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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Brian M. Gibbons, Circuit Court Judge

LONNIE MILLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000351

APPENDIX

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1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions

3
4 Indictment Number: 2017GS0201234
2017GS0201235

5
6 State of South Carolina,)
7 Plaintiff.)

8 vs.)

Transcript of Record

9)
10 Lonnie Dean Miller,)
Defendant.)

11
12 February 16, 2018
13 Aiken, South Carolina

14
15 B E F O R E:

16 The Honorable Doyet A. Early III, Judge.

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

19 J. Strom Thurmond Jr., Solicitor
20 Attorney for the State

21 Maureen O. Floyd, Esquire
22 Attorney for the Defendant

23
24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Doyet A. Early III
25 P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 MR. THURMOND: Lonnie Dean Miller.

2 LONNIE DEAN MILLER was duly sworn.

3 MR. THURMOND: Your Honor, good morning. Before
4 the Court is Lonnie Dean miller. He is here this morning
5 to plead guilty to the following five indictments:
6 2017GS02737, charging him with failure to stop a motor
7 vehicle at the scene causing the death of Tony Redmond;
8 Indictment Number 2017GS02739, failure to stop a motor
9 vehicle at the scene causing the death of Robert Clark;
10 Indictment 2017GS02741, failure to stop a motor vehicle at
11 the scene with personal injury to Michael Lowe; Indictment
12 Number 2017GS021234, reckless vehicular homicide relating
13 to Tony Redmond; Indictment Number 2017GS021235, reckless
14 vehicular homicide relating to Robert Clark.

15 The first three charges, the two cases of leaving
16 the scene with death and with personal injury are
17 straight-up guilty pleas, no plea offers, no plea bargains,
18 no negotiations whatsoever as to those two.

19 The last two offenses of reckless vehicular
20 homicide, the State is recommending that they run
21 concurrent with the principal three.

22 THE COURT: Prior record of Mr. Miller, please?

23 MR. THURMOND: Your Honor, I can do that now or
24 later on in my presentation as I had planned, but however
25 you want it.

1 THE COURT: You can do it later on.

2 MR. THURMOND: Yes, sir.

3 THE COURT: Ms. Floyd, good morning, how are you?

4 MS. FLOYD: Have good, Your Honor. Thank you.

5 THE COURT: You represent Lonnie Dean Miller in the
6 indictments that have been called?

7 MS. FLOYD: I do, Your Honor.

8 THE COURT: By representing him, Mr. Miller, I
9 assume that you have advised him of the charges contained
10 in each indictment; is that correct?

11 MS. FLOYD: I have, Your Honor.

12 THE COURT: Have you further advised him of the
13 potential sentence as to each indictment, i.e. up to 25
14 years and/or 10,000 -- strike that up to 25 years and a
15 fine between 10,000 and 25,000 on the two indictments
16 dealing with leaving the scene of an accident with death
17 involved; is that correct?

18 MS. FLOYD: I have, Your Honor.

19 THE COURT: As to the hit and run with personal
20 injuries, that carries up to one year and a fine between
21 100 and 500. Have you advised him of that?

22 MS. FLOYD: I have, Your Honor.

23 THE COURT: And as to the two charges of reckless
24 homicide with death, those both carry up to 10 years and/or
25 a fine between 1,000 and 5,000. Have you advised him of

1 that?

2 MS. FLOYD: I have, Your Honor.

3 THE COURT: As to the two hit and run with death
4 involved, have you advised him that they were classified as
5 serious -- strike that -- as violent and that means it will
6 have some effect on how and where he is housed in the
7 department of corrections?

8 MS. FLOYD: I have, Your Honor.

9 THE COURT: Have you advised him that those two
10 indictments are what we refer to as a no-parole sentence,
11 which means that under the current state of law, that
12 whatever sentence that is imposed upon him he will have to
13 do 85 percent of it and once released it would be into a
14 community supervision program?

15 MS. FLOYD: Yes, sir, Your Honor.

16 THE COURT: In your opinion, does your client
17 understand all of that?

18 MS. FLOYD: He does, Your Honor.

19 THE COURT: Is it your understanding that the only
20 recommendation being made in this case is that the two
21 vehicular reckless homicide cases will run concurrent to
22 the hit and run with death involved?

23 MS. FLOYD: That's correct, Your Honor.

24 THE COURT: Having advised him of all of that have
25 you advised him of his right to trial by jury?

1 MS. FLOYD: I have, Your Honor.

2 THE COURT: And how has he indicated to you he
3 wishes to plead to each of these five indictments?

4 MS. FLOYD: He wants to plead guilty, Your Honor.

5 THE COURT: Do you agree with that decision?

6 MS. FLOYD: I do, Your Honor.

7 THE COURT: Do you know how long he has been
8 incarcerated?

9 MS. FLOYD: He was arrested on March 13th, 2017.

10 MR. THURMOND: 336 days.

11 THE COURT: You agree with that? 336 days?

12 MS. FLOYD: I do, Your Honor.

13 THE COURT: Mr. Miller, good morning.

14 THE DEFENDANT: Good morning.

15 THE COURT: You stand before me on five indictments
16 that have been true billed by the Aiken County Grand Jury.
17 Two of those indictments are for hit and run with -- and
18 which involved the death of two individuals. Do you
19 understand those two charges?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Those two charges carry up to 25 years
22 in the department of corrections and a fine between \$10 and
23 \$25,000; do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: The other one -- one of the other

1 charges is a hit and run with personal injury involved.
2 That carries up to one year and/or a fine between 100 and
3 500; do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And the last two are what's known as
6 reckless homicide with death involved. And those both
7 carry up to 10 years in the department of corrections
8 and/or a fine between 1,000 and 5,000 thousand; do you
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: The two hit and run with death
12 involved, they are both classified as violent, so that will
13 have some effect on where and how you are housed in the
14 department of corrections and your release date; do you
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: These two offenses, i.e. the hit and
18 run with death involved, are what we call a no-parole
19 sentence, which means under the current state of law that
20 whatever sentence I impose upon you, you will have to do
21 and complete 85 percent of it before you are eligible for
22 release and once you are released you would be released
23 into a community supervision program. Do you understand
24 that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions at all about
2 what you're charged with, the potential sentences as to
3 each indictment, the classification of violent, the fact
4 that it is a no-parole sentence, the fact that you'll do 85
5 percent of whatever sentence imposed and you'll be released
6 into the community supervision program? Do you have any
7 questions at all about any of that?

8 THE DEFENDANT: No, sir.

9 THE COURT: Understanding the charges, the possible
10 sentence and the classifications, how do you wish to plead
11 to these charges? Not guilty or guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: Sir, when you plead guilty, you will
14 give up certain of your constitutional rights. One of
15 those rights is your right to remain silent. You will have
16 to admit to me as we go along this morning of the facts
17 alleged in these indictments; do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You will also give up or forego or
20 waive your constitutional right to a trial by jury. We've
21 had a jury here all week. We just tried a three-and-a-half
22 day case. So if you demanded a jury trial and pled guilty,
23 obviously, the State would provide a trial for you; at
24 which time you would have the right to cross-examine all
25 witnesses who testified against you with your lawyer. You

1 would have the right to present your defense; in other
2 words, tell your side of the story. You can do that by
3 calling witnesses, introducing relevant exhibits, and
4 getting on the witness stand and testifying on your behalf.
5 Tell your side.

6 If you exercised your constitutional right to
7 remain silent, I would inform or tell the jury that they
8 could not hold the fact that you did not testify against
9 you in any manner whatsoever and, in fact, I would instruct
10 them that they could not even consider the fact that you
11 did not testify when they deliberated your guilt or
12 innocence. You would be presumed innocent throughout the
13 trial and the State of South Carolina would have the burden
14 of proving you guilty beyond a reasonable doubt to a jury
15 of twelve people. And in order for that jury to convict
16 you, all twelve jurors would have to unanimously agree that
17 you were, in fact, guilty. And even if you were convicted,
18 you would still have the right to an appeal.

19 Now, do you understand your rights to trial by
20 jury?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Understanding those rights, do you
23 still wish to plead guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Other than the recommendation of the

1 concurrent sentence on the reckless homicide, which I can
2 follow or I don't have to follow, but it's a
3 recommendation, other than that, has anyone promised you
4 anything, held out any hope of reward or threatened you in
5 any manner in order to make you plead guilty?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you satisfied with the services
8 rendered to you by your attorney, Ms. Floyd?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: In your opinion, has she had enough
11 time to spend with you, enough time to research the law and
12 investigate the facts so that she can properly defend you
13 here today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Is there anything else you wish for her
16 to do for you today before we proceed other than speak up
17 on your behalf?

18 THE DEFENDANT: No, sir.

19 THE COURT: And I ask you again, are you totally
20 and completely satisfied with her representation?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Sir, are you today under the influence
23 of alcohol, drugs, or prescription medication?

24 THE DEFENDANT: No, sir.

25 MS. FLOYD: He is taking prescription medication

1 for anxiety that's administered at the jail. He's taking
2 Buspar.

3 THE COURT: And you are taking some anxiety
4 medication prescribed to you; the fact that you're doing
5 that, sir, has that kept you from understanding any of
6 these proceedings or any of my questions?

7 THE DEFENDANT: No, sir.

8 THE COURT: Sir, do you know today of any nervous,
9 mental or emotional condition which would keep you from
10 understanding my questions?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you understood all of my
13 questions?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any questions you would
16 like to ask of me?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you entering a plea of guilty to
19 all of these indictments that we've been over of your own
20 free will?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you sir, here in Aiken County, on
23 or about March 13 of last year, 2017, operate a vehicle in
24 a reckless disregard for the safety of others, causing
25 fatal wounds to Robert Clark and Anthony John Redmond as a

1 result of a motor vehicle wreck. And did you, sir, in
2 fact, on that same date, time, and place after the wreck,
3 did you fail to stop and remain at the scene to render aid
4 to Anthony John Redmond and/or Robert L. Clark?

5 And did you also fail to stop and render aid to the
6 survivor Michael Lowe, as required by law?

7 Did you operate your vehicle in a reckless manner
8 in violation of the laws of this state, as a result of that
9 reckless operation of the vehicle, you had a wreck which
10 caused the death of two people, Anthony John Redmond and
11 Robert Clark; you failed to stop and render aid and/or give
12 information and/or assistance to them as well as to the
13 person who sustained injuries, i.e. Michael Lowe; is that
14 what you did?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is that what you're pleading guilty to?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You're pleading guilty because you are,
19 in fact, guilty and violated the laws of our state?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I find your decision to plead guilty,
22 Mr. Miller, to be freely, voluntarily and intelligently
23 made. You've had the representation of an excellent
24 lawyer, Ms. Maureen Floyd, with whom you tell me you're
25 satisfied and I will accept the plea.

1 If for some reason you disagree with these
2 proceedings or my sentence, you have 10 days from today's
3 date to file a notice of intent to appeal; do you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Thurmond?

7 MR. THURMOND: Thank you, may it please the Court.

8 Your Honor, I have prepared for you a series of
9 photographs that will allow you to kind of follow along
10 with our factual presentation; and I have provided
11 Ms. Floyd with a copy as well.

12 Your Honor, March 13th, 2017 was a Monday morning.
13 It was clear but cloudy around 8:30 a.m. on Highway 421, on
14 a section of road between Atomic Road and Storm Branch
15 Road. This is in the Clearwater section of Aiken County
16 and just outside the city limits of North Augusta.

17 Department of Transportation workers, Michael Lowe,
18 61 years old and a 42 year veteran of the South Carolina
19 Department of Transportation, Robert Clark, 64 years old, a
20 DOT supervisor originally from Friendship, New York and
21 grandfather of 11, and Tony Redmond, 54 years old and a DOT
22 supervisor for 22 years and known by all as a master
23 outdoors man, were assigned to check a drain clogged with
24 debris on the side of Highway 421 that had been causing a
25 washout.

1 This section of Highway 421 is a straight line for
2 about as far as one can see with no visual obstructions.
3 These three men parked their South Carolina Department of
4 Transportation pick-up truck completely off the side of the
5 road and activated the flashing roof lights, similar to
6 those seen on an emergency vehicle. They walked back to
7 the clogged drain and removed several limbs from it.
8 Mr. Lowe was in the rear, wearing a fluorescent DOT safety
9 vest, followed by Mr. Clark in the middle, with Mr. Redmond
10 in front, also wearing a fluorescent safety vest.

11 At 8:32 a.m., a gold 2004, uninsured Pontiac Grand
12 prix, weighing 3500 pounds and traveling 59 miles an hour
13 in a 45 mile-an-hour zone, heading north on Highway 421,
14 left the roadway and struck Mr. Lowe in the right arm and
15 hand. This vehicle then hit Mr. Clark, propelling his body
16 some 20 feet down into a steep ravine on the right side of
17 Highway 421. Lastly the vehicle struck with a --
18 Mr. Redmond, hurling his body in excess of 40 feet into the
19 bed of the DOT pick-up truck, where his body then collided
20 with a commercial air compressor located in the bed of the
21 truck.

22 The speeding vehicle then quickly veered back onto
23 Highway 421 without striking the rear of the parked DOT
24 pick up. Mr. Lowe will later report that he never saw
25 brake lights on the Pontiac and that it was easily 6 feet

1 off the side of the road when he and his co-workers were
2 hit. Numerous pieces of debris, to include a gold
3 passenger side mirror, were left at the scene. The vehicle
4 fled.

5 Mr. Lowe immediately radioed for help. Aiken
6 County EMS was dispatched at 8:37 a.m. and arrived on scene
7 at 8:46 a.m. where Mr. Clark and Mr. Redmond were both
8 pronounced dead. A witness, Mr. Terry Wright drove by the
9 collision scene and notified the highway patrol that he had
10 just observed a brown or tan Pontiac with heavy damage to
11 the right side and broken windshield pull into a nearby
12 trailer park at Bright Star Lane, less than two tenths of a
13 mile from the incident location.

14 The highway patrol and the sheriff's office found a
15 vehicle matching the description at 142 Bright Star Lane.
16 A blanket had been placed over the front of the Grand prix
17 in an effort to conceal the damage to it. Investigators
18 made inquiry of neighbors at the trailer park as to who
19 lived there at that address and were given the names of
20 Lonnie Miller and a Zakela Harris. The car was registered
21 to her.

22 Both Miller and Harris have Augusta addresses and
23 with the exception of this address, Miller's footprint is
24 largely in Georgia. The only contact that we could find
25 with law enforcement for him in South Carolina was that the

1 highway patrol had issued him tickets for not wearing
2 seatbelts in this very vehicle back in 2016.

3 Search warrants were obtained for the residence and
4 the vehicle. Aiken County Sheriff's Office SWAT team
5 ultimately made entry into the residence, finding no one
6 inside. A search of the vehicle revealed a receipt from
7 the North Augusta Burger King from 8:16 a.m. that morning.
8 The highway patrol went to that location on Martintown
9 Road, that's approximately 3 miles away from the incident
10 location; interviewed the employee who took Miller's order,
11 as she had served him about 15 times in the past. She
12 specifically remembered the gold Pontiac and that the
13 driver's side window was inoperable and that Miller would
14 have to open the door to pay for his food. That morning he
15 paid cash, using exact change.

16 Mr. Miller's whereabouts were unknown to law
17 enforcement for the next several hours. He turned himself
18 in at approximately 4:30 p.m. on March the 13th, some 8
19 hours after the incident and well beyond the protocols for
20 any sort of DUI investigation.

21 While en route to the Aiken County Sheriff's Office
22 -- from the Aiken County Sheriff's Office to the Aiken
23 County Detention Center, he told First Sergeant LaChance
24 that he, quote, Must have blanked out or perhaps had sleep
25 apnea, end quote. He was charged that day with two counts

1 of leaving the scene of an accident with death and one
2 count of leaving the scene of an accident with bodily
3 injury.

4 The bodies of Mr. Clark and Mr. Redmond were
5 autopsied at Newberry Pathology on March the 14th, the
6 following morning. Mr. Clark died from a basilar skull
7 fracture within minutes of being struck by the defendant.
8 Mr. Redmond died immediately upon impact from a basilar
9 skull fracture with a torn brain stem. The pathologist
10 also noted that all of his ribs were fractured, along with
11 a fractured sternum, humerus, tibia, and fibula, a broken
12 left ankle, as well as a lacerated heart, right lung, and
13 liver. The only drugs in Mr. Clark's and Mr. Redmond's
14 system was a little bit of caffeine, presumably from their
15 morning coffee.

16 The South Carolina Highway Patrol Multidisciplinary
17 Accident Investigation Team, also known as the MAIT team
18 processed the scene and the vehicle. The damage to the
19 right front-end was significant. The windshield shattered
20 and there was biological material all over the vehicle.
21 DNA swabs were taken and they took dozens of pictures and
22 measurements and even created an animation.

23 The vehicle was inspected and found to be in
24 working order. No mechanical issues with the braking,
25 steering, or anything like that. The electronic data

1 recorder -- and, Your Honor, these modern vehicles have
2 kind of a black box similar to an airplane, was downloaded,
3 revealing a speed of 59.8 miles per hour one second before
4 impact, with zero percent braking. The download also noted
5 that Mr. Miller was not wearing a seatbelt.

6 Upon completion of the MAIT report which took
7 several weeks and as a result of the speed, 20 miles over
8 the posted speed limit of 40 miles an hour, Miller was
9 served with two additional warrants for reckless vehicular
10 homicide on June the 26th of 2017.

11 Your Honor, we have his driving history, which I
12 think is relevant in a case like this as to sentencing, as
13 well as his criminal history. I've -- all of his driving
14 record and criminal record are out of the State of Georgia.
15 Some of the highlights of his driving record --

16 THE COURT: No, sir, you got his whole driving
17 record?

18 MR. THURMOND: Yes, sir.

19 THE COURT: Let me have it, please. Not in my
20 hand, do it on the record.

21 MR. THURMOND: Yes, sir, I'll include everything.

22 2004, fleeing from police, hit and run, reckless
23 driving, failure to maintain lane, violation of a limited
24 permit. 2005 --

25 THE COURT: Hold on a second. Fleeing, hit and

1 run, what else?

2 MR. THURMOND: Reckless driving, failure to
3 maintain lane and violation of a limited permit; 2005,
4 driving while license revoked for serious violations under
5 the age of 21; and a second count for that in 2005; and
6 fleeing from police again in 2005; 2006, speeding in a
7 construction zone with workers present; 2006, running a red
8 light, driving without a license, no insurance; 2007 --

9 THE COURT: One second, please. Go back to '06.
10 Speeding in a construction zone?

11 MR. THURMOND: With workers present is what the
12 Georgia ticket says. And a separate incident in 2006,
13 running a red light, driving without a license, no
14 insurance; 2007, fleeing from police, violation of an
15 instructional permit. And since you wanted all of them,
16 I'll give you all of them.

17 2009, illegal --

18 THE COURT: Hold on a second. 2007, fleeing again
19 from --

20 MR. THURMOND: Yes, sir.

21 THE COURT: -- police.

22 MR. THURMOND: And violation of instructional per
23 mit; 2009, illegal window tint; 2009 driving with a
24 shattered windshield; 2011, running a stop sign, driving
25 without a license; 2011 loud music; 2012, driving without a

1 license, no brake lights; 2012, driving with an expired
2 tag, failure to maintain lane; 2013, improper passing
3 resulting in an accident; 2014 passing in a no-passing
4 lane.

5 THE COURT: Hold on a second. '13, improper
6 passing with accident.

7 MR. THURMOND: Yes, sir. 2014, passing a in no
8 passing lane; 2015, driving with a broken headlight; 2016
9 driving without headlights.

10 Your Honor, he has convictions out of the State of
11 Georgia. 2004, possession of marijuana; a second
12 conviction in 2004, possession of marijuana.

13 THE COURT: 2002 or 2004?

14 MR. THURMOND: Yes, sir.

15 THE COURT: Two marijuana possessions in 2004?

16 MR. THURMOND: Yes, sir. 2011 distribution of
17 marijuana and use of a commercial facility in commission of
18 a felony; 2012, possession of marijuana; 2014, obtaining
19 controlled substance by fraud times two. Your Honor, the
20 allegations in that case were that he was using fictitious
21 doctor's prescriptions to obtain the controlled substance,
22 Xanax, received a sentence of probation for 6 years back in
23 2014. He's --

24 THE COURT: So in 2014, he got a
25 6-year-probationary sentence?

1 MR. THURMOND: Yes, sir.

2 THE COURT: So he was on probation for possession
3 of a controlled substance at the time of the wreck?

4 MR. THURMOND: I believe so, Your Honor.

5 THE COURT: All right. 6 and 14 is 20.

6 MR. THURMOND: Yes, sir.

7 THE COURT: So I would assume he was.

8 MR. THURMOND: Yes, sir.

9 Your Honor, just briefly in closing, the weather
10 was clear, the road was straight, the defendant was
11 speeding 20 miles over the speed limit in a mechanically
12 sound vehicle. He left the roadway by at least 6 feet. He
13 hit three people, culling two. Two of those individuals
14 were wearing reflective safety vests in proximity to a DOT
15 vehicle with flashing lights. He made a conscious decision
16 after striking each one not to stop, to not know or care
17 about the condition of another human being. He made a
18 decision to not even hit the brakes, to flee the scene, to
19 conceal the damaged vehicle with a blanket, and to further
20 flee.

21 His post-arrest statements of blanking out and
22 sleep apnea are inconsistent with paying for breakfast with
23 exact change some 20 minutes beforehand. And blanking out
24 and sleep apnea are inconsistent with the reflexes needed
25 to swerve back onto the road before striking the rear of

1 the DOT truck. And then waiting 8 hours to turn himself
2 in, he denied the State the ability to determine if he had
3 been under the influence of drugs or alcohol. And, Your
4 Honor, that is certainly a reasonable and logical concern
5 of someone with five prior drug offenses and currently on
6 probation for using fake prescriptions to acquire Xanax.

7 So, judge, in closing --

8 THE COURT: Well, in closing, you didn't mention
9 his driving record. His driving record is horrendous.

10 MR. THURMOND: Yes, sir. We've been through that
11 extensively. But this is the most aggravated and senseless
12 hit and run case, certainly in my tenure of the last 9
13 years plus, and perhaps in the history of the circuit.
14 These were completely innocent victims who were doing
15 nothing at all wrong and we would ask the Court to impose a
16 very substantial sentence. We have considerable victim
17 impact; and at the appropriate time, we have
18 representatives both from the Clark family and the Redmond
19 family, the Department of Transportation who would like to
20 address you.

21 THE COURT: Any medical records to verify he has
22 sleep apnea?

23 MR. THURMOND: Not that we've been provided.

24 THE COURT: The blanket was found over the front of
25 the car when the police got to the residence. How long was

1 -- do you know when it was found -- the wreck was about
2 8:30 --

3 MR. THURMOND: Yes, sir, the highway patrol gets
4 tremendous credit for moving this as quickly along as they
5 did. Within a couple of hours they were at the Burger King
6 just before eleven o'clock that morning, two-and-a-half
7 hours after this event, interviewing the employee who
8 served Mr. Miller that morning, so they moved with
9 lightening speed.

10 THE COURT: Other than the damage to the front of
11 the vehicle, what else was hidden by the blanket?
12 Anything?

13 MR. THURMOND: No, sir, the blanket attempted to
14 cover the front of the vehicle and the windshield which had
15 a significant impact to it. There was glass from the
16 windshield inside of the vehicle.

17 THE COURT: All right. Going through the
18 photographs, the first one I see, and this obviously is the
19 scene of the -- once the law enforcement had responded,
20 first responders, et cetera, et cetera.

21 MR. THURMOND: Yes, sir, the vehicle on the right
22 side of the road, the first vehicle on the right is the DOT
23 pick-up truck.

24 THE COURT: That's that truck right at the
25 intersection?

1 MR. THURMOND: Yes, sir, and I believe in that
2 picture you can see that the lights on top are actually
3 illuminated in this picture.

4 THE COURT: So they -- the two victims and the
5 other person that was hurt were standing behind the
6 vehicle, obviously.

7 MR. THURMOND: Yes, sir. The --

8 THE COURT: And he ran off the road going up -- up
9 this photograph, ran off and did not hit the truck.

10 MR. THURMOND: No, sir, swerved back on the road,
11 avoiding the truck.

12 THE COURT: How far behind me, on this picture this
13 way, is it clear -- you said a clear view for how long?

14 MR. THURMOND: Your Honor, from where the picture
15 is taken, it comes on back up a hill where one would exit
16 off of Atomic Road, which is Highway 125.

17 THE COURT: So on the truck, you could view for --

18 MR. THURMOND: A good ways.

19 THE COURT: The second picture I have is a -- looks
20 like a ladder. What is --

21 MR. THURMOND: Yes, sir, that was a ladder that
22 first responders used to access that ravine to recover the
23 body of Mr. Clark.

24 THE COURT: The third picture speaks for itself.

25 MR. THURMOND: Yes, sir.

1 THE COURT: Fourth picture just looks like the
2 rearview mirror.

3 MR. THURMOND: Yes, sir, that's the passenger-side
4 rearview mirror of the vehicle that was driven by
5 Mr. Miller. And the next picture shows that it's,
6 obviously, a perfect match to the vehicle that was
7 recovered two-tenths of the mile from the incident
8 location.

