

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

March 25, 2014

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED
MAR 25 2014
S.C. Supreme Court

RE: Daydrian Rouse, 342518 v. State of South Carolina; 2011-CP-40- 1921;
Appellate Case No. 2013-001269

Dear Mr. Shearouse:

Enclosed for filing please find the Appendix for the above captioned Post-Conviction Relief Appeal. The Petition for Writ of Certiorari will be filed separately. I enclose copies of the cover pages for the three volumes of this Appendix. I would appreciate having those copies clocked and returned to my courier for my records. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".
Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: Megan E. Harrigan, Assistant Attorney General (w/enclosures via hand-delivery)
Daydrian Rouse, 342518 (w/enclosures via U.S. Mail)
Ernest and Betty Rouse (w/out enclosures via U.S. Mail)

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2013-001269

DAYDRIAN ROUSE, 342518,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appendix in the above-entitled case has been served upon opposing counsel this the 25th day of March, 2014, by hand delivering one (1) copy properly addressed to:

Megan E. Harrigan
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

Sharon McCollister

Sharon McCollister

Paralegal to:

TARA DAWN SHURLING

Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 25th day
of March, 2014.

Joyanne Graham (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/28/2024

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In the Supreme Court

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S.C. Supreme Court

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PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

TARA DAWN SHURLING
Attorney and Counselor at Law

JOHN W. MCINTOSH
Deputy Attorney General

3614 Landmark Drive, Suite A
Columbia, S. C. 29204
(803)738-8622 Phone

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

(803)738-1600 Fax
Email: tdslaw@shurlinglaw.com

MEGAN E. HARRIGAN
Assistant Attorney General
Post Office Box 11549
Columbia, S. C. 29211
(803) 734-3737

ATTORNEY FOR PETITIONER.

ATTORNEYS FOR RESPONDENT.

APPENDIX

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*Applicant's Exhibit #4 was a copy of the discovery materials sent to Defense Counsel in this case. This exhibit was neither listed on the Court Reporter's Receipt for Exhibits nor indexed in the transcript of the September 10, 2012 PCR hearing. Respondent and Petitioner have agreed to the filing of a Replacement Exhibit #4, which is a copy of the discovery package obtained from the Fifth Circuit Solicitor's Office pursuant to subpoena. This substitution was approved by Order of presiding judge.

STATE OF SOUTH CAROLINA)	
County of Richland)	COURT OF General Sessions
)	2009-GS-40-3721
)	2009-GS-40-3722
)	2009-GS-40-3723
)	
The State)	
)	
vs.)	PARTIAL
)	TRANSCRIPT OF RECORD
Daydrian Rouse,)	
)	
Defendant)	

August 30, 2010
Columbia, South Carolina

BEFORE:

The Honorable Thomas G. Cooper, Jr., Judge

APPEARANCES:

Daniel Goldberg, Asst. Solicitor
Luck Campbell, Asst. Solicitor
Attorneys for the State

George Johnson, Esq.
Yvonne Murray-Boyles, Esq.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

INDEXWITNESSES:

1 (A jury was selected, pretrial witnesses were called.

2 The following was placed on the record.)

3 THE CLERK: Raise your right hand.

4 DAYDRIAN ROUSE;

5 after being duly sworn, testified as follows:

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

7 Standing before you is Daydrian Rouse with his attorneys,

8 George Johnson and Yvonne Murray-Boyles.

9 As, Your Honor, is aware, this case was called for
10 trial yesterday, selected a jury. The jury was not sworn.

11 Mr. Rouse is before you at this time to plead guilty
12 under North Carolina vs. Alford to one count of assault
13 and battery with intent to kill, plead guilty to one count
14 of assault and battery of a high and aggravated nature
15 that's been reduced from A.B.I.K. and one count of hit
16 and run with great bodily injury.

17 There's no negotiations or recommendations --

18 THE COURT: All right.

19 MR. GOLDBERG: -- at this time, and the consideration
20 for the Alford plea, the benefit of the bargain, would
21 be the reduction of charges from the one A.B.I.K. to the
22 A.B.H.A.N.

23 THE COURT: All right. Mr. Johnson, you represent
24 Daydrian Rouse?

25 MR. JOHNSON: Yes, Your Honor.

1 THE COURT: Have you advised your client of the
2 charges contained in these indictments and his right to
3 a trial by jury?

4 MR. JOHNSON: I have, Your Honor.

5 THE COURT: How does your client indicate he wishes
6 to plead?

7 MR. JOHNSON: He indicates he wished to plead under
8 North Carolina vs. Alford charge to the A.B.W.I.K.
9 charge, guilty to the other two charges.

10 THE COURT: All right. Mr. Rouse, you were charged
11 in two counts of assault and battery with intent to kill.
12 It's my understanding that you're pleading to one count
13 under North Carolina vs. Alford. Has your lawyer
14 explained that to you?

15 THE DEFENDANT: Yes.

16 THE COURT: That proceeding, that plea?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: You're pleading to one count of assault
19 and battery of a high and aggravated nature. That charge
20 carries a penalty of up to ten years in jail. Do you
21 understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: You're also charged -- I'm sorry. The
24 assault and battery with intent to kill that you are
25 pleading guilty to under North Carolina vs. Alford

1 carries a penalty of up to 20 years in jail. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Third, you're charged with hit and run
5 with -- resulting in great bodily injury to some individual.
6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And that charge carries a penalty of up
9 to ten years in jail also. Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Understanding the charges
12 you face and the punishment you could receive to the
13 assault and battery of a high and aggravated nature and
14 hit and run charge, it's my understanding that you're
15 pleading guilty to these charges; is that correct?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. And as to the assault and
18 battery with intent to kill, you're pleading under North
19 Carolina vs. Alford. Now, let me tell you that even though
20 you entered that plea, it makes no difference to the Court
21 in terms of sentencing or anything like that. Do you
22 understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. Do you believe that if the State
25 went to trial on that charge, that the State could find

1 that -- a jury could find you guilty on that charge?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: That's why you've taken advantage of
4 the -- of the Alford plea. You're entering the Alford
5 plea -- you're entering the Alford plea with the
6 understanding that even though you might not feel you
7 were guilty of that charge in its entirety that if the
8 State went forward with that charge, they could find you
9 guilty on that charge, the jury could find you guilty.

10 Do you understand what you're doing?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Understanding the charges
13 you're facing and the punishment you could receive, how
14 do you -- I'm sorry. Do you understand by pleading guilty
15 to these charges or entering the Alford plea, that you're
16 giving up -- basically given up your right to remain
17 silent. Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you understand that your giving up your
20 right to a trial by jury also?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: If you requested or demanded a trial by
23 jury, the State would give you a trial. Do you understand
24 that?

25 THE DEFENDANT: Yes. Your Honor.

1 THE COURT: At that trial, you'd have the right to
2 confront and cross-examine all witnesses against you.
3 You'd have a right to present any witnesses and/or
4 evidence in your own defense. You'd have a right to
5 testify in your own defense, if you wished to do so. You
6 don't have to testify at your own trial. Do you understand
7 that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: If you decide to go to trial and to not
10 testify, the judge would tell the jury they could not hold
11 your failure to testify against you. In fact, the jury
12 could not even consider your failure to testify in their
13 deliberations on your guilt or innocence. You'd be
14 presumed innocent throughout your trial.

15 The State would have to prove you guilty
16 beyond a reasonable doubt to a jury of 12 people. All
17 12 people would have to unanimously agree that you were
18 guilty in order for you to be convicted.

19 Even if you were convicted, you'd still have the
20 right to appeal that conviction. Do you understand your
21 rights with regard to a trial by jury?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Understanding those rights do, you still
24 want to plead guilty, or do you want me to set your case
25 for trial?

1 (Pause)

2 MR. JOHNSON: Beg the Court's indulgence.

3 (Pause)

4 THE COURT: Do you want me to ask it again?

5 MS. CAMPBELL: Yes, sir.

6 MR. JOHNSON: Yes, sir.

7 THE COURT: Understanding your right to a trial by
8 jury, do you still want to plead guilty, or do you want
9 me to set your case for trial?

10 (Pause)

11 THE DEFENDANT: Plead guilty.

12 MALE SPECTATOR: Please go to trial.

13 THE COURT: Are you sure about that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. Y'all -- somebody is going
16 to have to -- I'm not going to have people in the
17 audience -- do you understand?

18 MALE SPECTATOR: Yes, sir, I'm sorry.

19 THE COURT: That's quite all right. I mean, I
20 understand that people get emotional with these things.

21 Mr. Rouse, are you satisfied with your lawyers?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Have they done everything you asked
24 them to do in preparation for this plea?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Have they shared with you the witnesses
2 and evidence the State has available to present at trial
3 to prove that you're guilty? Have they talked to you about
4 your discovery information that the State has?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. You've been over that with them.
7 Do you need any more time to talk to them?

8 THE DEFENDANT: Yeah, can I talk to them? Yes. Can
9 I?

10 THE COURT: All right. I'm not sure he understands.

11 (Pause)

12 MR. JOHNSON: He advises us he is ready to continue,
13 Your Honor.

14 THE COURT: All right. Mr. Rouse, have you had an
15 opportunity to fully discuss this decision with your
16 lawyers?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. You're satisfied with their
19 advice?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Are you under the influence of any
22 alcoholic beverages, drugs or prescription medications
23 at this time?

24 THE DEFENDANT: No.

25 THE COURT: Are you aware of any mental condition

1 that would keep you from understanding what you're doing
2 here today?

3 THE DEFENDANT: No. Your Honor.

4 THE COURT: Are you pleading guilty of your own free
5 will and accord?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Now, the solicitor is going
8 to briefly tell me about the facts of this case, and after
9 she does that -- or he does that, I'm sorry, I'm going
10 to ask you if those facts are correct, because this is
11 what the State intended or intends to prove if the case
12 goes to trial. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I'm going to ask you if that's what
15 happened. All right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Mr. Goldberg.

18 MR. GOLDBERG: Thank you, Your Honor. The incident
19 took place on April 19th, 2009, 1225 Bluff Road here in
20 Richland County.

21 Just briefly, there was a party that night at the
22 National Guard Armory for the Omega Psi Phi fraternity,
23 as well as other chapters of the fraternity in the area.

24 The victim and a number of his friends made the trip
25 up from South Carolina State. They're members of the

1 fraternity that went to the party.

2 Inside the party, it was quite a raucous atmosphere.
3 A couple of fights broke out, including one involving the
4 defendant, his brother and his brother's lady friend.
5 There was an altercation in there. This did not involve
6 the victim or the victim's associates at all.

7 As a result of that altercation, the defendant, as
8 well as his friend, sustained some minor injuries. I
9 believe a bloody lip, that sort of thing.

10 Shortly thereafter, the party ended. The
11 sheriff's department was on hand. They shut the party
12 down. Groups were congregating outside the building,
13 including the victim and his friends.

14 The defendant, as well as his friends, exited the
15 building. There would have been testimony that there
16 was some sort of gesturing or pointing from a friend of
17 the defendant's in the direction of the victim and his
18 group of people, as if they were part of the fight, even
19 though the testimony would be they had nothing to do with
20 the fight.

21 A few moments later as the victim and his friends
22 were walking across Bluff Road from the armory towards
23 where their car was parked, a few of them had crossed the
24 road; some of them were in the median; some of them had
25 not yet crossed.

1 The defendant, who had been seen getting into a
2 metallic silver or gold Honda Accord just previously,
3 pulled out onto Bluff Road, made a right-hand turn on to
4 Bluff, was heading in the direction of the victim and his
5 friends.

6 The testimony would have been at that time that he
7 slowed down to a near stop, basically, to allow the
8 pedestrians to cross, at which point he then
9 accelerated.

10 Upon accelerating, struck one victim, Alvarez
11 Pringle, that's the victim of the A.B.H.A.N. charge, on
12 the elbow, just as Mr. Pringle was about to get to the
13 sidewalk.

14 After striking him, the vehicle continued on and
15 then struck Justin Boyd squarely in the center of the
16 car, at which point Mr. Boyd was thrust up onto the hood
17 of the car and ultimately onto the windshield and then
18 off to the side of the car landing on the sidewalk.

19 There would have been testimony presented at that
20 time Mr. Rouse proceeded onward, did not stop in anyway,
21 and, in fact, went on to, I believe McDonald's at that
22 time and then drove on back by the scene later on, on the
23 way back to his apartment, failing to stop again at that
24 point.

25 That's somewhat of a bare bones rendition of the

1 facts as would be presented at trial. Your Honor, it's
2 my understanding that Mr. Rouse is going to be sentenced
3 in the morning, that we reserve the right to present some
4 additional facts at that time, as well as possibly some
5 victim impact from the victim's family and himself.

6 THE COURT: Is that what happened, Mr. Rouse?

7 THE DEFENDANT: No, sir, Your Honor.

8 THE COURT: Sir?

9 MR. JOHNSON: Your Honor, part of what he said
10 encompasses the assault and battery with intent to kill
11 charge, which he's pleading under Alford.

12 THE COURT: I understand that. His vehicle hit
13 Mr. Boyd?

14 MR. JOHNSON: Yes, sir.

15 You agree with that, right?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And he was driving?

18 MR. JOHNSON: Yes, Your Honor.

19 THE COURT: And he left the scene?

20 MR. JOHNSON: Yes, Your Honor. There's a statement
21 to that effect.

22 THE COURT: Well, that's what --

23 MR. JOHNSON: Yes, sir.

24 THE COURT: That's what the State said; that was a
25 bare bones...

1 MR. JOHNSON: Yes, sir.

2 THE COURT: All right. I find the decision of the
3 defendant, Daydrian Jamal Rouse, to plead guilty to be
4 freely, voluntarily, intelligently made. He's had the
5 representation of competent counsel in a person in
6 Mr. Johnson and Ms. Boyles, with whom he says he's
7 satisfied. I'll accept his plea.

8 Mr. Rouse, it's my understanding that based on your
9 lawyer's negotiations and the State's lawyer's
10 negotiations that sentencing will take place tomorrow
11 morning at 9:30 and that -- actually, I'd like to do it
12 at nine o'clock if that's possible, because I've got
13 another trial starting --

14 MR. GOLDBERG: Yes, sir, we can be there.

15 THE COURT: -- first thing in the morning, so we'll
16 do it at nine o'clock tomorrow morning.

17 And Mr. Rouse, because the -- you may not understand
18 this, although I'm sure your lawyers have explained it
19 to you, because your bond is no longer in effect, because
20 you have made an appearance and made a -- entered a plea
21 in this case, you no longer have a bond.

22 The bondsman is relieved, whoever that might be,
23 you're bond. I'll have to hold you in custody until
24 nine o'clock in the morning. Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 MR. JOHNSON: Your Honor, would you allow us a few
2 minutes to check with another bonding company?

3 THE COURT: Sure, but right now, he's in custody until
4 he gets --

5 MR. JOHNSON: Yes, sir; yes, sir.

6 THE COURT: Sentencing will be -- the sentencing
7 hearing will be -- take place at nine o'clock tomorrow
8 morning.

9 Thank you very much.

10 MR. GOLDBERG: Thank you, Your Honor.

11 (The proceedings in this matter concluded for the
12 day.)

13 MR. GOLDBERG: May it please the Court. Back on the
14 record for the sentencing hearing of Daydrian Rouse.
15 Your Honor, I went into some of the facts yesterday, as
16 accepted during the guilty plea.

17 I'd just like to go back over a few things. As I
18 mentioned yesterday, this was a party that took place at
19 the National Guard Armory on Bluff Road.

20 The primary people throwing the party was the Omega
21 Psi Phi fraternity. A number of chapters were involved,
22 members from South Carolina, from South Carolina State,
23 Benedict College, a number of places.

24 The party was also open to non-Omegas. While inside,
25 there were a couple of alterations that took place,

1 including one that involved the defendant, Mr. Rouse.

2 It began as a result of an incident involving
3 Mr. Rouse's brother's lady friend. There was an
4 altercation in which Mr. Rouse and his brother and his
5 friend, Mr. Shaw, got into a physical altercation with
6 the person who had assaulted, for lack of a better word,
7 the lady friend.

8 The victim in the case, as well as his friends, had
9 absolutely nothing to do with this. They were present
10 at the party. They saw -- some of them saw it happen,
11 but they were not involved in the fight in any way
12 whatsoever.

13 After the fight, Mr. Rouse, as well as his friend,
14 I believe, had some blood coming out of their mouths.
15 Witnesses would have testified to that.

16 The party had broken up shortly thereafter. People
17 were milling about outside the armory at this time. It
18 was about 2:30 in the morning, trying to figure out where
19 they were going to go from here.

20 The victim, as well as his friends, were standing
21 out there trying to figure out what their next move was,
22 where they were going to go.

23 As they were doing so, the testimony would have
24 been that the defendant and his friend, Mr. Shaw, came
25 out from the armory, were walking near the victims, the

1 victim and their friends. There was some pointing and
2 some gesturing towards the victims.

3 The testimony would have been that the victims were
4 possibly standing near the subject involved in the
5 altercation inside, not necessarily with him but near him.
6 There were comments made in that direction to the effect
7 of, "F the Omegas. We gonna get 'em. I got burn in my
8 car," things of that nature.

9 At this point, the victim and his friends wanted
10 nothing do with it, didn't respond, walked the other
11 way. The defendant and his friend kept walking towards
12 their car, which was a silver or gold metallic Honda
13 Accord.

14 Witnesses would have put the defendant standing by
15 the driver's door of the car, about to get into the car.
16 It was parked across the street from the armory. As this
17 was happening, Mr. Boyd and his friends, the victim and
18 his friends are beginning to cross Bluff Road over to
19 where their car was parked.

20 Some of them had already crossed. Some of them were
21 in the median. Some of them had yet to cross, and the
22 testimony at trial would have been that as these
23 individuals were crossing the road, Mr. Rouse pulled his
24 car out onto Bluff Road, proceeded up half a block
25 approximately.

1 Some witnesses put him coming to a complete stop,
2 at a minimum coming to a near stop to the point where the
3 pedestrians were allowed to cross. In fact, there was
4 at least one witness that would indicate that someone
5 from that area from the car actually said, "Go ahead, go
6 ahead."

7 At this point, Mr. Alvarez Pringle, along with
8 Justin Boyd, began to cross the road, did cross the road.
9 Mr. Pringle was almost to the curb, to the sidewalk,
10 when witnesses would have testified that the car then
11 accelerated at a high rate.

12 You could hear the engine rev up as the car
13 accelerated. There was some chirping of the tires as they
14 moved on.

15 Mr. Pringle tried to jump out of the way. As he gets
16 out of way, the side-view mirror of the car -- or at least
17 part of the car, strikes Mr. Pringle in his elbow. He
18 doesn't go down to the ground.

19 This would have been on the right side nearly at
20 the curb. The testimony would have been the car then,
21 as a result, swerves back towards the left a little bit
22 and then back again to the right towards the curb.

23 And as it -- again, it's darting back to the right
24 a little bit at an angle. It strikes Mr. Boyd basically
25 head on, directly in the middle of car.

1 The testimony would have been that he then flips up
2 onto the hood, lands on the hood, and actually makes
3 contact with the windshield of the car and eventually is
4 rolled off the side of the car landing on the sidewalk
5 but essentially on his head.

6 At that point, Mr. Rouse proceeded onward. The
7 testimony would have been there was not so much as a brake
8 light that was used at this point as he goes forward.

9 He and Mr. Shaw is in the car with him, proceed to
10 go to the McDonald's on Elmwood Avenue, get some food.
11 They leave there, drive back by the scene, actually.

12 Mr. Rouse was living in an apartment complex
13 literally within walking distance of the National
14 Guard Armory. I think it was less than two blocks away.
15 It was about two blocks behind the armory.

16 So in order to come back to his apartment, he
17 had to actually drive back by the scene. He and
18 his -- Mr. Shaw actually indicated when they drove back
19 by, they saw blue lights. They saw everyone out there.
20 Again, did not stop, went to the apartment complex, stayed
21 there for a while until eventually Mr. Rouse leaves the
22 apartment, doesn't spend the night there, goes all the
23 way across town to off of Road on
24 to an apartment complex to where his brother was living,
25 parked his car there, stayed at his brother's house that

1 night.

2 Investigator -- or Sergeant Ellis, through the
3 course of his investigation was able to determine that
4 the car was located at that apartment complex. At that
5 time, they didn't know who was driving the car. It was
6 towed.

7 When they found it, pictures were taken. I'll just
8 hand those up to the Court. There's some pictures here
9 that counsel has seen. One is of the side-view mirror
10 that's completely missing from the car. It was later
11 actually found. The mirror itself was found in the trunk
12 of the car.

13 There's a crack in the windshield that you'll see
14 there, as well as the dent on the front of the car that
15 would have been as a result of striking Mr. Boyd.

16 Ultimately, Mr. Rouse was brought in for a
17 statement. He gave a statement to law enforcement
18 minimizing the incident.

19 In fact, in his statement, he never admitted to
20 striking two people at that time. I believe his words,
21 as he put it, is he only hit one person, "And I didn't
22 really hit him. I just brushed or skimmed him," were his
23 words.

24 The testimony would have been, again, that it was
25 clear that, you know, two people were struck. The car

1 accelerated potentially upwards of 25, 30, 35 miles an
2 hour, possibly, and he was eventually arrested some ten
3 days later.

4 There would have been a series of phone calls and
5 text messages that the State would have been seeking to
6 introduce, as well, between Mr. Rouse and his brother.

7 There was at least one series of messages between
8 them on the day that Mr. Rouse went to the sheriff's
9 department between the time that his brother was
10 actually interviewed by the sheriff's department
11 talking about his brother basically saying, "This is
12 what I told them. You don't have to tell them anything.
13 You know, don't admit to anything," that sort of
14 thing.

15 I believe it was actually his brother who texted to
16 Mr. Rouse, "I told them you only hit the one and not the
17 other and that the one guy was okay."

18 His -- he then also said, "One officer said that you
19 hit two of them. They don't have nothing, just wanting
20 your side of the story. Don't say nothing that they
21 could use against you," and then Mr. Rouse responded, "All
22 right. I don't even have to talk with them."

23 He then said, "I said you were worried about
24 stopping with all those guys around," which it's kind of
25 important that his brother says that he told him that,

1 because in Mr. Rouse's statement, he actually references
2 that, that one reason why he didn't stop is that he thought
3 that one of the guys that had been fighting with them was
4 over there, and that's another reason why I didn't stop,
5 so as to prevent another altercation.

6 So in essence, they were forming their story to
7 provide it to law enforcement. I just think that's
8 important to note.

9 As Your Honor is aware, he has no prior record.
10 There's a number of family and friends that would like
11 to address the Court about this issue.

12 His injuries, Your Honor, Mr. Boyd's injuries were,
13 obviously, extremely significant. I have some
14 photographs of it I'd like to hand up that counsel has
15 been made aware of and seen.

16 If you'll note, they actually --

17 MS. CAMPBELL: They've been turned over.

18 MR. JOHNSON: Your Honor, some of these are similar
19 to ones that you were not going to allow in at trial. I
20 don't know if the same objection...

21 MR. GOLDBERG: I think they're just demonstrative
22 of the nature of his injuries.

23 THE COURT: All right. Hand them up.

24 MR. GOLDBERG: Thank you.

25 Your Honor, if you'll note, they're actually in

1 chronological order. This whole process starting
2 with before the accident and then throughout the treatment
3 and the surgeries that Mr. Boyd has endured.

4 I believe since that time he has had no less than
5 seven surgeries. Seven surgeries on his head and
6 brain, including at least two surgeries just recently
7 within the last few months. I believe it was a
8 cranioplasty in order to try to reconstruct his head, so
9 to speak, Your Honor.

10 It's been a long and winding road. He's going to be
11 in -- need constant attention, as he has a lot of
12 difficulty caring for himself on his own in terms of
13 preparing meals, doing laundry, just day-to-day
14 activities.

15 His left arm and most of his left side is also
16 paralyzed. Thus, the necessity for the wheelchair. It's
17 pretty safe to say that, obviously, his life will never
18 be the same.

19 I think that there are a number of people that would
20 like to speak. I don't know if you'd like to hear from
21 them now.

22 THE COURT: I'll be glad to hear from them.

23 MR. GOLDBERG: Okay.

24 MR. JOHNSON: Your Honor, if you would like, I could
25 address some of the facts that were presented by the

1 State.

2 THE COURT: You'll have plenty of opportunity.

3 VICTIM'S STEPFATHER: Yes. My name is Cordell
4 Jenkins. I'm Justin's stepfather. I've been involved
5 in his life for 14 years.

6 On April 19th, we received a phone call about three
7 o'clock in the morning. It said that Justin was involved
8 in an accident, so we -- I told Jackie, "Get up".

9 We proceeded to Columbia. I mean, prior to that, we
10 got another phone call from the chaplain at the hospital
11 that asked us if we -- if we were on our way. I said,
12 "Yes, we are."

13 So we proceeded, and we went to Columbia. When we
14 got there, we had to wait a few hours before we saw the
15 doctor. They told us once we got there that they
16 couldn't wait up there to do the surgery, right away. They
17 could not wait for us to sign, do anything, do the
18 surgery.

19 So about six -- I mean, about eight o'clock, Dr. Sweet
20 came to address us to let us know what had happened,
21 and he looked at us, and he said, "This is the worst brain
22 injury" that he had ever seen. He said, "The only thing
23 that I could do -- that I did do, is to relieve the pressure
24 on the brain. That's all I could do." All we could do
25 is just wait and see, because there's nothing else that

1 we could do.

2 So I got on the phone and informed the other people
3 back in Charleston what had happened and asked them to
4 please come, so we made it through the first day. He was
5 on life support at that time, so we made it through the
6 first day.

7 The next day the doctor informed us that he had to
8 go ahead and do another surgery to relieve the pressure
9 from the brain from the left side -- on the other side
10 of the brain.

11 Then he came out again and told us, "I need y'all
12 to make a decision. What do you want me to do?"

13 At that time, Jackie told them to do everything you
14 can to -- we were not willing to pull the plug. So we
15 hung in there, and there we stayed at the hospital for
16 ten days under -- in the critical care unit. Then the
17 doctor decided there was nothing they could do there in
18 Columbia. The only thing they could do was send him back
19 to Charleston, wait until he could come home.

20 So they sent him back in a critical care van to
21 Charleston where he was closer to home. His entire head
22 was still swollen. He could not move his left side at
23 all. He was really moving his right side, but he could
24 not move his left side at all.

25 So at that time, the doctors in Charleston said that

1 they couldn't do anything, and they recommended sending
2 him to the Shepherd's Center, which is in Atlanta, which
3 was one of the premier traumatic brain injury centers
4 in the country to see what they could do to help, I mean,
5 to try to help rehabilitate.

6 So we were there for about -- about -- probably
7 about two weeks. At that time, Justin hadn't spoken a
8 word, couldn't do anything, no gestures, other than move
9 the right.

10 When he got there at the Shepherd Center, they
11 tried to do a series of different things to try to see
12 if they could get him to respond to by asking him to move
13 one finger, two fingers, no response.

14 So one Saturday morning, I just got up and went down
15 in the hospital room with him and asked him, I said,
16 "Justin, can you raise one finger?" And he raised one
17 finger, and I said, "Can you raise two?" He raised two.
18 I said, "Three," and he raised three. I said, well,
19 I'm calling everybody and told them that he is
20 responding.

21 So as more time went on, Justin could do nothing for
22 himself. He -- everything was done in the bed. If he had
23 to use the bathroom, he had to use it right there in the
24 bed. The only indication to tell us that he had used
25 the bathroom was he would shake his leg or pat it to tell

1 us to clean him up.

2 Then one day Jackie called me and told me that Justin
3 spoke. She said -- I said, "What did he say?" He said,
4 "I need to use the bathroom," that was after two
5 months.

6 After -- he stayed at the Shepherd Center until
7 August 20th, then we brought him back home. We had to
8 build a wheelchair ramp. We had to try to make do with
9 what we had because of the time period, so we had to build
10 a wheelchair ramp. We had to start reconfiguring the
11 entire house as a result of the incident.

12 So over the past year, Justin has had several
13 surgeries, brain surgeries. He's had several other
14 surgeries on his chest. He's on seven different
15 medications.

16 Here is a young man who has been healthy all of his
17 life. Nothing. Now, he is -- this is the condition that
18 he's in today.

19 We're still -- we had to buy a van that's wheelchair
20 equipped. You know, we had to reconstruct the bathroom
21 to try to put the wheelchair inside of it, which was an
22 enormous cost.

23 We have attempted -- we hired a lawyer to try to the
24 find insurance. They have indicated to us that they had
25 no insurance. So -- so that's where we're at.

1 We're doing everything to try to provide some
2 quality of life for Justin.

3 Justin, baby -- I know that the lawyers for this
4 young man will probably say he hadn't been in any trouble.
5 I know they'll say how great he was, but it only takes
6 one time to do a dastardly act. It doesn't take two or
7 three times. It's a life changing event, just one time.

8 So today we have -- we have waited patiently for
9 our time. If he had a fight with somebody, he should
10 have went to somebody in law enforcement to get them
11 involved and had the police arrest them and sign a warrant
12 on the person.

13 You know, he was still -- he had time to think about
14 it. He didn't know Justin from Adam's house cat, and so
15 Justin don't know him.

16 So what -- if he had done what we have done so far,
17 we have left it to the court system. All I can do
18 today is leave it in your hands to make the right
19 decision. We have been devastated by this, absolutely
20 devastated. Life will never be the same and for
21 absolutely nothing.

22 Thank you.

23 THE COURT: Thank you, Mr. Jenkins.

24 VICTIM'S SISTER: I'm Kirstin Boyd, and I'm
25 Justin's younger sister.

1 MS. CAMPBELL: You're going to have to talk louder.

2 VICTIM'S SISTER: Words cannot tell you how
3 traumatic this has been on not only my brother but my
4 family, his friends. I'm in school. He was in school.
5 I'm traveling up and down the road trying to come home
6 and help my mother with my brother.

7 No one will ever, ever understand what we had to go
8 through. They would never understand. If the shoes
9 were on the other foot, I would say to myself, "A crime
10 is a crime. The law is the law. Those are two things that
11 cannot change."

12 If he had been where my brother is, I'm pretty sure
13 his family would be feeling the same way our family has
14 felt. My brother is very, very nice. Even to this day,
15 he still keeps a smile on his face. He is still
16 mannerable.

17 His therapist, his friends, anybody will tell you,
18 "Thank you. No, ma'am. Yes, sir. No, sir," no
19 problems.

20 Before this, we were in school together. He was
21 always one grade ahead of me. If he had a teacher before
22 and I got the teacher the next year, I would always hear,
23 "Oh, you're Justin Boyd's younger sister, very
24 mannerable young man, very mannerable."

25 There has never been any problems from my brother

1 at all. My brother has never even been in a fight, a
2 physical altercation, never, and I can raise my right hand
3 and I can say that.

4 I just ask today that we take into account everything
5 that has happened, everything that will happen, and we
6 let the law be the law.

7 Justin is not the same. He will not ever be the
8 same, and we can't change that. We can't change the law
9 either.

10 Thank you, sir.

11 THE COURT: Thank you, Ms. Boyd.

12 VICTIM'S AUNT: My name is Deborah Brown. I'm
13 Justin's aunt. I have a letter prepared that I put
14 together. "On April 19th, 2009, our lives were forever
15 changed. I was at work. I received a call from my
16 daughter around three or four in the morning saying Justin
17 had been in an accident, but she didn't know the
18 circumstances at the time.

19 "I told her to find out exactly what happened and
20 to call me back. When she a called me back, she was
21 crying. She told me that he had been hit by a car in
22 Columbia and things didn't look good.

23 "I left work at 6:00 a.m. By this time, my sister,
24 Justin's mom, was already on the way. My other sisters
25 and my daughter drove to Columbia that morning not

1 knowing what to expect and fearing the worst. My niece
2 who lives in Columbia went to the hospital where Justin
3 was taken. She did her best to keep us informed. In
4 between tears, she kept telling us, 'Please hurry'.

5 "The damage was so extensive, they took him'
6 immediately to surgery to perform a craniotomy, and he
7 was placed on a ventilator.

8 "When our sister saw her child, we were told
9 that she fainted. When we finally reached the
10 hospital, we found our sister sitting in a wheelchair
11 crying uncontrollably.

12 "Justin's mom was surrounded by dozens of Justin's
13 friends who were there all night, physically shaken. My
14 sister and I are nurses, and when we went in together,
15 we weren't prepared for what we saw. Our Justin was
16 almost unrecognizable.

17 "What happened to our family that night is something
18 we wish no other family would have to go through.

19 "Justin was scheduled to graduate from South
20 Carolina State University in December of 2009. He had
21 only nine hours of studies left.

22 "In March of 2009, he had an interview with the
23 corporate head of Harris Teeter in Charlotte, North
24 Carolina. Justin had been working for them for ten years,
25 and they saw something special in him.

1 "With his major in computer science, he was going
2 to work with them in Charlotte. Justin had just pledged
3 Omega Psi Phi two weeks before the accident and was proud
4 to carry on the legacy of his father, who he had lost at
5 a very young age.

6 "On April 2009, everything changed. He was in a
7 fight for his life. The doctor told us he wouldn't make
8 it. They told us if he did make it, he would be a
9 vegetable, but our Justin was a fighter.

10 "We refer to him as 'our Justin' because that's
11 exactly what he is to us, our boy. He has always been
12 a fighter. He never let his size stop him from doing
13 anything. He was always the smallest, hence the name,
14 'Shrimp'.

15 "He was, and still is to this day, an obedient
16 child. Never once has he given his mother any trouble.
17 Ever since he was old enough to work, he always had a job.
18 There were things that he wanted, and he knew he had to
19 work for them. This was never a problem for him.

20 "To this day, all Justin wants to do is walk, drive,
21 get his degree and work so he can, as he said, pay his
22 mom and sister back for what they have done and continue
23 to do for him.

24 "His sister, Carrie, is now a senior at Clemson
25 University. Imagine what she had to endure trying to

1 continue her studies and driving to and from Atlanta
2 every weekend to be with her brother and mother.

3 "It is said that all things happen for a reason. We,
4 as a family, has continued to struggle to see in Justin
5 all that has happened in Justin.

6 "When Justin got hurt, we were very angry. Our boy
7 was almost lost to us, all because one individual
8 became so angry that he let his ignorance and his
9 cowardliness get in the way of his mistake and used a car
10 to its very worst, and our boy was the recipient of his
11 ignorance.

12 "Neither he or his family have not once called to
13 check on Justin or his mom to see how they are doing or
14 to offer any form of an apology.

15 "Justin has come a long way, but he has a long way
16 to go. This young man needs to be made aware of what
17 Justin has gone through, what he is going through, and
18 what he will continue to go through.

19 "He needs to be held accountable for his actions.
20 He needs to be head financially and physically
21 responsible for Justin. This young man can get up and
22 go when he want to, jump in his car and drive when he wants
23 to.

24 "He continues to go to school and work. He doesn't
25 needed help to wash himself, feed himself, or go to the

1 bathroom. He took all of this away from Justin, and he
2 needs to be held responsible for as long as Justin is in
3 need of help.

4 "Justin does not know the defendant, but he has
5 on several occasions asked his mother and sister why
6 and how did this all happen to him. We, as a family, would
7 also like to know the answer to Justin's question."

8 Thank you.

9 FRATERNITY BROTHER: Good morning, Your Honor,
10 friends. My name is Red Jamison (phonetic). I'm Justin's
11 line brother from the Omega Psi Phi. I'm here on behalf
12 of my line brothers and also the fraternity.

