MR. GROSE: That is all I have at this time.

1 MR. ZELENKA: Nothing on redirect.

2 THE COURT: You may step down. Thank you
3 very much.

4 MR. ZELENKA: State has no further witnesses.

5 MR. GROSE: In reply, I would recall
6 Ms. Browder.

7 THE COURT: All right. Still under oath.
8 Come on up.

9 **REPLY EXAMINATION**

10 **BY MR. GROSE:**

11 **Q** Was it ever conveyed to you throughout the
12 case, prior to October with the guilty plea, that
13 leaving the scene of the accident was never going
14 to go away?

15 **A** Not that I can recall, no. I would have to
16 look at my e-mail. Hold on.

17 (A brief pause in the proceedings.)

18 **A** In my e-mail, Exhibit 14, Applicant's 14, it
19 is an e-mail where I'm responding to Mr. Kornmeyer
20 about the hit-and-run. My understanding was when
21 we were originally discussing the plea offer, the
22 leaving the scene was going to be dismissed so his
23 exposure would go from 50 to 25. Rick still needed
24 to talk to the victims to make sure they were okay
25 with that. During Tom's meeting with the girls,

1 Rick and I were talking, and he said the victims
2 refused to want to get rid of the leaving the
3 scene, and if we did the plea, he would have to
4 plea to it. That's when we went into where I said,
5 Well, if he does, it has to be concurrent and
6 Alford.

7 So my understanding was it would potentially
8 go away. He needed to talk to the victims to make
9 sure they were okay with that.

10 Q All right. But that was -- that was -- as
11 far as the meeting with Tom's girls and the
12 conversations with --

13 A Right. But that is what -- prior to that,
14 that is what my understanding had been, and Rick
15 was going to take it to the victims.

16 Q And Applicant's Exhibit No. 12, August
17 14th --

18 A Yes.

19 Q -- is it fair to say that at that time it was
20 your understanding the plea offer was just a one
21 charge of felony DUI death?

22 A Yes.

23 Q And Applicant's Exhibit No. 13,
24 August 20th, same understanding?

25 A Correct.

1 **Q** I mean -- and if I understand your testimony
2 from earlier, it was your understanding after the
3 in-chambers meeting that it was an understanding
4 with the judge that the charges would be
5 concurrent?

6 **A** Correct.

7 **Q** All right. When was the first time that you
8 heard that the prosecutor didn't have that same
9 understanding?

10 **A** Just now.

11 **Q** Okay --

12 **A** Although, I would say he said -- he wasn't
13 opposing anything that we were asking for when it
14 came to that.

15 **Q** So that's not necessarily an agreement for it
16 to be concurrent?

17 **A** I can't remember exactly how it went in
18 chambers, but it was our understanding that it was
19 going to be concurrent.

20 **Q** And was it your understanding that the State
21 was going to be silent on sentencing?

22 **A** Yes. And Judge Hood even asked in chambers
23 What is your position going to be on the record,
24 and he said, I'm going to remain silent.

25 **Q** But then the highway patrol asked for the

1 max?

2 **A** I can't remember what they asked for, but I
3 remember they spoke, yes.

4 **Q** And so they weren't silent on sentencing?

5 **A** The highway patrol was not, no.

6 **Q** And, at that point, you didn't move to
7 withdraw the guilty plea?

8 **A** No.

9 MR. GROSE: That is all I have.

10 **REPLY CROSS EXAMINATION**

11 **BY MR. ZELENKA:**

12 **Q** Just a couple of questions. Did you consider
13 when the victims and highway patrol spoke, that
14 that was some, sort of, a breach of your agreement
15 with the State?

16 **A** No. I assumed the victim's family would be
17 asking for the max. I mean, it happens all the
18 time in pleas where the State remains silent, but
19 you know the victim is going to say something else.

20 **Q** So you didn't think you had anything to move
21 to withdraw?

22 **A** No.

23 **Q** Up until the day before the plea, was it your
24 opinion that you had a firm plea offer from the
25 State at that time?

1 **A** I can't remember if it was in writing or not,
2 but my understanding was that it was going to be
3 just to the felony DUI death, and then at the
4 meeting the day before is when he told me the
5 victims wouldn't agree to it.

6 MR. ZELENKA: All right. No further
7 questions.

8 **EXAMINATION**

9 **BY THE COURT:**

10 **Q** Had you moved to withdraw the plea, and had
11 it been granted, the case was going to be up for
12 trial that week?

13 **A** I can't remember if it was that week or the
14 next week, but it was up immediately.

15 THE COURT: All right. Thank you.

16 Anything else?

17 MR. GROSE: Not as far as witnesses are
18 concerned.

19 THE COURT: Anything you want to tell me,
20 briefly?

21 MR. GROSE: Well, the first thing I want to
22 do is -- is pursuant to Rules of Civil Procedure,
23 move to conform evidence, which would now include
24 the fact of what we learned today that there was a
25 plea negotiation that the State would remain silent

1 on sentencing, and they didn't, and the trial
2 counsel was ineffective for not moving to withdraw
3 the plea at that point.

4 I would request an opportunity to submit
5 post-hearing memorandum.

6 MR. ZELENKA: No objection to that.

7 THE COURT: Okay. All right. Very good.
8 Granted.

9 MR. ZELENKA: I would like 30 days to respond
10 to their pleading.

11 THE COURT: How many?

12 MR. ZELENKA: 30.

13 THE COURT: 30?

14 MR. ZELENKA: 15?

15 THE COURT: How long is it going to take you
16 to -- five?

17 MR. GROSE: I can probably get it to you by
18 the end of next week.

19 THE COURT: All right. You got --

20 MR. ZELENKA: A week then?

21 THE COURT: A week is fine. That would be
22 great.

23 MR. GROSE: And on my motion to conform
24 evidence --

25 THE COURT: I don't think you object to that?

1 MR. ZELENKA: No, I don't object.

2 THE COURT: Okay. All right.

3 MR. GROSE: All right. Thank you.

4 (Whereupon, the audio of the proceedings
5 concluded.)

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CERTIFICATE OF TRANSCRIBER

Case Name: Thomas Stafford v. State of SC

Case No.: 2015-CP-32-01888

Date of Hearing: June 22, 2024

* * * * *

I, Natalie Dahl, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; **that said proceedings were transcribed to the best of my ability from the audio recording.**

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

Natalie Dahl, RPR

Natalie Dahl, Registered Professional
Reporter and transcriber for the State of
South Carolina

Affidavit of Donna Schwartz-Watts, M.D.

1. I, Donna Marie Schwartz-Watts am a physician licensed to practice medicine in the State of South Carolina.
2. I examined Thomas Stafford at the Lexington County Detention Center on 1/13/13.
3. He reports a history of seizure type activity one year prior to his present offense.
4. He reports a history of memory loss for past and recent events.
5. On mental status examination, he had deficits when reproducing a visual design.
6. He performed poorly on a test of verbal fluency.
7. He exhibited confabulation on a test of short term memory.
8. On an examination of his extraocular eye movements, he had nystagmus.
9. The above findings are consistent with cognitive dysfunction.
10. It is my opinion to a reasonable degree of medical certainty that Mr. Stafford needs neuropsychological testing.
11. It is also my opinion to a reasonable degree of medical certainty that Mr. Stafford needs to be evaluated by a neurologist and to have an electroencephalogram to rule out an underlying seizure disorder.

Donna Schwartz-Watts, M.D.



Psychiatric Evaluation

Name: Thomas Stafford

Date of Evaluation: 07/14/2017

Date of Report: 2/11/18

Place of Evaluation: Kirkland Correctional Institute

Evaluator: Donna Schwartz Maddox, M.D.

Identifying Information:

Thomas Stafford is a 43-year-old (43) male evaluated pursuant to a request from his post-conviction relief attorney, Charles Grose. Mr. Stafford had previously been examined by the undersigned for his pre-trial evaluation. Mr. Stafford has been confined for four (4) years at Kirkland Correctional Institute.

Reason for Evaluation:

During his prior evaluation, Mr. Stafford was felt to have neurological impairment which contributed to his charges. The undersigned was not called to testify during his proceedings. Psychiatric evaluation was requested by his present attorney.

Sources of Information:

-Neurology report, June 19th 2017 by Dr. Pritchard.

Lexington County Detention Center Records 11/19/12-

Coordination of care Form 8/1/12 Crossroads Treatment Center (10/24/11, methadone 120, Klonopin 1 mid, Vybrid 40)

Arrest warrant Hit and Run resulting in Death 12/3/12

Arrest Warrant DUI resulting in death 12/3/12

Incident report 12/3/12

10 year Driver record

SLED laboratory tests

RAP sheet

Medication Administration records Crossroads Treatment

History and Physical 10/22/12 Crossroads

Email Lisa Kornmeyer to Anna Browder 1/24/13

Pertinent History:

Mr. Stafford reports that he has been confined for four (4) years at the Kirkland Correctional Institute. He reports that he has visits from his mother. He reports that he also has two (2) children whom he keeps in contact with; a fourteen-year-old (14) and his twenty-year-old (20). He reports that his oldest child lives in Gilbert. and his youngest, Leah lives in West Columbia, in his former home.

He reports that he has lower back pain and that he had taken a hundred (100) milligrams of Elavil® and thirty (30) milligrams of Remeron® which “knocked it out.” He reports that he has not taken medications since he was at Lexington County three (3) years prior to his incarceration. He reports that he works presently in maintenance and he has one (1) roommate.

Mr. Stafford reported that he was sentenced to seventeen (17) years. He reported that his attorney told him that he would receive five (5) to nine (9) years. He reported that he understood the victim’s family only wanted him to serve five (5) to nine (9) years.

Regarding his original offense, he reports that he had never taken pills; that he had taken back medications in the past but prior to his accident had told his doctor he did not want his medications anymore. He had a history of taking Klonopin®. He reported that he had been on Methadone® 145 milligrams, but that he had not been on any medications at the time of his offense. The arrest warrant and incident report indicated Mr. Stafford told authorities he was prescribed methadone.

Personally, he was born in Long Island, New York. He moved to Clearwater, Florida when he was four (4) years old. In an email to Anna Browder, his mother reported that she and Tom lived in a commune called Stonegate from ages 1.5 to two years. He reports that his mother first married Bill. He reported that Bill beat his mother. He reported that Bill would come into his room and attempt to sexually molest him. He reported that Bill took a shower in front of him and encouraged him to touch him. He reported that his mother was married three (3) years to Bill and that their marriage ended after Bill tried to sodomize him.

He reported that his mother has been married five (5) times. He reported that his mother’s next marriage was “the best guy she had been married to.” He reported his name was Michael Forrest. Mr. Stafford reported they were married for two (2) years.

He reported that in addition to his mother being married five (5) times, he went to nineteen (19) different schools and had a very disruptive childhood. He reported some of the abuse he was exposed to included Bill pulling down his pants and beating him with a belt. He reported that his mother’s third marriage, John, was “the worst abuser of all.” He reports that he doesn’t remember many aspects of

the physical abuse from John from ages ten (10) to twelve (12). He reports that he had been pushed down on numerous occasions.

He reports his mother's next relationship was with Mark Rustin and this is whom he refers to as his father. He states they were together from his ages of twelve (12) to twenty-eight (28). He reported that Mark was a good person, cut his hair, taught him about working, and his overall values.

He reports his mother is presently married to Michael Williams, and they have been together for three (3) or four (4) years. He stated that he uses her. He quit his job because his mother was working at Estée Lauder.

He reports he moved to South Carolina when he was twelve (12) years old. He lived in St. Andrews; attended Lexington Middle School, Pelion High School and Lexington High School. He also reports that he went to Florida for a period of time. He reports he received his GED at Wil Lou Gray. He reports some of the schools that he attended included Ponce de León. He reports that he failed both second and fifth grade for too many absences.

He reported his father had a history of Opiate addiction. He reports his mother has anxiety. In an email to Anna Browder, Ms. Kornmeyer reported her mother suffered from anxiety and depression. She reported her sister had ECT. She has a niece with Multiple Sclerosis. His mother reported that Tom's daughter has an Autism Spectrum Disorder.

He reported one significant relationship. He stated they dated five (5) years, and her name was Theresa. He reported a relationship with his daughter's mother. He reports that they were together "off and on" for eight years.

He denied any preexisting medical or psychiatric history. He does admit to a history of substance abuse. He admitted using Opiates, specifically Morphine which were prescribed by Dr. Dunn. He reported he hurt his back while working construction and had Lumbar and Cervical spine problems. He reported that his right leg had been numb for periods of time. He reported he would take up to thirty (30) Opanas®. He stated he finally had told his doctor he didn't want pain medications anymore. He also reported that he would take Klonopin®. He reported he ended up going to the Methadone Clinic and took it as prescribed. He reported he was given a big dose of Klonopin®. He also reported in the past he was able to drink up to a case of beer a day. Review of the Continuum of care Form from Crossroads indicates Mr. Stafford was prescribed methadone 120mg daily, Klonopin 1mg twice daily and Vibryd 40 mg daily for anxiety and depression. Review of his jail records indicate he was prescribed the antidepressant Remeron.

A History and physical examination from Crossroads indicates he reported drinking a case of beer daily for fifteen years but stopped in October 2011. He also indicated past use of cocaine, amphetamines and marijuana.

He reported a previous DUI where a motorist saw him swerve and called 911. He reported he had driven another five (5) miles, went into his home and the police were there waiting for him. He was

charged with a DUI. He reported two (2) weeks later, October 3, 2012 as he was going over the bridge, he could see the truck of the worker who was killed. He reported he did not think that the truck of the victim had any lights on. He reported that he was locked up. He reported he remembered rolling in the grass and swerving in the middle of the road. He reported on that day he had been to the clinic at five-thirty or six in the morning, then he had to work from one to one-thirty. He had taken a light lunch. He reported he had taken one (1) Klonopin, which had been prescribed by Dr. Dunn. He reported he was not using drugs and he had just been working hard and does not have an explanation for his accident.

He does report a history of head injury with a loss of consciousness. He did report being involved in an accident when he was fourteen (14) years of age. He reported that he rolled and flipped a car. He reports that he has difficulty remembering things. He reports he has a lot of difficulty remembering his childhood. He reports he has difficulty remembering trauma. He does report flashbacks of his offense. He reports that he blames himself. He does remember having bad memories of some childhood events. He denied any history of suicide attempts; he said he would never do such a thing because of his children. He denies that he's ever hurt anyone else.

He had a DUI in 2008. he had prior arrests for possession of cocaine and driving under suspension.

Mental Status Examination:

He was alert and oriented to the date. He was able to reproduce a visual design without difficulty. He was able to register three (3) items. He demonstrated adequate concentration on a serial seven test. He was able to abstract similarities between objects. He did perform below average on a test of verbal fluency. He did have some confabulation when recalling the three (3) items and he also required a forced choice. He only recalled one (1) of three (3) items after five (5) minutes. When asked for three (3) wishes, he said: "to be in a big house with my kids, go back and not have had this happen", and he didn't give a third wish.

Results of testing:

He was evaluated by Dr. Pritchard and found to have some difficulty with delayed recall. Dr. Pritchard noted his amnesia and cognitive examination abnormalities could be explained by nonconvulsive seizures. The report of his EEG is pending.

Diagnoses:

Post Traumatic Stress Disorder

Opiate Use Disorder, In a Controlled Environment

Opinions:

1. Mr. Stafford has a family history of substance abuse and anxiety disorders.
2. Mr. Stafford was under medical care at the time of his accident.
3. He has a trauma and other stressor related disorder secondary to being the victim of sexual and physical abuse by his stepfathers.
4. Mr. Stafford has a history of closed head injury, and an abnormal cognitive examination.

Donna Schwartz Maddox, MD

Consulting Forensic Psychiatrist

Psychiatric Evaluation

Name: Thomas Stafford

Date of Birth: [REDACTED]

Dates of Evaluation: 1/13/13, 7/14/17, 9/21/18, 6/11/19

Date of Report: 2/11/18

Date of Addendum: 4/7/22

Place of Evaluation: Kirkland Correctional Institute, Tyger River

Evaluator: Donna Schwartz Maddox, M.D.

Identifying Information:

Thomas Stafford is a 48-year-old (48) male evaluated pursuant to a request from his post-conviction relief attorney, Charles Grose. Mr. Stafford had previously been examined by the undersigned for his pre-trial evaluation in 2012. Mr. Stafford was sentenced to 17 years for a Felony DUI resulting in Death and a Hit and Run Resulting in Death which occurred in Lexington County on 12/3/12. Since his conviction, I saw him two times at Kirkland Correctional Institution and once at Tyger River.

Reason for Evaluation:

During his prior evaluation, Mr. Stafford was felt to have neurological impairment which contributed to his charges. The undersigned was not called to testify during his proceedings. Psychiatric evaluation was requested by his present attorney.

Sources of Information:

-Neurology report, June 19th 2017 by Dr. Pritchard.

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10 year Driver record

SLED laboratory tests

RAP sheet

Medication Administration records Crossroads Treatment

History and Physical 10/22/12 Crossroads

Email Lisa Kornmeyer to Anna Browder 1/24/13

Neuropsychological Testing Tora Brawley, Ph.D. 6/24/19

Pertinent History:

Mr. Stafford reports that he has been confined for four (4) years at the Kirkland Correctional Institute. He reports that he has visits from his mother. He reports that he also has two (2) children whom he keeps in contact with; a fourteen-year-old (14) and his twenty-year-old (20). He reports that his oldest child lives in Gilbert. and his youngest, Leah lives in West Columbia, in his former home. He was seen again at Kirkland on 9/21/18 after his mother reported he decompensated. He was evaluated and transferred to Tyger River which improved his mental status when I examined him again on 6/11/19. Neuropsychological testing was conducted afterwards once his mental status returned to its baseline.

During his evaluation in 2017, he reported that he had lower back pain and that he had taken a hundred (100) milligrams of Elavil® and thirty (30) milligrams of Remeron® which “knocked it out.” He reports that he has not taken medications since he was at Lexington County three (3) years prior to his incarceration. He reports that he works presently in maintenance and he has one (1) roommate. During his most recent evaluation, he reported he ‘weaned’ himself from his Remeron so that he could transfer to a Level 1 Institution.

Mr. Stafford reported that he was sentenced to seventeen (17) years. He reported that his attorney told him that he would receive five (5) to nine (9) years. He reported that he understood the victim’s family only wanted him to serve five (5) to nine (9) years.

Regarding his original offense, he reports that he had never taken pills and that he had returned medications in the past. He stated that prior to his accident, he had told his doctor he did not want his medications anymore. He had a history of taking Klonopin®. He reported that he had been on Methadone® 145 milligrams, but that he had not been on any medications at the time of his offense. The arrest warrant and incident report indicated Mr. Stafford told authorities he was prescribed methadone. Both his methadone and Klonopin were prescribed. His Klonopin was taken in doses larger than prescribed.

Personally, he was born in Long Island, New York. He moved to Clearwater, Florida when he was four (4) years old. In an email to Anna Browder, his mother reported that she and Tom lived in a commune called Stonegate from ages 1.5 to two years. He reports that his mother first married Bill. He reported

that Bill beat his mother. He reported that Bill would come into his room and attempt to sexually molest him. He reported that Bill took a shower in front of him and encouraged him to touch him. He reported that his mother was married three (3) years to Bill and that their marriage ended after Bill tried to sodomize him.

He reported that his mother has been married five (5) times. He reported that his mother's next marriage was "the best guy she had been married to." He reported his name was Michael Forrest. Mr. Stafford reported they were married for two (2) years.

He reported that in addition to his mother being married five (5) times, he went to nineteen (19) different schools and had a very disruptive childhood. He reported some of the abuse he was exposed to included Bill pulling down his pants and beating him with a belt. He reported that his mother's third marriage, John, was "the worst abuser of all." He reports that he doesn't remember many aspects of the physical abuse from John from ages ten (10) to twelve (12). He reports that he had been pushed down on numerous occasions.

He reports his mother's next relationship was with Mark Rustin and this is whom he refers to as his father. He states they were together from his ages of twelve (12) to twenty-eight (28). He reported that Mark was a good person, cut his hair, taught him about working, and his overall values.

He reports his mother is presently married to Michael Williams, and they have been together for three (3) or four (4) years. He stated that he uses her. He quit his job because his mother was working at Estée Lauder.

He reports he moved to South Carolina when he was twelve (12) years old. He lived in St. Andrews; attended Lexington Middle School, Pelion High School and Lexington High School. He also reports that he went to Florida for a period of time. He reports he received his GED at Wil Lou Gray. He reports some of the schools that he attended included Ponce de León. He reports that he failed both second and fifth grade for too many absences.

He reported his father had a history of Opiate addiction. He reports his mother has anxiety. In an email to Anna Browder, Ms. Kornmeyer reported her mother suffered from anxiety and depression. She reported her sister had ECT. She has a niece with Multiple Sclerosis. His mother reported that Tom's daughter has an Autism Spectrum Disorder.

He reported one significant relationship. He stated they dated five (5) years, and her name was Theresa. He reported a relationship with his daughter's mother. He reports that they were together "off and on" for eight years.

He denied any preexisting medical or psychiatric history. He does admit to a history of substance abuse. He admitted using Opiates, specifically Morphine which were prescribed by Dr. Dunn. He reported he hurt his back while working construction and had Lumbar and Cervical spine problems. He reported that his right leg had been numb for periods of time. He reported he would take up to thirty (30) Opanas®. He stated he finally had told his doctor he didn't want pain medications anymore. He also reported that

he would take Klonopin®. He reported he ended up going to the Methadone Clinic and took it as prescribed. He reported he was given a big dose of Klonopin®. He also reported in the past he was able to drink up to a case of beer a day. Review of the Continuum of care Form from Crossroads indicates Mr. Stafford was prescribed methadone 120mg daily, Klonopin 1mg twice daily and Vibrid 40 mg daily for anxiety and depression. Review of his jail records indicate he was prescribed the antidepressant Remeron.

A History and physical examination from Crossroads indicates he reported drinking a case of beer daily for fifteen years but stopped in October 2011. He also indicated past use of cocaine, amphetamines and marijuana.

He reported a previous DUI where a motorist saw him swerve and called 911. He reported he had driven another five (5) miles, went into his home and the police were there waiting for him. He was charged with a DUI. He reported two (2) weeks later, October 3, 2012 as he was going over the bridge, he could see the truck of the worker who was killed. He reported he did not think that the truck of the victim had any lights on. He reported that he was locked up. He reported he remembered rolling in the grass and swerving in the middle of the road. He reported on that day he had been to the clinic at five-thirty or six in the morning, then he had to work from one to one-thirty. He had taken a light lunch. He reported he had taken one (1) Klonopin, which had been prescribed by Dr. Dunn. He reported he was not using drugs and he had just been working hard and does not have an explanation for his accident.

He does report a history of head injury with a loss of consciousness. He did report being involved in an accident when he was fourteen (14) years of age. He reported that he rolled and flipped a car. He reports that he has difficulty remembering things. He reports he has a lot of difficulty remembering his childhood. He reports he has difficulty remembering trauma. He does report flashbacks of his offense. He reports that he blames himself. He does remember having bad memories of some childhood events. He denied any history of suicide attempts; he said he would never do such a thing because of his children. He denies that he's ever hurt anyone else.

He had a DUI in 2008. he had prior arrests for possession of cocaine and driving under suspension.

Mental Status Examination:

He was alert and oriented to the date. He was able to reproduce a visual design without difficulty. He was able to register three (3) items. He demonstrated adequate concentration on a serial seven test. He was able to abstract similarities between objects. He did perform below average on a test of verbal fluency. He did have some confabulation when recalling the three (3) items and he also required a forced choice. He only recalled one (1) of three (3) items after five (5) minutes. When asked for three (3) wishes, he said: "to be in a big house with my kids, go back and not have had this happen", and he didn't give a third wish.

Results of testing:

He was evaluated by Dr. Pritchard and found to have some difficulty with delayed recall. Dr. Pritchard noted his amnesia and cognitive examination abnormalities could be explained by nonconvulsive seizures. The report of his EEG is pending.

He had neuropsychological testing with Dr. Brawley on 6/24/19. Contrary to his performance in 2013, he gave a good effort and did not attempt to exaggerate or malingering cognitive deficits. He exhibited deficits in areas of immediate verbal learning (4%), Immediate verbal learning for prose (1%) and delayed memory for prose (1%). His visual memory was excellent at 67%. He also had deficits in speed of mental tracking (7%), manual speed of right hand (6%) and manual dexterity of his right hand (7%).

Diagnoses:

Post Traumatic Stress Disorder

Opiate Use Disorder, In a Controlled Environment

Unspecified Neurocognitive Disorder

Opinions:

1. Mr. Stafford has a family history of substance abuse and anxiety disorders.
2. Mr. Stafford was under medical care at the time of his accident.
3. He has a trauma and other stressor related disorder secondary to being the victim of sexual and physical abuse by his stepfathers.
4. Mr. Stafford has a history of closed head injury, and an abnormal cognitive examination. His testing showed that he had impairment in memory and motor testing. He reported to the undersigned he had periods of memory loss which are supported by his history of abuse and formal testing.

Donna Schwartz Maddox, MD

Consulting Forensic Psychiatrist

From: anna@annagoodlaw.com
 Subject: Tom Stafford
 Date: January 3, 2013 at 7:20 PM
 To: Jim Kommeyer jimmkormeyer@gmail.com, lisa kommeyer lisa.lpkommeyer@gmail.com

Hey Lisa and Jim--

I wanted to touch base with you and update you on the case and answer some questions you have asked.

1. I have attached the letter regarding Tom being incarcerated for the car insurance. You will see in the letter that I stated I attached an article from the media documenting his arrest and the fact his bond was denied. You will need to print that article out and attach it to the letter. The link for the article is <http://www.wltx.com/news/article/211278/2/Man-Charged-with-Felony-DUI-in-SCDOT-Workers-Death->

It does not include a printout from the jail. I spoke with the front desk and they had nothing they could print out. So, they sent me to the Sheriff's Department to get documentation. I went to the records department and they told me all they could give me was his booking sheet (which would do us no good because it just shows he was arrested, not that he is still incarcerated). They of course then told me I needed to speak with someone at the jail. They gave me the name and number of one of the sergeants there. So, long story short, if the letter I sent doesn't work, please let me know and I can try to track this Sergeant Taylor down and see if she can help me get some sort of documentation from the jail about his incarceration.

2. I spoke with Tom today and we have decided to try to get him moved now *if possible*. I did speak with Nurse Starks in medical and she informed me that mental health prescribed him Remeron for medication. Since medical and mental health are separate entities at the jail, she gave me Mental Health's number to find out exactly why they prescribed this and what is going on regarding them signing off on his mental status, as medical doesn't deal with this. I left a message this morning for Mental Health, but they haven't called me back. Nurse Starks knew they hadn't called me back as of 11:30 because I spoke to her for a second time around then and she informed me she would tell them when she saw them to call me back and took my number also to give them. I can only hope they call me back in the morning. If they don't, I will call again tomorrow afternoon.

3. I also spoke with Tom regarding obtaining a private medical professional to evaluate him to help further our legal case, and at the very least, hopefully try to give him some other type of opinion that the jail can use to make sure he is being medicated correctly and for the right thing. He agreed to this and was fine with the process. He is aware he can speak to the doctor we use about anything and it will stay privileged since the doctor falls under attorney client privilege unless we decide to use him/her for testimony at a trial or for mitigation during a plea/sentencing.

4. As for the actual medical professional and the process, because I know Lisa you have questions about this. As I mentioned before, I think Donna Schwartz-Watts would be the best for us (as described in the previous email about her). If you decide to hire her to do the private evaluation, then she will get with me to get any background on Tom (medical and otherwise), any medical records I have for him, facts of the legal case, and any other information she deems necessary to give her background before meeting with Tom. So, all the medical records I have and any emails you have sent Lisa regarding the sexual abuse in his past would be given to Dr. Schwartz-Watts to give her a full picture of Tom before going in to meet with him. So, if you want to go through with hiring her to do the evaluation, please let me know so I can go ahead and get that set up as quickly as we can.

I hope I have answered all of your questions for now. Please let me know if there is anything I missed or anything else you want to know.

Anna

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Subject: Toms story

From: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>

Date: Fri, Jan 04, 2013 11:03 am

To: anna@annagoodlaw.com

Cc: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>

Sent from my iPad

Begin forwarded message:

From: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>
Date: January 4, 2013, 8:15:02 AM EST
To: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>
Subject: Fwd: Toms story

I wanted to share some details to Tom's life. I hope he opens up and can trust enough to talk.

He was born when I was sixteen, his dad left us and I raise him without any financial support from my family or his dad. I worked full time and went to school to better myself - Tom went to daycare and after school care.

The first recall of sexual abuse was with Bill who I was involved with when Tom was about 7 maybe 8 maybe younger when I look at pictures. He would go onto Toms room and get into his bed and ask him to "do things" to him.

Bill (solomon) was also a drug user and I recall a time that I found him in the bathroom with a needle in his arm. I don't know if Tom was introduced to drugs from Bill at this time but I can only assume the worse. I don't know how long Tom suffered the abuse from bill, but I was with him about a yr and 1/2 maybe.

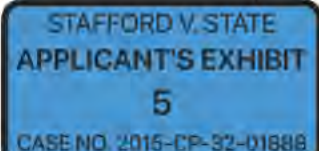
I took my son and we left when I became aware of the drug use- I never knew of the abuse at that time only the drug use which was enough for me to leave.

The next time I recall his abuse was with Richard (Sasser) Tom was a bit older, maybe 10. I worked during the day and Richard watched Tom and a neighbor's daughter, Bree.

He was getting SS benefits from a injury from the military. Richard appeared normal by all accounts until things began to change. I discovered he was a paranoid schizophrenic as per his military papers. Tom suffered abuse in many ways, however I did not know at that time as Tom never spoke of it. Later in life when he did, he told me Richard smoked pot, ranted and raved about demons and took him on car rides to cemeteries and made him "do things". Richard would give them "stuff" that made them sleepy. I recall a time Tom, Bree and Richard came home full of dirt and the kids said they buried someone. Toms x wife recalls his nightmares from incident, he would wake up in fear.

I called the police in Clearwater florida about what the kids told us, they took richard to the VA hospital and he committed suicide a few days later in the hospital, both Tom and Bree were so scared, they could not talk about it and nothing became of case.

At about 12 Tom was again sexual abused, this time by the mother of his best friend. Again I did not know until way later in his life.



I moved to SC to start a life, just me and Tom and moved to Lexington SC - Tom was about 13 or so.

Across the street was a man named Charlie Smith.

He was a bit older, had a nice house and a basement for the neighborhood kids to come. It was finally discovered that abuse was going on.

Charlie would take pictures of the boys, have them perform sex acts and other things and introduced them to drugs. When I finally found out about this and to my shock, he was a know child molester. I tried to get the police and others to help but was told with out the testimony of the boys we would have no case. I had photos but they were not of their private parts, but they were sexual in nature. Toms friend Shane was also a victim and the family moved away.

Tom's dad contacted us at this time. Tom wanted to go see him and I thought it might be a good idea. That was another mistake, apparently toms dad was a drug user also and left him in a trailer in Florida by himself for a week - he was home ASAP after that.

I heard of all this when Tom was older, probably 19 or older. He finally agreed to talk to a counselor and his girlfriend then, and his x-wife now took him to the mental health place called Columbia mental health on colonial drive (803) 898 4800, that diagnosed him bi- polar. However it was about 10 yrs ago that he went back so they still may have the records. The meds they gave him was something like Trileptal or tegretol.

He would not speak of it anymore for a while, no one could get through, he suppressed it all. He would tell me he would have dreams about having a penis in his face and many other horrible things. He was taking the meds on and off.

The drug used seemed to deaden the pain I am sure, he used them as a way to deal with his lack of self worth. He hurt himself never others. I knew he smoked pot a bit and when he was arrested for drug possession. He went through treatment and complied with what was asked of him. He doesn't have medical insurance so treatment options were limited. He tried a few and appeared to be ok, but memories returned and so did the nightmares.

At 21 he married and later had a daughter, Marisa who is just about 16 now with a type of Asbergers syndrome. Her disability makes it difficult for her to understand reality as we see it. She attends a special school. She think her dad hung the moon.

He divorced several yrs later but he remains friends with his x wife Theresa.

His second daughter, Leah is soon to be 10 and adores her dad and hasn't dealt with this at all very well. We are having to find a counselor to help her.

He has friends that will write letters about his character and how he would do anything for anyone. He loves his girls, spends time with them, they adore their dad. They are his heart.

When he was injured in an accident in 2006 which was not his fault, it was in a hit and run fashion and the medical report explains his injury to his head and back.

I have the file from the lawyer- (George SInk- who settled the case with a small amount of \$) The injury to his back has been an issue ever since and was given pain pills to ease the pain. I have copies of the prescriptions given.

About 2-3 yrs ago. He called and told me about wanting to get off them and the about the clinic which he was referred to as a means to help and has been going faithfully. The clinic is near shop road - called Crossroads, I think.

He went to see dr Dunn in Columbia for his anxiety also during this time and was given a script for meds but no other treatment for his abuse or other issues. The nightmares have never stopped, nor are the memories fading.

Several months back his girlfriend lost their baby boy after complications during pregnancy and tried to commit suicide. Her family didn't want anything to do with her and he stood by her when they did not. Her grandmother who raised her will write a letter to that fact.

He told me he wished he died in the accident, not the young boy, if it had to be someone. I don't know if he will make it through this after all his has gone through.

Tom, is not the monster the media is saying he is. He doesn't have a malicious bone in his body. He suffers greatly but has never hurt anyone as a result of his suffering. He is a great dad and loves his kids.

Many of his friends would testify to that. I am sure Tom has much more on his mind that has happened that he has never shared.

I can not see how putting him in a hole in a cell, no help, confined 23 hrs, no support, dirty towels, and screaming inmates is going to help him. His nightmares are worse.

I would like to know what green and white pills they gave him when he arrived at jail and filmed him. He told me things they did .The pills they are giving him now are making them worse.

Just take minute a look at his website www.staffordppc.com about his work ethic and reputation. If I think of anything else I will let you know.

Lisa

From: anna@annagoodlaw.com
Subject: RE: A few questions
Date: January 30, 2013 at 10:28 AM
To: lisa.kornmeyer lisa.lpkornmeyer@gmail.com

See below for my responses...(in blue)

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----- Original Message -----

Subject: Re: A few questions

From: lisa.kornmeyer <lisa.lpkornmeyer@gmail.com>

Date: Wed, January 30, 2013 10:16 am

To: "anna@annagoodlaw.com" <anna@annagoodlaw.com>

Don't you think they should have the blood work from the hospital, and other discovery by now so you can know what you will be dealing with. I just a bit confused as to how you go into court Friday without knowing anything. I got a message yesterday from the preliminary hearing court for Friday's felony DUI hearing and the SC Highway Patrol is still investigating the case (I told you it takes them a while) so the hearing for Friday has been continued. It usually takes a while for blood work to come back (several months because SLED has to run the bloodwork and they do it for the entire state so it goes by when it is taken into their system) so I wouldn't necessarily expect it to be back yet but also since the SCHP is still investigating that is why the solicitor's office wouldn't have discovery on the felony DUI yet. I am actually going to speak with the solicitor tomorrow before I go see Tom at the jail. I am hoping he has the DUI 2nd discovery. They should definitely have that one by now.

That is the one I am more concerned with at this point for that preliminary hearing on February 11. The DUI 2nd is what really helps us at the new bond hearing because they based the danger to the community on the fact he had a prior DUI arrest in November.

Can they withhold any info? Or delay it getting to you. I am not required to have the discovery before the preliminary hearing; however, they can't withhold information or delay getting it to me (within reason). If they have it, they are required to send it to me. As stated above, I am seeing Rick Collins tomorrow at the appearance so hopefully he will have some for me.

Seems to me that they want him to stay in jail, perhaps file my innocence of the law

Seems to me that they want him to stay in jail, perhaps it's my ignorance of the law talking.

Can you estimate when you think we might go before bond court again? [I am hoping to go again in March, once we have information on the DUI 2nd offense. That is the really important one for bond in my opinion.](#)

I have his drivers license- they gave it to me with his stuff, they did not ask him to surrender it, I guess because he complied with the test. But if he does bond out, it's suspended right? [I will have to see if they gave him a notice of suspension. It will be in the discovery. In any event, one thing we most likely will say at a bond is he agrees not to drive \(and if they didn't suspend his license, we can say he surrenders it to me and I will hold it, which means he can't drive\). That helps us with the "danger to the community" argument.](#)

Thanks for getting those papers signed, we have filed them and are getting our homeowners insurance so we can get the loan against house.

I will be making my residence in sc.

Thanks again,

Lisa

Sent from my iPad

[See More](#) from anna@annagoodlaw.com

From: [redacted]
 Subject: Tom Stafford
 Date: February 6, 2018 at 8:06 PM
 To: lisa.kornmeyer@gmail.com, Jim Kornmeyer jmkornmeyer@gmail.com

Hey Lisa and Jim--

This email may be long, so bear with me. I have a lot of information since we have some of the discovery now. First off, the preliminary hearing for Monday is no longer going to happen. We received the discovery on the DUI 2nd and it will be bound over for probable cause at the hearing. I have gone over the actual discovery with Tom and he agrees due to the facts and what the officer would testify to so we are waiving the preliminary hearing.

DUI 2ND--HOWEVER, we have a very good argument for getting it dismissed through the court due to a problem with the roadside video. The cop is required to record the roadside stop and tests. The statute is very specific on this and the case law is very specific on this. Under exigent circumstances, a cop can submit an affidavit of why the video wasn't done. In this case, he did, stating his video cassette wasn't working and has since been corrected. That in itself on it's face might be enough, but there is case law that is on our side too. BUT the kicker is, before the field sobriety tests started, another officer from another jurisdiction showed up and was helping with the case, so under the statute, once video taping is available, it must begin immediately. Needless to say, that cop didn't record the roadside. So, in most all cases, the only remedy for this failure to video is dismissal of the case. We are going to do a motion through the court to dismiss the DUI 2nd. We aren't going to do this immediately though. I am going to subpoena the Pine Ridge officer's car's maintenance records. He is required to make reasonable efforts to fix a problem immediately. This way, if he gets up and testifies at the Motion to Dismiss he made reasonable efforts, I have the records to show he didn't if in fact he didn't request to have it fixed soon or it took forever for it to be fixed. It could have been broken for several months and he didn't get it fixed, which doesn't cut it. So, we eventually will get to this motion but we want the cop's records first.

In any event, even if the DUI 2nd gets dismissed, the state can still use it for purposes of the bond based on the facts and argued it was only dismissed because of a technicality, SO, we have decided to go ahead and ask for a bond. We decided it is probably our best bet to go in front of Judge Keesley since Judge McMahon is very law enforcement minded. I will be filing the motion on February 14 and sending it to the Judge and solicitor on February 18. We are required to give them 10 days notice of the motion normally, so that way we will be going for the week of March 4 for the bond, as Judge Keesley is the only judge there that week. If the solicitor tries to push us and go a little bit earlier the week of February 25, then Keesley is also there that week. There are two other judges also which I don't know very well, but one of them is a pretty light sentencer from what I hear, so I assume he will be the same on bond, and I don't know the other one. I am going to specifically request Keesley though since he is the chief administrative judge right now and most likely the solicitor's office will agree.