9 THE COURT: Ms. Floyd?

10 MS. FLOYD: Thank you, Your Honor. Your Honor, my
11 client --

12 THE COURT: Whatever suits you about sitting or
13 standing.

14 MS. FLOYD: Thank you, Judge.

15 First of all --

16 THE COURT: Bob, how about put that mic down there.

17 MS. FLOYD: Thank you, Judge.

18 THE COURT: We have a lot of people in the
19 courtroom. I'm sure they would like to hear.

20 MS. FLOYD: This is an absolute tragedy. My client
21 has a expressed tremendous remorse for what happened. He
22 accepted responsibility when he came to my office. After
23 this happened he went to his mother's house, his mother
24 brought him to my office. It was probably one of the most
25 emotional scenes I've ever experienced in 33 years of

1 practicing law.

2 I contacted Mr. Thurmond and told him that he was
3 in my office, and then I drove him over to the sheriff's
4 department where he turned himself in.

5 What happened that morning is my client took his
6 children to school over in Augusta and had gone through the
7 Burger King and gotten breakfast. When he came back to go
8 to his girlfriend's house, he was about three blocks from
9 where this happened. When he was traveling down the road,
10 if you are coming down that road, there's no way you could
11 miss the department of transportation workers if you were
12 looking down that road. It's a clear shot. And what
13 happened is he fell asleep. And when he did that, he --

14 THE COURT: Why did he fall asleep? It was eight
15 o'clock in the morning.

16 MS. FLOYD: He suffers from sleep apnea and also --

17 THE COURT: Have you got medical records to verify
18 that?

19 MS. FLOYD: No, Your Honor. He had applied for
20 social security and did not have medical insurance, but he
21 has been advised that the symptoms that he had was sleep
22 apnea and he advised that to the officer because when they
23 were transporting him from the sheriff's department to the
24 jail, he was trying to figure out what happened because he
25 remembers driving down the road. He remembers hitting

1 something, but until he got to his house, which is right
2 around the corner, is when he heard ambulances coming. He
3 was not aware that he had run into people. And when he
4 hit --

5 THE COURT: Ms. Floyd, I find that almost
6 impossible to believe. I mean...

7 You strike three people and snatched out your
8 windshield and damaged the car.

9 MS. FLOYD: No, no, he understood he was in an
10 accident. And he understood that there was damage to his
11 car and he hid that damage. He absolutely panicked.

12 THE COURT: Well, if he was so drowsy that he fell
13 asleep and had sleep apnea, how can we be so alert when he
14 pulls into the driveway to consciously take a blanket and
15 cover the car up to hide from the police what has happened?

16 MS. FLOYD: Right. The problem with his behavior
17 legally is that at the point that he left the scene of the
18 accident, when he realize there was an accident, whether he
19 had realized he had hit people or not, he had an obligation
20 to come back to the accident and remain there and that's
21 why he's entering these pleas. There's no doubt --

22 THE COURT: I understand that and that is not
23 responsive to my concern about he's so drowsy that he ran
24 off the side of the road, how can he be so conscious just
25 minutes later to try to conceal the damage and, I assume,

1 leave the house there because he wasn't there when they got
2 there, or the trailer.

3 MS. FLOYD: He knew when he left the accident that
4 he had hit something. He did not understand that he had
5 hit people. And it was when he got to the house and he
6 heard the ambulance coming that he realized that someone
7 was injured. At that point he covered up the car.

8 He should not have done that because he was not
9 going back to the scene of the accident, which he should
10 have stayed there when he realized he was in an accident.
11 So he did not realize that people had been hit until he
12 heard the ambulance and then he realized, I must have hit
13 someone or injured someone in some way because there's an
14 ambulance coming.

15 As you can tell from what Mr. Thurmond has said,
16 there was no intent for him to hit the brakes, there was no
17 -- he just continued to speed up as he came down that hill
18 and he ran into these department of transportation workers.
19 There was no --

20 THE COURT: Well, Ms. Floyd, I can't -- Ms. Floyd,
21 it's in comprehensive to me, I don't care how sleepy you
22 are or how drowsy you are, when you hit something that
23 hard, enough to do the damage he's done, whether he knew if
24 he hit a human being or a dog or a sign, why speed up and
25 keep on going? He had to have knew he hit something.

1 MS. FLOYD: No, he did -- he did understand that he
2 hit -- that's what I'm telling you, Judge. When he hit
3 something, he understood he hit something when he woke up.
4 But he didn't realize it was people until he heard the
5 ambulances coming. They drove right by his house.

6 THE COURT: Well, how long was he asleep?

7 MS. FLOYD: I figure it's from about halfway down
8 the hill to when he struck the vehicles. Because he
9 doesn't --

10 THE COURT: Well, I -- did you -- when -- when did
11 he turn himself into you?

12 MS. FLOYD: He came over -- I can't remember what
13 time I called Mr. Thurmond. He may remember.

14 THE COURT: Well it was several hour several hours,
15 several hours later.

16 MS. FLOYD: Yes, Your Honor. He came to my office.

17 THE COURT: Did you do a -- did you suggest any
18 kind of blood or alcohol test?

19 MS. FLOYD: The first thing I did was call Mr.
20 Thurmond and tell him that he was in my office and we drove
21 from my office over to the sheriff's department.

22 THE COURT: Well, that's commendable that he turned
23 himself in and the problem is, and the purpose of this
24 statute is, and I've just had one less than 6 months ago,
25 one person was killed, but the main reason they don't turn

1 themselves in is so they don't have to take a blood test or
2 a breathalyzer or a toxicology test.

3 MS. FLOYD: When Mr. --

4 THE COURT: Because of the consequences of hitting
5 someone under the influence is, as you know and I know
6 substantially greater than just a reckless homicide case.
7 And to me, that's the only reason, not the only reason, but
8 the most logical reason that you would flee, was to avoid
9 having to be tested.

10 MS. FLOYD: Well, when he appeared --

11 THE COURT: That's why the statute is as it is.

12 MS. FLOYD: Right, right. And when he appeared at
13 our office, he was so emotionally overwrought. His family
14 was there. He was crying, he was almost hysterical. Just
15 overwhelmingly -- when he found out that people had been
16 killed --

17 THE COURT: How did he find out people had been
18 killed?

19 MS. FLOYD: It was all over the radio. It was all
20 over the media. And that's when I called Senator, I mean
21 Solicitor Thurmond and told him that he was in my office
22 and that we would be bringing him over. And we took him
23 directly to the sheriff and turned him in.

24 But he was so upset and just inconsolable. I can't
25 -- I can't give you any other explanation. I think that he

1 panicked, his whole family was here, is here, they can tell
2 you what happened. And he turned himself in due to the
3 fact that he knew he had killed people and he had the
4 support of his family in doing that. I didn't see anything
5 on his part to hide any drug use or alcohol use.

6 THE COURT: Well, I'm not insinuating that you have
7 hidden anything.

8 MS. FLOYD: Uh-huh.

9 THE COURT: But I am -- the only inference that can
10 be made or the most obvious inference can be made from
11 concealing or not staying there is because you're trying to
12 conceal what results of a drug or alcohol test was going to
13 show.

14 MS. FLOYD: I don't believe that is what -- what
15 happened in this case. I don't believe the Burger King
16 employee noticed anything out of the usual; and the family
17 is here and they can testify what he was doing that morning
18 and when he dropped the kids off and they went to school.
19 He basically panicked and his mother, his mother -- he went
20 to see his mother, his mother brought him to my office. I
21 took him from my office to the sheriff's department. He
22 was just absolutely overrun with emotion and overwrought
23 with emotion and sorrow for what had happened and --

24 THE COURT: Well, how do we reconcile that panic
25 mode when you go back all the way to 2004 where he's

1 involved in fleeing the scene for one, two, three -- I can
2 hardly read my writing -- it looks like three times, at
3 least three times -- was it more in the past?

4 MR. THURMOND: Three separate occasions of fleeing.
5 They call it willful obstruction of law enforcement
6 officers, which is Georgia's version of failure to stop for
7 a blue light. But he has a prior hit and run in 2004. So
8 the prior hit and run plus the three offenses of fleeing.

9 THE COURT: Plus being on probation.

10 MR. THURMOND: Yes, sir.

11 THE COURT: Ms. Floyd, this is a horrible,
12 horrible, horrible situation.

13 MS. FLOYD: Yes, Your Honor, and in my year of
14 representing him and working with him and with his family,
15 you know, he would like to apologize to the family for what
16 happened and for what -- he's written out a statement he
17 would like to read to them -- for what he did and the loss
18 that he's caused. But there is no indication from anyone
19 in the family, from the Burger King person or from -- and
20 you and I both know that even after -- if it had been eight
21 hours since he turned himself in, there still would have
22 been cocaine or any other -- marijuana or any other drug.
23 It may not have indicated whether or not there -- there may
24 still be metabolites of alcohol, but that was not tested.
25 They're was no appearance of any type of altered state of

1 my client or -- when I saw him within hours of this.

2 There was just this sorrow and sadness and remorse.
3 He does suffer from anxiety. He was in the process -- he
4 had a prescription for anxiety medication.

5 THE COURT: What was he prescribed?

6 MS. FLOYD: He was prescribed Buspar.

7 THE COURT: Had he taken that that morning?

8 MS. FLOYD: Yes, Your Honor.

9 THE COURT: How much?

10 MS. FLOYD: He takes a half a pill. And he also
11 has a back injury. He was trying to get social security.
12 He was unemployed at the time. His job was to take the
13 three children to school. His fiance was working and he
14 regularly goes through that Burger King and gets breakfast
15 for the kids or for himself. And when you take a look at
16 where this accident happened, there's no way in the world
17 he could have missed those flashing lights in that road,
18 except for the fact that he had fallen asleep while
19 driving, which he did not --

20 THE COURT: Well, what made him fall asleep?

21 MS. FLOYD: He thinks -- what he believes is he had
22 had sleep apnea and it had kept him from getting a good
23 night sleep the night before and as a result of that he
24 just fell asleep while he was driving, which has happened
25 to people who don't have that. There's no indication that

1 he tried to brake or that he did any move other than the
2 accident itself to caused the car to move so that he didn't
3 just continue to plow in that direction. But without his
4 seatbelt on, he fell forward. He believes that he hit his
5 head. He fell forward. He believes he hit the gas and
6 that's why he ran into these people.

7 You know, I have no doubt that he panicked. I have
8 no idea, you know, why he didn't come back other than that
9 because he expressed immediate remorse at my office. He
10 did everything he could to get his mother to get in to get
11 to see me so he could turn himself in because it was a
12 very, very charged atmosphere, looking for Mr. Miller and
13 that's why I drove him to the sheriff's department.

14 The insanity of this entire case is with the record
15 that Mr. Thurmond has given you, my client had a valid
16 driver's license. The day of the wreck he had a valid
17 driver's license.

18 THE COURT: Well, he should have been under the
19 habitual offenders. I assume --

20 MR. THURMOND: Yes, sir.

21 THE COURT: -- that would apply. I don't know why
22 -- but having a driving without a license -- he'd been
23 driving without a driver's license for a long time. I
24 don't know how he got one this time.

25 Ms. Floyd, you and I have known each other a long

1 time. You're an excellent, wonderful lawyer and person and
2 this is just a horrible, horrible case. And this -- these
3 are the times that this job is just absolutely all the
4 weight of the world on the judge trying to do what is
5 appropriate and what the law dictates. And --

6 MS. FLOYD: And, Your Honor --

7 THE COURT: I doubt anybody's going to like what I
8 do.

9 MS. FLOYD: I understand it and Mr. Miller
10 understands it. And his thought process is this, I did
11 these things wrong. I'm accepting responsibility.

12 THE COURT: He has.

13 MS. FLOYD: I am not putting these family through a
14 trial. I am not going to prolong this. You know, I feel
15 that in this case, you know, there was no DUI test, I
16 understand that. I didn't realize that. I thought they
17 would have done that when we turned him in. He is
18 accepting responsibility. And I think that he is allowed
19 to be believed that he fell asleep because the evidence
20 indicates that he made no diversion air movement. If he
21 made no diversionary movement, then this would have been
22 murder. He would have intentionally run these people over.

23 But I think that logically, the fact that his car
24 -- his car was turned as a result of hitting those people,
25 he went about two-tenths of a mile and called his family

1 and turned himself in and has accepted responsibility.

2 He would like to address the Court. Could he do
3 that?

4 THE COURT: Sure.

5 MS. FLOYD: And to the victims in this case.

6 THE COURT: But, before he does, you understand if
7 by accepting responsibility, he's still, because of his
8 reckless driving, caused the horrible death of those two
9 men and injuries to a third person; the families have
10 suffered and he didn't stay at the scene. He consciously
11 covered the car up, consciously left the scene, consciously
12 left the car where it was.

13 So I've got to put all that on the scales when I
14 weigh out what is an appropriate sentence; obviously
15 tempered by some mercy because he accepted responsibility,
16 but that's why we have laws that govern the operation of
17 vehicles on the highway.

18 MS. FLOYD: Yes, Your Honor.

19 THE COURT: And gracious me, he has just snubbed
20 his nose to our laws since -- for 14 years.

21 How old are you, sir?

22 THE DEFENDANT: 30.

23 THE COURT: I'll be glad to hear from you.

24 THE DEFENDANT: Your Honor -- Your Honor, I come to
25 you today begging for mercy of the Court. I fully

1 understand that what I'm in front of you for today, I am
2 truly sympathetic and sorry for the losses, the grief, the
3 anger, and the pain that I have caused by my actions and
4 mistakes. Everyone should, and if not, know that this was
5 accidental. I had no intention to make what come about of
6 this situation to happen, for the fact that it could have
7 been one of my own loved ones, friends, or close
8 acquaintance. And for my actions of me panicking and
9 leaving the scene, you know, instead of me staying and
10 seeking help, I ask for mercy.

11 There has not been a day that goes by since March
12 13th, 2017 that I don't feel remorse for what my actions
13 have caused. Not only me, but the lives that were lost,
14 the families that have broken apart on my side, and the
15 victims of this case. I beg everyone for their forgiveness
16 for the sake of my three children, my wife, my mother, my
17 father, and my entire family.

18 No words can bring the lives back that was lost, so
19 all I can do is ask for forgiveness of the Court and
20 forgiveness of the victim's families, and friends and
21 co-workers to forgive me for all the pain that I caused
22 them. I sincerely apologize and pray and hope for
23 forgiveness.

24 I am so, so, so, sorry about what happened in this
25 accident that took the lives of Mr. Anthony Redmond and

1 Mr. Robert Clark. I wish I could go back and things, I
2 would have stayed and helped them by calling the cops and
3 the ambulance and stayed there until help arrived. Because
4 of this, I still have nightmares to this day. Some nights
5 I just lay in bed and cry my heart out to God. When I run
6 out of tears, I begin to pray asking God for forgiveness,
7 for repension for my transgression and asking God to give
8 the victim's family a forgiving heart to be willing to
9 forgive me for my sin.

10 I just hope you find it in your heart to do so. I
11 also pray that God help you move on and heal your heart
12 from this pain and suffering. Once again, I want to say
13 I'm truly sorry to the victim's family for this accident
14 that I caused.

15 MS. FLOYD: Could you hear from his family, Your
16 Honor?

17 THE COURT: Ma'am?

18 MS. FLOYD: Could you hear from his family?

19 THE COURT: Sure.

20 Right over here, ma'am. Yes, ma'am, if you'll give
21 me your full name.

22 MS. MILLER: Emily Miller.

23 THE COURT: And you are related how to Mr. Miller.

24 MS. MILLER: Sister of Mr. Miller.

25 THE COURT: You're his sister?

1 MS. MILLER: Uh-huh.

2 THE COURT: I'll be glad to hear from you, ma'am.

3 MS. MILLER: Well, to the family, I would like to
4 say I'm sorry and if y'all could just please find it in
5 your heart to forgive him, at least forgive him. I mean, I
6 know nothing he could say or do or whatever; I know it
7 won't bring your family -- y'all lost ones back, but if
8 y'all would please just at least forgive my brother for
9 what he have done. He is truly sorry. I know y'all
10 probably look at him as a monster or look at him because of
11 his past, which I think don't have nothing to do with this,
12 that was years ago. He's a totally different person with a
13 family and kids that also love him.

14 So he would be leaving his kids as well. They look
15 up to him. And he truly love his kids and he has family.
16 He became a different person, so if y'all would just not
17 judge him of his past. He has not proved who these papers
18 claim that he is.

19 MS. FLOYD: Were you with him the day of the
20 accident?

21 MS. MILLER: Yes, ma'am, and he's sorry. He
22 repeatedly said if it was him, he just, Lord, take him.
23 That's what he was staying. He was saying take him.

24 MS. FLOYD: Did you see any signs of drug or
25 alcohol use on that day from him?

1 MS. MILLER: No, ma'am, none at all.

2 MS. FLOYD: And did he come to my office --

3 THE COURT: Ma'am, ma'am, that's not -- she can't
4 give an opinion about intoxication. You know that.

5 MS. FLOYD: Did he come to my office?

6 MS. MILLER: Yeah, he came to your office. I mean
7 it take -- that take hard to do that as well, no matter how
8 long it take, I understand he didn't turn himself in right
9 away, but, you know, he had time to think and, you know,
10 come together with his family and spend his last time with
11 his family, not knowing when the last time he might see
12 them. So...

13 THE COURT: Thank you for coming.

14 MS. MILLER: He is fully remorseful for that.

15 THE COURT: There's no doubt in my mind that he's
16 remorseful and truly sorry.

17 MS. MILLER: I know no matter what we say it is
18 what it is, but --

19 THE COURT: No, ma'am --

20 MS. MILLER: He's sorry for that. So don't look at
21 him or judge him for anything that he did. That was just a
22 mistake. One simple mistake is putting my brother away for
23 ain't no telling how long.

24 THE COURT: Well, it's not a simple mistake, ma'am,
25 it's a huge, huge --

1 MS. MILLER: It's a huge mistake, but it wasn't
2 intention, sir. It wasn't nothing that he just thought
3 that he was going to do and just say I'm going to hurt
4 somebody.

5 THE COURT: I don't think it was purposely. I have
6 not indicated that at all.

7 MS. MILLER: I still look at my brother as a hero
8 and I'm still going to look up to him because he is a good
9 person. No matter what the past was, he is a good person.
10 I'm going to stand up for that.

11 THE COURT: I understand that, thank you.

12 MS. FLOYD: Mrs. Miller?

13 THE COURT: Yes, ma'am, you're his mom?

14 MRS. MILLER: Yes, sir.

15 THE COURT: Your full name, please?

16 MRS. MILLER: Excuse me?

17 THE COURT: Your name, please?

18 MRS. MILLER: Shelby.

19 THE COURT: Thank you, Mrs. Miller, you can put
20 your hand down. I'll be glad to hear anything you want to
21 tell me.

22 MRS. MILLER: Yes, sir. First of all, I want to
23 tell the family that I'm so sorry and we couldn't imagine
24 how y'all felt at the time, you know. We are very sorry.
25 When my son first called me, he was like, I'm sorry y'all.

1 I'm sorry, y'all. This is what he was saying, you know,
2 after he finally said I'm sorry, y'all, I am so sorry. You
3 know, he was saying that to his mind, you know. He was
4 hurt, you know. And we are very sorry. Please accept our
5 condolences. He's a good person, he's a good man. He's a
6 good father, good friend, a son. He's really -- he's --
7 I'm so sorry. He is so sorry.

8 He done cried so many times. He can't sleep. He
9 is totally a different person. He is just suffering, you
10 know, and we talk to God. We know God. I raised him to
11 know God. So like I said, I know God forgive us. We know
12 because what happened to one of my family that gets all of
13 us. You understand. This is the honest to God truth. We
14 are a family at heart.

15 We are so sorry and he is so sorry. I have to go
16 through this with him crying every day almost. He's a
17 totally different person. He as well have to deal with
18 this. Oh, my God. I understand how y'all fill. I promise
19 we are so sorry. And I -- he is very, very, sorry.
20 Please, please have mercy on us and forgiveness,
21 forgiveness. Very sorry.

22 THE COURT: Thank you.

23 MS. FLOYD: That's it.

24 Do you want to say anything else to the Court,
25 Lonnie? Or to the families?

1 THE DEFENDANT: I just want to say I'm sorry to
2 everyone, to the families. And I hope that you'll forgive
3 me for what I've done and to ask that everyone have mercy
4 on me.

5 MR. THURMOND: Thank you, Your Honor.

6 We have a copy of a spreadsheet. We have a number
7 of people here today this will give you some help with
8 who's who.

9 Ladies and gentlemen, if I could briefly ask the
10 friends and families of Tony Redmond to stand.

11 Thank you y'all, you may be seated.

12 And the friends and family of Robert Clark, if you
13 would please stand.

14 Be seated.

15 If the employees of the Department of
16 Transportation would please stand.

17 Your Honor, I want to point out to you that
18 Ms. Christie Hall is present in the courtroom. She's the
19 Secretary of Transportation and it speaks volumes of that
20 agency's interest in this case and the concern that they
21 have for their employees for her to be here today.

22 We also have several representatives of the South
23 Carolina Highway Patrol who worked very diligently on this
24 case and you can recognize them in the courtroom.

25 But at this time, I would like to call Leland

1 Coleman to come stand by me, please. He is the Deputy
2 Secretary for Engineering at the Department of
3 Transportation and he has a statement that he would like to
4 read on behalf of that agency.

5 MR. COLEMAN: Your Honor, thank you for the
6 opportunity to speak today on behalf of the loyal men and
7 women of the South Carolina Department of Transportation.
8 I'm the Deputy Secretary for Engineering.

9 And first, I would like to thank the Aiken County
10 Sheriff's Department as well as the South Carolina Highway
11 Patrol for their swift action and investigation of this
12 unfortunate matter.

13 Second, I would like to thank the Aiken County
14 Solicitor and his office for bringing this criminal portion
15 to a closure in such a swift fashion.

16 Your Honor, on the morning of March 13th of last
17 year, three valued men of our Aiken County Maintenance
18 Office, Robert Clark, Tony Redmond, and Mike Lowe were
19 performing a site inspection along the shoulder of Augusta
20 Road when, for whatever reason, Lonnie Miller veered off
21 the roadway and struck all three members of our team. Very
22 unfortunately, Mr. Clark and Mr. Redmond were fatally
23 injured and did not make it home to their families that
24 dreadful Monday afternoon.

25 Of course, the Clark and Redmond families still

1 hurt and continue to hurt with this great loss and will
2 continue to do so well after today. In addition their work
3 family and the entire Aiken County Maintenance Office
4 continue to miss Mr. Clark and Mr. Redmond, especially Mike
5 Lowe, who was injured and witnessed the entire event.

6 Your Honor, these great public servants were lost
7 and only doing their jobs and doing it in a safe manner.
8 One of the things that upsets me the most other than the
9 deaths of Mr. Robert Clark and Mr. Tony Redmond is a
10 complete lack of respect for human life and just downright
11 decency for our fellow human beings displayed by Lonnie
12 Miller. Did Lonnie Miller stop and render aid to
13 Mr. Clark? Mr. Redmond? or Mr. Lowe? The answer to that
14 question is an emphatic no.

15 Did Lonnie Miller call 9-1-1 or in any way show any
16 concern or any compassion for the men that he plowed into
17 that Monday morning. The answer to that question is an
18 emphatic no.

19 Your Honor, I hope that the Court considers Lonnie
20 Miller's actions or more accurately inactions shown on that
21 dreadful Monday morning as the Court contemplates the
22 appropriate sentencing. As from my viewpoint, he displayed
23 a complete disregard for human life.

24 Finally, I appreciate the opportunity this morning
25 to speak on behalf of the dedicated men and women of the

1 South Carolina Department of Transportation. Thank you,
2 Your Honor.

3 THE COURT: Thank you.

4 MR. THURMOND: Thank you.

5 Your Honor, at this time, I would like to call
6 Ms. Christina Toler, she's the victim advocate for the
7 Highway Patrol and she is here to read a letter on behalf
8 of Mr. Michael Lowe and his wife. If y'all could please
9 just briefly stand.

10 Mr. Lowe is the surviving victim from this event.

11 MS. TOLER: Good morning, Your Honor.

12 THE COURT: Good morning, ma'am.

13 MS. TOLER: On the morning of Monday, March 13th,
14 2017, Tony Redmond, Robert Clark, and I went to look at a
15 job that needed to be done near Storm Branch Road on
16 Augusta Road. What happened shortly after we arrived was a
17 site that I will never forget. I witnessed two of my
18 friends, not just co-workers, suffer a violent death that
19 we never saw coming; and something I will see for the rest
20 of my life.