13 As a new chapter of the L.B., the organization at our
14 school, prayer was immediately in effect when we first
15 heard the news, from doing fundraisers, from traveling
16 back and forth to Charleston or to Columbia or Atlanta
17 where he was in the hospital, I think it would be
18 injustice if I was to say it was rough.

19 When things happen to one human being, you'd be
20 surprised and amazed how it can affect -- how many people
21 it will affect.

22 Our L.B., the line brothers -- excuse me, I'm a
23 little nervous. We really had a trying time helping his
24 family. If his mother called, or his stepfather called,
25 or sister called, needed anything, we assisted with --

1 assistance with financial means or just as any time you
2 guys come see him or do a little hop for him, brighten
3 his day. It was no problem.

4 Stop. Justin is here, let's go. When we first heard
5 the news, it was real devastating. It was real early in
6 the morning. We jumped in the car, traveled on the road.

7 So I can say for my L.B., my line brothers, and also
8 the fraternity, we can only imagine what the defendant
9 has gone through.

10 There never was a time when they called that we was
11 not there, again, from fundraisers, from doing a prayer
12 on campus, joining others and assisting with the family's
13 financial need and also physical needs.

14 Once again, I thank you for allowing me to have this
15 opportunity, on behalf of my line brothers and to the
16 family. Keep it in prayer. God brought him this far.
17 He's not going to abandon him here.

18 Thank you.

19 THE COURT: Thank you.

20 FRATERNITY BROTHER: Good morning, Your Honor.

21 THE COURT: Good morning.

22 FRATERNITY BROTHER: My name is Brian Hanberry, here
23 on behalf of the fraternity.

24 Since April 19th, our lives have all changed from
25 us to Justin, his family, to school.

1 Being there on that night, being one of the people
2 who was there, before we even left to go to that party,
3 we all talked about how it was going to be a great night,
4 how we was going to all go and have fun.

5 Like they stated, Justin just crossed like two
6 weeks ago. It was probably like our first time going out
7 together as a fraternity.

8 No one knew that that night really, really changed
9 our lives completely from watching him smile and talk
10 about how he enjoyed just being around us and the
11 comradeship that we shared, to see from that smile to
12 watching him lay in the street and could do nothing
13 like -- we was helpless. No help, no remorse. It
14 changed us..

15 We are here to speak on behalf of him. We just want
16 justice, I guess, in a sense, to put it in laymen's terms.
17 We want the punishment to fit the crime.

18 We -- we feel for him. We hope that he has a steady
19 recovery. We pray for him every day. We talk about
20 him. We try to find ways to help the family, as Brandon
21 stated, from fundraisers to cookouts, through any means
22 to try to ease the family.

23 They're with him every day, 24/7. They help him to
24 try to have a basic life, but what is basic? Like they
25 say, he gets -- the defendant, he's fine. He can walk.

1 He can talk. He can do things on his own. Justin can't.

2 We're just here for Justin, for Justin. Thank
3 you.

4 THE COURT: Thank you, sir.

5 MR. GOLDBERG: Your Honor, I just want to point
6 out, Mr. Hanberry who just addressed you, as well as about
7 six or seven other guys in the crowd today who are
8 here, are all friends of Justin's, that were prepared to
9 testify, all of which were with him that night, college
10 graduates, most of them in grad-school, currently in
11 school. I just want to thank them for making themselves
12 available to be here today.

13 Beg the court's indulgence for one second.

14 (Pause)

15 Your Honor, Mr. Alvarez Pringle, who is the victim
16 of the A.B.H.A.N. charge is present today. He doesn't
17 wish to say anything at this time. I just want to point
18 that out.

19 The last person to address you at this time will be
20 Justin himself.

21 THE VICTIM: How are you doing, Your Honor?

22 THE COURT: I'm all right, Justin.

23 (The victim shakes in the negative).

24 (Pause)

25 THE VICTIM: This has affected my life really badly,

1 Your Honor. As you heard from them, from the richness
2 of my heart, out of all act -- out of all act -- my
3 activeness, Your Honor, all scars is gone, and it has
4 affected my life dramatically.

5 Can you understand that all right?

6 THE COURT: I understand you.

7 THE VICTIM: Thank you, sir.

8 (Pause)

9 Your Honor, sir, I can't honestly -- I honestly
10 can't remember everything that happened to me that night.
11 I asked my line brothers everything that happened.

12 Is that all right with you?

13 (Pause)

14 (Conferring)

15 Yes, sir, and then Mr. Rouse, I probably -- come to
16 look at him, what he has done to me, sir. He has
17 changed my life dramatically. I was -- I was scheduled
18 to graduate in December, and physic--- physically, I'm
19 not able to.

20 Do you understand that, sir?

21 THE COURT: I understand you.

22 THE VICTIM: This whole incident has changed my life
23 dramatically, Your Honor. It's sad. You see I'm
24 crying, sir.

25 (Pause)

1 Thank you, Your Honor.

2 INVESTIGATOR: Your Honor, if I can address the
3 Court briefly. In reference to this incident, this was
4 a tragic, horrific incident. As you've heard testimony
5 from -- the injuries were incredible.

6 I think we had some discussions pretrial about
7 there was going to be some talk about intent in this
8 incident. From investigating this case, the testimony
9 that was going to be brought forth -- after this incident
-10 occurred, no one stopped to see about Mr. Boyd. They
11 continued on. They went to get something to eat.

12 They came back by, still failing to stop to see or
13 render any aid. They go to their apartment complex
14 where a mirror is removed from the vehicle that was damaged
15 during this incident.

16 The vehicle is then taken to another apartment
17 complex, to the brother's apartment, and placed there.
18 There's the text message in between the two brothers while
19 we're interviewing them that we would have tried to
20 introduce, as Mr. Campbell's -- I mean Mr. Goldberg
21 stated.

22 I would submit that these incidents, to me, show
23 intent in this crime and that there was no doubt in my
24 mind when people do these types of things, that shows
25 intent to the crime.

1 And I know it's up to Your Honor as far as sentencing
2 in this incident, but we would request, respectfully
3 request, substantial time on this incident.

4 MR. GOLDBERG: That's all.

5 THE COURT: Anything further?

6 MR. GOLDBERG: No, sir.

7 MR. JOHNSON: Judge Cooper, May it please the Court.

8 THE COURT: Yes, Mr. Johnson.

9 MR. JOHNSON: I'd like to begin by thanking you for
10 having this proceeding, allowing the Rouse family to get
11 their family members here from Charleston this morning
12 in support of Daydrian.

13 I'd also like to thank you for allowing Daydrian to
14 come back this morning. It was compelling, to me,
15 yesterday to see how -- the steps this family went to,
16 time wise, financially, to spend a couple of hours with
17 him knowing that when he came back here today, that you
18 would be sending him to jail.

19 I hope that the trust that you placed in Daydrian
20 was from -- came from your length of time around him and
21 his family, knowing that he would come back, despite
22 knowing that he will be in jail for years.

23 During our conversations yesterday, prior to him
24 coming before you and pleading, I was frank with him and
25 his family that any type of plea would result in years

1 of jail time. He knew that, and he still came before you
2 yesterday. He came back before you this morning.

3 Mr. Boyd's aunt mentioned to the Court that no one
4 from Daydrian's family had apologized or said anything
5 to them about this incident. I can be blamed for that.
6 The responsibility for that is on me.

7 It is basic defense -- basic policy for a defense
8 attorney to tell his clients to not have any contact with
9 the victim's family, and that's what I did immediately,
10 over a year ago. So I am responsible for that.

11 I can tell you, as an officer of the Court, that for
12 the past year there has never been a conversation I had
13 with Daydrian or his family where they did not ask about
14 how Mr. Boyd was doing, and hoping that he was getting
15 better, happy when he was getting better.

16 Every time, there were tears, from Daydrian, from
17 his family, for Mr. Boyd's condition. I can tell you,
18 as an officer of the Court, that Daydrian has always
19 been extremely remorseful for what he did that day.

20 I would ask the Court to bear with us from the
21 standpoint -- his plea yesterday was part -- all three
22 parts: An Alford, a guilty plea, and I cautioned Daydrian
23 and his family about -- he took responsibility for
24 his actions yesterday and to do nothing, say nothing to
25 take away from that.

1 Because of the Alford part of it, I would ask the
2 Court to bear with him in this matter, along those lines.
3 I feel compelled to address a few of the factual
4 statements made by Mr. Goldberg.

5 There was a statement by a -- one of the witnesses
6 who stated that the young man who was with Daydrian said
7 that, we're going to get the Omegas or something along
8 those lines.

9 It was clear in the statement it was not Daydrian
10 who made those statements. Particularly in that
11 statement, he said that Daydrian was smiling as he walked
12 out of the National Guard Armory.

13 If we had gone to trial, we would have presented
14 testimony that there was a black S.U.V. between
15 Daydrian's car and the young men who were crossing the
16 street.

17 I had actually subpoenaed Mr. Hanberry, because he
18 was one of the ones mentioned yesterday as being in the
19 black S.U.V. in the inside lane.

20 The testimony about the McDonald's, the young man
21 that was driving with Daydrian suffers from migraines.
22 He told Daydrian as they were leaving that he needed to
23 get some food to take his migraine medication.

24 Additionally, the young man was -- that was in that
25 fight was kicked and was in pain. He just asked Daydrian

1 to keep on, get me some food so I can take my pain
2 medication. That's why they went to McDonald's, Your
3 Honor.

4 As you've been told, they had to go back that way
5 to get home. He had no idea the severity of Mr. Boyd's
6 injuries. He didn't stop, but he pled guilty yesterday
7 to hit and run.

8 So he had no excuse for not knowing the severity of
9 the injuries, but the fact that he did not -- I'm not making
10 excuses for him along those lines. -- He should have
11 stopped, but he did not know the severity of those
12 injuries.

13 I think it's important to note that the next day,
14 his father contacted the sheriff's department after
15 hearing that they had been at his oldest son's apartment
16 looking at Daydrian's car and brought both his sons in
17 to give statements.

18 There's always been the implication that
19 Daydrian tried to hide his car after this incident, and
20 this was -- if that was the intent, he did a poor job,
21 Your Honor.

22 He took the car to his brother's house. The police
23 found the car by going to his brother's house. He didn't
24 cover it or put it in a garage. He drove it straight into
25 a parking space. On the back of his window is a big

1 picture with a big sign that says "Chuck Town" because
2 that's a nickname for Charleston.

3 He didn't dispose of the broken side-view mirror.
4 He put it in his trunk. I'd just ask the Court -- he did
5 not try to hide his car. That morning, he took an exam,
6 a military entrance exam, and he had -- I believe it was
7 his brother take him to take that test -- it may have been
8 his father. He just didn't want to drive the car with
9 the mirror missing.

10 The car, as he was driving -- it was his mother's
11 car, and she was responsible for paying the insurance.
12 It lasted during the time of this accident, Your Honor.
13 Daydrian was never responsible for making insurance
14 payments. He was responsible for the family car. He's
15 responsible for this accident, this incident. More -- be
16 I apologize. Please don't take offense if I call it an
17 accident. For the past year I've been preparing for
18 trial, and that's the word that's in my head, but I hope
19 you will not hold the insurance issue against Daydrian
20 because it just wasn't his responsibility.

21 I asked Daydrian to speak to you to tell you a
22 little bit about himself. Normally defense attorneys
23 come in here and tells you, "My client is a certain age,
24 goes to school."

25 Daydrian is such a smart young man that he can speak

1 for himself. I don't know if he can wait, right now, but
2 I would ask the Court whenever you allow me to have
3 -- there's some people here who would like to speak
4 about Daydrian. Would this be an appropriate time?

5 THE COURT: Yes.

6 MR. JOHNSON: Certainly. His pastor, Reverend
7 Groves.

8 You can stand right there.

9 THE PASTOR: Your Honor, thank you for this
10 opportunity to speak. I'm here because I am the pastor
11 for this family.

12 THE COURT: Your name. I need your name for the
13 record.

14 THE PASTOR: I'm sorry, Robert Groves.

15 THE COURT: Thank you very much.

16 THE PASTOR: Yes, sir.

17 I'm the pastor of the Baptist church. I've been the
18 Rouse's pastor since 1993, and I baptized Daydrian in 1996.

19 Of course, the Daydrian I know is just a well-mannered
20 young man who comes to church with his family. When he's
21 home from school, he comes to church.

22 He worked with our youth ministry touring program.
23 Never, to my knowledge, was he ever any problems to his
24 family or to anyone else, so I came to -- not to excite
25 us but to be supportive in a situation that's just

1 tough. it's just a tough situation.

2 I've been pastoring now for some 22 years, and I've
3 seen so many situations. This one really grabbed at my
4 heart because I feel for this family; I feel grace and
5 compassion for them.

6 I have sons, and I have three daughters, and knowing
7 Daydrian and this family, it's a very, very, very good
8 family, Your Honor, and it's just hard, hard. I'm here
9 because of the Daydrian that I know and the Rouse family
10 that I know.

11 I appreciate the opportunity to give me a chance to
12 speak.

13 THE COURT: Thank you, Reverend.

14 MR. JOHNSON: Your Honor, may I approach? This is
15 some letters of -- if you'd like to see them?

16 MS. CAMPBELL: We'd like to see the letters.

17 (Pause)

18 MR. JOHNSON: While they're looking at that, Your
19 Honor, Ms. Alvena Singleton.

20 MS. SINGLETON: Good morning, Your Honor.

21 THE COURT: Good morning, Ms. Singleton.

22 MS. SINGLETON: My name is Alvena Singleton. I am
23 a probation officer, and I have been for 30 years.

24 Daydrian is my cousin, although he considers me as
25 his aunt. We grew up together. I have watched this

1 man, this young man, Your Honor, over the last 21 of those
2 years, and an honest, loving and caring individual. He
3 is not the individual that was portrayed on the paper.

4 As his family spoke, we love Daydrian. We surround
5 him. We don't minimize what has happened to this family.

6 We have prayed night and day from day one for this
7 family. We're losing two wonderful young men. We don't
8 want to lose this young man to the medical system, and
9 we certainly do not want to loose Daydrian to the criminal
10 justice system.

11 I can say that we don't want to lose either one of
12 them. They're both good young men. My plea is for
13 Daydrian. We don't want to minimize what has happened.
14 We can't take it back. However, there has not been a
15 moment that Daydrian has not considered the victims in
16 this case.

17 There's not been a moment that he hadn't thought
18 about it. We talked lots of times in reference to it.
19 He is remorseful. He has taken responsibility for what
20 has happened.

21 His life, his family, have also changed. We come
22 before this Court today, not only in support of Daydrian
23 but also in support of this family.

24 We have to accept whatever the Court imposes on
25 Daydrian. Daydrian has never been in any trouble, and

1 I grant you, Your Honor, he will never be after this
2 happens. His life, our life, all of our lives continues.

3 We're asking for the leniency of the Court. We're
4 asking that the judge look at Daydrian as an individual
5 and as a person that was a good man who has never done
6 anything like this before and never will again.

7 Thank you, Your Honor.

8 THE COURT: Thank you, Ms. Singleton.

9 MR. JOHNSON: May I pass up these letters for your
10 consideration?

11 While you're looking at that, his brother, Kiron
12 (phonetic), would like to speak to the Court, Your Honor.

13 THE BROTHER: Your Honor, I just want to speak for
14 my brother, Daydrian. Even as the oldest, I always
15 looked up to Daydrian, as well because this was one of
16 the -- he was smarter than I was in school.

17 When I attended U.S.C. and graduated, you know, I
18 advocated -- I went like this, going to school, and by
19 doing what's in school, you have some new opportunities
20 for yourself.

21 So I advocated for him go, come to Columbia to U.S.C.
22 and because this is -- because of this waste on the
23 economy, this situation would never have happened.

24 For my family, your family, as well, I pray every
25 day, several times a day, both -- both families, will not

1 spite for evil.

2 I said from the time he was grown to a little child
3 until now, I say we are children of God, and I just pray
4 to -- I continue to pray for both families. I just want
5 to say that -- I just want to say he has an opportunity
6 to be strong. That's all I'm asking for.

7 THE COURT: Thank you very much.

8 MR. JOHNSON: Your Honor, this is Ms. Betty Rouse,
9 Daydrian's mother.

10 MOTHER: Good morning, Your Honor.

11 THE COURT: Good morning, Ms. Rouse.

12 MOTHER: Good morning. My name is Betty Rouse. I
13 am the mother of Daydrian Rouse.

14 First, I would offer my apologies to the family. I
15 did once before. I did apologize and said I'm sorry,
16 and to all this, I have prayed dearly and dearly that all
17 of this would work out, and I want the best for both of
18 them.

19 I am so proud of them all. They want to go on for
20 their education, and they want something out of life.
21 Sometimes life brings us mishaps, but we don't have any
22 control over it.

23 I just want them to know sincerely in my heart. I
24 went to my pastor several times, and I asked him,
25 "Please, pray for that young man," to say anything to the

1 family because I wanted to call, get a message to you,
2 something, but I always asked the attorney, every time
3 I saw him, "How is the young man doing?"

4 Now, Daydrian has always been a good child. I am
5 very proud of Daydrian. I have three boys, well
6 mannered. I have always taught them to be honest, and
7 I have always taught Daydrian that no matter what, you
8 tell the truth.

9 Daydrian has always done it, and he has always put
10 up those responsibilities. He has always been a bright
11 young child.

12 In elementary school, Daydrian was elected to be in
13 the gifted and talented. He was in the school band. He
14 was in honors, and I never had to go to any school about
15 any fight.

16 The teachers loved him. All I know is they called
17 him Smiley sometimes. He was quiet and never takes side
18 or nothing, even with me and his father, he would never
19 take -- he's always got a smile, you know.

20 And -- and I told Daydrian, stay strong and keep God
21 first. And I have to believe that, and I asked him to
22 please offer leniency on my child, not because he's my
23 child, but any young man out there that's trying because
24 things do happen.

25 It's not always plain, but things happen, but I know

1 that God is in control, and he considers all the young
2 men. This one, too, and I believe Justin, that He's
3 going to take care of him, and I am proud of his
4 accomplishments. Thank you.

5 MR. JOHNSON: Lastly, Your Honor, we have his father,
6 Mr. Rouse.

7 THE COURT: Yes, Mr. Rouse.

8 FATHER: Good morning.

9 THE COURT: Good morning.

10 FATHER: First of all, my prayers go out to the
11 family. Just as my wife said, we tried and we wanted to
12 talk to the family, but we're here from the heart.

13 Our attorney said it was best not to, but we did it
14 internally within our heart. But I have three, three
15 boys: Timmy, Daydrian, and Kiron, three fine boys.

16 It's tiring, but a fine man, a fine gentleman, but
17 what should a father say? I mean, no problem with him,
18 not in high school.

19 I mean, he was born on the 21st of December. I recall
20 when he was born, we brought home him home from the
21 hospital. They had a Christmas tree out, and I put him
22 by the Christmas tree, the gift of life, the gift of
23 life.

24 But I'm just asking the Court, it's easy, it's easy.
25 If he only -- I don't know why -- I don't know. It's hard.

1 It's real hard, but I'm asking -- this is from my heart,
2 and asking for a little leniency on my son because it
3 wasn't no intent for what happened.

4 I could go on and on and on. I think it's best to
5 sit down and let it be in your discretion.

6 Thank you.

7 THE DEFENDANT: Good morning. My name is
8 Daydrian. First, I'd like to apologize to Justin Boyd,
9 as well as Alvarez Pringle and the families of each.

10 Like they said, I'm 21-years old. I was attending
11 the University of South Carolina. I had three semesters
12 left before I also graduated with my degree in computer
13 science and my minor in graphic design.

14 Plenty of times, I asked -- I attempted -- not
15 attempted, but I asked if it -- if it was possible if I
16 could in any way apologize to the family because if it
17 was known at the time...

18 (Crying)

19 If it was known at the time -- that if I had known
20 his condition...

21 (Crying)

22 I mean, I knew I would start crying, but you can't
23 worry about the past. It's going to always be here
24 (indicating).

25 I went to get in touch with the family. I wanted to

1 send my sympathies, my apologies, and every night, I
2 probably prayed for his family more than I probably
3 prayed for myself. But at the same time, I took everything
4 into consideration, like pray for his family, as well as
5 Alvarez Pringle's family.

6 I even prayed for the solicitors and the attorney
7 of their family, even though I was told that they was
8 going to talk bad about me; that they didn't like me;
9 that they never wanted anything to do with me, as well
10 as the friends of Justin Boyd and Alvarez Pringle.

11 There's plenty of times I've heard -- I've had
12 messages come back to me, but at the same time, I continued
13 to pray for the family, his condition, my family.

14 Basically, I would like to say to both Justin Boyd
15 and Alvarez Pringle that I apologize.

16 MR. JOHNSON: And, Your Honor, since around noon
17 yesterday, I've tried to figure out what I was going to
18 say to you to convince you to take mercy on Daydrian
19 Rouse.

20 I realize the range the legislature has given you
21 to impose, and I'm asking you to sentence him on the low
22 end of the range, which is what you would expect me to
23 do.

24 I tell you, as an officer of this Court, that this
25 young man is someone you will never see again, someone

1 I would have never expected to be before you today.

2 He made so many mistakes on April 18th and 19th,
3 2009, but they don't truly encompass who he is. Who he
4 is, is a young man who has so much potential, just like
5 Mr. Boyd.

6 The tough part about these pleas in my job is when
7 I talk about my client, the natural response is for
8 Mr. Boyd. I understand that, but I wish I could tell you
9 that Daydrian comes before you as a college graduate, but
10 he didn't finish college.

11 I wish I could lay out for you his exemplary work
12 history, but you know, at 21 years old, he hadn't been
13 in school. He hasn't been working the past year, and in
14 high school.

15 I wish I could tell you about his children that he's
16 a good father for, but to his credit, he has not had any
17 children out of wedlock.

18 All I can tell you is a substantial jail sentence
19 is unnecessary to make this young man understand what
20 he's done. It's not -- he understands the gravity of what
21 he's done.

22 Your Honor, we would respectfully ask you to sentence
23 him on the low end of the range. Thank you.

24 THE COURT: Anything further?

25 MR. GOLDBERG: Beg the Court's indulgence for one

1 second.

2 THE COURT: Yes, sir.

3 MR. GOLDBERG: Your Honor, I apologize, during our
4 previous presentation, Justin's mother did not think
5 that she was going to be able to actually address the
6 Court, but she tells me that she would like the opportunity,
7 if possible.

8 THE COURT: I'll be glad to hear from her.

9 MR. GOLDBERG: Thank you.

10 MOTHER: Your Honor, I'm Jacqueline Boyd. I'm
11 Justin Boyd's mother.

12 THE COURT: Good morning, Mrs. Boyd.

13 THE MOTHER: I just wanted to say that I don't wish
14 for the family to have to go through what we've had to
15 go through for the past year-and-a-half with my son.

16 Oh God. It's been tremendously hard. Justin's life
17 has been just thrown a curve ball for no reason at all.

18 If I could make a child, a model child, I could not
19 have picked a better son than Justin. He's never given
20 me any problems, never given anybody any problems.

21 Elementary school through college, he was no problem
22 whatsoever.

23 Oh, gosh. Excuse me.

24 (Pause)

25 Oh, God. They'll never know what it's been like

1 being away from your family, five months in the hospital
2 with your son, just praying that he would be okay.

3 (Crying)

4 I'm sorry.

5 Having the doctor tell you that there's nothing they
6 can do for your child, just to let him go...

7 We prayed for my son. Justin has had some prayers
8 from all over. We've received prayers from as far as
9 England on Justin's behalf, people we don't even know.
10 They've been praying for him, everyone.

11 I just want to say even if Daydrian serves time,
12 he still can go on with his life. He still would be
13 able to drive and go out, even wash himself, do anything
14 for himself, and Justin -- Justin won't be able to do all
15 of the things that he could before, before this incident
16 happened.

17 I'd just ask that you -- justice be served on Justin's
18 behalf. Thank you.

19 THE COURT: Approach the bench, Counsel.

20 (Whereupon, there was a bench conference.)

21 THE COURT: Mr. Johnson, why don't you have your
22 client take a seat. We're trying to investigate
23 something.

24 (Pause)

25 THE COURT: All right. I'm going to take a minute,

1 and I'll let you know my decision in about ten minutes.

2 MS. CAMPBELL: Thank you.

3 THE COURT: We'll stand at ease for about ten
4 minutes.

5 (WHEREUPON, a short break was taken.)

6 THE COURT: All right. Well, ladies and gentlemen
7 and both of these families, I realize this has been an
8 extremely difficult and heart rendering time for all of
9 you since April of 2009.

10 It's, indeed, a tragedy for both of these young men
11 and both of these families. Both of them will be scarred
12 for life, but there's nothing I can do to make it not
13 happen or go away.

14 It's happened, and it's an extremely difficult
15 position that I find myself in. When fashioning this
16 sentence, I had given the indication of what I thought
17 about it to counsel in chambers before the plea.

18 I thought balancing both the sadness and the
19 devastation that Mr. Boyd's family has suffered and yet
20 looking at Mr. Rouse, believing that he is a good person
21 that made a mistake. He has admitted to that mistake,
22 and he has taken responsibility.

23 There is nothing I can do to make Mr. Boyd whole
24 again, and that's a sad -- it's a sad, sad situation.

25 I will tell you, frankly, that most sentencing

1 hearings take about 30 minutes, and based on what all of
2 you said, we've been here for two-and-a-half hours to try
3 to come to some resolution of this, some fair resolution.

4 In sitting here and in listening to you tell the
5 story of both these young men, it occurred to me that there
6 must be something I could do in the way of some sort of
7 financial help for the family of Mr. Boyd that would
8 never -- would never repay them for what they've gone
9 through, but at least might be some solace for them.

10 Unfortunately, the way our laws are structured and
11 our prison, the manner in which they -- it operates and
12 the parole system, it's difficult to fashion something.

13 So when I left the room -- and your attorneys can
14 tell you more about that and how the parole system
15 works, but this is a plea to assault and battery with
16 intent to kill.

17 Even though it was an Alford plea, it carries a
18 potential sentence of 20 years in jail. That makes it
19 what is known as a no-parole offense.

20 In other words, the legislature has determined that
21 that sentence -- although that's not a mandatory
22 minimum -- requires that any individual that is convicted
23 of that crime serve 85 percent of his sentence and would
24 give me no room to try to compensate the Boyd family for
25 this tragedy.

1 So -- and your counsel can tell you this, because
2 I brought them into the process, but I called the
3 Department of Corrections and told them of my dilemma.
4 And they gave me a suggestion, which I think is fair, and
5 that is the sentence I'm about to impose.

6 But I worried so much about this case that I felt
7 that I needed not only divine guidance, but some guidance
8 from the people who are going to be with Mr. Rouse for
9 the next few years, some insight into their system as to
10 how I could do what I wanted to do.

11 They gave me a suggestion, and I ran it by both
12 counsel. It's not their job; your counsel's job, to
13 necessarily agree with me, and I'm not certain that they
14 do, but I think they understand why I'm doing what I'm
15 doing.

16 Ms. Singleton, you may understand. You understand
17 the dilemma, I think, because you work in the system where
18 there's a no-parole offense. It's very difficult to
19 fashion some sort of either a probationary sentence or
20 something to create a responsibility for restitution.

21 Your system is a lot more flexible than mine, but
22 be that as it may, we have to live with what the legislature
23 has dictated.

24 So Mr. Rouse, with respect to your hit and run
25 charge, the sentence of the Court is you be committed to

1 the State Department of Corrections for a period of 10
2 years.

3 On your assault and battery of a high and
4 aggravated nature charge, the sentence of the Court is
5 you be committed to the State Department of Corrections
6 for a period of ten years.

7 On your assault and battery with intent to kill
8 charge, the sentence of the Court is you be committed to
9 the State Department of Corrections for a period of 15
10 years; provided, however, upon the service of ten years,
11 the balance is suspended with probation for five years
12 and restitution in the amount of \$20,000.

13 Provided however, it -- this sentence shall be
14 reduced to a straight ten-year incarceration sentence
15 with no probation upon the payment of \$20,000 restitution
16 on or before January 1st, 2011, payable to the Clerk of
17 Court for Richland County for the benefit of Justin
18 Boyd.

19 That is my sentence. Good luck to you, sir.

20 MR. JOHNSON:

21 MR. GOLDBERG: Thank you, Your Honor.

22 THE COURT: All sentences to run concurrent, and he's
23 given credit for any time served.

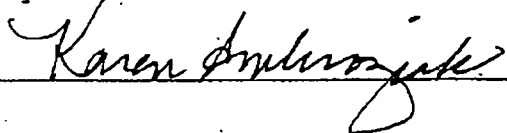
24 (Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and partial Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the General Sessions Court for Richland County, South Carolina, on the 30th day of August 2010.

May 16, 2011



Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	2009-GS-40-3721
County of Richland	)	2009-GS-40-3722
	)	2009-GS-40-3723
	)	
State	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Daydrian Rouse,	)	
	)	
Defendant.	)	

November 8, 2010
Columbia, South Carolina

BEFORE:

The Honorable G. Thomas Cooper, Jr., Judge

APPEARANCES:

Daniel Goldberg, Asst. Solicitor
Luck Campbell, Asst. Solicitor
Attorneys for the State

MICHAEL COLEMAN, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T SWITNESSES:

(There were no witnesses called.)

EXHIBITS:

(There were no exhibits introduced.)

CERTIFICATE OF REPORTER

20

1 THE COURT: All right. Mr. Coleman, this is your
2 motion.

3 MR. COLEMAN: Judge, obviously, I'm in front of you,
4 as Mr. Daydrian Rouse. I got involved in this case
5 about -- I'd say about a month ago.

6 Judge, obviously, I think you're very familiar with
7 this case. You imposed a sentence on Mr. Rouse of ten
8 years. I was contacted by an investigator out of
9 Charleston that was very familiar with the family and
10 wanted to know if I'd take a look at this case.

11 I explained to them, you know, obviously, Judge, my
12 role as a defense attorney, this case was past that part.
13 I'm not an appellate lawyer and that, you know, Mr. Rouse
14 stood in front of Your Honor and entered a plea on this
15 case. Whether it was under Alford or not, he entered a
16 plea and was sentenced.

17 I took a look at the file, judge, and I don't want
18 to go into a whole lot of that detail today. Why I'm here
19 today, Your Honor, is to ask you to respectfully consider
20 the sentence that you placed on Mr. Rouse.

21 He entered a plea under Alford. He has explained
22 to me, and his family has explained to me, that at the
23 time he came into this courtroom, he was coming into the
24 courtroom for trial.

25 Unfortunately, the victim in this case has been

1 injured severely and Mr. Rouse was told by his lawyer
2 that nothing he said on the stand was a jury going to believe
3 based on the condition of the victim, nothing that he
4 testified to that they were going to listen to, all these
5 other comments were made about why he needed to take that
6 plea.

7 He pled on one day. The next day he was sentenced,
8 and after the fact, Judge, as the investigator started
9 looking at the case, I took a look at the case.

10 After speaking with Mr. Rouse, I mean, I've had
11 several criminal cases and several cases that went to
12 trial. This was clearly a case, had I been the attorney
13 in the case, and we can't change what has happened as far
14 as the trial goes, but had I been the attorney in the case,
15 I would have never advised my client to take a plea in
16 this matter, not even under Alford.

17 I believe that Mr. Rouse's background supports
18 that, that he has never been in trouble with the law. He
19 has -- he was in college at the time. All of these
20 individuals were in college at the time.

21 He claims that he was not involved in some sort of
22 fight or confrontation that took place inside the gym,
23 and that later on is the reason they claim that he hit
24 this individual.

25 He had no motive to hit this individual with his

1 vehicle. from his side of the story, he says that they
2 ran out in front of another vehicle as they were crossing
3 the road. He swerved to miss them, and that's what happened.
4 He hit the individuals, and the mistake that he made that
5 led to his detriment, he didn't stop. He got scared.

6 I think we could all understand, in a situation like
7 that, at that exact moment, that was the problem that he
8 -- that was the bad decision that he made.

9 He, Your Honor, he has never been in trouble, like
10 I stated. He's got a very loving family who loves and
11 supports him.

12 THE COURT: Mr. Johnson told me all of that.

13 MR. COLEMAN: A very good family. I think in this
14 case, Judge, that the appropriate sentence in the
15 case, if Your Honor would consider, would consider giving
16 some active time but then some probationary time with a
17 long suspended sentence.

18 He can't go back and change what happened, and
19 that's why he pled under Alford, because he maintained
20 that he just didn't feel that he was guilty of the crime,
21 but he firmly stands behind the fact that he was told over
22 and over again by his attorney to take the deal. That
23 he had to take the deal. That there was no way he was
24 going to win that trial.

25 He knows what he has done. It's totally wrong what

1 has happened, and he's very sorry for it and
2 very -- everybody is very emotional. I mean, when I look
3 at a case like this, Your Honor, I think everybody has
4 lost.

5 But now to put him in prison for ten years where I
6 know after ten years, I just don't see that a young man
7 like him is going to be able to be rehabilitated after
8 ten years in the penitentiary when they went in as a
9 person who truly had never had any problems with the law.

10 You know, obviously, to the family, about post
11 conviction relief, I've explained to them about the
12 procedures of withdrawing a guilty plea and things like
13 that; and, you know, in this instance, to save everyone
14 time on those issues and to avoid that process -- I mean,
15 Mr. Rouse has asked me to come before you just to ask
16 the court if you would agree to consider some type of
17 reduction in the sentence. Put all the conditions on it
18 in the world that you feel appropriate, you know, but I
19 don't think he's a danger to the community.

20 I definitely don't think, after my review of this
21 case that this was an intentional act on his part.
22 Unfortunately --

23 THE COURT: Did you have the advantage of the
24 witness -- knowing what the witnesses would have said
25 had the matter gone to trial? Did you talk to the State

1 about that?

2 MR. COLEMAN: I did not, Your Honor. I had -- I mean,
3 all I had in front of me, obviously, was discovery and
4 speaking with the investigator that the Rouse's had
5 retained after the fact, so, no, sir.

6 THE COURT: Okay. I didn't know how much
7 investigation you had been able to do in this short
8 period of time.

9 MR. COLEMAN: Well, unfortunately, Judge, I mean I
10 did not speak to the witnesses in this case, and I did
11 not -- I mean, as far as the State's witnesses in this
12 case.

13 THE COURT: All right.

14 MR. COLEMAN: Mr. Johnson is a very good attorney.
15 I'm not saying that he is not a good attorney. He's a
16 very good lawyer. His file was very well documented.
17 His file was outstanding, as far as I'm concerned, about
18 what he had at trial, and that was provided to me freely
19 by the Rouse's.

20 Every attorney has a right to have a difference of
21 opinion on how they would have handled this case, but
22 with all that aside, speaking to Mr. Rouse and his family,
23 they felt so pressured about the fact that had he went
24 to trial no one would have listened to anything he said,
25 because of the condition of the victims and that he should

1 take the deal.

2 That deal was for a lesser sentence. I don't think
3 at any time, did they say that sentence was going to be
4 the maximum ten-year sentence. I mean...

5 THE COURT: Well, he had two charges.

6 MR. COLEMAN: Correct.

7 THE COURT: Three charges, actually --

8 MR. COLEMAN: Correct.

9 THE COURT: -- that he could have been sentenced on.

10 MR. COLEMAN: Correct.

11 THE COURT: Judge, what I'm asking the Court to do,
12 which I believe is still a significant amount of
13 punishment on Mr. Rouse, is to consider a reduction in
14 the active time on the sentence and put other conditions
15 that, obviously, he would have to be on probation and
16 parole so that he would have a chance to, you know, still
17 be a productive member of the community.