So, I don't need to know now because I won't put it in the motion, but before the actual bond hearing, I need from you guys to let me know what range you could potentially make for a bond. Keep in mind a bondsman will ask for about 5% from you. I have discussed this with Tom, but I will let you know too, it is always possible a judge could continue to deny the bond based on danger to the community (the number of DUI arrests in the one month span). We are going to try to give the judge a picture of Tom's support system here and the fact he agrees not to drive, to be on house arrest, electronic monitoring, or any other condition the judge sees appropriate for purposes of him getting a bond.

I'm sure you have a tons of questions, so just let me know. I won't even get into the felony

DUI discovery at this point, as I don't have much (I have already requested what I am missing as there is a lot still missing), and what I do have as a lot of issues for trial in it. I watched the roadside on that one and a lot of it should be suppressed in my opinion because the officer obviously puts Tom under arrest immediately, but he never gives him his Miranda rights until 30 minutes into the video so in my opinion, any statements and field sobriety tests done should be suppressed. That is a long ways off though to deal with the discovery on the felony DUI but just wanted to let you know there are a lot of things we can maybe try to do at trial on that one if we decide to go that route.

Finally, I picked up Tom's medical records from the detention center today so that was the last thing I was waiting on for Donna, so I will get them to her in the morning and hopefully she can get us that affidavit soon for the medical tests.

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From: anna@annagoodlaw.com
Subject: RE: A rough draft of what I will say at bond.
Date: April 3, 2013 at 9:03 PM
To: lisa kornmeyer lisa.lpkornmeyer@gmail.com

The Friday after the bond....I have to be in Spartanburg on a case this Friday. I can go ahead and put it on the calendar and if you have to cancel if we don't get a bond, then we can just reschedule. If I don't hold it now though, it will go quick.

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----- Original Message -----

Subject: Re: A rough draft of what I will say at bond.
From: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>
Date: Wed, April 03, 2013 4:43 pm
To: "anna@annagoodlaw.com" <anna@annagoodlaw.com>

The Friday before or after bond?

If its after and he doesn't get a fair bond then I am not sure how we will deal with this and I may not be in any condition.

His girl cried after seeing their dad and I had to pick up the pieces all day.

What happens at bond court will give us a good idea of things to come. We feel hopeless.

Sent from my iPhone

[See More from anna@annagoodlaw.com](#)

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----- Original Message -----

Subject: Re: T. Stafford

From: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>

Date: Mon, August 19, 2013 9:29 pm

To: "anna@annagoodlaw.com" <anna@annagoodlaw.com>

I agree, Hood is our best choice!

The guess Tom would be willing to lose his life then not to try to see his kids. I can't get through to him either. He loves those girls and they need him so much. He was hoping Rick would understand about the kids, he would lock himself in the house, wear a bracelet just for a few months, then do his time.

If only we could try for bond, get him out then plea, life would be bearable for him, but that is a dream I know and I can't seem to get Tom to see that.

We have to try to convince him to do what you think is best. He needs to be told as I am unsure he really understands.

You think we should plea, right?

I am going on a retreat for a few days and I will see him Monday. Hopefully I can get an answer from him then.

Sent from my iPad

On Aug 19, 2013, at 9:05 PM, "anna@annagoodlaw.com" <anna@annagoodlaw.com> wrote:

I explained every possible option to him regarding the case. One of his main questions was if he decided to go the bond route would Rick take back negotiations? I told him I couldn't guarantee anything, but that I thought he probably would. We also went through a lot of the discovery again for him to understand about what our game plan would be if we went to trial.

I told him I could push Kick off a little bit until the September dates if we needed them. Tom just needs to tell me what he wants to do now. I did push Rick off today and he told me that the last week of September he thinks Hood will probably be the trial judge but if Tom could let us know in the next couple of weeks, he can ask to see if we could schedule this special plea in front of Hood instead of having it go in front of Keesley.

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----- Original Message -----

Subject: Re: T. Stafford
From: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>
Date: Mon, August 19, 2013 10:28 am
To: "anna@annagoodlaw.com" <anna@annagoodlaw.com>

I just spoke to Tom, he said you would tell me where we are in this.

He said you would talk to Rick tell us know.

I am not convinced he understands, I though he would agree to plea.
Now I'm concerned.

Sent from my iPad

On Aug 16, 2013, at 8:42 AM, "anna@annagoodlaw.com" <anna@annagoodlaw.com> wrote:

It would be before the 29th or that day. I haven't talked to Rick about the details of that yet since I didn't know if Tom is going to plea or not

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----- Original Message -----

Subject: Re: T. Stafford

From: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>

Date: Thu, August 15, 2013 4:07 pm

To: Anna Good <anna@annagoodlaw.com>

If Tom agrees when would we (me, Nicole and girls) see him as per the agreement? Before or after the 29th?

Sent from my iPad

On Aug 15, 2013, at 4:00 PM, Anna Good <anna@annagoodlaw.com> wrote:

If he wants to plea, the plea would be August 29 in front of judge hood. He isn't back again after that until September and they don't know yet if he is the plea judge or the trial judge then. If we wait til September, there is a chance hood is the plea judge and we get stuck with Keesley, Russo or king, which we don't want.

Sent from my iPhone

On Aug 15, 2013, at 3:45 PM, lisa kornmeyer <lisa.lpkornmeyer@gmail.com> wrote:

Ok, I will but when he judge hood on the bench again?

Sent from my iPad

On Aug 15, 2013, at 3:37 PM, Anna Good <anna@annagoodlaw.com> wrote:

Hey Lisa---

I got stuck in court this morning, as usual, so I didn't get by to see Tom. I have nothing scheduled in my calendar for Monday morning so I am going to go first thing Monday to see him. If you speak to him, please let him know.

Anna

Sent from my iPhone

On Aug 15, 2013, at 7:52 AM, lisa kornmeyer <lisa.lpkornmeyer@gmail.com> wrote:

I was up all night and I know that Rick is "overcharging" as it is called. These are threats used by prosecutors to get the plea the way he wants it.

How does he sleep at night?

When are you looking to go before judge hood if Tom agrees?

Sent from my iPad

On Aug 14, 2013, at 1:19 PM, "anna@annagoodlaw.com" <anna@annagoodlaw.com> wrote:

I understand your stress; however, if he doesn't plea to just the one charge of felony dui death, then they are going to push a trial on this and more charges could be tacked on from the solicitor's office, such as reckless homicide, ABHAN, and other charges that can be used in this type of case. The solicitor has already told me if we go to trial he is going to directly present those charges also. I haven't discussed this with Tom yet because I just found out yesterday from Rick when he emailed me asking for an update.

This is Tom's chance to plea in front of a great judge in Judge Hood and have a chance at life after this tragic accident. If he doesn't, and we go to trial, it is possible he spends the rest of his life in jail which is not the outcome anyone wants in this case. I am not trying to force a plea by any means, but I have to make everyone aware of the consequences of a trial on this if that is the route we take. We have some issues at the

Overcharging
↓

trial we could possibly use, but the judge would have to rule in our favor on those, and that is purely discretionary.

I will talk to Tom tomorrow and try to sort some of this out with him. The plea is a normal plea with the way the judicial system is set up. I don't know how else to explain it.

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----- Original Message -----

Subject: Re: Question
From: Lisa's Gmail
<lisa.lpkornmeyer@gmail.com>
Date: Wed, August 14, 2013 11:57 am
To: "<anna@annagoodlaw.com>"
<anna@annagoodlaw.com>
Cc: Jim Kornmeyer
<jimkornmeyer@gmail.com>

Anna,

Toms concern is that the 2nd should have been dismissed due to lack of evidence, and should have never been part of the deal. He thinks the delay played a role in this.

The charge of Isoa - it's assumed

that you all agree he is guilty when he told you that was completely untrue. Tom would NEVER do that and that is the fact. He will not go down with people thinking he is guilty of that!

You are saying "facts" of the case when they are not the facts. It's a charge that he has yet to be found guilty.

The fact is that he was under the influence, resulting in death.

I apologize for my tone, my stress level is off the charts. My son was wrong for driving while under, for sure and will pay for this but I am not sure he will agree to plea with these as conditions.

He needs time to think.

Sent from my iPhone

On Aug 13, 2013, at 11:47 AM, &l

From: anna@annagoodlaw.com
Subject: RE: Tom Stafford questions
Date: April 16, 2013 at 7:38 PM
To: lisa kornmeyer lisa.lpkornmeyer@gmail.com

I can understand that. I would probably feel the same way too. DUIs are crimes that happen to normal everyday people, not people seeking to commit a malicious crime and purposefully hurt someone. I will go through all of the next steps we are taking with him so he can maybe see the big picture and that that was just a battle in the war and that it doesn't mean anything is over. There is still a long way to go on this trying to get everything in line we need to help mitigate all the facts in his case. For your knowledge, here are the things we will be doing in the next several weeks:

1. Neuropsych eval and test
2. MAIT expert--I will email you and let you know the cost on that so you can get it together once I talk to Woody.
3. Motion to Dismiss on the DUI 2nd

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----- Original Message -----

Subject: Re: Tom Stafford questions

From: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>

Date: Tue, April 16, 2013 7:26 pm

To: "anna@annagoodlaw.com" <anna@annagoodlaw.com>

I think he is so afraid. He is a good man. Just do what you do and I am sure he will be ok.

I don't think it's about trust as much as his fear of the unknown.

Sent from my iPad

[See More from anna@annagoodlaw.com](#)

From: anna@annagoodlaw.com
 Subject: RE: Fwd: Toms review
 Date: May 31, 2013 at 10:13 AM
 To: lisa kornmeyer lisa.lpkornmeyer@gmail.com

Hey--

Sorry I was in meetings and court all day yesterday. I have not heard back from Marthers yet (MAIT guy). He was going to do some research then get with me.

The doctor won't be doing a report on Tom. If she does a report, it won't help us and we will have to turn it over to the prosecutor. As long as she doesn't do a report, we don't have to let them know any findings.

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----- Original Message -----

Subject: Fwd: Toms review
 From: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>
 Date: Thu, May 30, 2013 9:55 am
 To: anna@annagoodlaw.com

Can we talk sometime today ?

Did you get the dr report and mait report yet?

Lisa

Sent from my iPhone

Begin forwarded message:

From: LISA <lisa.lpkornmeyer@gmail.com>
Date: May 28, 2013, 8:22:24 PM EDT
To: "anna@annagoodlaw.com" <anna@annagoodlaw.com>
Subject: Re: Toms review

The dr that met with tom, what was that for? I am a bit confused.

I have a X-ray of his back that show his injury and reason for the pain pills. I don't think the dr he met with was that type of doctor.
I still think he needs an MRI of his head. I know something is just not right - these tests can't tell the whole story.

How can he go through the trauma as a little boy, suffer abuse and be ok? Doesn't make sense...

The mait expert we met didn't see Tom drawings of the accident yet his conclusion was more closer to Toms. Why didn't he see what tom had drawn, shouldn't he see it?

Tom says they are locked done for 27 hrs at a time and the other inmate are telling their lawyers because it should not be this way. The jail just makes up the rules as they go.

I know we can go to bond unless the 2nd is dropped, but in the event it is not, are there any other ways we can try to get him out?

The kids are really sad and we think we have to now get them counseling. Marisa the one with disability may not be able to attend the special school, and there is so much more.

thanks,
Lisa

On May 28, 2013, at 11:42 AM, lisa kornmeyer <lisa.lpkornmeyer@gmail.com> wrote:

I will just email my questions- I am out and about so I may miss the calls

Sent from my iPhone

[See More](#) from anna@annagoodlaw.com

I went to see Tom this morning to update him on things. Of course since I went to see him, the mail came today and the south congarree stuff came. There is a DVD (I don't know what is on it because I was in court all afternoon), but I am hoping there is nothing on it. I guess we will see. If you could let Tom know when you talk to him we got something from South Congaree now, not Pine Ridge yet, and I will let you guys know as soon as I get a chance to look at it.

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----- Original Message -----

Subject: Update Tom stafford
From: lisa kornmeyer
<lisa.lpkornmeyer@gmail.com>
Date: Tue, July 09, 2013 4:26 pm
To: "anna@annagoodlaw.com"
<anna@annagoodlaw.com>

Just checking on if you received the info we were waiting on from the police department? If it's want

you thought, then let me know
so we
can hope for bond.

We have a serious situation with
toms daughter with the
disabilities.
She has been struggling and
almost had to be hospitalized.
She had
an illness, and it has gotten
worse.

We have to let Rick and the
family know about Tom daughter
and why it
is critical he gets bond,

Your check was returned- I forgot
to stamp it! It's going back in
mail
today! Sorry

Lisa

Sent from my iPhone

From: Jim Kornmeyer jimkornmeyer@gmail.com
 Subject: Re: Tom stafford visit
 Date: July 19, 2013 at 8:49 PM
 To: lisa kornmeyer lisa.lpkornmeyer@gmail.com

This is good.

Jim Kornmeyer
 Sent from my mobile

On Jul 19, 2013, at 4:39 PM, lisa kornmeyer <lisa.lpkornmeyer@gmail.com> wrote:

Anna,

I went to see Tom and we talked about a few things.

His stress level is high and he is losing his hair in spots. He has alopecia- this has happened before. His anxiety, as you know is real as indicated by his dr records from the clinic, etc
 He still has vivid nightmares, can't sleep.

I believe you said the reports from the drs that went to see him were regarding his cognitive skills.

What about his mental issues? The abuse he suffered was real and he still has issues that haven't been dealt with coupled with dealing with the death of Zachary (I think was the boy's name)- why didn't the drs we sent in to test him talk to him about any of this?
 Will any of this play a role regarding his sentencing when that time comes? He should at-least be able to get help while in jail and not be with violent offenders.

What is the difference between non violent and violent when being charged, and how does this play a role in his sentencing and also regarding where he serves his time.
 This was an accident, not intentional.

If the pine ridge police department has no info regarding Tom second dui, to prove either way the charges, why would we compel the judge to have them turn over info they are claiming they don't have?
 If the tape from s. Congaree proves in our favor, what else do we need to try to dismiss the second dui?

Tom tells me this is what he wants to try for bond again. I know you discuss the option regarding plea vs trial, but he really wants to try to get before a judge one more time.

I told Tom that you would be in next week to see him. We are a bit confused and he tells me what you all talk about if he can remember. I know in part the reason things are not disclosed is because you are protecting him and want to be sure nothing is discussed over the phone, or during videos, but I can assure you that nothing we discuss in person is ever discussed after that.
 We do not talk about case when we are on the phone or during videos.

Thanks,
 Lisa

From: <anna@annagoodlaw.com>
 Date: July 18, 2013, 8:26:09 PM EDT
 To: "Lisa's Gmail" <lisa.lpkornmeyer@gmail.com>
 Subject: RE: Update Tom stafford

If we do go back on bond, it would be the judge's decision. I obviously cannot disclose to you what Tom and I have discussed during our meetings; however, we are exploring all options at this point and discussing plea versus trial. We may decide not to go back for bond depending on the options available and what our ultimate decision is. I'm sorry I can't tell you more, but our conversations are privileged.

Ultimately, it is what is best for him and his decision to make. I will keep you updated as I learn more and speak with Tom more. I am going back to meet with him again either next Wednesday or Thursday. Hope you are doing well, despite this situation obviously. I know it is stressful on you and you don't necessarily understand everything

that is going on. I will do my best to answer any questions you have.

sincerely,

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----- Original Message -----

Subject: Re: Update Tom stafford

From: Lisa's Gmail <lisa.lpkornmeyer@gmail.com>

Date: Thu, July 18, 2013 4:52 pm

To: "<anna@annagoodlaw.com>" <anna@annagoodlaw.com>

But I thought it was the judges decision about bond- if we get the stuff to dismiss the 2nd DUI.

The solicitor has reasons- what are they?

We have agreed to monitoring, not driving, and whatever else.

I am sorry Anna, but this just doesn't seem right according to the law.

They can argue against the bond if we go again but he can't decide this.

It's up to the judge as you stated before.

Sent from my iPhone

On Jul 18, 2013, at 11:09 AM, <anna@annagoodlaw.com> wrote:

Hey--

Sorry I couldn't call yesterday. I got stuck in court. I can answer everything this way though. See below for my responses to your questions.

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----- Original Message -----

Subject: Re: Update Tom stafford

From: lisa kornmeyer <lisa.lpkornmeyer@gmail.com>

Date: Tue, July 16, 2013 9:19 pm

To: "anna@annagoodlaw.com" <anna@annagoodlaw.com>

Anna,

I thought if I asked the questions on email, you will have the answers when we talk.

Tom is asking me and I m seeing him Thursday and hope to give him answers.

Did you view DVD from s. congaree? I have not watched it yet. I had a DSS trial on Monday, a jury trial on Tuesday, then another DSS trial yesterday, then I have been in court all Monday in family court today. There is an affidavit on the front of it though indicating some problem with it, so there is something wrong with the DVD.

Why is it taking so long to get the info from pine ridge? Because they are claiming that since they don't keep records of that sort of thing, there is nothing to turn over. I thought they had to the 20th of June and its way past that. Don't you agree that this time frame given was adequate. Why is this acceptable. They are claiming they have complied with the subpoena because there is no information to turn over since they don't keep maintenance records.

Is there anymore you can do to get this info coming in our direction? I can file a motion to compel to try to get a judge to turn over the information. That is going to take a little bit longer though.

There are many things going on in Tom's family. He needs to get bond before doing his time. I have talked to the solicitor a little bit about Tom's family situation. Tom is indicating to me that he does not want a trial. After talking to the solicitor, they will not agree to let him out on bond fro multiple reasons, but he is willing to do whatever we need to allow Tom to be able to have some one on

whatever we need to allow Tom to be able to have some one on one time with the girls (whether you want to do it at the jail and he will pull some strings to allow the girls to go in there) or at the courthouse in a vacant courtroom at the courthouse before a plea so Tom can speak with the girls, hug them and try to explain to them what is going on. He wants to be able to do that for Tom.

Can we request to meet with the family or Rick? If they knew of Marisa's disability issues and his step dads cancer and short time left, or Leah having to see a counselor. See my answer above about talking to rick and what he is willing to do.

Tom said he hears other inmate talk of their lawyers doing these things and going before the judge with requests. Aren't they any exceptions or something more we can do.

Thanks,
Lisa

Sent from my iPad

On Jul 15, 2013, at 7:15 PM, "anna@annagoodlaw.com" <anna@annagoodlaw.com> wrote:

if my jury trial pleads tomorrow i may be able to talk at some point. if not, i can talk on wednesday around 11:30 or so probably.

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----- Original Message -----

Subject: Re: Update Tom stafford

From: Lisa's Gmail <lisa.lpkornmeyer@gmail.com>

Date: Sun, July 14, 2013 8:05 pm

To: Anna Good <anna@annagoodlaw.com>

So when can we talk?

Sent from my iPhone

On Jul 14, 2013, at 6:57 PM, Anna Good

<anna@annagoodlaw.com> wrote:

No. I am in a jury trial Monday and Tuesday in lexington. I will be back in the office in and out between hearings on Wednesday.

Sent from my iPhone

On Jul 12, 2013, at 2:34 PM, lisa kornmeyer

<lisa.lpkornmeyer@gmail.com> wrote:

Will u be on your office Monday, I wanted to call u

Sent from my iPhone

On Jul 11, 2013, at 5:39 PM, Anna Good

<anna@annagoodlaw.com> wrote:

I haven't been in my office all day. Was in court in Lexington in the morning and then in Richland all afternoon. So I haven't seen it yet. Hopefully tomorrow.

Sent from my iPhone

On Jul 11, 2013, at 5:06 PM, lisa kornmeyer

<lisa.lpkornmeyer@gmail.com> wrote:

I told him and we are hoping you had a chance to view it...

Sent from my iPad

On Jul 10, 2013, at 4:57 PM,

"anna@annagoodlaw.com"

<anna@annagoodlaw.com> wrote:

Hey Lisa--

From: anna@annagoodlaw.com
 Subject: RE: Question
 Date: August 14, 2013 at 1:19 PM
 To: Lisa's Gmail lisa.lpkornmeyer@gmail.com

I understand your stress; however, if he doesn't plea to just the one charge of felony dui death, then they are going to push a trial on this and more charges could be tacked on from the solicitor's office, such as reckless homicide, ABHAN, and other charges that can be used in this type of case. The solicitor has already told me if we go to trial he is going to directly present those charges also. I haven't discussed this with Tom yet because I just found out yesterday from Rick when he emailed me asking for an update.

This is Tom's chance to plea in front of a great judge in Judge Hood and have a chance at life after this tragic accident. If he doesn't, and we go to trial, it is possible he spends the rest of his life in jail which is not the outcome anyone wants in this case. I am not trying to force a plea by any means, but I have to make everyone aware of the consequences of a trial on this if that is the route we take. We have some issues at the trial we could possibly use, but the judge would have to rule in our favor on those, and that is purely discretionary.

I will talk to Tom tomorrow and try to sort some of this out with him. The plea is a normal plea with the way the judicial system is set up. I don't know how else to explain it.

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----- Original Message -----

Subject: Re: Question
 From: Lisa's Gmail <lisa.lpkornmeyer@gmail.com>
 Date: Wed, August 14, 2013 11:57 am
 To: "<anna@annagoodlaw.com>" <anna@annagoodlaw.com>
 Cc: Jim Kornmeyer <jimkornmeyer@gmail.com>

Anna,

Toms concern is that the 2nd should have been dismissed due to lack of evidence, and should have never been part of the deal. He thinks the delay played a role in this. The charge of Isoa - it's assumed that you all agree he is guilty when he told you that was completely untrue. Tom would NEVER do that and that is the fact. He will not go down with people thinking he is guilty of that!

You are saying "facts" of the case when they are not the facts. It's a charge that he has yet to be found guilty.

The fact is that he was under the influence, resulting in death.

I apologize for my tone, my stress level is off the charts. My son was wrong for driving while under, for sure and will pay for this but I am not sure he will agree to plea with these as conditions.

He needs time to think.

Sent from my iPhone

[See More from anna@annagoodlaw.com](#)

From: Anna Good anna@annagoodlaw.com
Subject: Re: Plea/ stafford
Date: August 20, 2013 at 5:51 PM
To: lisa kornmeyer lisa.lpkornmeyer@gmail.com

Plea ✓

AUG 20 2013

Hey Lisa--

The plea would be to plea to one charge of Felony DUI (1-25 yrs). In exchange for pleading guilty, the state is dismissing the Leaving the Scene of an Accident, death resulting (0-25 yrs.) and DUI 2nd.

If he does not plea guilty, we would be going to trial on the felony DUI, leaving the scene of an accident, and reckless homicide (which the solicitor will indict in front of the grand jury before trial). Potentially 75 years.

To answer your question regarding the medical records and Tom's depression, I cannot remember. I know it talks about his anxiety. I am not in my office and won't be tomorrow because I will be in Fairfax to visit a client in prison there, but I can check when I get in on Thursday.

Sent from my iPhone

On Aug 20, 2013, at 5:26 PM, lisa kornmeyer <lisa.lpkornmeyer@gmail.com> wrote:

Anna,

Jim and I are going to try to convince Tom to plea as we feel it is the best choice.

Please outline the agreement again for us so when we talk to him tomorrow night we can make sure he understands.

Thanks,
Lisa

Sent from my iPad

On Aug 20, 2013, at 2:09 PM, Lisa's Gmail <lisa.lpkornmeyer@gmail.com> wrote:

I wanted to ask, does toms medical records indicate his depression issues?

Sent from my iPhone

On Aug 20, 2013, at 8:58 AM, <anna@annagoodlaw.com> wrote:

Hey--

He seemed to understand when I talked to him yesterday because he asked intelligent appropriate questions at the right time when discussing stuff, but I know it was a lot to take in at one time.

I do think pleading is the right way to go for Tom's case, based on the evidence and what our chances would be at a trial. I know Tom is looking short term right now versus long term. Long term, it is best to plea and try to get the lowest number we can in front of a judge we want. If we were to force the bond issue, which is not guaranteed, then we would potentially have to go to trial in front of a judge we do not pick and would most likely load him up if he is convicted. Usually the trial judges are harsher sentencers, which is why no one pleas in front of them.

Marion and I are playing email tag trying to find a good day to go to lunch, but we will definitely meet up before the plea if that is the route Tom decides to take.

Have fun on your retreat and let me know when you get back what Tom's decision is.
Thanks!

Anna

Anna R. Good
Law Office of Anna Good, LLC

From: anna@annagoodlaw.com
Subject: RE: Tom Stafford
Date: October 4, 2013 at 10:26 AM
To: Jim Kornmeyer jimkornmeyer@gmail.com
Cc: lisa.kornmeyer lisa.lkornmeyer@gmail.com

See my responses below in blue...

Anna R. Good
Law Office of Anna Good, LLC
1720 Main Street, Suite 303

See More

Anna R. Good
Law Office of Anna Good, LLC
1720 Main Street, Suite 303

----- Original Message -----
Subject: Tom Stafford
From: Jim Kornmeyer <jimkornmeyer@gmail.com>
Date: Fri, October 04, 2013 7:26 am
To: Anna Good <anna@annagoodlaw.com>

Anna,

Needless to say, everyone is very surprised and disappointed by the sentence given yesterday.

I was under the impression that the hit and run was being dismissed as part of the plea, but that was not the case. Can you explain why this wasn't dismissed? When we were originally discussing the plea offer, the leaving the scene was going to be dismissed so his exposure would go from 50 years to 25 years. Rick still needed to talk to the victims to make sure they were okay with that. During Tom's meeting with his girls, Rick and I were talking and he said the victims refused to want to get rid of the leaving the scene and if we did the plea, he would have to plea to it. I told him the only conditions that Tom would plea to the leaving the scene was if 1) he agreed the sentences would be concurrent (which means run at the same time) so his exposure was still on 25 years and 2) Tom would have to plea under what is called NC v. Alford. This means that Tom is not admitting he is guilty to the leaving the scene of the accident, but understands if we were to go to trial on this it is possible that the jury could find him guilty of it. So that is what we did. If we were to go to trial on it, the two witnesses who pulled him over would be the evidence for the charge. We would not have been able to put Tom up to testify for several reasons which would have hurt our case at a trial so there would have been no evidence at a trial to contradict what the two witnesses said.

The DUI second with the mailbox seemed to be an influencing factor in the judge's decision. I still don't understand why we didn't move forward clearing that up, considering the prosecution seemed to keep referring back to that and the judge made a point of saying that this incident influenced his decision. This was a factor at the bond hearing as well as yesterday's plea. An explanation would be helpful. Tom and I discussed this in length and decided not to try to dismiss this charge, as it was not a guarantee to get dismissed because it would be up to a judge to determine it, and if we pushed on that, we would lose the negotiating part of the deal where his exposure

DAU
After
Plea

goes from 50 years to 25 years.

I saw Tom last night and he mentioned that when you spoke with him before the plea, there was a discussion that the prosecution was asking for 5-8 years. Not true. We were going to ask for 2-5 so that if the judge decided to sentence over what we asked for we would hopefully still get less than ten years. At the hearing they asked for the max. What happened? In an effort to bring this to a plea bargain, I feel like the prosecution did somewhat of a "bait and switch" regarding the jail time and dropping the hit and run. Please clarify. The deal with the prosecution was the solicitor was not going to put a number on the record and would not have a position on sentencing. We always knew the victims were going to ask for something very high due to their emotions. In fact, when we went back to talk to the judge before the plea, Rick kept his end of the deal even there. The judge asked what Rick's position on sentencing was and he said his position was that he had no position. He also told the judge that he was okay with the sentences to be running at the same time so his exposure was only 25 years instead of 50 but he couldn't say that on the record due to the victims.

Tom still believes that various scenarios painted by the prosecution were not true. Tom says he pulled over voluntarily and the prosecution painted a picture of two civilian heroes bringing Tom to a stop. There is obviously two different sides to that story and we put our side regarding the leaving the scene on the record showing he pulled over and did not try to speed up past them since he was only half a mile up the road.

Regarding the second DUI, he said he co-operated, blew and gave urine. The prosecution painted a completely different picture. Were there not facts to support Tom's position? if so, why were they not brought up yesterday? Regarding the DUI second, Rick put on the record that he refused to blow. I corrected that in our defense and said that he did actually blow and he blew a 0.00. the notice of suspension on his license was because he refused to give urine (which is true) at the hospital. We also put on the record that Tom was not aware his license was suspended for refusing to give a urine sample because the cop never took his license away from him and in fact gave it back to him. That was all said yesterday to the judge on the record by us.

At this point everything is very "raw" and we are trying to understand all of our options as we move forward. I know we spoke in the parking lot about various options, but we need a clear explanation by email if you don't mind.

There are two options at this point:

1) Appeal his plea---When I talked to Tom yesterday, he was not sure as to whether he wanted to appeal or not because he did not want to risk getting more time if the appeal was granted. If an appeal is granted, all of his charges come back and his exposure is back to 50 years and the prosecutor's probably won't agree to lessening his exposure to 25 years again. Since he was not sure what he wanted, I told him I would file the Notice of Intent to Appeal so he has the option if he wants to do it. If he doesn't he can always withdraw his appeal. Once the notice of intent to appeal is filed, the Office of Appellate Defense will take over his case since he is incarcerated and has no money. They do exclusively appeals and know everything about them.

OR

2) Lisa had asked about Post-Conviction Relief---basically what if Tom thought I did something wrong. Post conviction relief is an action that goes through civil court which a judge hears to determine if the lawyer did something wrong on the case.

Again, as above, if the PCR is granted, all of his charges come back and the whole

Again, as above, if the PCR is granted, all of his charges come back and the whole case starts over again as I discussed above.

Thanks,

Jim

Jim Kornmeyer
Sent from my mobile

From: alistakornmeyer@gmail.com
Subject: More
Date: October 6, 2013 at 5:36 PM
To: Jim Kornmeyer jimkornmeyer@gmail.com

She told me in the court room minutes before the judge was to come out that Rick decided to put leaving the scene back on the table. She told me her and Rick talked about it in the back of the room while we were visiting Tom the day before. She did not go to the jail to talk to Tom. she told him minutes before the judge was to come out and she had him sign a paper. Tom did not understand any of that.

They changed up the original plea of one count of felony dui 1-25, and added the leaving scene which added 1-50.

I want to know where the original plea agreement document is stating the original agreement of one count. The prosecutor made it clear if we didn't agree to that plea it was off the table, how can they change it minutes before!!

Why didn't she go talk to him the day before, right after her and Rick had the talk and tell him, he may have wanted more time to think. They should have never decided for Tom. They assumed he would go for it if Anna convinced him it was ok, which is what she did. I know he would have wanted time to think had she told him.

Sent from my iPad

plea
Rick

[Print](#) | [Close Window](#)**Subject: Re: Client needing evaluation****From: Donna Schwartz <donnawattsmd@gmail.com>****Date: Tue, Jan 15, 2013 10:08 pm****To: "anna@annagoodlaw.com" <anna@annagoodlaw.com>**

Found numerous cognitive deficits on mental status examination:

1. Short term memory loss with confabulation
2. Poor performance on test of verbal fluency
3. Difficulty with reproducing visuospatial design
4. Lateral nystagmus
5. long term memory deficits

I can explain long term memory deficits psychiatrically. Need blood tests and at a minimum, neuropsychological tests to determine extent of cognitive dysfunction. May need EEG, MRI and neurological exam later.

Laboratory tests needed: RPR, TSH, Folate, B12, methymaluronc acid, homocysteine, thaimine, HIV, Comprehensive metabolic profile, CBC, prolactin level

I will be glad to provide affidavit to get funding for these tests.

On Jan 14, 2013, at 4:57 PM, anna@annagoodlaw.com wrote:

5:15 or so ok?

Sent from my Verizon Wireless 4G LTE Smartphone

From : Donna Schwartz

Subject : Re: Client needing evaluation

Make it after 4 if possible

Sent from my iPhone

On Jan 14, 2013, at 4:39 PM, "anna@annagoodlaw.com" <anna@annagoodlaw.com> wrote:

I will call you tomorrow. Thanks for taking it on

Sent from my Verizon Wireless 4G LTE Smartphone

From : Donna Schwartz

Subject : Re: Client needing evaluation

Great case! I need some tests! Also need detention center records from dr cherry! Lets talk!
8038349953

Sent from my iPhone

On Jan 14, 2013, at 3:56 PM, <anna@annagoodlaw.com> wrote:

Hey Donna—

They put the check in the mail to me today, so as soon as I get it, I will forward it onto you Thanks again!

Anna R. Good

Law Office of Anna Good, LLC

LAW OFFICE OF ANNA GOOD
1720 MAIN STREET SUITE 303
COLUMBIA, SC 29201

1347
67-778/532 8448
2000048853918

1-23-13 DATE

PAY TO THE ORDER OF Donna Schwartz-Watts

seven hundred fifty and 00/100

\$ 750.00

DOLLARS

WELLS FARGO
Wells Fargo Bank, N.A.
South Carolina
wellsfargo.com

FOR Stafford evaluation

Anna Good

MP

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

The State of South Carolina,)

vs.)

Thomas Stafford,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
 Warrant Number: 2012A3210201149 and 1150

EX PARTE MOTION FOR PAYMENT OF
 FUNDS AND AUTHORIZATION OF
 SERVICES

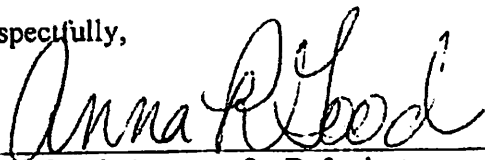
BETH A. ARRIFF
 CLERK OF COURT
 LEXINGTON, SC

FILED
 APR 16 2013
 8 41

The Defendant, by and through his undersigned counsel, requests the Court to order the payment of State funds on behalf of the Defendant and hereby states as follows:

1. The Defendant is currently charged in the Lexington County Court of General Sessions with Felony Driving Under the Influence—Death Resulting and Hit and Run.
2. Anna Good, with offices located at 1720 Main Street, Suite 303, Columbia, SC 29201, was retained by the Defendant's family on December 7, 2012.
3. Due to the unique nature of this case, counsel believes a neuropsychologist and additional medical testing for the defense is necessary to assist with the investigation of the facts in this matter, as the Defendant has been previously examined by Dr. Donna Schwartz-Watts (see attached statement). Defendant is without any medical insurance and his family cannot afford to pay for the expensive cost of this testing. Counsel asserts these fees will not exceed one thousand five hundred dollars (\$1,500.00).
4. Counsel for the Defendant requests the Court to authorize the Commission on Indigent Defense to pay an amount of up to one thousand five hundred dollars, (\$1,500.00) for the services of a neuropsychologist and additional medical testing for the defense.

Respectfully,



Anna Good, Attorney for Defendant
 Law Office of Anna Good, LLC
 1720 Main Street, Suite 303
 Columbia, SC 29201
 (803)429-9107

This 1st day of April, 2013

State of South Carolina vs. Thomas L. Stafford
Plea Notebook

- A. Thomas Stafford Letter
- B. Lisa Kornmeyer Letter
- C. Mark Rushton Letter
- D. Amye Rushing Affidavit
- E. Marie Kennedy Letter
- F. Family and Friends
 - Jim Kornmeyer
 - Lillian Williford
 - Britt Bodie
 - John Bolos
- G. Children Letters and Photos
- H. Thomas Stafford's Work History
- I. Thomas Stafford's Medical Records

Johnson family,

I am not sure how to even put this into words. I am so sorry about this accident. I can only imagine what you must feel. I am sure there is a lot of hate for me. I have never been good at letting people know how I feel. Being sorry is a understatement of what I am feeling. If I could change things or trade places I would. I wish I could meet with you and let you see how sorry I am, and show you I am not a bad man. I was just on my way home from work. I can not say sorry enough times. Me being a daddy of two girls I can't even imagine what you are going through. I have always said to myself I would be a good daddy to my girls and a good man to my wife and family. I do not want them to go through what I did. I had a great mother. She was young when she had me. It was the men in are lives that hurt us. I would like to help kids that went through some of the things I went through. Its not good to keep it inside. I always try to make my kids laugh and have fun.

my oldest ~~son~~ is autistic and she can't understand what is going on. My youngest is in a sad case. I wish I could get them a head stronger as I could. I don't want them to suffer in school. I hope you can believe me when I say I am so sorry. I am feeling so many things, I am not sure how to put them into words. That has always been a problem with me. I tend to care for everyone else but myself. I pray for your family everyday and we pray for you at bible study. I have nothing but love for your family.

God Bless,

John

Words can not express the heartache felt by the two families in this court room today.

My deep-felt sorrow and apology goes out to the Johnson family.

Tom has heartfelt remorse for all that has happened and the loss of Nicolas.

Tom tells me how much his heart hurts for all that has happened and he fully understand how the Johnson family must feel, having children of his own. Toms daughter went with me to the accident site to see the picture of Nicolas and pray.

Tom wants the family to know that he is not a drug dealer, alcoholic or drug addict. He is not a dead beat dad, gang member or a loser. He is just a regular guy who's decision that day has and will continue to be overwhelming for so many.

He is in fact a business owner, loving father, good friend and son. He would help those down and out by hiring them to work, he would often go down to the river, build a grill and feed the homeless.

He has lived in Lexington for over 25 yrs, he comes from a large Italian family and strong values.
Tom has a business and the type of work he does requires precision and over the yrs he has developed his craft.
On his website he has photos of his work on restaurants, businesses, and homes and has a strong work ethic.

His childhood experiences may have caused him pain at times and the memories a struggle to forget, but he has become a loving father and dedicated family man. He has many friends, families members and work associate that have written letters on his behalf.

He is not cruel, or malicious in fact, just the opposite which make this so difficult. His daughters, Marisa and Leah will suffer the impact of their Dad's absence and it is that which I ask your mercy when you sentence him. The price to pay is a hard to say for a life lost and I grieve along with the Johnson family.

As Tom's mom, experiencing a loss of a different kind, I ask that you consider all of what you read about Tom from the people that know and love him when you make your decision.

Respectfully,
Lisa Kommeyer

Judge Hood,

I respectfully thank you for allowing me to share some facts of Tom's life.

Tom was born when I was 16, his Dad left and I raised him alone without any financial support. Working full time and attending school filled my days and nights.

My desire to find Tom a "Dad" did not prove successful - why I felt the need to I am not sure but never the less the men in our lives were abusive and hurt us both. I did not know of the sexual abuse until Tom was about 19 and he shared it all with me since he decided to seek some counseling.

Tom was sexually abused at 5 yrs old by a man named Bill (Solomon). Bill would go onto Tom's room and get in his bed, and ask him to "do things of sexual nature". I returned home from work to find Bill passed out on the floor with a needle in his arm and Tom crying. I took my son and we moved and I don't know how long Tom suffered abused from him.

Tom was abused again by a man name Richard (Scasser), about the age of 7 maybe. Richard was a veteran and received SS benefits. I discovered Richard was a paranoid schizophrenic and would smoke pot, rant and rave about demons and would take him and his friend Bree on rides to the cemetery and make them "do things (sexual)" and give them candy to make them sleepy. When I called the police, they talked to the kids and told them that Richard hit someone with a car and buried the person. Tom and Bree were scared and would talk anymore. They took Richard to the VA hospital in Clearwater Florida where he committed suicide a few days later.

About the age of 11 or 12 Tom was sexual abused by a mother of his friend. I didn't know at the time but I recall getting into an argument with her about something.

We then moved to SC to start over when Tom was 13.

We lived on Elm St in Lexington and we had a neighbor by the name of Charlie Smith who befriended the kids in the neighborhood, he had a basement with a pool table and stuff for the kids to play with. I went over many times because I was fearful because of the past. His daughter told me her dad was nice guy and I had nothing to be concerned about.