21 That morning seemed like any other Monday morning,
22 Tony, Robert, and I had a job that needed to be looked at
23 to see what we needed to get things done. We parked our
24 work truck on the Eastbound shoulder of Augusta Road just
25 before the intersection of Storm Branch Road. We walked

1 West on the road shoulder, looking and deciding what needed
2 to be done. When we turned around we were making our way
3 back to the work truck, I saw a limb that had fallen off of
4 a tree. When I went to pick up the limb and throw it
5 further down the shoulder. As I was turning back, I felt
6 something hit me in the left arm and it threw me to the
7 ground. When I looked up and realized what was happening,
8 I tried to yell to Robert and Tony to warn them of a car
9 barreling towards them. I yelled and watched in horror as
10 I saw this car plow right through them as if there was
11 nothing in the way.

12 Robert was the first to get hit. He was thrown
13 down the shoulder in the brush. Then Tony was hit second.
14 He was thrown in the air like a rag doll and landed in the
15 back of the work truck that was still a good distance away.
16 The car just left, not slowing down, not stopping. I got
17 to them as fast as I could, but I knew it was too late. I
18 could not imagine anyone surviving something like that.

19 These words paint a picture of something out of a
20 movie or a TV show. Those are the last moments of the
21 lives of two great men that I respected and cherished as
22 friends. We were not just co-workers, we were friends. We
23 watched each other's backs. We helped each other. We went
24 on fishing trips together. We hung out and told old
25 stories and our families know each other. We were family.

1 It all happened in just a few seconds, but I
2 continue to see this play out over and over again. After
3 that morning, I have become anxious about what used to be
4 normal every day life. Certain things trigger me to see it
5 all over again. It has not stopped. I do not know if it
6 will ever stop. Even when I close my eyes for a second I
7 can see it. I have not slept an entire night because I
8 experience it every night. Sometimes I go a while not
9 thinking about it, but I can always see.

10 We go to work to provide a way for our families.
11 Our families expect to see us at the end of every day. We
12 all were supposed to go home at the end of that Monday.
13 Tony and Robert never made it home that day. I'm very
14 proud to have worked with them and known these men. For me
15 they will never be forgotten. Sincerely, Michael Lowe.

16 Thank you.

17 MR. THURMOND: Your Honor, next, we're going to
18 call Will, Bill Hamilton to come speak on behalf of Tony
19 Redmond. He's a long time friend of his from the Midway
20 Grill.

21 THE COURT: Mr. Hamilton, nice to have you with us.

22 MR. HAMILTON: How you doing. Thank you, Judge.

23 I thank you, the Court, for allowing me to speak,
24 but you know, Tony Redmond and I, we go back a long way.
25 They come to my restaurant on a daily basis. We fish

1 together, we eat together. And Tony Redmond, himself, you
2 know, what happened to him, he and Mr. Clark, you know, the
3 tragedy, but our community it's, and what he's done to this
4 family here, you know, they have to live with this. This
5 is a daily thing.

6 This was one of the finest men you'd ever meet.
7 You never want a best friend. This man here family stands
8 up and they've showed more remorse than he has. He hasn't
9 had the decency to even turn and look at this family.

10 THE COURT: Just --

11 MR. HAMILTON: I know. I'm sorry. But I hope this
12 Court renders the harshest sentence it's allowed to. Thank
13 you.

14 MR. THURMOND: Your Honor, one of our victim
15 advocates is going to read the statement of Ms. Cathrine
16 Redmond who was a daughter-in-law to Mr. Redmond.

17 MS. JORDAN: My name a Cathrine and Tony Redmond
18 was my father-in-law. I first met Tony Redmond in 2009.
19 From the very first time that we met, he always treated me
20 like family. Over the years that I knew him, he would drop
21 what he was doing and come to my rescue, whether it was
22 giving me directions or coming out of his way to come
23 change my car tire. I knew if I called Tony Redmond he
24 would be there.

25 I recently totaled my car and not having him to

1 call made me realize how much of a hero he was. When going
2 places with Tony Redmond, he would always introduce me to
3 people as his daughter. Tony Redmond was always being a
4 dad to me from the very first day we met. He taught me how
5 to hunt and fish and we spent a lot of time together.

6 When we found out we were having Natalie, we told
7 him on April Fool's Day that he was going to be a grandpa.
8 He didn't want to believe it and he thought it was an April
9 Fool's joke. I'll never forget the day that Natalie was
10 born and seeing the look on his face when he saw the
11 baby --

12 THE COURT: Slow down a little --

13 MS. JORDAN: Sorry.

14 THE COURT: -- for my court reporter.

15 MS. JORDAN: Seeing the look on his face when he
16 saw his granddaughter for the first time. He cried like a
17 baby and blamed a hand sanitizer for all the tears. He
18 loved her and he was so proud to be a PeePaw. They did so
19 much together. He took her to drink coffee with him and
20 when he found out he was going to be a PeePaw for the
21 second time, he couldn't wait to meet her. He was so proud
22 of his girls. Tony Redmond bragged about his
23 granddaughters everywhere he went.

24 After McKenzie was born, he was the only one that
25 had a magic touch and could get her to sit on his lap and

1 he could get her to sleep before anyone. Tony Redmond
2 didn't get much time to spend with McKenzie because he was
3 taken away much too soon. When we would hang out in the
4 kitchen, he would always -- he would be cooking and I would
5 always give him directions on how he should cook by telling
6 him how small to cut the onions so I that couldn't tell
7 that they were in the food. I can still hear him now
8 telling Derrick, you better come get her she's trying to
9 tell me how to cook.

10 I could pretty much get away with anything and he
11 would always defend me. One time when we returned from
12 hunting, we were all covered in beggar lice and I picked
13 every one of them off of me and stuck every one of them on
14 his pant leg. He never one time told me stop, or don't do
15 it. He just sat right there on the couch until I finished.

16 Although nothing can take away my grief, I hope
17 that Court sees full punishment with no parole. I thank
18 you for your time and for listening to my statement. Tony
19 Redmond will truly be missed each and every day.

20 THE COURT: Thank you.

21 MR. THURMOND: Your Honor, our victim advocate
22 Ms. Ann Key is going to read a letter penned by Ms. Jackie
23 Redmond. She was the mother of Mr. Tony Redmond.

24 MS. KEY: To whom it may concern: My name is
25 Jackie Redmond. My son Tony Redmond was killed in a

1 hit-and-run accident in March of 2017 by Lonnie Miller.

2 Tony Redmond was only 54 years old. I only had two
3 children. A few years ago, my daughter Beverly died from
4 chemo treatments for cancer. Since then I have had to
5 depend on my son Tony Redmond for everything. I am 75
6 years old and have severe COPD. I have never been able to
7 drive and have had to depend on either my husband, until
8 his death; my daughter until her death; my son, whose death
9 should not have happened.

10 When I lost my son, I felt like my whole world
11 ended. I lost all my independence. I'm on a fixed income
12 and have to depend on someone to take me everywhere I go,
13 doctors appointments, drugstore, grocery store, and to
14 church. I have a very sweet daughter-in-law and
15 grandchildren who are very good to me. But I have to work
16 all my needs around their schedule because they all work.

17 To me, there is no way to justify allowing this man
18 to go free for not only taking my son's life but lying and
19 trying to cover up what he did. I'll never be able to get
20 over my son's death. I'm asking you to take all this into
21 consideration when you are deciding his punishment. Put
22 yourself in my shoes. What if this was your only son, the
23 only person you could truly depend on. Me and my son were
24 very close. Thank you, Jackie Redmond.

25 MR. THURMOND: Your Honor, we have a letter

1 authored by John Derrick Redmond, who is the 25-year-old
2 son of Tony Redmond. He wanted it passed up for Your Honor
3 to read yourself.

4 (There was a pause in the proceedings.)

5 MR. THURMOND: We also have some family photographs
6 that they wanted you to have the opportunity to see.

7 THE COURT: Is Derrick in the courtroom?

8 MR. THURMOND: He's on the front row.

9 Your Honor, our last speaker on behalf of Tony
10 Redmond is his wife Tina. If I could ask her to come
11 forward, please.

12 MRS. REDMOND: Thank you, Your Honor, for hearing
13 our statements. It's hard to believe it's been almost a
14 year since Tony Redmond was killed. I think about this day
15 all the time. Sometimes I catch myself thinking he should
16 be driving up our driveway and coming in the door after
17 work. It's just so hard to believe he's gone. I miss him
18 so much. Tony Redmond always made me feel safe and was
19 always there for me talk to at the end of the day and I
20 knew I could depend on him for anything.

21 I can honestly say that Tony Redmond loved his
22 family and his friends and we all loved him truly. He was
23 just a good man.

24 One of the hardest things that I've had to face
25 after Tony Redmond's death was going somewhere and then

1 having to come home to an empty house because he was always
2 there. Always.

3 And I miss smelling his cologne in the mornings
4 when we would get ready for work. Even getting groceries
5 at the grocery store, it's just changed so much. I loved
6 cooking for Tony Redmond and I prepared dinner for him
7 every day. And every night after he got through with his
8 dinner, he would say thank you. He appreciated everything
9 I did for him.

10 Tony Redmond loved hunting and fishing. That's no
11 deny. Anybody you talk to will tell you that. And when we
12 first started dating, the first time he took me hunting,
13 which was unbelievable that I would go hunting, but I
14 wasn't going to let him go anywhere without me. I always
15 wanted to be with him. He came to pick me up. I had my
16 hair done and my makeup on and big earrings on. And he
17 always called me Gloria Vanderbilt. He said Gloria
18 Vanderbilt, you got to put those hub cap earrings in the
19 glove box. You can't hunt, you'll scare the deer off. So
20 I would take my earrings off and put them away.

21 Anytime he knew somebody, he had a nickname for
22 them. In the mornings, he would say Gloria Vanderbilt who
23 fixed your hair? It's pretty. He was a character. Always
24 had something going and was always picking on people and
25 giving them a hard time. But that was his way of showing

1 love.

2 He had a special relationship with our kids.
3 Derrick and Justin always gave him a hard time. They would
4 get him so frustrated just by picking on him and it was
5 relentless to the point that sometimes he would jump off
6 the couch and chase them around the house and try to act
7 mad, but he was trying to not laugh too. And they knew
8 just how far they could push their dad.

9 Many nights when we would be getting ready for bed,
10 they would come sneaking in our bedroom as he was getting
11 the covers just right and they would jump up on our bed and
12 he would be yelling please get out of here, you're getting
13 me all worked up, I'm ready to go to sleep. The more he
14 fussed, the more we laughed. It was just those little
15 memories that mean so much and that's the things we miss
16 the most.

17 I think you take those things for granted every day
18 because they're just part of everyday life, but when it's
19 gone, it's gone.

20 He was so in love with our granddaughters. The day
21 that he was killed, as he left for work that morning, he
22 was so excited because I was going to be having the
23 granddaughters at our house. That was my first day of
24 babysitting them. And as he got to the door he turned
25 around and he smiled and he said those babies sure are

1 sweet. I can't wait to see them when I get home. I'm so
2 excited you're going to have our little sweethearts.

3 In the evenings he would go down to Midway Grill to
4 drink coffee or just catch up on gossip. And most often he
5 would take Natalie with him. She would come back with ice
6 cream or really anything she wanted because she was so
7 spoiled. Then he would take her next door to the
8 convenience store and buy her a bag of candy. And he would
9 say, he couldn't wait for McKenzie to be a little older
10 because he looked so forward to taking both of those girls
11 with him to do just that.

12 I always talk about Tony Redmond to the girls. We
13 talk about him on a daily basis because I want those two to
14 remember just how much their PeePaw loved them and how much
15 he looked forward to spending so much time with them.

16 One of Tony Redmond's favorite things to do was to
17 participate in the handicap hunts at Savannah River Site.
18 He would volunteer each year and sit with a handicapped
19 person or someone from the Wounded Warrior's Project. He
20 would scout out the area, get the blind set up, have
21 everything just right so that the person he was taking
22 hunting would have a good chance of killing a deer or a
23 turkey or whatever it might be that day.

24 I remember one of the first times he went he called
25 me and he said the guy that I was sitting with killed one

1 of the biggest deer. He said I will have to tell you this
2 is the best hunting trip I've ever been on. He said I
3 think it did me more good to see this fellow kill a deer
4 than it would have been for me to kill it myself because he
5 just enjoyed it that much, seeing other people enjoy things
6 like that. He looked forward to this every year.

7 He also looked forward to his annual fishing trip
8 with all of his friends from Midway Grill that he drank
9 coffee with. They had one coming up in May after he was
10 killed. They were all planning on going and this year he
11 was going with Mr. Clark that was also killed with him.
12 They had bonded and became friends immediately, so they
13 were looking forward to their annual fishing trip. And I
14 think it was more of a trip of playing jokes on each other
15 than it was who could catch the most fish. Tony Redmond
16 was excited about this because he knew he would be with all
17 of his friends.

18 Two guys, two great guys lost their lives that day
19 and never made that yearly fishing trip. He was always
20 doing things for people but never said anything about it
21 because he didn't want recognition. He just enjoyed
22 helping others. He had such a big heart and he couldn't
23 stand the thought of someone in need. If someone from work
24 was sick he would do his best to visit them or at least
25 call and check on them. If someone's loved one had passed

1 away, he would do his best to pay his respects. He went to
2 the funeral home all the time just to say how sorry he was
3 for them losing their loved ones.

4 I can honestly say that the Department of
5 Transportation has been so good to me and my family. They
6 have supported us just like Tony Redmond would have
7 supported his co-workers and he would be so proud to know
8 that. Tony Redmond was such a simple man, but he loved
9 life so much because his personality was larger than life.

10 There are so many things that I miss about it and
11 it's the simple every day life things. I was blessed to
12 have him for 35 years. He was a good -- he was good to his
13 mom and he was good to my mom and I'm so thankful for that.
14 There will never be another one like him and losing him has
15 been so devastating.

16 I know that we're supposed to forgive people for
17 what they've done to us and that's what the Bible says, but
18 I'm not just there yet. It's going to take some time and
19 lots of prayers. So I will continue to live my life by the
20 grace of God. I'll get through this difficult time, but
21 it's going to take lots of prayers. And my family and my
22 friends have been a very big support and I appreciate that.

23 Thank you so much for your time and letting me
24 share my story. And I hope that you see that Lonnie Miller
25 pays for this crime in accordance with the circumstances.

1 I would like to see it be a very stiff penalty. Life with
2 no parole is not enough. Thank you.

3 MR. THURMOND: Your Honor, we have a couple of
4 folks here to speak on behalf of Robert Clark and we'll
5 begin with his widow, Robin Clark. If you could come
6 forward.

7 MS. CLARK: Your Honor, thank you for allowing me
8 to speak to you today. This is my husband and two of his
9 grandchildren which he will not see grow up. And I try to
10 sit down and write a few words about him. There weren't
11 any words. He was such an awesome man, father,
12 grandfather, brother. There probably isn't another one
13 like him in this world. He was my world, my love. My
14 everything.

15 He was a man of high ethical standards and he lived
16 by them daily. He had a strong sense of right and wrong
17 and he would not hesitate to stand up for his values. He
18 loved to work with his hands. He was a handyman who
19 enjoyed remodeling the house and he helped build the house
20 we lived in when he was killed.

21 He was a family man through and through. His
22 family always came first. Always willing to do household
23 repairs for his daughter. He enjoyed helping anyone in
24 need and it didn't stop with family.

25 He was a man who enjoyed hunting. This was his

1 second love. And family was his first love, of course. He
2 enjoyed sharing his knowledge with his stepson T.J. and
3 taught him how to shoot and track deer and turkeys from a
4 very young age. He was a man who loved to ride horses. He
5 also enjoyed competing in horse related competitions that
6 we did as a couple. We did everything as a couple. We did
7 -- we would shop, we would ride horses, work on the house,
8 everything. We were as one.

9 He loved sharing his knowledge and horse expertise,
10 which was evident seeing that he volunteered as 4H Leader
11 for kids. He wanted to give back. He also coached little
12 league baseball because coaches were needed and he loved
13 kids and thought it was important to pass on his knowledge
14 to the younger generation.

15 I not only lost my best friend on March 13th, 2018,
16 I lost my world. And the community lost a roll model and
17 pillar of society. I ask that you give this criminal the
18 maximum sentence so another family will not suffer loss as
19 we did. Thank you, sir.

20 THE COURT: Thank you.

21 MS. FLOYD: Could we approach, judge?

22 (There was a bench conference out of the hearing of
23 the jury and the court reporter.)

24 MR. THURMOND: Your Honor, next we have Ms. Morgan
25 Clark. She is one of Mr. Clark's daughters and traveled

1 yesterday from New York to be here today and she would like
2 to address the Court if I could ask her to come stand by
3 me, please.

4 MS. CLARK: I do have some pictures here of my dad
5 with all the grand kids specially my daughter.

6 THE COURT: Just hand them up to me and let me look
7 at them.

8 (Handing the pictures up to the Court.)

9 THE COURT: How many grandchildren did he have?

10 MS. CLARK: I believe 11. All three girls had
11 three.

12 THE COURT: He was a lucky man. I've only got
13 three. I wish I had 11.

14 MS. CLARK: He loved them. Those are from her
15 first birthday that he never got to see. It's been 11
16 months and three days since he died. Every month, every
17 day, every hour, every minute, every second has been filled
18 with heartache and loss. They say over time it gets
19 easier, but I know you just get used to the pain and the
20 heartache. My dad was there for all of my milestones
21 growing up; however, he was supposed to be there for my
22 daughter's. He never saw her first steps, her first
23 birthday, or anymore of her firsts to come.

24 He will never see the mother that I have become and
25 he will never see the joy that she has for horses and the

1 outdoors that he instilled in me. Every day I wonder if
2 he'd be proud. And so many times I just want to call him
3 and hear his voice and his words of encouragement for those
4 hard days. And hear the joy in his voice when he heard
5 about all the good ones.

6 I miss him more and more every day. I don't know
7 how I'm going to be able to show my daughter how loving,
8 how kind, how amazing her grandfather was, and all the love
9 he had for her, as well as the love that I had for him.
10 That's all.

11 THE COURT: I'm going to give all these pictures
12 back at the end.

13 MR. THURMOND: Yes, sir.

14 Thomas Latimer, if he could come forward.

15 And, Your Honor, he's going to read a statement
16 from one of Mr. Clark's brothers, Mr. William Clark of
17 Arizona.

18 MR. LATIMER: Your Honor, thank you. This -- my
19 Uncle Bill wrote this. I was asked to read this aloud for
20 him.

21 My name the Bill Clark and Bob was my brother. Due
22 to health considerations I cannot be there for this
23 sentencing. The loss of my brother to such a violent and
24 senseless act is beyond comprehension. I believe any
25 person's life is valuable and irreplaceable. I also

1 believe we must value human life as that is what separates
2 us from animals. The thought of my brother and another
3 human being left by the side of the road as a piece of
4 garbage is nauseating and inconceivable. I cannot wrap my
5 head around it as it is self-fish, evil, and sickening. It
6 hits me to the core of my being.

7 The families who are affected will have an
8 emptiness that will never be filled. His grandchildren
9 will never get to know the man I have grown to love over my
10 lifetime. Bob was a friend, brother, uncle, dad,
11 grandfather, and husband. He was kind, thoughtful,
12 considerate, tolerant, loving, unselfish, funny, honest,
13 but most of all a pillar of strength. He would help his
14 neighbors or a perfect stranger and expect nothing in
15 return.

16 He will be sorely missed by his brother Lee Clark
17 as they spent many hours on the phone and hunting. He
18 stood up for what is right and wrong. I believe people
19 should be held accountable and demonstrate they were
20 capable of learning from their mistakes. Nothing less than
21 the maximum sentence is deserved as the injuries to others
22 are inevitable if something is not done to prevent it
23 today. Thank you, sir.

24 MR. THURMOND: Lastly, Your Honor, I'm going to
25 call Ms. Rebecca Hannis to come forward. She's also one of

1 Mr. Clark's daughters and also traveled from New York
2 yesterday to be here today. And I believe she has a
3 statement to make as well as an audio clip that she would
4 like to play for the Court.

5 MS. HANNIS: Your Honor, I did bring along the
6 picture that I carry with me every day in my purse and it
7 shows my father's smile, which I always have, which
8 everyone tells me I look like my father.

9 I did not imagine that I would ever be before this
10 Court today in a situation like that. I really have a
11 bunch of scattered words to say. So what I want to say
12 most of all is how what a loving, caring, kind father he
13 was and he will be because his memory will be carried on.
14 I am basically -- I may be the middle child, but I am my
15 dad's little girl and us girls were his life. I was just
16 recently married this past October. I walked down that
17 aisle by myself because there is no man that can ever be a
18 substitute for my father. And I walked and I walked proud.
19 He was with me in spirit, but there was no one that could
20 replace him, so I walked alone. And he should have been
21 there for that day.

22 We had been visiting my father before this tragedy
23 happened. We were planning to move down to Edgefield to be
24 closer to my dad because as you all can see I was born
25 different and I can tell you that my father raised me to be

1 strong and I am just like everyone else. He was there, he
2 was my little league coach, he was my 4H leader. He taught
3 me how to ride and he was there to pick me up the first
4 time I got bucked off my horse. He was like this for
5 everyone in his community, friends, anyone -- if anyone
6 needed anything, my dad did it without question and without
7 wanting anything in return.

8 I'm asking, and my family's asking, for the maximum
9 sentence to be placed today because it will not change the
10 hurt that we feel, but we need to protect other families
11 going forward. We need to make sure that justice is served
12 and that his memory will live on.

13 I can tell you, I can bring up so many memories of
14 my children. We were here in January, 2017 to spend
15 Christmas with my father and my daughter had gotten a bow.
16 She was 14 years old and she came down the South Carolina
17 so Grandpa could teach her how to shoot her bow. Grandpa
18 got her a target that year and that's what they did when we
19 were here is they shot bow at the farm. My daughter will
20 no longer have that. His great grandchildren will never
21 meet him. His grandchildren that he has now will never get
22 the chance to know him. They just will be words. But we
23 hope that his memory is kept alive.

24 I do -- can tell you that 11 days before this
25 happened was my birthday on March 2nd. And my father every

1 year would call me as he called all of his daughters and
2 sang us happy birthday. I can tell you most of the time I
3 missed his phone call, but he always left me a recording
4 and that's what I have left of him is I do have the
5 recordings that he has left me and I have recordings back
6 to 2013. I would like to play for the Court today, the
7 recording from March 2nd, 2017, 11 days before he was
8 killed.

9 For those of you who don't know my father or never
10 speak to my father, this is the type of man he was and
11 you'll hear it in his voice. When I was a little girl, my
12 father grew up calling me Becky. Well, when I got to be an
13 adult I told him my name was Rebecca, so that was a family
14 joke of ours and our family about being called Becky or
15 Rebecca. And you will hear this in this song that he sang
16 me.

17 But I listen to this song often and I listen to it
18 sometimes daily just to hear my father's voice.

19 (The recording was played.)

20 MS. HINNIS: That was our long time running joke.
21 And this year coming up in March, I will not get that phone
22 call again. That is what I have left to listen to and to
23 hear my father's voice. There's so many times -- I talked
24 to my sister Jodie who was unable to be here today, that
25 she still goes to pick up the phone when something happens

1 to tell dad. He is missing his grandson just graduating
2 from Ranger school. And he's missing that graduation. He
3 came to all of our children's events. I live in New York.
4 He would come to New York. If I had a problem, my father
5 would drive all night long to come help me. It didn't
6 matter that we lived so far away he was always there. And
7 that is what I have left. And I will not get that phone
8 call this year.

9 I thank you for listening to us today. And like I
10 said, we are asking for the maximum sentencing on all the
11 charges. Thank you.

12 MR. THURMOND: Your Honor, we are grateful for all
13 of the time that you allowed these two families to be heard
14 and that concludes the presentation on behalf of the state?

15 THE COURT: Anything from anyone else before I
16 impose sentence?

17 MS. FLOYD: Your Honor, my client did not -- was
18 not able to turn around and speak to the family directly
19 and -- can I do that for him.

20 THE COURT: Sure.

21 MS. FLOYD: Mr. Miller expresses his complete
22 sorrow for your loss and asks that you accept it.

23 THE COURT: Most days this job is running through
24 20, 25, 30 pleas that the solicitors bring to me. He's the
25 best solicitor in the state. He runs the most efficient

1 office in the state. Some days he brings to me a case that
2 just absolutely tears your heart out. And this is one.

3 My heart goes out to all the families, co-workers,
4 friends. My heart goes out to the defendant, his mom,
5 sister, family. It's a tragic situation.

6 Our legislature ensures that we live by a rule of
7 law. That's the only way a civilized society can operate.
8 And there's a whole lot of law that governs the use of our
9 highways and if people comply with those laws, we have
10 pretty safe highways. If you don't comply with the law,
11 the rule of law, then obviously 90 percent of the time you
12 can speed and nothing happens. 90 percent of the time you
13 can drive reckless and nothing happens. But when that law
14 is violated and something does happen, normally it's not
15 this devastating.

16 This is a tragic situation where two fine men with
17 families and grandchildren and friends lives were snuffed
18 out in the blink of an eye and the third worker left
19 injured and devastated and will never get over it.