18 I believe he was a productive member of the
19 community, and I believe that he still could be. I
20 believe with a sentence like this, it severely cuts his
21 chances of that.

22 Unfortunately, I understand from the victim's side
23 of this case that -- you know, this individual -- there's
24 a lot of things that have been taken away from him, too.

25 THE COURT: Have you seen the victim?

1 MR. COLEMAN: I haven't, Your Honor.

2 THE COURT: You basically know his condition?

3 MR. COLEMAN: I do, Your Honor.

4 Your Honor, I mean, there are several members of
5 the family here, his mother and father, that would like
6 to address the Court.

7 I don't know if the Court wants to entertain that
8 or not, but they are here and would like to --

9 THE COURT: Let me hear what the State has to say
10 first.

11 MR. COLEMAN: Thank you, Judge.

12 THE COURT: Yes, sir.

13 MR. GOLDBERG: Yes, sir. Thank you, Your Honor.
14 If it please the Court, just as reminder of a few
15 details in regards to this plea, obviously, Your Honor,
16 is very familiar with the facts in this situation, but
17 if you recall, the case was called for trial the week of
18 August 29th.

19 I believe the guilty plea was initially entered and
20 accepted on Tuesday the 30th, if I'm not mistaken, at
21 which time all parties agreed that we would return for
22 sentencing the following day on the first, Wednesday
23 September 1st if -- for no other reason so that the
24 defendant could have more of his family present. That
25 was the specific request, so that he could have more

1 family present to speak on his behalf at sentencing.

2 However, the plea was accepted on Tuesday, and the
3 sentence levied on Wednesday. He pled guilty to hit and
4 run great bodily injury. He had a 10-year sentence on
5 that.

6 He pled guilty to assault and battery of a high and
7 aggravated nature, which was reduced from assault and
8 battery with intent to kill, as it pertained to the
9 victim who was struck on the elbow, not Mr. Boyd, but the
10 other victim, and he got the 10-year sentence on that;
11 then pleading guilty under North Carolina vs. Alford to
12 assault and battery with intent to kill pertaining to
13 Mr. Boyd.

14 Your Honor sentenced him to 15 years suspended on
15 ten years active, followed by five years' probation with
16 restitution of \$20,000 to be paid to the victim. That
17 could be P.T.U.P.'d.

18 You also put in the order that he was given the option
19 that if the restitution was paid to the victims by
20 January 1st, the \$20,000, then the sentence would be
21 converted to a straight 10-year sentence at that time.

22 I believe we even -- there was even some
23 consultation with the Department of Corrections and their
24 legal department as to whether or not that was an
25 appropriate sentence. It was determined by Your Honor,

1 in speaking to them, that it was appropriate.

2 I find that interesting, Your Honor, that we're
3 here today with the defendant asking for you to
4 reconsider his sentence, when in effect, he already has
5 an opportunity to reduce his sentence. He and his family
6 do by virtue of paying this restitution and converting
7 his sentence to something less, which has yet to be done
8 as far as I'm aware at this point, according to the
9 family, as they are told me they have not received any
10 restitution, despite the fact it appears as though
11 Mr. Coleman was hired for these proceedings, as well as
12 an investigator being retained to look into this matter
13 further.

14 Additionally, some of the comments that were made
15 by Mr. Coleman about the manner in which Mr. Rouse was
16 advised, all of that sounds like a Post Conviction Relief
17 argument, Your Honor, that I don't believe is appropriate
18 for these proceedings.

19 I have not heard any new mitigating factors
20 presented here today that weren't presented on the day
21 of the guilty plea, either by Mr. Johnson, Mr. Rouse, or
22 the numerous friends and family of Mr. Rouse that
23 addressed the Court on that day.

24 Based primarily on those factors, we would ask Your
25 Honor not to reduce the sentence.

1 THE COURT: Well, let me ask you this. What does the
2 State -- what was the State prepared to prove at trial
3 in terms of --

4 MR. GOLDBERG: Your Honor, the --

5 THE COURT: -- the motivation, if any, for this
6 horrific accident?

7 MR. GOLDBERG: The State was prepared to say at trial
8 that there was an altercation inside this party that
9 night; that Mr. Rouse, as well as his brother, were
10 involved in the altercation.

11 Depending on who you ask, it varies on how much they
12 were involved, but they were involved in the altercation;
13 that after the altercation took place inside the
14 club -- or inside the party and all parties were leaving
15 this party, that at that point the victim was seen
16 walking around the group of people who the defendant
17 and his brother believed to have been part of this
18 altercation they had just been a part of.

19 In fact, may have even thought that one of the
20 victim's friends was part of the altercation, when, in
21 fact, that wasn't the case.

22 THE COURT: It has nothing to do with the
23 fraternity?

24 MR. GOLDBERG: That's correct. There was a
25 party -- the Omega Psi Phi fraternity had a party at the

1 armory on Bluff Road.

2 I believe there was an altercation over one
3 individual touching another female that was there.
4 Perhaps it was the defendant's brother's girlfriend, I
5 think, that caused the fight initially. There were a
6 number of fights inside this party.

7 There would have been testimony elicited that
8 Mr. Rouse and his brother, specifically, were upset about
9 how that happened.

10 They saw Mr. Boyd, the victim, him and his group of
11 friends outside, thinking they were affiliated with the
12 people who they had just fought with, which, in fact, was
13 not the case at all.

14 As a result, I think there would have been testimony
15 that there would have been a little trash talk at that
16 point, as well.

17 A few moments later, Mr. Rouse, along with
18 another defendant in the case, a Torrance Shaw, got into
19 Mr. Rouse's vehicle, which was a clearly marked vehicle.
20 It had a big Charleston reference on the back window,
21 making it easily identifiable.

22 The testimony would have been that members of the
23 victim's party were crossing the street, that Mr. Rouse
24 got in his car, was driving along.

25 Some of the traffic had stopped. He then proceeded

1 to step on the accelerator, and the victim, as well as
2 his friend, had been trying to jump out of the way. His
3 friend, Mr. Pringle, who was the victim as it pertains
4 to the A.B.H.A.N., was clipped by the side view mirror
5 on the elbow. He wasn't significantly injured in
6 anyway, but the testimony would have been that Mr. Boyd
7 was struck directly in the center of the car. There was
8 photographic evidence of this, a dent on the hood of the
9 car, striking Mr. Boyd, having him flip up onto the
10 hood of the car into the windshield and rolling off to
11 the side and landing on the sidewalk, presumably on his
12 head, leading to the numerous medical problems that were
13 presented to the Court that day.

14 It would have been our contention based upon the
15 witnesses that were available to testify that it was an
16 intentional act, and we would have desired to prove that
17 at trial.

18 If you'd like me to go back into the specifics or
19 any of the nature of the victim's injuries, I'll be glad
20 to, sir.

21 THE COURT: No. I have a pretty good recollection
22 of that.

23 Mr. Coleman, that recitation of the facts, plus the
24 testimony of the victim, was significant in my mind
25 when I constructed the sentence.

1 Now, you're client was -- had a much greater exposure
2 than what the sentence reflects. I also take into
3 consideration -- I always take into consideration the
4 possibility of parole and what mandatory time somebody
5 spends in the Department of Corrections before they
6 become eligible for parole.

7 So I think I gave your client a fair hearing. It
8 was a lengthy hearing. A lot of people spoke, and
9 these -- are difficult decisions. I made what I thought
10 was a reasonable decision.

11 The victim's bills, medicals were, what, in the
12 hundreds of thousands of dollars?

13 MS. CAMPBELL: 1 million, over 1 million so far.

14 THE COURT: What?

15 MS. CAMPBELL: Over 1 million so far.

16 THE COURT: Over \$1 million in damages. It was a
17 gut-wrenching decision, because I've got basically a
18 person whose life is -- has been cut short, and your
19 client, who has a marvelous family and never expected to
20 be in this position.

21 I know they love this young man, and they believe
22 in him. They told me that.

23 I just couldn't ignore the damage that was done.
24 Yes, it's -- it's hindsight to say, "I would have gone
25 to trial if I had known that I was going to get a harsh

1 sentence." That's an easy thing to say, but he consulted
2 with his family. He consulted with his lawyer.

3 I can't say that he was misinformed or hoodwinked
4 or tricked or anything like that. Yes, the victim was
5 very sympathetic, but I would have instructed the
6 jury on the law and that the State would have to prove
7 their case beyond a reasonable doubt, and these
8 allegations of intentional conduct, I would have
9 instructed the jury.

10 Mr. Johnson knew that; that they would have to find
11 those things beyond a reasonable doubt, and he elected
12 to go forward with the plea. That's what I did.

13 MR. COLEMAN: Judge, I understand that. I know those
14 decisions are difficult, because we hate these cases. I
15 mean, these are not drug cases.

16 THE COURT: We've got two families that are
17 devastated.

18 MR. COLEMAN: You know, again, I think -- and looking
19 at Mr. Johnson's file -- and again, I don't believe to
20 have any reason to believe that Mr. Johnson believed that
21 he tricked someone. I don't want to say that. I think
22 he's a very good attorney.

23 I -- I just believe that -- you know, want to
24 reiterate to the Court what my client has told me and the
25 family has said. You know, he just repeated over and over

1 and over to him again that he shouldn't go to trial, and
2 that he's going to go to prison for a lot longer time if
3 we went to trial.

4 THE COURT: Who knows? Things come out in a trial
5 that don't come out at the plea, if you've done this long
6 enough, you to know that that happens. Nobody should be
7 sentenced to a greater amount of time because they
8 exercised their rights to go to trial, and I can say that
9 I, in good conscience, have never done that.

10 But the case is different after a trial, after
11 you've heard all the witnesses, after you've seen the
12 tears, after you have considered all the legal
13 arguments.

14 In some cases, it does result in a higher sentence.
15 I can't tell you it would or would not have, because that
16 would be speculation, but it certainly could have. This
17 could have been a more serious sentence.

18 MR. COLEMAN: I...

19 THE COURT: As I say, he was facing, what, 50 years?

20 MR. COLEMAN: Thirty-five -- yes, that's
21 significant.

22 THE COURT: Significant. And he's young. I
23 couldn't -- if I run those figures through my mind, he
24 could be out in six years, five or six years, good
25 behavior, no criminal record, makes parole, if he does.

1 That's his choice, what he does while he's there.

2 MR. COLEMAN: I mean, would Your Honor -- I mean -- I
3 know that you could make decisions -- you can, again you
4 can make decisions, preserve these rights to make these
5 decisions down the road.

6 I mean, would Your Honor be inclined to revisit this
7 issue, you know, once the restitution has been paid and
8 things like that to see if you would consider it at that
9 time down the road to review how well he's done or
10 anything like that to reduce his sentence?

11 THE COURT: I think that's the parole board's
12 responsibility. I mean, I know it is.

13 MR. COLEMAN: I mean, I'm just asking the Court to
14 do something that's not normal --

15 THE COURT: You'd have to -- if I kept jurisdiction
16 of every case I've ever sentenced -- you can imagine.

17 MR. COLEMAN: I understand.

18 THE COURT: It would be impossible.

19 MR. COLEMAN: I understand. I just feel strongly.
20 I mean, you know, that in this case it was just a bad
21 outcome, but it was clear -- I'm not going to say clearly.
22 It was a bad outcome, you know, what my client has
23 maintained was an accident.

24 THE COURT: He had every opportunity to tell the
25 jury that, and I think he -- you know, I'm not sure what

1 he said at sentencing. I don't recall, so I don't want
2 to put words in his mouth.

3 I must respectfully deny your motion.

4 MR. COLEMAN: Thank you, Judge.

5 MR. GOLDBERG: Thank you, Your Honor.

6 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the General Sessions Court for Richland County, South Carolina, on the 8th day of November, 2010.

May 16/ 2011

Karen Ambroziak

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2011CP4001921

DAYDRIAN J. ROUSE, 342518,)
Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention: MacDougall Correctional Institution
2. Name and location of Court which imposed sentence: Richland County General Sessions
3. Name(s) of co-defendant(s) (if any): N/A
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2009-GS-40-03721- Traffic / Hit and run, duties of driver involved in accident with great bodily injury
 - (b) 2009-GS-40-03722 - Assault and Battery of a High and Aggravated Nature (ABHAN)
 - (c) 2009-GS-40-03723 - Assault / Assault and Battery with Intent to Kill (ABWIK)

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 1, 2010 - ten (10) years
 - (b) September 1, 2010 - ten (10) years Concurrent
 - (c) September 1, 2010 - Fifteen (15) years Concurrent to be suspended to ten (10) years with no probation upon payment of \$20,000.00 restitution on or before January 1, 2011. Payment was not made by that date.
6. Check whether a finding of guilty was made
- (a) after a plea of guilty YES
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? No.
8. If you answered "yes" to (7), list
- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

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

(a) N/A

(b) N/A

(c) N/A

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

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

(b) The Applicant's pleas of guilty were not voluntary and intelligently entered. The judgments and sentences against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

(c) _____

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

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

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

(c) _____

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

(a) any petitions in a State Court under South Carolina law? N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(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. Richard J. Breibart, Esquire, P. O. Box 310, Lexington, S.C. 29071

ii. N/A

iii. N/A

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

i. Guilty Pleas and Sentencing

ii. _____

iii. _____

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

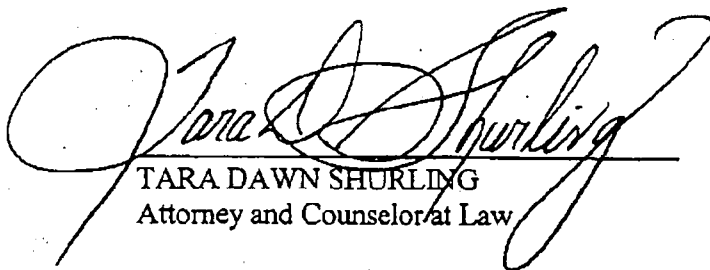
20. Are you now under sentence from any other court that you have not challenged? no

STATE OF SOUTH CAROLINA

VERIFICATION

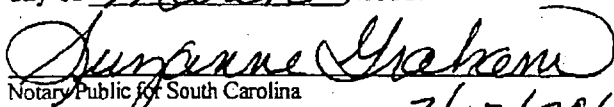
COUNTY OF RICHLAND

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



TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 15th
day of March, 2011.



Suzanne Graham
Notary Public for South Carolina

My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
ROUSE Daydrian J -	)	2011CP4001921
# 00342518,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 22, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by George Johnson, Esquire. On September 1, 2010, following a guilty plea, the Applicant was sentenced by The Honorable G. Thomas Cooper, Jr.. The Applicant had been indicted and/or convicted of the following: Hit an Run-Great Bodily Injury, & Assault and Battery With Intent to Kill (2 counts) - (2009-

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2011CP4001921&CourtType=G&CaseType=Civil&CourtAgency=40002>

State's Return - (2011CP4001921) - Applicant: ROUSE Daydrian J

GS-40-3721;3723). Offense Asslt & Batt W/intnt Kill Sentence Start Date 09/01/2010 Sentence Length 10 YRS, 0 MOS, 0 DYS ²

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

Direct Appeal

The Applicant did not appeal his conviction and/or sentence.

The application for post conviction relief (PCR) was filed March 22, 2011.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00342518>

required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for

counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even with respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Tara Dawn Shurling, Esquire regarding when the hearing should be set.³

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

September 15, 2011

³ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>
State's Return - (2011CP4001921) – Applicant: ROUSE Daydrian J

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

ROUSE Daydrian J -
00342518,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

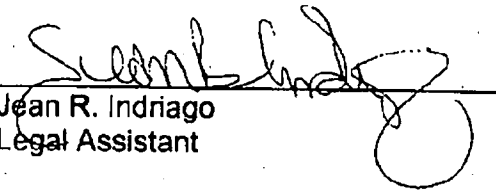
2011CP4001921

CERTIFICATE OF SERVICE

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 a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

Tara Dawn Shurling
3614 Landmark Drive; Suite A
Columbia, SC 29204

19
DATED September 16, 2011.


Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
DAYDRIAN JAMAL ROUSE

AKA:

Race: B Sex: M Age: 21DOB: 1988 SS#: 8411Address: City, State, Zip: COLUMBIA, SC 29201DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault / Assault and battery with Intent to Kill (ABWIK)INDICTMENT/CASE#: 2009GS403723A/W#: 1900402Date of Offense: 4/19/09S.C. Code §: 16-03-0620CDR Code #: 0014

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014
☐ 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:

Campbell, LuckSC Bar# 13009DefendantAttorney for DefendantSC Bar# 7308WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 yearsand/or to pay a fine of \$ 2000; provided that upon the service of 10 days/months/years and/or paymentof \$ 5; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP ☒Total: \$ 2000 plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPS 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

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

§ 44-53-450(C) (Conditional Discharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code: 2126Sentence Date:

RICHLAND COUNTY

SOUTH CAROLINA

REduced HOWEVER THIS SENTENCE SHALL BE REDUCED
TO A STRAIGHT 10 YEAR INCARCERATION WITH
NO PROBATION UPON PAYMENT OF \$2000 RESTITUTION

☐ Condition Discharge, § 44-53-450(C) requires
 \$350 be paid to the Clerk prior to case disposition

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
FOR RICHLAND COUNTY COURT
FOR THE BENEFIT OF
THE STATE

WITNESSES
(S) MATTHEW ELLIS, RCSD

DOCKET NO. 2009-GS-40-3723

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2009

ARREST WARRANT NUMBER

1900402

ACTION OF GRAND JURY

TRUE BILL

JUL 16 2009
Person of Grand Jury

VERDICT

Person of Petit Jury

After being fully advised as to my legal rights, I hereby waive present and future rights to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment and to

Defendant

Witness:

C.C.C. PLS. AND G.S.

THE STATE
vs.

DAYDRIAN JAMAL ROUSE

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL
SC Code: 16-3-520
CDR Code: 0014
Class FEL-C(V)

STATE OF SOUTH CAROLINA)

INDICTMENT

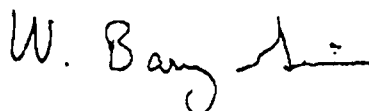
COUNTY OF RICHLAND)

At a Court of General Sessions, convened on JULY 15, 2009, the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That DAYDRIAN JAMAL ROUSE did in Richland County on or about APRIL 19, 2009, with malice aforethought commit an assault and battery upon one JUSTIN BOYD, with intent to kill the said victim; all in violation of §16-03-620 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.



WARREN B. GIESE, SOLICITOR

ARREST WARRANT

1-900402

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE CASE #09041782-19

against

Daydrian Jamal Rouse

Address:

Columbia, SC 29201-

Phone: (843)324-2333 SSN: 68411

Sex: M Race: B Height: 6 4 Weight: 180

DL State: SC DL #: 1988

DOB: 04/000 Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Matthew Ellis - 1027

Offense: Assault / Assault and battery with Intent to Kill

(ABWIK)

Offense Code: 0014

Code/Ordinance Sec: 16-03-0620

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Daydrian J Rouse

4/30/09

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions

1701 Main Street

P O Box 192

Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on or about

State of South Carolina (or ordinance of

in the following particulars:

DESCRIPTION OF OFFENSE Assault / Assault and battery with Intent to Kill (ABWIK)

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

That on or about APRIL 19, 2009 while at 1200 BLOCK OF BLUFF ROAD in the OLYMPIA Magisterial District of Richland County, it is believed that one DAYDRIAN JAMAL ROUSE did commit the crime of ASSAULT AND BATTERY WITH INTENT TO KILL because he did while driving his 2000 Honda Accord, stop to let a group of people cross the road and then sped at them hitting the victim, Justin Boyd. Boyd was struck by the front of the Honda about his legs and was flipped over the car's hood and landed face first on the curb. This incident happened after the defendant was involved in a physical altercation at the National Guard Armory. The defendant has admitted to being the driver of the Accord which subsequently left the scene.

RCSO Case #09041782-19

Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29203

Affiant's Telephone (803)576-3000

ARREST WARRANT

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

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

on or about 4/19/2009 defendant Daydrian Jamal Rouse

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

☒ County/ ☐ Municipality of Richland / Lykesland Magistrate

DESCRIPTION OF OFFENSE: Assault / Assault and battery with Intent to Kill (ABWIK)

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

Sworn to and subscribed before me

on 04/28/2009

Signature of Issuing Judge

Michael R Davis

Judge Code: 5458

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803)576-2500

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Matthew Ellis

Daydrian Jamal Rouse

04/19/2009

County/ ☐ Municipality of

Richland / Lykesland Magistrate

DESCRIPTION OF OFFENSE Assault / Assault and battery with Intent to Kill (ABWIK)

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

That on or about APRIL 19, 2009 while at 1200 BLOCK OF BLUFF ROAD in the OLYMPIA Magisterial District of Richland County, it is believed that one DAYDRIAN JAMAL ROUSE did commit the crime of ASSAULT AND BATTERY WITH INTENT TO KILL because he did while driving his 2000 Honda Accord, stop to let a group of people cross the road and then sped at them hitting the victim, Justin Boyd. Boyd was struck by the front of the Honda about his legs and was flipped over the car's hood and landed face first on the curb. This incident happened after the defendant was involved in a physical altercation at the National Guard Armory. The defendant has admitted to being the driver of the Accord which subsequently left the scene.

RCSO Case #09041782-19

Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29203

Affiant's Telephone (803)576-3000

ARREST WARRANT

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

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

on or about 4/19/2009 defendant Daydrian Jamal Rouse

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

☒ County/ ☐ Municipality of Richland / Lykesland Magistrate

DESCRIPTION OF OFFENSE: Assault / Assault and battery with Intent to Kill (ABWIK)

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

Sworn to and subscribed before me

on 04/28/2009

Signature of Issuing Judge

Michael R Davis

Judge Code: 5458

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803)576-2500

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Judge Streater
Date 4/30/09
Type and Amount: 75,000 c/s (cont)
Name of Surety: _____

PRELIMINARY HEARING held by _____

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before _____

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

CODEFENDANTS

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATEINDICTMENT/CASE#: 2009 -GS- 40 . 3722VS.
Dayarian J. RouseAW#: I- 900401
Date of Offense: 4-19-09
S.C. Code #: 16-3-620
CDR Code #: 0014AKA: _____
Race: B Sex: M Age: _____
DOB: 88 SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Assault and Battery of a High and Aggravated Nature (ABHAN)in violation of C/L of the S.C. Code of Laws, bearing CDR Code # 0013☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1" or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

72620 Dayarian Rouse 930K
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ 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) \$100 \$ _____
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$56-1-289 (DUI Breath Test) \$500 \$ _____
\$35.13 (Public Def/Prob) \$25 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
\$90.11 TP (SCCA Surcharge) \$5 \$ _____
TOTAL \$ _____Court Reporter: Jeanette McBride
Clerk of Court/ Deputy ClerkObtain 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: _____ \$25 \$ _____

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code: 2126
Sentence Date: 9-2-10RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) MATTHEW ELLIS, RCSD

ARREST WARRANT NUMBER

1900401

ACTION OF GRAND JURY

TRUE BILL

JUL 16 2009

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-40-3722

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2009

42

THE STATE

vs.

DAYDRIAN JAMAL ROUSE

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620

CDR Code: 0014

Class FEL-C(V)

After being fully advised as to my legal rights, I hereby waive my right to the Grand Jury.

Defendant

I, Daydrian Jamal Rouse, hereby appear in my own proper person and plead guilty to the within indictment or to the

Assault and Battery of a High & Born Nature (Aggravated)

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

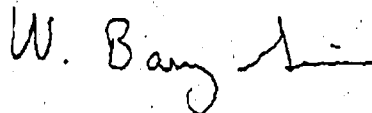
COUNTY OF RICHLAND)

At a Court of General Sessions, convened on JULY 15, 2009, the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That DAYDRIAN JAMAL ROUSE did in Richland County on or about APRIL 19, 2009, with malice aforethought commit an assault and battery upon one ALVAREZ PRINGLE, with intent to kill the said victim; all in violation of §16-03-620 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.



WARREN B. GIESE, SOLICITOR

ARREST WARRANT

I-900401

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE

against

CASE #09041782-19

Daydrian Jamal Rouse

Columbia, SC 29201-

(843)324-2333 SSN: 8411

M Race: B Height: 6 4 Weight: 180

DL #: 100388322

Agency ORI #: 04000

Richland County Sheriff Department

Matthew Ellis - 1027

Assault / Assault and battery with Intent to Kill

(ABWIK)

Code: 0014

Ordinance Sec: 16-03-0620

Affiant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

Richland / Lykesland Magistrate

The accused

be arrested and brought before me to be

with according to the law.

(L.S.)

Signature of Judge

RETURN

of this arrest warrant was delivered to

Daydrian J. Rouse

4/30/09

Signature of Constable/Law Enforcement Officer

WARRANT TO:

Richland County General Sessions

701 Main Street

PO Box 192

Columbia, SC 29202

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant Matthew Ellis

being duly sworn deposes and says that defendant Daydrian Jamal Rouse

did within this county and state on or about 04/19/2009

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

Richland / Lykesland Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE: Assault / Assault and battery with Intent to Kill (ABWIK)

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

That on or about APRIL 19, 2009 while at 1200 BLOCK OF BLUFF ROAD in the OLYMPIA Magisterial District of Richland

County, it is believed that one DAYDRIAN JAMAL ROUSE did commit the crime of ASSAULT AND BATTERY WITH

INTENT TO KILL because he did while driving his 2000 Honda Accord, stop to let a group of people cross the road and then sped

at them hitting the victim, Alvarez Pringle, about his arm. Pringle was struck by the Accord's mirror as he was trying to clear the

path of the car. This incident happened after the defendant was involved in a physical altercation at the National Guard Armory.

The defendant has admitted to being the driver of the Accord which subsequently left the scene.

RCSO Case #09041782-19

Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29229

Affiant's Telephone (803)576-3000

ARREST WARRANT

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

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

on or about 4/19/2009 defendant Daydrian Jamal Rouse

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

☒ County/ ☐ Municipality of Richland / Lykesland Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault and battery with Intent to Kill (ABWIK)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or

her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as

soon thereafter as is practicable

Sworn to and subscribed before me

04/28/2009

Signature of Issuing Judge

Michael R Davis

Judge Code: 5458

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803)576-2500

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

Judge Streater
 on 4/30/09
 Type and Amount: 75,000 c/s (core)
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
DAYDRIAN JAMAL ROUSE

AKA:

Race: B Sex: M Age: 21DOB: 1988 SS#: 8411Address: [REDACTED]City, State, Zip: COLUMBIA, SC 29201DL#: [REDACTED] SID#: [REDACTED]*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 great bodily injury

in violation of § 56-05-1210(A)(2) of the S.C. Code of Laws, bearing CDR Code # 2462

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The pleas: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Campbell, Luck13009
SC Bar#Daydrian Jamal Rouse
Defendant[Signature]
Attorney for Defendant9308
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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		

Clerk of Court/ Deputy Clerk [Signature]INDICTMENT/CASE#: 2009GS403721A/W#: 1900400Date of Offense: 4/19/09S.C. Code § : 56-05-1210(A)(2)CDR Code #: 2462

SENTENCE SHEET

_____ 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: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge [Signature]Judge Code: 2126

FILED

WITNESSES

(s) MATTHEW ELLIS, RCSD

DOCKET NO. 2009-GS-40-3721

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2009

42

ARREST WARRANT NUMBER

1900400

ACTION OF GRAND JURY
TRUE BILL

JUL 16 2009

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

HIT AND RUN - GREAT BODILY
INJURY

SC Code: 56-5-1210(A)(2)

CDR Code: 2462

Class Felony

Foreperson of Petit Jury

Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

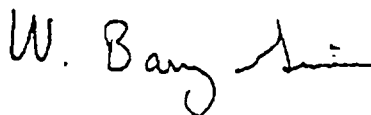
INDICTMENT

At a Court of General Sessions, convened on JULY 15, 2009 the Grand Jurors of Richland County present upon their oath:

HIT AND RUN – GREAT BODILY INJURY

That DAYDRIAN JAMAL ROUSE did in Richland County on or about APRIL 19, 2009, wilfully and unlawfully, while operating a motor vehicle, to wit: an automobile, which was involved in an accident which resulted in great bodily injury to the injured person, to wit: Justin Boyd, fail and refuse to render, to the injured person, such assistance as he could have rendered and did then and there wilfully and unlawfully leave the scene of a great bodily injury accident and/or fail to remain at the scene of the accident until after fulfilled the requirement of § 56-5-1230, *Code of Laws of South Carolina*. All in violation of §56-5-1210, *Code of Laws of South Carolina*.

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



WARREN B. GIESE, SOLICITOR

ARREST WARRANT

I-900400

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE CASE #09041782-19
against

Daydrian Jamal Rouse

Address: ~~Richland / Lykesland Magistrate~~

Columbia, SC 29201-

Phone: (843) 324-2333 SSN: ~~3411~~

Sex: M Race: B Height: 6 4 Weight: 180

DL State: SC DL #: 100388322

DOB: ~~1988~~ Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Matthew Ellis - 1027

Offense: Traffic / Hit and run, duties of driver involved in

accident with great bodily i

Offense Code: 2462

Code/Ordinance Sec: 56-05-1210(A)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Daydrian J. Rouse
4/20/09

Signature of Constable/Clerk Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions

1701 Main Street

P O Box 192

Columbia, SC 29202

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant Matthew Ellis

being duly sworn deposes and says that defendant Daydrian Jamal Rouse

did within this county and state on or about 04/19/2009

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

Richland / Lykesland Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Traffic / Hit and run, duties of driver involved in accident with great bodily i

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

That on or about APRIL 19, 2009 while at 1200 BLOCK OF BLUFF ROAD in the OLYMPIA Magisterial District of Richland County, it is believed that one DAYDRIAN JAMAL ROUSE did commit the crime of HIT AND RUN, DUTIES OF DRIVER INVOLVED IN ACCIDENT WITH GREAT BODILY INJURY because he did while driving his 2000 Honda Accord, stop to let a group of people cross the road and then sped at them hitting two victims, Justin Boyd and Alvaroz Pringle. Boyd was struck by the front of the Honda, flipped over the car's hood and landed face first on the curb. His injuries have required him to remain in ICU. This incident happened after the defendant was involved in a physical altercation at the National Guard Armory. The defendant had admitted to being the driver of the Accord which subsequently left the scene never stopping or calling law enforcement or emergency medical personnel.

RCSD Case #09041782-19

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address

5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803) 576-3000

ARREST WARRANT

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

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

on or about 4/19/2009

defendant Daydrian Jamal Rouse

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

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

) as set forth below:

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

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

Sworn to and subscribed before me

on 04/28/2009

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803) 576-2500

Signature of Issuing Judge

Michael R Davis

Judge Code: 5458

Issuing Court: ☒ Magistrate ☐ Municipal

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BAIL set by

Judge Shooter
 on 4/30/09
 Type and Amount: 75,000 cash (cont)
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
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 Telephone: _____

CODEFENDANTS

CMTI330D

SCDC OFFENDER MANAGEMENT SYSTE

04/12/11

OMCOMITA

RELEASE DATE SCREEN

C040481

SCDC# > 342518

LOC: MACDOUGALL C

ROUSE, DAYDRIAN JAMAL

SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE... ADULT-STRAIGHT SENTENCE

SEXUAL REGISTRY... N

SEXUAL PREDATOR... NOT APP

DNA STATUS..... COMPLETED

GPS REQUIREMENT... N

PREA DECISION.....

CURRENT SENTENCE: 010-00-000

CONSECUTIVE SENTENCE ... N

010-00-000

CURRENT SENT START DATE: 09/01/2010

PROJECTED COMPLETION DATES

MAXOUT DATE 02/28/2019

CURRENT EWC .. 2 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC .. NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 00/00/0000

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ... 000079

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS 000000

CATEGORY 4 OR 5 OFFENSE

TOTAL EXTRA EARNED CREDITS .. 000

TOTAL SERVICE TIME EARNED ... 000221

PFKEYS: 5: HISTORY OF DATE CHANGES

4-@

1 Sess-1 167.7.50.33

SCDC1677

3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 04/12/11

C0404

ROUSE, DAYDRIAN JAMAL FBI # 667740001 SID# SC01880549 SCDC # 342518

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... MACDOUGALL CORRECT INST

SECURITY/CUST.: 2 MINIMUM IN

CURR INCARC SENT... 10 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...: ~~2-2-2~~8411

DORM.....: M200016A

RACE.....: R SEX...: M

PROJ MAXOUT DATE: 02/28/2019

PROJ PAROLE DATE: 00/00/0000

EWC INR...: COOK

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 2F5 REC LEVEL:

ASSIGNMENT...: FOOD SERVICE

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 22 DATE OF BIRTH...: ~~02/28~~/88

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	U/V	CATEGORY
HIT AND RUN	10	0	0	RICHLAND	9/ 1/2010	N	3
ASSLT & BATTERY-HIGH&AGG.NA	10	0	0	RICHLAND	9/ 1/2010	N	3
ASSLT & BATT W/INTNT KILL	10	0	0	RICHLAND	9/ 1/2010	U	4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINEES (HOLD, WANTED, NOTIFY):

NO DETAINEES

NO DETAINEES

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

9/25/10 REFUSING OR FAILING OBEY CONVICTED MAJOR STAFF

HISTORY OF MOVEMENTS:

11/16/10	MACDOUGALL CORR	INCARCERATED	ADMINISTRATIVE
11/ 8/10	KIRKLAND	INCARCERATED	RETURN FROM COURT
11/ 8/10	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
9/ 2/10	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
COOK	04/01/11	0/ 0/ 0		2F5
COOK	12/18/10	3/31/11	MT ELIGIBLE FOR LEVEL 2	3F5
FOOD SERVICE AIDE	11/18/10	12/17/10	PROMOTION	3F5

HISTORY OF EARNED EDUCATION CREDITS:

FEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

09/01/2010 11:21 8035761

CRIMINALRECORDS

PAGE 02/04

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.

DAYDRIAN JAMAL ROUSE

AKA:

Race: B Sex: M Age: 21

DOB: 11-19-1988 SS#: 4411

Address: 1000 1st St

City, State, Zip: COLUMBIA, SC 29201

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Traffic / Hit and run, duties of driver involved in accident with great bodily injury

IN THE COU. OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS403721

A/W#: 1900400

Date of Offense: 4/19/09

S.C. Code § : 56-05-1210(A)(2)

CDR Code #: 2462

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-1210(A)(2) of the S.C. Code of Laws, bearing CDR Code # 2462

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The pleas: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: 13009 9308
Campbell, Luck 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 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2126Sentence Date: 9-1-10

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE

vs.

Daydrien J. Rouse

AKA:

Race: BSex: M

Age:

DOB: 8-8

SS#:

Address:

City, State, Zip:

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Assault and Battery of a High and Aggravated Nature (ABHAN)in violation of § 9-2 of the S.C. Code of Laws, bearing CDR Code # 0013☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

72620
SC Bar #

Defendant

Attorney for Defendant

SC Bar # 9308WHEREFORE, 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

_____ 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)	\$100	\$ _____
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2925 (DUI Assessment)	\$12	\$ _____
§56-1-289 (DUI Breath Test)	\$500	\$ _____
§35.13 (Public Def/Prob)	\$25	\$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ _____
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
§50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	\$	\$ _____
§90.11 TP (SCCA Surcharge)	\$5	\$ _____
TOTAL	\$	\$ _____

Court Reporter:

Clerk of Court/ Deputy Clerk

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: _____ \$25 \$ _____

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

2126

Sentence Date:

9-1-10

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

DAYDRIAN JAMAL ROUSE

AKA:

Race: B Sex: M Age: 21

DOB: 1988 SS#: 8411

Address: 13009 E. Highway 90

City, State, Zip: COLUMBIA, SC 29201

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault and battery with Intent to Kill (ABWIK)

INDICTMENT/CASE#: 2009GS403723

A/W#: I900402

Date of Offense: 9/19/09

S.C. Code §: 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

☐ 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.