Well - Charlie was a child molester - on the list - and he would take pictures, sexual in nature of the boys, I found some and reported him to the police. Tom and his friend Shane had to testify, however both boys did not want to because they were scared. The case was dropped and the daughter moved her dad somewhere.

There may have been other times I am not aware of but I tell you these things to bring to light that although he has suffered he has tried not to be a victim.

His suffering has not been in vain and he is a good dad and better person. He has a heart of an angel.

Tom has been in a relationship for 5 yrs and recently they lost the baby during pregnancy due to complications. Not sure if either of them ever grieved the death of their baby.

He is a man of God and knows that life on this earth is temporary.

Please consider facts about Tom's life in the past and what kind of man he has become today when you make you decision.

Respectfully,
Lisa Kornmeyer
Tom's Mother

My name is Mark Rushton, In 1988 I married Toms mom when he was about 14 years old. I became Tom's dad as Toms biological dad was not in his life and his mom raised him pretty much on her own.

Basically he was a typical teen with the typical teen challenges. When he became old enough to date he'd drive my pickup. I don't recall him ever being late coming home or abusing the privilege.

Later on he married, became a welder and worked for Boatwright steel for several years. During his time at Boatwright Steel I was diagnosed with kidney disease and was forced to seek other employment at which time I started an electronics business called Big Apple Music. We sold car audio equipment and other electronic goods. When construction took a downturn he came to work with me traveling the Southeast doing satellite shows. He was great with customers, and was trusted with an inventory of high end equipment.

After 911 hit the economy took a dip and so I was forced to sell the business, Tom went on to work for other companies and later began his trade as a painter.

Tom worked for me again after I opened my construction business, then he went on to open his own painting business Stafford Painting. He is extremely good at his craft.

When my kidneys failed and I went on dialysis Tom was there for me and assisted in the day to day operations of the contracting company. When I had my kidney transplant MUSC in Charleston, again Tom was by my side - he is my son and was with me through a very tough time. During the past year I was recently diagnosed with stage 4 head and neck cancer, have gone through treatment and in recovery to which my son has been supportive even from jail.

Tom has two beautiful daughters, who love him as any daughter loves their father. Leah is the youngest and Marisa the oldest of the two. Never having a dad as a boy Tom knows how it feels not to have that love. He has always tried to be the best dad for his girls. They love him and if they could tell you themselves, they would. Tom has a big and he is the type of man who'd give you the shirt off this back.

Please consider who Tom is as a man; he's a father and a son. I know Tom has remorse for what happened and will have to live with the pain in his heart forever. It's something he has to live with on a daily basis

Thank you.

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS
 FOR THE ELEVENTH CIRCUIT

State of South Carolina,
 PLAINTIFF,

VS.

Thomas Stafford,
 DEFENDANT.

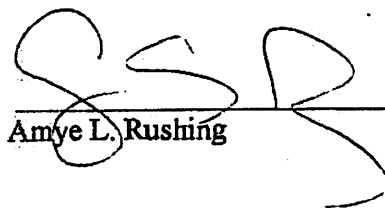
2012-DR-28-0434

Affidavit of Amye L. Rushing

1. My name is Amye L. Rushing, and I am an attorney in the State of South Carolina. I have been practicing law for over fourteen (14) years, and have served both as a prosecutor and as a defense attorney.
2. I have known Tom Stafford for approximately five (5) years.
3. A friend referred Tom's business to me as being one that was not only reliable but that also did quality work in a timely manner. My friend was very pleased with the work that Tom did for her and gave him the highest recommendation.
4. Following my friend's recommendation, I hired Tom's business and he has done various work on my home. After Tom did a great job painting the exterior of my home, I then hired him to do several other projects, both on the interior and the exterior of my home. He did an amazing job on every project that he undertook for me and treated me and my home with much respect. In addition, he always showed up when scheduled, was professional, and consistently did beautiful work.
5. Since Tom has been arrested, I have had a hard time finding someone that is not only as trustworthy as he is, but that is also capable of his exceptional quality of work. I have several projects that still need to be done at my home, and I do not want to hire anyone other than him to complete these projects. Therefore, Tom will have work available to

him immediately upon his release from prison and I will be thrilled to be able to hire him to work on my home again.

6. I have always trusted Tom fully with my home and my possessions and he has never violated that trust. There were many days that he worked in my home alone and, without a shadow of a doubt, I would fully trust him to do so again if he works for me in the future.
7. In addition to witnessing his work first hand, I have also had the pleasure of observing Tom in a parental role where I found him to be a loving and caring father. He brought one of his gorgeous daughters to my home a few times when working on projects, and he was absolutely wonderful with her. Tom was very much engaged with her, and it was obvious how much she adored and looked up to her father.
8. I respectfully ask this Honorable Court to have mercy on Tom, as he is a hard-working, talented businessman and father, who has the ability to have a positive impact on those around him as well as be an important part of our society.


Amye L. Rushing

Sworn before me this 27th day of September 2013

M Edrington
Notary Public for the State of South Carolina

My commission expires: 6/2/2018

Thomas Stafford is my daughter Leah's Father.

Leah is 10 and Tommy has been in her life ever since she has been born. Toms dad was not in his life so he made sure that his girls would not feel that pain.

He is a great Dad and spends time with her as much as he can. He has provided for her financially and emotionally and is a loving father.

She adores her Dad and loves him very much. She has not been doing so well with not being able to see her Dad, they are very close. She cries at time, then other times she doesn't want to talk.

She spends time at his house with her grandma, tom^k mom and will sleep in his bed sometimes with this t shirts. Being around his stuff helps.

I trust Tom with Leah and he would often pick her up after school and help her with homework. He would take her to work and show her how to paint and she would help him and she really had fun with him. He loves to cook and would make her, her favorite meals. Tom likes to play the drums and guitar and he would teach Leah how to play both and sometimes they would dance and she really enjoys that time with him.

We share the holidays and vacation time as much as possible. Leah has been to Tom's family reunion in Virginia and met all her cousins.

With Tom away Leah is somewhat lost. We try to make up for the loss of her father but no one can ^{take} ~~take~~ his place. We try to do videos from jail so she can talk to him but they don't work well. She prays for her daddy and the boy nick and hopes that some day they will meet in heaven and be friends.

Please consider Leah, and her sister Marisa , when you sentence their Dad. This was a terrible accident and my prayers are for the family.

Marie Kennedy

To the court:

My name is Jim Kornmeyer and I have known Tom since 2006. I married his mother in 2009 and over the years have spent time with Tom in various environments including holidays, general family time and work projects.

This situation is tragic, both for the victim and the victim's family. Unfortunately the survivors must live with the situation. I am sure there is tremendous pain within the family of the victim. There is also tremendous pain within Tom's family, especially his two young girls. This was truly an unfortunate accident, surely not premeditated or planned in any way.

Tom's family is Italian and Family is on the top of his priority list.

During Holidays, Tom was always the person that cooked for the family. We would have large barbecues and he would always take the lead on making sure that large meals were delivered and everyone was taken care of.

During general family time, Tom was always the joy of the party, always had a smile on his face and was there to help in anyway he could.

Tom has a painting business and I worked with him on various painting projects. In fact he painted our home, both inside and out. He is an extraordinary painter and his work can be seen at his website. His work is top notch.

Tom is a family man. His two girls mean everything to him.

I ask that the court have mercy on Tom. I ask that the sentence be delivered, with consideration for the heart of Tom Stafford, realizing that this was truly an accident and was in no way premeditated.

Jim Kornmeyer

Honorable Judge Hood,

I am writing on behalf of Thomas Stafford, my nephew, who is appearing before you today on the charge of Felony DUI.

Knowing Tom his entire life I can say without hesitation that he is truly a sweet soul. He is utterly despondent when he thinks of the catastrophic tragedy he caused. I say "he caused" because he knows the loss of this young man's life is his fault. Tom has stated to me "I see him every day". I have seen the look of remorse in his eyes when he recalls the tragic events of that day. Tom relates to the age of the young man killed as his cousin, my son Matthew, is the same age and he grasps the intense sorrow and heartache he has caused.

Tom, in the past, desired one thing from his life and that was to have a relationship with his father. Unfortunately, his father is a true "dead beat dad". He left when Tom was 4. His father's life continues to be riddled with unemployment, drugs, debt and he remains only a detriment to him today.

By the grace of God, Tom was influenced when my sister married her husband Mark. Through him, Tom learned what it meant to be a father, how to love and provide for your children. Through his painting business, welding and numerous side jobs Tom has provided financially for his daughters. More importantly, a strong bond of love exists between Tom and each of his girls. His oldest daughter Marisa struggles with a disability that gives rise to difficulties acquiring knowledge and skills expected of those her age. She remains confused and upset because her disability doesn't allow her to understand why she can't be with him.

Leah is a bright young girl who misses her daddy. She is coming to the age when a father's presence is so very important. Tom is a family man. He loves Sunday dinners with friends and family around the table. He is a great cook and loves our family cooking competitions and chili cook offs.

The horrific result of the accident that day cannot be minimized. I understand the seriousness of the charge and I must therefore stress how Tom's behavior on that day deviates from his normal actions and temperament. Tom has never been malicious, violent or cruel to anyone. He made a dreadful mistake that negatively impacted many lives. Tom accepts full responsibility for his part in what happened and will be haunted for the rest of his life with thoughts of the victim. I know him to be a kind, giving and loving man with much to offer his girls and society. I pray that you will give heartfelt consideration to who Tom is and not only to the circumstances of one day.

Respectfully,

Lillian Williford
Clinical Quality and Performance Consultant
Optum/UnitedHealth Group
McKinney, Texas 75070

To whom it may concern:

I am writing this letter requesting that it be taken into consideration when determining the sentencing of my cousin, Thomas Stafford.

Thomas and I grew up together on Long Island as part of a loving, extended family. Although Thomas was the son of a single mother, and my own parents' marriage was sometimes troubled, we were both raised to appreciate the value of family and family commitment.

That is how I know Thomas is heartsick and remorseful for the pain he has caused the family of the young man he killed. And I know that Thomas is asking for mercy in your sentencing decision not out of consideration for himself, but because of his responsibilities to his own two daughters, particularly his oldest daughter, Marissa, who struggles with learning disabilities and needs the financial and emotional support her father can provide.

I am not requesting that Thomas not be punished. I am merely asking that you consider that although this was a horrible event, it is not the sum total of who Thomas is. The cousin I know is a loving, caring father and son committed to his family. He is not the one-dimensional monster the news reports have painted him.

If anyone hurt my children, I would want them to pay for it. I expect that Thomas will pay for what happened that horrible night, as well, as he himself would say he should. I only request that, when deciding his fate, you realize that he is at heart a good man who would never intentionally hurt anyone.

John Keenan

January 18, 2013

Thomas Lee Stafford

To Anna:

I am writing this letter for some background on Thomas Stafford or Tom.

I have known Tom for over 10 years and have always considered him a good friend and brother. He and I have been roommates on several occasions and could always trust him with my life. He is proud of daughters and it was a joy to have them to the house or the lake. He loves his family and friends and would do anything for them. He was always there to lend a hand from helping paint my house to just there when you needed someone to talk to in the good and bad.

I trust this will help you understand that he is good at heart and has much to give to his family and our world. If I can help in any other way, please let me know.

Sincerely,

Britt Bodle
803-603-1045

John Bolos
1040 Hilton Sound Drive
Chapin, SC 29036

This is a letter concerning Tom Stafford

I have known Tom Stafford for about 14 years, about the length of time that I have been in South Carolina. I have known him not only as a contractor working for me, but personally as well. I admit I have had time writing this letter wanting to be honest but also wanting to get it out there, especially in light of all the allegations against Tom.

First let me say that as a worker he did the best job he could. He was proud of his work. And if there were flaws that needed correcting he was the first one there making it right.

As a person, he was someone that could be depended on. He loves his little girls. Most of all what drove him to go to work was having the ability and means to spend time with them. There never was evidence of any greed in him materially. He just loves his family. And he was loyal as I said above to everyone he encountered.

For the bad. I have seen the media portrayals. That picture painted can be anyone who has a problem with an addiction be it alcohol or drugs. I am not in anyway trying to lessen the severity of what happened that day on Hwy 20 with the tragic accident that took that young mans life. But Tom is a good guy, he is not callous. I know Tom and no matter the courts outcome of the case, living with what happened will haunt him forever as well. He is not a hardened criminal, not uncaring, and as I know Tom does not deserve to be portrayed in that way,

As for myself, I am president of Fox Proper Solutions. My wife Renee has worked in real estate and is the founder of Covenant Properties. Tom was in the small bible study group that my wife has for all of our employees, friends, and contractors.

John Bolos

Dear Judge,

My name is Leah M. Stafford I'm 10 years. I miss my daddy and was hoping you will see him for a little while.

He feeds us and cook dinner for us. We play games on the wii and some times go bowling.

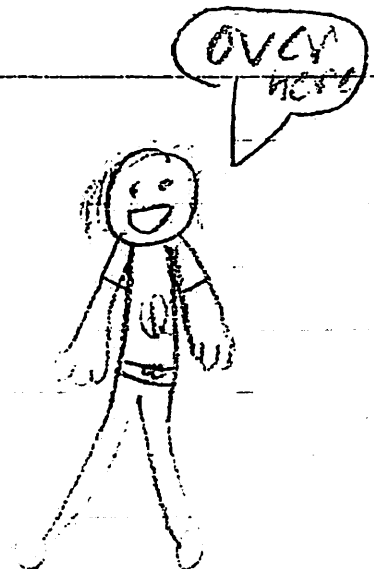
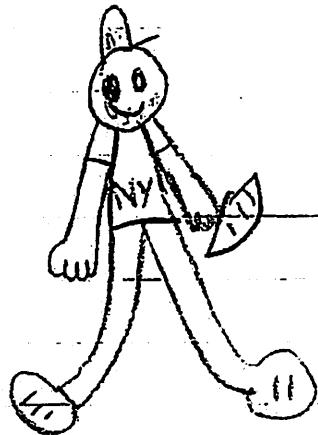
He is my best dad and I love him the best and biggest I can.

I am only 11 and the people at the jail I can't see him.

I sleep in his bed now and smell his pjs because I miss him too much.

I cry but I pray that God takes care of him. my neman tells me that.

Leah



Dear Mr. Judge

My name is Marisa Stafford

I am 15 years old. I pray

that my dad will come out. I

watch the Giants game with

him sometimes. He is a very

good cook. He cooks

baked ziti it is so

good and cheesy. I miss

him so much. I miss his hugs

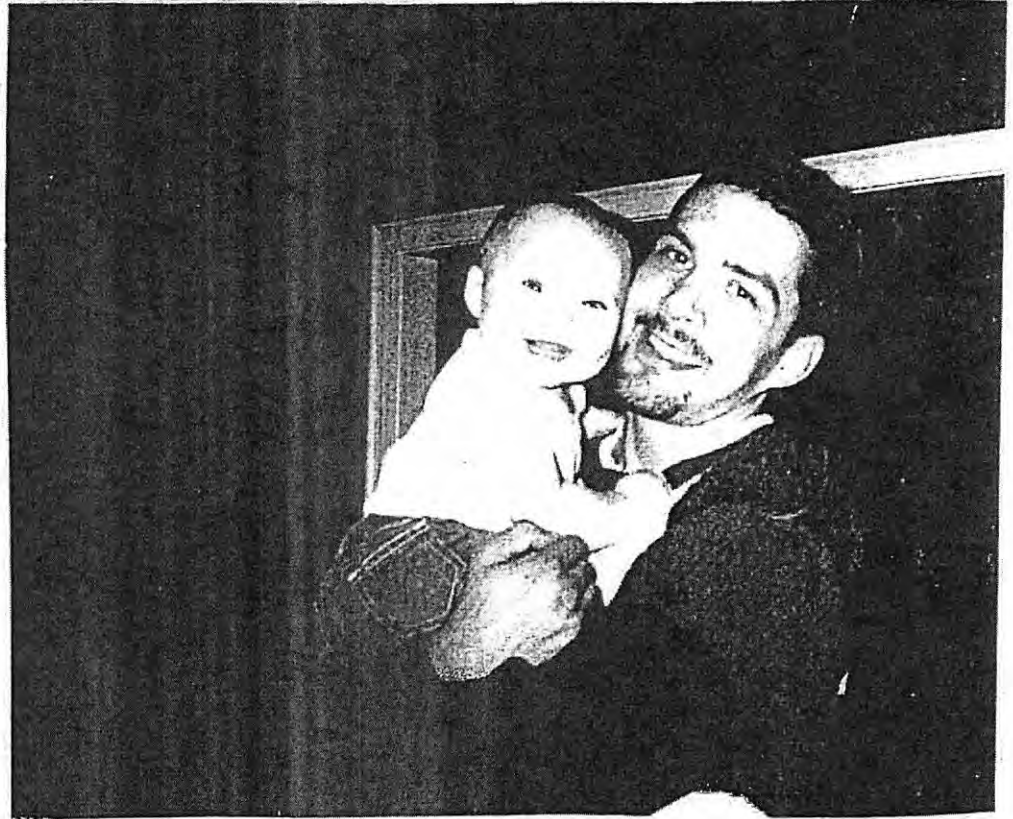
and his kisses. I miss him

so much that I smell his

clothes. Please just let him

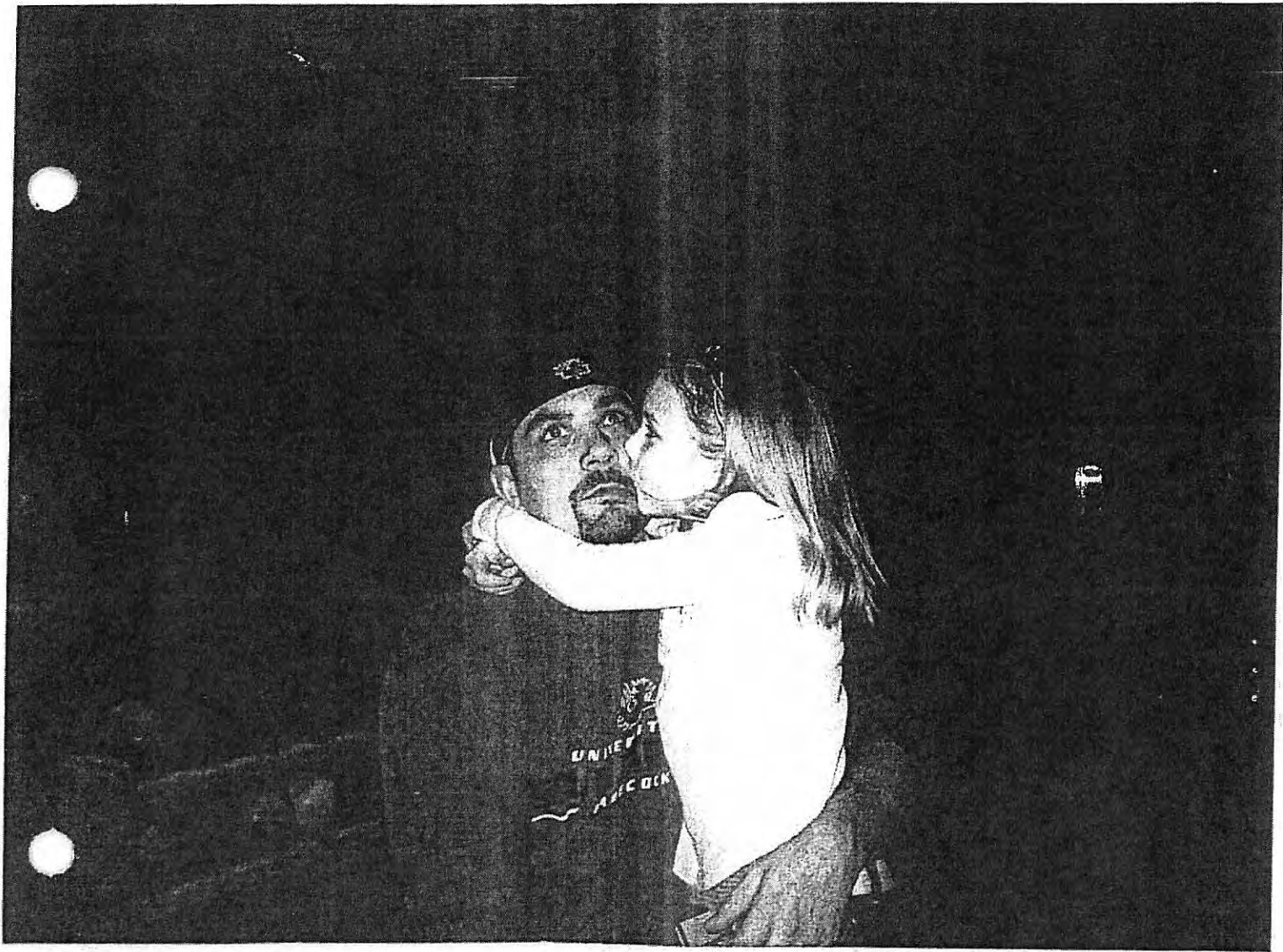
out for a little while so

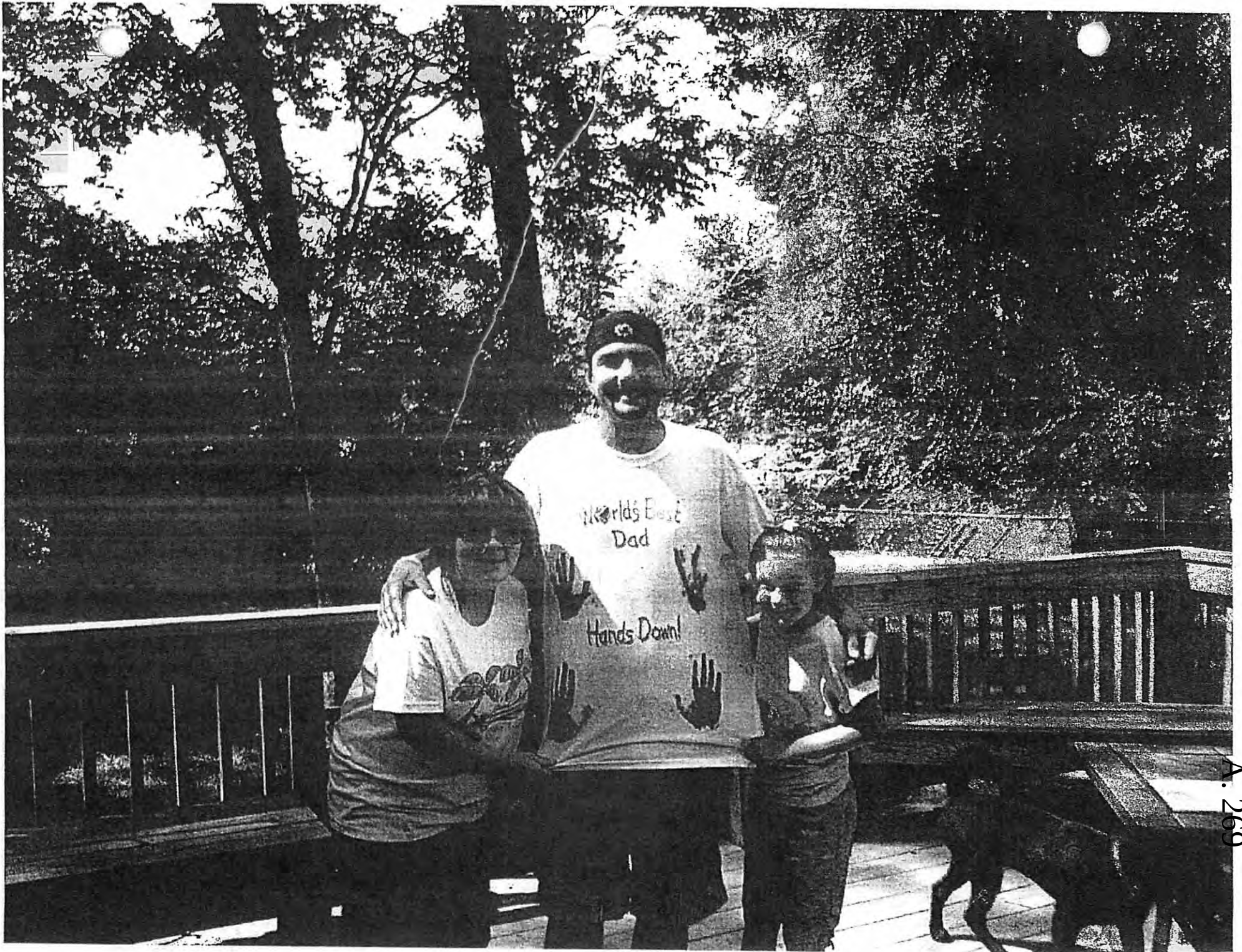
we can see him. Love Marisa Stafford

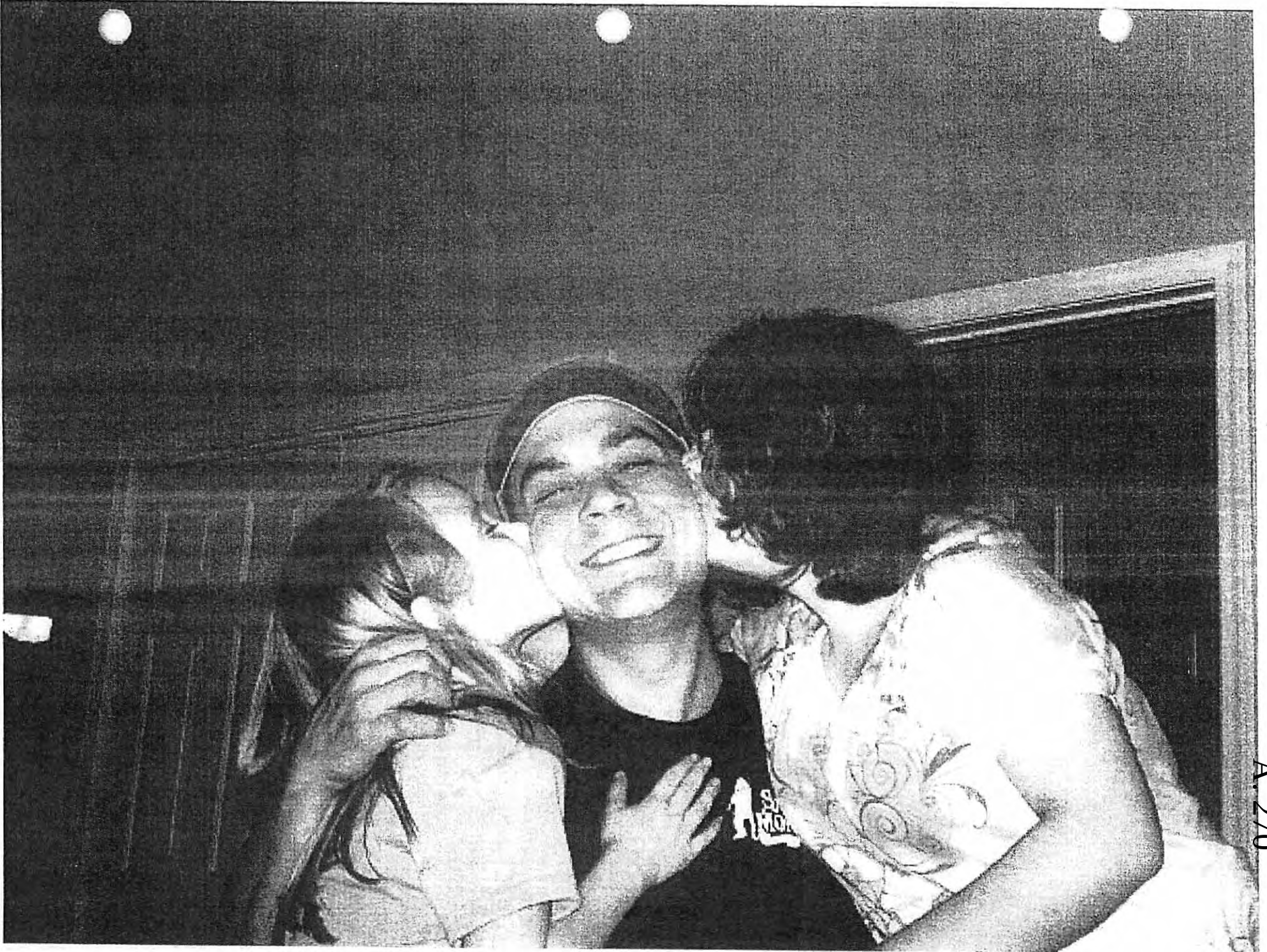


A-267









Thomas L. Stafford

Website: www.staffordnnc.com

Telephone: 803-446-0522

Objective Obtain a position/contract with a professional company

Experience Jan. 2007- present **STAFFORD PROFESSIONAL PAINTING** Columbia, SC
Owner

Professional painter with 20 years experience in residential and commercial painting. Additional services include but not limited to some construction and carpentry. Partnered with Safeguard properties as vendor responsible for bidding project and completing tasks and job scope to restore homes to HUD standard. Strong work ethic and excellent customer service and satisfaction.

Sept. 2006 – present **RUSH CONSTRUCTION CO.** Columbia, SC
Subcontractor

Commercial and residential painter for contractor specializing in special projects such as The Barringer Building renovation and 1520 Main Street condo renovation. Additional projects included traveling to job sites to bid on projects out of town and completing job scope as per request and under budget.

1993-2006 **WRIGHT WAY PAINTING** Columbia, SC
Painter

Painter specializing in custom painting for new residential home communities and individual homeowners. Special attention to spraying, trim and prep detail work. Excellent customer satisfaction.

Contracted with commercial builders for special projects. The 3 million dollar Santee project included, but not limited to painting 500 hotel rooms. Managed a crew of 4 painters to complete the project within the time frame required.

2000–2003 **BIG APPLE IMPORTS** Columbia, SC
Sales Manager/Crew Leader

Traveled the country providing electronic equipment and services through consumer trade show.

Responsibility for generating \$45,000 per show, maintaining a net profit of 25% or more.

Trained, supervised, and monitored employee progress. Effectively coached staff challenges to maximize their efforts for company gain.

Successfully managed inventory levels of up to \$500,000.

Suggested new products that increased earnings by 23%.

1994 -1998 **BOATWRIGHT STEEL** Columbia, SC
Certified Welder

Specialized in all type of welding for fabrication shop.

Other responsibilities included painting, grinding, and loading trucks to haul products to customers.

Education 1992 – Lexington Vocational Center / Welding certification
1991 – Lexington High School

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About Us

STAFFORD PROFESSIONAL PAINTING AND CONSTRUCTION COMPANY IS DEDICATED TO PROVIDING QUALITY PAINTING AND CONSTRUCTION SERVICES AT COMPETITIVE PRICES. GREAT CUSTOMER SERVICE AND COMPLETE SATISFACTION IS OUR GUARANTEE.

Tom Stafford has over 17 years of residential and commercial painting experience in the Columbia and surrounding areas.

Tom's commercial experience include partnering with several builders in the community on special projects such as the renovation of the Barringer Building and the 1520 Main Street condominiums. Together with his crew of only top professionals, he completed the 3 million dollar Santee project of painting 500 hotel rooms within the time frame required by the Builder.

When it come to residential projects, he understands and respects his residential customers and homeowners. Through a process of communication and preparation you can be assured that your expectations will be met. Home improvement such as painting adds value to your investment so be sure it is done right.

His attention to detail is his signature and his expertise is appreciated by the commercial and residential customers he has serviced over the years.

"This is not just a company but my name" -Tom Stafford

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Services

STAFFORD PROFESSIONAL PAINTING AND CONSTRUCTION uses only premium paint and materials to provide excellent results. We strive to meet or exceed our customers expectation.

INTERIOR

REPAINT

NEW CONSTRUCTION

COLOR CONSULTATION

CUSTOM COATING

DRYWALL AND PLASTER REPAIR

CARPENTRY

WALLPAPER REMOVAL

FAUX FINISHES

CABINET REFINISHING

EXTERIOR

REPAINT

NEW CONSTRUCTION

COLOR CONSULTATION

SITE AND SURFACE PREP

DECKS BUILT/CLEANED/STAINED

PRESSURE WASHING

GARAGE FLOOR AND DRIVEWAYS

PATIO/POOL AREAS

CARPENTRY

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PREVIOUS NEXT

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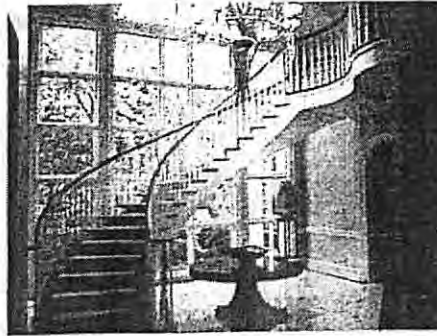


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PLAY

PREVIOUS NEXT

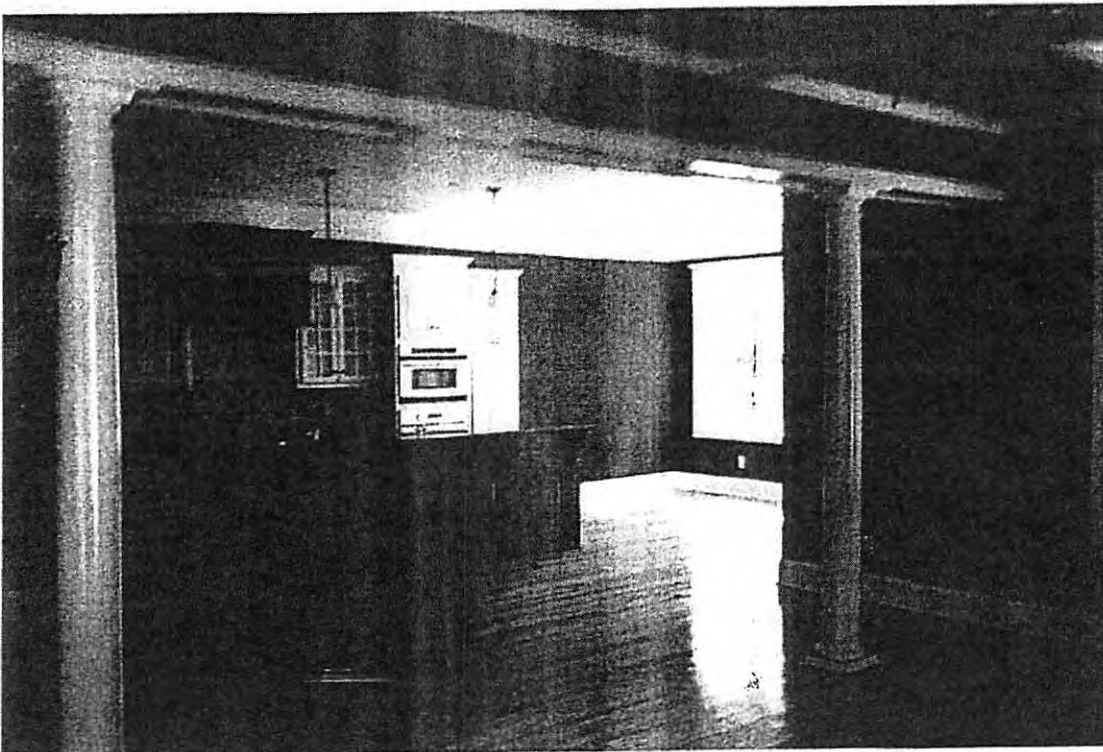
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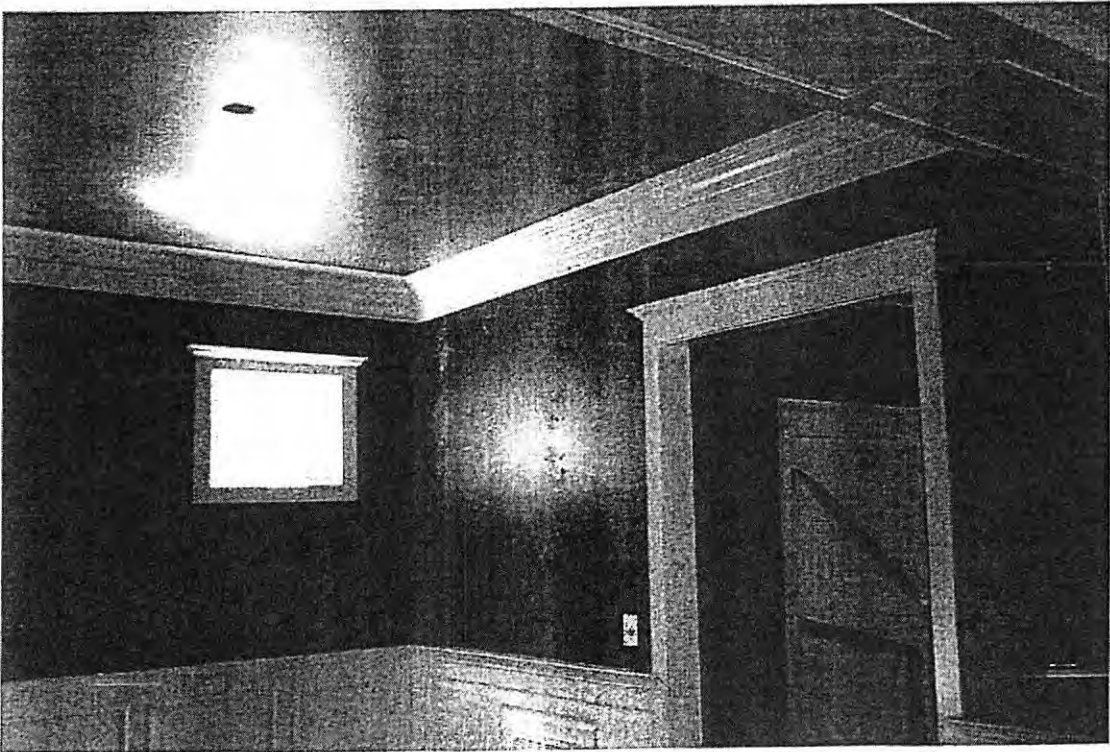
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A.278