20 So trying to decide what punishment is appropriate
21 in a situation like this is always a difficult task. In
22 this case, the law allows me to give up to 71 years. That
23 is, I don't think, appropriate under these circumstances.
24 You asked for mercy. I will temper this sentence with
25 mercy. You ask for forgiveness. Obviously, I can't impose

1 a sentence that forgives you. I think these family
2 members, as one wife expressed, if they haven't already
3 forgiven, they will probably in this future forgive you to
4 some degree.

5 But my job mandates that I balance out the
6 violation of the law and what it caused and it's a very
7 difficult job, Son, it's very difficult.

8 I have to look at similar cases in the past. Quite
9 frankly, I've never had one this severe with these type of
10 situations. I just had one about maybe 2 months ago, 3
11 months ago, time flies, where a young man swerved across
12 the center line and no reason and ran over a person and
13 killed them and continued on. That was one death. That
14 man received a sentence of 15 years. We have two deaths
15 here. We have one man injured. And then notwithstanding
16 what some people have said, I have to look and take into
17 consideration that you have been a habitual violator of the
18 driving laws all the way back to 2004.

19 In addition, you were on probation for violating
20 the substance laws. So balancing all of that out, the
21 sentence that I'm going to give you is what you'll think is
22 way too much, the families will think it's way too little.

23 I've been doing this a long time. 14 years on the
24 bench, 30 years practicing law, and trying to decide and
25 judge what an appropriate sentence is, is always a -- not

1 always, in these kind of cases, it's always a difficult
2 situation.

3 I believe you're truly sorry. I believe you're
4 remorseful. But society demands that I send a message that
5 if you're going to drive in a reckless manner and fail to
6 stop and render aid, fail to stop so appropriate tests can
7 be done, a message has to be sent.

8 Therefore, as to Indictment 17GS2739, that is the
9 indictment for hit and run with death involved, sentence of
10 this court is you be committed to the State Department of
11 Corrections for a period of 25 years. That, likewise, the
12 other sentence on the other failure to stop. The other one
13 is a one year sentence. The two reckless homicides are
14 both ten year sentences. They will all run concurrent.
15 You will be given credit for your time served. Good luck
16 to you.

17 MS. FLOYD: Thank you very much, Your Honor.

18 THE COURT: I would ask that the family members,
19 family and friends let the defendant's family exit the
20 courthouse first and then y'all be able to go out.

21 * * * * * END OF TRANSCRIPT * * * * *

22

23

24

25

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of General Sessions in and
12 for the State of South Carolina on 16th day of February
13 2018.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 15th day of February 2019.

18
19
20
21
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24
25

Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

FORM 5

STATE OF SOUTH CAROLINA)

County of Aiken)

IN THE COURT OF COMMON PLEAS

Lonnie Miller, #375485)

Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR

State of South Carolina)

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 McCormick, Corr. Inst. 386
Redemption way, McCormick, S.C. 29096
2. Name and location of Court which imposed sentence Aiken County
Judicial Center Aiken, S.C.
3. Name(s) of co-defendant(s) (if any) NO

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: (warrant #'s)

17650201234 (a) 2017A0210201119 - Homicide / Reckless, Homicide death 3 yrs
17650201235 (b) 2017A0210201120 - Homicide / Reckless, Homicide death 3 yrs

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Feb. 18, 2017 - 25 yrs Concurrent sentences
- (b) Feb. 19, 2017 - 25 yrs Concurrent sentence
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I never knew of an Appeal from Guilty Plea
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Involuntariness of Plea -
- (b) Ineffective Assistance of Plea Counsel
- (c) Failure for Counsel Performing Any Pre-trial Investigation
11. Both Factual or Legal State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Transcript of Involuntary Plea
- (b) Ineffective Assistance of Plea Counsel
- (c) Counsel did no type of Investigation Prior to Plea
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:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____ *N/A*
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____ *N/A*
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____ *N/A*
- iv. _____

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

_____ *NO*

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

(a) which grounds have been presented:

- i. _____
- ii. _____ *N/A*
- iii. _____

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

- i. _____
- ii. _____ *N/A*
- iii. _____

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

(a) N/A
 (b) _____
 (c) _____

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

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

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

(a) the name and address of each attorney who represented you:
 i. Maureen O. Floyd, Attorney at Law 461 Greene St. Augusta, Ga 30901
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. M. (a), (b)
 ii. _____
 iii. _____

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

Reversal of Guilty Plea is involuntary!
Trial Counsel did not perform any Pre-trial
Investigation factual or Legal/Plea violation Lockhart.

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

NO

STATE OF SOUTH CAROLINA)

County of Aiken)

VERIFICATION

I, Lonnie Miller, #375485, 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.

/s/ Lonnie Miller

SWORN to and subscribed before me this 5
 day of December, 2018.

Bede J. W. Adema (L.S.)
 Notary Public

My Commission Expires: 9.30.26

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

I, Lonnie Miller, #375485, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

/s/ Lonnie Miller
Applicant

SWORN or affirmed to and subscribed before me this

5 day of December, 2018.

Bud Wideman
Notary Public

My Commission Expires: 9.30.25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
Lonnie Miller, SCDC # 375485,	)	2018-CP-02--2939
Applicant,	)	
v.	)	RETURN AND MOTION FOR A MORE
State of South Carolina,	)	DEFINITE STATEMENT
Respondent.	)	

In response to the post-conviction relief application filed December 13, 2018, by Applicant Lonnie Miller, Respondent (the State) would show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Aiken County Grand Jury indicted Applicant for two counts of reckless homicide with death resulting (2017-GS-02-1234, -01235), two counts of failure to stop a motor vehicle at the scene causing death (2017-GS-02-737, -0739), and failure to stop a motor vehicle at the scene of an accident with personal injury (2017-GS-02-0741), all stemming from a March 13, 2017, motor vehicle accident caused by Applicant that resulted in the death of two victims and the injury of a third victim. The case was prosecuted by Second Circuit Solicitor Stroin Thurmond. Applicant was represented by Maureen O. Floyd, Esquire.

On February 16, 2018, Applicant appeared before the Honorable Doyet A. Early, III, and pled guilty to all the above-referenced offenses. Applicant advised the court he understood the sentence ranges and parole eligibility for the indicted offenses. Applicant advised the court he understood and wished to waive his constitutional rights. Applicant advised the court he was

satisfied with the services of his attorney and specifically advised the court that his attorney had properly researched and investigated his case. Applicant informed the court he was pleading guilty because he was indeed guilty of the indicted offenses. Judge Early accepted Applicant's guilty pleas and sentenced him to concurrent sentences of twenty-five years imprisonment for each count of failure to stop a motor vehicle at the scene causing death, ten years imprisonment for each count of reckless homicide with death resulting, and one year imprisonment for failure to stop a motor vehicle at the scene of an accident with personal injury (2017-GS-02-0741).

Applicant did not pursue a direct appeal.

II. Allegations Raised and Relief Sought in Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on:

1. Involuntary Guilty Plea: "Transcript of Involuntary Plea"
2. Ineffective Assistance of Plea Counsel: "Failure for counsel performing any pre-trial investigation both factual or legal. Counsel did not type of investigation prior to plea."

Applicant fails to list any specific allegations or facts to support how his guilty plea was involuntary. He similarly fails to state what counsel could or should have investigated prior to his guilty plea.

As requested relief, Applicant states he wants "reversal" of his guilty plea.

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, the plea transcript, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III. Response to Allegations of Involuntary Guilty Plea

Applicant asserts his guilty plea was involuntarily entered, however he fails to state with any specificity why his guilty plea was involuntary. The records from Applicant's plea proceeding fully support that Applicant's guilty plea was entered freely, voluntarily, and knowingly. This allegation is without merit.

In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging his or her guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985).

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Statements made during

the plea should be considered conclusive unless the defendant presents reasons why she should be allowed to depart from the truth of those statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

In Applicant's case, the record fully supports the knowing and voluntary nature of Applicant's plea. Applicant indicated he understood the potential sentences for all indicted offenses and parole eligibility. Applicant further indicated he understood all of his constitutional rights, including his right to a trial by jury. He also told the plea court he was pleading guilty freely and voluntarily.

Accordingly, the record conclusively refutes Applicant's allegation his plea was involuntary. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant also asserts his plea counsel was constitutionally ineffective for failing to investigate his case. However, he fails to state what counsel could or should have investigated.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668, Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

Applicant asserts plea counsel was ineffective for failing to investigate his case. “Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary.” Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Cl. App. 2014) (citing Strickland, 466 U.S. at 691). “A criminal defense attorney has the duty to

conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel’s decision not to undertake a particular investigation should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. Bagwell, 410 S.C. at 265, 763 S.E.2d at 633 (citing Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006)). “[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (*emphasis omitted*). “Counsel’s conversations with the defendant may be critical to a proper assessment of counsel’s investigation decisions.” Bagwell, 410 S.C. at 265, 763 S.E.2d at 634. (internal citations omitted). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Strickland, 466 U.S. at 690.

In the present case, the transcript reflects Applicant told the plea court he was fully satisfied with counsel’s services and he specifically informed the court that counsel had done a thorough factual and legal investigation in his case. Moreover, Applicant readily admitted his guilt on the record and turned himself into law enforcement eight hours after the accident. Based on the foregoing, it is completely reasonable that counsel may have decided that certain investigations would have been fruitless in light of the strong evidence establishing Applicant’s guilt and Applicant’s ready admissions that he was indeed guilty of the indicted offenses.

Accordingly, the record refutes Applicant’s allegation his plea counsel was ineffective. However, allegations regarding ineffective assistance of counsel may raise a question of fact

which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Motion for More Definite Statement

In his application, Applicant fails to set forth with specificity the facts and circumstances upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to these allegations. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. Any Future Amendments and Invocation of Discovery Process

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

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. Response to Any and All Other Allegations

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

VII. Request for Applicant to file an Amended Application

WHEREFORE, having made its return, the State requests applicant, through his counsel, amend the application to provide the required specificity for his allegations of involuntary guilty

plea and ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not shown sufficient cause to arrant an evidentiary hearing on this application and requests a hearing not bc schedule until after an amended application is so filed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

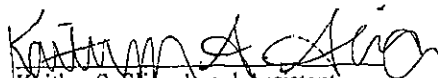
March 5th, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	2018-CP-02-02939
	)	
LONNIE DEAN MILLER, #375485,	)	
	)	
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 and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Nancy C. Fennell, Esquire
 Post Office Box 2176
 Irmo, South Carolina 29063

DATED this the 5th day of March 2019.


 Kaitlyn S. Slice, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Lonnie Miller, #375485

Applicant,

v.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO. 2018-CP-02-2939

AMENDMENT TO PCR APPLICATION

The Applicant, by and through appointed counsel below, hereby amends his PCR application filed on December 13, 2018, to add the following grounds and/or facts on which Applicant bases his allegations that he is being held in custody unlawfully:

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

Ineffective assistance of counsel for failing to request a competency evaluation for Applicant.

Ineffective assistance of counsel for failure to adequately investigate all available defenses to Applicant regarding his medical or mental health conditions.

Ineffective assistance of counsel for failing to obtain a mitigation investigator or otherwise failing to adequately prepare or present powerful mitigating evidence during Applicant's sentencing.

FILED January 2, 2020

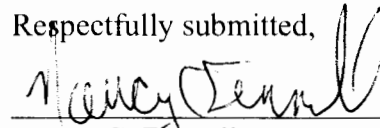
Robert J. White C.C.P. & G.S.
Charles Griffing
Deputy Clerk

Ineffective assistance of counsel for failing to provide medical documentation to support Applicant's sleep apnea or prescription drug dosage.

Ineffective assistance of counsel for failing to discuss with Applicant the viability of a motion to suppress evidence of the black box in Applicant's vehicle.

The above deficiencies prejudiced Applicant in that there is a reasonable probability that, but for counsel's errors, Applicant would not have plead guilty and would have insisted on going to trial.

Respectfully submitted,



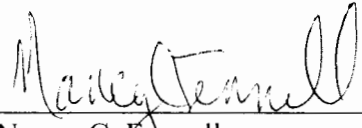
Nancy C. Fennell
Law Office of Nancy C. Fennell, LLC
P.O. Box 2176
Irmo, South Carolina 29063
(803) 553-1772
nancyfennell1@gmail.com
SC Bar No. 69729
Attorney for Applicant

Columbia, SC
December 30, 2019

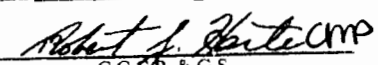
CERTIFICATE OF SERVICE

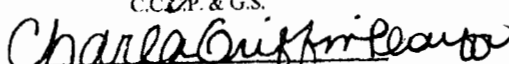
The undersigned hereby certifies that a true and correct copy of this Amendment to PCR Application was served upon the following this 30th day of December, 2019 via email and First Class Mail, postage prepaid, to:

Brianna Schill
Assistant Attorney General
briannaschill@scag.gov
P.O. Box 11549
Columbia, SC 29211



Nancy C. Fennell
Attorney for Applicant

FILED January 2 2020


C.C.P. & G.S.


Deputy Clerk

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
COUNTY OF AIKEN * TRANSCRIPT OF RECORD

-----X
LONNIE MILLER, *
Applicant, *
vs. * Case No. 2018-CP-02-02939
STATE OF SOUTH CAROLINA, *
Respondent. *
-----X

July 16, 2024

POST-CONVICTION RELIEF HEARING

B E F O R E:

The Honorable Brian M. Gibbons, Presiding Judge

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

Nancy Fennell, Esq.
Attorney for the Applicant

Cruise Mitchell, Esq.
Assistant Attorney General for the State

Recorded by: DCRP Court Monitor

Court Transcriber: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E XWITNESS/DESCRIPTIONPAGE

Lonnie Miller

Direct Examination By Ms. Fennell

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Cross-Examination By Mr. Mitchell

42

Sheila Miller

Direct Examination By Ms. Fennell

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Maureen Floyd

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(Exhibits on file in Clerk of Court's Office.)

Applicant Exhibit

No. A	Description	ID.	REC'D
1	Packet of Medical Documents	38	38

COURT REPORTER LEGEND

Dash (--) Indicates an interruption in speech

Ellipses (...) Indicates trailing off in speech

(ph) Indicates phonetic word

[Verbatim] Indicates the word is said as written

(Indiscernible)[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(The following proceedings started at 10:21 a.m.):

THE COURT: All right, Mr. Attorney General.

MR. MITCHELL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. MITCHELL: This is the Post-Conviction Relief matter of Lonnie Miller v. State, Case No. 2018-CP-02-0939 out of Aiken County. I'm Cruise Mitchell on behalf of the State of South Carolina. The applicant is present and represented by counsel, Ms. Nancy Fennell.

The Aiken County Grand Jury indicted Applicant for two counts of reckless homicide with death resulting, two counts of failure to stop a motor vehicle at the scene, causing death; failure to stop a motor vehicle at the scene of an accident with personal injury, all stemming from a March 13th, 2017, motor vehicle collision caused by Mr. Miller that resulted in the death of two victims and the injury of a third victim.

The case was prosecuted by former Second Circuit Solicitor Strom Thurmond. Applicant was represented by Ms. Lorraine O'Floyd, Esquire.

On February 16th, 2018, Applicant appeared before the Honorable Doyet A. Early, III, and pleaded guilty as indicted. Judge Early accepted Applicant's guilty pleas and sentenced him to concurrent sentences of 25 years' imprisonment for each

1 count of failure to stop a motor vehicle at the scene, causing
2 death; 10 years' imprisonment for each count of reckless
3 homicide, with death resulting; and one-year imprisonment for
4 failure to stop a motor vehicle at the scene of an accident
5 with personal injury.

6 And with that, Your Honor, I'll turn it over to
7 Ms. Fennell.

8 THE COURT: All right. Ms. Fennell?

9 MS. FENNELL: Thank you, Your Honor. At this point, I am
10 making a motion for payment of funds and authorization of
11 services.

12 Mr. Miller -- I was appointed to represent Mr. Miller in
13 his application. He has been determined to be indigent. He
14 is seeking the review of the recently received medical
15 records. He would like a review of these medical records.

16 THE COURT: When were those records received?

17 MS. FENNELL: Those records were received on June 21st,
18 2024.

19 THE COURT: And I'm looking at Judge Curtis's Order --
20 that's the first thing in this file that was just handed up to
21 me -- from a hearing back in February where she continued it
22 and said, "This matter shall not be continued beyond the next
23 PCR term except for extraordinary circumstances."

24 You know, here I am. I know nothing about the case. I
25 show up in Aiken in the middle of July, and you're telling me

1 it's not ready?

2 MS. FENNELL: Your Honor, so I do understand that and we
3 did continue this last time. There has -- these records -- he
4 was diagnosed in October of 2021. That was after the
5 amendment to this PCR.

6 THE COURT: Diagnosed with what?

7 MS. FENNELL: Diagnosed with sleep apnea.

8 One of his allegations in this case is that he had sleep
9 apnea at the time of the incident and that counsel failed to
10 have him evaluated for that despite being aware of that
11 allegation that he had sleep apnea.

12 He now has that diagnosis. He didn't have that diagnosis
13 initially when I subpoenaed the SCDC records on December 31st,
14 2020. The last time we were ready to go, I requested a
15 continuance to further inquire into the issue.

16 I did subpoena additional records, and that is when, on
17 June 21st, 2024, I received additional medical records through
18 the present time that did, in fact, show that he had been
19 diagnosed with sleep apnea.

20 THE COURT: And you disclosed those records to the AG's
21 office?

22 MS. FENNELL: I did, Your Honor.

23 THE COURT: All right. So this just all happened within
24 the last two weeks or so?

25 MS. FENNELL: Yes. And immediately after discussing with

1 Mr. Miller, he did -- he wants me to make this motion for this
2 funding for an expert to review these medical records to make
3 a determination as to whether he suffered from sleep apnea at
4 the time of the accident.

5 THE COURT: All right. So what if the expert -- there's
6 two or three ways this can go down. As you know -- and I'm
7 sure you've advised him of this -- if I were to grant this
8 motion, the expert comes in and makes that opinion, and then
9 it's up to me, or whoever the judge is, to find it credible or
10 not.

11 Or the doctor, if there's an expert appointed or hired,
12 the doctor says, "I can't go back that far and make that
13 determination based upon the records presented to me," which
14 leads us right back now to square one.

15 Or there's a good possibility the doctor will say, "No,
16 in my opinion, this wasn't a baseline issue concerning what he
17 was convicted of." That really damages your client's case or
18 his allegation, you know, under a Strickland test for this
19 PCR. Would you agree with that?

20 MS. FENNELL: I would, Your Honor, and I have discussed
21 that with him, the dangers of moving forward with this motion
22 for funding. But it is my understanding -- and he has
23 directed me to make this motion.

24 And in the interest -- well, immediately when I became
25 aware that he wanted me to make this motion, I did call

1 Mr. Mitchell and discuss with him the fact that I would be
2 making the motion. I've discussed it further with Mr. Miller
3 this morning, and he would like to move forward in that
4 fashion.

5 So as to not delay this matter any further, we have
6 proposed moving forward today on all the allegations that
7 could be moved forward on without that expert report and
8 holding the record open to come back to pursue any additional
9 allegation or --

10 THE COURT: How many -- okay. I understand what you're
11 saying. How many witnesses do you anticipate having in your
12 case-in-chief?

13 MS. FENNELL: Today?

14 THE COURT: Yes.

15 MS. FENNELL: Two witnesses.

16 THE COURT: That being your client and...

17 MS. FENNELL: And his mother.

18 THE COURT: Okay. Got it.

19 And, potentially, you're saying there could be a third
20 witness, that being a doctor or an expert.

21 MS. FENNELL: If I am able to obtain an expert who
22 provides a favorable report, I would have an expert testify.

23 THE COURT: Okay. But, regardless, in your motion -- I
24 mean, you understand this thing is old. I believe it happened
25 seven years ago. I know Judge Early has been retired since

1 2019, I think. I know that. Or 2018, somewhere probably soon
2 after this was done. So it's an '18 case number.

3 MS. FENNELL: And it is, Your Honor, and I did -- you
4 know, I've explored the option of getting medical records
5 around the time of the incident. That did not pan out. You
6 know, unfortunately, it wasn't until I broadened the scope of
7 the request to SCDC that we were unable to recover these
8 records.

9 So I do believe that the State is not prejudiced in
10 allowing him the funding. I think he -- this is reasonable
11 and necessary for him to pursue all of his allegations. He's
12 not going anywhere, and so I don't think there's any
13 prejudice. We would go forward with all testimony that would
14 be required of Ms. Floyd so that, you know, she wouldn't
15 necessarily have to come back. I understand she's having
16 health issues.

17 So that's what we would propose.

18 THE COURT: Let me hear from the State and his response,
19 and then I can decide what I'm going to do.

20 MR. MITCHELL: Your Honor, the State objects to expert
21 funding in this case. This case arises from a guilty plea to
22 two counts of hit-and-run resulting in death, two counts of
23 reckless homicide, and one count of hit-and-run resulting in
24 injury.

25 Your Honor, at the time of the collision in 2017 -- and

1 this is reflected in the plea transcript -- Mr. Miller never
2 had a diagnosis of sleep apnea.

3 For the record, Ms. Fennell gave to me -- the earliest
4 diagnosis of sleep apnea was from 2021, four years after the
5 incident.

6 More importantly, Your Honor, it's irrelevant whether
7 Mr. Miller had sleep apnea at the time of the collision. The
8 hit-and-run statute is clear that all the State must prove is
9 that Mr. Miller was involved in the collision and he left the
10 scene. Whether or not Mr. Miller dozed off for whatever
11 reason causing the collision is not a relevant inquiry into a
12 hit-and-run.

13 THE COURT: Understood. I understand that, but had he
14 made an allegation that he received ineffective assistance of
15 counsel and, to support that allegation, he's arguing or
16 presenting the allegation that, you know, look, you know, this
17 is something I should have been -- my lawyer should have known
18 about and should have had me evaluated to determine whether or
19 not I was competent to, you know, make a knowing and
20 intelligent waiver of all my trial rights when I pled guilty.

21 You know, I mean, I understand what you're saying. The
22 elements of the crime -- but the elements of the crime in a
23 PCR analysis, when you're looking at the Strickland test,
24 whether counsel was deficient -- performance was deficient
25 based upon recognized norms and whether or not there was

1 prejudice as a result of that. Doesn't that require a little
2 bit more analysis?

3 MR. MITCHELL: I do not believe so. Not in this case and
4 not pertaining to this specific allegation of whether an
5 expert on sleep apnea -- because, to prove prejudice, you must
6 show that a reasonable and competent attorney would have
7 investigated this; and two, he would have proceeded to trial
8 on this basis.

9 Why would an attorney go out of their way to investigate
10 something that's not even relevant to the element of a
11 defense? And two, how could you possibly be prejudiced when
12 it's not something that can be beneficial to his defense,
13 whether he had sleep apnea or not?

14 So I don't think you're going to be able to show
15 deficiency or prejudice just by getting an expert to opine
16 that Mr. Miller may have had sleep apnea back in 2017. I just
17 don't think it's relevant to either his defense at trial nor
18 the Strickland analysis in his current PCR action.

19 THE COURT: All right. Assuming --

20 MR. MITCHELL: Especially where Mr. Miller, at the guilty
21 plea hearing, admitted that he panicked and left the scene of
22 a collision.

23 THE COURT: Got it.

24 MR. MITCHELL: And it's a guilty plea, Your Honor.

25 THE COURT: I got it.

1 Assuming that I grant in part and deny in part --
2 essentially, she's seeking a continuance again. You know,
3 we're not continuing the entire hearing. Okay? I mean, I'm
4 anticipating some victims are here and some of his members of
5 his family are here.

6 MR. MITCHELL: Yes, Your Honor. And just on that point,
7 this PCR has been pending since 2018, six years ago. The
8 victims in this case, defense counsel, and Ms. Floyd, have all
9 been waiting six years for the resolution of this case.

10 THE COURT: Got it. We're doing something today. Okay?
11 So, inasmuch as your request, Ms. Fennell --

12 Is it "Fe-nell" or "Fen-nil"?

13 MS. FENNELL: "Fe-nell."

14 THE COURT: All right. Ms. Fennell -- if you're seeking
15 an outright continuance, that's denied. Okay? That's --
16 that's -- we need to get this thing done. Okay? Both, you
17 know, for your client's sake -- you know, he needs to have his
18 day in court. Okay?

19 And certainly the State needs to have its day in court on
20 these allegations, and, most importantly, the victims need to
21 have their day in court as far as this thing just continues to
22 linger and fester. It's in nobody's best interest to let --
23 allow this thing to go forward. Okay?

24 To cut through the heart of the matter, then,
25 Mr. Mitchell -- I don't want to take your legs out from

1 underneath you on your argument. You know, reluctantly, I
2 agree with Ms. Fennell on her presentation that she should be
3 allowed to explore this since she just got the records in a
4 couple of weeks ago, but this is ending with me. Okay?

5 We're going to try as much of the case today as we can.
6 Okay? I'm going to grant her Order requesting funding. And
7 the only witness that is going to be left out there, I guess,
8 at this point in time should be that of the expert and any
9 recall testimony y'all wish to present based upon that expert.