AT TEST:

Campbell, Luck

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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 1000; provided that upon the service of 10 days/months/years and/or payment

of \$ 5; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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 §17-25-155.

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

SPECIAL CONDITIONS:

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

Total: \$2000 plus 20% fee: \$

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)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCJA Surcharge)

§ 44-53-450(C) (Conditional Discharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

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

~~REMOVED FROM FILE THIS SENTENCE SHALL BE REDUCED~~~~TO A STRAIGHT 10 YEAR INCARCERATION WITH~~~~NO PROBATION UPON PAYMENT OF \$2000 RESTITUTION~~☐ Condition Discharge, § 44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

~~ALL OR BEFORE 1-1-11 PAYABLE TO THE CLERK OF COURT~~

FOR RICHLAND COUNTY FOR THE BENEFIT OF JUVENILE

Presiding Judge

Judge Code: 2126

Sentence Date: 9-1-10

1 STATE OF SOUTH CAROLINA

2 COUNTY OF RICHLAND

} COURT OF COMMON PLEAS
2011-CP-40-01921

3
4 Daydrian J. Rouse,

5 Plaintiff,

6 vs.

7 State of South Carolina,

8 Defendant.

} TRANSCRIPT OF RECORD

9 September 10, 2012
10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

15
16
17 A P P E A R A N C E S:

18 TARA DAWN SHURLING, ESQ.
Attorney for the Plaintiff

19 ROBERT D. CORNEY, ASSISTANT ATTORNEY GENERAL
20 Attorney for the Defendant

21
22
23
24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1 AND 2	Statements of Mr. Shaw	20	20
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SEPTEMBER 10, 2012

MR. CORNEY: This is a PCR of Daydrian Rouse, 2011-CP-40-1921. Mr. Rouse was true-bill indicted at the July 2009 term of the Richland County Grand Jury for a hit and run resulting in great bodily injury; two counts of assault and battery with intent to kill.

He proceeded -- initially proceeded to jury trial August 30, 2010 before Judge Cooper, but after jury selection but before the jury was sworn, he ended up entering a guilty plea to the hit and run with great bodily injury and one count of a lesser included assault and battery of a high and aggravated nature, as well as an Alford plea to the other assault and battery with intent to kill as indicted.

Mr. Rouse was sentenced without recommendations or negotiations to ten years imprisonment on each of the ABHAN and the hit and run, and 15 years imprisonment suspended to the service of ten years and five years probation on the assault and battery with intent to kill. The assault and battery with intent to kill was converted to a straight 10-year sentence with no probation upon the payment of \$20,000 restitution.

1 It is my understanding payment was never made
2 by the date it was ordered to be made by, and so
3 the sentence remains 15 years suspended at this
4 point.

5 A motion for reconsideration was filed and a
6 hearing was convened November 8, 2010 before Judge
7 Cooper at which he was represented by Michael
8 Coleman.

9 Judge Cooper denied the motion. No direct
10 appeal was filed. A PCR was filed timely March
11 22nd, 2011. And he is represented today by Ms.
12 Tara Shurling in the action, Your Honor.

13 THE COURT: Okay, Ms. Shurling.

14 MS. SHURLING: Your Honor, at this time I call
15 George Johnson.

16 THE COURT: All right, Mr. Johnson.

17 THE BAILIFF: Place your left hand on the
18 Bible and raise your right hand.

19 (Witness complies.)

20 THE COURT: Do you swear or affirm that you
21 are going to truthfully testify?

22 THE WITNESS: Yes, sir.

23 THE COURT: Take the stand.

24 (Witness complies.)

25 THE COURT: Okay, since it took a while for

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

6

1 the people to get here, I have read the
2 transcripts, including the second one, that
3 actually sounds like a PCR.

4 MS. SHURLING: Thank you.

5 THE COURT: I'm not saying it was, it sounded
6 like it. Go ahead.

7 MS. SHURLING: I was concerned about that
8 myself, Your Honor. Thank you.

9 GEORGE JOHNSON,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SHURLING:

13 Q Just for the record, would you please state your
14 full name for the record.

15 A George Johnson.

16 Q And, Mr. Johnson, do you recall representing
17 Daydrian Rouse back in August of 2010?

18 A I do.

19 Q Were you the first lawyer hired to represent
20 Mr. Rouse or were you brought in --

21 A I believe I was.

22 Q You were?

23 A Yes.

24 Q And do you know how long after the incident date,
25 which was April 18th, 19th depending on the time,

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

7

1 2009 you were retained?

2 A I cannot tell you exactly, but my notes mention
3 that I was speaking with Investigator Matt Ellis as
4 early as April 27th, 2009.

5 Q So that certainly makes it within a week of the
6 incident, correct?

7 A Uh-huh.

8 Q Okay. Thank you. And were you hired by the
9 Applicant, Daydrian Rouse, or by his parents? Who
10 actually hired you?

11 A I believe his parents.

12 Q His parents?

13 A (Nods affirmatively.)

14 Q And at the time you were hired, was he detained or
15 was he already out on bond?

16 A I believe at the time that I was hired he had not
17 been charged yet, because I remember going to the
18 bond hearing with him.

19 Q Okay. And as the Respondent has already outlined
20 for the Court, your client was charged with two
21 counts of assault and battery with intent to kill
22 as well as hit and run under S.C. Code
23 Section 56-5-1210, correct?

24 A Yes.

25 Q Did you at some point make a motion to require the

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

8

1 State to elect between the assault and battery
2 charges and the hit and run charge?

3 A I did not.

4 Q Okay. Now, I understand that -- and have always
5 considered it a curiosity -- that assault and
6 battery with intent to kill doesn't require the
7 intent to kill in South Carolina, does it?

8 A No.

9 Q But any degree of assault and battery does require
10 general criminal intent, correct?

11 A Correct. And correct me if I'm wrong, does assault
12 and battery with intent to kill allow for a
13 reckless act as well? Is that right?

14 Q Pardon?

15 A Does assault and battery with intent to kill allow
16 for a recklessness or -- does that sound right to
17 you?

18 Q Wanton and willful disregard for the safety of
19 others is in a reckless homicide charge, but
20 assault and battery with intent to kill would
21 require some general criminal intent.

22 A Correct.

23 Q Correct?

24 A Uh-huh.

25 Q Now, are you familiar with the hit and run

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

9

1 provisions found in 56-5-1210?

2 A Off the top of my head, no.

3 Q Did you review those I assume during the time when
4 you were representing --

5 A I'm sure I did.

6 Q -- Mr. Rouse?

7 A I'm sure I did.

8 Q And, of course, the language of the statute will
9 speak for itself, but it is true, is it not, that
10 that code section addresses the actions of the
11 driver of the vehicle involved in an accident
12 resulting in injury or death to a person, correct?

13 A If you are reading it, I will take your word for
14 it.

15 MS. SHURLING: And, again, Your Honor,
16 statute will speak for itself.

17 Q So your client was charged with two counts of
18 assault and battery with intent to kill, which are
19 crimes which require general criminal intent as
20 well as leaving the scene of an accident under the
21 hit and run provision which by definition is
22 referencing the conduct of an individual following
23 an accident, correct?

24 A Correct.

25 Q Okay. Did you consider filing a motion for the

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

10

1 State to elect between those two theories of
2 prosecution, an intentional or two intentional
3 assault and batteries versus inappropriate conduct,
4 failure to honor the duties of a driver under this
5 Code Section, 56-5-1210, following an accident?

6 A I know I did not make the motion. I don't remember
7 if I considered it.

8 Q Okay. Well, did you consider asserting that the
9 prosecution of your client for the assault charges,
10 in addition to the hit and run, would be a
11 violation of his rights against double jeopardy or
12 specifically simultaneous jeopardy where hit and
13 run addresses the action of hitting as well as the
14 action of leaving the scene after the fact?

15 A I don't remember it, but I did not make the motion.

16 Q Okay. Did you ever discuss with your client the
17 fact that the hit and run statute in effect
18 addressed both hit -- that it was -- provided
19 penalties for being involved in an accident and
20 hitting someone and subsequently leaving the scene
21 without taking proper actions as defined by the
22 statute?

23 A Yes.

24 Q Okay. Did you ever discuss with your client the
25 fact that if he went to trial you might would have

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

11

1 a viable argument that the charge of assault and
2 battery with intent to kill or any degree of
3 assault and battery would be absorbed by the charge
4 of hit and run?

5 A I don't remember using the word absorbed, but our
6 defense was if we had gone to trial that it was an
7 accident.

8 Q That it was an accident?

9 A Yes.

10 Q Okay. Were there any plea negotiations in this
11 case?

12 A Starting on the day of trial there were. It lasted
13 over a period of 24 hours probably. Once Judge
14 Cooper took the case, we went back in chambers. He
15 asked if there were any plea negotiations, and
16 Ms. Campbell stated that he could -- my client
17 could plead straight up. And thereafter we went
18 back and forth until we got to the point of the
19 offer that was made and my client accepted.

20 Q Okay. And correct me if I'm wrong, but the sole
21 concession made in exchange for your client's pleas
22 was that the one count of assault and battery with
23 intent to kill regarding Mr. Pringle would be
24 reduced to ABHAN instead of ABWIK?

25 A Correct. And they would allow him to plead under

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

12

1 Alford to the ABWIK.

2 Q To the ABWIK, correct. Sorry. I was about to
3 forget to say that.

4 And the record as established by the discovery
5 in this case and even the comments of the
6 Solicitors in the various proceedings held in this
7 case pretty clearly establish that with regard to
8 Mr. Pringle he had no significant injuries, isn't
9 that true?

10 A Correct.

11 Q So if the case had gone forward to trial, is it
12 fair to say that there was scant evidence of any
13 significant injury to Mr. Pringle?

14 A Well, he was hit by the side view mirror of the
15 car. And it was unclear whether the loud zoom that
16 was heard was from his being struck or the other
17 young man. But when I spoke to an accident
18 reconstructionist I was told that the force it
19 would take to knock the side view mirror off would
20 be pretty high.

21 Q Pardon? Say that again?

22 A When I spoke to an accident reconstructionist --

23 Q Yes.

24 A -- and he told me that the force that knocked down
25 the side view would have been very high, the force

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

13

1 it took to do that would have been high, in his
2 words.

3 Q To knock the mirror off?

4 A Yes.

5 Q Okay. A moment's indulgence.

6 (Pause.)

7 BY MS. SHURLING:

8 Q Did you have -- in preparing this case for trial in
9 discovery, were you given medical records to
10 substantiate the degree of Mr. Boyd's injuries?

11 A Yes, I was, but they weren't needed.

12 Q Pardon?

13 A They were not needed. They were obvious.

14 Q I understand. My question, next question was that
15 you weren't given any kind of medical records
16 concerning even any medical treatment of
17 Mr. Pringle, were you?

18 A I don't remember.

19 Q Okay. In the plea negotiations that came, as you
20 say, once the trial had begun -- I believe you had
21 already picked a jury in this case, is that
22 correct?

23 A We had.

24 Q Okay. Can you tell us what if any efforts you had
25 made towards resolving this matter in a plea prior

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

14

1 to when the case was called for trial?

2 A I tried throughout the process. And if you have
3 any familiarity with Ms. Campbell, you know what
4 plea negotiations are like with her. As I said, no
5 offers were made until Judge Cooper got involved.
6 Actually, I went to meet with then Solicitor Barney
7 Giese to try to get a plea offer for my client on
8 August 12th, 2010.

9 Q Okay.

10 A And that did not go anywhere.

11 Q All right. Once the State offered to reduce the
12 one ABWIK to ABHAN for your client to enter a plea,
13 what were some of the factors you discussed with
14 your client in terms of making the decision whether
15 or not he should plead or go to trial?

16 A One of the things that I mentioned to him was --
17 I'm reading from a letter I wrote him July 16th,
18 2009.

19 The key to your case is intent. Did you
20 intend to hit the accident victims?
21 South Carolina law states that assault
22 and battery with intent to kill requires
23 only a general intent to commit grievous
24 bodily injury. The specific intent to
25 kill the victim need not be proved. A

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

15

1 general intent to kill any Omega is
2 legally sufficient. The necessary
3 intent may be shown by the acts and
4 conduct of the accused and other
5 circumstances from which a jury may
6 naturally and reasonably infer intent,
7 such as evidence of character, other
8 means or instrument used, the manner in
9 which it was used, the purpose to be
10 accomplished and the resulting wounds or
11 injuries. Where the evidence
12 establishes that the Defendant willfully
13 committed an act showing a natural
14 tendency to be fatal to another, intent
15 may be inferred.

16 So that is one of the things that I mentioned
17 to him. And I also provided him with copies of all
18 the statements provided. And Mr. Rouse did not --
19 there was no plea offer, real plea offer
20 beforehand.

21 Q Okay.

22 A And so -- but I did provide him with that
23 throughout the process.

24 Q And my question was, once you were on the verge of
25 beginning the actual jury trial -- and you in fact

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

16

1 selected a jury?

2 A We did.

3 Q And I assume with some encouragement from the bench
4 you had finally gotten Ms. Campbell to say she
5 would let him plead to one ABWIK under Alford, one
6 ABHAN reduced from an ABWIK, and the hit and run?

7 A Uh-huh.

8 Q At that point you had discussions with your client
9 about whether he should take that deal or go
10 forward with the trial?

11 A Correct.

12 Q Can you outline for us what some of the major
13 considerations were that you reviewed with your
14 client to assist him in making that decision?

15 A The -- he was well aware of the evidence that was
16 against him throughout our process, statements, and
17 he had seen firsthand that all the potential
18 witnesses were there, and that the young man who
19 had the brain injury was there.

20 Throughout the process that day and before, he
21 was aware he had a constitutional right to a jury
22 trial and that our defense would be that it was an
23 accident.

24 I'm not sure if I'm answering your question.

25 Q Okay. Well, you addressed the question of witness

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

17

1 statements. Had you personally interviewed any of
2 those witnesses?

3 A We tried to contact all of them. I personally
4 interviewed -- I know we spoke to Damonte Coleman,
5 Antoine Gamble, Bryan Handberry and one other
6 person. We tried to contact all the other ones.
7 Some of them wouldn't talk to us and the others we
8 couldn't find.

9 Q Now, the young man that was in the car with your
10 client, Torrence Shaw?

11 A Yes.

12 Q They called him Tory?

13 A Uh-huh.

14 Q Did you interview him?

15 A I did not. He was represented. He was charged.

16 Q Okay.

17 A I spoke to his attorney.

18 Q Okay. You spoke to his attorney, Jason Peavy?

19 A Correct.

20 Q And did Mr. Peavy decline to allow you to interview
21 Mr. Shaw?

22 A He must have, because I did not speak to him.

23 Q Okay. And there were two statements made by
24 Mr. Shaw that were provided to you in discovery,
25 isn't that correct?

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

18

1 A Yes.

2 Q And one of those was entered in April of '09,
3 April 21st, which would have been right after the
4 incident, and the other one in August of 2009. Do
5 you recall reviewing those?

6 A Yes.

7 Q And what if any significant change did Tory Shaw
8 make between his first statement and his second
9 statement? Can you recall?

10 A I don't remember any significant change unless --
11 if you have the statement I can look at it.

12 Q Sure.

13 MS. SHURLING: May I approach, Your Honor?

14 THE COURT: Sure.

15 (Ms. Shurling approaches.)

16 A This is missing some pages.

17 Q It is double-sided.

18 A Oh, I'm sorry.

19 Q I thought the same thing you did the first time I
20 read it.

21 A One thing I do remember about the second statement
22 was that Tory stated that:

23 It seems that Daydrian slowed down and I
24 looked out the back window and saw a man
25 in a white shirt.

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

19

1 I then looked out the front windshield
2 and saw a figure wearing dark clothing
3 and a hat coming onto the hood.

4 Which was -- he did not mention in his first
5 statement.

6 Q Okay. So in his first statement he indicates
7 seeing the gentleman in white, who was pretty much
8 universally identified as the gentleman whose elbow
9 was hit?

10 A Correct.

11 Q And in the second statement he acknowledges that he
12 also saw a figure dressed in black --

13 A Uh-huh.

14 Q -- coming over the hood of the car?

15 A Correct.

16 Q But in both statements, he consistently describes
17 the actual incident in which Mr. Boyd was so
18 tragically hurt as an accident, isn't that true?

19 A Correct.

20 Q So although he changed his statement from April to
21 August to acknowledge having seen a person in black
22 clothing or dark clothing, he maintained his
23 position that it was accidental?

24 A Correct.

25 Q Correct?

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

20

1 MS. SHURLING: Your Honor, I am going to
2 introduce both of Mr. Shaw's statements.

3 THE COURT: All right.

4 MR. CORNEY: Your Honor, I would just object
5 to them on the basis of hearsay coming in to prove
6 that Mr. Johnson had the opportunity to look at
7 those prior to discovery for the truth of the
8 matter asserted.

9 MS. SHURLING: Your Honor, I will lay a proper
10 foundation.

11 Q Mr. Johnson, do you recognize these two statements
12 as statements that were provided to you in the
13 discovery given to you by the Solicitor's Office?

14 A I believe they are the same.

15 Q Okay.

16 MS. SHURLING: Your Honor, I move to introduce
17 them as Applicant's 1 and 2.

18 (WHEREUPON, Plaintiff's Exhibit Nos. 1
19 AND 2 were marked for identification and
20 received into evidence.)

21 A You asked me about plea negotiations earlier. I
22 forgot I informed my client on August 24th, 2010
23 that:

24 I had informal plea negotiations with
25 Ms. Campbell, and the only thing the

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

21

1 State is offering is that you could
2 plead guilty to the charges under North
3 Carolina vs. Alford.

4 Q Plead guilty to the charges and what, sir?

5 A You could plead guilty to all the charges using
6 North Carolina vs. Alford.

7 Q Oh, okay.

8 A That was the only other offer prior to the day of
9 trial.

10 Q Well, if the State was amenable at that point to
11 allow your client to plead pursuant to North
12 Carolina vs. Alford, why at the time that your
13 client finally did plea in November of 2010 did you
14 avail him of that privilege only on the ABWIK
15 charge?

16 A That was all that was offered at the time.

17 Q Did you remind Luck Campbell that she had
18 previously said she would except Alford pleas on
19 all three charges?

20 A I don't remember if I reminded her, but that is all
21 that was offered at the time.

22 Q Okay. But you can't -- that is not my specific
23 question. You have a letter in your file saying
24 she agreed to let him plead under Alford to all
25 three charges, correct?

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

22

1 A We had informal talks, Luck Campbell and I.

2 Q Okay.

3 A And what was mentioned to me was pleading to all
4 the charges under North Carolina vs. Alford at the
5 time.

6 Q Okay.

7 A My client was not willing to plead guilty to
8 anything at that point.

9 Q I understand. My question is, at the time that a
10 firm plea offer was made after the jury was
11 selected and the offer was Alford for the ABWIK and
12 straight up to ABHAN and the hit and run charge,
13 did you remind Ms. Campbell that she had previously
14 agreed to accept pleas under Alford and ask that
15 she allow your client to do so?

16 A I don't remember having that conversation.

17 Q Okay. Now, did you tell your client that Tory
18 Torrence Shaw was going to testify against him if
19 he went to trial?

20 A Yes.

21 Q And how -- from what source did you reach that
22 conclusion?

23 A Mr. Peavy.

24 Q Mr. Shaw's lawyer told you he would be a witness
25 for the State?

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

23

1 A Yes.

2 Q Did you inquire as to whether he had made any
3 additional statements other than the two that you
4 had been provided in discovery?

5 A I was only aware of the two.

6 Q Okay. Did you discuss with your client thereafter
7 how prejudicial Tory Shaw's testimony would or
8 wouldn't be if he testified consistently with his
9 statements?

10 A On August 19th I wrote Daydrian and I stated:

11 Please find enclosed a copy of Torrence
12 Shaw's latest statement. My initial
13 impression is that it is not bad for us.

14 Q Okay. So the latest statement, that being the
15 August statement, you advised your client that it
16 is not really that bad for y'all, right?

17 A Correct.

18 Q Okay. In plea negotiations, did you ever discuss
19 with Luck Campbell any problems with proceeding
20 with assault and battery charges in addition to hit
21 and run where one set of charges was predicated on
22 his behavior following an accident and the other
23 one alleged intentional assault?

24 A I do not remember having that conversation with
25 him.

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

24

1 Q Okay. Once the decision was made for your client
2 to go forward with the plea -- well, let me back up
3 for a second. Did you discuss with your client
4 what would happen if he went to trial with regard
5 to a statement or statements he had made to law
6 enforcement?

7 A We had a Jackson v. Denno hearing.

8 MS. SHURLING: Your Honor, I have not been
9 provided with a copy of that proceeding.

10 A It is not in the record.

11 Q It is not on the record?

12 A It is not in the record that we have been provided.

13 Q Okay.

14 A It happened the day before.

15 Q So you did have a Jackson v. Denno hearing at which
16 his statement was found to be admissible?

17 A Yes. He was there with his father.

18 Q Okay. And did you make any sort of motion with
19 regard to the content of text messages that were
20 intercepted or reproduced between your client and
21 his brother?

22 A We hadn't gotten that far.

23 Q Okay. Well, you filed a motion to suppress the
24 statement?

25 A Uh-huh.

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

25

1 Q Had you filed any sort of motion in limine or any
2 other motion to suppress addressing the text
3 communications between your client and his brother?

4 A No.

5 Q Had you discussed with your client any possible
6 theories under which you might exclude those text
7 messages?

8 A No.

9 Q Okay. Now, once the concrete offer was made by
10 Ms. Campbell, did you discuss with your client the
11 applicable penalties for the three offenses that
12 judgments would be entered for under the terms of
13 the plea?

14 A Yes.

15 Q And in addition to assault and battery with intent
16 to kill and assault and battery of a high and
17 aggravated nature, did you go over the penalties
18 with him, I presume, for the hit and run statute?

19 A Yes.

20 Q Did you inform your client at any point that
21 restitution would likely be ordered or even could
22 be ordered as a consequence of his pleas?

23 A The -- part of our negotiations was that he would
24 make restitution of, I believe it was \$20,000.
25 That is what is encapsulated on the plea sheet.

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

26

1 Q Well, that was ordered by Judge Cooper in
2 sentencing, but are you representing now that that
3 was actually a term of the guilty plea agreement?

4 A No, it wasn't a term of the guilty plea agreement.
5 One of the issues was the fact that the car that
6 Daydrian was driving was not insured. And so there
7 was an interest in getting the victim some money,
8 and that is what came up. No medical bills were
9 ever presented, so there was never a discussion
10 about restitution specifically.

11 Q That is my question. Was your client paying
12 restitution to the victim an agreed upon term of
13 the plea bargain going into the guilty plea?

14 A No.

15 Q And had you advised your client in advance of the
16 guilty plea that he was likely to be ordered to
17 make restitution to the victim in addition to
18 whatever other penalty the Court imposed?

19 A No.

20 Q When a request for restitution is made, a Defendant
21 is generally entitled to a hearing on the
22 appropriate amount of restitution, is he not?

23 A Correct.

24 Q And no such hearing like that was held in this
25 case, was there?

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

27

1 A Not that I'm aware of.

2 Q Okay. Is there any reason why you did not object
3 to your client --

4 THE COURT: Because \$20,000 sounds a lot
5 better than \$1 million. Go ahead.

6 MS. SHURLING: I agree, but...

7 Q Did you discuss with your client the fact that he
8 had a right to an evidentiary hearing on what the
9 appropriate amount of restitution was?

10 A No. I thought that the \$20,000 was in his benefit.

11 Q And I certainly understand that position. Now,
12 once the plea was underway --

13 MS. SHURLING: And, Your Honor, the record is
14 just a little confusing to me because --

15 THE COURT: Well, Judge Cooper took a break
16 and called the Department of Corrections and tried
17 to work something out on all that. You are aware
18 of all that.

19 MS. SHURLING: Oh, yes, sir. What I was just
20 fixing to say is the cover of the transcript
21 provided to me indicates that the plea was on
22 August 30th and that the sentencing took place the
23 next day.

24 THE COURT: That's right.

25 THE WITNESS: That's correct.

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

28

1 THE COURT: That is what the record says.

2 MS. SHURLING: And the sentencing sheets are
3 dated September 1st.

4 Q Do you know what --

5 A No.

6 Q No.

7 A No, I don't know that.

8 Q I was just curious about that discrepancy. All
9 right, let's talk about what happened during the
10 actual guilty plea proceedings. Do you have a copy
11 of the guilty plea transcript with you?

12 A Yes.

13 Q If you would turn with me to Page 13 and first
14 acknowledge that immediately prior to that Deputy
15 Solicitor Goldberg was giving a lengthy recitation
16 of the facts from the perspective of the
17 prosecution, correct?

18 A Yes.

19 Q And on Page 13, His Honor, Judge Cooper, turns to
20 your client and says: Is that what happened to
21 Mr. Rouse?

22 Do you see that?

23 A Yes.

24 Q On Page 13? What was your client's response?

25 A "No, sir, Your Honor."

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1 Q And the Court says: Sir? In a questioning tone.

2 And the next page and a half or so involves
3 responses -- questions and responses between you
4 and the Court, not your client and the Court,
5 correct?

6 A Except for when the Court asked him did his vehicle
7 hit Mr. Boyd and he was asked: Do you agree with
8 that, right?

9 And the Defendant, Daydrian said: Yes, Your
10 Honor.

11 Q But I guess my point is, did you at any point ask
12 the Court for a moment's indulgence to ascertain
13 what portion of the State's recitation of the facts
14 your client disagreed with?

15 A No. I knew -- he had confessed to driving the car
16 and leaving the scene.

17 Q Okay.

18 A And so that part was established.

19 Q All right. But did you afford him an opportunity
20 to tell the judge in what regard he disagreed with
21 the factual recitation as laid out by the State?

22 A I did not.

23 Q Any particular reason why you would not have done
24 that?

25 A I thought that the part that he agreed to and I

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1 agreed to was the fact that he was driving the car,
2 he left the scene, and he had already confessed to
3 hitting the first young man with the side of his
4 car.

5 Q Okay. For the hit and run charge, all that was
6 necessary was that he had hit one or both of the
7 individuals and left the scene, correct?

8 A Correct.

9 Q And that at least one of them, regrettably
10 Mr. Boyd, was tragically injured, okay?

11 A Correct.

12 Q But there was a lot of leeway in sentencing, in
13 this sentencing proceeding, wasn't there?

14 A I don't know what you mean by leeway.

15 Q Well, the sentence for ABWIK is what?

16 A Off the top of my head -- let's see.

17 Q Up to 20 years?

18 A Up to 20. It is a Class C felony, yes.

19 Q And the sentence for ABHAN, up to ten years?

20 A Up to ten.

21 Q There are no mandatory minimums for either of
22 those, are there?

23 A Correct.

24 Q And the mandatory minimum for hit and run was how
25 much? Thirty days?

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1 A Thirty days up to, let's see --

2 Q Ten years?

3 A Ten years, yes.

4 Q So my point being there was a lot of latitude in
5 Judge Cooper's sentencing discretion that day,
6 wasn't there?

7 A I don't think so, but --

8 Q Well, there was a broad sentencing range possible
9 by statute then? I'll reword it. Correct?

10 A I would not define that as a broad range, but if
11 you do, that's fine.

12 Q Okay. Well -- and while the fact that your client
13 acknowledged hitting the guy and leaving may have
14 provided the essentials for the charge of hit and
15 run, there were many things contained in
16 Mr. Goldberg's recitation of the facts that
17 portrayed your client in, to be fair, the worst
18 possible light, weren't there?

19 A Yes.

20 Q Okay. And my question is, why did you not make an
21 attempt to ascertain what of that recitation your
22 client took specific issue with and try to mitigate
23 in sentencing by explaining that to the judge?

24 A I'm sure at the time I thought what we were doing
25 had benefit for my client.

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1 Q Okay. Let's go forward, if we can, for a minute
2 to -- during the guilty plea proceeding -- and I'm
3 sorry, I had a flag, and I don't have it marked --
4 but the Solicitor advised the Court that the
5 incident happened on May 18th, early morning hours
6 of the 19th, 2009, and that your client was
7 arrested ten days later. Do you recall that?

8 A I don't. It is in the record.

9 Q Okay. And the record will speak for itself. Did
10 you consider clarifying on the record that he may
11 not have been formally charged for ten days but
12 that he had in fact come to the Police Department
13 with his father on Monday, the 20th, and turned
14 himself in for questioning voluntarily?

15 A If you tell me I didn't say that, then I didn't.

16 Q Okay. And my question is, why would you not have
17 done that?

18 A Obviously I did not think to do it at the time.

19 Q Did you consider that the Solicitor's
20 characterization that this terrible thing happened
21 and your client wasn't arrested for ten days could
22 further perpetuate the appearance to His Honor that
23 your client had not done anything to step up and
24 take responsibility for his actions for ten days?

25 A No, I did not. Compared to what the judge had

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1 already seen, it seemed minor to me.

2 Q Okay. Did you -- in your plea in mitigation, did
3 you consider arguing the factors that you would
4 have argued in support of the theory of accident at
5 trial? Did you consider presenting some of those
6 factors to Judge Cooper as potentially standing in
7 mitigation of culpability and therefore the
8 appropriate penalty?

9 A I did not.

10 Q Okay. For example, the testimony of the witnesses
11 provided to you in discovery indicated that the
12 area where this occurred was dimly lit, did it not?

13 A Yes.

14 Q And that the first gentleman that was hit on the
15 elbow was wearing white clothes?

16 A Yes.

17 Q But that Mr. Boyd, sadly, was wearing dark
18 clothing?

19 A Yes.

20 Q Crossing the street in a dimly lit area when this
21 happened?

22 A Correct.,

23 Q Okay. How about the fact that this happened at
24 2:00, 3:00 o'clock in the morning, I forget the
25 exact time, but the wee hours, after midnight,

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1 following an Omega Psi Phi party at which there had
2 been drinking going on?

3 A I didn't want to bring up the drinking, no.

4 Q Well, if there was a question as to whether or not
5 there was any contributory blame, would it not be
6 appropriate to draw the Court's attention to the
7 fact that the revelers leaving the party scene and
8 crossing from left to right in front of your client
9 were part of a large group of people that had been
10 partying for hours?

11 A I did not think it was a good idea to put the
12 victim on trial or portray the victim as having
13 some fault in this. I did not think that would go
14 over well with Judge Cooper.

15 Q How about the fact that your client was traveling
16 in the right lane when there was another large SUV
17 traveling in the left lane and that the individuals
18 in question were traveling from left to right and
19 your client's view could have been or would have
20 been at least partially obstructed by the SUV?

21 A I did not feel that the plea was the appropriate
22 time to argue the case.

23 Q Okay. Do you recall during sentencing when the
24 Solicitor's Office recalled both -- and I should --

25 MS. SHURLING: Your Honor, I know you are

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1 speed reading, you will read all of this.

2 Q But there was a recitation of the facts done on the
3 day of the plea, and then there was another
4 recitation of the facts done the following day
5 during sentencing, and then ultimately -- and I
6 realize you were not counsel of record during the
7 motion to reconsider proceeding, but there was a
8 third recitation of facts at that time.

9 During the two that you would have been party
10 to, isn't it true that the Solicitor's Office,
11 through of course Mr. Goldberg, characterized your
12 client as revving his engine and chirping his
13 wheels?

14 A There was some testimony, or in statements that was
15 mentioned.

16 Q Okay. And did you consider pointing out to Judge
17 Cooper in sentencing that none of the discovery
18 materials provided to you, the police incident
19 reports, the CSI reports, or the MAIT report, none
20 of those indicated that any tire tread or rubber
21 was found on the ground there at the scene of the
22 so-called squealing tires?

23 A I did not. My focus at that point was on Daydrian
24 and what a good person he was. That was my focus
25 in mitigation.

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1 Q All right. Let's go backwards for a second. In
2 going back to the discussions I asked you about
3 earlier about the factors that you discussed with
4 your client when deciding whether or not to plead
5 guilty or not.

6 A Yes.

7 Q Did you go over with him what evidence you believed
8 was present in this case and what evidence was at
9 least personally documented by the discovery
10 materials given to you by the State that would have
11 supported your theory of accident?

12 A Yes.

13 Q And did you at any time discuss with him the fact
14 that you would object to the jury being told that
15 they could find him guilty of the two assault and
16 battery charges in addition to hit and run?

17 A I do not remember telling him that. I remember
18 telling him that our defense would be accident.

19 Q Pardon?

20 A Our defense would be that of an accident.

21 Q Okay. And addressing the character issue, your
22 client had no prior criminal record, right?

23 A Correct.

24 Q He had finished three years of college?

25 A He had.

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1 Q Had an exemplary record both as a young man in the
2 community and in school, right?

3 A Oh, definitely.

4 Q Okay.

5 A He had --

6 Q Did you discuss with him the fact that if he went
7 to trial he would have the opportunity to present
8 character witnesses?

9 A Yes.

10 Q Did you discuss with him the various evidentiary
11 factors that -- I think you may have just answered
12 this -- you did or didn't go over with him the
13 specific evidence you could use to support the
14 theory of accident?

15 A Yes.

16 Q Okay. Now, you said that your client -- pardon me,
17 that Tory Shaw's lawyer told you that Tory was
18 going to be called as a witness for the State?
19 Mr. Peavy?

20 A On August 27th, 2010 that is what Jason Peavy told
21 me.

22 Q Pardon?

23 A On August 27th, 2010, Jason Peavy told me that his
24 client was going to testify.

25 Q Okay. Did you discuss that with your client?

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1 A Yes.

2 Q Tory Shaw had been charged with a crime in
3 connection with this event, hadn't he?

4 A He had.

5 Q What was he charged with?

6 A I don't remember off the top of my head, but pretty
7 much he was -- the prosecutor was saying that he
8 kind of revved this on, he was the one doing a lot
9 of talking to the Omegas and cussing them out.

10 Q So based on Tory Shaw's mouthing off to some of the
11 Omegas earlier in the evening and prior to this
12 incident, they charged him as having complicity in
13 the hit and run?

14 A Yes.

15 Q Did you discuss with your client the fact that if
16 Tory Shaw took the stand and testified for the
17 State that you would also have the opportunity to
18 elicit from Mr. Shaw many things that would be
19 favorable to the theory of accident?

20 A I don't remember specifically having that
21 conversation, but that was my intention at trial.

22 Q But did you tell your client that?

23 A I don't remember.

24 Q Okay. And, in fact, there was a great deal in the
25 statements issued by Tory Shaw, as we discussed

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1 earlier, the first and the second statement, there
2 is a great deal of the text of those statements
3 that would have been supportive of the theory of
4 accident, wasn't there?

5 A Yes.

6 Q Did you also explain to your client that he would
7 have had the right to question Tory Shaw concerning
8 his own charge?

9 A I'm sorry, ask -- say that again.

10 Q Did you explain to your client that if Tory Shaw
11 testified against him for the State that you would
12 have had the right to bring out the fact that Tory
13 Shaw had a charge pending and to question him about
14 whether he was testifying in the hopes of that
15 charge either going away or being mitigated?

16 A I don't remember having that specific conversation,
17 but we were there for trial and I was going to
18 cross-examine him on that.

19 Q I understand. But the question is, in deciding
20 whether or not to enter a plea of guilty, did your
21 client know that? Did he know that Tory Shaw could
22 be impeached with the fact that he had gotten a
23 charge of his own that he was -- whether or not he
24 was hoping for some favorable resolution on his own
25 charge in exchange for testifying for the State?