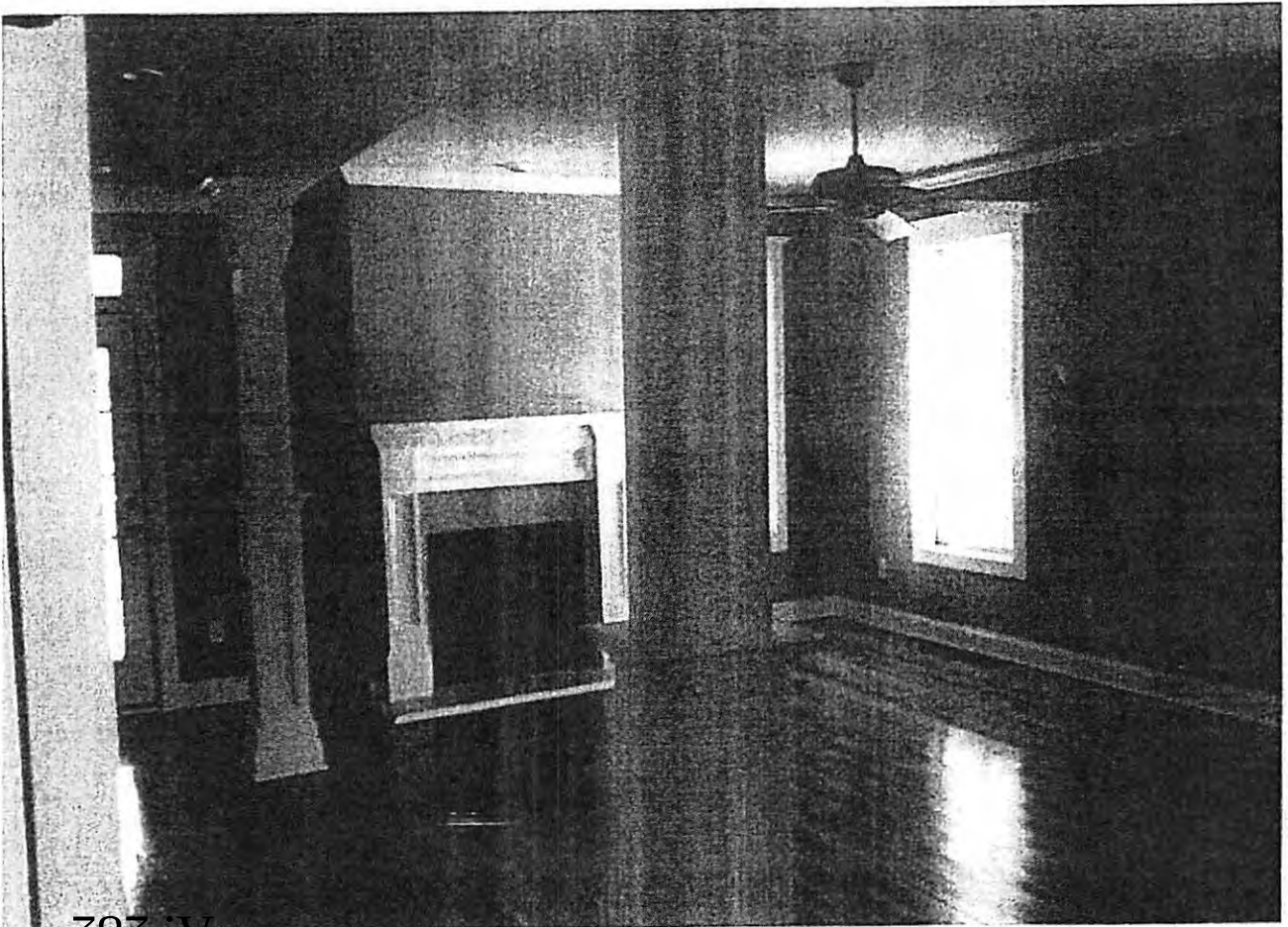
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A.280



A.281



A.282

A. 283



Patient Medication Record

Date: 12/4/2012

Time: 06:14:31

Crossroads Treatment Center of Columbia

1421 Bluff Rd.

Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

SSN: [REDACTED]

Patient Name: STAFFORD, THOMAS

CID:

Counselor ID: JCooper

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
11/1/2012 5:11:43 AM	11/1/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	11/2/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	11/3/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	11/4/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
11/5/2012 5:53:41 AM	11/5/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
11/6/2012 7:24:12 AM	11/6/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
11/7/2012 7:19:51 AM	11/7/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
11/8/2012 5:05:09 AM	11/8/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	11/9/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	11/10/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	11/11/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
11/12/2012 5:05:37 AM	11/12/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
11/13/2012 7:21:15 AM	11/13/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
11/14/2012 7:52:11 AM	11/14/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
11/15/2012 8:43:52 AM	11/15/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	11/16/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	11/17/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	11/18/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
11/19/2012 5:17:31 AM	11/19/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
11/20/2012	Patient Absent		Reason: Out of town						
11/21/2012 8:34:02 AM	11/21/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
	11/22/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
11/23/2012 5:11:08 AM	11/23/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
	11/24/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
	11/25/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
11/26/2012 5:16:49 AM	11/26/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
11/27/2012 5:06:07 AM	11/27/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
11/28/2012 5:07:45 AM	11/28/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
11/29/2012 7:15:34 AM	11/29/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
11/30/2012 5:12:39 AM	11/30/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter

Total Mgs: 3480

Days Receiving Doses: 29

Total Drug Screens: 1

Total Present Days: 17

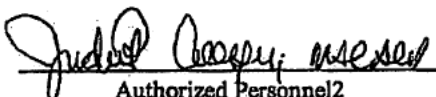
Total Absences: 1

Total Takeout Days: 12

Total Takeout Bottles Received (Including Splits): 12

* Taken Orally

Nurse on Duty


 Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 11/1/2012; To Date: 11/30/2012; Dispensed By: (All); Counselor ID: Judith Cooper; Site Group: N/A; Show Other Meds True; Show Dose Comments False;

Patient Medication Record

Date: 11/1/2012
Time: 05:28:43

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

SSN: [REDACTED]

Patient Name: STAFFORD, THOMAS
CID:

Counselor ID: JCooper

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
10/1/2012 5:19:50 AM	10/1/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/2/2012 5:09:29 AM	10/2/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/3/2012 5:08:46 AM	10/3/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/4/2012 5:17:57 AM	10/4/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	10/5/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	10/6/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	10/7/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/8/2012 5:23:19 AM	10/8/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/9/2012 5:23:56 AM	10/9/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/10/2012 5:24:11 AM	10/10/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/11/2012 5:06:02 AM	10/11/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
	10/12/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
	10/13/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
	10/14/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
10/15/2012 5:22:47 AM	10/15/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
10/16/2012 5:14:11 AM	10/16/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
10/17/2012 7:37:25 AM	10/17/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/18/2012 5:32:51 AM	10/18/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
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10/25/2012 7:28:58 AM	10/25/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	10/26/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	10/27/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	10/28/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/29/2012 5:18:02 AM	10/29/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/30/2012 5:14:42 AM	10/30/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
10/31/2012 5:15:02 AM	10/31/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter

Total Mgs: 3720

Days Receiving Doses: 31

Total Drug Screens: 2

Total Present Days: 19

Total Absences: 0

Total Takeout Days: 12

Total Takeout Bottles Received (Including Splits): 12

* Taken Orally

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 10/1/2012; To Date: 10/31/2012; Dispensed By: (All); Counselor ID: Judiet Cooper; Site Group: N/A; Show Other Meds True; Show Dose Comments False;

Patient Medication Record

Date: 10/2/2012
Time: 06:59:05

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

SSN: [REDACTED]

Patient Name: STAFFORD, THOMAS

Counselor ID: JCooper

CID:

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
9/1/2012 6:41:32 AM	9/1/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
	9/2/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
	9/3/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
9/4/2012 5:09:59 AM	9/4/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
9/5/2012 5:16:18 AM	9/5/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
9/6/2012 6:55:44 AM	9/6/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
9/7/2012 5:10:53 AM	9/7/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
9/8/2012 6:35:00 AM	9/8/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
	9/9/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
9/10/2012 5:03:20 AM	9/10/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
9/11/2012 5:44:23 AM	9/11/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
9/12/2012 5:08:12 AM	9/12/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
9/13/2012 5:14:01 AM	9/13/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
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	9/16/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Ahair
9/17/2012 5:33:25 AM	9/17/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
9/18/2012 5:09:15 AM	9/18/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
9/19/2012 5:52:44 AM	9/19/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
9/20/2012 5:54:49 AM	9/20/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
9/21/2012 5:52:39 AM	9/21/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	9/22/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	9/23/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
9/24/2012 5:08:08 AM	9/24/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Jhatfield
9/25/2012 5:21:22 AM	9/25/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
9/26/2012 5:33:00 AM	9/26/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
9/27/2012 5:19:42 AM	9/27/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	9/28/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	9/29/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter
	9/30/2012	1	Phase 2	Methadone Liquid	120		5/31/2012	120	Fcolter

Total Mgs: 3600

Days Receiving Doses: 30

Total Drug Screens: 1

Total Present Days: 21

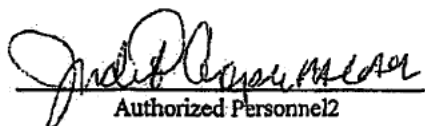
Total Absences: 0

Total Takeout Days: 9

Total Takeout Bottles Received (Including Splits): 9

* Taken Orally

Nurse on Duty


Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 9/1/2012; To Date: 9/30/2012; Dispensed By: (All); Counselor ID: Judith Cooper; Site Group: N/A; Show Other Meds True; Show Dose Comments False;

Patient Medication Record

Date: 9/7/2012
Time: 09:56:02

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

Patient Name: STAFFORD, THOMAS

CID:

Counselor ID: JCooper

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
8/1/2012 7:05:58 AM	8/1/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/2/2012 7:03:10 AM	8/2/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/3/2012 5:29:40 AM	8/3/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/4/2012 8:08:11 AM	8/4/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Ahair
	8/5/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Ahair
8/6/2012 6:07:13 AM	8/6/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/7/2012 7:00:37 AM	8/7/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/8/2012 6:54:15 AM	8/8/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/9/2012 6:29:42 AM	8/9/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/10/2012 6:47:55 AM	8/10/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/11/2012 6:36:19 AM	8/11/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
	8/12/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/13/2012 5:58:44 AM	8/13/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/14/2012 6:38:20 AM	8/14/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/15/2012 6:45:51 AM	8/15/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/16/2012 7:14:19 AM	8/16/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
8/17/2012 7:01:42 AM	8/17/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/18/2012	Patient Absent			Reason:					
8/19/2012	Patient Absent			Reason:					
8/20/2012 5:38:21 AM	8/20/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
8/21/2012 5:06:10 AM	8/21/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
8/22/2012 5:08:27 AM	8/22/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
8/23/2012 5:03:25 AM	8/23/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
8/24/2012 5:51:42 AM	8/24/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
8/25/2012 6:31:57 AM	8/25/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Ahair
	8/26/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Ahair
8/27/2012 5:05:44 AM	8/27/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
8/28/2012 5:36:54 AM	8/28/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/29/2012 5:08:06 AM	8/29/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
8/30/2012 5:25:37 AM	8/30/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
8/31/2012 5:04:08 AM	8/31/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield

Total Mgs: 3480

Total Drug Screens: 1

Total Absences: 2

Total Takeout Bottles Received (Including Splits): 3

* Taken Orally

Days Receiving Doses: 29

Total Present Days: 26

Total Takeout Days: 3

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 8/1/2012; To Date: 8/31/2012; Dispensed By: (All); Counselor ID: Judiet Cooper; Site Group: N/A; Show Other Meds True; Show Dose Comments False;

Patient Medication Record

Date: 7/31/2012
Time: 11:29:01

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

Patient Name: STAFFORD, THOMAS

CID:

Counselor ID: JCooper

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
7/9/2012 - 7/9/2012		Patient Guest Dosed		Clinic: Orlando Metro Treatment Center					
7/10/2012 6:02:10 AM	7/10/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/11/2012 7:02:29 AM	7/11/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
7/12/2012 7:06:26 AM	7/12/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/13/2012 7:13:56 AM	7/13/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/14/2012 6:44:59 AM	7/14/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
	7/15/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/16/2012 9:01:03 AM	7/16/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/17/2012 8:37:54 AM	7/17/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/18/2012 7:57:00 AM	7/18/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/19/2012 6:54:01 AM	7/19/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/20/2012 7:54:23 AM	7/20/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/21/2012 7:03:01 AM	7/21/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
	7/22/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Jhatfield
7/23/2012 7:50:30 AM	7/23/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/24/2012 8:30:45 AM	7/24/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/25/2012 8:39:38 AM	7/25/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/26/2012 7:01:58 AM	7/26/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/27/2012 6:15:02 AM	7/27/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/28/2012 6:42:48 AM	7/28/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Ahair
	7/29/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Ahair
7/30/2012 6:08:18 AM	7/30/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter
7/31/2012 6:24:50 AM	7/31/2012	1	Phase 1	Methadone Liquid	120		5/31/2012	120	Fcolter

Total Mgs: 2640

Total Drug Screens: 1

Total Absences: 0

Total Takeout Bottles Received (Including Splits): 3

* Taken Orally

Days Receiving Doses: 22

Total Present Days: 19

Total Takeout Days: 3

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 7/1/2012; To Date: 7/31/2012; Dispensed By: (All); Counselor ID: Judith Cooper; Site Group: N/A; Show Other Meds True; Show Dose Comments False;

Patient Medication Record

Date: 7/6/2012
Time: 07:59:58

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

Patient Name: STAFFORD, THOMAS

CID:

Counselor ID: JCooper

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
6/1/2012 5:54:06 AM	6/1/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Jhatfield
6/2/2012 6:45:47 AM	6/2/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Jhatfield
	6/3/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Jhatfield
6/4/2012 6:42:58 AM	6/4/2012	1	Phase I	Methadone Liquid	110		5/31/2012	110	Fcolter
	6/4/2012	2	Phase I	Methadone Liquid	5		5/31/2012	5	Fcolter
6/5/2012 7:31:35 AM	6/5/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/6/2012 6:19:51 AM	6/6/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/7/2012 6:48:54 AM	6/7/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/8/2012 6:24:13 AM	6/8/2012	1	Phase I	Methadone Liquid	100		5/31/2012	100	Fcolter
	6/8/2012	2	Phase I	Methadone Liquid	20		5/31/2012	20	Fcolter
6/9/2012 6:50:12 AM	6/9/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Jhatfield
	6/10/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Jhatfield
6/11/2012 6:01:29 AM	6/11/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/12/2012 6:10:57 AM	6/12/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/13/2012 6:11:57 AM	6/13/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/14/2012 7:19:36 AM	6/14/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/15/2012 10:17:33 AM	6/15/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/16/2012 6:47:36 AM	6/16/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Jhatfield
	6/17/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Jhatfield
6/18/2012 6:26:36 AM	6/18/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/19/2012 7:07:40 AM	6/19/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/20/2012 5:50:22 AM	6/20/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/21/2012 5:48:48 AM	6/21/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/22/2012 6:30:25 AM	6/22/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/23/2012 6:48:59 AM	6/23/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
	6/24/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/25/2012 6:48:18 AM	6/25/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/26/2012 5:35:52 AM	6/26/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/27/2012 6:18:24 AM	6/27/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter
6/28/2012 5:52:10 AM	6/28/2012	1	Phase I	Methadone Liquid	120		5/31/2012	120	Fcolter

6/29/2012 - 7/12/2012 Patient Guest Dosed

Clinic: Operation Par

Total Mgs: 3355

Days Receiving Doses: 28

Total Drug Screens: 3

Total Present Days: 24

Total Absences: 0

Total Takeout Days: 4

Total Takeout Bottles Received (Including Splits): 6

* Taken Orally

[Signature]
Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 6/1/2012; To Date: 6/30/2012; Dispensed By: (All); Counselor ID: Judith Cooper; Site Group: Outpatient;
Show Other Meds False; Show Dose Comments False;

Patient Medication Record

Date: 6/1/2012
Time: 06:42:28

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

Patient Name: STAFFORD, THOMAS

CID:

Counselor ID: JCooper

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
5/1/2012 6:42:23 AM	5/1/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
5/2/2012 6:56:59 AM	5/2/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
5/3/2012 7:00:19 AM	5/3/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
5/4/2012 6:58:22 AM	5/4/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
5/5/2012 7:45:43 AM	5/5/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
	5/6/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
5/7/2012 7:44:06 AM	5/7/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
5/8/2012 6:53:49 AM	5/8/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
5/9/2012 6:50:14 AM	5/9/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
5/10/2012 6:46:00 AM	5/10/2012	1	Phase 1	Methadone Liquid	110		5/10/2012	110	Fcolter
5/11/2012 6:18:45 AM	5/11/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/12/2012 6:47:18 AM	5/12/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
	5/13/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/14/2012 7:19:41 AM	5/14/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/15/2012 6:25:57 AM	5/15/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/16/2012 6:10:16 AM	5/16/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Jhatfield
5/17/2012 6:15:29 AM	5/17/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/18/2012 6:55:57 AM	5/18/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/19/2012 7:11:37 AM	5/19/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Jhatfield
	5/20/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Jhatfield
5/21/2012 6:32:34 AM	5/21/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/22/2012 6:18:55 AM	5/22/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/23/2012 6:35:04 AM	5/23/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Jhatfield
5/24/2012 6:27:47 AM	5/24/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/25/2012 6:06:49 AM	5/25/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/26/2012 6:58:44 AM	5/26/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Jhatfield
	5/27/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Jhatfield
	5/28/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Jhatfield
5/29/2012 6:31:22 AM	5/29/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/30/2012 6:22:49 AM	5/30/2012	1	Phase 1	Methadone Liquid	115		5/10/2012	115	Fcolter
5/31/2012 6:13:37 AM	5/31/2012	1	Phase 1	Methadone Liquid	115		5/31/2012	115	Fcolter

Total Mgs: 3515

Total Drug Screens: 1

Total Absences: 0

Total Takeout Bottles Received (Including Splits): 5

* Taken Orally

Days Receiving Doses: 31

Total Present Days: 26

Total Takeout Days: 5

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 5/1/2012; To Date: 5/31/2012; Dispensed By: (All); Counselor ID: Judiet Cooper; Site Group: Outpatient;
Show Other Meds True; Show Dose Comments True;

Patient Medication Record

Date: 5/3/2012
Time: 06:57:46

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

Patient Name: STAFFORD, THOMAS

CID:

Counselor ID: JCooper

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
4/2/2012 7:28:30 AM	4/2/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/3/2012 8:57:09 AM	4/3/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/4/2012 7:02:05 AM	4/4/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/5/2012 7:48:14 AM	4/5/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/6/2012 7:35:13 AM	4/6/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/7/2012 7:39:20 AM	4/7/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
	4/8/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/9/2012 7:26:28 AM	4/9/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/10/2012 7:22:31 AM	4/10/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/11/2012	Patient Absent		Reason:						
4/12/2012 7:15:54 AM	4/12/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/13/2012 7:06:33 AM	4/13/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/14/2012 7:09:19 AM	4/14/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
	4/15/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/16/2012 7:23:25 AM	4/16/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/17/2012 7:18:50 AM	4/17/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/18/2012 8:19:08 AM	4/18/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/19/2012 10:00:26 AM	4/19/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
4/20/2012 9:29:18 AM	4/20/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
4/21/2012 7:48:50 AM	4/21/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
	4/22/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
4/23/2012 8:12:32 AM	4/23/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
4/24/2012 9:44:33 AM	4/24/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
4/25/2012 7:16:45 AM	4/25/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
4/26/2012 6:50:51 AM	4/26/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
4/27/2012 6:48:01 AM	4/27/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
4/28/2012 8:00:48 AM	4/28/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
	4/29/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Jhatfield
4/30/2012 7:07:08 AM	4/30/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter

Total Mgs: 3190

Total Drug Screens: 3

Total Absences: 1

Total Takeout Bottles Received (Including Splits): 5

* Taken Orally

Days Receiving Doses: 29

Total Present Days: 25

Total Takeout Days: 4

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 4/1/2012; To Date: 4/30/2012; Dispensed By: (All); Counselor ID: Judiet Cooper; Site Group: Outpatient;
Show Other Meds True; Show Dose Comments False;

Patient Medication Record

Date: 4/4/2012
Time: 08:42:06

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

Patient Name: STAFFORD, THOMAS

CID:

Counselor ID: JCooper

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
3/1/2012 9:25:09 AM	3/1/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/2/2012 5:15:57 AM	3/2/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/3/2012 7:16:42 AM	3/3/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	3/4/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/5/2012 9:19:30 AM	3/5/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/6/2012 8:21:21 AM	3/6/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/7/2012 9:21:06 AM	3/7/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/8/2012 6:40:58 AM	3/8/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/9/2012 6:44:30 AM	3/9/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	3/10/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	3/11/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	3/12/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/13/2012 8:35:46 AM	3/13/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/14/2012 8:37:52 AM	3/14/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/15/2012 8:56:02 AM	3/15/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	3/16/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	3/17/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	3/18/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/19/2012 8:09:08 AM	3/19/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/20/2012 8:56:50 AM	3/20/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/21/2012 9:27:49 AM	3/21/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/22/2012 8:34:21 AM	3/22/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	3/23/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	3/24/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	3/25/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
3/26/2012 8:09:26 AM	3/26/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
3/27/2012 6:25:33 AM	3/27/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
3/28/2012 8:37:04 AM	3/28/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
3/29/2012 8:31:11 AM	3/29/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
3/30/2012 7:52:27 AM	3/30/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
3/31/2012 8:24:34 AM	3/31/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter
	4/1/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Fcolter

Total Mgs: 3410

Total Drug Screens: 2

Total Absences: 0

Total Takeout Bottles Received (Including Splits): 10

* Taken Orally

Days Receiving Doses: 31

Total Present Days: 21

Total Takeout Days: 11

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 3/1/2012; To Date: 3/31/2012; Dispensed By: (All); Counselor ID: Judith Cooper; Site Group: N/A; Show Other Meds True; Show Dose Comments False;

Patient Medication Record

Date: 3/3/2012
Time: 16:49:27

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

SSN: [REDACTED]

Patient Name: STAFFORD, THOMAS

Counselor ID: JCooper

CID:

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
2/1/2012 7:06:48 AM	2/1/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
2/2/2012 7:08:20 AM	2/2/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
2/3/2012 6:53:21 AM	2/3/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
2/4/2012 7:49:57 AM	2/4/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
	2/5/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
2/6/2012 8:00:21 AM	2/6/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
2/7/2012 6:50:37 AM	2/7/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
2/8/2012 6:49:55 AM	2/8/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Vhodgin
2/9/2012 8:12:07 AM	2/9/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
2/10/2012 5:07:25 AM	2/10/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
2/11/2012 7:12:19 AM	2/11/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
	2/12/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
2/13/2012 5:29:03 AM	2/13/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
2/14/2012 8:34:09 AM	2/14/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Smiller
2/15/2012 8:30:50 AM	2/15/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Vhodgin
2/16/2012 9:39:45 AM	2/16/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Smiller
2/17/2012 7:51:41 AM	2/17/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Smiller
	2/18/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Smiller
	2/19/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Smiller
2/20/2012 10:33:17 AM	2/20/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
2/21/2012 8:32:45 AM	2/21/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
2/22/2012 8:54:00 AM	2/22/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
2/23/2012 9:52:14 AM	2/23/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Smiller
2/24/2012 8:48:56 AM	2/24/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	2/25/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
	2/26/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
2/27/2012 9:08:53 AM	2/27/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
2/28/2012 8:41:48 AM	2/28/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter
2/29/2012 8:38:13 AM	2/29/2012	1	Phase 2	Methadone Liquid	110		1/30/2012	110	Fcolter

Total Mgs: 3190

Days Receiving Doses: 29

Total Drug Screens: 2

Total Present Days: 23

Total Absences: 0

Total Takeout Days: 6

Total Takeout Bottles Received (Including Splits): 6

* Taken Orally

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 2/1/2012; To Date: 2/29/2012; Dispensed By: (All); Counselor ID: Judiet Cooper; Site Group: N/A; Show Other Meds True; Show Dose Comments False;

Patient Medication Record

Date: 2/1/2012
Time: 04:50:37

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

SSN: [REDACTED]

Patient Name: STAFFORD, THOMAS

CID:

Counselor ID: Dkorson

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
1/3/2012 9:17:29 AM	1/3/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/4/2012 10:25:11 AM	1/4/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Vhodgin
1/5/2012 9:33:39 AM	1/5/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/6/2012 9:58:50 AM	1/6/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/7/2012 8:36:18 AM	1/7/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Vhodgin
	1/8/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Vhodgin
1/9/2012 7:56:08 AM	1/9/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/10/2012 9:54:26 AM	1/10/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/11/2012 8:34:23 AM	1/11/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Vhodgin
1/12/2012 9:39:12 AM	1/12/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/13/2012 9:46:05 AM	1/13/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/14/2012 7:47:08 AM	1/14/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
	1/15/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/16/2012 9:41:45 AM	1/16/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/17/2012 9:12:25 AM	1/17/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/18/2012 8:38:17 AM	1/18/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/19/2012 10:09:49 AM	1/19/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/20/2012 10:04:27 AM	1/20/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Vhodgin
1/21/2012 8:27:01 AM	1/21/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Vhodgin
	1/22/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Vhodgin
1/23/2012 7:47:10 AM	1/23/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/24/2012 8:52:33 AM	1/24/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/25/2012 8:59:48 AM	1/25/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/26/2012 9:11:00 AM	1/26/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/27/2012 8:39:21 AM	1/27/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/28/2012 8:00:32 AM	1/28/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
	1/29/2012	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
1/30/2012 7:35:03 AM	1/30/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller
1/31/2012 7:24:47 AM	1/31/2012	1	Phase 1	Methadone Liquid	110		1/30/2012	110	Smiller

Total Mgs: 2920

Days Receiving Doses: 29

Total Drug Screens: 1

Total Present Days: 25

Total Absences: 0

Total Takeout Days: 4

Total Takeout Bottles Received (Including Splits): 4

* Taken Orally

Scott Miller

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 1/1/2012; To Date: 1/31/2012; Dispensed By: (All); Counselor ID: Donald Korson; Site Group: N/A; Show Other Meds True; Show Dose Comments False;

Patient Medication Record

Date: 1/3/2012
Time: 06:03:04

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

SSN: [REDACTED]

Patient Name: STAFFORD, THOMAS

Counselor ID: Dkorson

CID:

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
12/1/2011 5:41:37 AM	12/1/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
12/2/2011 8:36:05 AM	12/2/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
12/3/2011 6:33:34 AM	12/3/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
	12/4/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
12/5/2011 6:36:18 AM	12/5/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
12/6/2011 6:39:56 AM	12/6/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
12/7/2011 6:08:25 AM	12/7/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
12/8/2011 8:54:30 AM	12/8/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Vhodgin
12/9/2011 5:51:29 AM	12/9/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
12/10/2011 8:22:27 AM	12/10/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Vhodgin
	12/11/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Vhodgin
12/12/2011 6:37:34 AM	12/12/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/13/2011 5:12:22 AM	12/13/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/14/2011 9:29:27 AM	12/14/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/15/2011 8:46:06 AM	12/15/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/16/2011 9:27:54 AM	12/16/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/17/2011 7:00:33 AM	12/17/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
	12/18/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/19/2011 8:11:35 AM	12/19/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/20/2011 8:13:14 AM	12/20/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/21/2011 6:14:49 AM	12/21/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/22/2011 6:13:14 AM	12/22/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/23/2011 8:53:19 AM	12/23/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/24/2011 8:04:40 AM	12/24/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
	12/25/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
	12/26/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Smiller
12/27/2011 9:14:35 AM	12/27/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Vhodgin
12/28/2011 10:23:37 AM	12/28/2011	1	Phase 1	Methadone Liquid	100		12/12/2011	100	Vhodgin
12/29/2011 - 1/2/2012	Patient Guest Dosed			Clinic: Martinsburg Institute					

Total Mgs: 2690

Days Receiving Doses: 28

Total Drug Screens: 1

Total Present Days: 23

Total Absences: 0

Total Takeout Days: 5

Total Takeout Bottles Received (Including Splits): 5

* Taken Orally

Scott Miller

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 12/1/2011; To Date: 12/31/2011; Dispensed By: (All); Counselor ID: Donald Korson; Site Group: N/A; Show Other Meds True: Show Dose Comments False;

Patient Medication Record

Date: 12/1/2011
Time: 08:57:10

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

SSN: [REDACTED]

Patient Name: STAFFORD, THOMAS

CID:

Counselor ID: Dkorson

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
11/1/2011 7:26:39 AM	11/1/2011	1	Phase 1	Methadone Liquid	60		11/1/2011	60	Smiller
11/2/2011 7:55:27 AM	11/2/2011	1	Phase 1	Methadone Liquid	65		11/1/2011	65	Smiller
11/3/2011 7:41:32 AM	11/3/2011	1	Phase 1	Methadone Liquid	65		11/1/2011	65	Smiller
11/4/2011	Patient Absent		Reason:						
11/5/2011 8:25:13 AM	11/5/2011	1	Phase 1	Methadone Liquid	70		11/5/2011	70	Smiller
	11/6/2011	1	Phase 1	Methadone Liquid	70		11/5/2011	70	Smiller
11/7/2011 7:19:39 AM	11/7/2011	1	Phase 1	Methadone Liquid	75		11/7/2011	75	Smiller
11/8/2011 7:18:45 AM	11/8/2011	1	Phase 1	Methadone Liquid	75		11/8/2011	75	Smiller
11/9/2011 10:15:55 AM	11/9/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
11/10/2011 7:20:13 AM	11/10/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
11/11/2011 8:25:53 AM	11/11/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
11/12/2011 7:46:51 AM	11/12/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
	11/13/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
11/14/2011 8:19:12 AM	11/14/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
11/15/2011 8:03:45 AM	11/15/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
11/16/2011 8:29:26 AM	11/16/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
11/17/2011 8:38:08 AM	11/17/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
11/18/2011 6:46:48 AM	11/18/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
11/19/2011 6:44:09 AM	11/19/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
	11/20/2011	1	Phase 1	Methadone Liquid	80		11/8/2011	80	Smiller
11/21/2011 8:28:35 AM	11/21/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
11/22/2011 6:53:14 AM	11/22/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
11/23/2011 7:17:00 AM	11/23/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
	11/24/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
11/25/2011 9:14:28 AM	11/25/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
11/26/2011 8:23:34 AM	11/26/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
	11/27/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
11/28/2011 7:27:38 AM	11/28/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
11/29/2011 7:40:52 AM	11/29/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller
11/30/2011 7:58:34 AM	11/30/2011	1	Phase 1	Methadone Liquid	90		11/21/2011	90	Smiller

Total Mgs: 2340

Days Receiving Doses: 29

Total Drug Screens: 2

Total Present Days: 24

Total Absences: 1

Total Takeout Days: 5

Total Takeout Bottles Received (Including Splits): 5

* Taken Orally

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 11/1/2011; To Date: 11/30/2011; Dispensed By: (All); Counselor ID: Donald Korson; Site Group: N/A; Show Other Meds True; Show Dose Comments False; -

Patient Medication Record

Date: 11/1/2011
Time: 05:07:54

Crossroads Treatment Center of Columbia
1421 Bluff Rd.
Columbia, SC 29201 (803) 733-5855

Patient ID: CTC0112

SSN: [REDACTED]

Patient Name: STAFFORD, THOMAS

CID:

Counselor ID: Dkorsen

Dose Date/Time	Take On Date	Dose #	Phase	*Drug/Dose Type	Dosage (mgs)	STO	Rx Date	Total Mgs	Entered By
10/24/2011 7:36:25 AM	10/24/2011	1	Phase 1	Methadone Liquid	30		10/24/2011	30	Smiller
10/25/2011 8:49:34 AM	10/25/2011	1	Phase 1	Methadone Liquid	35		10/24/2011	35	Smiller
10/26/2011 8:55:51 AM	10/26/2011	1	Phase 1	Methadone Liquid	40		10/24/2011	40	Smiller
10/27/2011 8:32:53 AM	10/27/2011	1	Phase 1	Methadone Liquid	45		10/24/2011	45	Smiller
10/28/2011 7:40:51 AM	10/28/2011	1	Phase 1	Methadone Liquid	50		10/28/2011	50	Smiller
10/29/2011 8:18:45 AM	10/29/2011	1	Phase 1	Methadone Liquid	55		10/29/2011	55	Smiller
	10/30/2011	1	Phase 1	Methadone Liquid	55		10/29/2011	55	Smiller
10/31/2011 7:36:30 AM	10/31/2011	1	Phase 1	Methadone Liquid	60		10/29/2011	60	Smiller

Total Mgs: 370

Days Receiving Doses: 8

Total Drug Screens: 1

Total Present Days: 7

Total Absences: 0

Total Takeout Days: 1

Total Takeout Bottles Received (Including Splits): 1

* Taken Orally

Nurse on Duty

Authorized Personnel2

Authorized Personnel

Criteria: Patient ID: N/A; From Date: 10/1/2011; To Date: 10/31/2011; Dispensed By: (All); Counselor ID: Donald Korson; Site Group: N/A; Show Other Meds True; Show Dose Comments False;



crossroads treatment centers

Will treat you like family, with compassion and respect.

COORDINATION OF CARE FORM

Date 7/19/12 Patient ID# CTC 112
 Counselor Judith Cooper

Dear Dr. Dunn

In order to coordinate care for our mutual patient Thomas Stafford
 DOB [REDACTED], we are requesting information concerning medication prescribed by you
 for this patient. This patient has been attending treatment for opioid dependence with us since
10/24/11 and receives 120 mg of Methadone daily.

The patient's signed Release of Information form is attached.

Thank you for your efforts on behalf of this patient. Please don't hesitate to contact us. We will be glad to answer any questions or provide information you may need.

Harvey L. Causey, III, M.D., Medical Director, Crossroads Treatment Center of Columbia, PC

Please list medications prescribed by you for this patient:

Medication	Dose	Frequency	No. of refills	Reason
Klonopin	1mg	bid	0	anxiety
Vibryd	40mg	1 daily	0	depression

Comments from prescribing physician _____

Prescribing Physician's Signature _____

Date 8/1/12

Crossroads Treatment Center of Columbia, PC | 1421 Bluff Road | Columbia, SC 29201 | call 803-733-5855 | fax 803-733-5892

www.path2recovery.com

TOMS X-RAY
Compressed disc

reason given
pain meds

[Print](#) | [Close Window](#)

Subject: Re: Thomas Stafford toxicology results
From: Alex Morton <mortona@gmail.com>
Date: Wed, Jul 24, 2013 9:59 am
To: <anna@annagoodlaw.com>

Hi,
The benzodiazepines were oxazepam and triazolam plus triazolam metabolite.
Regards,
Alex
see page 35 of L12-15094 Case File pdf

—
W. Alexander Morton, PharmD, BCPP
Professor Emeritus of Pharmacy
Professor Emeritus of Psychiatry and Behavioral Sciences
Medical University of South Carolina
102 College Station Dr. Suite 3, #101
Brevard, NC 28712
res: 828-884-2705
cell: 843-364-6306

On Jul 24, 2013, at 8:47 AM, <anna@annagoodlaw.com> wrote:

Good morning Dr. Morton,

I have a random question. I know when you and I spoke about the results for Mr. Stafford, you mentioned to me that in addition to the methadone, xanax, and kolopin (sp), there were other benzos in Mr. Stafford's system that didn't meet the threshold but were there. Do you by chance know what those were? My client is asking, and of course I am curious too. Thank you. If you can't, it is not a problem. Hope you have been doing well.

Anna R. Good
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, SC 29201
(803) 429-9107
FAX: (803) 799-4059

Confidentiality Notice:

The documents attached to this e-mail transmission, or the content of this e-mail, may contain confidential information which is legally privileged. The information is intended only for the use of the individual or entity it is addressed to. If you are not the intended recipient, or the person(s) responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or the use of any of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone. Thank you.

STAFFORD V. STATE
RESPONDENT'S EXHIBIT

3

LAW OFFICE OF ANNA GOOD
1720 MAIN STREET SUITE 303
COLUMBIA, SC 29201

PAY TO THE ORDER OF Dr. Alexander Norton 6.27.13 DATE

Two hundred fifty and 00/100 \$ 250.00

FOR T. Stafford Anna R. Good

WELLS FARGO Wells Fargo Bank, N.A.
South Carolina
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1402
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DOLLARS

FILED

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) 2024 MAR -7) PM 12: 58
FOR THE ELEVENTH JUDICIAL CIRCUIT

Thomas Stafford,)
) LISA M. CONER
) CLERK OF COURT
Applicant) ON SC
) Case No. 2015-CP-32-01888

vs.) **Thomas Stafford's Post-Hearing Brief**

State of South Carolina,)
Respondent.)

This post-conviction relief case came before the Court on June 22, 2023 for an evidentiary hearing. Thomas Stafford submits this post-hearing brief.

I. FACTUAL AND PROCEDURAL BACKGROUND.

On December 3, 2012, Mr. Stafford was driving a 2003 Nissan Pathfinder westbound on I-20 near mile marker 62 in Lexington County. A Department of Transportation cleaning crew was working on this section of the highway. Mr. Stafford's vehicle struck one of the workers, Nicholas Johnson, who died instantaneously from his injuries. Mr. Stafford stopped his vehicle nearby. Toxicology results from the South Carolina Law Enforcement Division ("SLED") revealed Mr. Stafford had Xanax and Methadone in his blood system, both of which were prescribed by doctors who were aware of each other's prescriptions. The State charged Mr. Stafford with felony driving under the influence ("DUI"), death resulting, and leaving the scene of an accident, death resulting. Tr. 10-18.

Mr. Stafford was willing to plead guilty to felony DUI but not leaving the scene of an accident. Mr. Stafford's trial counsel informed him the State would accept a plea to Felony DUI and dismiss the leaving the scene of an accident charge. Applicant's Ex. 12, 13. At the evidentiary hearing, trial counsel testified about her understanding of the plea offer. Up to Wednesday, October

2, 2013, trial counsel understood the State would dismiss the leaving the scene of an accident charge. According to trial counsel, on October 2nd, the Solicitor informed her the State would require Mr. Stafford to plead guilty to leaving the scene of an accident but would recommend concurrent sentences. The Solicitor testified to a different understanding of plea negotiations. According to the Solicitor, dismissing the leaving the scene of an accident charge was never a possibility, and the State never agreed to concurrent sentences. The Solicitor testified the State agreed to remain silent on sentencing and would not oppose any sentencing request made by the Mr. Stafford and his counsel. In Mr. Stafford's reply case, trial counsel agreed with the Solicitors testimony that the State agreed to remain silent on sentencing and would not oppose any sentencing request made by her and Mr. Stafford. Both the Solicitor and trial counsel testified this common understanding of the plea negotiations was conveyed to the plea judge in chambers prior to the guilty plea.

On Friday, October 3, 2023, Mr. Stafford plead guilty to felony DUI and leaving the scene of an accident. The plea to leaving the scene of an accident was pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). The plea judge twice asked Mr. Stafford to explain, in his own words, the meaning of an *Alford* plea. Mr. Stafford was not able to do so. Tr. 6-7. Trial counsel requested a sentence "between two and five years." Tr. 42. The State did not remain silent on sentencing. First Sargent Chris Shelton, of the South Carolina Highway Patrol, addressed the plea judge and asked for the maximum sentence allowed by law. Tr. 27. Trial counsel did not move to withdraw the guilty plea.

In addition to not withdrawing the guilty plea, trial counsel proceeded with the guilty plea without completing the psychiatric evaluation of Dr. Donna Schwartz Maddox. Nor did trial counsel follow up on all of the recommendations of Dr. Maddox. Applicant's Ex. 1, 2, 3.

Mr. Stafford appealed his guilty plea to the South Carolina Court of Appeals; however, trial counsel did not preserve any issues for appeal. Mr. Stafford voluntarily dismissed his appeal on August 18, 2014. The Court of Appeals granted this motion on September 11, 2014, and issued the Remittitur on September 30, 2014. *State v. Stafford*, Appellate Case No. 2013-002454. On May 22, 2015, Mr. Stafford filed this PCR application.

II. STANDARD OF REVIEW.

Under the first prong of *Strickland v. Washington*, a defendant “must show that counsel’s representation fell below an objective standard of reasonableness,” which must be judged under “prevailing professional norms.” 466 U.S. 668, 688 (1984). “The first prong—constitutional deficiency—is necessarily linked to the practice and expectations of the legal community: The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010) (internal quotations omitted). “If the State contends the alleged deficiency resulted from a strategic decision made at trial, counsel must articulate a valid reason for employing a certain strategy.” *Freiburger v. State*, 413 S.C. 243, 247, 775 S.E.2d 391, 393 (Ct. App. 2015); cf. *Ingle v. State*, 348 S.C. 467, 560 S.E.2d 401 (2002).