10 MS. FENNELL: Yes, Your Honor.

11 THE COURT: All right. So we're going to get through all
12 the testimony today that's going to be presented with the
13 exception of the proposed expert, which I'm going to grant
14 funding for with OID, and of course, leave the record open for
15 the expert to potentially testify. The expert may not
16 testify. I don't anticipate you're calling that expert if
17 he's not going to say what you want him to say. Right?

18 MS. FENNELL: That's correct.

19 THE COURT: Of course. But the State will have that
20 information. Okay? And the State may want to call that
21 expert. You understand?

22 MS. FENNELL: I do, Your Honor.

23 THE COURT: Okay. I mean, that's the potential door you
24 open -- your client is opening up by doing this, because if
25 the expert comes in and says, "I don't think this is the way

1 to go," well, you've just kind of closed that door on the
2 allegation.

3 Do you want to talk to him about that again?

4 You know, there's an old saying, "Be careful what you ask
5 for; you just may get it." You know what I mean?

6 (Counsel confers with the Applicant.)

7 MS. FENNELL: Your Honor, I think we've had that
8 conversation ---

9 THE COURT: Okay.

10 MS. FENNELL: --- a couple of times.

11 THE COURT: All right. So we're doing three-quarters of
12 the trial today then. We're doing three-quarters of the
13 hearing today. The only thing that's going to be left out
14 there is whether or not there's going to be an expert
15 presented on the issue of sleep apnea and how it -- you know,
16 we need to get this thing done.

17 And if there's anything left to deal with at the end,
18 I'll retain jurisdiction, and, you know, I'll come back over
19 here or wherever is most convenient to y'all and have this
20 thing -- I'm assuming everybody lives here in this area? In
21 this circuit?

22 Is this case out of Aiken or Barnwell?

23 MS. FENNELL: This is Aiken.

24 THE COURT: Okay. Got it. All right. Well, that's what
25 we'll do then. Do you understand?

1 MR. MITCHELL: Yes, Your Honor.

2 THE COURT: All right. Are we ready to roll on what
3 you've got to present?

4 MS. FENNEL: Yes.

5 THE COURT: All right. Call your witness.

6 MS. FENNEL: Your Honor, Applicant would call Lonnie
7 Miller to the stand.

8 THE COURT: All right. Mr. Miller, come on up.

9 While he's on his way up, so the Order is going to say,
10 from today, is I granted the Order of Funding -- hold on a
11 second before you swear him in -- over the objection of the
12 State and that the trial of this case was bifurcated and I
13 retained jurisdiction. Okay?

14 I heard all other evidence with the exception of a
15 possible expert witness to serve on the issue of sleep apnea,
16 and I'm leaving the record open for the defense or for the
17 plaintiff -- the petitioner -- the applicant; that's the name
18 -- for the applicant to present that testimony with the
19 understanding that the State is allowed to call a witness to
20 rebut that testimony if it comes to that. Okay?

21 If it doesn't, we will still have another hearing at
22 which we can then close the record in this case. But I want
23 to make sure that everybody --

24 Do you understand, Mr. Mitchell?

25 MR. MITCHELL: Yes, Your Honor.

1 THE COURT: Do you understand, Ms. Fennell?

2 MS. FENNELL: Yes, Your Honor.

3 THE COURT: Do you understand?

4 THE APPLICANT: Yes, sir.

5 THE COURT: All right. He says yes.

6 All right. Swear him in.

7 THE CLERK: Please place your left hand on the Bible and
8 raise your right hand.

9 LONNIE MILLER,

10 having been duly sworn, was examined and testified to as
11 follows:

12 THE CLERK: Please take a seat in the witness stand and
13 state your full name for the Court.

14 THE COURT: Come on over here, sir. Be careful as you're
15 walking. Okay?

16 All right. Thank you.

17 Ms. Fennell?

18 MS. FENNELL: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. FENNELL:

21 Q. Mr. Miller, where are you currently housed?

22 A. At Ridgeland Correctional Institution.

23 Q. Okay. And how long have you been there?

24 A. About a year.

25 Q. Okay. And we're here on the Post-Conviction Relief

1 application that you initially filed on December 13th, 2018.

2 Do you recall filing the application?

3 A. Yes, ma'am.

4 Q. And, in that application, you made what -- do you recall
5 what allegations you made in that application?

6 If I handed you the application that you filed, would
7 that refresh your memory?

8 MS. FENNELL: May I approach the witness, Your Honor?

9 THE COURT: Yes.

10 BY MS. FENNELL:

11 Q. Mr. Miller, if you'll take a look at this document. It's
12 the original application that you filed under No. 10. What
13 were the allegations that you put forward on your application?

14 A. Ineffective assistance of counsel, including counsel
15 failure for counsel performing any pretrial investigation,
16 both factual or (indiscernible).

17 Q. And those are the allegations you put forward on your
18 original application?

19 A. Yes.

20 Q. Okay. I'll take that document back. Thank you.

21 And then, after we discussed your case, we filed an
22 amendment to your application; is that right?

23 A. Right.

24 Q. Okay. And you have a copy of that amendment in front of
25 you?

1 A. Yes.

2 Q. And that amendment was filed on January 2nd, 2020. Is
3 this amendment -- does this amendment contain the amendment --
4 I mean, the allegations that you want to move forward on
5 today?

6 A. Yes.

7 Q. Okay. And we're going to go through each of these
8 particular allegations as we move forward.

9 So what sentence are you currently serving?

10 A. 25 years.

11 Q. Okay. And you entered a guilty plea to five indictments;
12 is that right?

13 A. Right.

14 Q. And on those indictments, as the Attorney General cited
15 previously, you were -- the judge could have sentenced you up
16 to 71 years. Are you aware of that?

17 A. Yes.

18 Q. Okay. And you received a 25-year sentence. You're
19 serving a 25-year sentence, which consists of two 25-year
20 sentences, a 10-year sentence, and one-year sentence to run
21 concurrent; is that right?

22 A. Right.

23 Q. Okay. And what are you seeking here today in your
24 Post-Conviction Relief application?

25 A. I'm seeking any kind of relief.

1 Q. Okay. And do you understand that the relief available to
2 you and the relief that you sought in your Post-Conviction
3 Relief application is basically -- the relief available is to
4 go to the beginning and start over? So, basically, the
5 opportunity for a new trial or to ascertain whether you want
6 to move forward again with any guilty plea. Do you understand
7 that?

8 A. Yes, ma'am.

9 Q. And do you understand that, if you're successful in your
10 Post-Conviction Relief application, that you could potentially
11 receive a sentence that is greater than 25 years? Do you
12 understand that?

13 A. Yes.

14 Q. And knowing that, do you still want to move forward with
15 your PCR application?

16 A. Yes.

17 Q. Okay. Now, who represented you in the underlying
18 criminal charges?

19 A. Maureen Floyd.

20 Q. Okay. When did you meet Ms. Floyd?

21 A. The same day of the accident.

22 Q. And was the accident date March 13th, 2017?

23 A. Correct.

24 Q. How did you meet Ms. Floyd?

25 A. Well, I called her and asked her to -- could I come in

1 and talk to her. And then she told me when she would have
2 some available time. So I had to wait on -- I had to wait a
3 few hours until she had time, and then I met with her in her
4 office.

5 Q. And do you recall what time you called her that day?

6 A. I can't remember the time.

7 Q. Okay. Do you recall what time -- or did you go into her
8 office to meet with her that day?

9 A. Yes.

10 Q. And do you recall what time you went in to meet with her?

11 A. No, I can't recall the time.

12 Q. Can you give an estimate of the time?

13 A. It was about 1:00, 2:00, somewhere around in there.

14 Q. Okay. In the afternoon?

15 A. Yes.

16 Q. Okay. And what happened when you went to her office?

17 A. I told her -- I had to explain the situation. Told her
18 how much money I had at the time. And she was like, Come on
19 with it. And I gave her the money to talk to her. And then
20 she drove to the -- then she drove me to jail.

21 Q. And who went with you to meet with Ms. Floyd?

22 A. My mom, my kids, my sister. I believe my nieces.

23 Q. Okay. So you and Ms. Floyd went to the jail? What
24 happened then?

25 A. We went to the jail and I turned myself in, and she left.

1 Q. Okay. So were you -- you were arrested that day?

2 A. Correct.

3 Q. And you were taken to Aiken County Detention Center?

4 A. Yes.

5 Q. How long were you in the detention center before entering
6 a guilty plea?

7 A. Probably about 300-and-something days.

8 Q. If I said you were incarcerated for 336 days prior to
9 entering a guilty plea, does that sound accurate?

10 A. Yes.

11 Q. During the 336 days before you entered your guilty plea,
12 did you meet with Ms. Floyd?

13 A. Yes.

14 Q. How many times did you meet with her?

15 A. Probably like two times.

16 Q. Two times?

17 Did she come to the detention center to meet with you?

18 A. Yes.

19 Q. And what did y'all talk about?

20 A. She basically was telling me that I don't have any kind
21 of defense and I need to go ahead and plead guilty right now.
22 Like I had to make up my mind in the next two minutes if I was
23 going to plead guilty or not. I had to tell her right then.

24 Q. So I didn't quite catch that. She said you had to --
25 what was the time frame she gave you?

1 A. I had to enter my guilty plea right then on the spot.
2 She gave me, like, two to five minutes to make up my mind.
3 She was like, "It's in your best interest that you go on and
4 plead guilty."

5 Q. And that occurred when she came to visit you at the
6 detention center?

7 A. Correct.

8 Q. And do you recall what date that was?

9 A. No, ma'am.

10 Q. Okay. Do you recall how long before you had your plea
11 hearing on February 16th, 2018, that that occurred?

12 A. Could you repeat that?

13 Q Do you recall -- so you -- your plea hearing was on
14 February 16th, 2018; is that right?

15 A. Correct.

16 Q. How long before that plea hearing did this conversation
17 occur where she told you you had two to three minutes to make
18 a decision?

19 A. Probably like a week.

20 Q. Okay. And so did you tell her you were going to enter a
21 guilty plea?

22 A. Yes, but I told her that, if I don't -- if she don't see
23 any kind of defense or anything, yes, I'm going to go ahead
24 and plead guilty.

25 Q. Did she offer any type of defense that you might be able

1 to put forward?

2 A. No, ma'am. She said I had no defense whatsoever.

3 Q. Okay. Now, your first allegation in your PCR application
4 is ineffective assistance of counsel for failing to request a
5 competency evaluation for Applicant.

6 What is your education level?

7 A. 12th grade.

8 Q. And do you have a mental health history?

9 A. Yes, ma'am.

10 Q. What is your mental health history?

11 A. Anxiety.

12 Q. Okay. Anxiety?

13 A. Yes, ma'am.

14 Q. And when were you diagnosed with anxiety?

15 A. Probably in 2005. Somewhere in there.

16 Q. And have you ever had a mental health evaluation?

17 A. I don't think so.

18 Q. Have you ever had a competency evaluation?

19 A. I don't think so.

20 Q. When you were meeting with Ms. Floyd, did she go over
21 with you the charges against you?

22 A. Yes.

23 Q. Did she go over what the State would have to prove to
24 find you guilty?

25 A. No.

1 Q. She did not?

2 A. No.

3 Q. Okay. Did you understand at that point what the State
4 would have to prove to find you guilty?

5 A. No.

6 Q. Did you have the ability to understand at that point what
7 the State would have to prove to find you guilty?

8 A. No.

9 Q. Did she go over with you -- did she ever ask you about
10 your mental health past?

11 A. Yes.

12 Q. Okay. And what did you tell her?

13 A. Just told her that I have anxiety real bad and I suffer
14 from panic attacks very often, and there will be times where I
15 just be walking about the house, just pacing around, walking
16 in circles. There might have been times where I might be
17 driving, and I'd have to stop the car and just walk.

18 Q. And if Ms. Floyd didn't tell you what the elements of
19 each charge were that the State would have to prove, do you
20 feel like you had the information necessary to make an
21 informed decision as to whether to plead guilty?

22 A. No.

23 Q. Were you able to fully understand the consequences of
24 your plea?

25 A. No.

1 Q. And you don't think you actually had the ability to
2 understand the consequences of your plea?

3 A. No.

4 Q. Did you ask her to get competency evaluations for you?

5 A. No, ma'am. I didn't know anything about it.

6 Q. Okay. Do you think that, based on the information you
7 did provide her, that she should have requested a competency
8 evaluation?

9 A. Yes, ma'am.

10 Q. Do you think having a competency evaluation would have
11 affected the outcome of this case?

12 A. Yes, ma'am.

13 Q. How do you think it would have affected the outcome of
14 this case?

15 A. Because I wasn't competent enough to stand trial or go in
16 for an open plea. I wasn't in my right state of mind. And,
17 furthermore, I didn't have the right state of mind and was not
18 competent to stand trial at the time.

19 Q. Okay. And let's talk about the second allegation,
20 ineffective assistance of counsel for failure to adequately
21 investigate all available defenses to Applicant regarding his
22 medical or mental health conditions.

23 Now, you've already testified about the mental health
24 conditions, but let's talk about any medical conditions that
25 you had. What medical conditions did you have at the time of

1 the incident back in 2017?

2 A. I know I had anxiety. I believe I was a diabetic because
3 I would feel funny, and it would be times where I feel like
4 I'm about to faint, things like that, so...

5 Back problems.

6 Q. And did you also have issues regarding your ability to
7 sleep?

8 A. Yes.

9 Q. Okay. Describe what kind of issues you were having
10 regarding any sleep issues.

11 A. So, like, I'd have trouble staying asleep. I can go to
12 sleep but keep waking up constantly and go back to sleep for
13 10 minutes and wake up and go to sleep for another 30 minutes
14 and wake up. There would be times where I would sleep and I
15 would wake up gagging and choking for air and I'm falling to
16 the floor, holding my throat, hoping that I get some air. I
17 feel like somebody's choking me in my sleep. I had numerous
18 episodes like that.

19 Q. Okay. And did you discuss that particular issue about
20 your sleep issues with Ms. Floyd?

21 A. Yes.

22 Q. And what did you-all discuss about that?

23 A. I told her that I believe I had sleep apnea and I need to
24 get -- I need to have a sleep study done.

25 Q. Okay. And what did she say?

1 A. She just kept saying, "We're going to get to it, we're
2 going to get to it," because she just kept on. So I kept
3 putting in paperwork to the Medical to be seen, and then
4 that's when, finally, they set up an appointment to be seen,
5 but --

6 Q. Well, let's -- and I don't mean to interrupt you, but
7 let's stick to the time frame prior to you entering SCDC and
8 during the time frame that you were speaking with Ms. Floyd
9 before you entered a guilty plea. What conversations did you
10 have with her specifically about you having sleep apnea?

11 A. I told her that I needed to be tested, that I needed to
12 have a study done. It had been times where I would fall
13 asleep in the tub, I would fall asleep on the toilet. I
14 remember a time when I told her that I was working at
15 Captain D's and I fell asleep standing up, waiting on the food
16 to get done. And also another time where I was turning left
17 on my mother's street, and in the middle of the left turn, I
18 dozed off. And I tried -- and then, when I woke up, I woke up
19 just about the time when I run off the whole curb, but I did
20 (indiscernible) the tire and drove down the street to my Mom
21 house. And I told her that too.

22 Q. Okay. But she did not have you evaluated at that point
23 in time?

24 A. Correct.

25 Q. But she did report during the plea hearing that you had

1 sleep apnea to the judge?

2 A. Correct.

3 Q. And did the judge ask for records corroborating that
4 diagnosis?

5 A. Correct.

6 Q. And -- but there were no records available?

7 A. Correct.

8 Q. Do you think if she had -- well, strike that.

9 You now have a diagnosis of sleep apnea; is that right?

10 A. Correct.

11 Q. Do you think -- well, what symptoms -- well, strike that.

12 When were you diagnosed with sleep apnea?

13 A. I believe in 2021.

14 Q. And what symptoms were you exhibiting around 2021 when
15 you were diagnosed?

16 A. Gagging, choking in the middle of the night. Can't stay
17 asleep. Snoring very loud, waking everybody up. Dry mouth
18 when I wake up. It's like I could never stay asleep. Like
19 any little thing, I would jump up out of my sleep. I just
20 couldn't -- I just could never get a good night's rest.

21 Q. And does that affect your ability to function during the
22 day?

23 A. Correct.

24 Q. And that was one of the reasons you would fall asleep,
25 you believe, because you were -- you were suffering from that?

1 A. Yes, ma'am.

2 Q. Okay. And do you believe, if she had had you tested for
3 sleep apnea at that point in time, that it would have affected
4 your decision on whether to enter a guilty plea?

5 A. Correct.

6 Q. Did you ever discuss with her or did she inform you
7 whether that would be any type of defense she could raise
8 during any trial?

9 A. No, ma'am, because she said I didn't have a defense.

10 Q. Okay. Now, does she have any other -- on the day you
11 went to her office, how many hours after the accident did you
12 go there?

13 A. Probably about four to five hours, something like that.

14 Q. And did she have -- did she have you tested? Did you do
15 any blood tests or any kind of alcohol testing or anything
16 like that?

17 A. No, ma'am.

18 Q. Okay. Did you-all --

19 A. She said she didn't smell any alcohol or have any reason
20 to test me. She didn't feel I had been drinking or anything,
21 so she didn't test me.

22 Q. Okay. But you-all discussed that?

23 A. Yes.

24 Q. Did you discuss that that day?

25 A. Yes.

1 Q. Did you discuss that again later?

2 A. Yes.

3 Q. And during your plea hearing, did the judge raise that
4 issue?

5 A. Yes.

6 Q. Was that an issue that you didn't turn yourself in in a
7 timely fashion to be tested?

8 A. Yes.

9 Q. Do you think that if she had sought to get you tested,
10 that that would have helped your case?

11 A. Yes.

12 Q. If she had sought to get you tested, would that have
13 affected your decision to enter into a guilty plea?

14 A. Yes.

15 Q. Do you -- well, strike that.

16 Now, when did you -- you said you met with her twice.
17 When did you first discuss entering a guilty plea?

18 A. Probably, like, a week before court.

19 Q. Okay. So prior to that when you met with her, what were
20 you-all discussing?

21 A. We really didn't discuss much. She just was telling me
22 that we're just going to wait and see when we go to court --
23 just going to wait and see how it plays out. If I come up
24 with one, let her know, but she don't see anything and she
25 just going to -- convinced me to just go on and plead guilty

1 and go on and get it over with.

2 Q. Okay. Now, let's go to the third allegation:

3 Ineffective assistance of counsel for failing to obtain a
4 mitigation investigator or otherwise failing to adequately
5 prepare or present powerful mitigating evidence during
6 Applicant's sentencing.

7 During your plea hearing, did Ms. Floyd provide any
8 medical documentation regarding the medical issues we have
9 discussed today?

10 A. No, ma'am.

11 Q. Did she seek to get any medical records?

12 A. No, ma'am.

13 Q. Were you employed at that time?

14 A. No, not at the time.

15 Q. Had you -- were you on disability at that time?

16 A. No. I had put in -- I put in the paperwork but I wasn't
17 insured.

18 Q. What do you mean, you weren't insured?

19 A. I didn't have insurance, Medicaid or anything.

20 Q. Okay. So what was the basis for you filing for
21 disability?

22 A. I believe I had to have some type of insurance.

23 Q. Okay. Were you claiming disability?

24 A. Yes.

25 Q. Okay. What disability were you claiming?

1 A. Back problems, mental health issues.

2 Q. Okay. And did you make Ms. Floyd aware of that?

3 A. Yes.

4 Q. And did she seek out any of those records?

5 A. No.

6 Q. Did you ultimately have a disability hearing?

7 A. No, ma'am. I believe I had one of these paperwork saying
8 that I have a hearing, but I was incarcerated, so I couldn't
9 attend.

10 Q. Okay. And moving on to the fourth allegation,
11 ineffective assistance of counsel for failing to provide
12 medical documentation to support Applicant's sleep apnea or
13 prescription drug dosage. We've kind of already talked about
14 the failure that Ms. Floyd did not get any medical
15 documentation. Did -- were you on any prescription drugs at
16 the time of the accident?

17 A. Yes.

18 Q. What prescription drugs were you on?

19 A. Buspar and alprazolam.

20 Q. And were you exhibiting symptoms of sleep apnea at the
21 time of the accident?

22 A. Yes.

23 Q. Did Ms. Floyd seek any medical records regarding the
24 effect any of the prescriptions you were on might have had on
25 you for driving?

1 A. No.

2 Q. Did you discuss with her that some of the medication or
3 any of the medication you were on could have had an affect on
4 you?

5 A. Yes.

6 Q. And what did you discuss?

7 A. I told her that the medication I was on and the sleep
8 apnea had me in a confused state of mind and played a big part
9 in me (indiscernible).

10 Q. Okay. And then --

11 MS. FENNELL: Your Honor, may I approach the witness?

12 THE COURT: Yes.

13 BY MS. FENNELL:

14 Q. So, Mr. Miller, if you'll take a look at -- these are
15 just excerpts from the transcript. And if you can look
16 specifically at page 21. At the bottom there, the solicitor
17 is talking, and the solicitor makes a reference, on line 22,
18 to sleep apnea. Do you see that?

19 A. Yes.

20 Q. Okay. And he argues there that sleep apnea is consistent
21 with some of the other actions you took that day; is that
22 right?

23 A. Right.

24 Q. And then, on the next page, page 22, the Court -- on
25 lines 21 through 22, the Court specifically asks, "Are there

1 any medical records to verify he has sleep apnea?" Is that
2 right?

3 A. Right.

4 Q. And what -- on line 23, what does the solicitor say?

5 A. "Not that we have been provided."

6 Q. Okay. And then if you will look at page 26. I believe I
7 have provided you page 26. Do you have page 26?

8 A. Yes.

9 Q. Okay. If you'll look at lines 17 through 18, the Court
10 is, again, asking now Ms. Floyd, "Have you got medical records
11 to verify the sleep apnea?" Is that right?

12 A. Right.

13 Q. Okay. And what -- what was Ms. Floyd's response that
14 started on line 19?

15 A. "No, Your Honor. He had applied for Social Security and
16 did not have medical insurance, but he has been advised that
17 the symptoms that he had was sleep apnea and he advised that
18 to the officer because, when they were transporting him to the
19 Sheriff's Department to the jail, he was trying to figure out
20 what happened because he remembers driving down the road."

21 Q. Okay. Did I give you page 27? Okay. You can continue
22 then.

23 A. "He remembered hitting something, but until he got to his
24 house, which is right around the corner, is when he heard the
25 ambulance coming. He was not aware that he had run into

1 people (indiscernible)."

2 Q. Okay. And then lines 5 through 6, what does the Court
3 say in response to that?

4 A. "Ms. Floyd, I find that almost impossible to believe. I
5 mean, you strike three people and smash out your windshield
6 and damage the car."

7 Q. Okay. So do you -- it's clear from that, do you believe
8 -- I'll take that back now.

9 Do you believe that, if Ms. Floyd had been able to
10 provide the Court with medical records supporting your
11 diagnosis of sleep apnea, that that might have changed the
12 Court's (indiscernible)?

13 MR. MITCHELL: Your Honor, calls for speculation.

14 THE COURT: Overruled.

15 BY MS. FENNELL:

16 Q. Can you answer again?

17 A. Yes, correct.

18 Q. Okay. Do you think that would have been powerful,
19 mitigating evidence during your sentencing?

20 A. Correct.

21 Q. Now, moving to --

22 MS. FENNELL: Your Honor, may I approach the witness?

23 THE COURT: Yes.

24 BY MS. FENNELL:

25 Q. Mr. Miller, take a look at these documents. And can you

1 identify what these documents are?

2 A. Medical records.

3 Q. Okay. And are these medical records during the time that
4 you have been in SCDC?

5 A. Yes.

6 Q. Okay. And, if you will, take a look at the second page
7 of what I've provided to you. And under "Contact detail," do
8 you see a date?

9 A. Yes.

10 Q. What date do you see?

11 A. 10/29/2021.

12 Q. Okay. And under the details on that entry, can you
13 describe what -- what's under that?

14 A. "Communication comment. Late entry 10/4/21.

15 Recommendation: Sleep study diagnostic. Impression: Severe
16 obstruction sleep apnea and ADHD 111.0 (indiscernible)."

17 Q. And was that the diagnosis you received from the sleep
18 study that you had?

19 A. Yes.

20 Q. Where did you have that sleep study?

21 A. I believe it was in Columbia.

22 Q. Was it at Prisma Health?

23 A. Yes.

24 Q. And did you have that sleep study on October 5th, 2021?

25 A. Yes.

1 Q. So, then, the diagnosis came on October 29th, 2021?

2 A. Yes.

3 Q. And had you previously had a sleep study scheduled for
4 January 23rd, 2020?

5 A. Yes.

6 Q. And that was cancelled?

7 A. Yes.

8 Q. Did you have one scheduled for April 2nd, 2020?

9 A. Yes.

10 Q. That was also cancelled?

11 A. Correct.

12 Q. Did you have one scheduled on August 20 of 2020?

13 A. Yes.

14 Q. And that was also cancelled?

15 A. Yes.

16 Q. And then you ultimately -- well, strike that.

17 You had another one again scheduled on June 24th, 2021?

18 A. Yes.

19 Q. And that one was cancelled?

20 A. Correct.

21 Q. Okay. Then you ultimately had the sleep study on
22 October 5th, 2021?

23 A. Yes.

24 Q. Okay. Now, looking again at the document that I handed
25 to you, can you look at the third page of that document. And

1 in the comments -- do the comments describe that you're
2 complaining about the same symptoms regarding your sleep?