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1 A Daydrian knew that we were going to cross-examine
2 all the witnesses that testified against him.

3 Q Okay. But you have no specific recollection of
4 telling him about his ability to impeach under
5 Giglio and a hundred other cases, Mr. Shaw,
6 concerning his own charge and his hopes for
7 favorable treatment in exchange for his testimony?

8 A No. And part of the problem is it is unclear from
9 Tory's statement whether he would say that Daydrian
10 saw the second person come across the car or if he
11 saw it.

12 In his first statement he says that he was not
13 feeling well and he moved his chair back. And then
14 in the second statement he says he sees the second
15 person come across. He doesn't say Daydrian saw
16 it, he just said a person came across. So I'm not
17 sure what he would have testified to.

18 Q I understand, but -- and I'm not trying to beat a
19 dead horse to death, but did your client have
20 advice from you to the effect that if Tory all of a
21 sudden at trial decided to say that your client
22 definitely knew he hit two people as opposed to the
23 vague way it is referenced in the statements, that
24 you would have the ability to impeach him, (a), for
25 having not made that assertion in earlier

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1 statements; and (b), having hopes of bettering his
2 own treatment on his own criminal charge?

3 A All I can tell you is that we were there for trial
4 and he knew that we were going to cross-examine all
5 the witnesses against him.

6 Q Did you discuss with him the parameters of that
7 cross-examination, what would be permissible and
8 what wouldn't?

9 A I did not.

10 Q Okay. Throughout the record of this plea
11 proceeding, the State argued that your client's
12 actions in the aftermath of this tragedy
13 demonstrated that he had intentionally struck these
14 two people, didn't they?

15 A Yes.

16 Q And did you consider in mitigation countering that
17 with an argument that however your client panicked
18 and behaved in the aftermath of a terrible accident
19 was not proof that the act itself was deliberate?

20 A You mean during his plea?

21 Q Yes. During sentencing.

22 A No, I did not. I did not want to bring up the fact
23 that after they left the scene and went to
24 McDonald's and came back and drove back by the
25 scene where the young man was laying in the street,

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1 I did not want to bring that back up, no.

2 Q But the Solicitor brought that up?

3 A Yes, but I didn't want to reinforce it.

4 Q Well, I'll jump to that then. Isn't it true that
5 Tory Shaw had informed law enforcement in his
6 statement that he was ill and in pain?

7 A Yes.

8 Q And needed to take pain medication?

9 A Yes.

10 Q And in fact that he was having a sudden onset acute
11 pain -- those are my words -- but he said he had a
12 sudden acute pain and begged his friend to drive
13 him to get something to eat so he could take his
14 pain medication, correct?

15 A Correct.

16 Q Okay. Well, since the Solicitor had already said,
17 oh, yeah, and after they hit these poor people they
18 went to McDonald's, making it sound like they just
19 went to get a burger and fries, did you consider
20 that it would be incumbent upon you as defense
21 counsel to mitigate the negative inference of that
22 by explaining that even Tory Shaw's statement
23 verified that the reason they went to McDonald's
24 was that Tory Shaw was in pain and needed pain
25 medication?

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1 A No.

2 Q Don't you think that would have been helpful?

3 A No.

4 Q Okay.

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

7 (Pause.)

8 BY MS. SHURLING:

9 Q Did you discuss with your client the fact that all
10 of the eyewitnesses who gave statements in this
11 case were in fact people that were hanging out with
12 and associating with Mr. Boyd and Mr. Pringle on
13 the night of this incident?

14 A We talked about that they were all in the same
15 fraternity, yes.

16 Q Okay. And did you discuss with your client how if
17 he went to trial you could cross-examine them about
18 their prior association and affiliation with the
19 victim in an effort to establish their bias in
20 their testimony?

21 A Yes.

22 Q So you did discuss that with your client?

23 A We talked about the fact that they were all in the
24 same fraternity. And I remember his father was
25 concerned about them getting their stories

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1 together. So we did talk about it.

2 Q About him doing what, I'm sorry?

3 A About the Omegas getting their stories together,
4 that they talked and got their stories together.

5 Q Okay.

6 A I remember that was a concern of Mr. Rouse.

7 Q But did you discuss with your client that if he
8 went on to trial you would be able to cross-examine
9 each of these witnesses about the fact that they
10 were all in the same fraternity, that they were all
11 close friends, thereby demonstrating for the jury a
12 great potential for bias?

13 A What I informed Daydrian was that at trial we would
14 cross-examine all the witnesses against him. I did
15 not get into bias or prejudice or any of the
16 different aspects. I just told him that we would
17 cross-examine the witnesses against him.

18 Q Okay. After sentencing was imposed -- well, let me
19 back up for a moment. Is it fair to say that both
20 your client and his family were very hopeful given
21 his very positive background up to this point in
22 his life -- up to that point in his life -- they
23 were hopeful that there might be some chance of a
24 probationary sentence in this case?

25 A That I don't know.

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1 Q Well, had you ever discussed with them the
2 possibility given his lack of criminal record, his
3 positive school history, and so forth, that there
4 was at least a possibility that the judge would
5 consider probation?

6 A I advised him of the possible penalties, but I
7 don't remember telling him that a judge would
8 impose probation, if that is what you are asking
9 me.

10 Q No, no, no. I said, did you ever discuss with them
11 their hope that probation was a possible outcome in
12 sentencing?

13 A Not that I remember.

14 Q Okay.

15 A I'm sure they, like every person, would like
16 probation, but I don't remember the specific
17 conversation, no.

18 Q Did you ever discuss with them prior to -- did you
19 ever discuss with your client prior to the plea the
20 fact that hit and run carried a mandatory minimum
21 sentence?

22 A Yes. Uh-huh.

23 Q So he knew that?

24 A Yes.

25 Q But he didn't know that restitution was a

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1 possibility?

2 A Restitution was never discussed.

3 Q Okay. Thank you.

4 A By the Solicitor or by anybody else.

5 Q And ultimately your client received a sentence of
6 five years suspended upon service of ten with a
7 \$20,000 restitution figure, correct?

8 A Yes, uh-huh. But that was not presented as
9 restitution, I guess. Or I guess it was.

10 Q Pardon me?

11 A There was a desire to get the young man some type
12 of funds. When I think restitution, I'm
13 thinking -- I'm presented with a bill that has to
14 be paid. And the conversation was the car would
15 have had -- it didn't have insurance on it, and so
16 that is where the number came from.

17 Q I understand. But my point being that ultimately
18 your client received a sentence on the ABWIK charge
19 of 15 years suspended upon service of ten with a
20 probationary period during which he had to pay
21 \$20,000 restitution?

22 A Yes.

23 Q Okay. And I believe, as the Respondent has pointed
24 out, the opportunity was given for that
25 restitution to be paid early and go ahead and

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1 reduce the sentence, active sentence to ten years,
2 but if it wasn't, it was the 15 suspended upon
3 service of ten and restitution to be paid during
4 probation, right?

5 A It was our understanding at the time of the plea
6 that the funds were available to do it.

7 Q Let's move on for just a second. When sentence --
8 sentence wasn't imposed the day of the plea, it was
9 the following day, correct?

10 A Correct.

11 Q When sentence was imposed, are you the attorney
12 that filed the motion to reconsider sentence, or
13 did the new attorney that was retained by the
14 family file the motion to reconsider sentence?

15 A I did not file the motion.

16 Q You didn't file it? So that would have been
17 Mr. Coleman?

18 A I assume so.

19 Q Did you discuss with your client at any point the
20 possibility of asking Judge Cooper to allow him to
21 withdraw his plea?

22 A The only time we had a conversation about that was
23 the next day. What I mean by that is, he entered
24 his plea, I believe it was on a Tuesday. And we
25 came back on Wednesday. And I asked him if he

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1 still wanted to go forward, and he did. That is
2 the extent of it. I did not discuss withdrawing
3 the plea.

4 Q You did not discuss with him the possibility of
5 asking Judge Cooper to withdraw the plea?

6 A No.

7 Q Now, overnight -- I know the record reflects on
8 Page 13 that he said he did not agree with some of
9 the factual scenario set forth by the State, and
10 the record will of course speak for itself that no
11 break or recess was taken to ascertain what his
12 problem was at that time.

13 Did you discuss that with him overnight to
14 determine what his problems with what the Solicitor
15 said were?

16 A No.

17 Q Okay.

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

20 THE COURT: All right.

21 (Pause.)

22 BY MS. SHURLING:

23 Q This is going to sound redundant, and I apologize,
24 but I have been an appellate lawyer for too long.
25 If you didn't discuss with your client the

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1 possibility of challenging the State's ability to
2 charge him with both the assault and battery
3 charges and the hit and run charge, is it safe to
4 assume that you didn't have any discussion with him
5 about any efforts you might make with regard to a
6 directed verdict of acquittal argument, along those
7 lines, or requests for jury charges that would
8 instruct the jury that they could find him guilty
9 under one theory but not both?

10 A We didn't get that far.

11 Q You didn't have any discussion with him about that?

12 A We didn't talk about directed verdicts or jury
13 charges because we didn't get that far in the
14 process.

15 Q Okay. So when you were talking about whether he
16 should go on to trial or not, there were no
17 discussions about what efforts you might could make
18 to lift his exposure to either the two assault and
19 battery charges or the hit and run charge?

20 A No. The concern at the time was -- we were there
21 to go to trial. And the young man was there in the
22 wheelchair. And it was -- he was at a point where
23 he could communicate, so he would be able to
24 testify. All of the eyewitnesses were there to
25 testify. Daydrian had already given a statement

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1 that he was driving the car that left the scene,
2 had driven back by.

3 It was the consensus of all that were there
4 that the plea -- at the time, obviously at the
5 time -- that the plea was the right thing to do.

6 Q Okay. During the sentencing when members of
7 Mr. Boyd's family were speaking in very compelling
8 statements on behalf of this young man that had
9 been injured, reference was made, I believe
10 multiple references, to the fact that your client
11 had never apologized for his actions of that
12 evening. Do you recall that?

13 A Yes.

14 Q And you were gracious enough to say in the end
15 that, blame that on me, that I'm the one that
16 wouldn't let him have any contact with the victim's
17 family.

18 Had you considered prior to this point where
19 you are about to go to trial discussing with your
20 client the relative wisdom of allowing him to go
21 ahead and make a heartfelt apology to the victim's
22 family?

23 A You mean during -- I'm sorry. Try that again.

24 Q It is your position that your client's statement,
25 coupled with the other statements and certainly the

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

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1 testimony of the statement of the young man that
2 was in the car with him, made it pretty clear that
3 the car hit two people?

4 A Uh-huh.

5 Q And that there was going to be a fight, if any,
6 over whether it was intentional or accidental,
7 correct?

8 A Correct.

9 Q If he went to trial?

10 A Correct.

11 Q The bone of contention was going to be whether this
12 was a terrible accident that your client had
13 behaved perhaps badly in the aftermath of, but an
14 accident, or whether it was as the State was
15 characterizing it, as a horrible, deliberate act,
16 right?

17 A Right, uh-huh.

18 Q And in your experience as a criminal defense
19 lawyer -- and I actually didn't ask you this. What
20 percentage of your practice was relating to
21 criminal defense matters at this time, 2009?

22 A Fifty percent.

23 Q Fifty percent?

24 A Uh-huh.

25 Q And isn't it true that in these days and times the

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 feelings of a victim or a victim's family are taken
2 into great consideration in plea negotiations?

3 A Yes.

4 Q And, in fact, there have been -- have you been
5 involved in cases where you felt you could have
6 gotten a better deal from the Solicitor but for the
7 family being unaccepting of the particular
8 potential offer?

9 A Yes.

10 Q Okay. Bearing that in mind, the question is, did
11 you ever consider that rather than allow this
12 family to go on for all those months and months
13 thinking that your client had no remorse, wasn't
14 sorry, that it would be to your advantage in trying
15 to generate some interest in a plea bargain with
16 the Solicitor's Office to allow him to make some
17 form of apology for the tragedy and the injuries to
18 Mr. Boyd?

19 A No, I did not. Definitely not.

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

22 (Pause.)

23 MS. SHURLING: Nothing further, Your Honor.

24 THE COURT: Okay.

25 CROSS-EXAMINATION

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 BY MR. CORNEY:

2 Q Mr. Johnson, when you got the discovery file, I
3 think you testified earlier that you had the
4 opportunity to review it with Mr. Rouse?

5 A Yes.

6 Q Were you able to get him a copy of at least a
7 portion if not all of the discovery materials?

8 A Yes.

9 Q And he had those on his own to be able to review at
10 his leisure?

11 A Yes.

12 Q And were you able to review those with his family
13 was? Did his family have an active part in this?

14 A Very active.

15 Q And were you able to review the discovery materials
16 with them as well?

17 A Yes.

18 Q Do you remember any noteworthy materials that were
19 part of the discovery file that maybe gave you
20 concern or things you remember from that?

21 A There was a lot that gave me concern. Number One,
22 Daydrian and his roommate and his brother had been
23 in a fight with some Omegas prior to the incident,
24 and there were multiple statements that when they
25 were leaving the party that he, he meaning

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1 Daydrian, and mostly Tory were making statements
2 towards the Omegas, angry statements towards the
3 Omegas.

4 After the incident, the thing that really was
5 compelling to me, in my opinion the case would come
6 down to credibility, whether a jury believed that
7 this was an accident and believed when Daydrian
8 told them it was an accident. And one of the
9 things that concerned me was the fact that Daydrian
10 had stated that he did not see the second person.

11 And to be honest with you, I believed
12 Daydrian. But the problem was the dent from where
13 he hit the second person was in the middle of the
14 hood, which I thought would be tough for a jury to
15 believe.

16 The other things that I took into
17 consideration were the fact that Tory was sick and
18 they went to McDonald's. And he was sick and
19 didn't feel well, but I was worried about how 12
20 people from the community who didn't know Daydrian
21 would view that.

22 I was also concerned about the fact that they
23 drove back by the scene while the young man was
24 laying in the street and didn't stop. I was
25 concerned about how a jury would view that.

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 And if we had gone to trial Daydrian would
2 have testified that he didn't realize that the
3 young man was in the street and he saw the person
4 with the white shirt standing up. But I was still
5 concerned about it.

6 I was concerned about the fact that Daydrian
7 took his car to his brother's house that night
8 instead of at his apartment. And the reason he did
9 that, he didn't wanted to drive the car with the
10 side view mirror missing, but I'm sure the
11 prosecutor would have portrayed it as trying to
12 hide the car.

13 I was concerned about the text messages that
14 were sent between Daydrian and his brother.

15 I was concerned about what Tory would testify
16 to, because his statement seemed to be evolving
17 over time.

18 Those were the things that concerned me.

19 And the other thing I was concerned about was
20 when he came to see me, he was facing 50 years in
21 jail. That was also a consideration of mine.

22 Q Okay. Were those concerns you were able to voice
23 to Mr. Rouse and review with him during the
24 meeting?

25 A Yes.

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 Q It is fair to say this was a pretty emotional case,
2 very emotionally driven?

3 A Yes. The -- everyone in the courtroom was crying
4 when the young man came forward and talked about
5 what had happened to him.

6 Q Okay. And in your investigation I think you
7 mentioned a Mr. Handberry earlier that was the
8 driver of black SUV nearby?

9 A I don't know who was driving the black SUV.

10 Q You did mention Mr. Handberry, though, is that
11 correct? Is that somebody that you --

12 A Handberry? Bryan Handberry was one of the
13 witnesses that we spoke to.

14 Q Okay. And had you subpoenaed him to testify on
15 Mr. Rouse's behalf at trial?

16 A Didn't need to. The State was going to have them
17 there.

18 Q But he was on the list to be called to trial?

19 A Yes. Yes.

20 Q Was Mr. Rouse -- well, I guess I should start by
21 saying, Mr. Rouse is a fairly intelligent person,
22 would you agree?

23 A Very, very intelligent person.

24 Q And he was a college student at some point in time?

25 A Yes.

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 Q Was he an active part in helping you review the
2 case, prepare the defenses?

3 A Yes.

4 Q And during the course of your meetings with him and
5 your preparation, would you say that he was on
6 board with the facts as you had said you started to
7 develop?

8 A I would say so, yes.

9 Q And he concurred with your opinion that that needed
10 to be the defense presented at trial?

11 A Correct.

12 Q Now, as you approached -- well, I'll back up for
13 just a minute.

14 As part of the discovery, were there
15 photographs of the victim and the injuries,
16 anything of that nature, included in the discovery?

17 A There were.

18 Q And how would you describe those as far as how
19 damaging they could be at trial?

20 A Extremely. The young man had to have part of his
21 skull removed.

22 Q So in an emotionally driven case already, would it
23 have been a big strategy of yours to make sure the
24 jury didn't see those pictures? Was that a big
25 concern of yours if you went to trial?

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 A Yes. But I'm sure the judge would have let them in
2 to show the extent of injuries.

3 Q Now that you approached the trial, the case is
4 called, and you go forward and pick the jury, in
5 your experience as a criminal defense attorney, is
6 it uncommon for the Solicitor to withdraw all prior
7 plea offers, plea negotiations once the case is
8 called to trial?

9 A Yes. And to be clear, no formal plea offer was
10 made prior to when we were at trial.

11 Q But as far as -- I think you mentioned before, and
12 I know Ms. Shurling had questioned you about all
13 three charges and some sort of offer or mention
14 being made that all three charges could be pled
15 under Alford?

16 A Yes. Yes. That was something that the prosecutor
17 and I talked about, but at the time Daydrian was
18 not willing to plead to anything at that point.

19 Q And once it was called for trial, would it have
20 been uncommon for Luck Campbell or the Solicitor's
21 Office to say, whatever we put out there before we
22 are withdrawing because we are going to trial?

23 A There was really nothing out there, but, yes, that
24 is not uncommon.

25 Q As far as -- and I know Ms. Shurling touched an

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 awful lot on things that I guess should have been,
2 or she alleges should have been raised in
3 mitigation. Would you say it is a fair statement
4 that you may have a different strategy in
5 mitigation at a plea than you would have convincing
6 a jury at trial?

7 A Correct.

8 Q And in your experience, would it be I guess a
9 normal thing for a judge to want to hear a
10 Defendant take responsibility with a charge?

11 A Yes.

12 Q And in your experience, is that usually a
13 beneficial thing to do, go before the judge and
14 take responsibility for your actions rather than
15 kind of blame them away in mitigation?

16 A It is.

17 Q Okay. And I think in this specific instance you
18 mentioned not wanting to blame the victim or I
19 guess victimize the victim and make them, you know,
20 push the blame on them. That was a concern of
21 yours in your mitigation?

22 A It was.

23 Q As far as the information about Mr. Rouse and I
24 believe with Mr. Shaw going to McDonald's after
25 this occurred, that was something that you

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 presented in mitigation, wasn't it? I think it is
2 on Page 42 if you just want to take a minute to
3 refresh your memory. I think it is 42 at about --
4 starting on 43. The fact that they needed to take
5 some kind of pain medication?

6 A Correct.

7 Q I think from getting in a fight. And they went to
8 McDonald's to get something for him to take pain
9 medication?

10 A Yes, you're right, I did.

11 Q Okay. So that was something you brought out in
12 mitigation?

13 A And I also brought out the fact that there was a
14 black SUV between Daydrian's car and the young men
15 that were crossing the street.

16 I also brought up the fact that Daydrian was
17 smiling as he left the National Guard Armory, in
18 contradiction of testimony that he was angry.

19 And I also mentioned that Daydrian had no idea
20 of the severity of Mr. Boyd's injuries when he
21 drove back by the scene.

22 Q Do you remember which, if any, pretrial motions you
23 might have filed prior to the plea hearing that
24 would have been addressed had he gone to trial?

25 A Off the top of my head, I do not.

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 Q But there were motions filed?

2 A Yes.

3 Q Suppression motions, those type of things, that
4 would have been handled at trial?

5 MS. SHURLING: Objection, Your Honor. He says
6 he has no recollection.

7 THE COURT: Well, he has got his file there.
8 If he wants to look at it he can.

9 THE WITNESS: The problem is I don't know
10 where in my file it is.

11 BY MR. CORNEY:

12 Q And, you know, we don't need to go any further into
13 that.

14 A Okay.

15 Q On July 30th, 2010, when you came before Judge
16 Cooper, were you prepared to try Mr. Rouse's case?

17 A Oh, definitely.

18 Q After Mr. Rouse entered the plea and came back for
19 sentencing, Judge Cooper stepped back -- and I
20 believe Judge Kinard might have mentioned this a
21 minute ago, but Judge Cooper stepped back and made
22 a call to SCDC. Is that something you recall?

23 A I do.

24 Q And that was to sort of kind of fashion a sentence
25 where some sort of restitution, if you want to call

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 it that, something along those lines, could be made
2 to benefit the victim?

3 A Yes.

4 Q Is that your recollection?

5 A That's true.

6 Q And when Judge Cooper came back out from speaking
7 with SCDC about how to fashion the sentence, I
8 believe he said -- this on Page 59 of the
9 transcript -- and said, I ran it by both you and
10 the Solicitor after speaking with SCDC about that?

11 A Correct.

12 Q Do you recall that conversation with Mr. Cooper or
13 what might have been said -- or Judge Cooper about
14 what might have been said at that time?

15 A I do.

16 Q Okay. And what -- how did that conversation go
17 with him approaching you about potentially making
18 payments or monetary obligation as part of the
19 sentence?

20 A Judge Cooper was interested or was concerned about
21 the victim and there not being any insurance to
22 help with his medical bills and was trying to
23 fashion a remedy to address that.

24 Q Okay. And after he came back from SCDC, that was I
25 guess what SCDC or whoever he spoke with over there

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 had suggested to him? Or do you remember any
2 details about that?

3 A I wasn't on the phone, but it was my recollection
4 that he had spoke to SCDC and they told him that it
5 was okay to fashion a sentence the way he did.

6 Q And was that something that you had the opportunity
7 to review with Mr. Rouse at that point in time?

8 A I do remember speaking to Daydrian's father about
9 whether that was something they could financially
10 handle. I definitely remember that.

11 Q And I think before you mentioned it, but were you
12 put under the impression that that was an
13 obligation they might be able to meet to lessen the
14 sentence?

15 A Yes.

16 Q Would you say that Mr. Rouse -- Mr. Rouse's family
17 was on board with that, being, you know, part of
18 the sentence, where if you could get it reduced
19 that he paid that amount?

20 A Yes.

21 MS. SHURLING: Your Honor, objection. I
22 believe he testified earlier he didn't discuss
23 restitution with my client. He needs to clarify
24 that the Mr. Rouse he is talking about --

25 THE COURT: He said with the family, not your

GEORGE JOHNSON -- CROSS BY MR. CORNEY

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1 client.

2 MS. SHURLING: Okay. Thank you, Your Honor.

3 THE COURT: He knew your client didn't have
4 \$20,000, but he thought maybe the family did.

5 BY MR. CORNEY:

6 Q Mr. Johnson, you were able to have several people
7 speak on Mr. Rouse's behalf in mitigation at the
8 plea, correct?

9 A We asked the judge to bifurcate the hearing so
10 family and friends from Charleston could come.

11 MR. CORNEY: Beg the Court's indulgence.

12 THE COURT: All right.

13 (Pause.)

14 BY MR. CORNEY:

15 Q As far as a double jeopardy claim with different
16 charges, would it be a fair I guess statement of
17 the law to say there is no double jeopardy, there
18 is different elements to be proved for each charge?

19 A That is my understanding. And my other --

20 Q Do you think that that is the case between -- do
21 you think that that would be a fair case to be made
22 for the hit and run and the assault and battery
23 with intent to kill charges in this instance?

24 A That, and I remember one of the things we looked at
25 was that one of the mental states for ABWIK could

GEORGE JOHNSON -- REDIRECT BY MS. SHURLING

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1 be extreme reckless indifference. And so that was
2 part of my thinking at the time.

3 MR. CORNEY: I believe that is all the
4 questions I have, Your Honor. Thank you.

5 REDIRECT EXAMINATION

6 BY MS. SHURLING:

7 Q None of the discussions about trying to construct a
8 sentence that would provide for some restitution to
9 the victim's family -- the victim and his family,
10 those discussions were not had in the presence of
11 your client, were they?

12 A I'm sure they were, because we were all meeting
13 together.

14 Q Well, if they are not on the record and they
15 indicate that they were back in chambers, that
16 would -- your client wasn't back in chambers, was
17 he?

18 A No, he was not back in chambers. And I know when I
19 asked his father if the -- something that the
20 family could handle, his father was sitting -- I
21 had to walk back to him, so I don't know if
22 Daydrian was involved in that conversation or not.

23 Q Okay. Thank you. The question of insurance was
24 brought up a moment ago. Did you do any
25 investigation into whether or not there was any

GEORGE JOHNSON -- REDIRECT BY MS. SHURLING

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1 possibility that the insurance company that had
2 been insuring the mother's car until just before
3 the accident might ultimately be held accountable,
4 or liable rather?

5 A I did not. She told me they hadn't paid anything.

6 Q And are you aware or have you been made party in
7 any way to the ongoing civil litigation that is
8 still pending with regard to the personal injury
9 claims made by Mr. Boyd?

10 A This is the first I heard of it.

11 Q Okay. Thank you.

12 MS. SHURLING: Moment's indulgence.

13 (Pause.)

14 BY MS. SHURLING:

15 Q The meeting that took place with Mr. Rouse on
16 Friday before this case was scheduled to go to
17 trial the following week, who handled that meeting
18 with your client?

19 A I did, and my associate, Yvonne Murray-Boyles.

20 Q Were you present for that entire meeting?

21 A I don't remember.

22 Q Do you recall ever advising your client's family
23 that none of the evidence in this case was
24 favorable to him?

25 A No. I can't -- there wasn't much favorable to him,

GEORGE JOHNSON -- REDIRECT BY MS. SHURLING

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1 but --

2 Q No further questions.

3 A -- I don't believe I used those words.

4 Q Well, let me -- while I see you are looking -- do
5 you keep your e-mail communications in your file,
6 Mr. Johnson?

7 A I do not.

8 Q Do you have any recollection of an e-mail
9 communication with Mr. Rouse's family in which you
10 indicated to them that none of the evidence was
11 favorable?

12 A No, but if you tell me I sent it, then I did.

13 Q Okay.

14 MS. SHURLING: No further questions.

15 THE COURT: You can step down.

16 (Witness steps down.)

17 MS. SHURLING: Thank you, Your Honor. At this
18 time we would call Ms. Murray-Boyles to the stand,
19 please.

20 THE COURT: All right.

21 THE BAILIFF: Place your left hand on the
22 Bible and raise your right hand.

23 (Witness complies.)

24 THE COURT: Do you swear or affirm you are
25 going to truthfully testify?

YVONNE RENEE MURRAY-BOYLES -- DIRECT BY MS. SHURLING

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1 THE WITNESS: I do, Your Honor.

2 YVONNE RENEE MURRAY-BOYLES,
3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SHURLING:

6 Q Would you state your full name for the record,
7 please.

8 A Yvonne Renee Murray-Boyles.

9 Q And, Ms. Boyles, back at the time of this plea in
10 August of 2009, who were you practicing law with?

11 A Johnson, Toal & Battiste.

12 Q And are you still there?

13 A I am.

14 Q All right. And I said 2009. I apologize,
15 August 2010. Had you been involved in this case
16 from the time that Mr. Johnson was retained
17 immediately after the incident up through the time
18 it was going to court or did you more recently get
19 involved in it?

20 A I more recently got involved in it. Perhaps
21 towards the beginning of July of 2010.

22 Q Okay. So you can place it at roughly the beginning
23 of July?

24 A That's correct.

25 Q Okay. And are you aware of any plea negotiations

YVONNE RENEE MURRAY-BOYLES -- DIRECT BY MS. SHURLING

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1 in this case prior to when the jury was selected in
2 this matter?

3 A No, I'm not.

4 Q Okay. And did you participate in all of the
5 meetings that Mr. Johnson had with Mr. Rouse once
6 you got involved in the case? Did you sit in on
7 all the meetings?

8 A I believe I did sit in on one or two, but I'm not
9 actually sure as to the number that I did, but I
10 did meet with him.

11 Q So you are not aware as to whether there were other
12 meetings to which you were not privy?

13 A No, I'm not.

14 Q Okay. At the time you became involved in the case,
15 was it your belief -- was it the belief of the
16 defense team that the case was headed to trial?

17 A Yes, it was.

18 Q And you were I assume at that point preparing in
19 earnest for an upcoming trial?

20 A I was.

21 Q Did you interview any of the eyewitnesses in this
22 case?

23 A I did.

24 Q Which witnesses does your file indicate you
25 interviewed?

YVONNE RENEE MURRAY-BOYLES -- DIRECT BY MS. SHURLING

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1 A I interviewed Damonte Coleman, Antoine Gamble, and
2 Bryan Handberry.

3 Q And Bryan Hannabell--

4 A Handberry.

5 Q Handberry, pardon me. Was he either the driver or
6 the occupant of the SUV? No?

7 A He was actually somebody who was at the party with
8 Mr. Boyd.

9 Q Okay. So he was one of the fraternity members?

10 A That's correct.

11 Q That was with the group that evening?

12 A That's correct.

13 Q Did you interview anybody that was driving, or a
14 passenger in the SUV?

15 A We never were able to interview anyone in regard to
16 driving an SUV.

17 Q And did the police incident reports provided or any
18 of the other documentation provided in discovery
19 even give you any indication as to the identities
20 of the persons in the other car?

21 A No.

22 Q Okay. So their identities were an unknown factor
23 going in?

24 A The driver of the SUV was unknown at the time.

25 Q Okay. Did you have a theory of defense going into

YVONNE RENEE MURRAY-BOYLES -- DIRECT BY MS. SHURLING

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1 this trial?

2 A Well, based on my discussions with George and
3 strategizing the case that this was an accident,
4 and that was the approach that we were going to
5 take.

6 Q And did you ever do any research or have any
7 discussions with your client on the question of
8 whether or not you could challenge him being
9 multiply charged for both intentional acts of
10 assault and battery and hit and run?

11 A No, I did not.

12 Q Okay. Did you discuss with Mr. Rouse the fact that
13 Tory Shaw might be a witness for the State?

14 A I did not. I know Mr. Johnson did.

15 Q Okay. Were you present during any discussions
16 between Mr. Johnson and your client concerning how
17 the testimony of Tory Shaw could be handled at
18 trial if he in fact testified for the State?

19 A I was not.

20 Q Okay. Did you have any independent discussions
21 with Mr. Rouse concerning the parameters of
22 impeachment if you went to trial?

23 A I did not.

24 Q Did you have any discussions with Mr. Rouse
25 concerning the discovery in this case?

YVONNE RENEE MURRAY-BOYLES -- DIRECT BY MS. SHURLING

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1 A When George and I met with him, I was present at
2 the time during discussion of some of the
3 discovery, but Mr. Johnson led those meetings.

4 Q Okay. And to the best of your recollection, was
5 there ever any discussion as to what portions of
6 the discovery materials or witness statements could
7 be used to support the theory of accident?

8 A Based on the interviews that I had with the three
9 witnesses I was able to get in contact with, we
10 knew that those witnesses would not help in regard
11 to building a case of an accident, but other than
12 that, no.

13 Q Okay. There was a meeting with your client on
14 Friday I believe before this case was scheduled to
15 go to trial the following week. Do you recall that
16 meeting?

17 A I don't.

18 Q Okay.

19 A But I'm sure that we did meet at some point prior
20 to the trial.

21 Q Do you have any notice in the file that document
22 when you had meetings and who was present?

23 A I did not have the file, but the notes that I do
24 have are the notes from August 30th, 31st and
25 September 1st.

YVONNE RENEE MURRAY-BOYLES -- DIRECT BY MS. SHURLING

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1 Q Okay.

2 A And outside of my interview that I had with the
3 three witnesses. And that was August 11th.

4 Q Okay. So you have nothing in your file to document
5 when closer to the time of the plea you met with
6 Mr. Rouse and who was present for those meetings?

7 A Mr. Johnson would set those meetings up.

8 Q Okay.

9 A I was second chair on this case.

10 Q I understand.

11 A And as you can tell, I came in late in the case.

12 Q Okay.

13 A So Mr. Johnson would set up the meetings.

14 Q And were you present for the plea and sentencing
15 the following day?

16 A I was.

17 Q For both proceedings?

18 A I was.

19 Q And was there any discussion that you were privy to
20 either during or at the conclusion of either of
21 these proceedings concerning what your client had
22 been unwilling to agree to during the Solicitor's
23 recitation of the facts?

24 A Can -- I don't know what he was not in agreement
25 with. No, I don't have any knowledge.

YVONNE RENEE MURRAY-BOYLES -- DIRECT BY MS. SHURLING

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1 Q I was going to say, that was very poorly worded. I
2 apologize.

3 A Okay.

4 Q Too much cold medication. There was a point after
5 Dan Goldberg's recitation of the facts in the light
6 most favorable to the prosecution where your client
7 was asked if he agreed with what was said. Do you
8 recall that?

9 A Based on the testimony from Mr. Johnson to you, I
10 do.

11 Q And do you recall any subsequent discussion with
12 your client during a break or between the day of
13 the plea and the day of sentencing concerning what
14 it was that bothered him?

15 A Well, I do recall Mr. Johnson speaking with
16 Daydrian sometime -- I'm not sure whether it was
17 the sentencing -- I believe it was either during
18 the -- I believe it was during the plea. At some
19 point that Mr. Johnson did speak with Mr. Rouse. I
20 don't know whether it was after that period of him
21 saying, no, or at what point it was, but I do
22 recall the two of them speaking. And I was not
23 privy to that. That was just between the two of
24 them.

25 Q Okay. Now, I understand that you were second seat,

YVONNE RENEE MURRAY-BOYLES -- CROSS BY MR. CORNEY

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1 but within those parameters, did you have the
2 opportunity to discuss with your client, Mr. Rouse,
3 the possibility of asking to withdraw his plea?

4 A No, I did not.

5 MS. SHURLING: A moment's indulgence.

6 (Pause.)

7 MS. SHURLING: Nothing further, Your Honor.

8 MR. CORNEY: Just very briefly.

9 CROSS-EXAMINATION

10 BY MR. CORNEY:

11 Q From your recollection, at the time of the plea,
12 did Mr. Rouse seem to understand the implications
13 of pleading guilty as it relates to waiving
14 constitutional rights?

15 A He did. Mr. Johnson discussed with him the
16 difference between taking a plea versus going to
17 trial. He was well aware of it. He spoke several
18 times with him. His family was present at the
19 time. And in my opinion he understood.

20 Q Okay. And do you believe that he understood the
21 waiver of his ability to challenge the State's
22 evidence and present his own evidence in his
23 defense at trial?

24 A Yes.

25 MR. CORNEY: I believe that is all the

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 questions I have, Your Honor. Thank you.

2 THE COURT: You can step down.

3 (Witness steps down.)

4 MS. SHURLING: Your Honor, at this time I
5 would call the Applicant, Daydrian Rouse.

6 THE COURT: All right.

7 THE BAILIFF: Place your left hand on the
8 Bible and raise your right hand.

9 (Witness complies.)

10 THE COURT: Mr. Rouse, do you swear or affirm
11 you are going to truthfully testify?

12 THE WITNESS: I do.

13 THE COURT: Take the stand.

14 (Witness complies.)

15 DAYDRIAN J. ROUSE;
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. SHURLING:

19 Q State your full name for the record.

20 A Daydrian Jamaal Rouse.

21 Q Now, despite being a big fellow, you are real
22 soft-spoken. I need you to make a real effort to
23 speak up. The nice lady beside you has got to
24 write down every word you say, plus your lawyer is
25 a little hard of hearing. So speak up, okay? Say

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 it again.