The second prong of *Strickland* requires a defendant establish this deficiency prejudiced him. “The defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* “In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel’s error had on the outcome of the trial.” *Smalls v. State*, 422 S.C. 174, 188,

810 S.E.2d 836, 843 (2018)¹ (citing *Strickland*, 466 U.S. at 695-96 (explaining that the court must analyze how individual errors of counsel affect the important factual findings in a particular case)).

“The decision whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea.” *Lee v. United States*, 582 U.S. 357, 367 (2017). The High Court cautioned, “Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Rather, they should look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Id.*

III. LEGAL ARGUMENT.

Mr. Stafford’s PCR application raises three claims of ineffective assistance of counsel: (1) failure to investigate, discover and present evidence that would have provided a defense to the charges, (2) allowing the guilty plea to move forward and/or failing to withdraw the guilty plea when the prosecutor changed the plea negotiations as the last inoment, and (3) failing to investigate, discover, evidence that would have mitigated or reduced the sentence imposed. At the conclusion of the PCR hearing, pursuant to Rule 15(b), SCRPC, Mr. Stafford moved to conform the pleadings to the evidence to include a claim of ineffective assistance of counsel for not moving to withdraw the guilty plea wen the State breeched the agreement to remain silent on sentencing. For efficiency, the two claims involving a failure to move to withdraw the guilty plea are discussed in Subsection A below, and the two claims involving a failure to investigate are discussed in Subsection B below.

¹ See also *Thompson v. State*, 423 S.C. 235, 245, 814 S.E.2d 487, 492 (2018) (adhering to *Smalls*).

A. Failure to Move to Withdraw the Guilty Plea.

“In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea.” *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 473 (2009) (citing *Boykin v. Alabama*, 395 U.S. 238, 241 (1969)). “A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial.” *Id.* 384 S.C. at 413, 683 S.E.2d at 475. (citing *Hill v. Lockhart*, 474 U.S. 52 (1985)). “When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing.” *Id.* (citing *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)).

The Supreme Court of South Carolina consistently holds trial counsel ineffective for failing to enforce plea agreements. In *Jordan v. State*, “Jordan insisted on proceeding to trial. Jordan only agreed to plead guilty when he believed the solicitor would neither oppose nor recommend probation.” 297 S.C. 52, 54, 374 S.E.2d 683, 684-85 (1988). “When the solicitor disregarded the agreement,” trial counsel “failed to draw” the trial court’s “attention to the plea bargain and then failed to move to withdraw [the] guilty plea.” *Id.*, 297 S.C. at 54, 374 S.E.2d at 685. The Supreme Court held trial counsel’s failure to protect the “right to enforce the plea agreement with the Solicitor’s office fell below ‘prevailing professional norms.’” *Id.* (citing *Strickland*, 466 U.S. at 694). “Considering the original vehemence of Jordan in pursuing his right to trial by jury,” the Court further held “that there is a reasonable probability that but for the fact that Jordan’s attorney failed to object to the continuation of the guilty plea proceeding once the solicitor reneged on the

plea bargaining agreement, that Jordan would not have pleaded guilty, but would have insisted on going to trial.” *Id.* 297 S.C. at 54–55, 374 S.E.2d at 685.

In *Thompson v. State*, “Thompson initially planned to go to trial because the codefendant was not willing to testify against him” but “decided to pursue a plea bargain only after the codefendant decided to testify against him.” 340 S.C. 112, 114, 531 S.E.2d 294, 295 (2000). “During the plea negotiations, the trial judge told the attorneys he would not consider a youthful offender sentence and he would impose a sentence of at least 20 years, but not the maximum of 30 years.” *Id.* In addition, “the solicitor was not going to make a specific sentence recommendation.” *Id.* During sentencing, “[t]he solicitor requested the maximum 30 year sentence and Thompson’s attorney did not object.” *Id.* “Like the attorney in *Jordan*, Thompson’s attorney’s failure to object fell below prevailing professional norms.” *Id.*, 340 S.C. at 116, 531 S.E.2d at 296. Regarding the prejudice prong of *Strickland*, “The fact that Thompson was unsure whether to plead guilty up until the last minutes before trial coupled with the fact that he was under the impression the solicitor would not make a sentencing request is enough evidence to demonstrate a reasonable probability that Thompson would not have pled guilty but for his attorney’s ineffective assistance.” *Id.*, 340 S.C. at 117, 531 S.E.2d at 297.

Mr. Stafford’s case is similar to both *Jordan* and *Thompson*. All of the email correspondence shows that Mr. Stafford did not want to plead guilty unless the State dismissed the charge for leaving the scene of an accident. The emails illustrate trial counsel’s understating that Mr. Stafford would have to “plea to just the one charge of felony [DUI] death.” Applicant’s Ex. 12; *see also* Applicant’s Ex. 13 (“The plea would be to plea to felony DUI (1-25 yrs.). In exchange for pleading guilty, the [S]tate is dismissing the Leaving the Scene of an Accident, death resulting

(0-25 yrs.)^[2] and DUI 2nd.”). The post-plea emails further confirm this understanding. Applicant’s Ex. 14 (Jim Kornmeyer stating, “I was under the impression that the hit and run was being dismissed as part of the plea, but that was not the case.”). Applicant’s Ex. 14 also confirms that the State’s requirement to plead guilty to the leaving the scene of an accident was not known to Mr. Stafford until the eve of the guilty plea.

At the evidentiary hearing, Lisa Kornmeyer, Jim Kornmeyer, Lillian Williford, and Tina Orlowski testified the observed Mr. Stafford to be confused during the guilty plea regarding the charge of leaving the scene of an accident. These observations are confirmed by the transcript of the guilty plea when Mr. Stafford is not able to explain the meaning of an *Alford* plea in his own words. Tr. 6-7.

Additionally, Mr. Stafford’s case is similar to both *Jordan* and *Thompson* because the State did not honor the plea agreement. In *Jordan*, the State agreed to “neither oppose nor recommend probation.” 297 S.C. at 54, 374 S.E.2d at 684-85. In *Thompson*, the State agreed it “was not going to make a specific sentence recommendation” but during sentencing, “[t]he solicitor requested the maximum 30 year sentence.” 340 S.C. at 114, 531 S.E.2d at 295. Here, the State agreed not to oppose Mr. Stafford’s sentencing request of two to five years, not oppose concurrent sentences for the two charges, and to remain silent on the sentencing recommendation. Under the first prong of *Strickland*, trial counsel was deficient for not objecting to the Solicitor’s breach of the plea agreement and for not moving the withdraw the guilty plea. Like in *Jordan* and *Thompson*, Mr. Stafford’s longstanding desire that the charge for leaving the scene of an accident to be dismissed

² Trial counsel was incorrect. Leaving the scene of an accident, resulting in death, actually carries a penalty of “not less than one year nor more than twenty-five years.” S.C. Code Ann. § 56-5-1210(A)(3).

with a guilty plea is evidence that he would not have plead guilty but for trial counsel's diffident performance.

Anticipating arguments the State might make, Mr. Stafford will address two points before moving to the discussion of trial counsel's failure to investigate: (1) testimony by the Solicitor and trial counsel that a jury trial was imminent and (2) the Solicitor's testimony about his opinion of the strength of the State's case.

First, the Solicitor testified that, had Mr. Stafford not pled guilty on October 3, 2013, then Mr. Stafford's case would have proceeded to trial that week. Trial counsel testified that, if Mr. Stafford had not pled guilty, then his case would have proceeded to trial that week or the following week. This Court should not assign any weight to this testimony for four reasons. First, October 3, 2013 was a Thursday (Ex. A), and it is not conceivable that a felony DUI trial would commence on a Thursday. Second, the Judicial Branch Website reveals that no General Sessions Court was scheduled for Lexington County during the week of October 7, 2013 (Ex. B). Third, the uncontested evidence at the PCR hearing was that the State intended, prior to any jury trial, to seek direct indictments for reckless homicide and assault and battery of a high and aggravated nature (Applicant's Ex. 12, 13), but a review of the Judicial Branch Website reveals the State never sought direct indictments for these offenses.³ Fourth, the test is not whether a jury trial was imminent, but rather whether Mr. Stafford would have proceeded to trial absent trial counsel's deficient

³ During the PCR hearing, trial counsel testified Mr. Stafford could not be convicted of felony DUI, reckless homicide, and assault and battery of a high and aggravated nature, but the Solicitor wanted the jurors to have multiple options. This testimony is consistent with *State v. Greene*, 423 S.C. 263, 280, 814 S.E.2d 496, 505 (2018) ("one homicide is limited to one homicide punishment per defendant"). However, trial counsel contemporaneous advised, "If he does not plead guilty, we would be going to trial on the felony DUI, leaving the scene of an accident, and reckless homicide (which the solicitor will indict in front of the grand jury before trial). Potentially 75 years." Applicant's Ex. 13.

performance. As was the case in *Jordan* and *Thompson*, the contemporaneous evidence shows that Mr. Stafford would have proceeded to trial but for trial counsel's failure to protect his right to enforce the guilty plea.

Second, during the evidentiary hearing, the Solicitor offered his opinion about the strength of the State's case regarding the leaving the scene of an accident. This Court should not rely on this testimony because the purported strength of the State's case is not the relevant test. "When a defendant alleges his counsel's deficient performance led him to accept a guilty plea rather than go to trial, [post-conviction courts] do not ask whether, had he gone to trial, the result of that trial would have been different than the result of the plea bargain." *Lee*, 582 U.S. at 364 (internal quotations omitted). "That is because, while [courts] ordinarily apply a strong presumption of reliability to judicial proceedings, [courts] cannot accord any such presumption to judicial proceedings that never took place." *Id.* (internal quotations omitted). Post-conviction courts "instead consider whether the defendant was prejudiced by the denial of the entire judicial proceeding to which he had a right." *Id.* (cleaned up). Notably, trial counsel documented a defense: "Tom still believes that various scenarios painted by the prosecution were not true. Tom says he pulled over voluntarily and the prosecution painted a picture of two civilian heroes brining Tom to a stop. There is obviously two different sides to that story and we put or side regarding the leaving the scene on the record showing he pulled over and did not try to speed up past them." Applicant's Ex. 14, p. 2. Having a jury trial would have allowed Mr. Stafford to present this defense.

B. Failure to Investigate.

Trial counsel has a duty to investigate. *See Ard v. Catoe*, 372 S.C. at 332, 642 S.E.2d at 597 ("We find respondent proved that trial counsel should have further investigated and more

thoroughly challenged the gunshot residue evidence.”). This duty to investigate includes consulting expert witnesses. *See McKnight v. State*, 378 S.C. 33, 661 S.E.2d 354 (2008) (counsel rendered ineffective assistance when she failed to investigate medical evidence contradicting the State’s experts’ testimony on the link between cocaine and stillbirth); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015) (finding trial counsel ineffective for not consulting expert to refute state’s medical evidence). The duty to conduct a reasonable investigation includes not only the client’s guilt or innocence but also evidence that would mitigate the sentence. *See, e.g., Wiggins v. Smith*, 539 U.S. 510 (2003); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008). The S.C. Commission on Indigent Defense adopted performance standards for public defenders and appointed counsel in non-capital cases.⁴ Regarding sentencing, these standards require counsel “to ensure all reasonably available mitigating and favorable information likely to benefit the client is presented to the court” (Guideline 8.1(3)), “to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted” (Guideline 8.1(6)), to obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition” (Guideline 8.3(3)), and to present “information favorable to the defendant concerning such matters as the offense, mitigating factors and relative

⁴ Found at [https://sccid.sc.gov/docs/SCCID%20%20Performance%20Standards%20\(Non-Capital\)%20for%20Public%20Defenders%20and%20Assigned%20Counsel%20as%20adopted%20by%20SCCID%206-7-2013%20with%20revised%20Preamble%208-22-2013.pdf](https://sccid.sc.gov/docs/SCCID%20%20Performance%20Standards%20(Non-Capital)%20for%20Public%20Defenders%20and%20Assigned%20Counsel%20as%20adopted%20by%20SCCID%206-7-2013%20with%20revised%20Preamble%208-22-2013.pdf) (last viewed July 2, 2023). Regarding evidence of the prevailing professional norms, the Supreme Court of the United States has looked to publication of the National Legal Aid and Defender Association, “the American Bar Association, criminal defense and public defender organizations, authoritative treatises, and state and city bar publications.” *Padilla*, 559 U.S. at 367. The SC Commission of Indigent Defense Performance Standards in Non-Capital Case are modeled on the National Legal Aid and Defender Organization’s Performance Guidelines for Defense Representation. Found at <https://www.nlada.org/defender-standards/performance-guidelines> (last viewed July 2, 2023).

culpability, prior offenses, personal background, employment record and opportunities, education background (Guideline 8.6(4)).

In assessing the investigation in *Strickland*, the Court stated that “strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitation on investigation.” Any decision to halt investigation must be assessed for reasonableness. *Strickland* at 690-91. When assessing the reasonableness of an investigation, it is necessary to consider not only the evidence already known to counsel, but also whether this evidence would lead a reasonable attorney to conduct further investigation. *Wiggins*, 539 U.S. at 527. *See also Council*, 380 S.C. at 173, 670 S.E.2d at 363 (“Even the limited information obtained should have put counsel on notice that Respondents background, with additional investigation, could potentially yield powerful mitigating evidence”). Counsel need not investigate every possible line of mitigating evidence regardless of how likely that evidence would be to strengthen a mitigation case; however, a limited investigation must be supported by “reasonable professional judgments.” *Wiggins*, 539 U.S. at 533.

When assessing the reasonableness of an investigation, it is necessary to consider not only the evidence already known to counsel, but also whether this evidence would lead a reasonable attorney to conduct further investigation. *Wiggins*, 539 U.S. at 527. *See also Council*, 380 S.C. at 173, 670 S.E.2d at 363 (“Even the limited information obtained should have put counsel on notice that Respondents background, with additional investigation, could potentially yield powerful mitigating evidence”). Counsel need not investigate every possible line of mitigating evidence regardless of how likely that evidence would be to strengthen a mitigation case; however, a limited investigation must be supported by “reasonable professional judgments.” *Wiggins*, 539 U.S. at 533.

Here, Dr. Maddox examined Mr. Stafford at the Lexington County Detention Center and identified a history of memory loss, deficits on a mental status examination, and evidence of cognitive dysfunction. Applicant's Ex. 1. Dr. Maddox recommended opined, "It is my opinion to a reasonable degree of medical certainty that Mr. Stafford needs neurological testing" and "to be evaluated by an neurologist." *Id.* Evidence presented at the evidentiary hearing revealed that trial counsel failed to follow through on these recommendations. As part the failure to follow through on these recommendations, trial counsel did not develop the proper rapport with Mr. Stafford prior to the neurological testing.

Had trial counsel complied with Dr. Maddox's recommendations, the Dr. Maddox would have been able to complete her evaluation. Applicant's Ex. 2, 3. Dr. Maddox diagnosed Mr. Stafford with Post Traumatic Stress Disorder ("PTSD") and Opiate Use Disorder, In a Controlled Environment. *Id.* The Opiate Use Disorder resulted from medical doctors prescribing opiates to treat Mr. Stafford's back pain. Dr. Maddox testified that Mr. Stafford was under medical care at the time of the accident, which included doctors simultaneously prescribing Xanax and Methadone, which is contrary to the best medical practices. Although trial counsel provided the sentencing judge some information about Mr. Stafford's history of sexual abuse, that information lacked the medical conclusions regarding PTSD and the resulting effects.

Dr. Maddox further opined that, as a result of his cognitive deficits, Mr. Stafford would take a longer amount of time to process the accident, which contributed to the amount of time that elapsed before he stopped his vehicle. This testimony provides a defense to the charge of leaving the scene of an accident, which requires an element of knowledge. This testimony could also be offered as mitigation during sentencing.

Mr. Stafford was prejudiced by trial counsel's failure to investigate. The presentation of

the evidence during the guilty plea of the charge for leaving the scene of an accident was aggravating rather than mitigating. Dr. Maddox's report mitigated this evidence and even provided a defense. Had trial counsel completed the investigation, the Mr. Stafford would have go to trial on this offenses or received a shorter sentence. Dr. Maddox also presented compelling mitigation evidence regarding Mr. Stafford's history of trauma and cognitive disfunction. Had trial counsel presented this evidence, the Mr. Stafford would have received a shorter sentence.

IV. CONCLUSION.

For the foregoing reasons, this Court should order a new trial. Alternatively, this court should order a new sentencing hearing.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
S.C. Bar Number 66063
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Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groslawfirm.com

Attorney for Thomas Stafford

July 3, 2023
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	Case No. 2015-CP-32-01888
Thomas Stafford,	)	
	)	
Applicant,	)	
	)	
vs.	)	
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

I certify that I have served a copy of this pleading on the State of South Carolina, via email, to counsel's AIS email address, on the date reflected below, addressed to

Donald J. Zelenka, Esquire
 S.C. Attorney General's Office
 PO Box 11549
 Columbia, SC 29211-1549
dzelenka@scag.gov

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
 The Grose Law Firm, LLC
 404 Main Street
 Greenwood, SC 29646
 (864) 538-4466

July 3, 2023
 Greenwood, South Carolina

Exhibit A

<i>January</i>						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

<i>February</i>						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

<i>March</i>						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

<i>April</i>						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

<i>May</i>						
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Exhibit B

October 2013 Search

Terms of Circuit and Family Court
October 2013

Circuit Number	10/7/2013	10/14/2013	10/21/2013	10/28/2013
11	Common Pleas/Common Pleas Nonjury Lexington Gibbons, Brian NELSON 7, 8, 9, 10 JORDAN 11 Common Pleas/Common Pleas Nonjury Lexington Keesley, William JOHNSON 7, 8, 9 NO CR NEEDED 10 JOHNSON 11 am General Sessions Saluda Hocker, Donald FAUCETTE 7, 8, 9, 10 NO CR NEEDED Common Pleas/Common Pleas Nonjury Edgefield Brown, D. EDDINGS Common Pleas/Common Pleas Nonjury 7, 8, 9 Lexington Nettles, Michael REED 7, 8 NO CR NEEDED 9	General Sessions Saluda Baxley, J. EDDINGS 14, 15, 16, 17 NO CR NEEDED 18 General Sessions Lexington Cooper, G. Thomas JOHNSON 14, 15 am NO CR NEEDED 16 JOHNSON 17 NO CR NEEDED 18 Common Pleas/Common Pleas Nonjury Lexington Keesley, William NO CR NEEDED 14, 15, 16 NEVERS 17, 18 General Sessions Lexington King, Howard JORDAN 14, 15 am JORDAN 16, 17 am JORDAN 18 Common Pleas Non-Jury Griffith, Eugene DAVIS 14 THUEME 15, 16, 17, 18 am General Sessions Non-Jury 16, 17, 18 Keesley, William NO CR NEEDED 16 NEVERS 17, 18 Common Pleas Non-Jury 16, 17, 18 Keesley, William NO CR NEEDED 16 NEVERS 17, 18	General Sessions Non-Jury Cothran, R. HELMS 21, 22, 23, 24 NO CR NEEDED 25 Common Pleas/Common Pleas Nonjury Lexington Culbertson, Benjamin NO CR NEEDED Common Pleas Non-Jury Keesley, William EDDINGS 21, 22, 23, 24 NO CR NEEDED 25 General Sessions Non-Jury Keesley, William EDDINGS Family Court Edgefield / McCormick / Saluda Allen, Kellum W. DERRICK 21, 22 NO CR NEEDED 23 DERRICK 24, 25 Family Court Lexington Newton, Robert E. SHEALY MACMILLAN 21 SHEALY 22, 23, 24, 25 Family Court Lexington	Common Pleas/Common Pleas Nonjury McCormick Cothran, R. SIGWALD 28 NO CR NEEDED 29, 30, 31, 1 General Sessions Lexington John, Steven THUEME General Sessions/State Grand Jury Lexington Keesley, William EDDINGS 28, 29, 30 am NO CR NEEDED 31, 1 General Sessions Non-Jury 31, 1 Keesley, William EDDINGS 31, 1 Family Court Lexington Allen, Kellum W. KAISER 28, 29 NO CR NEEDED 30 KAISER 31, 1 Family Court Lexington Armstrong, Robert S. SHEALY Family Court 29, 30, 31, 1 Lexington
	Family Court Lexington Allen, Kellum W. KAISER Family Court Lexington Neese, Deborah DERRICK 7 am DERRICK 8 pm, 9, 10 THOMAS 11 Family Court Lexington Newton, Robert E.	Family Court Lexington Allen, Kellum W. KAISER Family Court Lexington Newton, Robert E. SHEALY	Family Court Edgefield / McCormick / Saluda Allen, Kellum W. DERRICK 21, 22 NO CR NEEDED 23 DERRICK 24, 25 Family Court Lexington Newton, Robert E. MACMILLAN 21 SHEALY 22, 23, 24, 25 Family Court Lexington	Family Court Lexington Allen, Kellum W. KAISER 28, 29 NO CR NEEDED 30 KAISER 31, 1 Family Court Lexington Armstrong, Robert S. SHEALY Family Court 29, 30, 31, 1 Lexington

	SHEALY		McGee, Randall E.	Neese, Deborah
			KAISER	JORDAN 29, 30, 31, 1

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Thomas Stafford,	)	C.A. No. 2015-CP-32-1888
S.C.D.C. No. 357279,	)	
	)	
Applicant,	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
2024 JAN 31 AM 11:06
CLERK OF COURT
LEXINGTON, SC

This matter comes before this Court by an Application for Post-Conviction Relief filed May 22, 2015, filed by Thomas Stafford, through his retained counsel E. Charles Grose, Esq. The Respondent made a Return on December 1, 2016. On June 22, 2023, an evidentiary hearing was convened before this Court. The Applicant was present and represented by his counsel. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant, Dr. Donna Schwartz Maddox, Lisa Kornmeyer, Jim Kornmeyer, Lillian Williford, Tina Orlowski, Anna Browder, and Rick Collins. Subsequent to the hearing, The Applicant made a Post-Hearing Brief dated July 3, 2023. On July 25, 2023, the Court indicated its intention to deny post-conviction relief. This Order follows:

PRIOR PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. In February 2013, the Lexington County Grand Jury indicted Applicant for leaving the scene of an accident with death (2013-GS-32-0392) and felony driving under the influence (DUI) resulting in death (2013-GS-32-0393). He was represented by Anna Good, Esquire. On October 3, 2013, Applicant pleaded

guilty as indicted on the charge of felony DUI resulting in death and entered an Alford¹ plea to leaving the scene of an accident with death. The Honorable Robert E. Hood sentenced Applicant to a term of imprisonment for seventeen (17) years for each charge. These sentences were to be served concurrently.

A timely notice of appeal was filed. Current counsel Charles Grose, Esq. represented Applicant on appeal. In an Order filed September 11, 2014, the Appeal was dismissed, noting Applicant voluntarily withdrew and dismissed his appeal. The Remittitur was issued on September 30, 2014.

FACTUAL BASIS OF THE PLEAS

The factual basis of the plea was set out by then Assistant Solicitor Rick Collins on the charge of felony DUI resulting in death and leaving the scene of an accident with death:

On December 3, 2012, at 1:33 p.m., the defendant was operating a 2003 Nissan Pathfinder westbound on 1-20 near the 62 mile marker in Lexington County. At that same time the Department of Transportation had deployed a cleaning crew on the overpass, one of the employees of which was Mr. Nicholas Johnson. . . parked in the emergency lane up against the barrier of the overpass were three Department of Transportation vehicles. . . . You could see that picture would depict a Department of Transportation vehicle in the far right-hand lane. You would see that attached to the dump truck is a trailer. On the back of the trailer is black and yellow reflective paint. Also you see trailer lights and reflectors. The sole purpose of that trailer is to act as a crash barrier. Attached to the truck are its lights and its reflectors, and on the top of the vehicle were orange lights, which were working and illuminated at the time. There were two other vehicles in front of that Department of Transportation vehicle.

Mr. Stafford passed that particular vehicle with all the warning signals and the other two vehicles, swerved over to the right-hand side of the road and near simultaneously struck the barrier and Mr. Johnson, who was then shoveling debris off the side of the roadway. Your Honor, that collision resulted in the nearly instantaneous death of Mr. Nicholas Johnson, who then was only 21 years old. . .

¹ North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970).

[He is in lane three] The far right lane. And he passes that vehicle, two other vehicles in the emergency lane, and then approximately another 300 feet where he veers into the emergency lane striking the barrier and Mr. Johnson. . . .

Your Honor, at that time in lane number two, the middle lane, were two witnesses, Mr. Charlie Bishop and Mr. Brett Blanks, who are in the courtroom here today. They would likely testify that Mr. Blanks saw the collision and Mr. Bishop saw the effects immediately after the collision. . . They're also continuing toward 378 exit, see the incident, and see that Mr. Stafford is continuing behind them. Your Honor, they would likely testify that they made an effort in an attempt to stop Mr. Stafford. They would further testify that Mr. Stafford changed lanes in an effort to get around them and then they in turn changed lanes as well, ultimately bringing him to a stop approximately one half mile up the road right before the Highway 378 exit. There they exited the vehicle, and confronted Mr. Stafford. They would testify as to his condition of being lethargic, slow, slurred speech, at one point making an attempt to get back into the vehicle, at which point they took the keys from the car, would not give him the keys back, contacted law enforcement. Approximately 20 minutes later the law enforcement officers did show up. . .

Your Honor, their conversation with Mr. Stafford at that point would reveal that they had inquired of Mr. Stafford if he realized what happened. His responses to them would have been no, that he did not know what happened. He couldn't understand why they were stopping him at that point. As the conversation progressed, that he began, well, I realized I hit something, I didn't know what it was.

Your Honor, in layman's terms as we believe that they would describe it, they would describe him as being on something at that point.

Your Honor, as I stated before the Highway Patrol and other emergency services were contacted. Trooper Blaylock of the Highway Patrol did respond to the scene approximately 20 minutes later. Once he arrived, emergency services were already on scene, and according to their report, again, resuscitative efforts were deemed futile at that point, given the nature of the collision.

Your Honor, Trooper Blaylock began to interview Mr. Stafford. There he noticed that his pupils were constricted, that he seemed to sway, that he seemed disoriented. Based on that, asked him a series of questions and performed a series of standardized field sobriety tests to which, according to Trooper Blaylock, he performed poorly on. He was subsequently arrested. He was transported to the Lexington ER where a blood draw was performed. The blood was analyzed by SLED, and that analysis revealed methadone and generic Xanax.

Your Honor, in statements taken from the defendant by the Highway Patrol MAIT team, Mr. Stafford would admit at that current time he was undergoing treatment from a methadone clinic. That on a daily effort at

approximately 4:30 to 5 o'clock in the morning, he would attend the clinic, receive a dose of about 120 milligrams of methadone, continue on about the day.

Your Honor, the levels according to the forensic toxicologist from SLED, the levels of methadone that were revealed in the analysis would tend to suggest that they were of therapeutic levels.

Your Honor, however, the Xanax that was indicated, we believe the toxicologist would testify that those levels were approximately three to four times what could conceivably be a therapeutic level of the Xanax. Moreover, it would be beyond comprehension in the toxicologist's opinion that the two would ever be prescribed together due to the additive or the synergistic effect of both the medications being combined at once and never would it be recommended that anyone drive after consuming both of those medications. . .

Your Honor, as you may very well already know, methadone is commonly used to, I think, wean people off of an opioid based pain killer or heroin...

And at the time I think Mr. Stafford would admit that there was such an addiction.

Your Honor, it's again our contention that Mr. Johnson's death was proximately caused by the driving due to the ingestion of those substances, and the basic facts of the case at issue. I believe what is more concerning in this case is that approximately 15 days before that, Mr. Stafford had been arrested for a DUI 2nd offense under circumstances which are strikingly similar to the facts in this case. It was about the same time in the afternoon, 1:30, 1:40 p.m., based on conversation with Officer Parker of the Pine Ridge Police Department, the conversation with Mr. Stafford would seem similar, that on that same day he had received a dose of methadone. On the DUI 2nd, he refused to submit a sample. However, in his vehicle that day was a prescription for 60 generic Xanax, Your Honor, only nine of those pills remained of a 60-day prescription of having — getting it filled seven days earlier.

Your Honor, that charge was pending obviously two weeks prior to this incident. This charge is being consumed in this plea. In exchange for his plea to these charges, this DUI 2nd is being dismissed. . . .

Plea Tr.p. 10-19.

SUMMARY OF PCR TESTIMONY

Dr. Donna Schwartz Maddox, a forensic psychiatrist, testified that she was retained in 2013 to assist in the defense of the Applicant. She indicated that she met with the Applicant on January 13, 2013 and he claimed he could not remember the incident. She was concerned that

there could be brain damage and sought neuropsychological testing, an evaluation by a neurologist, and an electroencephalogram to rule out a seizure disorder. She also wanted his blood tested. She indicated they obtained a forensic psychologist, Dr. Tora Brawley. Dr. Maddox indicated that Dr. Brawley attempted to evaluate him but determined that Stafford was not giving good effort in the testing and malingering or faking symptoms and did not issue a report. Dr. Maddox indicated that counsel Good still wanted her to continue to see Stafford, although Dr. Brawley did not complete a report. However, Dr. Maddox refused to do so.

Dr. Maddox indicated that she was again retained for this proceeding and issued an initial report in February 11, 2018 and a follow-up report April 7, 2022. Subsequent to the plea, in 2019, Dr. Brawley saw the Applicant again in preparation for this PCR hearing. Dr. Maddox opined that Dr. Brawley's testing confirmed her own earlier 2013 diagnostic impression of memory deficits, noting particular deficits in immediate verbal learning (4%), immediate verbal learning for prose (1%) and delayed memory for prose (1%). His visual memory was found by Dr. Brawley to be excellent at 67%. He was found to have other deficits in mental tracking (7%), manual speed of right hand (6%) and manual dexterity of his right hand (7%). Applicant's Exhibit 3, p.5.

Dr. Maddox testified that she had Dr. Pritchard, a neurologist, complete a neurological report in 2019 and an EEG. She indicated that Dr. Pritchard found he had difficulty with delayed recall. He further noted that Applicant had back pain.

Dr. Maddox further indicated medical and social history are important to determine behavior. Dr. Maddox reported that the Applicant's childhood was very disruptive and unstable. She also reported that the Applicant was a victim of sex abuse. The Applicant suffered from back pain after he hurt his back working construction. As a result, Applicant became addicted to

opiates, although he also took other medications. These included Klonopin and Xanax which were prescribed by the same doctor.

Dr. Maddox noted that there were times in 2017 when there was an issue concerning his competency. She saw him in initially July 2017 and noted the Applicant had gained weight and was working off medications. On September 21, 2018, he had been threatened by inmates and feared threats to his family. He was moved to Tyger River Correctional Institution. Dr. Maddox confirmed that he was stabilized now, and she had no issues about his competency, although he still had some paranoia. She had reviewed his EEG which was in normal range and not indicative of a seizure. She opined that he presently has a diagnosis of Post-Traumatic Stress Disorder and Opiate use disorder, in a controlled environment.

Concerning her involvement before the plea, Dr. Maddox stated she spoke with counsel Good in 2013 about the role of Dr. Brawley and a neurologist (Dr. Pritchard) in the mental health preparation which was to confirm or rule out reasons for the memory issues she experienced with the Applicant and matters related to criminal responsibility. She opined that the Applicant did not meet the definition of either insanity or guilty but mentally ill. However, she also stated the memory issues may have explained why he did not stop immediately at the accident site. She also asked counsel Good to retain Dr. Alexander Morton, a toxicologist, to assist the defense related to the drug issues presented in the case.

Dr. Maddox indicated that after she received the informal report from Dr. Brawley in 2013 about malingering, she could not go forward with the evaluation or report because of her belief in Applicant's lack of credibility at the time. She stated counsel Good begged her to stay involved, but she declined to do so at that time.

Lisa Kommeyer, the Applicant's mother testified she was interviewed for the evaluation. She confirmed that she was aware of the sexual abuse her son received because she noted his behavioral changes. She was also aware of the impact of the medications Applicant took. She described Applicant as tired and sleepy, but that he worked a lot. She described him as having a good relationship with his daughters and took care of them every other weekend.

Ms. Kommeyer stated she assisted in the representation by Anna Good of her son. She claimed that Anna went through her and they emailed each other numerous times. Applicant Exhibits 4-15. Concerning plea negotiations, Mrs. Kommeyer claimed the State had agreed to drop the "leaving the scene of the accident" charge if he pled guilty to felony DUI. She said she was surprised on the day of the plea that it was included in the plea. She later learned that the prosecutor was not going to drop the charge. Mrs. Kommeyer claimed Anna should have come to her before the plea to explain it to her and the family. She emailed counsel after the plea for an explanation. As noted in Applicant's Exhibit 14, she learned from counsel that the victims would not agree to dropping the leaving scene of the accident charge and counsel advised that the defense would only agree to plead if the prosecutor agreed the charges would run concurrent and that the Applicant could plead under N.C. v. Alford. Counsel indicated to her that the witnesses who stopped the vehicle would be the evidence on the charge and that there were reasons why the Applicant would not be able to testify if it went to trial. Applicant Exhibit 14. In that email, counsel also indicated to her that she and Tom discussed the decision related to the DUI 2nd charge. She also learned in the email that the prosecutor had agreed that he was not going to ask for a specific sentence and would not have a position at sentencing, but that they were always aware the victims were going to ask for something high. Applicant's Exhibit 14. Mrs. Kommeyer complained that counsel did not object to anything during the plea.

Jim Kornmeyer testified that he observed the effects of drugs on the Applicant. He described the Applicant as having a strong work ethic and a good relationship with his children. She stated that he understood prior to the plea that the leaving the scene of the accident charge had been dropped, but on the day of the plea learned it had been changed and included in the plea. During the plea, he thought the Applicant appeared to be confused.

Lillian Williford, the Applicant's aunt, was at the plea. She stated she did not have a complete understanding of the plea. She thought the Applicant appeared confused and had a blank look on his face.

Tina Orlowski, an aunt, was at the plea, but did not address the court. She testified Applicant appeared confused when he turned around and looked at the family. The Applicant testified that he was originally willing to plead to felony DUI, but not leaving the scene. He claimed he felt bad about the accident. As to plea negotiations, he thought he was guilty of felony DUI, but not guilty of leaving the scene. He stated that he wanted 5-9 years that Ms. Good advised him was a possible range. However, at some point prior to the plea, he learned leaving the scene (hit and run) was to be included. He stated that there was a period during the plea that he was confused. He thought everything happened so fast. He also thought N.C. v. Alford was not adequately explained to him by counsel.

Anna Browder (Anna Good) testified that she represented the Applicant as retained counsel. She indicated that she had numerous meetings with the Applicant prior to the plea. She retained Dr. Maddox to review his competency and criminal responsibility. Dr. Brawley was also retained but had determined that the Applicant was malingering and did not do a report. Counsel testified confirmed that Dr. Maddox confirmed to her some neurological deficits. State Exhibit 1. At Dr. Maddox's suggestion, she also retained Dr. Alexander Morton, a toxicologist, who

reviewed the SLED toxicology report and noted that SLED missed some drugs that were also reflected in the report. Counsel also retained David Mathers a MAIT accident expert to review the MAIT report and opined to her MAIT used the wrong method, but conclusion was not helpful to the defense case. She compiled a Plea Notebook (State's Exhibit 2) that she provided to Judge Hood prior to the plea and sentencing. This included a letter of remorse to the victim's family from the Applicant, support letters expressing remorse from Lisa Kornmeyer, stepfather Mark Rushton, Amye Rushing, Marie Kennedy (mother of Applicant's daughter), Jim Kornmeyer, Lillian Williford, John Keenan (friend), Britt Bodie (friend), John Bolos (friend and employer), daughters Leah and Marisa, family photographs, work records and photographs of projects, methadone patient records, and x-ray of compressed disc.

Counsel testified that they wanted to avoid maximum exposure in their negotiations. She stated that the state's initial offer was contingent on the victim's family agreeing to drop the leaving the scene charge, which they ultimately did not agree to do. She stated she thought this was made clear to the Applicant prior to the entry of the plea. She also indicated that there was never an agreed sentence, but that the prosecutor agreed to not oppose concurrent sentences and take no position on sentence requests, which she believe the prosecutor complied with in his representation to the judge in chambers. She further indicated that the Alford plea was done on the hit and run charge because the Applicant believed he was not guilty of leaving the scene, but the state was prepared to prove it.

Counsel stated that she tried to get Dr. Maddox to meet with the Applicant again, but she declared she could not do so based upon Dr. Brawley's assessment.

Counsel further testified about the series of emails which revealed the communication between counsel and the Applicant's family about the status of negotiations and information

about the Applicant's background. These emails included information about the sexual abuse (Applicant's Exhibit 5), Applicant's high stress level (Applicant's Exhibits 11 and 12), and the potential if he does not plead to one charge of felony DUI death, there was a risk the prosecutor would seek other charges such as reckless homicide and others and push for a trial over a plea. (Applicant's Exhibit 12) (August 14, 2013). She confirmed at that August 2013 time, she was still talking about just felony DUI. Similarly, referring to Applicant's Exhibit 13, counsel acknowledged in the August 20, 2013 email that she advised Applicant's mother the plea offer would be a plea to one charge of felony DUI (1-25 years) and the state would dismiss the leaving scene of death and DUI 2nd. However, counsel clarified that at that time of her email it was not a firm offer. Counsel confirmed that she did not recall discussing the change with the mother prior to the actual plea including the leaving the scene charge but did discuss it with the Applicant who agreed to go forward with the plea prior to its entry.

Rick Collins, the prosecutor in the case, testified that he was involved in the preparation for trial in the case. Collins indicated that it was his impression that the leaving the scene charge would never go away because he thought the victims would not say yes. Collins stated that in his discussions with Browder he indicated the possibilities during these periods of negotiations. However, Collins stated he never conveyed to counsel that Applicant could plead only to felony DUI and the rest would go away. Collins stated it was always up to victims. He stated there was never a firm offer until the final time when it was taken to victims. Collins recalled the meeting in chambers with the judge prior to plea noting the plea would be straight up with the Alford plea on leaving the scene, but he was not recommending anything as the solicitor. However, he indicated he was aware the victims would be making a request as well as Sgt. Shelton of the S.C.

Highway Patrol. Tr. p.23-28. Collins did not think the presentation violated any terms of the plea agreement.

On reply, the Applicant recalled counsel Browder. She indicated that she was never told during the plea negotiations that the leaving the scene charge would never go away. However, she understood that it could potentially go away, but that Collins would have to talk with the victims. She further understood that the prosecutor would not be opposing the sentence request and understood it to be a concurrent sentence.

ALLEGATIONS BEFORE THE COURT

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

1. Ineffective Assistance of Counsel
 - a. "Trial counsel failed to investigate, discover, and/or present information that would have provided a defense to the charges"
 - b. "Trial counsel failed to investigate, discover, and/or present information that would have led to the suppression of Applicant's statements"
 - c. "Trial counsel allowed the guilty plea to go forward and/or otherwise failed to withdraw the guilty plea when the prosecution changed the plea negotiations at the last moment"
 - d. "Trial counsel failed to investigate, discover, and/or present information that would have mitigated and reduced the sentence imposed"

Prior to the outset of the hearing, the Applicant, through counsel, withdrew allegations (a) and (b). However, as set out in his post-hearing memorandum, the Applicant proceeded on the following issues, as amended at the hearing:

Ineffective Assistance of Counsel:

- (1) Failure to investigate, discover and present evidence that would have provided a defense to the charges,
- (2) Allowing the guilty plea to move forward and/or failing to withdraw the guilty plea when the prosecutor changed the plea negotiations as the last moment.