3 A. Yes.

4 Q. Okay. Again, looking at -- if you look at the
5 second-to-last page of the document packet that I gave to you,
6 if you would look under -- well, first of all, can you tell,
7 at the top, it says, "Encounter Date." What is the date on
8 the document?

9 A. Can you repeat that?

10 Q. Looking at the top of the page, what is the date -- the
11 encounter date that you see at the top of the page?

12 A. February 3rd, 2021.

13 Q. Okay. And then, if you look down under "Request
14 Details," can you read what it says under that?

15 A. "The sleep study 33. No obese. Snore. Wakes up SOB
16 and (indiscernible). Classic presentation of sleep apnea.
17 Was seeing doctor prior to incarceration but did not have
18 insurance so could not get disability or machine."

19 MS. FENNELL: At this time, I would offer this packet of
20 documents into evidence as Applicant's 1.

21 MR. MITCHELL: No objection, Your Honor.

22 THE COURT: Without objection.

23 (Applicant's Exhibit No. 1, Packet of Medical Documents,
24 was marked for identification and received into evidence.)

25 BY MS. FENNELL:

1 Q. Now, Mr. Miller, moving on to your final allegation, that
2 allegation is ineffective assistance of counsel for failing to
3 discuss with Applicant the viability of a Motion to Suppress
4 Evidence of a black box in Applicant's vehicle. Did you ever
5 discuss with Ms. Floyd the evidence the State had against you?

6 A. Can you repeat that?

7 Q. Did you ever discuss with Ms. Floyd the evidence the
8 State had against you?

9 A. Yes.

10 Q. And did she -- did she go over what evidence they had
11 against you?

12 A. Yes.

13 Q. And did she -- well, did you, in particular, discuss
14 whether any of that evidence could be excluded?

15 A. No.

16 Q. And what is the significance of the black box to your
17 case?

18 A. They were saying that I was speeding, going 59 miles per
19 hour in a 40-mile-per-hour lane, and the black box could have
20 -- would have excluded that. They wouldn't have added extra
21 charges of reckless homicide. They added those charges to
22 cover me because they say I was speeding 20 miles over.

23 Q. And did you ever discuss with her her ability to make any
24 type of motion to suppress that evidence?

25 A. No.

1 Q. Do you think, if she had had those discussions with you,
2 that it would have affected your decision on whether to enter
3 into a guilty plea?

4 A. Yes.

5 Q. Did Ms. Floyd ever disclose to you what pretrial
6 investigation she had done?

7 A. No.

8 Q. Are you aware of any pretrial investigation that she did?

9 A. No.

10 Q. The scene -- did you ever go back to the scene of the
11 incident?

12 A. No.

13 Q. Do you know if Ms. Floyd went to the scene of the
14 incident?

15 A. I don't know.

16 Q. So she never -- she never told you what she had done to
17 investigate?

18 A. No, ma'am.

19 Q. So she never offered to you what she would present in
20 your defense if you went to trial?

21 A. No, ma'am. She said I don't have a defense.

22 Q. Okay. So, Mr. Miller, have we gone over all of the
23 allegations that you wanted to move forward on today?

24 A. Yes.

25 Q. And you understand that we are going to seek an expert

1 opinion as to the allegations to support a diagnosis on the
2 day of the incident?

3 A. Yes.

4 Q. Okay. One other question: During the plea hearing, you
5 have testified today that there was a delay in the time period
6 between when you called Ms. Floyd to come into her office and
7 when you were able to go to her office. What was the reason
8 you weren't able to immediately go into her office?

9 A. Because she didn't have time. She told me to come in
10 when she had an available appointment time.

11 Q. And during the plea hearing, was the -- was the issue
12 raised that you consciously delayed in turning yourself in to
13 avoid the consequences of potentially being tested for being
14 under the influence?

15 A. Could you repeat that?

16 Q. During the plea hearing, was the issue raised that the
17 delay in you turning yourself in was attributable to the fact
18 that you were trying to avoid being tested for being under the
19 influence?

20 A. Yes.

21 Q. During your plea hearing, did Ms. Floyd ever bring up the
22 fact that the delay was attributable to her schedule?

23 A. No.

24 Q. Do you think that would have benefited you in mitigating
25 your sentence?

1 A. Yes.

2 Q. I don't believe I have any questions -- additional
3 questions for you, Mr. Miller. Please answer any questions
4 Mr. Mitchell has for you.

5 THE COURT: All right, Mr. AG, your witness.

6 MR. MITCHELL: May it please the Court, Your Honor.

7 THE COURT: Yes.

8 CROSS-EXAMINATION

9 BY MR. MITCHELL:

10 Q. Mr. Miller, you pled guilty in this case; correct?

11 A. Correct.

12 Q. And during your guilty plea, the judge asked you to
13 explain what happened, and he asked you, "Did you fail to stop
14 and render aid to the survivor, Mr. Michael Lowe (ph), as
15 required by the law?" And you responded, "Yes, sir." Do you
16 remember that?

17 A. Yes.

18 Q. And do you remember the Court asking you that, "Did you
19 operate a vehicle in a reckless disregard for the safety of
20 others, causing fatal wounds to Robert Clark and Anthony John
21 Redmond as a result of the motor vehicle wreck?" And you
22 responded, "Yes, sir." Do you remember that?

23 A. Yes.

24 Q. And do you remember when the Court asked you, "Did you
25 also fail to stop and render aid to the survivor" -- excuse

1 me -- and "Did you operate your vehicle in a reckless manner
2 in violation of the laws of this state, and as a result of
3 that reckless operation of the vehicle, you had a wreck which
4 caused the death of two people, Anthony John Redmond and
5 Robert Clark; you failed to stop and render aid and/or give
6 information and/or assistance to them, as well as the person
7 who sustained the injuries, Michael Lowe. Is that what you
8 did?" And you responded, "Yes, sir." Do you remember that?

9 A. Yes.

10 Q. Do you remember also telling the plea court that you were
11 completely satisfied with the services of your attorney,
12 Ms. Floyd?

13 A. Yes.

14 Q. And, specifically, you told the plea judge that Ms. Floyd
15 had enough time to spend with you and investigate all aspects
16 of this case; correct?

17 A. Yes.

18 Q. And you never had a medical diagnosis of sleep apnea at
19 the time of your guilty plea; correct?

20 A. No.

21 Q. And, in fact, as you just testified, you didn't have
22 health insurance at the time either; correct?

23 A. Correct.

24 Q. And during the guilty plea, the solicitor went over your
25 extensive driving record. Did you have an extensive driving

1 -- extensive history of driving recklessly, Mr. Miller?

2 A. Yes.

3 Q. In fact, you had a prior hit-and-run; correct?

4 A. Yes.

5 Q. And you also had a prior speeding through a construction
6 zone; correct?

7 A. Yes.

8 Q. And, Mr. Floyd [sic], do you remember -- you testified at
9 your plea hearing; correct?

10 A. Correct.

11 Q. And do you recall that you gave -- in your mitigation,
12 you apologized to the victims, that you panicked and left the
13 scene of a collision?

14 A. Yes.

15 Q. Do you recall the plea court asking you about what
16 medication you were on before you entered your guilty plea?

17 A. Yes.

18 Q. And you told the plea judge that the medication was not
19 affecting your ability to understand the proceeding; correct?

20 A. Yes.

21 MR. MITCHELL: No further questions, Your Honor.

22 THE COURT: Any redirect?

23 MS. FENNEL: No, Your Honor.

24 THE COURT: All right. Thank you, sir. You can step
25 down.

1 Call your next witness.

2 MS. FENNELL: Yes, Your Honor. Applicant would call
3 Ms. Sheila Miller.

4 THE COURT: All right, Ms. Sheila.

5 All right. We'll let her get back, unless you've got
6 somebody else.

7 MS. FENNELL: I don't, Your Honor. She's the last
8 witness.

9 THE COURT: Okay.

10 (Pause in the proceedings.)

11 THE COURT: Are you Ms. Sheila?

12 MS. MILLER: Yes, sir.

13 THE COURT: We're going to swear you in and I'm going to
14 have you have a seat up here, if that's okay. All right?

15 THE CLERK: If you'll place your left hand on the Bible
16 and raise your right hand, please.

17 SHEILA MILLER,
18 after having been duly sworn, was examined and testified to as
19 follows:

20 THE CLERK: Yes, ma'am. If you'll just have a seat over
21 here in the witness stand.

22 THE COURT: Deputy, if you can help her out as best you
23 can.

24 Watch your step, young lady.

25 I'm surprised y'all don't have ramps in this courthouse

1 for witnesses. Just an FYI.

2 All right. You're good to go?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right.

5 MS. FENNELL: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. FENNELL:

8 Q. Ms. Miller, what is your relationship with Lonnie Miller?

9 A. He's my son.

10 Q. And were you with Mr. Miller on March 13th, 2017?

11 A. Yes, ma'am.

12 Q. And what happened on that date?

13 A. Well, he had called and he was like, "Ma, I don't know
14 what happened there. Something is going on." He was like, "I
15 might have hit somebody or hit something."

16 I said, "Well, maybe you hit a deer." You know?

17 But then, come to find out, that's what it was.

18 Q. Okay. And so did he come to your house that day?

19 A. I met him over at his house.

20 Q. Okay. And did you contact Ms. Maureen Floyd?

21 A. Yes, ma'am.

22 Q. And how did you know -- did you know Ms. Floyd?

23 A. I didn't know her. I just -- somebody had gave me some
24 lawyers, you know and I just picked her name out, and then
25 that's who he called.

1 Q. Okay. And when you called her, what happened?

2 A. Well, I told her I needed her. I explained that my son
3 was in an accident. So we didn't hear anything, and we waited
4 about -- we had to go see her about 2:00. And I told her how
5 much we had, and I told (indiscernible) would have to pay her
6 and stuff. I gave her what I had.

7 Then I would give her something every month. But my
8 daughter had gave her her income tax (indiscernible) and no
9 money had got on there. And you can check that year; she
10 didn't get any income tax money, so I guess we couldn't pay.

11 Q. Now, do you recall what time you called Ms. Floyd on that
12 date?

13 A. We finally called her about 12:30, 1:00, something like
14 that.

15 Q. Do you recall what time you went to her office?

16 A. We had to meet her at 2:00.

17 Q. Okay.

18 A. I believe, if I remember that.

19 Q. Okay. And did you -- so you met with her that day with
20 Mr. Miller?

21 A. Yes, ma'am.

22 Q. After that day, did you ever speak with Ms. Floyd again?

23 A. Yes, ma'am, I did.

24 Q. What conversations did you have with her after that day?

25 A. Okay. First of all, quite naturally, she wanted some

1 money. But she was telling us that it was looking okay, you
2 know, and stuff. She was saying that they hadn't tested him
3 for anything, for drugs or anything. So she said everything
4 might be all right because they didn't, you know, drug-test
5 him or nothing. So we were just talking about what happened.

6 Q. Did you ever discuss with her whether Mr. Miller was
7 going to go to trial or enter into a guilty plea?

8 A. I believe I asked her, you know, "Why did he plead
9 guilty?" I mean, it was an accident, I know. I'm very sorry.
10 But I felt like she was telling him to say to take a guilty
11 charge or whatever. I believe she was telling him to just go
12 ahead and plead guilty.

13 Q. Okay. And did you ever discuss with her any potential
14 defenses that Mr. Miller might have?

15 A. What? About the plea?

16 Q. Or anything.

17 A. Yes, ma'am. I told her (indiscernible) about his back.
18 You know, he had anxiety real bad. And I think he had sleep
19 apnea because he was falling asleep everywhere, talking to
20 him. I had to go in the bathroom, and he's in the bathroom
21 asleep. I've had to bathe my grandchild; he was in the tub
22 sleeping. I remember one time he was outside by the car, and
23 he was standing next to the car and nodded out. I had to go
24 out there and, you know, call him.

25 Q. Okay. So this was something you were seeing Mr. Miller

1 do?

2 A. I saw it, yes, ma'am.

3 Q. Okay. And how long had he been doing that?

4 A. I don't know his age or whatever, but I know he was -- a
5 long time. He was going to sleep -- just falling asleep.

6 Q. Did Ms. Floyd ever come to you about funding for any type
7 of evaluation for Mr. Miller?

8 A. I can't recall that, no.

9 Q. Did you ever have any discussion with her about seeking
10 any independent evaluation?

11 A. Yes.

12 Q. What discussion did you have?

13 A. I was telling her that he had sleep apnea. You know? I
14 believe he had it because he was falling asleep everywhere.
15 He fell asleep in the car and he's sitting right there in the
16 car. And he'll be -- he'll fall asleep. And I knew it was
17 something wrong because he kept falling asleep everywhere.
18 He'd be sitting on the sofa, talking, and he'd get quiet, and
19 he'd be over there asleep.

20 Q. Okay. Okay. I don't believe I have any additional
21 questions for you, but please answer any questions
22 Mr. Mitchell has for you.

23 THE COURT: All right.

24 MR. MITCHELL: The State has no questions for this
25 witness.

1 THE COURT: All right. Thank you, ma'am. Now you've got
2 to walk back down.

3 THE WITNESS: I know.

4 THE COURT: They're going to help you.

5 Y'all come help her.

6 All right. Anything further from the applicant?

7 MS. FENNEL: No, Your Honor.

8 THE COURT: All right. With the exception of the record
9 being left open from my previous ruling, anything else?

10 MS. FENNEL: No, Your Honor.

11 THE COURT: All right. Thank you.

12 Yes, sir?

13 MR. MITCHELL: Your Honor, I believe -- could we have a
14 quick bathroom break ---

15 THE COURT: Yeah, that's fine.

16 MR. MITCHELL: --- before we proceed?

17 THE COURT: All right. Let's take about a five-minute --
18 seven -- maybe 10-minute recess.

19 (A recess was taken from 11:39 a.m. to 12:01 p.m.)

20 THE COURT: All right. The State can call your next
21 witness.

22 MR. MITCHELL: May it please the Court, Your Honor.

23 THE COURT: Yes.

24 MR. MITCHELL: Your Honor, the State calls Ms. Maureen
25 Floyd to the stand.

1 THE COURT: Ms. Floyd, just come on around here, and I
2 think they'll have somebody come up for you.

3 THE WITNESS: Thank you.

4 MAUREEN FLOYD,
5 after having been duly sworn, was examined and testified
6 to as follows:

7 THE COURT: Thank you very much.

8 All right.

9 DIRECT EXAMINATION

10 BY MR. MITCHELL:

11 Q. Good morning -- or good afternoon. No, it's still
12 morning.

13 Good morning, Ms. Floyd. How are you?

14 A. Good. How are you?

15 Q. Will you please state your name for the record.

16 A. Sure. It's Maureen O'Leary Floyd.

17 Q. And, Ms. Floyd, did you represent Mr. Miller in this
18 underlying case?

19 A. I sure did.

20 Q. Will you explain how you came to represent Mr. Miller.

21 A. Yes. I had gotten a call that they wanted to come and
22 see me at the office. I don't know for sure -- and I honestly
23 don't remember, it's been so long -- but I think we had done
24 some work for the family before. And they took up the entire
25 conference room and they had small children. And so I brought

1 Mr. Miller into my office and met with him there.

2 Q. And do you recall what time they contacted you?

3 A. No, but I saw them as quickly as I could.

4 Q. And after they came to your office, did Mr. -- did you
5 contact Mr. Strom Thurmond?

6 A. Yes, I did. He was the solicitor at the time, and there
7 was a really heightened panic going on looking for Mr. Miller,
8 and I was fearful that he may be harmed if he drove himself to
9 Aiken.

10 So I drove Mr. Miller to Aiken to go to the Sheriff's
11 Department, and Solicitor Thurmond cleared the way for us to
12 turn him in at the Sheriff's Department.

13 Q. And how soon after them coming to your office did you
14 call Solicitor Strom Thurmond?

15 A. As soon as -- as soon as I got the details.

16 Q. So pretty --

17 A. Very quickly.

18 Q. And going back, you don't -- you said it was as quickly
19 as you could between the phone call and when they came to your
20 office?

21 A. That's right.

22 Q. Do you have the time frame or was it --

23 A. Less than an hour.

24 Q. Less than an hour?

25 A. The incident was all over the radio and all over the

1 media.

2 Q. And after Mr. Miller turned himself in, he was charged,
3 I'm assuming?

4 A. Yes.

5 Q. In preparation for this case, did you meet with
6 Mr. Miller between the time he was arrested and the guilty
7 plea?

8 A. Oh, several times.

9 Q. So more than twice?

10 A. Oh, definitely.

11 Q. And during the meetings, did you review all the discovery
12 and the State's evidence against him?

13 A. I did. And this happened on March the 13th -- I remember
14 because it was my anniversary -- March the 13th of 2017. And
15 my husband and I mapped out the route that Mr. Miller would
16 have taken down Highway 421 the next morning at the time that
17 this accident happened so we could see the position of the sun
18 and to see if the sun were in his eyes when he was driving on
19 the road.

20 And, as I recall, he went under an overpass, and it was a
21 straight shot to -- sight-wise from that height. You know,
22 the overpass was up higher than where the wreck happened, and
23 so you could see right straight down 421 where the people
24 would have been working. There was no sun in my eyes. I
25 actually asked my husband to drive so I could get a better

1 view.

2 Q. So, as part of your investigation, you did go to the
3 crime scene?

4 A. Yes, I did. And I reviewed the discovery and I reviewed
5 it with him, and he told me what his wishes were and...

6 Q. Would you briefly, to the best of your recollection,
7 explain just the facts in this case or what the State's
8 evidence against him was?

9 A. The accident happened on the right side of 421 going
10 between -- on the Augusta side going towards Aiken. And there
11 were three workers there, two of whom that were killed and one
12 was injured slightly.

13 After the collision, Mr. Miller, who said he was -- at
14 first, when I first talked to him, he was very, very upset,
15 and it took a few minutes to get the story out. But he left
16 there and went a thousand yards. I mean, not very far off and
17 -- to his girlfriend's house, and he covered up the car that
18 had blood on it. And I believe he called Ms. Miller and she
19 got involved.

20 And I don't remember if she went and picked him up or if
21 he came over to her, but they lived in the Harrisburg section
22 of Augusta, which is off of -- excuse me, off of
23 Walton (ph) Way. And I did recall going to their home and
24 talking with them and interviewing all of them.

25 Q. And do you remember if any statements were made in this

1 case?

2 A. I advised my client not to make any statements, but then
3 contrary to my advice, he talked about it to the deputy who
4 carried him from the Sheriff's Department to the jail, and it
5 was videotaped. I advised him not to make any statements over
6 the phone about this at all to family or anyone else, and he
7 talked about it, and they tape-recorded it, and they told him
8 they were going to tape-record it. They tape-recorded the
9 conversation between him and his mother. And those two
10 incidents did not help his case in any way.

11 Q. They were not benefit -- they were not exculpatory
12 statements?

13 A. They were not, no.

14 Q. And do you recall the black box in this case?

15 A. Yes.

16 Q. And do you remember, in your review of the evidence, any
17 admissibility issues with the black box?

18 A. No, they had a search warrant. There was nothing wrong
19 with that.

20 And Mr. Miller and I talked about everything relating to
21 the accident and what happened. And, you know, I was trying
22 -- when I went to the scene of the crime, you go down 421; I
23 think we did the trip two or three times down. I was trying
24 to figure out what happened. You know, how could you drive
25 that fast down that road and just happen to hit those people?

1 And he didn't brake his brakes. He must have fallen asleep.
2 I was pretty -- pretty convinced of that. He must have fallen
3 asleep.

4 Q. There was evidence that, after hitting the victims in
5 this case, he did -- was able to swerve out of the way of the
6 construction vehicle; correct?

7 A. Right.

8 Q. So, presumably, he would have been awake at that time?

9 A. Right.

10 Q. And then after he left the scene, you testified he
11 covered up his car?

12 A. Right. It was just a very just short distance to his
13 girlfriend's house, and he was able to -- right before that
14 happened, ten minutes before the wreck happened, he, you know,
15 had dropped the kids off at school, and he went through the
16 Burger King drive-through and got breakfast. And within ten
17 minutes, the wreck happened. So he was able to do all that.

18 Q. And pay in exact change; correct?

19 A. Right.

20 Q. Ms. Floyd, there was testimony regarding a -- you were
21 ineffective for failing to request a competency evaluation.
22 Did you observe any competency issues with Mr. Miller during
23 your representation of him?

24 A. No. I was admitted to practice law in 1985, and at one
25 point, the Augusta Chronicle said I was the most -- I was the

1 busiest attorney -- trial attorney in Augusta. And that only
2 happened because one of my partners became judge, and I got
3 his caseload also.

4 But I had an opportunity to observe thousands, not only
5 as a prosecutor but as a defense attorney, of clients, and I
6 saw nothing in Mr. Miller that caused any concern. He did say
7 he suffered from anxiety. He told me he took Buspar for that.
8 He never asked for a competency evaluation.

9 As to the issue of sleep apnea, he told me he thought he
10 had sleep apnea, but he had no medical records to back it up.
11 I read the transcript this morning, and Judge Early inquired
12 about that, and he admitted that he had no records.

13 He never told me, ever, that he -- any of this passing
14 out in the bathroom or the bathtub or had a wreck turning left
15 into his mother's house while driving. I don't see how that
16 would have helped him at all in this case if it were true
17 because he would have known not to drive with his record.

18 And as long as his record was for driving problems -- he
19 was on probation, I guess, for the drug charge in Augusta. As
20 long as his record was, he had a valid license the day of this
21 wreck and he was allowed to drive. You know, hearing what
22 I've heard today, if he knew that he fell asleep at the wheel,
23 why was he driving?

24 Q. Right. So not only are you hearing that for the first
25 time today but those -- those stories about him falling asleep

1 at the wheel, they would have been beneficial more for the
2 State than the defense; correct?

3 A. Absolutely.

4 MS. FENNEL: Objection.

5 THE COURT: Hang on. Hang on.

6 What's your objection?

7 MS. FENNEL: Leading.

8 THE COURT: Objection overruled.

9 A. It definitely would not have helped the defense at all.

10 BY MR. MITCHELL:

11 Q. And he never asked you for -- to get an evaluator for
12 sleep apnea?

13 A. No, he did not.

14 Q. Would a diagnosis of sleep apnea have been beneficial?

15 A. Well, you have to say this, you know, if he had revealed
16 to the doctor -- now I'm talking as someone who has practiced
17 law for (indiscernible) years, if he revealed to the doctor
18 that he would fall asleep while he was driving before this
19 incident, how would -- theoretically, how would that have
20 helped the defense?

21 But if you look at the -- if you look at the transcript,
22 Judge Early says, "I don't believe you did this
23 intentionally." He told that to one of the witnesses.

24 When I called the mother as a witness, when it became an
25 issue about when he came to see me and why the delay, she says

1 to the Court that he wanted to spend more time with his family
2 because this was the last time they were going to see him.

3 Q. So that was Ms. Miller's explanation for the delay in
4 contacting you or contacting anyone after the incident?

5 A. Right, right.

6 I don't recall ever, in all the years I've practiced law,
7 ever driving with a client to drop them off at the jail, and I
8 thought it was so important to protect his rights and his
9 safety to do that and I did it.

10 Q. And, Ms. Floyd, in your mitigation, did you have any
11 witnesses testify on behalf of Mr. Miller?

12 A. Yes. At the sentencing?

13 Q. Yes, ma'am.

14 A. Yes. I had his mother and his sister. Of course he had
15 a statement that he made, and I made comments, you know,
16 (indiscernible).

17 Q. Ms. Floyd, you also mentioned his prior driving record.
18 The judge seemed fairly displeased about his driving record;
19 correct?

20 A. Right.

21 Q. In fact, he brought it out during the sentencing --

22 A. (Indiscernible).

23 Q. That was a major consideration of his in getting this
24 sentence?

25 A. It was because, you know, the hit-and-run and the

1 speeding through a construction zone, and all the other
2 problems, you know, he was having. He was remorseful. He was
3 sorry for what had happened, and he wanted to enter a plea.

4 Q. But the fact that this was intentional or not was never
5 really a part of this case; correct?

6 A. Pardon me?

7 Q. Whether this was intentional or not was never really a
8 part of this case.

9 A. No, because -- because a person was killed in an
10 accident, and he knowingly left the scene of the crime.

11 Q. And will you explain your discussions with Mr. Miller
12 regarding trial versus guilty plea?

13 A. Oh, yeah, we went through all of that. He was
14 well-versed in moving through the system. You know, he had
15 had a lot of experience based on his record. He knew exactly
16 what we were talking about, and he wanted to enter a plea. He
17 wanted to ask for mercy.

18 As Judge Early said, he's facing 71 years. And he gave
19 an excellent (indiscernible) to the Court. He apologized to
20 the family, and I believe he came across as sincere. And his
21 mother was even better. She so passionately, you know...