2 A Daydrian Jamaal Rouse.

3 Q Pardon?

4 A Daydrian Jamaal Rouse.

5 Q Okay. After you were arrested in this matter, were
6 you put on bond?

7 A Yes.

8 Q So the majority of the time period between your
9 arrest and your eventual plea in August of 2010,
10 you were not detained, you were at home?

11 A Yes, that's correct.

12 Q Okay. And can you tell us how many meetings you
13 had with your defense attorney prior to your pleas?

14 A Approximately three.

15 Q And were your parents present during each of those
16 meetings or were they not with you for some of
17 them?

18 A No, the last one they wasn't present.

19 Q The last one they were not present?

20 A They were not present.

21 Q When did the last meeting take place?

22 A That was that Friday. I believe it was August --
23 it was the Friday before trial. The Friday before
24 that Monday.

25 Q Okay. And were you scheduled to meet with

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 Mr. Johnson that day?

2 A Yes, he was supposed to be present. He didn't show
3 up till later on.

4 Q Okay. And how long did -- well, if he wasn't
5 there, who did you meet with?

6 A During that meeting I spoke with Yvonne.

7 Q Okay. Ms. Murray-Boyles that just testified, is
8 that correct?

9 A Correct.

10 Q The lady that just was on the witness stand?

11 A Yes.

12 Q And how long did you have -- how long did the
13 meeting with her last before Mr. Johnson came?

14 A Approximately -- anywhere from an hour and a half
15 to two hours later he showed up.

16 Q And when Mr. Johnson arrived, how long did the
17 meeting continue after he arrived?

18 A Well, when he arrived she left and he just asked if
19 I had any questions about anything going on.

20 Q So how long did you talk to Mr. Johnson?

21 A Probably no more than five minutes, because he left
22 the office, he just left me with the box -- the
23 case file.

24 Q Okay. Well, for that hour and a half to two hours
25 that you were talking with Ms. Murray-Boyles, what

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 were you discussing?

2 A We were discussing the -- pretty much we were
3 trying to prepare a defense to go to trial, but it
4 was a bunch of discrepancies. It was just
5 incomplete. It wasn't -- at that time there wasn't
6 any progress being made.

7 Q Okay. Were you aware of any plea negotiations, any
8 plea offers that were made by the State prior to
9 your trial?

10 A No..

11 Q Did you hear earlier today Mr. Johnson say that the
12 offer had been made for you to plead straight up
13 but pursuant to the Alford case on all three
14 charges?

15 A Yes.

16 Q Were you aware of that offer?

17 A No, I wasn't.

18 Q To be fair, would you have taken it if you had
19 known about it?

20 A As opposed to the plea that I did plea to? It is a
21 possibility, yes.

22 THE COURT: There is no way he would do that.
23 He didn't understand the question.

24 MS. SHURLING: Okay.

25 Q Would you have pled to two counts of assault and

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 battery with intent to kill and the hit and run?

2 A No.

3 Q Okay. So to be fair to Mr. Johnson, even if you
4 don't remember that offer, you wouldn't have taken
5 that one, would you?

6 A No.

7 Q Okay. When you were getting ready for trial, did
8 your lawyer go over with you all of the evidence
9 that had been provided to him in the discovery
10 materials?

11 A All the evidence that he presented, at that time I
12 believed it was all the evidence, but --

13 Q Okay. As far as you know, did Mr. Johnson and his
14 staff give you an opportunity to review all the
15 discovery materials in this case?

16 A No.

17 Q Since your judgments and sentences have been
18 entered, have you written Mr. Johnson's firm and
19 requested a complete copy of the discovery?

20 A No.

21 Q So how do you know that you didn't get to review
22 everything?

23 A A lot of information came up with the civil suit, I
24 guess the lawyers during their investigations, a
25 lot more information was surfaced that was

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 presented to me.

2 Q Okay. And when you refer to the civil suit, you
3 are referring to a civil action that has been
4 brought on behalf of Mr. Boyd?

5 A Yes.

6 Q And you are saying that information has come out
7 during the civil suit that you didn't know about?

8 A Correct.

9 Q And it is your understanding that that was
10 information that came from the discovery materials
11 in this case?

12 A Yes.

13 Q Okay. Now, did you have a discussion with
14 Mr. Johnson prior to trial about what portions of
15 the evidence in this case could be used to argue
16 your theory, which was accident?

17 A We had a discussion, but it was limited to the fact
18 that even though he believed that it was an
19 accident, he was thinking that none of the evidence
20 would prove that. He was saying that it would be
21 hard for him to prove.

22 Q Okay. Did he discuss with you the fact that if you
23 went to trial he could point out to the jury that
24 the eyewitnesses who were claiming this was an
25 intentional act were all friends and associates of

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 Mr. Boyd?

2 A As far as I'm concerned he didn't discuss it
3 because he had stated when I asked him who he had
4 spoke to, he didn't -- he couldn't get in contact
5 with all the witnesses to actually interview them.

6 Q Okay. That's not my question. Did he discuss with
7 you the fact that if your case went to trial, there
8 could be ways that he could challenge the
9 reliability of those witnesses' testimony?

10 A Not that I recall.

11 Q Did he discuss with you the potential for
12 developing at least the inference of bias by
13 establishing that all these individuals were
14 friends and fraternity brothers of Mr. Boyd?

15 A No.

16 Q Did you get a chance to review Tory Torrence Shaw's
17 two statements that he made?

18 A Yes, I did.

19 Q And did your lawyer tell you that Tory Shaw was
20 going to be a witness for the State at trial?

21 A Yes.

22 Q Now, you and I have talked about the kind of things
23 that can be used to impeach the credibility of
24 someone's testimony, haven't we?

25 A Correct.

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 Q And did your defense lawyer ever discuss with you
2 the fact that he could use Mr. Shaw's two written
3 statements to impeach him if he tried to say
4 something at trial different from what he said in
5 those statements?

6 A No.

7 Q Did he discuss with you the fact that Tory Shaw
8 actually had a charge pending against him?

9 A I mean, that was known.

10 Q Okay.

11 A I knew that.

12 Q Did he discuss with you how he could use the
13 pendency of that charge, the fact that Tory had
14 that charge pending as a way to question Tory about
15 whether he was hoping to get some benefit in
16 exchange for his testimony?

17 A No.

18 Q He did not discuss that with you?

19 A No.

20 Q Did he discuss with you any plans to present any
21 sort of demonstrative evidence to illustrate for
22 the jury and for the Court your version of how the
23 events happened on the night Mr. Boyd was hurt?
24 Charts or graphs or pictures from the crime scene
25 or anything?

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 A Can you repeat the question? I didn't --

2 Q Did Mr. Johnson discuss with you trying to develop
3 any sort of demonstrative evidence, pictures or
4 graphs or anything, to try to illustrate to the
5 jury how easily this could have been an accident?

6 A He brought forth a couple of pictures and showed
7 them, but we never discussed how he would use it in
8 court, no.

9 Q Okay. Now, there was discussion about a bunch of
10 photographs of poor Mr. Boyd after he was hurt.

11 During your plea there is some indication that
12 the admissibility of those photographs had already
13 been debated and the judge had ruled some of them
14 were not going to be admissible before your plea,
15 is that true?

16 A That's correct.

17 Q So you knew that some of these pictures were not
18 going to come into evidence if you went on with the
19 trial, correct?

20 A Yes.

21 Q Did your lawyer discuss with you the possibility of
22 putting up witnesses to establish your background,
23 the fact that you were a good student and had
24 finished three years of college and had no prior
25 record, any of that?

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1 A He did after a while. It took a while for us to
2 persuade him to let certain people talk in my
3 behalf.

4 Q But he did have discussions with you about how he
5 could portray you as a person of good character if
6 you went to trial?

7 A Yes.

8 Q Okay. When you finally talked to your lawyer about
9 the State making a plea offer, it was after the
10 jury had already been picked for your trial, right?

11 A Correct.

12 Q Did your lawyer ever discuss with you the fact that
13 at least one of these charges carried a mandatory
14 minimum?

15 A No, not to my recollection, no.

16 Q And had there been discussions with you and your
17 family about the hope that you might possibly get
18 probation?

19 A It was a possibility, yes.

20 Q And did you know going into the plea that at least
21 on the hit and run charge there was a mandatory
22 minimum, albeit a short one, but there was a
23 mandatory minimum?

24 A No.

25 Q Would you have pled guilty if you had known that?

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1 A Would I have pled guilty to the hit and run alone?

2 Q No. Would you have pled guilty period? Would you
3 have waived your right to a jury trial if you had
4 known that you were for certain going to go to jail
5 for some period of time?

6 A No.

7 Q Okay. Now, what about restitution? You have heard
8 your lawyer's testimony here today that he didn't
9 have discussions with you about restitution.

10 Do you recall ever being told that you could
11 be ordered to pay a substantial sum in restitution
12 as part of your penalty if you pled guilty?

13 A No.

14 Q And did your lawyer discuss with you the fact that
15 you had a right to an evidentiary hearing in order
16 to put the State to their burden of proof as to the
17 appropriate amount of restitution in the case?

18 A No.

19 Q Then I assume you didn't voluntarily waive having
20 such a hearing, did you?

21 A No, I didn't.

22 Q Okay. Would you have pleaded guilty if you had
23 known that in addition to whatever sentence His
24 Honor imposed that you could be ordered to pay
25 sizeable restitution during any term of probation

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1 he might grant?

2 A No.

3 Q Did your lawyer ever discuss with you the
4 possibility of arguing that legally the State
5 should be required to elect between the assault and
6 battery charges and the hit and run charge?

7 A No, he didn't.

8 Q Now, to be fair, you and I have had discussions
9 about that particular legal theory, haven't we?

10 A Correct.

11 Q And I have advised you that that was a theory that
12 could have been put forth by counsel, but that it
13 would have been an open question of law for the
14 trial judge to decide, correct?

15 A Correct.

16 Q But if you had known that there was at least the
17 possibility of successfully making that argument,
18 would that have affected your decision to plead
19 guilty?

20 A Yes, of course.

21 Q Okay. And by the time this case was getting ready
22 to go to trial, had you pretty much come to grips
23 with the fact that your car hit two people?

24 A Yes.

25 Q And you and I have discussed the fact that on the

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1 night in question Mr. Pringle had on white clothes,
2 correct?

3 A Yes.

4 Q And that he and apparently Mr. Boyd dashed across
5 the street at the same time?

6 A Correct.

7 Q And do you recall seeing the white clothing?

8 A Yes.

9 Q You felt a bump?

10 A Correct.

11 Q Correct?

12 A Yes.

13 Q And after that you looked in the rearview mirror
14 and saw the guy with the white clothes on walking
15 around, right?

16 A Correct.

17 Q You and I have spent a lot of time going over the
18 evidence in this case, haven't we?

19 A Yes.

20 Q After reviewing all of the evidence and the
21 discovery materials carefully, have you come to the
22 conclusion that it is obvious that two people were
23 struck?

24 A Yes.

25 Q So would you have been willing, if the opportunity

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 had ever been presented to you, would you have been
2 willing to plead guilty to the hit and run charge?

3 A Yes, I would have pled.

4 Q But you have heard Mr. Johnson today indicate that
5 that option was never offered to you by the State,
6 correct?

7 A Correct.

8 Q If you had understood that your lawyer would have
9 had the ability at trial to argue that you were
10 clearly guilty of hit and run but not the assault
11 charges, would you have wanted to go forward with
12 your trial?

13 A Considering my record, yes.

14 Q Considering your record, yes?

15 A Yes.

16 Q And, again, you have no prior criminal record
17 whatsoever, do you?

18 A No.

19 Q How far had you gone in school before this
20 incident?

21 A It was my third year.

22 Q You were in your third year -- had finished your
23 third of college or you were getting ready to start
24 your third year?

25 A I was about to start my fourth year.

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 Q You were about to start your fourth year of
2 college?

3 A Yes.

4 Q And you were pretty active in your community?

5 A Yes.

6 Q An active member of jury church?

7 A Yes.

8 THE COURT: Where are you going with that?

9 MS. SHURLING: I'll wrap it up.

10 THE COURT: Civil cases I tell the jury, if
11 Mother Theresa ran into Hitler, Mother Theresa
12 would owe Hitler.

13 MS. SHURLING: I understand.

14 THE COURT: All right. Go ahead.

15 BY MS. SHURLING:

16 Q But did your lawyer discuss with you using those
17 factors and others in support of your credibility
18 if you had testified at trial?

19 A What is the question?

20 Q Did your lawyer discuss with you using those
21 factors as evidence in support of your credibility,
22 your good character if you had gone to trial?

23 A No, not if I had went to trial, no.

24 Q Okay. This is the hard part that I hate to get
25 into, but we have to for the record.

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1 I have discussed with you the potential
2 penalties for each of the crimes you pleaded guilty
3 to, haven't I?

4 A Correct, yes.

5 Q And you do understand that as part of the plea
6 negotiation in this case, one of the charges was
7 reduced, that being one count of assault and
8 battery with intent to kill which was reduced to
9 ABHAN, assault and battery of a high and aggravated
10 nature, correct?

11 A Yes.

12 Q And you understand that as originally indicted, the
13 two counts of ABWIK both carry up to 20 years
14 apiece?

15 A Yes.

16 Q And that the hit and run carries a potential
17 maximum sentence of ten years, correct?

18 A Yes.

19 Q So you were looking at a maximum possible exposure
20 of 50 years if you had gone to trial as indicted
21 and then convicted on all charges?

22 A Yes.

23 Q Not saying that you would have gotten 50 years,
24 but that the judge would have had the sentencing
25 discretion to give you up to that?

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1 A Yes.

2 Q Okay. Have I explained to you that if His Honor
3 were to decide to grant you a new trial, that there
4 is nothing to stop the State from going back and
5 retrying you on all the original charges?

6 A Yes, you have.

7 Q And so you understand that if you were granted a
8 new trial you could very well be going to trial on
9 two counts of ABWIK and the hit and run charge?

10 A Yes.

11 Q We have also discussed the case law in South
12 Carolina that says that assault and battery with
13 intent to kill, that the intent to kill is not an
14 element of assault and battery with intent to kill,
15 haven't we?

16 A Correct, yes.

17 Q Did you understand that at the time of your plea?

18 A At the time of the plea I was misled. At one point
19 it was told that, I believe the word was specific
20 intent, and then I was told about general intent.
21 I guess I was confusing two -- I was confused
22 between the two. I wasn't sure what was supposed
23 to be meant.

24 Q So you were unwilling to say that you intended to
25 kill Mr. Boyd?

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 A Correct.

2 Q And was that the reason for wanting to enter the
3 Alford plea?

4 A Yes, that is the reason why I accepted it, yes.

5 Q Okay. So I have also explained to you that you
6 have a right to jury trial, correct?

7 A Correct.

8 Q And you can plead guilty to anything you are
9 charged with if you want to, right?

10 A Yes.

11 Q But I have also explained to you that there is no
12 constitutional right to a plea bargain, right?

13 A Correct.

14 Q And I have actually come right out and told you
15 that there is a possibility if this case were
16 reversed and remanded for a new trial that the
17 Fifth Circuit Solicitor's Office might refuse to
18 even engage in any kind of plea negotiations with
19 you?

20 A Correct.

21 Q You understand that?

22 A Yes.

23 Q And notwithstanding all those risks, you've decided
24 that you want to go forward here today with your
25 request for a new trial?

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1 A Yes, I do.

2 Q And, once again, I just have to be real clear that
3 I have made it clear to you that there is no way to
4 predict what the State would be willing or not
5 willing to do if you want a new trial?

6 A Yes.

7 Q Okay. Barring some very unusual circumstances not
8 likely to be present in your case, this is your one
9 and only PCR. You understand that, don't you?

10 A Yes.

11 Q You have been present in the courtroom today as I
12 have been asking questions and raising by those
13 questions certain specific allegations of
14 ineffective assistance of counsel.

15 Have I raised all of the allegations that you
16 wanted me to raise here today?

17 A Yes.

18 Q Was there any other -- well, let me backtrack. You
19 and I have discussed Strickland vs. Washington and
20 the standard for establishing ineffective
21 assistance of counsel, haven't we?

22 A Yes.

23 Q And I explained to you that we have to demonstrate
24 errors and omissions that would have likely made a
25 difference in your decision to plead guilty if they

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1 had not taken place, right?

2 A Yes.

3 Q And I have also explained under Hill versus
4 Lockhart that the real question before His Honor is
5 whether any of this would have made a difference in
6 whether or not you pleaded guilty or went to trial?

7 A Yes.

8 Q I called it the so-what factor, didn't I?

9 A Yes.

10 Q So you understand all that?

11 A Yes.

12 Q Can you think of any other thing that you believe
13 Mr. Johnson did that he did incorrectly or that he
14 didn't do that he should have done that would have
15 made a difference in your decision about pleading
16 guilty or going to trial by jury that I have not
17 covered here today?

18 A The only conversation I remember was that day when
19 we did take a recess, if he would have advised me I
20 could have withdrew my plea at that time, I would
21 have.

22 Q Okay. Well, we did have some testimony on that,
23 but let's just get it real clear for the record.

24 At your guilty plea proceeding, the Solicitor
25 got up there and talked for a long time about what

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1 they thought the facts in the case were, right?

2 A Yes.

3 Q And at some point the judge asked you if that was
4 right or did you do all that, or something to that
5 effect, correct?

6 A Yes.

7 Q On Page 13 of the plea transcript?

8 A Yes.

9 Q After that the judge talked with Mr. Johnson about
10 what had taken place, but you weren't questioned
11 about what your problem was, were you?

12 A No, I wasn't.

13 Q What specifically prompted you to say, no, sir --
14 when the judge said, is that what happened,
15 Mr. Rouse? And you on Page 13, Line 7 say, no,
16 sir, Your Honor. What was it that Solicitor
17 Goldberg had said that you took issue with?

18 A Was the fact that he made it seem like it was
19 intentional when it wasn't.

20 Q Okay.

21 A When he introduced evidence saying that I revved my
22 engine and those facts that --

23 Q All right. Your statement to law enforcement in
24 this case and that of Mr. Shaw indicated that you
25 had tried to slow down when you saw the SUV in the

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1 left lane stopping when people were crossing the
2 street, right?

3 A Correct, yes.

4 Q And that after the large group of people crossed,
5 you were going on through when the accident
6 happened and the other two people were struck,
7 correct?

8 A Correct.

9 Q Okay. If afforded the opportunity at that juncture
10 in the plea, would you have wanted to make it clear
11 to His Honor that you disputed the claim that you
12 had intentionally accelerated and hit these people?

13 A Yes.

14 Q Okay. At some point -- and I actually touched on
15 this is a moment ago, but this is an important
16 point I want to make clear. Did you say you did or
17 didn't have any discussion with Mr. Johnson in
18 which he outlined the evidence he thought you could
19 present in support of your theory that this was an
20 accident?

21 A For the most part he did not.

22 Q Okay.

23 A It was -- at one point he is saying one thing and
24 the next point it is another, so -- at one point
25 I'm hearing, yes, this is good; but then later on,

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1 it is being changed, it is not favorable for you.

2 Q Well, did he ever tell you that you had any
3 evidence that was potentially good for you?

4 A I was told that there was nothing favorable to my
5 defense.

6 Q Pardon?

7 A I was told that there was nothing favorable to my
8 defense.

9 Q He told you, specifically told you there was no
10 evidence in your defense?

11 A Yes.

12 Q How did he tell you that, in person or in writing?

13 A I mean, he wrote it in correspondence between
14 e-mail. And also the moment before I gave up and
15 just decided just to plea, that is what the
16 conversation -- that was the gist of the
17 conversation, is that he would have a hard time
18 proving my innocence because there was no evidence
19 to support.

20 Q Okay. With that clarification, are any other
21 issues that you would have wanted me to have raised
22 here today that I have neglected to bring to His
23 Honor's attention?

24 A I believe that's it.

25 Q That's it?

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1 A Yes.

2 Q Please listen very carefully to the questions put
3 to you by the State and answer them truthfully.

4 MS. SHURLING: Oh, may I?

5 I apologize, Your Honor. I had intended to
6 have my client identify his statement from the
7 discovery materials.

8 THE COURT: All right.

9 BY MS. SHURLING:

10 Q Can you identify this for me, Mr. Rouse?

11 A That's my statement.

12 Q And that is your statement?

13 A It wasn't typed, but I believe it is the same as
14 that they typed it.

15 Q Is that your signature?

16 A That's my signature, yes.

17 Q On the front and back?

18 A Yes.

19 Q And, subsequently, did you get to see a copy of
20 this typed version in the discovery materials?

21 A Yes.

22 Q Okay.

23 MS. SHURLING: Your Honor, I would introduce
24 this as Applicant's 3.

25

DAYDRIAN J. ROUSE -- CROSS BY MR. CORNEY.

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1 (WHEREUPON, Plaintiff's Exhibit No. 3
2 was marked for identification and
3 received into evidence.)
4 MS. SHURLING: Now nothing further. Thank
5 you, Mr. Corney.

6 CROSS-EXAMINATION

7 BY MR. CORNEY:

8 Q Mr. Rouse, at the plea hearing, you told the judge
9 you understood that you had a right to trial where
10 you could present the witnesses and where you could
11 challenge the evidence the State was going to put
12 up against you, and you said you wanted to waive
13 that right, correct?

14 A As I was instructed, yes.

15 Q And at that point in time you said you were
16 satisfied with Mr. Johnson's representation of you
17 as your attorney, is that correct as well?

18 A Yes.

19 Q You said he had done everything you had asked him
20 to do?

21 A As I was instructed, yes.

22 Q And you said -- you also noted that Mr. Johnson had
23 reviewed the discovery file with you, correct?

24 A Can you repeat the question?

25 Q You also noted that Mr. Johnson had reviewed the

DAYDRIAN J. ROUSE -- CROSS BY MR. CORNEY

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1 discovery file with you?

2 A At that time, yes.

3 Q And you said he had shared the evidence and
4 witnesses that the State was going to present
5 against you at trial, and y'all had reviewed all
6 that?

7 A To the best of his ability, yes.

8 Q You also told the Court you were pleading guilty of
9 your own free will and accord at that point in
10 time? Yes?

11 A As I was instructed to, yes.

12 Q So during your meeting with Mr. Johnson, he never
13 went over the evidence with you regarding what
14 could be favorable to your case versus what was
15 negative to your case, is that your testimony?

16 A The evidence that he said at one point that would
17 be favorable, he later on said that there wasn't no
18 con -- a positive conclusion from his investigation
19 that would in fact be favorable to me.

20 Q The fact that the victim was wearing dark clothes,
21 is that one of the things he told you that he came
22 back and said that wouldn't be favorable any more?

23 A I believe he did -- he covered that saying that the
24 victim had dark clothing on.

25 Q What about the fact that Damonte Coleman was not

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1 around the incident when it occurred? Is that a
2 fact that he had discussed with you as possibly
3 being positive to your case in the beginning but
4 then later on told you it wouldn't be beneficial?
5 Is that -- I mean, are these facts he discussed
6 with you?

7 A What was it you said about Damonte Coleman?

8 Q About not being near the incident when it happened,
9 that he had been walking around later on, you had
10 seen him walking around later on, or that witnesses
11 had seen Coleman walking around later on after the
12 accident happened. Is that something that he had
13 reviewed with you?

14 A Yes, that is something that he mentioned, yes.

15 Q And that that could be positive and beneficial to
16 your case?

17 A As far as the, I guess the collaboration between
18 the two events, yes. But as far as him -- as far
19 as me proving that it was an accident and wasn't
20 intentional, no.

21 Q Some of those inconsistencies in Mr. -- in Bryan
22 Handberry's statement, were those things he was
23 able to review with you as well?

24 A I don't recall.

25 Q You don't recall that?

DAYDRIAN J. ROUSE -- REDIRECT BY MS. SHURLING

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1 A So many statements.

2 Q But you knew that day when you entered your plea
3 that you would be waiving your right to go to trial
4 and challenge the evidence, correct?

5 A To an extent, yes.

6 Q And you signed the waiver of rights form at or
7 before your plea that detailed all of that, is that
8 correct?

9 A Yes, as I was instructed, yes.

10 Q Okay. And in that it said you would have the
11 opportunity to question the State's witnesses
12 called against you and you would have the
13 opportunity to call witnesses on your own behalf as
14 well, right?

15 A I didn't have enough time -- we didn't have enough
16 time to go over it, so we just -- it was something
17 that was rushed.

18 Q Okay.

19 MR. CORNEY: Your Honor, I believe that is all
20 the questions I have. Thank you.

21 REDIRECT EXAMINATION

22 BY MS. SHURLING:

23 Q Daydrian, at the time of the guilty plea when you
24 were asked if your lawyer had discussed all the
25 discovery materials with you, did you believe that

DAYDRIAN J. ROUSE -- REDIRECT BY MS. SHURLING

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1 he had at that time?

2 A At that time, yes I did.

3 Q And it had only been since the civil proceedings
4 going on that you have learned of other evidence
5 that you didn't know about?

6 A Correct, yes.

7 Q Okay. And, again, during the civil proceeding when
8 the evidence that you didn't know about at the time
9 of your plea was discussed, was it clearly
10 indicated that that evidence came from the
11 discovery materials?

12 A Yes.

13 Q Okay. And those were documents and pieces of
14 evidence that you had not previously seen?

15 A Correct.

16 Q Okay. And when you were discussing the specific
17 witness statements in this case, did you and
18 Mr. Johnson go over each statement and discuss the
19 inconsistencies between some of those statements or
20 portions of some of the statements that were
21 inconsistent with other known evidence?

22 A We discussed -- not -- we didn't go over each
23 statement individually. We went over outline -- I
24 guess certain key sentences or phrases from each
25 statement that was put on a diagram.

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1 Q Were you given a chance to read the entire
2 statements, though?

3 A It was handed -- yes, it was in a file, yes.

4 Q Okay. For example, one of the witness
5 statements -- and at the moment I don't remember
6 which one -- referred to there being four young men
7 in your car?

8 A Yes.

9 Q Do you recall that?

10 A I recall the investigators mentioned it, yes.

11 Q Okay. And did you discuss how discrepancies like
12 that could be used to undermine the State's theory
13 of the case if you went to trial?

14 A Yes.

15 Q Okay. Last call, as they say. Can you think of
16 anything else you want to say, Daydrian?

17 A I mean, I just -- at that time I was given -- I was
18 given -- I already picked my jury. I had planned
19 to go to trial. I was given 30 minutes to decide,
20 to make a decision on if I wanted to go to trial
21 with an attorney who was telling me that evidence
22 is not favorable to me, that he is going to have a
23 hard time proving my case, that at that time he
24 hadn't been able to get in contact with each and
25 every witness to the extent where I just felt like

1 I was overwhelmed. I didn't have much of a choice.
2 to take the route where he was telling me, okay,
3 you take the plea. You can go before the judge and
4 ask for an offer of leniency and that he would be
5 able to consider the fact that you are being
6 lenient before the Court and that I would have a
7 better outcome, so I took the latter of the two
8 options.

9 Q You and I have gone over very carefully the
10 discovery materials in this case, haven't we?

11 A Yes.

12 Q And we have discussed at length the law that would
13 have been applicable to your case had you proceeded
14 with your jury trial?

15 A Yes.

16 Q We have discussed the evidence as it broke down in
17 terms of what was potentially very harmful to you
18 versus what was potentially useful to you and could
19 have supported your position that this was an
20 accident?

21 A Correct.

22 Q Correct?

23 A Yes.

24 Q Including the fact that you could have gone to
25 trial while admitting that you were guilty of hit

DAYDRIAN J. ROUSE -- REDIRECT BY MS. SHURLING

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1 and run?

2 A Yes.

3 Q In other words, we discussed the fact that you
4 could fall on your sword, so to speak, and say,
5 look, I'm guilty of hit and run, I'm ashamed of it,
6 I did the wrong thing, I made a bad judgment call,
7 I'm guilty of hit and run, but I'm not guilty of
8 these other things, and that is why I'm going to
9 trial. We talked about that, right?

10 A Correct, yes.

11 Q If you had known that you could do that, that you
12 could have acquiesced in your guilt in the one
13 charge while challenging your guilt on the others,
14 would you have wanted to go forward with your jury
15 trial?

16 A If I had known that was available, of course, yes,
17 I would have wanted to go to trial.

18 Q Okay. Thank you. No further questions.

19 THE COURT: Do you have any other witnesses?

20 MR. CORNEY: Your Honor, I -- I apologize.

21 THE COURT: I'm asking the question because
22 I'm going to take a break whether you have other
23 questions or not.

24 MR. CORNEY: I apologize, Your Honor.

25 MS. SHURLING: No, sir, Your Honor. Well,

DAYDRIAN J. ROUSE -- RECROSS BY MR. CORNEY

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1 actually I need two minutes to talk to his parents.

2 THE COURT: All right. Well, you take two and
3 you can question them. You just stay there.
4 Because I need to make sure he understands a couple
5 of things, believe it or not, you didn't cover.

6 MR. CORNEY: Thank you, Judge. I apologize.

7 THE COURT: Like restitution, he can have a
8 hearing and they can put up a million dollars, not
9 \$20,000.

10 MS. SHURLING: That's true.

11 THE COURT: Did you mention that to him?

12 (WHEREUPON, a break was taken.)

13 THE BAILIFF: Court come to order, and
14 remain seated.

15 MS. SHURLING: Your Honor, I will have two
16 witnesses, and they will both be extremely brief.

17 THE COURT: Okay, cross-exam -- re-cross.

18 MR. CORNEY: Thank you, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. CORNEY:

21 Q How do you know that these civil documents they
22 were talking about were part of that criminal
23 discovery file?

24 A It was included inside the MAIT report that I was
25 never made aware of.

DAYDRIAN J. ROUSE -- RECROSS BY MR. CORNEY

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1 Q But you know that that MAIT report was part of the
2 discovery file?

3 A It was sent with the discovery information,
4 correct, yes.

5 Q Is that something that you have with you today here
6 in the courtroom?

7 A I don't have it with me, no.

8 Q After Mr. Johnson came and let you know that the
9 State was willing to let you plead under Alford, at
10 any point in time was he -- did he give you the
11 opportunity to discuss it with your family?

12 A Like I said, it was 30 minutes, less than that, it
13 was a rushed decision. There wasn't really any
14 time to discuss anything.

15 Q In that 30 -- I mean, 30 minutes, he left you alone
16 in the jury room with your family for just you and
17 your family to discuss, he left to allow you time
18 to do that, didn't he?

19 A No, not in the jury room, no.

20 Q Did he leave you with your family alone to have
21 time to discuss that plea offer and whether you
22 should discuss it?

23 A No, not -- I didn't really have a chance to
24 elaborate the different possibilities, the
25 different routes that was made available, no.

DAYDRIAN J. ROUSE -- RECROSS BY MR. CORNEY

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1 Q I'm not necessarily asking you that, I'm saying
2 were you given time, you and your family, outside
3 the presence of Mr. Johnson, to discuss whether or
4 not you needed to plead guilty or go to trial?

5 A By the time he got through finished explaining
6 everything, there was a little bit of time left,
7 yes.

8 Q That is a yes, you were given time with your
9 family?

10 A Minimal, yes.

11 MR. CORNEY: That's all the questions I have,
12 Your Honor.

13 MS. SHURLING: Nothing further.

14 Mr. Coleman? I believe he is in the restroom.

15 Mr. Ernest Rouse, Your Honor.

16 THE COURT: No, I need to make sure --

17 MS. SHURLING: Oh, I'm sorry.

18 THE COURT: -- he understands a couple of
19 things.

20 Now, I'm not ruling on anything because that
21 is a lot of stuff I have to read, but I have read
22 the transcript of the plea in front of Judge
23 Cooper, and then I have read the transcript where
24 Mr. Coleman appeared. Okay? And you don't know
25 me, but I represent to you I'm a speed reader with

DAYDRIAN J. ROUSE -- RECROSS BY MR. CORNEY

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1 fair retention, so I know everything that was in
2 there.

3 You understand -- and I'm not ruling -- that
4 if I grant your relief, what happens is you get a
5 new trial on all three charges. Nothing gets
6 thrown out. It is possible in a trial -- not that
7 the State -- motions can be made to elect, but it
8 is clearly possible to submit to the jury choices,
9 like you can find him guilty of accident with great
10 bodily injury, leaving the scene, and if you do
11 that you can't find him guilty of an intentional
12 tort, an intentional crime, even though specific
13 intent is not required. Maybe the trial judge will
14 let everything go just like it did before. No
15 guarantee that would happen. I don't know who
16 trial judge would be.

17 In any event, you would clearly, I think,
18 since Solicitors generally don't cut any favors for
19 Defendants, would be charged with assault and
20 battery with intent to kill on both charges, okay?

21 Now, chances are that if they did that and
22 that went to the jury, the judge would give the
23 jury a choice of finding you guilty or not guilty
24 of assault and battery with intent to kill or
25 assault and battery of a high and aggravated

DAYDRIAN J. ROUSE -- RE CROSS BY MR. CORNEY

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1 nature, the judge probably wouldn't make that
2 decision, all right, based on the facts as I read
3 them because of the alleged prior incident where,
4 in the light most favorable to the State, you were
5 going to do him in, and you did him in, you hit him
6 right in the center of the car. Boy, I'm glad he
7 is right there. Of course the other side of that
8 is, it is dark and he was just crossing the street.
9 But, I mean, that is going to be a jury question.
10 Do you understand that?

11 THE WITNESS: Yes.

12 THE COURT: And on the right to a restitution
13 hearing, if you cause injury to somebody, they can
14 ask for the total amount, not just \$20,000. I
15 don't know how much it was. I saw in one of these
16 a lot more than that.

17 And of course you get a trial. It is the same
18 situation. The fraternity boys testify what they
19 testified to at the hearing, which is not favorable
20 to you at all, okay? And you testify, in the light
21 most favorable to you, all I did was hit him and
22 leave the scene. And I'm not even getting into
23 riding back by.

24 I don't want to give anybody any argument, but
25 they can say, riding back by you didn't stop. That

1 goes to one. Another they can say, he didn't stop
2 and said, boy, I got him good.

3 Of course you have a right to testify or not
4 during a trial.

5 Credibility, they can attack your credibility
6 just like whoever represents you in a new trial, if
7 you get one, can attack anybody else. But
8 basically the jury just looks at people and they
9 believe what they say or they don't. Everybody has
10 some connection in this case with somebody else,
11 you know. So, that is all.

12 Anything else I need to tell him? If I
13 misspoke, now, you can tell me.

14 MS. SHURLING: No.

15 EXAMINATION

16 BY MS. SHURLING:

17 Q Mr. Rouse, I want to make real sure you are clear
18 on this. We talked about how if you were
19 reconvicted you could get up to the statutory
20 maximum, but His Honor is correct, I didn't
21 question you about the fact that if everything was
22 thrown out and you started over and were found
23 guilty, if there was a restitution hearing, there
24 is no telling what amount of restitution the trial
25 judge might would order. It could be far in excess

DAYDRIAN J. ROUSE -- RE CROSS BY MR. CORNEY

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1 of the \$20,000. Do you understand that?

2 A Yes.

3 Q Okay. And even knowing that, you would still want
4 to get a new trial?

5 A Yes.

6 Q Thank you.

7 THE COURT: Okay. You can step down.

8 (Witness steps down.)

9 MS. SHURLING: Your Honor, Mr. Michael
10 Coleman.

11 THE COURT: All right, now, what is he going
12 to add to the lengthy hearing that he had in front
13 of Judge Cooper?

14 MS. SHURLING: I'm going to ask him one -- two
15 questions, that's it.

16 THE COURT: All right. He can come up. I
17 mean, he had his shot in front of Judge Cooper who
18 rejected everything that he said.