- (3) Failing to investigate, discover, evidence that would have mitigated or reduced the sentence imposed.
- (4) Not moving to withdraw the guilty plea when the State breached the agreement to remain silent on sentencing.

FINDINGS AND CONCLUSIONS

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the original application for post-conviction relief, the Respondent's Return, and the Applicant's Post-Hearing Memorandum. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented during the guilty plea and this evidentiary hearing.

FAILURE TO MOVE TO WITHDRAW PLEA.

This Court must find that the Applicant failed in his burden of proof on his first allegation. In his first argument before this Court in his post-hearing memorandum, the Applicant asserts that counsel should have moved to withdraw the guilty plea because the plea was inconsistent with counsel's understanding of the charges Stafford was going to face because it was the understanding of the family members that the hit and run (leaving the scene) charge would be dismissed as a result of the plea bargain. *Stafford's Post-Hearing Memo*, p. 6-7. The Applicant contends that the State did not honor the plea agreement, relying upon email

correspondence that predated the day of the plea and the testimony of family members present at the plea who asserted Applicant was confused at the time of the plea. This Court concludes that there was no unkept plea bargain agreed between the parties and no basis for counsel to either object or move to withdraw the guilty pleas.

Trial counsel must provide reasonably effective assistance under “prevailing professional norms.” Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Reviewing courts presume counsel was effective. Id. at 690, 104 S.Ct. 2052. Therefore, to receive relief, a PCR applicant must prove: (1) counsel failed to render reasonably effective assistance under prevailing professional norms and was deficient; and (2) the deficient performance prejudiced the applicant's case. Id. at 687, 104 S.Ct. 2052.

First, Applicant must prove plea counsel's performance was deficient. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” Butler v. State, 286 S.C. at 445, 334 S.E.2d at 816. “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’” Dunn v. Reeves, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23–24).

Prejudice is defined as a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 694, 104 S.Ct. 2052. A

reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). “Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.” *Id.* at 700, 104 S.Ct. 2052. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 369, 137 S. Ct. 1958, 1966 (2017). Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee v. United States, 582 U.S. 357, 369, 137 S. Ct. 1958, 1967, 198 L. Ed. 2d 476 (2017)

Judges must “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” Lee, 582 U.S. at 369, 137 S. Ct. at 1967. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

This Court must conclude that the plea bargain entered at the time of the entry of the guilty plea was satisfied by the actions of the Applicant, defense counsel and the prosecutor. On the day the plea was entered and the time it was entered the relevant parties were aware of and accepted the terms of the plea offer. This Court finds that the actual plea offer that was accepted

at the entry of the plea was that the Applicant would plead guilty to felony DUI resulting in death and plead guilty under North Carolina v. Alford to leaving the scene of an accident resulting in death without a negotiated sentence, without a sentence recommendation by the prosecution and the defense was free to argue whatever sentence it deemed appropriate. In return the prosecutor agreed to dismiss the pending DUI second offense. This Court further finds that the 17 year concurrent sentences the Applicant received were consistent with the agreed negotiation.

The Applicant relies upon two prior South Carolina cases that are distinguishable in the present setting. He relies upon Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 296 (2000), to support our conclusion. In Thompson, plea counsel failed to object after the solicitor recommended the maximum sentence in violation of the earlier plea agreement. 340 S.C. at 115, 531 S.E.2d at 296. Thompson was indicted for murder and pleaded guilty to voluntary manslaughter. *Id.* at 113, 531 S.E.2d at 295. Thompson testified at the PCR hearing that he chose to plead guilty because he was under the assumption the solicitor was not going to make a sentencing request or recommendation. *Id.* at 114, 531 S.E.2d at 295. In addition, Thompson's attorney testified she told him prior to the plea the solicitor was not going to make a sentencing recommendation. *Id.* Thompson's attorney also confirmed to the plea court that the solicitor had correctly and completely stated the plea agreement and there was nothing further that needed to be added regarding the plea negotiations. *Id.* at 116, 531 S.E.2d at 296. Our supreme court found there was a reasonable probability that Thompson would not have pled guilty but for his attorney's ineffective assistance because he entered his guilty plea in reliance on the sentencing range and the solicitor's agreement not to make any sentencing recommendations. *Id.* at 117, 531 S.E.2d at 297.

The Applicant also relies upon Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988). In Jordan, the defendant agreed to plead guilty because he believed the solicitor would neither oppose nor recommend probation. Id. at 54, 374 S.E.2d at 685. When the solicitor in Jordan reneged on the plea agreement and recommended against probation, Jordan's attorney failed to draw the plea judge's attention to the plea bargain and then failed to move to withdraw Jordan's guilty plea. Id. Therein, the Supreme Court held that "the conduct of Jordan's counsel in not protecting Jordan's right to enforce the plea agreement with the Solicitor's office fell below prevailing professional norms." Id. (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). Like the attorney in Jordan, Thompson's attorney's failure to object fell below prevailing professional norms. See also Smith v. South Carolina, 775 S.E.2d 696 (S.C. 2015) (the supreme court found deficient performance when trial counsel failed to object to the solicitor's recommendation that the defendant receive maximum punishment after the solicitor promised to remain silent during sentencing).

This case is distinguishable from both cases. Unlike Thompson and Jordan, at the time the plea was entered the defense counsel, the Applicant and the prosecution were aware that the agreed negotiation included the entry of the Alford plea to leaving the scene of the accident. This is supported by the testimony of defense counsel, the prosecutor and Applicant. The fact that the Applicant's family may have been surprised at the time of the plea by the inclusion of the second charge does not bind the Court or the prosecution. The Applicant was aware at the time of the entry of the plea of its inclusion during the plea with the understanding that he was pleading under Alford. Tr.p. 6, l. 12-p. 9, l 2.² In addition to this testimony, the defense counsel was

² The colloquy by the Applicant, his counsel, and the Court about his understanding about the entry of the plea pursuant to Alford carries a presumption of verity. The Applicant has failed to present a cogent reason as to why he should not be held to the truth of his statements. See

credible in her assertion that she was aware that the removal of the pending leaving the scene charge would only occur if there was agreement by the victim's family which did not occur on the eve of the plea. Applicant's Exhibit 14 is contemporaneous and consistent with this understanding. Further, the prosecutor credibly stated that the removal of the leaving the scene charge throughout the negotiation was contingent upon the victim's approval.

Unlike, Thompson, Jordan, and Smith, the understanding of the negotiations as Applicant entered the plea was consistent with what occurred. The prior hopes and expectations of the defense counsel and his family that the charge would be dropped did not occur and was not part of the plea bargain. Unlike Thompson and Jordan, the prosecutor also complied with his agreement that he would not seek a particular sentence or consecutive sentences. As counsel stated clearly in Applicant's Exhibit 14, "the deal with the prosecution was that they were not going to put a number on the record and would not take a position on sentencing. We always knew the victims were going to ask for something very high due to their emotions."³ Further, the prosecutor had indicated to the judge in chambers that he had no position on sentencing. The Applicant's reliance upon earlier emails between counsel with the mother and father, which predated that day of the plea and admittedly before the firm and final offer was made by the State is not persuasive after the credible explanation by defense counsel.

Blackledge v. Allison, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977) (holding that solemn declarations in open court "carry a strong presumption of verity"). see also State v. Thrift, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994) ("[A]ll plea agreements must be on the record and must recite the scope, offenses, and individuals involved in the agreement.").

³ The Court notes that consistent with the expectations and negotiation during the plea the victim's mother made a victim impact statement on behalf of the family asked for the maximum allowed sentence. Tr.p. 26. Similarly, on behalf of the State Highway Patrol First Sgt. Chris Shelton and supervisor of at the scene also speaking on behalf of the victim's family asked for the maximum sentence. Tr.p. 27. These presentations were also consistent with the expectations of defense counsel and did not suggest that reasonable counsel should have either objected or moved to withdraw the plea at that time as a violation of the plea agreement.

The Applicant questions whether the alleged potential for a trial was imminent as pushing the entry of the plea. He points out trial counsel's testimony that if a plea was not entered, the case would have proceeded to trial either that week or the next week. Applicant questions these statements because the date of the guilty plea was on a Thursday and that there was no General Sessions term the next week. Although the Applicant appears to be correct that there was no scheduled term the next week, he has not shown that if the plea was not entered that a trial would not have been held during the next available General Sessions term. Further, although in an August 13, 2013 and August 20, 2013 emails indicated that the State may proceed on other available charges if he did not enter a plea to felony DUI (Applicant's Exhibits 12, 13), the Applicant is correct that the State had not yet indicted on other charges at the time the plea was entered. However, the prosecutor confirmed that in their discussions, he had spoken with counsel about possible outcomes and possibilities. Although additional charges by indictment could not be made that week, there remained a possibility of a direct indictment by the grand jury at the next term, if that remained the course the prosecutor chose to pursue. As revealed in the factual basis of the plea, there was a further factual basis to do so.

The Applicant also asserts the comment by the prosecutor that the State had a strong case regarding leaving the scene of the accident should not be considered because it is not the relevant test in assessing the prejudice prong from a guilty plea after deficient performance is shown. The strength of the case was reflected in the factual basis set forth in the plea as set out above. The representation was made by defense counsel that the basis for the Alford plea on that charge was set out and asserted that he was not trying to leave the scene although he stopped a half a mile from the actual scene. Tr.p. 34-35. Here, the comment at the PCR hearing by the prosecutor was based to support the entry of the Alford plea and counsel's reasonable advice and assessment that

that there was a basis to enter the Alford plea and was not deficient in the recommendation. The Applicant is correct that mere strength of the State's case does not alone satisfy the prejudice prong which is related to what the Applicant would do if there was deficient performance proven. See Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Since the representations at the time of the plea were consistent with the negotiations actually agreed upon by all parties, there was no basis that reasonable counsel would have moved to withdraw the plea or object to anything the prosecutor stated. Counsel did not misinform the Applicant concerning the agreed plea negotiation. Counsel cannot be deemed to be deficient under the circumstances. The assertion to the contrary is dismissed.

FAILURE TO INVESTIGATE

The Applicant contends that counsel failed to adequately investigate the case, in particular in failing to follow Dr. Maddox's recommendations for neurological testing and did not develop an adequate rapport with the Applicant prior to the testing. Applicant claims that had this been followed up, the Applicant would have had an opinion from Dr. Maddox about the Applicant suffering from Post-Traumatic Stress Disorder and Opiate Use Disorder, in a Controlled Environment. This Court must conclude that the Applicant has failed to show deficient performance or prejudice.

"[C]riminal defense attorneys have a duty to conduct a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226,235, 723 S.E.2d 610,615 (Ct. App. 2012), overruled on other grounds, Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result."

Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.” Wiggins v. Smith, 539 U.S. 510, 521-22, 123 S. Ct. 2527, 2535 (2003).

This Court must find that counsel performed a reasonable investigation related to the Applicant’s mental status by retaining Dr. Maddox, Dr. Brawley, and Dr. Morton to assess the Applicant’s mental state and the impact of his drugs injection on his performance. The critical problem was that the Applicant was determined to be malingering by Dr. Brawley, the neuropsychologist, during her neuropsychological testing of the Applicant. This critical finding at that time precluded further assessment by Dr. Brawley and Dr. Maddox at that time. It is uncontested that counsel attempted to get Dr. Maddox to continue to complete an examination of the Applicant after the malingering assessment, but she refused to do so due to the Applicant’s malingering. This is not a situation where there was no investigation into the Applicant’s mental health, but an investigation was attempted but impacted by the Applicant’s malingering of his mental symptoms.

An assessment of counsel’s performance must be viewed from the perspective at the time of counsel’s conduct when the Applicant was malingering and preventing a further assessment. As stated earlier, judicial scrutiny of counsel's performance must be highly deferential, and a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland v. Washington, 466 U.S. 668, 669, 104 S. Ct. 2052, 2055, 80 L. Ed. 2d 674 (1984).

In the plea in mitigation, counsel expressed the Applicant's remorse for the accident. Tr.p. 28. As stated above, she presented a packet of materials to the sentencing judge which included evidence of Applicant's methadone treatments, the prescriptions for Klonopin for anxiety and Vybrid for depression.⁴ She described to the sentencing court his 2011 accident that caused a compressed disc in his back that led to his addiction to pain medication. Tr.p. 31. She presented as a result he began methadone treatments which he had been faithful to since October 2011 for a year prior to this incident. She further noted the impact of having lost a child a couple months before led to a tailspin prior to the accident and a period of depression and extreme anxiety with the added medications. Tr.p. 32.⁵

She also addressed in the mitigation presentation the basis as to why he pled to leaving the scene under Alford. First, she indicated that there was no doubt he was under the influence and overmedicating himself in excess of what it should have been and the accident occurred as a result of the overmedication. Tr.p. 32. However, she asserted that there was a factual issue with how the accident happened, but he was still under the influence and could have been avoided if he had not been. She sought to mitigate the prior DUI charge and the pending DUI 2nd that was dismissed because there was no evidence about his medications on that day and claimed he was unaware that his driver's license was suspended on the day of the incident. As to the leaving the scene Alford basis, she asserted that Applicant had contended to her since her representation that he had no intent to flee at the time of the incident and stopped a half a mile down the road. She claimed that his position would have been he could have managed to avoid Mr. Blanks and Mr.

⁴ During the State's presentation at the plea, information was provided that the levels of methadone were at therapeutic levels, but the Xanax was at three to four times of a therapeutic level. It was further reported that no one should be recommended to drive with the synergistic effect of the combination of those prescribed drugs. Tr.p. 17, ll. 3-16.

⁵ Counsel did not bring negative details she learned from Dr. Morton's assessment of the SLED toxicology report that benzodiazepines were also in his system at the time of the incident.

Bishop to get away from them if he was really trying to leave the scene. She suggested that if he was actually fleeing he would have been three miles or more down the road, but he was only stopped one half mile. Tr.p. 35. Counsel further claimed he was not taking drugs for recreational purposes, but that this was prescribed medication that just got out of control while he was trying to help his family. Tr.p. 42. The Applicant stated his remorse for the accident.⁶

The Applicant suggests that the failure to further investigate would have provided a defense to the leaving the scene of the accident. However, in Dr. Maddox's testimony, she opined that there was no evidence to support either a defense of insanity or guilty but mentally ill. Although Applicant suggests that it was defense to leaving the scene because some of his memory deficits would have caused him to take a longer amount of time to process that he committed the accident.⁷ The law requires an immediate stop or as close as possible, not a stop

⁶ In the materials provided to the sentencing court in counsel's plea packet, it included references from Lisa Kornmeyer that the Applicant was sexually abused at age 5 and age 7 by two different men, at age 11 or 12 by a mother of a friend, and subsequently she reported on a neighbor who had molested the Applicant time and his friend. State Exhibit 2, page 4-5. Although the information did not include a diagnosis of Post-Traumatic Stress Disorder, the genesis of such a diagnosis was presented to the sentencing authority who acknowledged he had read the material. Tr.p. 29, ll. 6-9. ("I have reviewed it in full. I've read every page."). However, as Dr. Maddox acknowledged the diagnosis she recently rendered does not support a plea of guilty but mentally ill (lacked sufficient capacity, due to mental illness to conform his conduct to the requirements of law, S.C. Code Ann. § 17-24-20(A)).

⁷ S.C. Code Ann. § 56-5-1210 (A) involving the "Duties of drivers involved in accident resulting in death or personal injury; moving or removing vehicles" states as follows:

(A) The driver of a vehicle involved in an accident resulting in injury to or the death of a person immediately shall stop the vehicle at the scene of the accident or as close to it as possible. He then shall return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 56-5-1230. However, he may temporarily leave the scene to report the accident to the proper authorities. The stop must be made without obstructing traffic more than is necessary.

one-half mile down the road. However, it was the Applicant's malingering, not counsel's deficiency that prevented this additional information from Dr. Maddox from being presented in mitigation at the plea.

Under these discrete circumstances, the Court must conclude that counsel was not deficient in her investigation in the matter. She acted as reasonable counsel in seeking mental health expert assistance in her representation. It was not performance, but the Applicant's own actions that thwarted the additional investigation. He failed in his burden of proof.

This Court also must conclude that Sixth Amendment prejudice has not been shown, assuming *arguendo* that deficient performance was found. The prejudice prong issue is initially whether *to a reasonable probability* the Applicant would have gone to trial on all charges with this information rather than plead guilty or reject the plea agreement to plead under Alford. This claim by the Applicant does not address issues with Felony DUI charge but is focused on the presentation of the leaving the scene of the accident charge. Although the Applicant asserted in the PCR proceeding he would have gone to trial on the hit and run charge, this Court viewing all the circumstances finds that this is not credible as related to the prior Alford plea entry and the plea agreement. This additional information did not undermine confidence in the earlier acceptance of the negotiated plea and did not provide a legal defense to the leaving the scene which the Applicant was allowed to plead under Alford. He has failed in his burden of proof.

This Court must further find that prejudice is not shown related to the mitigation or sentencing of the Applicant. The sentencing court was presented with significant information about the impact of the drugs on the Applicant's action as and his history of being a victim of child abuse, the basis for the later diagnosis of Post-Traumatic Stress Disorder by Dr. Maddox. The sentencing court also learned that it was the Applicant's position under Alford, that being

stopped one-half mile from the scene of the accident under his condition was a short distance and not supportive of an intent to leave the scene. The additional information that he suffered under some memory deficits which may have led to some processing issues may have explained a delay but does not undermine confidence in the plea court's sentencing to two concurrent 17 year sentences when the victims were asking for a maximum sentence on the charges. He had failed in his proof to show a reasonable probability that the sentence would have been different.

CONCLUSION

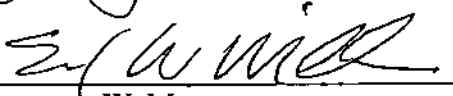
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he 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, 409 S.E.2d 395 (1991), 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 Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of January, 2024.


EDWARD W. MILLER
Presiding Judge
Eleventh Judicial Circuit

Summerville, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
11th JUDICIAL CIRCUIT

COUNTY OF Lexington

FILED

2024 MAR -7 AM 10:08

CASE NO.: 2015-CP-32-01888

Thomas Stafford

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

State of South Carolina

Defendant.

Plaintiff's Attorney: Charles Grose, Bar No. 66063 Address: 305 Main Street, Greenwood, SC 29646 Phone: 864-538-4466 Fax 864-538-4405 E-mail: charles@groselawfirm.com Other:		Defendant's Attorney: Donald L. Zelenka, Bar No. _____ Address: P.O. Box 11549, Columbia, SC 29211 Phone: 803-734-3601 Fax _____ E-mail: dzelenka@scag.gov Other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Rule 59(e), SCRCP Estimated Time Needed: 30 Minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <i>s/E. Charles Grose, Jr.</i> Signature of Attorney for ☒ Plaintiff / ☐ Defendant Feb. 8, 2024 Date submitted			
SECTION III: Motion Fee			
☐ PAID – AMOUNT: \$ ☒ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE _____ Date:	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____			

FILED

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) 2024 MAR -7) AM 10:18)
FOR THE ELEVENTH JUDICIAL CIRCUIT

Thomas Stafford,)
) LISA M. CGMER) Case No. 2015-CP-32-01888
) : CLERK OF COURT)
) Applicant)
))
vs.)
))
))
State of South Carolina,)
Respondent.)

**Thomas Stafford's
Rule 59(e), SCRPC Motion**

Pursuant to Rule 59(e), SCRPC, Thomas Stafford moves this Court to reconsider the order dated January 19, 2024 and filed January 31, 2024 ("Order"), withdraw that Order, and enter an order granting him post-conviction relief ("PCR").¹

I. THRESHOLD MATTER: VIOLATION OF SECTION 17-27-80 AND THE SEPARATION OF POWERS.

The procedure followed by the PCR court denied Mr. Stafford his right to have his PCR claims adjudicated by a judicial officer. "S.C. Code Ann. § 17-27-80 (1976), requires the PCR court to 'make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.'" *McCray v. State*, 305 S.C. 329, 330, 408 S.E.2d 241, 241 (1991). *See also Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992). This Court did not do that, but rather delegated that responsibility to the Attorney General's Office. Such delegation of a judicial branch function to the executive branch violates the separation of powers required by S.C. Const. Art. I, § 8. *See, e.g., State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012).

¹ The Public Index does not show the filing of Mr. Stafford's post-hearing brief, which was received by this Court. *See, e.g., Order*, pp. 1, 6. Mr. Stafford is remailing his post-hearing brief to the Clerk of Court contemporaneously with filing this motion.

This Court signed the proposed order of dismissal, drafted by the Attorney General's Office, without making a single change, other than minor formatting differences.² Addressing section 17-27-80 in the context of a capital post-conviction relief case, the Supreme Court "strongly encourage[d] PCR judges to draft their own findings of fact and conclusions of law." *Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004). Section 17-27-80, however, makes no distinction between capital and non-capital cases.

The Supreme Court continuously expresses frustration with the validity of final orders in PCR cases. In *Kevin S. Epting v. State*, Appellate Case No. 2017-000696, on November 21, 2019, at 11:17 – 13:05,³ one Justice referred to the Attorney General's Office drafting the final PCR order as "the classic case of the fox guarding the henhouse," observed PCR applicants have the right to have their issues litigated and called on the criminal defense bar "to fix this problem." Another Justice stated the entire Court shares these concerns.

In *Fishburne v. State*, the Supreme Court recognized the significant issues involved in drafting PCR orders:

[B]ecause the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a party's procedural shortcoming—such as the failure to file a Rule 59(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80.

427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019). *Fishburne* set a lofty goal for "[t]he preparation and finalization of a PCR order [to be] a collaborative effort." 427 S.C. at 516, 832 S.E.2d at 589

² The State's proposed order is attached as Exhibit A.

³ <http://media.sccourts.org/videos/2017-000696.mp4> (last viewed June 22, 2020). *Epting* involved the Attorney General's Office drafting the final order, the PCR judge signing the order that failed to address all the issues, and the applicant's attorney not filing a Rule 59(e), SCRCR motion. On December 4, 2019, this Court dismissed *certiorari* as improvidently granted.

(2019). The final order in this case was not a “collaborative effort,” but rather the final order is an advocacy position drafted by “the fox guarding the henhouse,” rather than true judicial findings of fact and conclusions of law.

II. GROUNDS FOR RELIEF.

A. Failure to Move to Withdraw the Guilty Plea.

Regarding trial counsel’s failure to withdraw the guilty plea, Mr. Stafford raises two grounds for relief: (1) ineffective assistance of trial counsel for allowing the guilty plea to move forward and/or failing to withdraw the guilty plea when the prosecutor changed the plea negotiations as the last moment and (2) ineffective assistance of counsel for not moving to withdraw the guilty plea when the State breached the agreement to remain silent on sentencing.

During the PCR hearing, it became apparent that the Solicitor agreed the prosecution would remain silent on the sentence to be imposed but the court. The factual findings of the Order support this agreement but stop short of making the ultimate factual finding. *E.g.* Order, p. 9 (Trial counsel “indicated that there never was an agreed sentence, but the prosecutor agreed to not oppose concurrent sentences and take no position on sentences requests.”), p. 10 (The Solicitor “recalled the meeting in chambers with the judge prior to the plea noting the plea would be straight up with the *Alford*⁴ plea on leaving the scene, but he was not recommending anything as the solicitor.”), pp. 14-15 (“This Court finds that the actual plea offer that was accepted at the entry of the plea was that [Mr. Stafford] would plead guilty to felony DUI resulting in death and plead guilty under *North Carolina v. Alford* to leaving the scene of an accident resulting in death without a negotiated sentence, without a recommendation by the prosecution and the defense was free to argue whatever sentence it deemed appropriate.”). The Order—drafted by the Attorney General’s Office as an

⁴ *North Carolina v. Alford*, 400 U.S. 25 (1970).

advocate for the prosecution—departs from the evidence by not acknowledging that the full and complete nature of the in chambers discussion where the Solicitor promised not to oppose Mr. Stafford’s sentencing request of two to five years, not oppose concurrent sentences for the two charges, and to remain silent on the sentencing recommendation. As seen, the State did not remain silent on sentencing when First Sargent Chris Shelton, of the South Carolina Highway Patrol, addressed the plea judge and asked for the maximum sentence allowed by law. Tr. 27. The Attorney General’s Office undoubtably minimized the role of the Solicitor’s promise during in chambers conference in order to save this conviction, *i.e.* “the classic case of the fox guarding the henhouse.” Once this Court recognizes the full impact of the Solicitor’s promises, it is apparent that the plea agreement included the State remaining silent on the length of the sentence. Once this Court makes this finding of fact, then *Jordan v. State*, 297 S.C. 52, 374 S.E.2d 683 (1988) and *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000) require this Court to order a new trial. Trial counsel, accordingly, rendered constitutionally deficient performance not moving to withdraw the guilty plea when the State breached the agreement to remain silent on sentencing.

The Order is not supported by the testimony of Mr. Stafford and his family members regarding the prosecutor changing the plea negotiations as the last moment. The emails presented during the evidentiary hearing portray not only the family members’ understanding of the guilty plea negotiations, but also trial counsel and Mr. Stafford’s understanding of the guilty plea negotiations. The Order acknowledges Mr. Stafford’s uncontested PCR hearing testimony:

[Mr. Stafford] testified that he was originally willing to plead to felony DUI, but not leaving the scene of the accident. He claimed he felt bad about the accident. As to plea negotiations, he thought he was guilty of felony DUI but not guilty of leaving the scene. . . . He stated that there was a period during the plea that he was confused. He thought everything happened so fast. He also thought *N.C. v. Alford* was not adequately explained to him by counsel.

Order, p. 8. At the evidentiary hearing, Lisa Kornmeyer, Jim Kornmeyer, Lillian Williford, and

Tina Orlowski testified she observed Mr. Stafford to be confused during the guilty plea regarding the charge of leaving the scene of an accident. These observations are confirmed by the transcript of the guilty plea when Mr. Stafford is not able to explain the meaning of an *Alford* plea in his own words. Tr. 6-7. Although this testimony is summarized in the Order, pp. 7-8, the relevant findings of fact ignore this testimony. Order, pp. 12-19. Once this Court credits this testimony, it is apparent that Mr. Stafford's guilty was not knowing and voluntary. *Hill v. Lockhart*, 474 U.S. 52 (1985); *Boykin v. Alabama*, 395 U.S. 238 (1969); *Rolen v. State*, 384 S.C. 409 683 S.E.2d 471 (2009).

B. Failure to Investigate.

Regarding trial counsel's failure to investigate, Mr. Stafford raises two grounds for relief: (1) failure to investigate, discover and present evidence that would have provided a defense to the charges, and (2) failing to investigate, discover, evidence that would have mitigated or reduced the sentence imposed. This Court's finding that trial "counsel performed a reasonable investigation related to [Mr. Stafford's] mental status by retaining Dr. Maddox, Dr. Brawley, and Dr. Morton," Order, p. 20, is not supported by the record and contradicted by the Order itself. The Order states, "it is uncontested that counsel attempted to get Dr. Maddox to continue to complete an examination of [Mr. Stafford] after the malingering assessment, but she refused to do so." *Id.* Despite acknowledging that trial counsel had "a duty to conduct a reasonable investigation," Order, p. 19 (quoting *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), overruled on other grounds, *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014)), this Court defers to Dr. Maddox's unwillingness to continue the investigation, at the time, rather than trial counsel's uncontested contemporaneous belief that the investigation needed to continue, including her pleas for Dr. Maddox to continue the investigation. Counsel need not investigate every possible line of mitigating evidence regardless of how likely that evidence would be to strengthen a mitigation

case; however, a limited investigation must be supported by “reasonable professional judgments.” *Wiggins v. Smith*, 539 U.S. 510, 533 (2003). Here, it was unreasonable to limit the investigation. In her affidavit, Dr. Maddox outlined the investigation that needed to occur, which was not limited to her own participation. Applicant’s Ex. 1. After taking additional steps, trial counsel could have reengaged Dr. Maddox (as PCR counsel did) or retain another forensic psychiatrist.

Had trial counsel complied with Dr. Maddox’s recommendations, then Dr. Maddox—or another forensic psychiatrist—would have been able to complete her evaluation. Applicant’s Ex. 2, 3. Dr. Maddox diagnosed Mr. Stafford with Post Traumatic Stress Disorder (“PTSD”) and Opiate Use Disorder, In a Controlled Environment. *Id.* The Opiate Use Disorder resulted from medical doctors prescribing opiates to treat Mr. Stafford’s back pain. Dr. Maddox testified that Mr. Stafford was under medical care at the time of the accident, which included doctors simultaneously prescribing Xanax and Methadone, which is contrary to the best medical practices. Although trial counsel provided the sentencing judge some information about Mr. Stafford’s history of sexual abuse, that information lacked the medical conclusions regarding PTSD and the resulting effects.

Dr. Maddox further opined that, as a result of his cognitive deficits, Mr. Stafford would take a longer amount of time to process the accident, which contributed to the amount of time that elapsed before he stopped his vehicle. This testimony provides a defense to the charge of leaving

the scene of an accident, which requires an element of knowledge.⁵ This testimony could also be offered as mitigation during sentencing.⁶

Mr. Stafford was prejudiced by trial counsel's failure to investigate. The presentation of the evidence during the guilty plea of the charge for leaving the scene of an accident was aggravating rather than mitigating. Dr. Maddox's report mitigated this evidence and even provided a defense. Had trial counsel completed the investigation, the Mr. Stafford would have go to trial on this offenses or received a shorter sentence. Dr. Maddox also presented compelling mitigation evidence regarding Mr. Stafford's history of trauma and cognitive disfunction. Had trial counsel presented this evidence, the Mr. Stafford would have received a shorter sentence.

⁵ S.C. Code §56-5-1210(A) provides:

The driver of a vehicle involved in an accident resulting in injury to or the death of a person immediately shall stop the vehicle at the scene of the accident or as close to it as possible. He then shall return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 56-5-1230. However, he may temporarily leave the scene to report the accident to the proper authorities. The stop must be made without obstructing traffic more than necessary.

Section 56-5-1230 requires the person to "give his name, address, and the registration number of the vehicle he is driving," "exhibit his driver's license" if requested and "available," and "render to any person injured in such accident reasonable assistance, including the carrying or making arrangements of the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment it is apparent that such treatment is necessary or if such carrying is requested by the injured person." Section 56-5-1210 does not specify a mens rea; however, section 56-5-1210 would unconstitutional because it does not include a mens rea. The appropriate mens rea for this offenses is knowledge.

⁶ Significantly, the sentencing judge never heard testimony form a medical doctor that Methadone and Xanax were prescribed by physicians with knowledge of what the other physician was prescribing. This information would have made a difference in the sentence imposed.

III. CONCLUSION.

For the reasons set forth in Mr. Stafford's post-hearing brief and this pleading, this Court to reconsider the Order, withdraw that Order, and enter an order granting him post-conviction relief.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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Attorney for Thomas Stafford

February 8, 2024
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	Case No. 2015-CP-32-01888
Thomas Stafford,	)	
	)	
Applicant,	)	
	)	
vs.	)	
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

I certify that I have served a copy of this pleading on the State of South Carolina, via email, to counsel's AIS email address, on the date reflected below, addressed to

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By s/E. Charles Grose, Jr.

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February 8, 2024
Greenwood, South Carolina

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Thomas Stafford,	)	C.A. No. 2015-CP-32-1888
S.C.D.C. No. 357279,	)	
	)	
Applicant,	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

This matter comes before this Court by an Application for Post-Conviction Relief filed May 22, 2015, filed by Thomas Stafford, through his retained counsel E. Charles Grose, Esq. The Respondent made a Return on December 1, 2016. On June 22, 2023, an evidentiary hearing was convened before this Court. The Applicant was present and represented by his counsel. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant, Dr. Donna Schwartz Maddox, Lisa Kommeyer, Jim Kommeyer, Lillian Williford, Tina Orlowski, Anna Browder, and Rick Collins. Subsequent to the hearing, The Applicant made a Post-Hearing Brief dated July 3, 2023. On July 25, 2023, the Court indicated its intention to deny post-conviction relief. This Order follows:

PRIOR PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. In February 2013, the Lexington County Grand Jury indicted Applicant for leaving the scene of an accident with death (2013-GS-32-0392) and felony driving under the influence (DUI) resulting in death (2013-GS-32-0393). He was represented by Anna Good, Esquire. On October 3, 2013, Applicant pleaded

guilty as indicted on the charge of felony DUI resulting in death and entered an Alford¹ plea to leaving the scene of an accident with death. The Honorable Robert E. Hood sentenced Applicant to a term of imprisonment for seventeen (17) years for each charge. These sentences were to be served concurrently.

A timely notice of appeal was filed. Current counsel Charles Grose, Esq. represented Applicant on appeal. In an Order filed September 11, 2014, the Appeal was dismissed, noting Applicant voluntarily withdrew and dismissed his appeal. The Remittitur was issued on September 30, 2014.

FACTUAL BASIS OF THE PLEAS

The factual basis of the plea was set out by then Assistant Solicitor Rick Collins on the charge of felony DUI resulting in death and leaving the scene of an accident with death:

On December 3, 2012, at 1:33 p.m., the defendant was operating a 2003 Nissan Pathfinder westbound on I-20 near the 62 mile marker in Lexington County. At that same time the Department of Transportation had deployed a cleaning crew on the overpass, one of the employees of which was Mr. Nicholas Johnson. . . parked in the emergency lane up against the barrier of the overpass were three Department of Transportation vehicles. . . . You could see that picture would depict a Department of Transportation vehicle in the far right-hand lane. You would see that attached to the dump truck is a trailer. On the back of the trailer is black and yellow reflective paint. Also you see trailer lights and reflectors. The sole purpose of that trailer is to act as a crash barrier. Attached to the truck are its lights and its reflectors, and on the top of the vehicle were orange lights, which were working and illuminated at the time. There were two other vehicles in front of that Department of Transportation vehicle.

Mr. Stafford passed that particular vehicle with all the warning signals and the other two vehicles, swerved over to the right-hand side of the road and near simultaneously struck the barrier and Mr. Johnson, who was then shoveling debris off the side of the roadway. Your Honor, that collision resulted in the nearly instantaneous death of Mr. Nicholas Johnson, who then was only 21 years old. . .

[He is in lane three] The far right lane. And he passes that vehicle, two other vehicles in the emergency lane, and then approximately another 300 feet where he veers into the emergency lane striking the barrier and Mr. Johnson. . . .

¹ North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970).

Your Honor, at that time in lane number two, the middle lane, were two witnesses, Mr. Charlie Bishop and Mr. Brett Blanks, who are in the courtroom here today. They would likely testify that Mr. Blanks saw the collision and Mr. Bishop saw the effects immediately after the collision. . . They're also continuing toward 378 exit, see the incident, and see that Mr. Stafford is continuing behind them. Your Honor, they would likely testify that they made an effort in an attempt to stop Mr. Stafford. They would further testify that Mr. Stafford changed lanes in an effort to get around them and then they in turn changed lanes as well, ultimately bringing him to a stop approximately one half mile up the road right before the Highway 378 exit. There they exited the vehicle, and confronted Mr. Stafford. They would testify as to his condition of being lethargic, slow, slurred speech, at one point making an attempt to get back into the vehicle, at which point they took the keys from the car, would not give him the keys back, contacted law enforcement. Approximately 20 minutes later the law enforcement officers did show up. . .

Your Honor, their conversation with Mr. Stafford at that point would reveal that they had inquired of Mr. Stafford if he realized what happened. His responses to them would have been no, that he did not know what happened. He couldn't understand why they were stopping him at that point. As the conversation progressed, that he began, well, I realized I hit something, I didn't know what it was.

Your Honor, in layman's terms as we believe that they would describe it, they would describe him as being on something at that point.

Your Honor, as I stated before the Highway Patrol and other emergency services were contacted. Trooper Blaylock of the Highway Patrol did respond to the scene approximately 20 minutes later. Once he arrived, emergency services were already on scene, and according to their report, again, resuscitative efforts were deemed futile at that point, given the nature of the collision.

Your Honor, Trooper Blaylock began to interview Mr. Stafford. There he noticed that his pupils were constricted, that he seemed to sway, that he seemed disoriented. Based on that, asked him a series of questions and performed a series of standardized field sobriety tests to which, according to Trooper Blaylock, he performed poorly on. He was subsequently arrested. He was transported to the Lexington ER where a blood draw was performed. The blood was analyzed by SLED, and that analysis revealed methadone and generic Xanax.

Your Honor, in statements taken from the defendant by the Highway Patrol MAIT team, Mr. Stafford would admit at that current time he was undergoing treatment from a methadone clinic. That on a daily effort at approximately 4:30 to 5 o'clock in the morning, he would attend the clinic, receive a dose of about 120 milligrams of methadone, continue on about the day.

Your Honor, the levels according to the forensic toxicologist from SLED, the levels of methadone that were revealed in the analysis would tend to suggest that they were of therapeutic levels.

Your Honor, however, the Xanax that was indicated, we believe the toxicologist would testify that those levels were approximately three to four times what could conceivably be a therapeutic level of the Xanax. Moreover, it would be beyond comprehension in the toxicologist's opinion that the two would ever be prescribed together due to the additive or the synergistic effect of both the medications being combined at once and never would it be recommended that anyone drive after consuming both of those medications. . .

Your Honor, as you may very well already know, methadone is commonly used to, I think, wean people off of an opioid based pain killer or heroin...

And at the time I think Mr. Stafford would admit that there was such an addiction.

Your Honor, it's again our contention that Mr. Johnson's death was proximately caused by the driving due to the ingestion of those substances, and the basic facts of the case at issue. I believe what is more concerning in this case is that approximately 15 days before that, Mr. Stafford had been arrested for a DUI 2nd offense under circumstances which are strikingly similar to the facts in this case. It was about the same time in the afternoon, 1:30, 1:40 p.m., based on conversation with Officer Parker of the Pine Ridge Police Department, the conversation with Mr. Stafford would seem similar, that on that same day he had received a dose of methadone. On the DUI 2nd, he refused to submit a sample. However, in his vehicle that day was a prescription for 60 generic Xanax, Your Honor, only nine of those pills remained of a 60-day prescription of having — getting it filled seven days earlier.

Your Honor, that charge was pending obviously two weeks prior to this incident. This charge is being consumed in this plea. In exchange for his plea to these charges, this DUI 2nd is being dismissed. . . .

Plea Tr.p. 10-19.

SUMMARY OF PCR TESTIMONY

Dr. Donna Schwartz Maddox, a forensic psychiatrist, testified that she was retained in 2013 to assist in the defense of the Applicant. She indicated that she met with the Applicant on January 13, 2013 and he claimed he could not remember the incident. She was concerned that there could be brain damage and sought neuropsychological testing, an evaluation by a

neurologist, and an electroencephalogram to rule out a seizure disorder. She also wanted his blood tested. She indicated they obtained a forensic psychologist, Dr. Tora Brawley. Dr. Maddox indicated that Dr. Brawley attempted to evaluate him but determined that Stafford was not giving good effort in the testing and malingering or faking symptoms and did not issue a report. Dr. Maddox indicated that counsel Good still wanted her to continue to see Stafford, although Dr. Brawley did not complete a report. However, Dr. Maddox refused to do so.