22 And his sister -- and I think Judge Early realized -- and
23 he says, "I believe you're remorseful for what you did, but
24 the law requires that, when you don't stop and render aid when
25 you've killed some people, you're going to be punished."

1 And he understood that because I -- in fact, in his
2 conversation with his mother on the phone with the tape
3 recorder, it's my recollection that he says to his mother,
4 within days of being arrested, "They're telling me, had I not
5 left the scene, I wouldn't be in very much trouble."

6 So he understood the significance of leaving the scene of
7 the crime and not to tell his mother, against my advice not to
8 talk to anyone, your family. I gave him the standard, you
9 know, "We need to know what's going on and we need to talk to
10 the client," and I always say, "You may want to know but you
11 don't need to know." You're not to talk to the client over
12 the phone, especially when it's being tape-recorded.

13 So he was aware very early on that his troubles came from
14 leaving the scene.

15 Q. And he was aware of the pitfalls in this case as well?

16 A. Oh, definitely. You know, I honestly can tell you now
17 that I've been -- now that I've retired, there's really
18 nothing more exciting and wonderful and fantastic for me than
19 trying cases. I loved doing it.

20 And if there was any way I thought that trying this case
21 would have helped Mr. Miller, I would have advised him to do
22 it. And it would not help him in the least with his record,
23 the statements that he made, and the evidence in this case.

24 You know, the fact that he secluded the vehicle, covered
25 it with a tarp or a blanket or something. And it just isn't

1 going to fly if you don't know that you've hit something like
2 a person, when there's blood and broken glass inside your car.

3 Q. So based --

4 A. We talked about all that.

5 Q. So prior to the plea, he was aware of the process of
6 going to trial, the charges against him, and the consequences
7 and everything?

8 A. That's correct.

9 Q. And based on your experience and years of practice and
10 the evidence in this case, do you believe it was in his best
11 interest to plead guilty?

12 A. I do.

13 Q. And did Mr. Miller ever indicate a desire to proceed to
14 trial?

15 A. Never.

16 Q. I've already touched on it.

17 A. Never.

18 Q. Ms. Floyd, thank you very much. I believe that's all the
19 questions I have.

20 THE COURT: All right. Ms. Fennell, your witness.

21 MS. FENNEL: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. FENNEL:

24 Q. Now, Ms. Floyd, you agree that you did not get him -- get
25 Mr. Miller evaluated for sleep apnea; is that right?

1 A. I did not.

2 Q. Did you get him evaluated for anything?

3 A. No.

4 Q. Okay. And do you recall making the statement during the
5 plea hearing that Mr. Miller fell asleep?

6 A. Yes.

7 Q. And do you recall making the statement that he suffers
8 from sleep apnea?

9 A. I do.

10 Q. And do you recall the Court asking if you had any records
11 to support that?

12 A. Right. And there were no records. As you found out when
13 you try to get some, there are no records that he was ever
14 diagnosed with sleep apnea, and my client told me that there
15 were no records.

16 Q. Okay. But you made the decision not to have him
17 evaluated just by him reporting symptoms that he had?

18 A. No, he did not report the symptoms that he testified to.
19 He told me that he had sleep apnea.

20 Q. Okay. And that's what you reported to the Court?

21 A. That's what I reported to the Court.

22 Q. Okay. And it was clear during the plea hearing that the
23 judge was considering the fact that there was an allegation
24 that he had sleep apnea?

25 A. Yes.

1 Q. Okay.

2 A. And I remember Judge Early saying something to the effect
3 -- that isn't in the transcript -- "I actually have sleep
4 apnea and I don't run over people." It's not in the
5 transcript. (Indiscernible) this morning.

6 Q. And --

7 A. And I don't know how to explain it but Judge Early even
8 says in the transcript that "I don't believe he did this on
9 purpose." And so I took that to mean and I still take it to
10 mean that he believes that my client fell asleep.

11 Q. And you -- you testified that, even if he had sleep
12 apnea, it would not be a defense to hit-and-run?

13 A. To hit -- to leaving the scene?

14 Q. Right.

15 A. Not if he was awake after -- not if he woke up.

16 Q. Okay.

17 A. And he hid the car and he concealed the car, the blood,
18 the bloody car, and the fact that, at one point, you know,
19 there was glass inside his car.

20 Q. And isn't it clear from the plea transcript that -- that
21 the judge was leaning towards the fact that Mr. Miller was
22 consciously avoiding turning himself in for a certain time
23 period?

24 A. He was asking questions about did he do it, and I
25 defended Mr. Miller and said I saw no signs of that in dealing

1 with him. And I think someone -- I think the State objected
2 at that point.

3 But, you know, Mr. Thurmond didn't make an issue out of
4 it because he knew I talked to him as quickly as I could to
5 get him over there. And by the time he had come to see me,
6 like I said, there would have been metabolites -- and I even
7 say in the plea transcript, there would have been metabolites
8 of cocaine, marijuana (indiscernible). There would have been
9 -- if they believe that he was intoxicated, they could have
10 taken tests.

11 Q. And they did not take any.

12 A. And they did not take tests.

13 Q. And so would you agree that, even if sleep apnea wouldn't
14 have been a defense, based on the Court's comments during
15 sentencing, that, if you have been able to provide medical
16 records, that that would have been a mitigating factor in his
17 sentencing?

18 A. Absolutely not, because there were no medical records.
19 They were not medical records that existed prior to this, and
20 I was not aware of him falling asleep while driving or falling
21 asleep on the toilet or falling asleep in the bathtub. None
22 of that was explained to me by him or his mother. Okay? So I
23 had no way of knowing that that was an issue.

24 But if there were an issue -- and I keep looking
25 (indiscernible), which is always 20/20 vision. If it were an

1 issue and he had relayed that to the doctor doing the testing,
2 that he had fallen asleep driving before, that would have been
3 like a knife in our heart that he was reckless by driving,
4 knowing that he falls asleep while driving. Okay?

5 And so praise the Lord that we didn't have a sleep test
6 because he -- if he had told that to the doctor, that would
7 have been -- that would have taken away, I think, some of his
8 remorse and culpability. It would have upped his culpability
9 because he knew he shouldn't have been driving if he --

10 MS. FENNELL: I'm going to object to this testimony as
11 non-responsive.

12 THE COURT: It's your question, but overruled.

13 BY MS. FENNELL:

14 Q. Okay. So you made that -- in hindsight, you're looking
15 back, and that is the reason that you didn't have him
16 evaluated for sleep apnea?

17 A. I don't -- I don't understand your question.

18 Q. Okay. Let me rephrase that. So your testimony today is
19 that -- well, strike that.

20 Today, you have learned -- you have heard his testimony
21 and the testimony of his mother regarding how sleep apnea
22 affected him. And so --

23 A. No, I don't agree with that, because they can't make that
24 -- they're not capable of making that diagnosis.

25 Q. That's not my question.

1 A. Yeah, your question was whether or not I'm aware now that
2 there is problems related to their understanding that he has
3 sleep apnea.

4 Q. That's not my question.

5 A. They didn't --

6 THE COURT: Ma'am, let her ask a question.

7 BY MS. FENNELL:

8 Q. My question is: You have heard the testimony today of
9 the symptoms he was exhibiting that they testified to today
10 regarding his sleep apnea. Did you hear the testimony?

11 A. I heard it today, yes.

12 Q. Okay. And so you're basing your decision not to have him
13 evaluated based on testimony that you heard today?

14 A. No. I didn't have him evaluated because I was not aware
15 of those other problems until today. And, you know, if we're
16 going into the ethers of hypotheticals, if I had gotten him
17 evaluated and he had told the doctor that he had fallen asleep
18 driving before, how would that possibly have helped him?

19 I mean, you can extrapolate, you know, hypotheses as much
20 as you want, but if I don't know that information, you know,
21 seven years later asking me what I would have done, I would
22 have talked to -- I would have talked to his mother. I would
23 have talked to him about it. But there were no medical
24 records. He had never been diagnosed with sleep apnea. This
25 is what he had told me.

1 Q. Thank you, Ms. Floyd. I don't believe I have any further
2 questions.

3 THE COURT: Any redirect?

4 MR. MITCHELL: Just very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. MITCHELL:

7 Q. Ms. Floyd, you -- did you explain the elements of the
8 offenses?

9 A. Yes.

10 Q. And did Mr. Miller ever ask -- did Mr. Miller ever ask
11 for a sleep apnea evaluation?

12 A. Never.

13 Q. Do you believe a sleep apnea evaluation would have been
14 relevant to the elements of hit-and-run?

15 A. No.

16 MR. MITCHELL: No further questions, Your Honor.

17 THE COURT: Anything else?

18 MS. FENNELL: Nothing further.

19 THE COURT: All right. Thank you, ma'am. You may step
20 down.

21 THE WITNESS: Thank you.

22 THE COURT: The State can call its next witness.

23 MR. MITCHELL: Your Honor, the State has no further
24 witnesses.

25 THE COURT: All right. Thank you.

1 Anything further from the applicant at this time?

2 MS. FENNELL: Your Honor, just a brief closing.

3 THE COURT: Yeah, all right. Yes, ma'am.

4 MS. FENNELL: Thank you.

5 CLOSING ARGUMENT ON BEHALF OF THE APPLICANT

6 MS. FENNELL: Your Honor, a defendant who pleads guilty
7 on the advice of counsel may only attack the voluntary and
8 intelligent character of the plea by showing that counsel's
9 representation fell below an objective standard of
10 reasonableness and that there is a reasonable probability
11 that, but for counsel's errors, the defendant would not have
12 pleaded guilty and would have insisted on going to trial.

13 In this case, there has been substantial evidence and
14 medical records supporting the fact that Mr. Miller has a
15 diagnosis of sleep apnea. The testimony and the transcript
16 reflect that everyone knew that he was raising his hand and
17 saying, "Hey, I have sleep apnea."

18 Knowing that, Ms. Floyd still did not have him evaluated,
19 and I think, you know, knowing that he had that potential
20 issue and that it could have been used in providing him advice
21 on whether to enter a guilty plea or to go to trial and that
22 any information could have been used as a mitigating factor
23 during his sentencing, I think a reasonable attorney would
24 have explored that before moving forward with a guilty plea.

25 I think there is sufficient evidence presented today that

1 that failure to take that step was prejudicial to Mr. Miller,
2 and for that reason, I believe that he has met the burden of
3 proof.

4 THE COURT: All right. A couple of questions: How could
5 it be prejudicial to him if -- assuming your argument is
6 correct that there is some -- counsel's performance was
7 deficient by not having him evaluated based upon him saying
8 that -- allegedly telling her that he had sleep apnea although
9 he had never seen a doctor for sleep apnea?

10 Assuming that the first prong of the Strickland test was
11 met by you, how was that prejudicial? Because as the
12 witnesses testified, if it was shown, yeah, he does have a
13 tendency to fall asleep when he's at the wheel, wouldn't that
14 have made the circumstances a lot worse for your client?

15 MS. FENNELL: I don't necessarily believe so, because I
16 -- if you read -- you know, a reading of the transcript shows
17 that the sentence was clearly -- the judge took into
18 consideration that there was this time frame of delay in order
19 to avoid being tested for being under the influence. So I
20 think, while a sleep apnea evaluation wouldn't have negated
21 that cloud that was, you know --

22 THE COURT: That he fell asleep going down the hill or
23 whatever and hit the people and didn't realize that he had hit
24 people but he just kept going and didn't realize he had hit
25 people until he heard the ambulance or saw the ambulance go

1 by. I read all that.

2 MS. FENNELL: I think it would have perhaps settled the
3 judge's mind that he was under the influence. It would have
4 been a mitigating factor to show that he wasn't under the
5 influence. I understand what you're saying.

6 THE COURT: Do you see where I'm getting at?

7 MS. FENNELL: It's not a defense, I --

8 THE COURT: The crime is not the hitting and killing of
9 the people. That's the reckless homicide for which the
10 recommendation was concurrent sentences. Okay? That's 10
11 years apiece for that.

12 The crime for which he was sentenced, the lead indictment
13 of 25 years, was for leaving the scene of an accident where
14 people were injured or there was some (indiscernible). So
15 it's what happened after he left that is an issue here. You
16 understand -- do you follow me?

17 MS. FENNELL: I do.

18 THE COURT: So the fact that he had -- whether he had or
19 not a diagnosable medical condition of sleep apnea, how is
20 that relevant to the underlying crime of leaving the scene of
21 an accident?

22 MS. FENNELL: I think it's relevant to the overall
23 representation of Mr. Miller.

24 THE COURT: Okay. All right. Got it. Anything else?

25 MS. FENNELL: No, Your Honor.

1 THE COURT: All right. Thank you.

2 Anything from the State?

3 MR. MITCHELL: Just briefly, Your Honor.

4 CLOSING ARGUMENT ON BEHALF OF THE STATE

5 MR. MITCHELL: Your Honor, Mr. Miller has failed to meet
6 his burden showing that Mrs. Floyd was ineffective in this
7 case.

8 As an initial matter -- this would go to all
9 allegations -- Mr. Miller has failed to show prejudice just
10 based on Mrs. Floyd's testimony that he had never had any
11 indication of wanting to go to trial and this was a guilty
12 plea from the beginning. Hill v. Lockhart says, in the
13 context of guilty plea, to show prejudice, you must show that
14 he would have proceeded to trial.

15 For ineffective or failing to -- to get a sleep apnea
16 evaluation, I think what she said just now pretty much covers
17 it, but deficiency is what a reasonable attorney would do and
18 would any reasonably competent attorney take the path that
19 counsel would have taken in their particular case.

20 Here, sleep apnea is not a relevant defense to
21 hit-and-run. The cause of the collision is not a relevant
22 defense. So why would a reasonable attorney investigate and
23 argue something that is not a defense to any element of the
24 crime?

25 So I think that would kind of go to deficiency and

1 prejudice, that he can't be prejudiced because investigating
2 this wouldn't help his defense of hit-and-run and also to
3 deficiency because how can you be deficient in investigating
4 something that's not beneficial to the defense?

5 Furthermore, Your Honor, failure to request competency
6 evaluation, Ms. Floyd said that she had no indication that he
7 was mentally incompetent, and the case law is clear that, as
8 to the deficiency prong under Strickland, an attorney may
9 reasonably rely upon his or her own perception of the
10 defendant and whether or not they need to be mentally
11 evaluated. Ms. Floyd testified she saw none of that.

12 Furthermore, Mr. Miller has presented no evidence to the
13 Court beyond his own self-serving testimony that he had any
14 sort of mental incompetency issues. Didn't hear any evidence
15 of that at the time of trial -- at the time of the plea,
16 rather.

17 With regards to the admissibility of the black box, there
18 was no -- there was no evidence presented to the Court from
19 the applicant that -- that this black box would have been
20 admissible at trial. Ms. Floyd testified that she saw no
21 admissibility issues regarding it.

22 And for failing to present an adequate mitigation,
23 Ms. Floyd gave an in-depth mitigation presentation. This is
24 -- Your Honor, you have been on the bench a while. This is an
25 80-page -- almost an 80-page plea transcript. That's rather

1 long. She had two witnesses speak on his behalf and a
2 statement was read by Mr. Miller.

3 Also, going to the argument of sleep apnea or medical
4 records would have helped in mitigation, I don't think there's
5 any evidence that the record -- in fact, during the
6 sentencing, the judge, when he was explaining -- right before
7 he's about to hand down the sentence -- his reasonings for it.
8 He described the tragic and severe nature of the collision and
9 Mr. Miller's own horrific driving record as a reason for the
10 sentence.

11 So he didn't mention anything about him -- there's no
12 medical records of him having sleep apnea. There's no -- you
13 know, there's no evidence that he was intoxicated or any of
14 that. That was not his reasoning for his sentence. It was
15 the severe nature and the tragic nature of this collision
16 along with his horrific driving nature that led him to get
17 this sentence.

18 And with that, Your Honor, I think Mr. Miller has failed
19 to meet his burden establishing post-conviction relief.

20 THE COURT: All right. Thank you.

21 Anything further, Ms. Fennell?

22 MS. FENNELL: No, Your Honor.

23 RULING

24 THE COURT: All right. Here's what's going to happen.
25 Now that I've heard everything -- I've had an opportunity to

1 review the transcript as well. I know how I ruled pretrial;
2 I'm going to reverse myself. I see no reason to delay this
3 thing any further. I think, you know, funding an expert to
4 try to find something that wasn't -- it's just -- to find
5 something that's not even relevant in the case, now that I've
6 heard everything and everything has been presented, it doesn't
7 rise to the level of deficient performance by the attorney.

8 So, therefore, in considering the facts and the evidence
9 as well as the applicable law under the Strickland
10 standards -- and before I rule, specifically, Ms. Fennell, I
11 find you've done an admirable and zealous job representing
12 your client. You have done -- you have crossed every T and
13 dotted every I. You've done what you needed to do. I have to
14 rule based upon the evidence and the law, and you have done
15 your client well. Okay?

16 MS. FENNELL: Thank you, Your Honor.

17 THE COURT: This application is denied for the reasons
18 set forth. This case is over.

19 You can prepare the Order. All right?

20 MR. MITCHELL: Yes, Your Honor. Thank you.

21 THE COURT: Thank you very much.

22 MS. FENNELL: Thank you, Your Honor.

23 THE COURT: All right.

24 (The hearing concluded at 12:29 p.m.)

25

Certificate of Transcriber

CASE NAME: Lonnie Miller v. State of SC

DATE OF HEARING: 7/16/24

RECORDING METHOD: DCRP Court Monitor (BIS)

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.

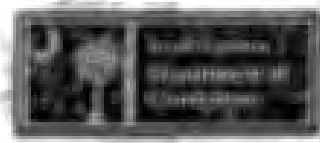
Bobbi Fisher

/s/ Bobbi Fisher

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 6/5/25

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 COPIES OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT BFISHER@SCCOURTS.ORG.



Patient Name: LONNIE MILLER
Date of Birth: 07/02/1987
Location: 0181.F3A 0184 A --
Inmate ID: 000000375485
Visit Type: Provider Visit
Encounter Date: 10/29/2021 09:32 AM

Referral Communication Form

Referral Order

Date	Diag Code	Specialty	Service	Ref Status	Location	Time	Time/Ref
10/29/2021	G47.30	Pulmonology	Consult	Approval not needed	Outside Medical		next available

Comments:
 Severe sx's based on sleep study; CPAP titration requested
 by Pulmonology

Current Medications:

Medication	Dose	Sig Desc
escitalopram oxalate	20 mg	take 1 tablet by oral route every day
bupropion HCl	15 mg	take 2 tablet by oral route 2 times every day

Allergies:

Ingredient	Reaction (Severity)	Medication Name	Comment
NO KNOWN ALLERGIES			

Benjamin Lewis MD

MILLER, LONNIE DEAN. 000000375485 10/29/2021 09:32 AM Page: 231/420



Communication Message

PATIENT NAME: LONNIE MILLER
 DATE OF BIRTH: [REDACTED]
 DATE: 10/29/2021

Spoke with:
 Time: 11:42 AM
 Taken by: Deborah Cunningham
 Contact type:
 Type: other

Contact Detail

Date	Time	Employee	Detail
10/29/2021	9:32 AM	Deborah Cunningham	Communication Comment: LATE ENTRY 10/04/21 RECOMMENDATIONS S/P SLEEP STUDY: DIAGNOSTIC IMPRESSION-SEVERE OBSTRUCTIVE SLEEP APNEA WITH AN AHI OF 111.0 EVENTS/HR AROUSAL INDEX OF 59 PER HOUR AND LOW SATURATION OF 75% RECOMMENDATION- A CPAP TITRATION IS RECOMMENDED TO ESTABLISH OPTIMAL TREATMENT PARAMETERS.
10/29/2021	11:42 AM	Benjamin Lewis	Communication Comment: determine who does the CPAP titration and where

Provider

Lewis, Benjamin 10/29/2021 11:43 AM

Document generated by: Benjamin Lewis

MILLER, LONNIE DEAN. 000000375485 07/02/1987 10/29/2021 09:32 AM Page: 232/420



Patient Name: LONNIE MILLER
Date of Birth: [REDACTED]
Location: 0181 F3A 0184 A --
Inmate ID: 000000375485
Visit Type: Psychiatric Clinic
Encounter Date: 10/07/2021 10:20 AM

Psychopharm

Start Time: 10:20 AM

Stop Time: 10:29 AM

Duration: 00 hours, 09 minutes

Individuals Present

Contact type: Telemedicine

Individual present

Prescriber's Evaluation

34 yo at MCCL last seen on 7/26/2021. Current Dx: Unspecified Anxiety Disorder. He had his sleep study on 10/4/2021 and results are pending. Plan was:

1. Continue Cefexa and Increase Buspar to 15 mg po BID.
2. Check thyroid panel, CMP and CBC with diff.
3. OSA is highly probable and contributing to picture given poor sleep quality. Will staff concerns about it being canceled again in Tx team.
4. Follow up 3 months or sooner if indicated."

Symptoms remain about the same at night. Has noted improvement with anxiety and breathing during the day since Buspar was increased to 15 mg po BID. Thinks anxiety was triggering shortness of breath during the day some. Would like to try going up on it again. Sleep study for evaluation of OSA was done on 10/4/2021. He was told that it will take 2 to 4 weeks to get the results. Weight today is 214 lbs which is essentially unchanged from July 2021 when it was 215 lbs.

Reports F3 form is going ok but they are still locked down a lot. Thyroid lab results from July 2021 and were all normal.

Patient Name: MILLER, LONNIE DEAN
ID: 31255 Date of Birth: 07/02/1967

Page 233 of 420
Encounter Date: 10/07/2021 10:20 AM

No issues with his current roommate.

Family doing well.

MSE- Well groomed, cooperative, no abnormal involuntary movements, good eye contact. Oriented to person, place and time. Speech- regular rate, tone and rhythm. Thought process linear. Mood anxious, affect congruent. Denies SI, HI, AH, and VH.

Medication Information

Allergy

Ingredient	Reaction	Medication Name	Comment
(Severity)			
NO KNOWN ALLERGIES			

Active Medication

Medication	Sig	Dose	PRN	PRN Reason	Start Date	Stop Date
			Status			
citalopram 40 mg tablet	take 1 tablet by oral route	N			07/26/2021	10/07/2021
	every day					
buspirone 15 mg tablet	take 1 tablet by oral route	N			07/26/2021	10/07/2021
	2 times every day					
escitalopram 20 mg tablet	take 1 tablet by oral route	N			10/07/2021	04/04/2022
	every day					
buspirone 15 mg tablet	take 2 tablets by oral route	N			10/07/2021	04/04/2022
	2 times every day					

Diagnosis since last visit:
No change

Plan

1. Increase Buspar to 30 mg po BID.
2. Due to SCDC formulary change from Celexa to Lexapro, will stop Celexa and start Lexapro 20 mg daily. Change was explained to him.
3. Follow up 3 months or sooner if indicated.

SIGNATURES

Patient Name: MILLER, LONNIE DEAN
ID: 31255 Date of Birth: [REDACTED]

Page 234 of 420
Encounter Date: 10/07/2021 10:20 AM

Psychiatrist: Signed by Megan Howard, on 10/07/2021
Document generated by: Megan Howard, MD 10/07/2021 12:09 PM

000000375485

Confidential

Electronically signed by Megan Howard MD on 10/07/2021 12:16 PM

Patient Name: MILLER, LONNIE DEAN
ID: 31255 Date of Birth: [REDACTED]

Page 235 of 420
Encounter Date: 10/07/2021 10:20 AM



Patient Name: LONNIE MILLER
 Date of Birth: [REDACTED]
 Location: 0181 F3A 0184 A --
 Inmate ID: 00000375485
 Visit Type: Provider Visit
 Encounter Date: 02/03/2021 11:32 AM

Referral Communication Form

Patient Information

LONNIE DEAN MILLER
 0181 F3A, 0184 A --
 Max Out Date: 06/06/2038

DOB: [REDACTED]
 # 375485

Referral Type: Initial Visit

Order

Req. Provider	Req. Date	Specialty Needed	Diagnosis	Location
Thomas Byrne MD	02/03/2021	sleep lab	Sleep apnea	Outside Medical

Request Details	Time Limit	Timeframe
Sleep Study 33 yo obese, snores, wakes up SOB and coughing. Classic presentation of sleep apnea. States was seeing Dr prior to incarceration, but did not have insurance so could not get study or machine.		

Referral Status	Resp. Provider	Resp. Date	Details
Approved	Gregory Furness PA	03/01/2021	

Current Medications:

Medication	Dose	Sig Desc
bupirone HCl	10 mg	take 1 tablet by oral route 2 times every day
citalopram hydrobromide	40 mg	take 1 tablet by oral route every day
docusate sodium	100 mg	take 1 capsule by oral route every day at bedtime as needed

Allergies:

Ingredient	Reaction	Medication Name	Comment
NO KNOWN			

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT
)
)

Lonnie Miller, SCDC #375485,

) Case No. 2018-CP-02-02939
)

) Applicant,
)

) v.
)

ORDER OF DISMISSAL

) State of South Carolina,
)

) Respondent.
)
)
)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harte, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

JAN 23 2025

Robert J. Harte
C.C.P. & G., Aiken County, S.C.
Charla Peauble
Deputy Clerk

cmp

I. INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Lonnie Miller ("Applicant") on December 13, 2018. On July 16, 2024, a hearing into the matter was convened before the Honorable Brian M. Gibbons at the Aiken County Courthouse.