19 THE BAILIFF: Place your left hand on the
20 Bible and raise your right hand.

21 (Witness complies.)

22 THE COURT: Do you swear or affirm you are
23 going to truthfully testify?

24 THE WITNESS: I do.

25 THE COURT: Even though you were soundly

MICHAEL COLEMAN -- DIRECT BY MS. SHURLING

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1 asleep over there through most of it.

2 THE WITNESS: It's been a rough day.

3 MICHAEL COLEMAN,
4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SHURLING:

7 Q Good afternoon.

8 A Good afternoon.

9 Q When you were hired, the plea had already been
10 entered, the client had already been sentenced, you
11 were simply addressing the family's desire to have
12 the sentence reconsidered?

13 A Correct.

14 Q And did you file the motion to reconsider sentence?

15 A Yes.

16 Q Did you discuss with your client or with his family
17 the fact that within that 10-day window of
18 opportunity he could also file a motion to withdraw
19 his plea?

20 A No, I did not.

21 Q Did --- I guess this answers it, but you discussed
22 with him the fact that within ten days he could ask
23 to have the sentence reconsidered?

24 A Yes. I mean, that is exactly what we were -- I
25 mean, we had -- the majority of my discussion was

MICHAEL COLEMAN -- DIRECT BY MS. SHURLING

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1 with the family because he was incarcerated at the
2 time. We met one time and went over, you know, the
3 fact that what I was hired to do was ask the Court
4 to reconsider and maybe consider some of these
5 others facts in reducing the sentence. That -- I
6 mean, that is what I was hired to do, is asked to
7 reconsider the sentence.

8 Q Okay. But did you ever discuss with your client
9 the fact that within that jurisdictional window you
10 would have the opportunity to file other post-trial
11 motions, including a motion to withdraw pleas?

12 A We talked about this motion to reconsider, we
13 talked about their appellate rights, notice of
14 intent to file an appeal of the sentence. I mean,
15 that was it. I mean, we really at that time was
16 discussing the motion to reconsider. We -- I did
17 not advise him of a motion to withdraw his plea.

18 Q Okay. Or I guess it goes without saying, if you
19 didn't do that, then you didn't discuss with him
20 the possibility of couching a motion in the
21 alternative, a motion to reduce the sentence or in
22 the alternative to withdraw the plea?

23 A Correct. My motion was just to reconsider the
24 sentence.

25 Q Thank you.

MICHAEL COLEMAN -- CROSS BY MR. CORNEY

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1 MS. SHURLING: No further questions.

2 A And --

3 MR. CORNEY: Very briefly, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. CORNEY:

6 Q Sort of the argument you presented at the motion
7 for reconsideration was based on the theory that
8 Mr. Rouse had unintentionally hit the victim in
9 this case as he ran across the road essentially,
10 and his only mistake was not stopping after it
11 happened, is that your recollection of it?

12 A Can you repeat that?

13 Q Yes. And I'm sorry for making that kind of a
14 long-winded question. Would it be fair to say that
15 the argument you presented for Mr. Rouse was
16 essentially that it was an accident and his only
17 mistake was not stopping after he hit the victim?

18 A That would be --

19 Q Is that fair to say that is the argument you
20 presented on his behalf at the motion for
21 reconsideration?

22 A Well, I think there was a little bit more than that
23 presented, but I would agree that that was
24 presented. I mean --

25 Q Sure. That was part of the argument you presented?

MICHAEL COLEMAN -- CROSS BY MR. CORNEY

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1 A Correct.

2 Q And the State I think in kind of rebuttal to that
3 their argument was that they had witnesses who
4 would have testified it was an intentional act at
5 trial had it proceeded?

6 A Correct. And just so we're clear on that, what I
7 presented and what I didn't present, you know, in
8 my discussions with my client and the family at
9 that time, you know, I also explained the
10 consequences of the recon -- the withdrawing of a
11 plea as far as whether or not this goes back to
12 square one, whether or not this goes back to -- you
13 know, if this was PCRd, appealed, plea withdrawn,
14 anything puts him back into that category of a
15 trial on everything. You know, the two assault and
16 battery with intent to kill. It puts him back, you
17 know, back at home plate to bat again. It doesn't
18 just go away. And I think they were well aware of
19 that. And that was one of the reasons when I went
20 in, and what I did was just to reconsider the
21 sentence.

22 Some judges, no offense, Judge, but, I mean,
23 you know, some judges, if they -- if you give
24 them -- it has been a couple of months, maybe they
25 will reconsider, maybe they will -- you know, maybe

MICHAEL COLEMAN -- CROSS BY MR. CORNEY

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1 I was a little upset that day or something, maybe
2 the sentence was too harsh.

3 And in this case, we felt that the ten years
4 was a pretty harsh sentence and that we would
5 hopefully get a much lesser sentence, or at least
6 get, you know, the sentence cut in half or
7 something.

8 So to some people that is worth a shot to file
9 that motion just to reconsider the sentence. So
10 that is basically what we discussed and what I was
11 retained to do.

12 Q Okay. In the end, Judge Cooper denied that motion
13 essentially saying that if it was an accident, that
14 was something that could have been presented at
15 trial?

16 A Correct.

17 Q And that Mr. Rouse had waived his right to present
18 that defense by pleading guilty?

19 A I believe -- I mean, I looked -- took a look at the
20 transcript, and I believe he said that he took a
21 very long time in making his decision in this case
22 because it was a very difficult case to -- you
23 know, any time you have someone that doesn't have
24 any prior history and something that carries such a
25 bad sentence, I mean, he said he took his time, he

MICHAEL COLEMAN -- REDIRECT BY MS. SHURLING

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1 didn't want to render a sentence that day. He took
2 his time and had thought about it and considered
3 it. And I was not going to change his mind in his
4 sentence. He recalled everything very much to the
5 "t" as far as what had been presented at the plea,
6 witnesses, et cetera.

7 MR. CORNEY: That's all the questions I have.
8 Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. SHURLING:

11 Q Just to be clear, though. Prior to going ahead
12 with filing the motion to reconsider, you did not
13 discuss with Mr. Rouse whether he would want to
14 preserve the option of asking to withdraw his plea
15 if Judge Cooper declined to reduce his sentence?

16 THE COURT: That may have been successful one
17 time in the last century, Ms. Shurling.

18 A I guess I didn't because, you know, to be honest,
19 in the criminal defense practice which I
20 participate down in Charleston, it is very rare
21 that we are going to have a judge allow to withdraw
22 a plea even if we are standing right in front of
23 them and our client, once he accepts that plea,
24 says, whoa, whoa, Judge, we are going to step down,
25 we want to withdraw that plea. It is too far. I

MICHAEL COLEMAN -- REDIRECT BY MS. SHURLING

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1 mean, you have entered the plea. You have answered
2 the questions.

3 So I would have to be fair and say we probably
4 did not discuss that particular motion being filed.
5 And I did not raise it, it is not in the transcript
6 at the hearing. I would have definitely felt at
7 that hearing, if I was losing my -- if I was losing
8 my appeal -- or motion to reconsider and that was
9 the only thing we had to fall back on, if that is
10 what we had discussed as a plan, I would have
11 brought that up to the Judge Cooper at that time,
12 but we did not do it because -- it was just not
13 something that I felt was going to happen in this
14 case. And also it just -- I can't recall exactly
15 if we discussed it or not. I know that it was not
16 in my plan that day to do that particular motion.
17 It was a motion to reconsider sentence. So I
18 couldn't tell you for sure if we discussed it or
19 not.

20 Q Did you discuss with Mr. Rouse what if anything had
21 happened during the sentencing that came as a
22 surprise to him, other than the length of the
23 sentence?

24 In other words, did you discuss with him any
25 potential grounds for asking for a revocation of

MICHAEL COLEMAN -- REDIRECT BY MS. SHURLING

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1 the guilty plea, such as the fact that he didn't
2 know restitution could be ordered?

3 A I don't recall. I know that we talked about -- I
4 don't recall whether or not we discussed that. I
5 know that in -- that the sentence had been handed
6 down and we knew about the \$20,000 in restitution
7 when I was hired in the case. And we weren't
8 really concerned about the money at the time. And
9 I don't think we did discuss it.

10 Q Thank you.

11 MS. SHURLING: No further questions.

12 THE COURT: You can step down.

13 THE WITNESS: Can I be excused?

14 THE COURT: Head back to Charleston. Drive
15 carefully.

16 THE WITNESS: Thank you.

17 (Witness steps down and is excused.)

18 MS. SHURLING: Your Honor, Mr. Ernest Rouse.

19 THE BAILIFF: Place your left hand on the
20 Bible and raise your right hand.

21 (Witness complies.)

22 THE COURT: All right, Mr. Rouse, are you
23 going to tell us the truth?

24 THE WITNESS: Yes, sir.

25 THE COURT: Take the stand.

ERNEST ROUSE, JR. -- DIRECT BY MS. SHURLING

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1 (Witness complies.)

2 ERNEST ROUSE, JR.,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SHURLING:

6 Q State your full name for the record.

7 A Ernest Rouse, Jr.

8 Q And, Mr. Rouse, you are Daydrian's father, right?

9 A Yes, ma'am.

10 Q And have you been here all day today for the
11 testimony relating to your son's case?

12 A Yes, ma'am.

13 Q There was testimony earlier today concerning a
14 discussion between you and your son's defense
15 attorney on the subject of restitution. Do you
16 recall that testimony?

17 A Very briefly. It was -- didn't last very long.

18 Q I'm saying do you recall the testimony today
19 concerning a conversation that allegedly took place
20 between you and defense counsel on the subject of
21 restitution?

22 A Yes, ma'am.

23 Q Was there an actual break in the sentencing
24 proceeding during which you had an opportunity to
25 have a conversation with Mr. Johnson concerning the

ERNEST ROUSE, JR. -- DIRECT BY MS. SHURLING

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1 possibility of restitution?

2 A Let me make sure I understood your question. Was
3 there a break?

4 Q During the sentencing proceeding, did you have an
5 opportunity to discuss the subject of possible
6 restitution with Mr. Johnson?

7 A No. No, ma'am.

8 Q Was there a recess or a break in the proceeding
9 where you got to have a one-on-one conversation
10 with Mr. Johnson about restitution?

11 A No, ma'am.

12 Q Did he ever say anything to you about possible
13 restitution during your son's sentencing? And, if
14 so, how did that come about?

15 A Well, that came about I guess when Judge Cooper had
16 a little recess, and he reached over and he briefly
17 talked about something about restitution at that
18 particular time.

19 Q When you say he reached over, you weren't seated at
20 the table with your son, were you?

21 A No, ma'am. He came over to where we were sitting
22 at.

23 Q And at that time can you recall the gist of that
24 brief conversation?

25 A I know he did mention something about \$20,000 at

ERNEST ROUSE, JR. -- DIRECT BY MS. SHURLING

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1 that particular time.

2 Q He did mention a figure of \$20,000?

3 A I think he did.

4 Q Okay. And did you indicate a willingness to pay
5 that much restitution?

6 A Well, it wasn't clear. I mean -- I mean, you got
7 to realize the stage that we were in. And
8 everything that was -- the burden that was on
9 everybody at that particular time. So, I mean, my
10 thinking -- I mean -- I mean, when he reached over
11 and when he came over and talked to myself and my
12 wife, everything wasn't clear. It wasn't clear. I
13 mean, because it was a bum rush when he came over
14 to us.

15 Q Have you in fact paid that restitution on behalf of
16 your son?

17 A No, ma'am.

18 Q Okay. Thank you.

19 MS. SHURLING: No further questions.

20 MR. CORNEY: No questions.

21 THE COURT: All right. You can step down.

22 (Witness steps down.)

23 MS. SHURLING: Your Honor, I would briefly
24 recall George Johnson.

25 THE COURT: All right. You are already sworn,

GEORGE JOHNSON -- DIRECT BY MS. SHURLING

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1 Mr. Johnson.

2 THE WITNESS: Yes, Your Honor.

3 GEORGE JOHNSON,

4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SHURLING:

7 Q Thank you, Mr. Johnson. Earlier today, just before
8 the proceeding began, did you have an opportunity
9 to share some portions of the discovery file with
10 me?

11 A Yes.

12 Q And was included in those discovery materials a
13 copy of the MAIT report issued by --

14 A Yes.

15 Q -- the highway patrol in connection with this
16 accident?

17 A Yes.

18 Q Thank you.

19 MS. SHURLING: No further questions from this
20 witness, Your Honor.

21 MR. CORNEY: I don't think I have any
22 questions for this witness.

23 THE COURT: Step down.

24 (Witness steps down.)

25 MS. SHURLING: And lastly, Your Honor, I need

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 to recall my client for two questions.

2 THE COURT: Just ask him right there.

3 MS. SHURLING: Okay.

4 DAYDRIAN J. ROUSE,

5 after being duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SHURLING:

8 Q Mr. Rouse -- and I remind you you are still under
9 oath -- you have heard Mr. Coleman testifying today
10 about his recollections concerning whether or not
11 he ever discussed with you the possibility of
12 asking to withdraw your plea.

13 Did Mr. Johnson or Mr. Coleman ever tell you
14 that within the 10-day period following your
15 sentencing you could make a request to withdraw
16 your plea and argue reasons why you should be
17 justified in allowing -- being allowed to withdraw
18 your plea?

19 A I believe I did receive a letter -- I did receive a
20 letter maybe the day before, the ninth or the tenth
21 day while I was at Kirkland R&E. And the mail
22 system, I guess being that there is a lapse for all
23 the inmates there, I received it late. So for me
24 to be able to get out and contact somebody after
25 receiving that notice is pretty much impossible

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 during that process at Kirkland when I was made
2 aware of it.

3 Q You received a letter from whom?

4 A I believe it was from the office, the letterhead,
5 the law firm, Johnson Law Firm.

6 Q The Johnson Law Firm?

7 A Correct.

8 Q And that letter informed you of your right to do
9 what?

10 A I believe it was the right -- it was saying that I
11 had a possibility maybe of appealing.

12 Q Appealing?

13 A Appealing.

14 Q Okay. But did anyone ever tell you -- well, let me
15 rephrase. Your family hired Mr. Coleman to file a
16 motion to reconsider sentence for you, is that
17 correct?

18 A Yes.

19 Q With your knowledge?

20 A Yes.

21 Q Did Mr. Coleman ever tell you that when he filed
22 the motion, as long as he did it within the ten
23 days, that he could also ask in the alternative for
24 you to be allowed to withdraw your plea, but that
25 he would have to state grounds for why you should

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 be allowed to withdraw your plea? Did he ever
2 discuss that with you?

3 A No, I wasn't made aware.

4 Q And if you had been made aware that that was one of
5 the post-trial, post-plea motions you would have
6 had a right to make, would you have wanted him to
7 file the motion to reconsider sentence and ask that
8 in the alternative you be allowed to withdraw your
9 plea?

10 A Yes. I tried to do it before the plea was even
11 accepted when me and Mr. Johnson took a break and
12 spoke about it.

13 Q Tell us about that.

14 A It is in the break in the transcript that when the
15 judge asked me if I understood everything that was
16 going on, my questions were pointed since I was
17 asking --

18 THE COURT REPORTER: I'm sorry, I couldn't
19 understand.

20 A The break in the transcript when the judge
21 questioned if I needed to speak with my attorney,
22 Mr. Johnson, I acknowledged that, yes, I need to
23 speak with him.

24 When me and Mr. Johnson went to the side, that
25 was my main intent speaking with him was to the

DAYDRIAN J. ROUSE -- DIRECT BY MS. SHURLING

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1 fact that I wanted to withdraw my plea as soon as
2 possible.

3 But the response I got was basically it was
4 too late, or just continue going on with the
5 process and it was almost over and that everything
6 was supposed to be fine.

7 Q But you specifically asked whether it was too late
8 to stop and get your jury trial?

9 A Yes. But the response that was given was a
10 negative response that it was too late.

11 Q Okay. Thank you.

12 MS. SHURLING: No further questions.

13 MR. CORNEY: No questions.

14 MS. SHURLING: That's all, Your Honor.

15 THE COURT: All right.

16 MS. SHURLING: Your Honor, the Applicant has
17 specifically alleged that he received ineffective
18 assistance of counsel in violation of his Sixth and
19 Fourteenth Amendment rights and that he has,
20 through the testimony elicited today, as well as
21 any documents introduced, demonstrated errors and
22 omissions on the part of defense counsel which he
23 has testified but for which he would not have
24 waived his right to jury trial, that he would not
25 have pleaded guilty and would have proceeded with

1 his jury trial but for these errors and omissions
2 of counsel.

3 I can, if Your Honor would like, outline each
4 of the specific errors, but I believe that they
5 have been illustrated by the testimony here today.

6 THE COURT: No, y'all just prepare some
7 orders, send them, and I'll review them and take
8 the file.

9 MS. SHURLING: Thank you, Your Honor. I have
10 a nightmare of a court schedule coming up the next
11 few weeks. May we have 30 days?

12 THE COURT: Sure.

13 MS. SHURLING: Thank you.

14 THE COURT: I don't read any until I get both.
15 So that is how it is. If you have got 30, then he
16 has got 30 to reply, so that is 60.

17 MS. SHURLING: Your Honor, I ask that both of
18 our orders be due at the same time.

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

20 MS. SHURLING: Otherwise, his is responsive to
21 mine. Thank you.

22 MR. CORNEY: It doesn't matter to me. I'll do
23 it in 30 days, Your Honor.

24 THE COURT: Thirty days they are due.

25 (WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

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CERTIFICATE OF REPORTER

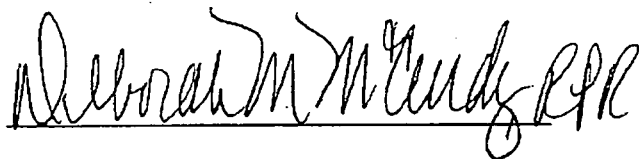
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 10th day of September, 2012.

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

September 27, 2012



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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RECEIPT FOR EXHIBITS

Case No. 11-CP-40-01921
 Plaintiff: Daydrian Rouse
 Defendant: State
 Date Trial Started: 9-10-12

Judge JE. Edmunds Jr
 Plt's Atty. Jara Shurtine
 Def's. Atty. Rob D. Corney
 Date Trial Ended: 9-10-12

Received of Rebecca M. Mundy, Court Reporter for the above case, these exhibits:

		Clerk of Court Use
1	P-1 - Statement of Tony Shaw	✓
2	2 - Statement of Tony Shaw (Kerr)	✓
3	3 - Statement of Daydrian Rouse	✓
4	(omega-matt ellis) (112 5110428)	
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This 4th day of October 2012.

Page 1 of 1

By: JDD

Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

Statement of

Tory Shaw843-478-9883

Made at

Columbia, South Carolina, this 13 day of August, 2009, at 1001 hours, in the presence of Tory's Attorney Jason Peavy and Sergeant Matt Ellis of the Richland County Sheriff's Department.

I, Tory Shaw, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Q: Sergeant Matt Ellis

A: Tory Shaw

Q=Tory you are here today to add to your statement and/or somewhat change your statement that you provided to Lt McDoanld on April 21, 2009 in reference to the incident on Bluff Road. Is this correct?

A=Yes sir.

Q=Your Attorney, Jason Peavy is present with you today while you have been talking to me and also as I'm taking this statement from you?

A=Yes sir.

Q=What is it that you would like to add or change to your statement?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 13 day of August, 2009.

Sworn to and subscribed before me
This 13 day of August, 2009

Signed: [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 04/2019

Page 1



A=On April 19, 2009 we were leaving the party and I had got into the passenger seat of Daydrian's Honda. I reclined the passenger seat. Daydrian had gotten into the driver's seat and as he turned right onto Bluff Road and headed towards town he was in the curb lane closest to the sidewalk. As Daydrian pulled onto Bluff Road, a black SUV passed us traveling the same direction in the lane closest to the median. The black SUV was slightly ahead of us when it stopped suddenly. After it stopped that is when I saw a person in a white shirt running across the street. He was running from the armory towards the side of the street where we had been parked. I then shouted out Daydrian's name to get him to slow down and that was when I heard a loud thump on my side (the passenger side). I then looked out the front windshield and saw a figure wearing dark clothing and a hat coming onto the hood. He came up close to the where the hood meets the windshield and rolled off the passenger side of the Daydrian's car near the where the tire is. It seems that Daydrian slow down and I looked out the back window and saw the guy in the white shirt still standing on the sidewalk and a group of people running towards him from the armory side. I didn't see the guy who had on the dark clothing and the hat. That is when I caught a sharp pain in my side and yelled out and that was when Daydrian said that he was going to take me to the hospital. I told him I didn't want to go to the hospital for him to just take me to get something to eat so I could take my medicine. We went to McDonald's on Elmwood and Assembly and after we got our food we headed towards our apartment. On the way back home when we were on Bluff Road, that is when I saw blue lights flashing and I saw the guy with the white shirt on still standing on the sidewalk. We then pulled up to our apartment and when I got out of the car I noticed a small dent in Daydrian's hood. I then said to Daydrian that I thought that he had hit someone and just responded that he didn't know by saying I don't know man. He then asked me if I still wanted to go the hospital and I told him no. Daydrian's brother Keron pulled up and he asked me the same question and I told him no. I went into the house and lay down and that was the night.

Q=So Daydrian never came to a stop on Bluff Road just before he hit the two subjects?
A=No sir.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: Tammie J. Shaw

Witness: [Signature]

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 13 day of August, 2009.

Sworn to and subscribed before me.
This 13 day of August, 2009

Signed: Tammie J. Shaw

[Signature]
Notary Public for South Carolina
My commission expires 04/2019

Statement

State of South Carolina)
) S. S.
 County of Richland)

Personally appeared before me this 21 day of April, 2009, at 1117 hours, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Tory Shaw of [REDACTED], Columbia, SC 29201. Day time telephone number 843-214-4125. Night time telephone number Same.

Who makes the following statement under oath to wit:

Q. Lt. McDonald

A. Tory Shaw

Q. Did you attend a party at the National Guard Armory on Bluff Rd this past Saturday night 4-18-09?

A. Yes sir

Q. Who did you attend this with?

A. Daydrian Rouse who is my roommate.



Q. While at the party did anything happen?

A. Yes sir, when the lights came on to shut down the party around 2:00 am, I was standing behind Keron and Rouse and I was talking to one of my home girls. I then heard loud talking and turned around to see, a tall light skin guy about 603, 250 lbs light skin taking off his beads. This guy then swung at Daydrian and when Daydrian stepped back from the punch he slipped and was starting to fall. I tried to catch Daydrian, and then that is when I got hit in the back of my head by somebody. I then fell to the ground and covered up as I began to get hit in my head, side and my back. I was being kicked also by guys wearing purple shirts and boots. I then attempted to get up again and got knocked down again. Eventually someone pulled me up and asked me if I was OK.

T don't call me Daydrian

This statement was made in the presence of LT. McDonald / Inv. Ellis of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
 this ____ day of _____ 2009.

Signed: Tory Shaw

Witness: Sister [unclear]

Witness: _____

Notary Public for South Carolina
 My commission expires _____

Statement

State of South Carolina)

) S. S.

County of Richland)

I told them "No, I'm not ok my side is hurting". I then went looking for Rouse and Keron and eventually found them with security. Security grabbed them thinking they were going to fight again and that is when security told us we had to leave. We got outside and Rouse realizes he doesn't have his keys. Security then let us back inside to look for Rouses' keys. Rouse eventually finds them in the men's room.

We walked outside, and Keron and his girlfriend walk with me and Rouse to Rouses car. While we were walking I was upset and told Rouse my side was hurting. We got in Rouses car and his brother and his girlfriend left. I told Rouse I wasn't feeling well and had a bad headache. I am prone to migraines and told him to go to McDonalds so I could get something to eat to take with my medicine for migraines.

We pulled out onto Bluff Rd heading towards the stadium towards the McDonalds. As we began down bluff road, a black SUV pulled up next to us in the inside lane towards the median. The black SUV suddenly stopped in the road. Rouse attempted to slow down also. I hollered out "Daydrian" when a person in a white shirt darted across the road. We heard a bump, and as we passed I looked out the back window and saw that the guy was walking and a group of people with purple shirts were going to him. I told Daydrian that he is up and walking and is ok, and that I don't feel very good and to keep going so I could get something to eat to take with my medicine.

After going to McDonalds, we went back to College Suites and Keron would eventually show up and ask us if we were ok. I told him I didn't feel good and he and Rouse decided that Rouse would spend the night with Keron. There was no reason for that that I'm aware of. I just wanted to go to bed, because I was hurting.

Q. At any time once Daydrian pulled onto Bluff Rd did he stop the car for any reason?

A. No sir.

This statement was made in the presence of LT. Michael / Inv. Ellis
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this ____ day of _____ 2009.

Signed: [Signature]

Witness: [Signature]

Witness: _____

Notary Public for South Carolina
My commission expires _____

State of South Carolina)

) S. S.

County of Richland)

Q. How fast was Daydrian going on Bluff Rd right before he tried to stop?

A. About 30-35 mph.

Q. How fast was he going when you heard the bump on the front of the car?

A. 15-20 mph.

Q. When you saw the guy in the white shirt coming across the road was he walking or running?

A Running

Q. Did you recognize this person from earlier in the altercation inside?

A. No sir

Q. How much did you drink that night?

A. None

Q. How much did Daydrian drink that night?

A. He had one thing of Omega oil inside and that was it.

Q. In your opinion was Daydrian intoxicated that night at the time he went to drive?

A. No sir.

Q. Did you see anyone else get hit by the car?

A. No sir

Q. Do you know how the mirror got damaged on the passenger side of the vehicle?

A. No sir, we didn't realize it until we got to College Suites.

Q. Was this mirror damaged prior to Daydrian hitting the guy in the street?

This statement was made in the presence of LT. MADAL / INV. ELUS
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this ____ day of _____ 2009.

Signed: FS

Witness: James Blue

Witness: Sc-mah

Notary Public for South Carolina
My commission expires _____

STATEMENT

State of South Carolina)

) S. S.

County of Richland)

A. No sir, it wasn't damaged when I got into the car to leave.

Q. In addition to the guy in the white shirt, did you see anyone else trying to cross the street?

A. No sir.

Q. What is the lighting like where this happened?

A. It was dimly lit.

Q. Did you see anyone lying on the ground after the guy in the white shirt was hit by the car?

a. No sir.

Q. Did Daydrian swerve the car at anytime when he saw the guy in the white shirt run across the street?

A. No sir. He attempted to slow down.

Q. When you saw the guy coming across the street, where were you sitting in Daydrians car?

A. In the front passenger side, and the seat was cocked back some.

Q. Do you feel this was an intentional act by Daydrian or an accident?

A. I feel it was an accident.

Q. Were you and Daydrian the only ones in Daydrians car?

A. yes sir.

Q. When were you going to come forth and tell law enforcement about what had happened?

This statement was made in the presence of LT. M. W. / INV. ELLIS
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this ____ day of ____ 2009.Signed: Tony ShawWitness: Steve M. Shaw

Witness: _____

Notary Public for South Carolina

My commission expires _____.

Statement

State of South Carolina)

) S. S.

County of Richland)

A. I was waiting for my mom to come up but she couldn't get off from work, so she told me to handle this myself.

Q. Has anyone promised you anything for this statement you are giving?

A. No sir.

Q. Did you come back down through Bluff Rd by the armory to go back to College Suites?

A. Yes, we saw police lights near the armory.

Q. Did you stop to talk to the police about what had happened?

A. No, I just wanted to get home.

Q. Are there any other witnesses to this incident that you know of?

A. No sir

Q. Is there anything else you would like to add?

A. No sir

Q. Is this statement the truth to the best of your knowledge?

A. Yes sir.

This statement was made in the presence of LT. M. R. P. / Inv. Ellis
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this ____ day of _____ 2009.

Signed: Tony BrownWitness: S. E. M. D.

Witness: _____

Notary Public for South Carolina
My commission expires _____

Personally appeared before me this 20 day of April, 2009, at 1800 hours, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Daydrian Rouse of Prichard Court, Apt 506. Daytime telephone number 843-324-2333. Nighttime telephone number _____.

Nighttime telephone number: _____
Who makes the following statement under oath to wit:
_____ A-Davidrian I

Q=Investigator Matt Ellis A=Daydrian Rouse

Q=Daydrian did you come to RCSD today with your father on your own free will to talk to me about the incident on Bluff Road a couple days ago?

A=Yes:

Q=Did I tell you that you were not under arrest and that you were free to leave at any point?

A=Yes.

Q=Did you come to tell me your side of the story on your own free will?

A=Yes.

Q=Tell me what happened at the Omega party on Bluff Road at the Armory?

Q= Tell me what happened at the Omega party on Blum Road at the Anthony
A= When I was leaving in my gold Honda Accord, I made a right out of the parking lot that I showed you on the map in the direction of the fast food restaurant to get something to eat. As I was driving, there was a black either SUV, Truck or van beside me. I was in the right lane and the black vehicle was in the left. The black vehicle slowed down and I slowed down too but I was passing the black vehicle. While passing the black vehicle I realized that there was a group of people walking across the middle of the intersection and there was just one person in a white shirt that ran across my line of sight. I tried to slow down but I guess that he skimmed the top of my hood as he ran across the street. I kept going forward and as I looked in my mirror (rear view mirror) I could see that he was still walking. That is when I proceeded to get something to eat at McDonalds (thinks its on Elmwood). After I got something to eat, I went back to my apartment. Once I got out of my car I realized the damage to my car. There was a little dent on the hood and somehow my passenger side mirror was hanging down. I later went to my brother's apartment and spent the night there.

Q=Was there anyone with you when you hit this guy in your car?

A=Yes. Tory Shaw who lives with me. He was the only one with me.

Q=There wasn't 4 people in your car?

This statement was made in the presence of Investigator M. Ellis of the
Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 20 day of April 2009

Notary Public for South Carolina
My commission expires 8/18/17

Signed:

Witness:

Witness:

Page 1



Statement
State of South Carolina
County of Richland

A=No when I first got to my car there was me, Tory, my brother, his girlfriend and the officer. I can't have 4 people in my car because the rims will rub.

Q=Do you remember hitting more than one person?

A=I only hit one person. I really didn't hit him I just brushed or skimmed him.

Q=The damage to your hood and the broken mirror, was it there before you left the Armory party?

A=Not to my knowledge. I suspected the damage from the hood came from the guy running across the street. I not sure about the mirror.

Q=Were you intoxicated when you hit this guy that ran across the street?

A=No.

Q=How much did you have to drink that night?

A=I only had one "Omega Oil".

Q=Where is the mirror that was hanging down?

A=Its in the car now. After I realized it was hanging I cut it off.

Q=How fast do you think that you were traveling when you hit the guy?

A=At the most it couldn't had been more than 15 MPH as I was braking. I know that the speed limit is 35 MPH and the police sit there night and day.

Q=Why didn't you stop after you hit the guy?

A=Because I saw him still walking.

Q=Do you understand that it is against the law not to stop after having an accident?

A=No. I didn't consider it to be an actual car accident. I saw that he was still walking after he skimmed my car and I didn't think anything of it.

Q=What did Tory tell you about the guy that you hit?

A=He said that he thought that it might have been one of the guys that may have been fighting him after the fact. That is another reason that I didn't stop to prevent another altercation.

Q=I understand that there was an altercation inside the party before you left that you have described in detail to me but wish not to have that part of your statement. Is this correct?

This statement was made in the presence of Investigator M. Owens of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me
this 20 day of April 2009


Notary Public for South Carolina
My commission expires 8/18/18

Signed: Troy Davis

Witness: [Signature]

Witness: [Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

DAYDRIAN J. ROUSE,)
Applicant,)

2011-CP-40-01921

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

ORDER
PERMITTING FILING OF A
REPLACEMENT APPLICANT'S
EXHIBIT #4

JENNIFER W. MOORE
C.P. & G.S.

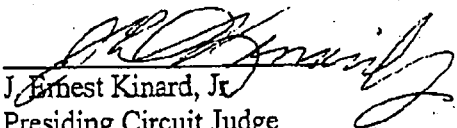
2014 FEB 11 PM 2:28

FILED

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed on March 22, 2011. The State filed its Return on September 21, 2011. An evidentiary hearing was convened before this Court on September 10, 2012, during which the Applicant was present and represented by Tara Dawn Shurling, Esquire and the State was represented by Assistant Attorney General, Robert D. Corney.

At the conclusion of this PCR proceeding the Applicant's PCR Counsel introduced a copy of all the discovery materials (including the MAIT Reports) in this case as an Applicant's Exhibit. That material was inadvertently not marked as an Exhibit and is not indexed in the PCR Hearing Transcript. Inasmuch as the parties agree that the discovery package was introduced by the Applicant during his evidentiary hearing, this Court has granted PCR Counsel leave to file the replacement set of the discovery materials provided by the Fifth Circuit Solicitor's Office with the Clerk of Court's Office as Plaintiff's Exhibit No. 4.

IT IS SO ORDERED.


Ernest Kinard, Jr.
Presiding Circuit Judge
Court of Common Pleas

This ^{TS} 7 day of Feb, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-01921

Daydrian J. Rouse, # 342518,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

2013 APR 10 PM 2:59

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 22, 2011. The Respondent made its Return on September 19, 2011. An evidentiary hearing into the matter was convened before this Court on Monday, September 10, 2012, at the Richland County Courthouse. The Applicant was present at the hearing represented by attorney Tara D. Shurling, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying were Applicant's former plea attorneys, George Johnson, Esquire, and Yvonne Murray-Boyles, Esquire, (collectively referred to herein as "counsel"); Applicant's counsel on the motion for reconsideration, Michael Coleman, Esquire; and Applicant's father, Ernest Rouse. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Richland County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

ROUSE Daydrian J., #342518 -- Order of Dismissal (2011-CP-40-01921)

1 of 21

SCANNED

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the July 2009 term of the Richland County Grand Jury for Hit and Run – Great Bodily Injury and two (2) counts of Assault and Battery with Intent to Kill (“ABWIK”) (2009-GS-40-03721 through -03723). George Johnson, Esquire, and Yvonne Murray-Boyles, Esquire, represented him on the charges. On August 30, 2010, Applicant proceeded to jury trial before the Honorable G. Thomas Cooper, Jr.

After jury selection but before the jury was sworn-in by the court, Applicant waived the jury trial and entered guilty pleas to Hit and Run – Great Bodily Injury and the lesser included Assault and Battery of a High and Aggravated Nature (“ABHAN”), as well as entered an Alford¹ plea to the remaining Assault and Battery with Intent to Kill. Judge Cooper sentenced Applicant without recommendations or negotiations to ten (10) years imprisonment each for ABHAN and Hit and Run, and fifteen (15) years imprisonment suspended to service of ten (10) years in jail and five (5) years probation on the ABWIK. The ABWIK was to be converted to a straight ten (10) year sentence with no suspended probationary period upon Applicant’s payment of twenty-thousand dollars (\$20,000) restitution to victim. All sentences were to run concurrently.

A motion for reconsideration was filed on Applicant’s behalf and a hearing was convened on the motion on November 8, 2010, before Judge Cooper. Applicant was represented by Michael Coleman, Esquire, at the hearing. At the close of the hearing, Judge Cooper denied Applicant’s request to reconsider the sentence previously imposed.

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

¹ North Carolina v. Alford, 400 U.S. 91 (1970).