Dr. Maddox indicated that she was again retained for this proceeding and issued an initial report in February 11, 2018 and a follow-up report April 7, 2022. Subsequent to the plea, in 2019, Dr. Brawley saw the Applicant again in preparation for this PCR hearing. Dr. Maddox opined that Dr. Brawley's testing confirmed her own earlier 2013 diagnostic impression of memory deficits, noting particular deficits in immediate verbal learning (4%), immediate verbal learning for prose (1%) and delayed memory for prose (1%). His visual memory was found by Dr. Brawley to be excellent at 67%. He was found to have other deficits in mental tracking (7%), manual speed of right hand (6%) and manual dexterity of his right hand (7%). Applicant's Exhibit 3, p.5.

Dr. Maddox testified that she had Dr. Pritchard, a neurologist, complete a neurological report in 2019 and an EEG. She indicated that Dr. Pritchard found he had difficulty with delayed recall. He further noted that Applicant had back pain.

Dr. Maddox further indicated medical and social history are important to determine behavior. Dr. Maddox reported that the Applicant's childhood was very disruptive and unstable. She also reported that the Applicant was a victim of sex abuse. The Applicant suffered from back pain after he hurt his back working construction. As a result, Applicant became addicted to

opiates, although he also took other medications. These included Klonopin and Xanax which were prescribed by the same doctor.

Dr. Maddox noted that there were times in 2017 when there was an issue concerning his competency. She saw him in initially July 2017 and noted the Applicant had gained weight and was working off medications. On September 21, 2018, he had been threatened by inmates and feared threats to his family. He was moved to Tyger River Correctional Institution. Dr. Maddox confirmed that he was stabilized now, and she had no issues about his competency, although he still had some paranoia. She had reviewed his EEG which was in normal range and not indicative of a seizure. She opined that he presently has a diagnosis of Post-Traumatic Stress Disorder and Opiate use disorder, in a controlled environment.

Concerning her involvement before the plea, Dr. Maddox stated she spoke with counsel Good in 2013 about the role of Dr. Brawley and a neurologist (Dr. Pritchard) in the mental health preparation which was to confirm or rule out reasons for the memory issues she experienced with the Applicant and matters related to criminal responsibility. She opined that the Applicant did not meet the definition of either insanity or guilty but mentally ill. However, she also stated the memory issues may have explained why he did not stop immediately at the accident site. She also asked counsel Good to retain Dr. Alexander Morton, a toxicologist, to assist the defense related to the drug issues presented in the case.

Dr. Maddox indicated that after she received the informal report from Dr. Brawley in 2013 about malingering, she could not go forward with the evaluation or report because of her belief in Applicant's lack of credibility at the time. She stated counsel Good begged her to stay involved, but she declined to do so at that time.

Lisa Kornmeyer, the Applicant's mother testified she was interviewed for the evaluation. She confirmed that she was aware of the sexual abuse her son received because she noted his behavioral changes. She was also aware of the impact of the medications Applicant took. She described Applicant as tired and sleepy, but that he worked a lot. She described him as having a good relationship with his daughters and took care of them every other weekend.

Ms. Kornmeyer stated she assisted in the representation by Anna Good of her son. She claimed that Anna went through her and they emailed each other numerous times. Applicant Exhibits 4-15. Concerning plea negotiations, Mrs. Kornmeyer claimed the State had agreed to drop the "leaving the scene of the accident" charge if he pled guilty to felony DUI. She said she was surprised on the day of the plea that it was included in the plea. She later learned that the prosecutor was not going to drop the charge. Mrs. Kornmeyer claimed Anna should have come to her before the plea to explain it to her and the family. She emailed counsel after the plea for an explanation. As noted in Applicant's Exhibit 14, she learned from counsel that the victims would not agree to dropping the leaving scene of the accident charge and counsel advised that the defense would only agree to plead if the prosecutor agreed the charges would run concurrent and that the Applicant could plead under N.C. v. Alford. Counsel indicated to her that the witnesses who stopped the vehicle would be the evidence on the charge and that there were reasons why the Applicant would not be able to testify if it went to trial. Applicant Exhibit 14. In that email, counsel also indicated to her that she and Tom discussed the decision related to the DUI 2nd charge. She also learned in the email that the prosecutor had agreed that he was not going to ask for a specific sentence and would not have a position at sentencing, but that they were always aware the victims were going to ask for something high. Applicant's Exhibit 14. Mrs. Kornmeyer complained that counsel did not object to anything during the plea.

Jim Kornmeyer testified that he observed the effects of drugs on the Applicant. He described the Applicant as having a strong work ethic and a good relationship with his children. She stated that he understood prior to the plea that the leaving the scene of the accident charge had been dropped, but on the day of the plea learned it had been changed and included in the plea. During the plea, he thought the Applicant appeared to be confused.

Lillian Williford, the Applicant's aunt, was at the plea. She stated she did not have a complete understanding of the plea. She thought the Applicant appeared confused and had a blank look on his face.

Tina Orlowski, an aunt, was at the plea, but did not address the court. She testified Applicant appeared confused when he turned around and looked at the family.

The Applicant testified that he was originally willing to plead to felony DUI, but not leaving the scene. He claimed he felt bad about the accident. As to plea negotiations, he thought he was guilty of felony DUI, but not guilty of leaving the scene. He stated that he wanted 5-9 years that Ms. Good advised him was a possible range. However, at some point prior to the plea, he learned leaving the scene (hit and run) was to be included. He stated that there was a period during the plea that he was confused. He thought everything happened so fast. He also thought N.C. v. Alford was not adequately explained to him by counsel.

Anna Browder (Anna Good) testified that she represented the Applicant as retained counsel. She indicated that she had numerous meetings with the Applicant prior to the plea. She retained Dr. Maddox to review his competency and criminal responsibility. Dr. Brawley was also retained but had determined that the Applicant was malingering and did not do a report. Counsel testified confirmed that Dr. Maddox confirmed to her some neurological deficits. State Exhibit 1. At Dr. Maddox's suggestion, she also retained Dr. Alexander Morton, a toxicologist, who

reviewed the SLED toxicology report and noted that SLED missed some drugs that were also reflected in the report. Counsel also retained David Mathers a MAIT accident expert to review the MAIT report and opined to her MAIT used the wrong method, but conclusion was not helpful to the defense case. She compiled a Plea Notebook (State's Exhibit 2) that she provided to Judge Hood prior to the plea and sentencing. This included a letter of remorse to the victim's family from the Applicant, support letters expressing remorse from Lisa Kornmeyer, stepfather Mark Rushton, Amye Rushing, Marie Kennedy (mother of Applicant's daughter), Jim Kornmeyer, Lillian Williford, John Keenan (friend), Britt Bodie (friend), John Bolos (friend and employer), daughters Leah and Marisa, family photographs, work records and photographs of projects, methadone patient records, and x-ray of compressed disc.

Counsel testified that they wanted to avoid maximum exposure in their negotiations. She stated that the state's initial offer was contingent on the victim's family agreeing to drop the leaving the scene charge, which they ultimately did not agree to do. She stated she thought this was made clear to the Applicant prior to the entry of the plea. She also indicated that there was never an agreed sentence, but that the prosecutor agreed to not oppose concurrent sentences and take no position on sentence requests, which she believe the prosecutor complied with in his representation to the judge in chambers. She further indicated that the Alford plea was done on the hit and run charge because the Applicant believed he was not guilty of leaving the scene, but the state was prepared to prove it.

Counsel stated that she tried to get Dr. Maddox to meet with the Applicant again, but she declared she could not do so based upon Dr. Brawley's assessment.

Counsel further testified about the series of emails which revealed the communication between counsel and the Applicant's family about the status of negotiations and information

about the Applicant's background. These emails included information about the sexual abuse (Applicant's Exhibit 5), Applicant's high stress level (Applicant's Exhibits 11 and 12), and the potential if he does not plead to one charge of felony DUI death, there was a risk the prosecutor would seek other charges such as reckless homicide and others and push for a trial over a plea. (Applicant's Exhibit 12) (August 14, 2013). She confirmed at that August 2013 time, she was still talking about just felony DUI. Similarly, referring to Applicant's Exhibit 13, counsel acknowledged in the August 20, 2013 email that she advised Applicant's mother the plea offer would be a plea to one charge of felony DUI (1-25 years) and the state would dismiss the leaving scene of death and DUI 2nd. However, counsel clarified that at that time of her email it was not a firm offer. Counsel confirmed that she did not recall discussing the change with the mother prior to the actual plea including the leaving the scene charge but did discuss it with the Applicant who agreed to go forward with the plea prior to its entry.

Rick Collins, the prosecutor in the case, testified that he was involved in the preparation for trial in the case. Collins indicated that it was his impression that the leaving the scene charge would never go away because he thought the victims would not say yes. Collins stated that in his discussions with Browder he indicated the possibilities during these periods of negotiations. However, Collins stated he never conveyed to counsel that Applicant could plead only to felony DUI and the rest would go away. Collins stated it was always up to victims. He stated there was never a firm offer until the final time when it was taken to victims. Collins recalled the meeting in chambers with the judge prior to plea noting the plea would be straight up with the Alford plea on leaving the scene, but he was not recommending anything as the solicitor. However, he indicated he was aware the victims would be making a request as well as Sgt. Shelton of the S.C.

Highway Patrol. Tr. p.23-28. Collins did not think the presentation violated any terms of the plea agreement.

On reply, the Applicant recalled counsel Browder. She indicated that she was never told during the plea negotiations that the leaving the scene charge would never go away. However, she understood that it could potentially go away, but that Collins would have to talk with the victims. She further understood that the prosecutor would not be opposing the sentence request and understood it to be a concurrent sentence.

ALLEGATIONS BEFORE THE COURT

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

1. Ineffective Assistance of Counsel
 - a. "Trial counsel failed to investigate, discover, and/or present information that would have provided a defense to the charges"
 - b. "Trial counsel failed to investigate, discover, and/or present information that would have led to the suppression of Applicant's statements"
 - c. "Trial counsel allowed the guilty plea to go forward and/or otherwise failed to withdraw the guilty plea when the prosecution changed the plea negotiations at the last moment"
 - d. "Trial counsel failed to investigate, discover, and/or present information that would have mitigated and reduced the sentence imposed"

Prior to the outset of the hearing, the Applicant, through counsel, withdrew allegations (a) and (b). However, as set out in his post-hearing memorandum, the Applicant proceeded on the following issues, as amended at the hearing:

Ineffective Assistance of Counsel:

- (1) Failure to investigate, discover and present evidence that would have provided a defense to the charges,
- (2) Allowing the guilty plea to move forward and/or failing to withdraw the guilty plea when the prosecutor changed the plea negotiations as the last moment.

- (3) Failing to investigate, discover, evidence that would have mitigated or reduced the sentence imposed.
- (4) Not moving to withdraw the guilty plea when the State breached the agreement to remain silent on sentencing.

FINDINGS AND CONCLUSIONS

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the original application for post-conviction relief, the Respondent's Return, and the Applicant's Post-Hearing Memorandum. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented during the guilty plea and this evidentiary hearing.

FAILURE TO MOVE TO WITHDRAW PLEA.

This Court must find that the Applicant failed in his burden of proof on his first allegation. In his first argument before this Court in his post-hearing memorandum, the Applicant asserts that counsel should have moved to withdraw the guilty plea because the plea was inconsistent with counsel's understanding of the charges Stafford was going to face because it was the understanding of the family members that the hit and run (leaving the scene) charge would be dismissed as a result of the plea bargain. *Stafford's Post-Hearing Memo*, p. 6-7. The Applicant contends that the State did not honor the plea agreement, relying upon email

correspondence that predated the day of the plea and the testimony of family members present at the plea who asserted Applicant was confused at the time of the plea. This Court concludes that there was no unkept plea bargain agreed between the parties and no basis for counsel to either object or move to withdraw the guilty pleas.

Trial counsel must provide reasonably effective assistance under “prevailing professional norms.” Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Reviewing courts presume counsel was effective. Id. at 690, 104 S.Ct. 2052. Therefore, to receive relief, a PCR applicant must prove: (1) counsel failed to render reasonably effective assistance under prevailing professional norms and was deficient; and (2) the deficient performance prejudiced the applicant's case. Id. at 687, 104 S.Ct. 2052.

First, Applicant must prove plea counsel's performance was deficient. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” Butler v. State, 286 S.C. at 445, 334 S.E.2d at 816. “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’” Dunn v. Reeves, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23–24).

Prejudice is defined as a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 694, 104 S.Ct. 2052. A

reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* With respect to guilty plea counsel, Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). "Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim." *Id.* at 700, 104 S.Ct. 2052. This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 369, 137 S. Ct. 1958, 1966 (2017). Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee v. United States, 582 U.S. 357, 369, 137 S. Ct. 1958, 1967, 198 L. Ed. 2d 476 (2017)

Judges must "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Lee, 582 U.S. at 369, 137 S. Ct. at 1967. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

This Court must conclude that the plea bargain entered at the time of the entry of the guilty plea was satisfied by the actions of the Applicant, defense counsel and the prosecutor. On the day the plea was entered and the time it was entered the relevant parties were aware of and accepted the terms of the plea offer. This Court finds that the actual plea offer that was accepted

at the entry of the plea was that the Applicant would plead guilty to felony DUI resulting in death and plead guilty under North Carolina v. Alford to leaving the scene of an accident resulting in death without a negotiated sentence, without a sentence recommendation by the prosecution and the defense was free to argue whatever sentence it deemed appropriate. In return the prosecutor agreed to dismiss the pending DUI second offense. This Court further finds that the 17 year concurrent sentences the Applicant received were consistent with the agreed negotiation.

The Applicant relies upon two prior South Carolina cases that are distinguishable in the present setting. He relies upon Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 296 (2000), to support our conclusion. In Thompson, plea counsel failed to object after the solicitor recommended the maximum sentence in violation of the earlier plea agreement. 340 S.C. at 115, 531 S.E.2d at 296. Thompson was indicted for murder and pleaded guilty to voluntary manslaughter. *Id.* at 113, 531 S.E.2d at 295. Thompson testified at the PCR hearing that he chose to plead guilty because he was under the assumption the solicitor was not going to make a sentencing request or recommendation. *Id.* at 114, 531 S.E.2d at 295. In addition, Thompson's attorney testified she told him prior to the plea the solicitor was not going to make a sentencing recommendation. *Id.* Thompson's attorney also confirmed to the plea court that the solicitor had correctly and completely stated the plea agreement and there was nothing further that needed to be added regarding the plea negotiations. *Id.* at 116, 531 S.E.2d at 296. Our supreme court found there was a reasonable probability that Thompson would not have pled guilty but for his attorney's ineffective assistance because he entered his guilty plea in reliance on the sentencing range and the solicitor's agreement not to make any sentencing recommendations. *Id.* at 117, 531 S.E.2d at 297.

The Applicant also relies upon Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988). In Jordan, the defendant agreed to plead guilty because he believed the solicitor would neither oppose nor recommend probation. Id. at 54, 374 S.E.2d at 685. When the solicitor in Jordan reneged on the plea agreement and recommended against probation, Jordan's attorney failed to draw the plea judge's attention to the plea bargain and then failed to move to withdraw Jordan's guilty plea. Id. Therein, the Supreme Court held that "the conduct of Jordan's counsel in not protecting Jordan's right to enforce the plea agreement with the Solicitor's office fell below prevailing professional norms." Id. (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). Like the attorney in Jordan, Thompson's attorney's failure to object fell below prevailing professional norms. See also Smith v. South Carolina, 775 S.E.2d 696 (S.C. 2015) (the supreme court found deficient performance when trial counsel failed to object to the solicitor's recommendation that the defendant receive maximum punishment after the solicitor promised to remain silent during sentencing).

This case is distinguishable from both cases. Unlike Thompson and Jordan, at the time the plea was entered the defense counsel, the Applicant and the prosecution were aware that the agreed negotiation included the entry of the Alford plea to leaving the scene of the accident. This is supported by the testimony of defense counsel, the prosecutor and Applicant. The fact that the Applicant's family may have been surprised at the time of the plea by the inclusion of the second charge does not bind the Court or the prosecution. The Applicant was aware at the time of the entry of the plea of its inclusion during the plea with the understanding that he was pleading under Alford. Tr.p. 6, 1. 12-p. 9, 1 2.² In addition to this testimony, the defense counsel was

² The colloquy by the Applicant, his counsel, and the Court about his understanding about the entry of the plea pursuant to Alford carries a presumption of verity. The Applicant has failed to present a cogent reason as to why he should not be held to the truth of his statements. See Blackledge v. Allison, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977) (holding that

credible in her assertion that she was aware that the removal of the pending leaving the scene charge would only occur if there was agreement by the victim's family which did not occur on the eve of the plea. Applicant's Exhibit 14 is contemporaneous and consistent with this understanding. Further, the prosecutor credibly stated that the removal of the leaving the scene charge throughout the negotiation was contingent upon the victim's approval.

Unlike, Thompson, Jordan, and Smith, the understanding of the negotiations as Applicant entered the plea was consistent with what occurred. The prior hopes and expectations of the defense counsel and his family that the charge would be dropped did not occur and was not part of the plea bargain. Unlike Thompson and Jordan, the prosecutor also complied with his agreement that he would not seek a particular sentence or consecutive sentences. As counsel stated clearly in Applicant's Exhibit 14, "the deal with the prosecution was that they were not going to put a number on the record and would not take a position on sentencing. We always knew the victims were going to ask for something very high due to their emotions."³ Further, the prosecutor had indicated to the judge in chambers that he had no position on sentencing. The Applicant's reliance upon earlier emails between counsel with the mother and father, which predated that day of the plea and admittedly before the firm and final offer was made by the State is not persuasive after the credible explanation by defense counsel.

solemn declarations in open court "carry a strong presumption of verity"). see also State v. Thrift, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994) ("[A]ll plea agreements must be on the record and must recite the scope, offenses, and individuals involved in the agreement.").

³ The Court notes that consistent with the expectations and negotiation during the plea the victim's mother made a victim impact statement on behalf of the family asked for the maximum allowed sentence. Tr.p. 26. Similarly, on behalf of the State Highway Patrol First Sgt. Chris Shelton and supervisor of at the scene also speaking on behalf of the victim's family asked for the maximum sentence. Tr.p. 27. These presentations were also consistent with the expectations of defense counsel and did not suggest that reasonable counsel should have either objected or moved to withdraw the plea at that time as a violation of the plea agreement.

The Applicant questions whether the alleged potential for a trial was imminent as pushing the entry of the plea. He points out trial counsel's testimony that if a plea was not entered, the case would have proceeded to trial either that week or the next week. Applicant questions these statements because the date of the guilty plea was on a Thursday and that there was no General Sessions term the next week. Although the Applicant appears to be correct that there was no scheduled term the next week, he has not shown that if the plea was not entered that a trial would not have been held during the next available General Sessions term. Further, although in an August 13, 2013 and August 20, 2013 emails indicated that the State may proceed on other available charges if he did not enter a plea to felony DUI (Applicant's Exhibits 12, 13), the Applicant is correct that the State had not yet indicted on other charges at the time the plea was entered. However, the prosecutor confirmed that in their discussions, he had spoken with counsel about possible outcomes and possibilities. Although additional charges by indictment could not be made that week, there remained a possibility of a direct indictment by the grand jury at the next term, if that remained the course the prosecutor chose to pursue. As revealed in the factual basis of the plea, there was a further factual basis to do so.

The Applicant also asserts the comment by the prosecutor that the State had a strong case regarding leaving the scene of the accident should not be considered because it is not the relevant test in assessing the prejudice prong from a guilty plea after deficient performance is shown. The strength of the case was reflected in the factual basis set forth in the plea as set out above. The representation was made by defense counsel that the basis for the Alford plea on that charge was set out and asserted that he was not trying to leave the scene although he stopped a half a mile from the actual scene. Tr.p. 34-35. Here, the comment at the PCR hearing by the prosecutor was based to support the entry of the Alford plea and counsel's reasonable advice and assessment that

that there was a basis to enter the Alford plea and was not deficient in the recommendation. The Applicant is correct that mere strength of the State's case does not alone satisfy the prejudice prong which is related to what the Applicant would do if there was deficient performance proven. See Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Since the representations at the time of the plea were consistent with the negotiations actually agreed upon by all parties, there was no basis that reasonable counsel would have moved to withdraw the plea or object to anything the prosecutor stated. Counsel did not misinform the Applicant concerning the agreed plea negotiation. Counsel cannot be deemed to be deficient under the circumstances. The assertion to the contrary is dismissed.

FAILURE TO INVESTIGATE

The Applicant contends that counsel failed to adequately investigate the case, in particular in failing to follow Dr. Maddox's recommendations for neurological testing and did not develop an adequate rapport with the Applicant prior to the testing. Applicant claims that had this been followed up, the Applicant would have had an opinion from Dr. Maddox about the Applicant suffering from Post-Traumatic Stress Disorder and Opiate Use Disorder, in a Controlled Environment. This Court must conclude that the Applicant has failed to show deficient performance or prejudice.

"[C]riminal defense attorneys have a duty to conduct a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226,235, 723 S.E.2d 610,615 (Ct. App. 2012), overruled on other grounds, Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result."

Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.” Wiggins v. Smith, 539 U.S. 510, 521-22, 123 S. Ct. 2527, 2535 (2003).

This Court must find that counsel performed a reasonable investigation related to the Applicant’s mental status by retaining Dr. Maddox, Dr. Brawley, and Dr. Morton to assess the Applicant’s mental state and the impact of his drugs injection on his performance. The critical problem was that the Applicant was determined to be malingering by Dr. Brawley, the neuropsychologist, during her neuropsychological testing of the Applicant. This critical finding at that time precluded further assessment by Dr. Brawley and Dr. Maddox at that time. It is uncontested that counsel attempted to get Dr. Maddox to continue to complete an examination of the Applicant after the malingering assessment, but she refused to do so due to the Applicant’s malingering. This is not a situation where there was no investigation into the Applicant’s mental health, but an investigation was attempted but impacted by the Applicant’s malingering of his mental symptoms.

An assessment of counsel’s performance must be viewed from the perspective at the time of counsel’s conduct when the Applicant was malingering and preventing a further assessment. As stated earlier, judicial scrutiny of counsel's performance must be highly deferential, and a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland v. Washington, 466 U.S. 668, 669, 104 S. Ct. 2052, 2055, 80 L. Ed. 2d 674 (1984).

In the plea in mitigation, counsel expressed the Applicant's remorse for the accident. Tr.p. 28. As stated above, she presented a packet of materials to the sentencing judge which included evidence of Applicant's methadone treatments, the prescriptions for Klonopin for anxiety and Vybrid for depression.⁴ She described to the sentencing court his 2011 accident that caused a compressed disc in his back that led to his addiction to pain medication. Tr.p. 31. She presented as a result he began methadone treatments which he had been faithful to since October 2011 for a year prior to this incident. She further noted the impact of having lost a child a couple months before led to a tailspin prior to the accident and a period of depression and extreme anxiety with the added medications. Tr.p. 32.⁵

She also addressed in the mitigation presentation the basis as to why he pled to leaving the scene under Alford. First, she indicated that there was no doubt he was under the influence and overmedicating himself in excess of what it should have been and the accident occurred as a result of the overmedication. Tr.p. 32. However, she asserted that there was a factual issue with how the accident happened, but he was still under the influence and could have been avoided if he had not been. She sought to mitigate the prior DUI charge and the pending DUI 2nd that was dismissed because there was no evidence about his medications on that day and claimed he was unaware that his driver's license was suspended on the day of the incident. As to the leaving the scene Alford basis, she asserted that Applicant had contended to her since her representation that he had no intent to flee at the time of the incident and stopped a half a mile down the road. She claimed that his position would have been he could have managed to avoid Mr. Blanks and Mr.

⁴ During the State's presentation at the plea, information was provided that the levels of methadone were at therapeutic levels, but the Xanax was at three to four times of a therapeutic level. It was further reported that no one should be recommended to drive with the synergistic effect of the combination of those prescribed drugs. Tr.p. 17, ll. 3-16.

⁵ Counsel did not bring negative details she learned from Dr. Morton's assessment of the SLED toxicology report that benzodiazepines were also in his system at the time of the incident.

Bishop to get away from them if he was really trying to leave the scene. She suggested that if he was actually fleeing he would have been three miles or more down the road, but he was only stopped one half mile. Tr.p. 35. Counsel further claimed he was not taking drugs for recreational purposes, but that this was prescribed medication that just got out of control while he was trying to help his family. Tr.p. 42. The Applicant stated his remorse for the accident.⁶

The Applicant suggests that the failure to further investigate would have provided a defense to the leaving the scene of the accident. However, in Dr. Maddox's testimony, she opined that there was no evidence to support either a defense of insanity or guilty but mentally ill. Although Applicant suggests that it was defense to leaving the scene because some of his memory deficits would have caused him to take a longer amount of time to process that he committed the accident.⁷ The law requires an immediate stop or as close as possible, not a stop

⁶ In the materials provided to the sentencing court in counsel's plea packet, it included references from Lisa Kornmeyer that the Applicant was sexually abused at age 5 and age 7 by two different men, at age 11 or 12 by a mother of a friend, and subsequently she reported on a neighbor who had molested the Applicant time and his friend. State Exhibit 2, page 4-5. Although the information did not include a diagnosis of Post-Traumatic Stress Disorder, the genesis of such a diagnosis was presented to the sentencing authority who acknowledged he had read the material. Tr.p. 29, ll. 6-9. ("I have reviewed it in full. I've read every page."). However, as Dr. Maddox acknowledged the diagnosis she recently rendered does not support a plea of guilty but mentally ill (lacked sufficient capacity, due to mental illness to conform his conduct to the requirements of law, S.C. Code Ann. § 17-24-20(A)).

⁷ S.C. Code Ann. § 56-5-1210 (A) involving the "Duties of drivers involved in accident resulting in death or personal injury; moving or removing vehicles" states as follows:

(A) The driver of a vehicle involved in an accident resulting in injury to or the death of a person immediately shall stop the vehicle at the scene of the accident or as close to it as possible. He then shall return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 56-5-1230. However, he may temporarily leave the scene to report the accident to the proper authorities. The stop must be made without obstructing traffic more than is necessary.

one-half mile down the road. However, it was the Applicant's malingering, not counsel's deficiency that prevented this additional information from Dr. Maddox from being presented in mitigation at the plea.

Under these discrete circumstances, the Court must conclude that counsel was not deficient in her investigation in the matter. She acted as reasonable counsel in seeking mental health expert assistance in her representation. It was not performance, but the Applicant's own actions that thwarted the additional investigation. He failed in his burden of proof.

This Court also must conclude that Sixth Amendment prejudice has not been shown, assuming *arguendo* that deficient performance was found. The prejudice prong issue is initially whether *to a reasonable probability* the Applicant would have gone to trial on all charges with this information rather than plead guilty or reject the plea agreement to plead under Alford. This claim by the Applicant does not address issues with Felony DUI charge but is focused on the presentation of the leaving the scene of the accident charge. Although the Applicant asserted in the PCR proceeding he would have gone to trial on the hit and run charge, this Court viewing all the circumstances finds that this is not credible as related to the prior Alford plea entry and the plea agreement. This additional information did not undermine confidence in the earlier acceptance of the negotiated plea and did not provide a legal defense to the leaving the scene which the Applicant was allowed to plead under Alford. He has failed in his burden of proof.

This Court must further find that prejudice is not shown related to the mitigation or sentencing of the Applicant. The sentencing court was presented with significant information about the impact of the drugs on the Applicant's action as and his history of being a victim of child abuse, the basis for the later diagnosis of Post-Traumatic Stress Disorder by Dr. Maddox. The sentencing court also learned that it was the Applicant's position under Alford, that being

stopped one-half mile from the scene of the accident under his condition was a short distance and not supportive of an intent to leave the scene. The additional information that he suffered under some memory deficits which may have led to some processing issues may have explained a delay but does not undermine confidence in the plea court's sentencing to two concurrent 17 year sentences when the victims were asking for a maximum sentence on the charges. He had failed in his proof to show a reasonable probability that the sentence would have been different.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.

This Court notifies the Applicant that he 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, 409 S.E.2d 395 (1991), 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 Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this _____ day of _____, _____.

EDWARD W. MILLER
Presiding Judge
Eleventh Judicial Circuit

_____, South Carolina

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) DO THE ELEVENTH JUDICIAL CIRCUIT

Thomas Stafford,
S.C.D.C. No. 357279,

2024 MAY -3 PM 3:07
LISA J. HENDER
CLERK OF COURT
LEXINGTON, SC

No. 2015-CP-32-1888

Applicant,

v.

State of South Carolina,

Respondent.

RESPONDENT'S REPLY TO THOMAS
STAFFORD'S RULE 59(e) MOTION

The Respondent State of South Carolina hereby makes a Reply to the Applicant's Rule 59 (e) Motion. This arises from the Order dated January 19, 2024 and filed January 31, 2024. This Reply is filed at the April 24, 2024 request of this Court under Rule 59 and consistent with Rule 59:

In his Motion before this Court, the Applicant asserts the following reasons for Relief.

- **THRESHOLD MATTER: VIOLATION OF SECTION 17-27-80 AND THE SEPARATION OF POWERS. (Motion, p. 1-3).**
- **Grounds for Relief**
 - **Failure to Move to Withdraw the Guilty Plea. (Motion p. 3-5)**
 - "(1) ineffective assistance of trial counsel for allowing the guilty plea to move forward and/or failing to withdraw the guilty plea when the prosecutor changed the plea negotiations as the last moment and
 - (2) ineffective assistance of counsel for not moving to withdraw the guilty plea when the State breached the agreement to remain silent on sentencing."
 - **Failure to Investigate. (Motion, p. 5-9)**
 - (1) failure to investigate, discover and present evidence that would have provided a defense to the charges, and
 - (2) failing to investigate, discover, evidence that would have mitigated or reduced the sentence imposed.

Respondent would show this Court the Applicant's motion should be denied for the reasons set forth below:

A. VIOLATION OF SECTION 17-27-80 AND THE SEPARATION OF POWERS. (Motion, p. 1-3).

In the first section, The Applicant claims he is entitled to Rule 59 and claims he was denied the right to have the matter adjudicated by a judicial officer. He claims that the responsibility was delegated to the Attorney General's Office and that such delegation violated the separation of powers required by S.C. Const. Art. I, §8. His basis is that that the Court signed the proposed order presented by the Attorney General's Office was signed by the Court, making only minor formatting changes. He references Hall v. Catoe, 360 S.C. 353, 601 S.E.2d 335, 341(2004) and *Fishburne v State*, 427 S.C. 505, 832 S.E.2d 584 (2019) in support of his position.

It is essentially the Applicant's position that no judge should request proposed orders prepared by the parties in any case and that it is state constitutional error for the Court to sign and adopt the order as a violation of their duty to adjudicate decisions. The Applicant misreads both the intent and effect of *Hall* and *Fishburne*.

In *Hall*, the Court was faced with the preparation of orders in capital PCR matters. The Court there noted that "[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency." Importantly, the Hall court noted the following important factors as it relates to the Applicant's case:

The commentary to South Carolina Appellate Court Rule 501, Canon 3 B(7)(e) provides that "[a] judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions." Further, in Pruitt v. State, this Court directed that:

[c]ounsel preparing a proposed order should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Moreover, after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by § 17-27-80 and Rule 52(a), SCRCP....

310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992).

Hall v. Catoe, 360 S.C. 353, 364–65, 601 S.E.2d 335, 341 (2004).

In addition the Hall court concluded :

Although we strongly encourage PCR judges to draft their own findings of fact and conclusions of law in death penalty cases, **we also acknowledge that in all other cases, it is common practice for judges to ask a party to draft a proposed order for the sake of efficiency. In the present case, the evidence sufficiently indicates that the PCR judge spent an adequate amount of time reviewing the order before adopting it.** Further, Hall waived his right to make this challenge when he failed to file a motion to alter or amend the order. *Id.*

Hall v. Catoe, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) (emphasis added).

In *Fishburne*, the Court faced with an Order that the Court deemed insufficient in its fact-finding and conclusions of law on issues that were actually raised and presented. The Fishburne court endorsed the procedure taken in the present case, contrary to the implication of Applicant:

We do not place the blame on a single party below for an insufficient PCR order. The preparation and finalization of a PCR order is often a collaborative effort. We recognize the prevailing party often prepares a proposed order for the PCR court. *See Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) (“[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency.”). **When counsel for either side prepares the proposed order, the order must include findings of fact and conclusions of law as to all issues raised by an applicant. A copy of the proposed order should be transmitted to opposing counsel. Opposing counsel should promptly review the proposed order and alert preparing counsel and the PCR court as to any deficiencies in the proposed order. Because the PCR judge will ultimately be signing the order, the PCR judge must carefully review the proposed order to ensure it includes appropriate findings of fact and conclusions of law as to all issues raised.** Once a proposed order is finalized, signed by the PCR judge, filed, and served upon the parties, the parties should thoroughly review the final order to make sure all issues raised were adequately addressed as required by section 17-27-80 and Rule 52(a); if they were not, a timely Rule 59(e) motion should be filed, requesting the PCR court to address the appropriate issues. When these steps are ignored on the front end, we find ourselves having to remand a case, as we do today.

Fishburne v. State, 427 S.C. 505, 516, 832 S.E.2d 584, 589–90 (2019). *See also Pruitt v. State*,

310 S.C. 254, 423 S.E.2d 127 (1992)

Like in Hall, adequate steps were taken in the matter. On July 25, 2023, after reviewing the Applicant's pos-hearing brief, the Court emailed both counsel and requested a proposed order reflecting the court's ruling. On December 29, 2023, the Respondents below signed counsel emailed a copy of Respondent's proposed order with the following email:

Judge Miller, et al.

Attached is Respondent's Proposed Order in the above-captioned case heard by Judge Mille on June 22, 2023. **I am providing a copy simultaneously to Applicant's retained counsel Charles Grose for his initial review as well.**

If further information or transcripts are required, please advise me. My apologies to the Court, Mr. Grose, and his client for my delay in getting this matter and request completed.

December 29, 2023 Email.

Respondent's counsel is unaware of any opposition of the preparation of a proposed order by the State or to the Court from July 25, 2023 through December 29, 2023 until the matter was submitted or from December 29 through January 19, 2024 when the Order was signed by this Court. This is contrary to the demands upon Applicant's counsel with procedures set out in *Fishburne*.

Further, to suggest that the Court abdicated its role in judicial adjudication is in error. The Court, after reviewing the Applicant's brief requested the State to submit a proposed order finding that Applicant's counsel did not fall below the objective standard of reasonableness and that he was not prejudiced by the conduct. July 25, 2023 email. Next, after receipt of the proposed order on December 29, 2023 until he signed an Order of Dismissal, the Applicant was silent about asserting the State was not authorized nor was the Court in violation of Article I. Section 8 or §17-27-80 in the mere request for a proposed order from a prevailing party. In addition, like the setting in *Hall*,

In the present case, the evidence sufficiently indicates that the PCR judge spent an adequate amount of time reviewing the order before adopting it.

The request to have the Court withdraw its order should be denied.

The process of submitting proposed orders is built into our rules, (see Rule 5(b)(3), SCRCPP), and custom, *Hall*, 360 S.C. at 365, 601 S.E.2d at 341. Further, a long line of precedent, state and federal, allows the acceptance of proposed order language where the court independently reviews and adopts the language as its own. *See, e.g., Jefferson v. Upton*, 560 U.S. 284, 293-94 (2010) (acknowledging prior holdings that “verbatim adoption of findings of fact prepared by prevailing parties” should be treated as findings of the court though recognizing it had “also criticized that practice.”) (citing *Anderson v. Bessemer City*, 470 U.S. 564, 572 (1985))¹; *State v. Holmes*, 832 S.E.2d 777, 781 (Ga. 2019) (“It is well established that a trial court may request and then adopt a proposed order from one party. Doing so does not itself demonstrate an absence of cautious discretion.”) (internal citations omitted); *McGahee v. State*, 885 So.2d 191, 229–30 (Ala.Crim.App.2003) (“even when a trial court adopts verbatim a party’s proposed order, the findings of fact and conclusions of law are those of the trial court and they may be reversed only if they are clearly erroneous.”). *See also Bryant v. Stirling*, No. 9:16-cv-1423-DCN-MHC, 2022 WL 10686835 *12 n. 6 (D.S.C. April 19, 2022) (“As this court and others have recognized on many occasions, it is disfavored for courts to wholesale adopt proposed findings and conclusion by one party; “[n]onetheless, the disposition of a petitioner’s constitutional claims in such a manner is unquestionably and ‘adjudication’ by the state court.”).²

¹ Though the Supreme Court in *Anderson* noted the criticism, the Court ultimately resolved “that even when the trial judge adopts proposed findings verbatim, the findings are those of the court and may be reversed only if clearly erroneous.” *Anderson*, 470 U.S. at 572.

² Other cases similarly allow adoption of such language. *See, e.g., United States v. El Paso*

The process this Court has directed be followed contains specific safeguards and cautions to ensure that the process is one where care is taken in review, both by the parties and the judge, and both before and after the order is entered. With the Supreme Court having recently spoken on the safeguards to ensure fairness in the procedure, *see Fishburne, supra*, it is unnecessary to scrap the precedent in favor of less structure – essentially placing all requesting of additional findings or reconsideration in the Rule 59 stage (a later submission with the same presentation). At bottom, a litigant will always be allowed to ask for certain findings of facts and urge certain conclusions of law.

Respondent respectfully submits that this portion of the Rule 59 should be denied.

REMAINING ISSUES OF THE RULE 59 MOTION

Respondent submits that the remainder of the Rule 59 motion should be denied. The Applicant has failed to show that the Court misunderstood, failed to fully consider, or failed to rule on an argument or issue or an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. Our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion:(1) a party may wish to file such a motion when he believes

Nat. Gas Co., 376 U.S. 651, 656 (1964) (in reviewing order from district court adoption of entirety of proposed order, “Those findings, though not the product of the workings of the district judge’s mind, are formally his; they are not to be rejected out-of-hand, and they will stand if supported by evidence.”); *Tennille v. W. Union Co.*, 785 F.3d 422, 440 (10th Cir. 2015) (“the fact that the district court adopted the order drafted by the parties, alone, does not establish that the district court failed to exercise its judgment independently”); *Lansford-Coaldale Joint Water Auth. v. Tonolli Corp.*, 4 F.3d 1209, 1215 (3d Cir. 1993) (“While we cannot dispute that a district court’s verbatim adoption of many of a party’s proposed findings does not always represent a desirable practice, we are satisfied that the district court’s findings here satisfy Rule 52(a) and should be upheld unless they are not supported by the evidence in the record.”); *Patton v. State*, 784 So. 2d 380, 388 (Fla. 2000) (rejecting challenge to verbatim adoption noting, “[t]he court chose to adopt the State’s arguments as an accurate and well-documented reflection of the facts and law pertaining to the issues.”).

the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider to rule on it; and (2) a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004). As set forth below, the Motion must be denied.

A.

Failure to Move to Withdraw the Guilty Plea. (Motion p. 3-5).

In his motion, the Applicant contends that the Court erred in failing to make adequate findings related to the nature of the plea negotiations and the alleged change and that the plea should have been withdrawn by defense counsel based upon an alleged breach of the agreement when law enforcement made a request for a sentence after the solicitor had previously agreed to remain silent as to sentencing. Respondent submits the Court adequately addressed the facts within its Order and made appropriate legal conclusions based upon the facts.