Applicant was present and represented by Nancy C. Fennell, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. At the evidentiary hearing, testimony was taken from Applicant, Sheila Miller (Applicant's mother), and Maureen O. Floyd, Esquire ("Counsel").

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Aiken County Grand Jury indicted Applicant for two counts of reckless homicide with death resulting (2017-GS-02-1234, - 01235), two counts of failure to stop a motor vehicle at the scene causing death (2017-GS-02-

FILED January 23 2025
Robert J. Harte 100
Charla Peauble cmp

737, -0739), and failure to stop a motor vehicle at the scene of an accident with personal injury (2017-GS-02-0741). The case was prosecuted by former Second Circuit Solicitor Strom Thurmond. Applicant was represented by Maureen O. Floyd, Esquire.

On February 16, 2018, Applicant appeared before the Honorable Doyet A. Early, III, and pleaded guilty as indicted. Judge Early sentenced Applicant to concurrent sentences of twenty-five years' imprisonment for each count of failure to stop a motor vehicle at the scene causing death, ten years imprisonment for each count of reckless homicide with death resulting, and one year imprisonment for failure to stop a motor vehicle at the scene of an accident with personal injury. Applicant did not pursue a direct appeal.

III. STATEMENT OF FACTS

On March 13, 2017, Department of Transportation workers were assigned to check a clogged drain on the side of Highway 421. At 8:32 am, Applicant was traveling 59 miles per hour in a 45 mile an hour zone, heading north on Highway 421, when he left the roadway and struck three of the workers. Immediately following the collision, Applicant veered back into the road and left the scene. Two of the workers were pronounced dead at the scene and another was hospitalized with severe injuries. A witness notified law enforcement that he saw a brown Pontiac with heavy damage pull into a nearby trailer park. Law enforcement observed a vehicle matching the description with a blanket placed over it to conceal the damage. Applicant turned himself in several hours after the incident. (Gp. Tr. pp. 13–18).

IV. CURRENT APPLICATION

Applicant commenced this PCR application on December 13, 2018. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel



- a. "Failure for counsel performing any pre-trial investigation both factual or legal. Counsel did not type of investigation prior to plea."
- 2. Involuntary Guilty plea
 - a. "Transcript of Involuntary Plea."

On January 2, 2020, Applicant, through PCR counsel, amended his application to include the following allegations:

- 1. Ineffective assistance of counsel for
 - a. "failing to request a competency evaluation for Applicant."
 - b. "failure to adequately investigate all available defenses to Applicant regarding his medical or mental health conditions."
 - c. "failing to obtain a mitigation investigator or otherwise failing to adequately prepare or present powerful mitigating evidence during Applicant's sentencing."
 - d. "failing to provide medical documentation to support Applicant's sleep apnea or prescription drug dosage."
 - e. "failing to discuss with Applicant the viability of a motion to suppress evidence of the black box in Applicant's vehicle."

At the evidentiary hearing, Applicant only went forward on the allegations in his amended application.

V. INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687-88;

accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCR. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “were outside the wide range of competence” demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court finds Applicant’s claims to be



without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Request Mental Competency Evaluation

Applicant contends Counsel was ineffective for failing to request a competency evaluation for Applicant. This Court finds this allegation is without merit.

This Court finds Applicant has failed to prove Counsel was ineffective for failing to request a mental health evaluation. Here, Counsel credibly testified she did not perceive any mental health competencies based on her interactions with Applicant. Counsel explained she determined a mental health evaluation was not necessary. As to the deficiency prong under *Strickland*, an attorney may reasonably rely upon his or her own perceptions of a defendant in determining whether or not their client should be mentally evaluated. *Jeter v. State*, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992). The following colloquy from Applicant's guilty plea corroborates Counsel's testimony:

The Court: Sir, are you today under the influence of alcohol, drugs, or prescription medication?

The Defendant: No, sir.

Ms. Floyd: He is taking prescription medication for anxiety that's administered at the jail. He's taking Buspar.

The Court: And you are taking some anxiety medication prescribed to you; the fact that you're doing that, sir, has that kept you from understanding any of these proceedings or any or my questions?

The Defendant: No, sir.

The Court: Have you understood all of my questions?

The Defendant: Yes, sir.

(Gp. Tr. pp. 10-11).

A handwritten signature in black ink, consisting of a stylized 'S' followed by a large loop and a long horizontal stroke extending to the right.

Because Counsel reasonably relied on her own perceptions to determine it was not necessary to request a mental health evaluation, she was not deficient.

Furthermore, Applicant has failed to prove he was prejudiced by Counsel's alleged failure to request a mental health evaluation. When establishing *Strickland* prejudice in the context of counsel's failure to request a mental competency evaluation, the applicant must show a reasonable probability that he was incompetent at the time of the original proceeding. *Garren*, 423 S.C. at 12, 813 S.E.2d at 710 (citing *Ramirez v. State*, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017)). Applicant presented no evidence at the evidentiary hearing that he was incompetent at the time of his plea. Applicant affirmed, under oath, the Buspar he was taking at the time of his plea did not cloud his judgment and did not keep him from understanding the proceeding or the plea court's questions. Thus, based on Applicant's own admissions at the guilty plea hearing, he has failed to prove he was incompetent at the plea due to his medication. Furthermore, Applicant has produced no objective data about the nature and effect of Buspar for this Court to consider whether such medication could have rendered him incompetent to enter a guilty plea. *See Garren v. State*, 423 S.C. 1, 813 S.E.2d 704 (2018) (holding that "a PCR court must consider objective data about the nature and effect of the medication the defendant had taken and evaluate whether such medication had the capability to produce a sufficient effect on his mental faculties to render him incompetent to enter a guilty plea.").

Accordingly, this allegation is DENIED.

Failure to Investigate Defenses Related to Applicant's Medical or Mental Health Conditions¹

Applicant contends Counsel was ineffective for failing to adequately investigate all available defenses to Applicant regarding his medical or mental health conditions. Specifically,

¹ Allegations 1(b) and 1(d) will be addressed in this section.

Applicant avers Counsel failed to provide medical documentation to support Applicant's sleep apnea or prescription drug dosage. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified he suffered from anxiety and was prescribed various prescription medications to treat it. Additionally, Applicant testified he informed Counsel he also suffered from what he believed to be sleep apnea. Applicant explained he informed Counsel of this and requested she set up a sleep study to aid in his defense. Although Applicant has since been diagnosed with sleep apnea, Applicant stated he had no medical diagnosis of sleep apnea at the time of the plea.

Counsel testified Applicant informed her he believed he had sleep apnea; however, Counsel stated Applicant never told her about any of the passing out incidents. Counsel explained that these prior incidents of Applicant passing out would not have been beneficial to his defense anyway, because it shows Applicant was aware he should not have been driving. Applicant further explained that, since this was a hit and run case, whether Applicant fell asleep at the wheel or not was not relevant to the issue, because Applicant knowingly left the scene of the collision. Counsel testified that Judge Early believed Applicant did not intentionally hit anyone and that he was asleep at the wheel. However, Counsel explained that sleep apnea was not a defense to hit and run, because Applicant woke up, left the scene, and hid his car. Counsel averred if Applicant had undergone a sleep study and told the doctor about his prior incidents of passing out while driving it would have increased his culpability in the crime.

This Court agrees with Counsel and finds any further investigation into Applicant's sleep apnea would not have been relevant to his defense in a hit and run case, and may, in fact, have been harmful to his defense. According to S.C. Code § 56-5-1210(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.

The relevant inquiries for a hit and run are “whether defendant was aware he was involved in incident involving vehicle and whether he complied with statute which required him to remain at scene of incident and statute which required him to provide certain personal information.” *State v. Westmoreland*, 421 S.C. 410, 807 S.E.2d 701 (Ct. App. 2017). Here, whether Applicant dozed off at the wheel due to his sleep apnea offers no explanation as to his actions following the collision. This is especially true since Applicant, during his mitigation at his guilty plea hearing, admitted on the record he panicked and left the scene of the crime. (Gp. Tr. p. 37). Additionally, evidence that Applicant was aware he had sleeping problems and had prior incidents of falling asleep while driving would have been harmful to his defense of reckless homicide. This Court finds Counsel articulated a valid reason for not further investigating Applicant’s sleep apnea where it is not a relevant inquiry in a hit and run case and where it would have been harmful to a defense for reckless homicide. Therefore, this Court finds Counsel was not deficient in this regard.

Furthermore, this Court finds Applicant has not met his burden of proving prejudice. At the guilty plea hearing, Applicant waived his right to a jury trial and his right to present a defense. (Gp. Tr. p. 9). Additionally, as noted above, this Court finds any additional investigation into Applicant’s sleep apnea is not a relevant inquiry for hit and run and would have been harmful to Applicant’s reckless homicide case. Therefore, this Court finds Applicant has failed to prove he was prejudiced in this regard.

Accordingly, this Court finds this allegation is DENIED.

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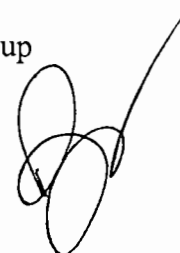
Failure to Obtain Mitigation Investigator or Adequately Present Mitigation

Applicant contends Counsel was ineffective for failing to obtain a mitigation investigator or otherwise failing to adequately prepare or present powerful mitigating evidence during Applicant's sentencing. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified Counsel did not provide any medical records at the guilty plea. Specifically, Applicant argues Counsel should have provided the plea court with medical records pertaining to his prescription drugs and sleep apnea. Applicant explained he had no health insurance at the time of the plea and did not have medical records. Counsel explained Applicant told her he was taking Burspar for anxiety and thought he had sleep apnea, but he had no medical records supporting this.

This Court finds Counsel was not deficient for failing to present medical records during Applicant's mitigation, because, based on the testimony of Applicant and Counsel, no medical records existed supporting his sleep apnea diagnosis. At the evidentiary hearing, Applicant admitted medical records into evidence reflecting a diagnosis of sleep apnea; however, that diagnosis came years following the incident in question. Thus, there were no medical records available at the time for Counsel to present. Furthermore, Counsel presented a lengthy mitigation presentation in which Applicant, Applicant's mother, and Applicant's sister all expressed remorse surrounding the incident. (Gp. Tr. pp. 25–43). Therefore, this Court finds Counsel was not deficient in her mitigation presentation.

Availability of records notwithstanding, as explained above, Applicant has failed to demonstrate how presenting medical documentation reflecting a sleep apnea diagnosis or reflecting his Burspar prescription would have been beneficial to Applicant. Counsel brought up both of these issues during her mitigation. The plea judge explained his reasoning behind the



sentence—Applicant’s lengthy prior driving record and the fact he was on probation at the time of the collision. (Gp. Tr. p. 69). Applicant has failed to show how any additional mitigation would have affected the outcome of his proceeding. Thus, Applicant has failed to meet his burden proving deficiency or prejudice as to this allegation.

Failure to Discuss with Applicant a Motion to Suppress the Black Box

Applicant avers Counsel was ineffective for failing to discuss with Applicant the viability of a motion to suppress evidence of the black box in Applicant’s vehicle. This Court disagrees, and finds Counsel was not ineffective in this regard.

At the evidentiary hearing, Applicant testified Counsel discussed the State’s evidence; however, Applicant states they did not discuss exclusion of the black box. Applicant explained the black box recorded him traveling 59 mph in a 40-speed limit zone. Applicant averred he would not have pleaded guilty had the black box been excluded. Counsel testified the State obtained a search warrant for the black box and there were no grounds to move to suppress the black box.

This Court finds Applicant has failed to meet his burden establishing deficiency or prejudice as to this allegation. Applicant has wholly failed to present any testimony or evidence supporting a ground in which the black box should have suppressed. Counsel credibly testified there were no non frivolous grounds to suppress the black box and there is nothing in the record to suggest otherwise. Therefore, Applicant has failed to meet his burden.

Accordingly, this Court finds this allegation is DENIED.

VII. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for



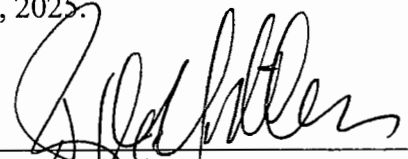
post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). 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 is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this ____ day of 1/10, 2025.


 THE HONORABLE BRIAN M. GIBBONS
 Presiding Judge
 Second Judicial Circuit

_____, South Carolina

WITNESSES

SC Dept. of Public Safety (SCHP)

J R Lachance

Law Enforcement Case #: 1993-155263

JST

ARREST WARRANT NUMBERFILED 18 May 20 17

2017A0210700056

Robert J. White
C.C. & G.S.
Deputy Clerk

ACTION OF GRAND JURY*true bill*

[Signature]
Foreperson of Grand Jury

Date: May 18, 2017

VERDICT

[Signature]
Foreperson of Petit Jury

Date: *5/18/17 LMJ*DOCKET NO. 2017GS0200737**The State of South Carolina**

County of Aiken

COURT OF GENERAL SESSIONS**MAY TERM 2017****THE STATE**

vs.

LONNIE DEAN MILLER

CDR #: 2463

Indictment for**FAILURE TO STOP MOTOR VEHICLE AT
SCENE WITH DEATH**

§ 56-05-1210(A)(3)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

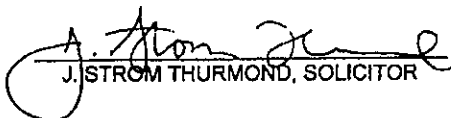
INDICTMENT FOR
FAILURE TO STOP MOTOR VEHICLE AT
SCENE WITH DEATH

§ 56-05-1210(A)(3)

At a Court of General Sessions, convened on May 22, 2017, the Grand Jurors of Aiken County present upon their oath:

That LONNIE DEAN MILLER did in Aiken County, South Carolina, on or about March 13, 2017, being the driver of a vehicle involved in an accident resulting in the death of Anthony John Redmond, by willfully and unlawfully failing to stop and remain at the scene of the accident and render aide to Anthony John Redmond, and fulfill the requirements of Section §56-5-1230 of the Code of Laws of South Carolina (1976), as amended, relative to giving information and rendering aid which is in violation of §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.


J. STROM THURMOND, SOLICITOR

STATE OF NORTH CAROLINA

COUNTY OF Aiken
STATE VS.

Lonnie Dean Miller

AKA:

Race: Black Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Traffic / Hit and run, duties of driver involved in accident with death

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) ☐ §17-25-45The 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.

ATTORNEYS:

Thurmond, Strom

15606
SC Bar#Lonnie Miller
DefendantMaurice [REDACTED]
Attorney for Defendant2053
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 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: 17-GS-02-739
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

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	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2795 (DUI Assessment)	\$12	\$
§ 56-1-236 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-2.2 (Law Enforce. Funding)	\$25	\$
§ 14-1-2.3 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BU) Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)	\$	\$ 3.00

TOTAL \$ 103.00

Clerk of Court/ Deputy Clerk

Court Reporter: Brenda Sigward

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS0200737

A/W#: 2017A0210700056

Date of Offense: 3/13/2017

S.C. Code § : 56-05-1210(A)(3)

CDR Code #: 2463

SENTENCE SHEET

0 → 25 and fine \$10k - \$25k

☐ CONVICTED OF or ☒ PLEADS

ELECTRONICALLY FILED - 2019 Mar 07 1:17 PM - AIKEN - COMMON PLEAS - CASE#2018CP0202939

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2156

Sentence Date: Feb 16, 2018

WITNESSES

SC Dept. of Public Safety (SCHP)

J R Lachance

Law Enforcement Case #: 1993-155283

DOCKET NO. 2017GS0200739**The State of South Carolina****County of Aiken**

JST

COURT OF GENERAL SESSIONS**MAY TERM 2017****ARREST WARRANT NUMBER**

2017A0210700057

FILED 18 May 20 17
Robert L. Lachance
 C.C.P. & S.S. Judge
Farahad Khan
 Deputy Clerk

THE STATE
VS.

LONNIE DEAN MILLER**ACTION OF GRAND JURY**true bill

[Signature]
 Foreperson of Grand Jury
 Date: May 18, 2017

VERDICT

[Signature]
 Foreperson of Petit Jury
 Date: 5/18/17 *[Signature]*

COR #: 2463**Indictment for**

**FAILURE TO STOP MOTOR VEHICLE AT
 SCENE WITH DEATH**

§ 56-05-1210(A)(3)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
INDICTMENT FOR
FAILURE TO STOP MOTOR VEHICLE AT
SCENE WITH DEATH
§ 56-05-1210(A)(3)

At a Court of General Sessions, convened on May 22, 2017, the Grand Jurors of Aiken County present upon their oath:

That LONNIE DEAN MILLER did in Aiken County, South Carolina, on or about March 13, 2017, being the driver of a vehicle involved in an accident resulting in the death of Robert L. Clark, by willfully and unlawfully failing to stop and remain at the scene of the accident and render aide to Robert L. Clark, and fulfill the requirements of Section §56-5-1230 of the Code of Laws of South Carolina (1976), as amended, relative to giving information and rendering aid which is in violation of §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.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
 STATE VS.
Lonnie Dean Miller
 AKA:
 Race: Black Sex: M Age: 29
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2017GS0200739
 A/W#: 2017A0210700057
 Date of Offense: 3/13/2017
 S.C. Code § : 56-05-1210(A)(3)
 CDR Code #: 2463

SENTENCE SHEET

0 → 25 and fine \$100 - \$25K

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

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Traffic / Hit and run, duties of driver involved in accident with death

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: [Signature] 15606 Lonnie Miller 2053
Thomond, Strom 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 25 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 (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: \$

 days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine: \$

Random Drug/Alcohol testing ☐

§ 14-1-206 (Assessments 107.5%) \$

Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

pmts. of \$ beginning

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

\$ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment) \$12 \$

Other:

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BU) (Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.00

TOTAL \$ 103.00

Clerk of Court/ Deputy Clerk

Court Reporter: Brenda

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2136

Sentence Date: Feb 16, 2018

WITNESSES

SC Dept. of Public Safety (SCHP)

J R Lachance

Law Enforcement Case #: 1993-155263

DOCKET NO. 2017GS0200741

The State of South Carolina

County of Aiken

JST

ARREST WARRANT NUMBER

2017A0210700058

FILED 18 May 20 17*Robert L. White*
Clerk & G.S.*Deanna D. [Signature]*
Deputy ClerkCOURT OF GENERAL SESSIONS

MAY TERM 2017

THE STATE

vs.

LONNIE DEAN MILLER

ACTION OF GRAND JURYtrue bill*[Signature]*
Foreperson of Grand Jury
Date: May 18, 2017VERDICT*[Signature]*
Foreperson of Petit JuryDate: 5/18/17 LRYCDR #: 2461Indictment forFAILURE TO STOP MOTOR VEHICLE AT
SCENE WITH PERSONAL INJURY

§ 56-05-1210(A)(1)

J. STROM THURMOND, SOLICITOR

§ 56-05-1210(A)(1)

That LONNIE DEAN MILLER did in Aiken County, South Carolina, on or about March 13, 2017, being the driver of a vehicle involved in an accident resulting in injury to Michael Lowe, by willfully and unlawfully failing to stop and remain at the scene of the accident and render aide to Michael Lowe, and fulfill the requirements of Section §56-5-1230 of the Code of Laws of South Carolina (1976), as amended, relative to giving information and rendering aid which is in violation of §56-5-1210 of the Code of Laws of South Carolina (1976), as amended.


J. STROM THURMOND, SOLICITOR

STATE OF NORTH CAROLINA

COUNTY OF Aiken
STATE VS.

Lonnie Dean Miller

AKA:

Race: Black Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was

TO: Traffic / Hit and run, duties of driver involved in accident with minor personal injury

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS0200741

A/W#: 2017A0210700058

Date of Offense: 3/13/2017

S.C. Code §: 56-05-1210(A)(1)

CDR Code #: 2461

SENTENCE SHEET

0 → 1 and 10/ Fine \$100 → \$500

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-1210(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2461

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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: Thurmond, Strom 15606 SC Clerk Lonnie Miller Defendant Monica J. [REDACTED] Attorney for Defendant 2053 SC ClerkWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1 day/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: 17-65-02-757
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ PTUP _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2795 (DUI Assessment)

§ 56-1-236 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-2 2 (Law Enforcement Funding)

§ 14-1-2 3 (Drug Court Surcharge)

§ 50-21-114(BU) Breath Test Fee)

§ 56-5-2742(1) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: Brenda Sigwald

SCCA217 (07/2016)

Presiding Judge

Judge Code: 2156Sentence Date: FEB 16, 2018

WITNESSES

DOCKET NO. 2017GS0201234

SC Dept. of Public Safety (SCHP)

The State of South Carolina

David A. Deering

County of Aiken

Law Enforcement Case #: 1993-155263

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

AUGUST TERM 2017

2017A0210201119

FILED Aug 3 2017

Robert J. White
C.C.P. & G.S.

Sherry L. Langley
Deputy Clerk

THE STATE

VS.

LONNIE DEAN MILLER

ACTION OF GRAND JURY

TRUE bill

Kehin M. Oglesby

Foreperson of Grand Jury
Date: August 3, 2017

CDR #: 3097

Indictment for

RECKLESS HOMICIDE
WITH DEATH RESULTS

§ 56-05-2910

VERDICT

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
RECKLESS HOMICIDE
WITH DEATH RESULTS

§ 56-05-2910

At a Court of General Sessions, convened on August 7, 2017, the Grand Jurors of Aiken County present upon their oath:

That LONNIE DEAN MILLER did in Aiken County, South Carolina, on or about March 13, 2017, drive a motor vehicle in a reckless disregard of the safety of others, causing mortal wounds of which [REDACTED] did die as a proximate result in Aiken County on March 13, 2017. All in violation of Section §56-5-2910 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.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS ¹⁹⁷COUNTY OF Aiken
STATE VS.
Lonnie Dean MillerAKA: _____
Race: Black Sex: M Age: 30INDICTMENT/CASE#: 2017GS0201234A/W#: 2017A0210201119Date of Offense: 3/13/2017S.C. Code § : 56-05-2910CDR Code #: 3097

SENTENCE SHEET

O → 10 and for fine \$1K → \$5K

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

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Homicide / Reckless Homicide, death results within 3 yrs, caused by injury from vehiclein violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 3097☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Thurmond, Strom15606
SC Bar#Lonnie Miller
DefendantManner
Attorney for Defendant2053
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 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 (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	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.00

TOTAL \$ 103.00

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge MB EarlyJudge Code: 2136Sentence Date: FEB 16, 2018Clerk of Court/ Deputy Clerk Robert J. HartsCourt Reporter: Brenda Diggs

SCCA/217 (07/2016)

WITNESSES

DOCKET NO. 2017GS0201235

SC Dept. of Public Safety (SCHP)

The State of South Carolina

David A. Deering

County of Aiken

Law Enforcement Case #: 1993-155263

JST

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

AUGUST TERM 2017

2017A0210201120

FILED Aug 3 20 17
Robert J. White
C.C.P. & G.S.

THE STATE
vs.

Sherry L. Langley SS
County Clerk

LONNIE DEAN MILLER

ACTION OF GRAND JURY

True bill

CDR #: 3097

Kehin M. Oglesby
Foreperson of Grand Jury
Date: August 3, 2017

Indictment for

VERDICT

RECKLESS HOMICIDE
WITH DEATH RESULTS

§ 56-05-2910

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
RECKLESS HOMICIDE
WITH DEATH RESULTS

§ 56-05-2910

At a Court of General Sessions, convened on August 7, 2017, the Grand Jurors of Aiken County present upon their oath:

That LONNIE DEAN MILLER did in Aiken County, South Carolina, on or about March 13, 2017, drive a motor vehicle in a reckless disregard of the safety of others, causing mortal wounds of which [REDACTED] did die as a proximate result in Aiken County on March 13, 2017. All in violation of Section §56-5-2910 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.


J. STROM THURMOND, SOLICITOR

200
STATE OF SOUTH CAROLINA

COUNTY OF Aiken

STATE VS.

Lonnie Dean Miller

AKA:

Race: Black Sex: M Age: 30

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS0201235

A/W#: 2017A0210201120

Date of Offense: 3/13/2017

S.C. Code § : 56-05-2910

CDR Code #: 3097

SENTENCE SHEET

0 → 10 and/or fine #1k → #5

CDE Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Homicide / Reckless Homicide, death results within 3 yrs, caused by injury from vehicle

in violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 3097

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

J. Strom 2018
Thurmond, Strom15606
SC Bar#Lonnie Miller
DefendantM. Miller
Attorney for Defendant2053
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years of ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

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	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.00

TOTAL

\$ 103.00

Clerk of Court/ Deputy Clerk

Court Reporter: Brenda Sigwald

SCCA/217 (07/2016)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2156

Sentence Date: Feb 16, 2018