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

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

(b) The Applicant's pleas of guilty were not voluntary and intelligently entered. The judgments and sentences against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

(c) _____

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

(a) Trial Counsel failed to adequately investigate the Applicant's charges, failed to investigate and interview potential witnesses and failed to give his client adequate legal advice prior to the Applicant's guilty plea proceeding. Trial counsel failed to fully advise the Applicant of the consequences of his pleas and further failed to investigate defenses against the charge against the Applicant. Trial Counsel neglected to adequately review discovery materials with the Applicant.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Advise Applicant of Sentencing Range

Applicant first contends counsel was ineffective for failing to advise him prior to the entry of his plea of the sentencing range associated with the pending charges. Specifically, Applicant testified counsel failed to advise him there was a mandatory minimum sentence associated with the Hit and Run charge which Applicant would be required to serve if he pled guilty to the charge as indicted. Applicant testified at the PCR hearing that had he known there

was a mandatory minimum sentence associated with the charge, he would not have pled guilty to it.

Counsel testified at the PCR hearing that he was retained to represent Applicant by Applicant's parents within one week of the incident, at which time Applicant had not yet been charged. He stated he reviewed all of the evidence against Applicant with him in their pretrial meetings and Applicant was well aware of his right to take the case to trial if he wished to do so. Regarding the sentencing range Applicant was facing on the charges, counsel said he reviewed all of the potential penalties for each charge with Applicant during their meetings, thereafter noting the Hit and Run charge carried a mandatory minimum thirty (30) day sentence. When questioned further on the subject, counsel explicitly testified he was sure based on their discussions that Applicant knew the Hit and Run charge carried a mandatory minimum sentence.

This Court finds this allegation to be without merit. As an underlying matter applicable to the entirety of this Court's ruling on each of the allegations raised, this Court finds Applicant's testimony to be not credible, while conversely finding counsel's testimony to be very credible. Accordingly, the credible evidence presented to this Court indicates counsel *did* in fact undertake a reasonable and appropriate review of the potential sentencing ranges Applicant was facing with Applicant in advanced of the plea hearing, including the thirty (30) day mandatory minimum sentence carried by the Hit and Run charge.² Applicant was well aware of the sentencing range he was facing for the Hit and Run charge, including the mandatory minimum. His contention to the contrary is not credible. Therefore, this allegation is denied as Applicant has failed to prove how counsel's performance was deficient in this regard.

Failure to File Motion to Elect/Failure to Challenge Double Jeopardy

² Under S.C. Code 56-5-1210(A)(2), a person who fails to stop or otherwise comply with the code section when great bodily injury results is guilty of a felony and must be imprisoned not less than thirty (30) days nor more than ten (10) years.

Applicant next alleges counsel was ineffective for failing to file a pretrial motion to require the state to elect which charges to pursue against Applicant. Specifically, Applicant contends counsel's failure to file a motion to elect between the Hit and Run charge and the Assault and Battery with Intent to Kill charge allowed the state to prosecute Applicant for two charges in violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. Applicant testified at the PCR hearing he was willing to enter a guilty plea to the Hit and Run charge as indicted, but was unwilling to concede that he had intended to kill the victim.

Counsel testified he did not file a motion to elect between the charges on Applicant's behalf, nor did he recall whether he ever considered filing such a motion. Counsel stated he did review the statutory language of each charge prior to Applicant's plea, and noted there is a difference in the intent required between the two charges. Counsel went on to say while ABWIK allows for general intent or recklessness, Hit and Run requires specific inappropriate conduct by the driver involved. He conceded he did not make a double jeopardy argument to the charges on Applicant's behalf either. Counsel also noted he did not recall discussing with Applicant the possibility of having the Hit and Run charge dropped through directed verdict or otherwise "absorbed" into the ABWIK charge. On cross-examination, counsel stated he believed the two charges did not constitute impermissible double jeopardy as each required different elements to be proven than the other, in particular noting Hit and Run requires proof of "reckless indifference".

After a thorough review of the testimony and the record, this Court finds counsel was not ineffective in this regard as Applicant has failed to prove counsel's performance was objectively unreasonable in failing to file such a motion. Further, Applicant failed to prove there is a

reasonable probability such a motion would have been successful if filed, and failed to prove had such a motion been made he would not have pled guilty but rather insisted upon going to trial.

"[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied as to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Blockburger v. U.S., 284 U.S. 299, 304, 52 S.Ct. 180, 182 (1932). "Accordingly, a defendant may be convicted of two separate crimes arising from the same conduct without being subjected to double jeopardy, where [the] conduct 'consists of two distinct offenses'." State v. Pace, 337 S.C. 407, 523 S.E.2d 466 (Ct. App. 1999), quoting State v. Moyd, 321 S.C. 256, 258, 468 S.E.2d 7, 9 (Ct. App. 1996). Further, when a single act combines the requisite ingredients of two or more distinct offenses, the State can indict a defendant for all of the charges arising therefrom without electing between them. State v. Austin, 299 S.C. 456, 385 S.E.2d 830 (1989).

Of the charges, both the Hit and Run Resulting in Great Bodily Injury and one count of Assault and Battery with Intent to Kill were premised on Applicant's collision with Justin Boyd. Applicant's contention that the two charges cannot be brought simultaneously as such would violate double jeopardy is without merit under the Blockburger "same-elements" test. Under S.C. Code § 56-5-1210(A)(2), the Hit and Run Resulting in Great Bodily Injury statute requires "the driver of a vehicle involved in an accident resulting in injury to...a person" to "immediately stop the vehicle at the scene of the accident or as close to it as possible" and to "return to...and remain at the scene of the accident until he has fulfilled the requirements of Section 56-5-1230". Conversely, Assault and Battery with Intent to Kill requires proof of the accused performing an unlawful act of a violent nature to the person of another with malice aforethought, either express or implied. State v. Kinard, 373 S.C. 500, 646 S.E.2d 168 (Ct. App. 2007). "Malice

aforethought' is defined as 'the requisite mental state for common-law murder' and it utilizes four possible mental states to encompass both specific and general intent to commit the crime", including "intent to kill, intent to inflict grievous bodily harm, extremely reckless indifference to the value of human life...and intent to commit a felony". *Id.* at 503 – 504, 646 S.E.2d at 169.

Based on the above, it is clear each charge requires proof of wholly separate and distinct elements from the other, thereby rendering the state's indictment and pursuit of both charges proper. According to counsel's credible testimony, he was aware the two required proof of separate and distinct elements, including different forms of intent. Therefore, counsel was not unreasonable in not filing a motion to elect, nor in failing to pose a double jeopardy argument to the court or otherwise discussing a possible directed verdict on one of the charges based on double jeopardy with Applicant. Further, in reviewing the language of the crimes under the Blockburger test, this Court finds such motions/arguments would have been unsuccessful if raised by counsel and, therefore, Applicant cannot prove prejudice as the motions/arguments would have been fruitless. Finally, Applicant has failed to convince this Court that, had such a pretrial motion to elect been made and been successful in disposing of either one of the charges, he would not have pled but rather insisted upon proceeding to trial. Therefore, he has failed to satisfy his burden of proof. Accordingly, this allegation is denied.

Failure to Investigate Torry Shaw and Review Potential Impeachment

Applicant asserts counsel was ineffective in his representation for failing to fully investigate and discuss with Applicant the potential testimony of Torrence "Torry" Shaw ("Shaw"), who was in the car with Applicant at the time of the incident. At the PCR hearing, Applicant testified he was aware Shaw had given two statements to law enforcement about the crash as he had reviewed them prior to the plea hearing, but said counsel failed to review with

him the possibility of impeaching Shaw's testimony at trial based on inconsistencies in the two statements. Applicant noted he was also aware Shaw had pending charges at the time of the trial.

Counsel testified he was able to review the entire discovery file with Applicant upon his receipt of such, which included the two statements given to law enforcement by Shaw detailing the accident. He noted the two statements did have some minor differences in facts as to the color clothing victim was wearing and whether Applicant slowed down at all before/after hitting victim. Counsel stated while he initially did not think Shaw's second statement was all that damaging to Applicant's case, Shaw's attorney (Jason Peavy, Esquire) advised counsel by letter dated August 27, 2010, that Shaw would be testifying against Applicant at trial. Counsel testified he was never able to interview Shaw as he was represented by Peavy, who refused to allow such an interview. Counsel said he reviewed all of this with Applicant, but could not definitively recall whether he reviewed with Applicant potential impeachment of Shaw at trial based on the inconsistencies and Shaw's pending charges. He did, however, review all of the potential witnesses' testimonies that would be presented at trial with Applicant as well as the ability to cross-examine those witnesses at trial to call their reliability into question. Counsel said Applicant seemed to fully understand all of this based on their discussions. Counsel later reiterated Applicant was aware counsel would have the opportunity to cross-examine all of the state's witnesses to call their credibility and version of facts into question.

Thereafter, counsel's second chair, Yvonne Murray-Boyles ("Murray-Boyles"), testified she became involved in the case in July of 2010, after which she attended several meetings between counsel and Applicant, as well as interviewed several witnesses. Murray-Boyles specifically noted she and counsel reviewed Shaw's statements with Applicant and his potential testimony at trial, as well as reviewed how that testimony could be challenged or refuted at trial.

She finished by saying based on her pre-plea discussions with Applicant, he was well aware he would be fully waiving his right to challenge the state's evidence by entering a guilty plea.

This Court finds counsel was not ineffective in this regard. Counsel's credible testimony reflects he did in fact review with Applicant his ability to cross-examine all witnesses presented at trial by the state to call their reliability and credibility into question regarding their recollection of the night in question. While counsel was unable to definitively testify as to whether he used the language "impeachment" in those discussions, or if he specifically explained the method he would use for impeachment, such testimony is unnecessary for this Court to make the definitive determination that Applicant was fully aware of the ability to challenge the accuracy of Torry's statements law enforcement and testimony presented at trial. Applicant, fully cognizant of that possibility, made the informed and voluntary decision to waive that right in order to accept an advantageous plea offer from the state under which one count of ABWIK was reduced to ABHAN. Applicant has failed to prove counsel's performance was objectively unreasonable in this regard.

Further, this Court finds Applicant's contention that he would have gone to trial but-for counsel's failure to advise him of the ability to impeach Torry's statements to be **not** credible based on the testimony presented and record before this Court. Applicant was facing a plethora of incriminating evidence tending to prove his guilt to the charges regardless of Torry's statements/testimony, including the potential testimony of numerous eye-witnesses at trial and Applicant's own statement to law enforcement admitting he had been driving and did not stop after hitting victim.³ In fact, counsel's credible testimony was there "wasn't much evidence favorable" to Applicant in the case. Rather, the record reflects it was the opportunity to accept

³ Based on counsel's credible testimony, a pretrial Jackson v. Denno hearing to suppress Applicant's statement to law enforcement had been finished prior to the start of Applicant's trial, which was unsuccessful.

the advantageous plea offer which swayed Applicant's decision to proceed to trial, as it wasn't until after jury selection that the state extended the offer and Applicant chose to accept it. Therefore, this Court cannot find any reasonable probability that counsel's alleged failure to review potential impeachment of witnesses was the factor upon which Applicant's decision to plead guilty was rooted. Accordingly, Applicant has also failed to prove resulting prejudice.

Failure to Challenge Evidence of Intent at Plea Hearing

Applicant alleges counsel was ineffective in his representation for failing to challenge the state's factual summation of the evidence in the case tending to prove the intent element of the crimes charged. Specifically, Applicant contends counsel was ineffective in failing to contest the state's presentation of Applicant's actions directly after the crash and regarding Applicant "chirping" his tires as they were improper comments tending to prove the intent element of the crimes.

During his PCR testimony, Applicant stated he never had the specific intent to kill the victim as the crash was an accident in which he did not see victim crossing the road prior to hitting him. He went on to say he was willing to plead guilty to the Hit and Run charge because he did leave the scene of the accident improperly, but was unwilling to admit guilt to the ABWIK as he never had the intent to hurt victim. The evidence presented by the state at the guilty plea, Applicant said, should have been challenged by counsel as it tended to insinuate he hit victim on purpose.

Counsel testified that at the time of Applicant's guilty plea, he was prepared to go to trial with Applicant where he would have presented an "accident" defense based on Applicant's rendition of the facts. He noted the ABWIK charge related to the secondary victim was reduced to ABHAN based on that victim having been hit with Applicant's side-view mirror with enough

force to break the mirror off. Counsel said while Applicant believed the facts presented by the solicitor regarding the accident were not entirely correct at the plea hearing, that contention was of little consequence to the decision to plead because Applicant had confessed to driving the car that night and leaving the scene of the accident. Further, Applicant pled guilty to the ABWIK charge relating to the main victim under North Carolina v. Alford, under which Applicant can plead guilty while maintaining his disagreement with the facts presented. Counsel went on to say he did not believe a plea hearing is the appropriate place to argue the case and said Applicant knew he was waiving his right to do so by entering the pleas as he did. Counsel also noted there were some eye witness statements provided in discovery which in fact did reference Applicant having revved his engine and/or "chirped" his tires prior to and after the accident, so the statements were supported by evidence. He also noted the victim and those witnesses were present in the courtroom on the day of the plea and would have testified at trial to the same before the jury had Applicant proceeded.

Counsel went on to say he didn't want to specifically harp on Applicant's actions after the accident as they were not flattering to Applicant's case, but noted he did provide the court with Applicant's reason for going to McDonald's directly after the fight to mitigate the state's presentation of that fact, which involved his passenger's need to take pain medication as a result of the fight. Counsel testified there was "a lot" of evidence in the discovery file that gave him concerns about Applicant's chances at trial, all of which he reviewed with Applicant and Applicant's family. Counsel said there was evidence which seemed to indicate Applicant attempted to hide his car after the accident to avoid detection, but he did challenge those facts in mitigation by saying Applicant didn't want to drive a car with a broken side view mirror.

Finally, Murray-Boyles gave limited testimony on the subject, saying Applicant was well aware that by pleading guilty he would be waiving his right to challenge the entirety of the state's evidence at trial, and was waiving his right to present evidence in his defense to prove his lack of intent.

This Court finds this allegation to be without merit. Counsel's performance was reasonable in attempting to challenge the facts provided by the state which tended to indicate intent where practical, while keeping in mind Applicant was entering a guilty plea for the charges and waiving his right to challenge the evidence at trial. The arguments presented by counsel in that regard were well within the wide range of competence required of defense attorneys during mitigation at a guilty plea hearing and Applicant has failed to prove otherwise. Counsel was clear in indicating his intention to avoid placing blame on victim or "putting victim on trial" through arguments at the plea hearing as counsel believed those arguments "would not go over well" with the plea judge. With the testimony presented and a review of the record, this Court finds counsel was not deficient in this regard.

Further, this Court finds no reasonable probability that had counsel presented some further argument in mitigation challenging the state's presentation, the plea judge would have imposed a lesser sentence. In fact, accepting responsibility for his wrongful conduct where applicable and saving the severely injured victim from a lengthy trial likely proved beneficial to the sentence imposed. Accordingly, this allegation is denied as Applicant has failed to prove counsel was ineffective in this regard.

Failure to Object to Restitution Portion of Sentence

Applicant alleges counsel was ineffective in failing to object to the plea judge's imposition of a monetary reimbursement for victim's medical bills as part of the criminal

sentence imposed pursuant to the pleas. Applicant testified at the PCR hearing he did not recall ever being advised by counsel or the plea judge there was a potential that restitution could be imposed as part of the sentence and said he was entirely unaware he was entitled to a restitution hearing prior to such an imposition. Applicant stated there was no restitution hearing held, but he was given roughly thirty (30) minutes alone with his family at the courthouse to decide whether to accept the state's plea offer after the jury was selected in his case.

Counsel testified there were no plea negotiations entered into with the state prior to trial despite his attempts throughout the process, as the prosecuting solicitor made it clear the only offer would be for Applicant to plead guilty "straight up". After the start of trial and jury selection, counsel said, he and the solicitor met in chambers with Judge Cooper where the state made a plea offer for Applicant to plead guilty to the lesser included ABHAN for the secondary victim (Pringle) as opposed to ABWIK, and Applicant would be allowed to plead under North Carolina v. Alford to the ABWIK relating to the main victim. Counsel testified he was provided with the medical records of the main victim's injuries, but noted they were not needed as that victim's injuries "were obvious". Counsel stated he did not recall discussing potential restitution as part of the sentence with Applicant or Applicant's family prior to the plea and agreed generally a separate hearing must accompany the imposition of restitution. However, counsel stated he did not object to the court's imposition of the twenty-thousand dollar reimbursement as part of the sentence as he "thought that the \$20,000 was in [Applicant's] benefit". Counsel noted he did not believe the fine imposed was presented as "restitution", but rather as a way to assist victim because of the lack of insurance on the car involved in the crash. Counsel plainly stated "it was [his] understanding at the time of the plea that the funds were available" to pay the fine imposed and lessen Applicant's sentence by five years in doing so.

On cross-examination, counsel testified pictures of the victim showing the extent of his injuries were included in the discovery file, and he noted victim has to have part of his skull removed as a result of this incident. Counsel stated the plea judge at one point went off the record in chambers to call the Department of Corrections to ask about fashioning a sentence for Applicant which would entail the imposition of a monetary reimbursement for victim. Counsel said he discussed the potential imposition of a monetary obligation with Judge Cooper in chambers thereafter, and said he was able to discuss such with Applicant's father as well to determine whether they would be able to make such a payment if imposed. Counsel said based on those discussions, he was under the impression Applicant and Applicant's family would be able to make that payment if imposed; he also noted they were "on board" with the monetary sentence being imposed if it gave Applicant the opportunity to reduce his jail sentence. Counsel plainly testified he was "sure" the discussions about imposition of a monetary obligation as part of the criminal sentence were had in Applicant's presence with Applicant's family.

Counsel for Applicant on the motion to reconsider sentence, Michael Coleman, Esquire (hereafter "Coleman") testified at the PCR hearing as well. Coleman said at the time of his representation, he and Applicant's family were both aware of the twenty-thousand dollars (\$20,000) in restitution imposed by the plea judge as part of the criminal sentence, but said they "weren't really concerned about the money at the time", so that portion of the sentence wasn't challenged through the motion.

Thereafter, Applicant's father, Ernest Rouse, Jr. (hereafter "Rouse"), testified, saying during a break in the plea hearing when Judge Cooper left the courtroom, counsel "reached over and briefly talked about something about restitution" with him. Rouse said counsel "mention[ed] something about \$20,000 at that particular time", but said it was unclear whether he indicated

any willingness to pay that amount if such was imposed. Rouse noted that restitution amount was, in fact, never paid on Applicant's behalf.

After a thorough review of the record and testimony presented, this ground for relief is denied. To reiterate, this Court finds counsel's testimony to be credible, while conversely finding the testimonies of Applicant and Applicant's father (Rouse) to be not credible. According to the record before this Court, Judge Cooper sentenced Applicant to fifteen (15) years imprisonment suspended to service of ten (10) years and five (5) years of probation, as well as restitution in the amount of twenty-thousand dollars (\$20,000) for the ABWIK on the primary victim. The judge went on to say if the restitution was paid on or before January 1, 2011, the sentence would be reduced to a "straight" ten (10) year sentence with no probationary period.

Based upon the credible evidence presented at the PCR hearing, counsel acted reasonably in failing to pose an objection to the imposition of restitution as part of the criminal sentence as both Applicant and Applicant's family were "on board" with the restitution imposed as a means to reduce Applicant's sentence. In fact, counsel credibly testified Applicant's family made it clear to him they would be able to make the payment prior to the deadline imposed, thereby reducing Applicant's criminal sentence. While S.C. Code § 17-25-322 does require a hearing be held to determine the amount of restitution to be given to the victim of a crime, counsel articulated a valid, strategic reason for not requesting such a hearing based on Applicant's family's representations to him about their ability to pay the obligation and his belief that the imposition of the monetary obligation as a means to reduce Applicant's criminal sentence was beneficial to Applicant. See Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992) ("Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance."). Counsel's credible testimony reflects Applicant's family

and Applicant himself likewise believed the sentence imposed was advantageous as it allowed the sentence to be reduced upon payment. Therefore, counsel's strategy in allowing the sentence to be imposed without a full restitution hearing was objectively reasonable.

Further, counsel's evaluation of the restitution imposed as being "beneficial" to Applicant is justifiable and supported by the record before this Court, as the testimony reflects victim incurred medical costs more than fifty (50) times greater than the \$20,000 ~~fine~~ ^{RESTITUTION} imposed as a result of Applicant's unlawful actions. Applicant could have been ordered to pay the entirety of the medical bills had such a restitution hearing been held and detailed medical bills been presented to the plea judge. Counsel testified he had the medical records of victim at the time of the plea hearing and noted the injuries victim suffered as a result of the incident were "obvious". Accordingly, this Court finds counsel's informed decision not to object to the imposition of the monetary portion of the sentence to be objectively reasonable in light of the facts of this case. Accordingly, this Court finds counsel's performance was not deficient.

This Court also finds Applicant has failed to prove but-for counsel's failure to pose such an objection to the restitution imposed, he would not have pled but rather insisted on going to trial where he faced much more jail time and restitution costs far in excess of those actually imposed. Additionally, Applicant has failed to prove had counsel posed such an objection and a hearing been held, there is a reasonable likelihood the amount of restitution would have been less than the amount imposed by Judge Cooper.⁴ Furthermore, it is highly likely that the amount of restitution imposed would have been much higher had such a hearing taken place. Accordingly, Applicant has failed to prove resulting prejudice as well and this allegation must be denied.

⁴ Applicant at one point noted he had received documents in the on-going civil case relating to the incident which were never supplied by the state in the criminal matter through Rule 5 or Brady; this Court would note Applicant failed to produce any such documents at the PCR hearing to substantiate that claim or to otherwise prove what effect those documents could have had on the case had they been uncovered. Therefore, Applicant failed to carry his burden in this regard as well and failed to prove the restitution costs would have been less had a hearing been held.

Failure to Present Sufficient Argument in Mitigation

Applicant contends counsel was ineffective in his presentation of mitigating evidence on Applicant's behalf as counsel failed to present a sufficient argument to lessen Applicant's respective culpability for the accident. Applicant testified while counsel introduced evidence of his good character and being a good student in mitigation, he failed to present other positive traits of his in mitigation and failed to set forth discrepancies in the evidence to mitigate his culpability.

Counsel testified the defense theory he planned to present at trial was one of "accident", but said when it comes to mitigation following a guilty plea there is a different strategy in presenting the facts of the case as a lot of judges are interested in hearing the defendant accept responsibility for his actions. In this particular case, counsel said, he did not want to present mitigating evidence that would "put the victim on trial or blame the victim" as he didn't think "that would go over well" with the plea judge when it came to sentencing. He noted his belief that mitigation is not the right time to argue the merits of the case as he would at trial. Counsel conceded there were some discrepancies in the evidence as to whether Applicant was "revving his engine" or "chirping" the tires before/after the collision. He also stated he did not want to harp too much on the alleged inconsistencies in the statements of the witnesses as there were some witness statements indicating after the incident Applicant had gone to McDonald's, then driven back by the scene revving his engine while victim still laid severely injured in the street.

After a thorough review of the mitigation presented at the plea hearing, in conjunction with the PCR testimony and the remaining portions of the record, this Court finds counsel was not ineffective in this regard. At the close of the plea hearing, counsel requested sentencing be

deferred until the following day to allow for Applicant's presentation of mitigation from family members on his behalf.

The following day, the matter was reconvened for sentencing at which five individuals spoke on Applicant's behalf in mitigation in addition to the introduction of several letters written on Applicant behalf and Applicant's own plea for mercy from the court. At the close of the state's summary of facts, counsel specifically noted he wished to address some of the alleged facts set forth by the state, which he was able to do as part of his mitigation thereafter. During such, counsel called several of the state's factual representations into question including the identity of the person saying they were "going to get the Omegas", the reason for Applicant going to McDonald's after the incident, his rationale for not stopping at the scene, and his willingness to cooperate with law enforcement the day following the accident. Further, counsel accepted personal responsibility for Applicant's lack of apology to victim/victim's family saying he advised Applicant not to have any contact with them until the conclusion of the case; spoke about Applicant's sincere remorse for his actions and continuous concern for victim's injuries during the time prior to trial; and noted Applicant's lack of prior record and minimal probability of recidivism. With these things in mind, this Court finds counsel's presentation of mitigating evidence to be objectively reasonable.

Further, this Court finds Applicant failed to present any evidence he alleges counsel should have presented in mitigation, and has failed to convince this Court that had counsel presented some further evidence there is a reasonable probability the plea judge would have imposed a lighter sentence. In fact, the plea judge's commentary prior to sentencing make it clear the sentence he imposed was well-thought out and specifically tailored to the specific facts of the case, only further convincing this Court counsel's presentation of some further mitigating

evidence would not have changed the sentence imposed. Likewise, the credible testimony of Michael Coleman, Esquire, (resentencing counsel) at the PCR hearing was clear in establishing the plea judge could not be convinced to impose some lesser sentence than that given. Therefore, this Court finds no resulting prejudice has been proven either.

Failure with Regard to Applicant's Assertions during the Plea Proceeding

Applicant contends counsel was ineffective for advising Applicant that it was too late to halt his plea once the plea proceeding had begun, failing to request a recess during the plea proceeding to obtain Applicant's objections to the State's factual recitations, and for allowing Applicant to plead guilty to ABHAN where his comments to the Court allegedly did not admit the criminal intent necessary to commit ABHAN.

This Court finds no prejudice in these allegations as Applicant makes no legal argument as to the prejudicial effect of counsel's failure to halt the proceedings or request a recess in order to ascertain Applicant's objections to the State's factual allegations. Furthermore, the argument that counsel was ineffective for allowing Applicant to plead guilty to ABHAN where he allegedly did not admit criminal intent is without merit as evidence of intent is irrelevant for purposes of a plea proceeding.

Failure to Adequately Advise Applicant Concerning Communications with his Brother

Applicant further contends that counsel was ineffective for neglecting to advise him that certain communications taking place with his brother may have been excluded based upon Fifth and Fourteenth Amendment grounds or otherwise be characterized as prior consistent statements supporting his defense.

The Court finds no prejudice in failing to advise regarding the admissibility of the conversations with his brother as Applicant makes no allegation that the admissibility of such evidence had any bearing upon his decision to plead guilty.

Failure to Explore the Possibility of Alford Pleas on all Counts

Applicant finally contends that counsel was ineffective on the grounds that he did not explore the possibility of entering a plea pursuant to Alford during the plea negotiations once the Applicant raised an objection to the State's claim that he deliberately committed an assault and battery on both victims.

This Court finds no prejudice in these allegations as Applicant puts forth no argument regarding any prejudicial effect stemming from the inability to enter a plea pursuant to Alford.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address any other issues at the hearing indicates a voluntary and intentional

relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10 day of April, 2013.


J. Ernest Kinard, Jr.
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

DAYDRIAN J. ROUSE,)
Applicant,)

2011-CP-40-01921

v.)

RULE 59(e) SCRPC, MOTION TO
ALTER OR AMEND

THE STATE OF SOUTH CAROLINA,)
Respondent.)

FILED
2013 APR 25 PM 4:42
JANETTE W. McBRIDE
C.C.P. & G.S.

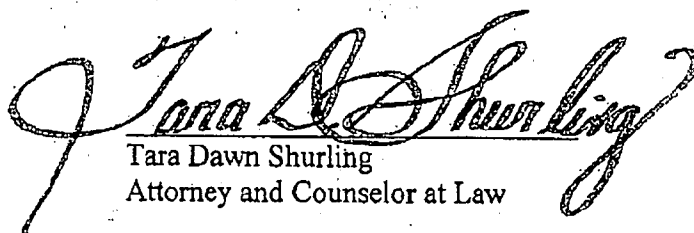
NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRPC, to alter or amend its Order of Dismissal filed April 11, 2013. The Application for Post-Conviction Relief in this matter was filed on March 22, 2011. The State filed its Return on September 19, 2011. An evidentiary hearing was convened on September 10, 2012, in which the State was represented by Assistant Attorney General, Robert D. Corney and the Applicant was represented by Tara Dawn Shurling, Esquire. In support of this motion, the Applicant would show unto this Honorable Court the following:

The Order of Dismissal filed on April 11, 2013 neglects to make findings of facts and rulings of law concerning the Applicant's allegation that defense counsel failed to adequately explore potential defenses in his case. This argument was presented in Applicant's allegation No. 1, 2, 8, 15, 17, 18 and 19. This issue was addressed in the Applicant's proposed order under section A.

The Applicant now asks that this Court reconsider it's denial of this Application for Post-Conviction Relief based on those allegations. In the alternative, he asks for this court to issue an amended order addressing those allegations.

For all the above reasons, the Applicant now prays that this Court might amend its Order pursuant to Rule 59(e), SCRPC, grant relief and remand the Applicant's case to the Richland County Court of General Sessions for a new trial. In the alternative the Applicant would respectfully request that the Court issue an Amended Order of Dismissal including the omitted allegations and arguments presented above. The Applicant would assert that his request for an Amended Order is necessary in order to preserve these claims for appellate review.

Respectfully submitted,


Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@shurlinglaw.com

Attorney for the Applicant

This 25th day of April, 2013.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

DAYDRIAN J. ROUSE,

Applicant,

v.

THE STATE OF SOUTH CAROLINA,
 Respondent.

2011-CP-40-01921

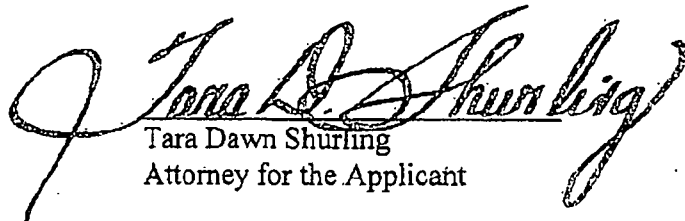
CERTIFICATE OF SERVICE

RICHLAND COUNTY
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 JEANETTE W. MOORE
 C.C.P. & S.S.

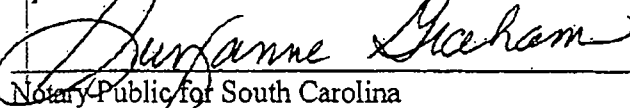
The undersigned hereby certifies that a true copy of the Rule 59e Motion to Alter or Amend in the above matter has been served on the Honorable J. Ernest Kinard, Jr., presiding judge, this 25th day of April, 2013, by mailing one (1) copy in a stamped envelope properly addressed to:

The Honorable J. Ernest Kinard, Jr.
 Circuit Court Judge for the Fifth Circuit
 P. O. Drawer 1707
 Camden, SC 29021

The original having been sent to the Richland County Clerk of Court for filing.


 Tara Dawn Shurling
 Attorney for the Applicant

SWORN TO BEFORE ME this 25th day of
 April, 2013


 Notary Public for South Carolina

(L.S.)

My Commission Expires: 2/28/2023

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

DAYDRIAN J. ROUSE,

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-40-01921

CERTIFICATE OF SERVICE

JENNIFER W. McBRIDE
C.C.P. & C.S.

2013 APR 25 PM 4:42

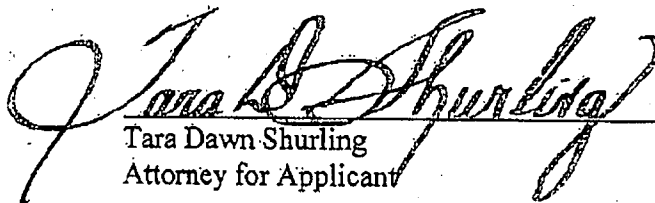
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RICHLAND COUNTY

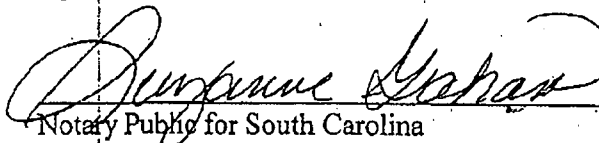
The undersigned hereby certifies that a true copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on opposing counsel this the 25th day of April, 2013, by mailing one (1) copy in a stamped envelope properly addressed to:

Megan Harrigan
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211.

The original having been sent to the Richland County Clerk of Court for filing.


Tara Dawn Shurling
Attorney for Applicant

SWORN TO BEFORE ME this 25th day of
April, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/28/2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-01921

Daydrian J. Rouse, # 342518,

Applicant,

v.

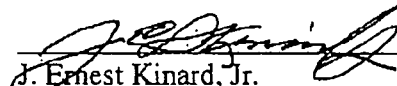
State of South Carolina,

Respondent.

ORDER

RICHLAND COUNTY
FILED
2013 MAY 21 AM 11:34
JEANETTE W. McBRIDE
C.C.P. & G.S.

On March 25, 2013 the Applicant's attorney executed and forwarded a Motion to Alter or Amend the Order of Dismissal filed around 4/11/13. The Order of Dismissal was 22 pages in length and addressed in detail the reasons for denial and, I feel, adequately addressed the allegations raised by the Applicant and addressed by Applicant's proposed Order under Section A as allegations 1, 2, 8, 15, 17, 18, and 19. In any event I have reread the Order I executed and all documents presented and have considered all allegations raised in the 59(e) Motion. While the Applicant would like for me to discuss with greater specificity each of his allegations, I decline to alter or amend the Order of Dismissal I executed. Accordingly, Applicant's Motion to Alter or Amend is **DENIED**.


J. Ernest Kinard, Jr.
Presiding Judge for the Fifth
Judicial Circuit

Beaufort, SC
May 8, 2013

ROUSE Daydrian J., #342518 – Order Denying Applicant's Motion to Alter or Amend
Judgment (2011-CP-40-01921)

SCANNED

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
J. Ernest Kinard, Jr., Presiding Judge

RECEIVED

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S.C. Supreme Court

2011-CP-40-1921

DAYDRIAN J. ROUSE, #342518

Applicant,

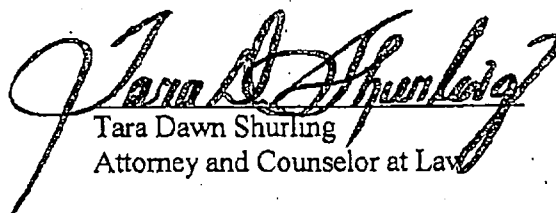
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief filed April 11, 2013, and the Order Denying the Applicant's Motion to Alter or Amend pursuant to Rule 59(e) SCRCP which was filed with the Richland County Clerk of Court on May 21, 2013.


Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 4th day of June, 2013.

Other Counsel of Record:
Megan Harrigan, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3319

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
J. Ernest Kinard, Jr., Presiding Judge

2011-CP-40-1921

DAYDRIAN J. ROUSE, #342518

Applicant,

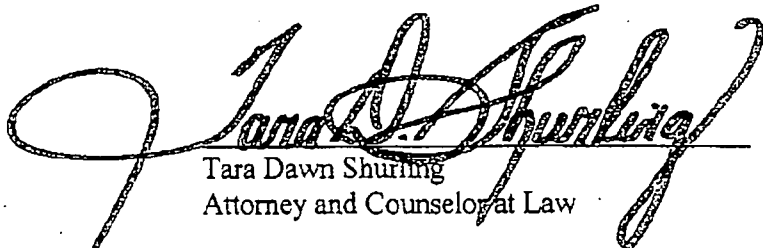
v.

THE STATE OF SOUTH CAROLINA,

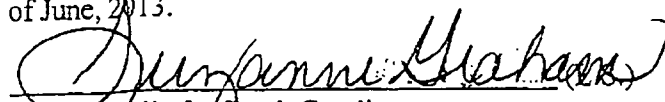
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Meagan Harrigan, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 4th day of June, 2013.


Tara Dawn Shuring
Attorney and Counselor at Law

SWORN TO BEFORE me this 4th day
of June, 2013.


Notary Public for South Carolina
My Commission Expires: 2/28/2023