The Applicant's focus initially is on his assertion that that Solicitor agreed to remain silent on the sentence imposed. He contends that the Court's findings support the existence of the agreement but stop short of the ultimate finding. Respondent disagrees. This Court did address those necessary and specific findings in its order:

“The Applicant contends that the State did not honor the plea agreement, relying upon email correspondence that predated the day of the plea and the testimony of family members present at the plea who asserted Applicant was confused at the time of the plea. This Court concludes that there was no unkept plea bargain agreed between the parties and no basis for counsel to either object or move to withdraw the guilty pleas.”

Order, p. 12-13.

“This Court must conclude that the plea bargain entered at the time of the entry of the guilty plea was satisfied by the actions of the Applicant, defense

counsel and the prosecutor. On the day the plea was entered and the time it was entered the relevant parties were aware of and accepted the terms of the plea offer. This Court finds that the actual plea offer that was accepted at the entry of the plea was that the Applicant would plead guilty to felony DUI resulting in death and plead guilty under *North Carolina v. Alford* to leaving the scene of an accident resulting in death without a negotiated sentence, without a sentence recommendation by the prosecution and the defense was free to argue whatever sentence it deemed appropriate. In return the prosecutor agreed to dismiss the pending DUI second offense. This Court further finds that the 17 year concurrent sentences the Applicant received were consistent with the agreed negotiation.”

Order, p. 14-15.

“Unlike *Thompson* and *Jordan*, at the time the plea was entered the defense counsel, the Applicant and the prosecution were aware that the agreed negotiation included the entry of the Alford plea to leaving the scene of the accident. This is supported by the testimony of defense counsel, the prosecutor and Applicant. The fact that the Applicant’s family may have been surprised at the time of the plea by the inclusion of the second charge does not bind the Court or the prosecution. The Applicant was aware at the time of the entry of the plea of its inclusion during the plea with the understanding that he was pleading under *Alford*. Tr.p. 6, l. 12-p. 9, l. 2. In addition to this testimony, the defense counsel was credible in her assertion that she was aware that the removal of the pending leaving the scene charge would only occur if there was agreement by the victim’s family which did not occur on the eve of the plea. Applicant’s Exhibit 14 is contemporaneous and consistent with this understanding. Further, the prosecutor credibly stated that the removal of the leaving the scene charge throughout the negotiation was contingent upon the victim’s approval.

Unlike, *Thompson*, *Jordan*, and *Smith*, **the understanding of the negotiations as Applicant entered the plea was consistent with what occurred.** The prior hopes and expectations of the defense counsel and his family that the charge would be dropped did not occur and was not part of the plea bargain. Unlike *Thompson* and *Jordan*, the prosecutor also complied with his agreement that he would not seek a particular sentence or consecutive sentences. As counsel stated clearly in Applicant’s Exhibit 14, **“the deal with the prosecution was that they were not going to put a number on the record and would not take a position on sentencing. We always knew the victims were going to ask for something very high due to their emotions.”** Further, the prosecutor had indicated to the judge in chambers that **he had no position on sentencing.** The Applicant’s reliance upon earlier emails between counsel with the mother and father, which predated that day of the plea and admittedly before the firm and final offer was made by the State is not persuasive after the credible explanation by defense counsel.”

Order, p. 16-17 (emphasis added).

The Applicant suggests that the request of State Highway Patrol First Sgt. Chris Sheldon was a violation of the plea agreement and not addressed in the Order. However, this Court addressed that assertion also in the order at page 17, footnote 3 where the Court concluded:

The Court notes that consistent with the expectations and negotiation during the plea the victim's mother made a victim impact statement on behalf of the family asked for the maximum allowed sentence. Tr.p. 26. Similarly, on behalf of the State Highway Patrol First Sgt. Chris Shelton and supervisor of at the scene also speaking on behalf of the victim's family asked for the maximum sentence. Tr.p. 27. **These presentations were also consistent with the expectations of defense counsel and did not suggest that reasonable counsel should have either objected or moved to withdraw the plea at that time as a violation of the plea agreement.**

Order, p. 17, n. 3.(**emphasis added**).³

The Applicant assertions are a request to reconsider the findings in light of the testimony the Court received from the Applicant and his family members. Motion, p. 4-5. As Applicant acknowledges, this Court did not ignore the PCR testimony of Applicant and his family. Motion, p. 4, citing Order, p. 7-8. However, the Applicant puts undue emphasis upon the Applicant's parsed response to the plea court's inquiry about the legal meaning of *Alford*, as undermining the knowing and voluntary plea. Motion p. 5. However, Applicant ignores the follow-up questioning by Judge Hood with the Applicant about the *Alford* concept, and Stafford's affirmance of his understanding of that concept. Plea Tr.p. 7-8. This was also addressed in the Court's Order, p. 16-17. Also, Order, p. 16, n. 2. AS noted there, The Applicant has failed to present a cogent reason as to why he should not be held to the truth of his statements. *See Blackledge v. Allison*, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977) (holding that solemn declarations in open court "carry a strong presumption of verity").

³ First Sgt. Shelton's plea testimony is located in the plea transcript at page 27 where he stated "he's done this once, he's done it twice, and there's a point in time obviously we ask that the maximum sentence be given. And I appreciate you giving me the opportunity to speak on behalf of the Johnson family." Plea Tr.p. 27,m l. 16-17.

Respondent respectfully submits that this portion of the Rule 59 should be denied. Counsel was not ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984) in failing to move to withdraw the guilty plea.

FAILURE TO INVESTIGATE

In his remaining assertion in his motion, Applicant asserts that the Court's order was inadequate in addressing counsel's failure to investigate adequately evidence which he claims would have presented a defense to the charge or mitigated the sentence. He claims that the Court's conclusions are contradicted by the record. Motion, p. 5-8. Respondent submits that the Court appropriately addressed the Applicant's concerns within its Order at pages 19-24, albeit not to the conclusion that Applicant now seeks. The Applicant complains that the Court deferred to the credible and uncontradicted testimony about Dr. Donna Maddox, the defense retained psychiatrist expressed unwillingness to continue her evaluation due to the Applicant's malingering of mental symptoms. He fails to acknowledge that counsel was acting reasonably in his retention of the expert which was thwarted by the actions of the Applicant. He emphasizes various steps that Dr. Maddox, prior to removing herself from the case, recommended counsel Browder to do in her representation and speculates that this would have led to Dr. Maddox in returning to the defense investigation. Motion, p. 6.

The Court addressed or rejected the Applicant's concerns in its Order. Concerning whether counsel in preparing the defense, but was precluded by the Applicant's uncontested malingering:

This Court must find that counsel performed a reasonable investigation related to the Applicant's mental status by retaining Dr. Maddox, Dr. Brawley, and Dr. Morton to assess the Applicant's mental state and the impact of his drugs injection on his performance. The critical problem was that the Applicant was determined to be malingering by Dr. Brawley, the neuropsychologist, during her neuropsychological testing of the Applicant. This critical finding at that time precluded further assessment by Dr. Brawley and Dr. Maddox at that time. It is uncontested that counsel attempted to get Dr. Maddox to continue to complete an

examination of the Applicant after the malingering assessment, but she refused to do so due to the Applicant's malingering. This is not a situation where there was no investigation into the Applicant's mental health, but an investigation was attempted but impacted by the Applicant's malingering of his mental symptoms.

Order, p. 20.

The evidence that supported the conclusion was from counsel Browder and Dr. Maddox who both confirmed at the PCR Dr. Maddox refused requests to become involved after the malingering conclusion.

The Applicant also ignores in his assertion and this Court's finding related to the mitigation presentation actually made by defense counsel. Order, p. 21-22. The plea judge had before it the significant mitigation presentation materials shown to Judge Hood, as well as this Court, revealing evidence of Applicant's methadone treatments, the prescriptions for Klonopin for anxiety and Vybrid for depression. PCR, State Exhibit 2. Counsel Browder described to the sentencing court his 2011 accident that caused a compressed disc in his back that led to his addiction to pain medication. Tr.p. 31. She presented as a result of the accident he began methadone treatments which he had been faithful to since October 2011 for a year prior to this incident. She further noted the impact of having lost a child a couple months before led to a tailspin prior to the accident and a period of depression and extreme anxiety with the added medications. Tr.p. 32. The basis for the *Alford* plea as to why he pled to leaving the scene was set out as:

First, she indicated that there was no doubt he was under the influence and overmedicating himself in excess of what it should have been and the accident occurred as a result of the overmedication. Tr.p. 32. However, she asserted that there was a factual issue with how the accident happened, but he was still under the influence and could have been avoided if he had not been. She sought to mitigate the prior DUI charge and the pending DUI 2nd that was dismissed because there was no evidence about his medications on that day and claimed he was unaware that his driver's license was suspended on the day of the incident. As to the leaving the scene *Alford* basis, she asserted that Applicant had contended to her since her representation that he had no intent to flee at the time of the incident and stopped a half a mile down the road. She claimed that his position would have been he could

have managed to avoid Mr. Blanks and Mr. Bishop to get away from them if he was really trying to leave the scene. She suggested that if he was actually fleeing he would have been three miles or more down the road, but he was only stopped one half mile. Tr.p. 35. Counsel further claimed he was not taking drugs for recreational purposes, but that this was prescribed medication that just got out of control while he was trying to help his family. Tr.p. 42. The Applicant stated his remorse for the accident.

Order, p. 21-22.

Concerning his claim that the Court ignored his assertion that the investigation was deficient in further finding an alleged defense to the accident, under S.C. Code §56-5-1210(A),ⁱ the Court did address whether it would have resulted in a defense to the crime in the following manner:

The Applicant suggests that the failure to further investigate would have provided a defense to the leaving the scene of the accident. However, in Dr. Maddox's testimony, she opined that there was no evidence to support either a defense of insanity or guilty but mentally ill. **Although Applicant suggests that it was defense to leaving the scene because some of his memory deficits would have caused him to take a longer amount of time to process that he committed the accident.**⁴ The law requires an immediate stop or as close as possible, not a stop one-half mile down the road. However, it was the Applicant's malingering, not counsel's deficiency that prevented this additional information from Dr. Maddox from being presented in mitigation at the plea.

Under these discrete circumstances, the Court must conclude that counsel was not deficient in her investigation in the matter. She acted as reasonable counsel in seeking mental health expert assistance in her representation. It was not performance, but the Applicant's own actions that thwarted the additional investigation. He failed in his burden of proof.

Order, p. 22-23 (**emphasis added**). In its Order, at p. 22, n.6, the Court addressed that "[A]lthough the plea information did not include a diagnosis of Post-Traumatic Stress Disorder, the genesis of such a diagnosis was presented to the sentencing authority who acknowledged he had read the material. Tr.p. 29, ll. 6-9. ("I have reviewed it in full. I've read every page."). However, as Dr.

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Maddox acknowledged the diagnosis she recently rendered does not support a plea of guilty but mentally ill (lacked sufficient capacity, due to mental illness to conform his conduct to the requirements of law, S.C. Code Ann. § 17-24-20(A)). The Court included that finding and conclusion in its Order. Order, p. 22, n. 6.

Respondent submits that this Court fully considered Dr. Maddox's PCR testimony in its review and included a summary of the testimony within its Order. Order, p. 4-6, as well as the exhibits introduced through Dr. Maddox, Applicant's exhibits 1, 2, 3.

More importantly, the Court reasonable addressed the prejudice prong of *Strickland* related to the mental health assertion of potential testimony from Dr. Maddox as it related to PTSD or memory deficits:

This Court also must conclude that Sixth Amendment prejudice has not been shown, assuming arguendo that deficient performance was found. The prejudice prong issue is initially whether to a reasonable probability the Applicant would have gone to trial on all charges with this information rather than plead guilty or reject the plea agreement to plead under *Alford*. This claim by the Applicant does not address issues with Felony DUI charge but is focused on the presentation of the leaving the scene of the accident charge. Although the Applicant asserted in the PCR proceeding he would have gone to trial on the hit and run charge, **this Court viewing all the circumstances finds that this is not credible as related to the prior Alford plea entry and the plea agreement.** This additional information did not undermine confidence in the earlier acceptance of the negotiated plea and did not provide a legal defense to the leaving the scene which the Applicant was allowed to plead under *Alford*. He has failed in his burden of proof.

This Court must further find that prejudice is not shown related to the mitigation or sentencing of the Applicant. **The sentencing court was presented with significant information about the impact of the drugs on the Applicant's action as and his history of being a victim of child abuse, the basis for the later diagnosis of Post-Traumatic Stress Disorder by Dr. Maddox.** The sentencing court also learned that it was the Applicant's position under *Alford*, that being stopped one-half mile from the scene of the accident under his condition was a short distance and not supportive of an intent to leave the scene. **The additional information that he suffered under some memory deficits which may have led to some processing issues may have explained a delay but does not undermine confidence in the plea court's sentencing to two concurrent 17 year sentences when the victims were asking for a maximum sentence on the charges.** He had

failed in his proof to show a reasonable probability that the sentence would have been different.

Order, p.23-24 (emphasis added).

Respondent respectfully submits that the Rule 59 related to this claim must be denied as to this portion. The Applicant has failed to show that the Court misunderstood, failed to fully consider, or failed to rule on an argument or issue or an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

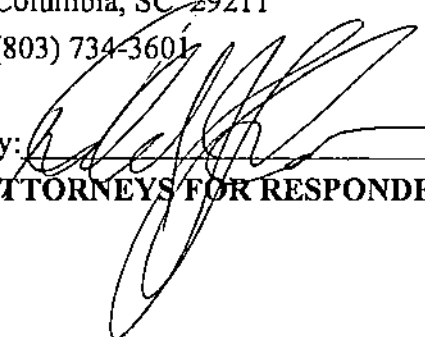
CONCLUSION

WHEREFORE, Respondent submits that the Motion to Alter and Amend should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

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S.C. Bar 5758
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(803) 734-3601

By: 

ATTORNEYS FOR RESPONDENT

April 26, 2024

¹ S.C. Code Ann. § 56-5-1210 (A) involving the “Duties of drivers involved in accident resulting in death or personal injury; moving or removing vehicles” states as follows:

(A) The driver of a vehicle involved in an accident resulting in injury to or the death of a person immediately shall stop the vehicle at the scene of the accident or as close to it as possible. He then

shall return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 56-5-1230. However, he may temporarily leave the scene to report the accident to the proper authorities. The stop must be made without obstructing traffic more than is necessary.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Thomas Stafford, #357279,)

C/A No. 2015-CP-32-1888

Applicant,)

v.)

AFFIDAVIT OF SERVICE

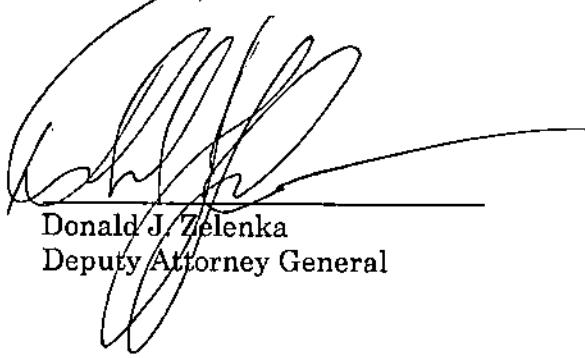
State of South Carolina,)

Respondent.)

1. I am counsel for Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Respondent's Reply to Thomas Stafford's Rule 59(e) Motion**, in the above-captioned matter has been forwarded to Applicant's counsel, Charles E. Grose, Jr., Esquire via email today, April 26, 2024 to charles@groselawfirm.com and by depositing same in the United States Mail, postage prepaid to:

E. Charles Grose, Jr., Esquire
305 Main Street
Greenwood, South Carolina 29646

DATED this 26th day of April, 2024.



Donald J. Zelenka
Deputy Attorney General

2024 MAY 28 AM 11:26) IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

LISA M. COMER
CLERK OF COURT No. 2015-CP-32-1888
LEXINGTON SC

ORDER DENYING THOMAS STAFFORD'S RULE 59(e) MOTION

State of South Carolina.

Respondent.

This Court has reviewed the materials and denies the Rule 59 motion for the following reasons.

I.

In his Motion before this Court, the Applicant asserts the following reasons for Relief.

- **THRESHOLD MATTER: VIOLATION OF SECTION 17-27-80 AND THE SEPARATION OF POWERS.** (Motion, p. 1-3).
- **Grounds for Relief**
 - **Failure to Move to Withdraw the Guilty Plea.** (Motion p. 3-5)
 - “(1) ineffective assistance of trial counsel for allowing the guilty plea to move forward and/or failing to withdraw the guilty plea when the prosecutor changed the plea negotiations as the last moment and
 - (2) ineffective assistance of counsel for not moving to withdraw the guilty plea when the State breached the agreement to remain silent on sentencing.”
 - **Failure to Investigate.** (Motion, p. 5-9)
 - (1) failure to investigate, discover and present evidence that would have provided a defense to the charges, and
 - (2) failing to investigate, discover, evidence that would have mitigated or reduced the sentence imposed.

This Court concludes the Applicant's motion should be denied for the reasons set forth below:

A. VIOLATION OF SECTION 17-27-80 AND THE SEPARATION OF POWERS. (Motion, p. 1-3).

In the first section, The Applicant claims he is entitled to Rule 59 and claims he was denied the right to have the matter adjudicated by a judicial officer. He claims that the responsibility was delegated to the Attorney General's Office and that such delegation violated the separation of powers required by S.C. Const. Art. I, §8. His basis is that this Court signed the proposed order presented by the Attorney General's Office, making only minor formatting changes. He references *Hall v. Catoe*, 360 S.C. 353, 601 S.E.2d 335, 341(2004) and *Fishburne v State*, 427 S.C. 505, 832 S.E.2d 584 (2019) in support of his position.

It is the Applicant's position that no judge should request proposed orders prepared by the parties in any case and that it is state constitutional error for this Court to sign and adopt the order as a violation of their duty to adjudicate decisions. The Applicant misreads both the intent and effect of *Hall* and *Fishburne*.

In *Hall*, the Court was faced with the preparation of orders in capital PCR matters. The Court there noted that "[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency." Importantly, the *Hall* court noted the following important factors as it relates to the Applicant's case:

The commentary to South Carolina Appellate Court Rule 501, Canon 3 B(7)(e) provides that "[a] judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions." Further, in Pruitt v. State, this Court directed that:

[c]ounsel preparing a proposed order should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the

PCR judge should carefully review the order prior to signing it. Moreover, after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by § 17-27-80 and Rule 52(a), SCRCP....

310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992).

Hall v. Catoe, 360 S.C. 353, 364–65, 601 S.E.2d 335, 341 (2004).

In addition the *Hall* court concluded :

Although we strongly encourage PCR judges to draft their own findings of fact and conclusions of law in death penalty cases, **we also acknowledge that in all other cases, it is common practice for judges to ask a party to draft a proposed order for the sake of efficiency. In the present case, the evidence sufficiently indicates that the PCR judge spent an adequate amount of time reviewing the order before adopting it.** Further, Hall waived his right to make this challenge when he failed to file a motion to alter or amend the order. *Id.*

Hall v. Catoe, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) (emphasis added).

In *Fishburne*, the Court faced with an Order that the Court deemed insufficient in its fact-finding and conclusions of law on issues that were actually raised and presented. The *Fishburne* court endorsed the procedure taken in the present case, contrary to the implication of Applicant:

We do not place the blame on a single party below for an insufficient PCR order. The preparation and finalization of a PCR order is often a collaborative effort. We recognize the prevailing party often prepares a proposed order for the PCR court. *See Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) (“[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency.”). **When counsel for either side prepares the proposed order, the order must include findings of fact and conclusions of law as to all issues raised by an applicant. A copy of the proposed order should be transmitted to opposing counsel. Opposing counsel should promptly review the proposed order and alert preparing counsel and the PCR court as to any deficiencies in the proposed order. Because the PCR judge will ultimately be signing the order, the PCR judge must carefully review the proposed order to ensure it includes appropriate findings of fact and conclusions of law as to all issues raised.** Once a proposed order is finalized, signed by the PCR judge, filed, and served upon the parties, the parties should thoroughly review the final order to make sure all issues raised were adequately addressed as required by section 17-27-80 and Rule 52(a); if they were not, a timely Rule 59(e) motion should be filed, requesting the PCR court to address

the appropriate issues. When these steps are ignored on the front end, we find ourselves having to remand a case, as we do today.

Fishburne v. State, 427 S.C. 505, 516, 832 S.E.2d 584, 589–90 (2019). *See also Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992)

Like in *Hall*, adequate steps were taken in the matter. On July 25, 2023, after reviewing the Applicant’s pos-hearing brief, the Court emailed both counsel and requested a proposed order reflecting the court’s ruling. On December 29, 2023, the Respondents emailed a copy of Respondent’s proposed order with the following email:

Judge Miller, et al.

Attached is Respondent’s Proposed Order in the above-captioned case heard by Judge Mille on June 22, 2023. **I am providing a copy simultaneously to Applicant’s retained counsel Charles Grose for his initial review as well.**

If further information or transcripts are required, please advise me. My apologies to the Court, Mr. Grose, and his client for my delay in getting this matter and request completed.

December 29, 2023 Email.

There was no opposition to the preparation of a proposed order by the State nor to the Court’s request from July 25, 2023 through December 29, 2023 until the proposed order was submitted to this Court nor from December 29 through January 19, 2024 when the Order was signed by this Court. This is contrary to the demands upon Applicant’s counsel with procedures set out in *Fishburne*.

This Court did not abdicate its role in judicial adjudication as Applicant suggests. After reviewing the Applicant’s brief, this Court requested the State to submit a proposed order finding that Applicant’s counsel did not fall below the objective standard of reasonableness and that he was not prejudiced by the conduct. *July 25, 2023 email*. Next, after receipt of the proposed order on December 29, 2023 until this Court signed an Order of Dismissal, the Applicant was silent

about his current contention that the State was not authorized to prepare a proposed order nor that the Court acted in violation of Article I. Section 8 or §17-27-80 in the mere request for a proposed order from a prevailing party. In addition, like the setting in *Hall*,

In the present case, the evidence sufficiently indicates that the PCR judge spent an adequate amount of time reviewing the order before adopting it.

The request to have the Court withdraw its order its January 19, 2024 is denied.

The process of submitting proposed orders is built into our rules, (see Rule 5(b)(3), SCRPC), and custom, *Hall*, 360 S.C. at 365, 601 S.E.2d at 341. Further, a long line of precedent, state and federal, allows the acceptance of proposed order language where the court independently reviews and adopts the language as its own. See, e.g., *Jefferson v. Upton*, 560 U.S. 284, 293-94 (2010) (acknowledging prior holdings that “verbatim adoption of findings of fact prepared by prevailing parties” should be treated as findings of the court though recognizing it had “also criticized that practice.”) (citing *Anderson v. Bessemer City*, 470 U.S. 564, 572 (1985))¹; *State v. Holmes*, 832 S.E.2d 777, 781 (Ga. 2019) (“It is well established that a trial court may request and then adopt a proposed order from one party. Doing so does not itself demonstrate an absence of cautious discretion.”) (internal citations omitted); *McGahee v. State*, 885 So.2d 191, 229–30 (Ala.Crim.App.2003) (“even when a trial court adopts verbatim a party’s proposed order, the findings of fact and conclusions of law are those of the trial court and they may be reversed only if they are clearly erroneous.”). See also *Bryant v. Stirling*, No. 9:16-cv-1423-DCN-MHC, 2022 WL 10686835 *12 n. 6 (D.S.C. April 19, 2022) (“As this court and others have recognized on many occasions, it is disfavored for courts to wholesale adopt proposed findings and conclusion

¹ Though the Supreme Court in *Anderson* noted the criticism, the Court ultimately resolved “that even when the trial judge adopts proposed findings verbatim, the findings are those of the court and may be reversed only if clearly erroneous.” *Anderson*, 470 U.S. at 572.

by one party; “[n]onetheless, the disposition of a petitioner’s constitutional claims in such a manner is unquestionably and ‘adjudication’ by the state court.”).²

This Court denies this portion of the Rule 59 motion.

REMAINING ISSUES OF THE RULE 59 MOTION

This Court finds that the remainder of the Rule 59 motion should be denied. The Applicant has failed to show that this Court misunderstood, failed to fully consider, or failed to rule on an argument or issue or an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. Our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion: (1) a party may wish to file such a motion when he believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider to rule on it; and (2) a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). As set forth below, the Motion is denied.

² Other cases similarly allow adoption of such language. *See, e.g., United States v. El Paso Nat. Gas Co.*, 376 U.S. 651, 656 (1964) (in reviewing order from district court adoption of entirety of proposed order, “Those findings, though not the product of the workings of the district judge’s mind, are formally his; they are not to be rejected out-of-hand, and they will stand if supported by evidence.”); *Tennille v. W. Union Co.*, 785 F.3d 422, 440 (10th Cir. 2015) (“the fact that the district court adopted the order drafted by the parties, alone, does not establish that the district court failed to exercise its judgment independently”); *Lansford-Coaldale Joint Water Auth. v. Tonolli Corp.*, 4 F.3d 1209, 1215 (3d Cir. 1993) (“While we cannot dispute that a district court’s verbatim adoption of many of a party’s proposed findings does not always represent a desirable practice, we are satisfied that the district court’s findings here satisfy Rule 52(a) and should be upheld unless they are not supported by the evidence in the record.”); *Patton v. State*, 784 So. 2d 380, 388 (Fla. 2000) (rejecting challenge to verbatim adoption noting, “[t]he court chose to adopt the State’s arguments as an accurate and well-documented reflection of the facts and law pertaining to the issues.”).

A.

Failure to Move to Withdraw the Guilty Plea. (Motion p. 3-5).

In his motion, the Applicant contends that the Court erred in failing to make adequate findings related to the nature of the plea negotiations and the alleged change and that the plea should have been withdrawn by defense counsel based upon an alleged breach of the agreement when law enforcement made a request for a sentence after the solicitor had previously agreed to remain silent as to sentencing. This Court finds it adequately addressed the facts within its Order and made appropriate legal conclusions based upon the facts.

The Applicant's initial focus is the assertion that that Solicitor agreed to remain silent on the sentence imposed. Applicant contends that the Court's findings supported the existence of the agreement but stopped short of the ultimate finding. This Court disagrees and concludes it did address those necessary and specific findings in its order:

"The Applicant contends that the State did not honor the plea agreement, relying upon email correspondence that predated the day of the plea and the testimony of family members present at the plea who asserted Applicant was confused at the time of the plea. This Court concludes that there was no unkept plea bargain agreed between the parties and no basis for counsel to either object or move to withdraw the guilty pleas."

Order, p. 12-13.

"This Court must conclude that the plea bargain entered at the time of the entry of the guilty plea was satisfied by the actions of the Applicant, defense counsel and the prosecutor. On the day the plea was entered and the time it was entered the relevant parties were aware of and accepted the terms of the plea offer. This Court finds that the actual plea offer that was accepted at the entry of the plea was that the Applicant would plead guilty to felony DUI resulting in death and plead guilty under *North Carolina v. Alford* to leaving the scene of an accident resulting in death without a negotiated sentence, without a sentence recommendation by the prosecution and the defense was free to argue whatever sentence it deemed appropriate. In return the prosecutor agreed to dismiss the pending DUI second offense. This Court further finds that the 17 year concurrent sentences the Applicant received were consistent with the agreed negotiation."

Order, p. 14-15.

“Unlike *Thompson* and *Jordan*, at the time the plea was entered the defense counsel, the Applicant and the prosecution were aware that the agreed negotiation included the entry of the Alford plea to leaving the scene of the accident. This is supported by the testimony of defense counsel, the prosecutor and Applicant. The fact that the Applicant’s family may have been surprised at the time of the plea by the inclusion of the second charge does not bind the Court or the prosecution. The Applicant was aware at the time of the entry of the plea of its inclusion during the plea with the understanding that he was pleading under *Alford*. Tr.p. 6, l. 12-p. 9, l 2. In addition to this testimony, the defense counsel was credible in her assertion that she was aware that the removal of the pending leaving the scene charge would only occur if there was agreement by the victim’s family which did not occur on the eve of the plea. Applicant’s Exhibit 14 is contemporaneous and consistent with this understanding. Further, the prosecutor credibly stated that the removal of the leaving the scene charge throughout the negotiation was contingent upon the victim’s approval.

Unlike, *Thompson, Jordan, and Smith*, **the understanding of the negotiations as Applicant entered the plea was consistent with what occurred.** The prior hopes and expectations of the defense counsel and his family that the charge would be dropped did not occur and was not part of the plea bargain. Unlike *Thompson* and *Jordan*, the prosecutor also complied with his agreement that he would not seek a particular sentence or consecutive sentences. As counsel stated clearly in Applicant’s Exhibit 14, **“the deal with the prosecution was that they were not going to put a number on the record and would not take a position on sentencing. We always knew the victims were going to ask for something very high due to their emotions.”** Further, the prosecutor had indicated to the judge in chambers that **he had no position on sentencing.** The Applicant’s reliance upon earlier emails between counsel with the mother and father, which predated that day of the plea and admittedly before the firm and final offer was made by the State is not persuasive after the credible explanation by defense counsel.”

Order, p. 16-17 (emphasis added).

The Applicant suggests that the sentencing request of State Highway Patrol First Sgt. Chris Sheldon was a violation of the plea agreement with the Solicitor and was not addressed in the Order. However, this Court addressed that assertion in the order at page 17, footnote 3 where the Court concluded:

The Court notes that consistent with the expectations and negotiation during the plea the victim’s mother made a victim impact statement on behalf of the family

asked for the maximum allowed sentence. Tr.p. 26. Similarly, on behalf of the State Highway Patrol First Sgt. Chris Shelton and supervisor of at the scene also speaking on behalf of the victim's family asked for the maximum sentence. Tr.p. 27. **These presentations were also consistent with the expectations of defense counsel and did not suggest that reasonable counsel should have either objected or moved to withdraw the plea at that time as a violation of the plea agreement.**

Order, p. 17, n. 3.(emphasis added).³

The Applicant also requested this Court to reconsider the findings in light of the PCR testimony from the Applicant and his family members. *Motion*, p. 4-5. As Applicant acknowledges, this Court did not ignore the PCR testimony of Applicant and his family. *Motion*, p. 4, citing *Order*, p. 7-8. However, the Applicant places undue emphasis upon the Applicant's parsed response to the plea court's inquiry about the legal meaning of *Alford*, as undermining the knowing and voluntary plea. *Motion* p. 5. However, Applicant ignores the follow-up questioning of the Applicant by Judge Hood about the *Alford* concept, and Stafford's ultimate affirmance of his understanding of that concept. *Plea Tr.p.* 7-8. This issue was also addressed in the Court's *Order*, p. 16-17. Also, *Order*, p. 16, n. 2. As noted there, the Applicant has failed to present a cogent reason as to why he should not be held to the truth of his statements at the plea. *See Blackledge v. Allison*, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977) (holding that solemn declarations in open court "carry a strong presumption of verity").

This portion of the Rule 59 motion should be denied after reconsideration was given by this Court. Counsel was not ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984) in failing to move to withdraw the guilty plea.

FAILURE TO INVESTIGATE

³ First Sgt. Shelton's plea testimony is located in the plea transcript at page 27 where he stated "he's done this once, he's done it twice, and there's a point in time obviously we ask that the maximum sentence be given. And I appreciate you giving me the opportunity to speak on behalf of the Johnson family." *Plea Tr.p.* 27,m 1. 16-17.

In his remaining assertion in his motion, Applicant asserts that the Court's order was inadequate in addressing counsel's failure to adequately investigate evidence which he claims would have presented a defense to the charge or mitigated the sentence. He claims that the Court's conclusions are contradicted by the record. Motion, p. 5-8. This Court finds it appropriately addressed the Applicant's concerns within its Order at pages 19-24, albeit not to the conclusion that Applicant now seeks. The Applicant complains that the Court deferred to the credible and uncontradicted testimony about defense retained psychiatrist Dr. Donna Maddox's expressed unwillingness to continue her evaluation prior to the plea due to the Applicant's malingering of mental symptoms. He fails to acknowledge that counsel was acting reasonably in his retention of the expert which was thwarted by the actions of the Applicant. Applicant emphasizes various additional steps that Dr. Maddox, prior to removing herself from the case, recommended to counsel Browder to do. He then speculates that if counsel would have completed the steps that it may have led to Dr. Maddox to return to the defense team in the investigation. Motion, p. 6.

The Court addressed or rejected the Applicant's concerns in its Order. Concerning whether counsel in preparing the defense, but was precluded by the Applicant's uncontested malingering:

This Court must find that counsel performed a reasonable investigation related to the Applicant's mental status by retaining Dr. Maddox, Dr. Brawley, and Dr. Morton to assess the Applicant's mental state and the impact of his drugs injection on his performance. The critical problem was that the Applicant was determined to be malingering by Dr. Brawley, the neuropsychologist, during her neuropsychological testing of the Applicant. This critical finding at that time precluded further assessment by Dr. Brawley and Dr. Maddox at that time. It is uncontested that counsel attempted to get Dr. Maddox to continue to complete an examination of the Applicant after the malingering assessment, but she refused to do so due to the Applicant's malingering. This is not a situation where there was no investigation into the Applicant's mental health, but an investigation was attempted but impacted by the Applicant's malingering of his mental symptoms.

Order, p. 20.

The evidence that supported the conclusions was from both counsel Browder and Dr. Maddox who both confirmed at the PCR hearing that Dr. Maddox refused every request to become involved after the malingering conclusion.

The Applicant also ignores in his assertion this Court's earlier findings related to the mitigation presentation actually made by defense counsel before Judge Hood. *Order, p. 21-22*. This Court had before it the significant mitigation presentation materials shown to Judge Hood revealing evidence of Applicant's methadone treatments, the prescriptions for Klonopin for anxiety and Vybrid for depression. *PCR, State Exhibit 2*. Counsel Browder described to the sentencing court Applicant's 2011 accident that caused a compressed disc in his back which led to his addiction to pain medication. *Tr.p. 31*. She presented that as a result of the accident he began methadone treatments which he had been faithful to since October 2011 for a year prior to this incident. She further noted the impact of having lost a child a couple months before led to a tailspin prior to the accident and a period of depression and extreme anxiety with the added medications. *Tr.p. 32*. The basis for the *Alford* plea as to why he pled to leaving the scene was set out as follows in the Order:

First, she indicated that there was no doubt he was under the influence and overmedicating himself in excess of what it should have been and the accident occurred as a result of the overmedication. *Tr.p. 32*. However, she asserted that there was a factual issue with how the accident happened, but he was still under the influence and could have been avoided if he had not been. She sought to mitigate the prior DUI charge and the pending DUI 2nd that was dismissed because there was no evidence about his medications on that day and claimed he was unaware that his driver's license was suspended on the day of the incident. As to the leaving the scene *Alford* basis, she asserted that Applicant had contended to her since her representation that he had no intent to flee at the time of the incident and stopped a half a mile down the road. She claimed that his position would have been he could have managed to avoid Mr. Blanks and Mr. Bishop to get away from them if he was really trying to leave the scene. She suggested that if he was actually fleeing he would have been three miles or more down the road, but he was only stopped one half mile. *Tr.p. 35*. Counsel further claimed he was not taking drugs for recreational purposes, but that this was prescribed medication that just got out of

control while he was trying to help his family. Tr.p. 42. The Applicant stated his remorse for the accident.

Order, p. 21-22.

Concerning his claim that the Court ignored his assertion that the investigation was deficient in failing to find an alleged defense to the accident, under S.C. Code §56-5-1210(A), this Court did address whether his PCR presentation would have resulted in a defense to the crime in the following manner:

The Applicant suggests that the failure to further investigate would have provided a defense to the leaving the scene of the accident. However, in Dr. Maddox's testimony, she opined that there was no evidence to support either a defense of insanity or guilty but mentally ill. **Although Applicant suggests that it was defense to leaving the scene because some of his memory deficits would have caused him to take a longer amount of time to process that he committed the accident.** The law requires an immediate stop or as close as possible, not a stop one-half mile down the road. However, it was the Applicant's malingering, not counsel's deficiency that prevented this additional information from Dr. Maddox from being presented in mitigation at the plea.

Under these discrete circumstances, the Court must conclude that counsel was not deficient in her investigation in the matter. She acted as reasonable counsel in seeking mental health expert assistance in her representation. It was not performance, but the Applicant's own actions that thwarted the additional investigation. He failed in his burden of proof.

Order, p. 22-23 (emphasis added). In the Order, at p. 22, n.6, this Court addressed that "[A]lthough the plea information did not include a diagnosis of Post-Traumatic Stress Disorder, the genesis of such a diagnosis was presented to the sentencing authority who acknowledged he had read the material. Tr.p. 29, ll. 6-9. ("I have reviewed it in full. I've read every page."). However, as Dr. Maddox acknowledged the diagnosis she recently rendered does not support a plea of guilty but mentally ill (lacked sufficient capacity, due to mental illness to conform his conduct to the requirements of law, S.C. Code Ann. § 17-24-20(A))." The Court included that finding and conclusion in its Order. *Order, p. 22, n. 6.*

This Court finds that it fully considered Dr. Maddox's PCR testimony in its review and included a summary of the testimony within its Order. Order, p. 4-6, as well as the exhibits introduced through Dr. Maddox, Applicant's exhibits 1, 2, 3. The Applicant's suggestion otherwise is denied.

More importantly, the Court addressed the prejudice prong of *Strickland* related to the mental health assertion of potential testimony from Dr. Maddox as it related to PTSD or memory deficits as follows:

This Court also must conclude that Sixth Amendment prejudice has not been shown, assuming *arguendo* that deficient performance was found. The prejudice prong issue is initially whether to a reasonable probability the Applicant would have gone to trial on all charges with this information rather than plead guilty or reject the plea agreement to plead under *Alford*. This claim by the Applicant does not address issues with Felony DUI charge but is focused on the presentation of the leaving the scene of the accident charge. Although the Applicant asserted in the PCR proceeding he would have gone to trial on the hit and run charge, **this Court viewing all the circumstances finds that this is not credible as related to the prior Alford plea entry and the plea agreement.** This additional information did not undermine confidence in the earlier acceptance of the negotiated plea and did not provide a legal defense to the leaving the scene which the Applicant was allowed to plead under *Alford*. He has failed in his burden of proof.

This Court must further find that prejudice is not shown related to the mitigation or sentencing of the Applicant. **The sentencing court was presented with significant information about the impact of the drugs on the Applicant's action as and his history of being a victim of child abuse, the basis for the later diagnosis of Post-Traumatic Stress Disorder by Dr. Maddox.** The sentencing court also learned that it was the Applicant's position under *Alford*, that being stopped one-half mile from the scene of the accident under his condition was a short distance and not supportive of an intent to leave the scene. **The additional information that he suffered under some memory deficits which may have led to some processing issues may have explained a delay but does not undermine confidence in the plea court's sentencing to two concurrent 17 year sentences when the victims were asking for a maximum sentence on the charges.** He had failed in his proof to show a reasonable probability that the sentence would have been different.

Order, p.23-24 (emphasis added).

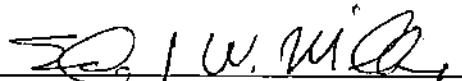
This Court concludes that the Rule 59 motion related to this claim must be denied as to this portion. The Applicant has failed to show that the Court misunderstood, failed to fully consider, or failed to rule on an argument or issue or an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

CONCLUSION

IT IS THEREFORE ORDERED:

1. That the Applicant Thomas Stafford's Rule 59 Motion is denied.

AND IT IS SO ORDERED this 12 day of May, 2024.


 EDWARD W. MILLER
 Presiding Judge
 Eleventh Judicial Circuit

Gunnville, South Carolina