

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Horry County

S.C. Supreme Court

J. Cordell Maddox, Jr., Circuit Court Judge

BRANDON S. MCDEVITT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002468

APPENDIX

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APPEARANCES

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..... On Behalf of the State

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INDEX OF TESTIMONY

PAGE

No witnesses testified during this hearing.

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NO EXHIBITS WERE MARKED BY THE COURT REPORTER

1 THE COURT:

2 All right.

3 (WHEREUPON: The defendant enters  
4 the courtroom and is sworn in open court by the Clerk at  
5 2:57 PM, June 9th, 2010.)

6 THE COURT:

7 All right. Ms. -- uh -- Tilley,  
8 if you would, call the case.

9 MS. TILLEY:

10 Yes, Your Honor.

11 This is State versus Brandon  
12 McDevitt.

13 He is pleading to a true billed  
14 indictment for burglary first-degree, Indictment 2009-GS-26-  
15 1247.

16 Also to leaving the scene of an  
17 accident -- uh -- with death, Indictment 2009-GS-26-1274.  
18 That is a true billed indictment as well.

19 Also to leaving the scene of an  
20 accident with great bodily injury; a true billed indictment,  
21 2009-GS-26-1275.

22 Leaving the scene with death --  
23 great -- excuse me, Your Honor -- Leaving the scene with  
24 great bodily injury, true billed indictment, 2009-GS-26-  
25 1276.



1 negotiation.

2 He is to be given credit for 647  
3 days.

4 THE COURT:

5 Yes.

6 All right, Mr. -- uh -- Monckton.

7 Have you explained to Mr. McDevitt  
8 the nature of a negotiated sentence?

9 MR. MONCKTON:

10 Yes, sir, Your Honor.

11 He completely understands that Your  
12 Honor can either accept or reject; it cannot be changed.

13 THE COURT:

14 All right.

15 And, that if I accept the plea,  
16 does he understand that I will give him a sentence of 22  
17 years?

18 MR. MONCKTON:

19 He understands that, Your Honor.

20 THE COURT:

21 Is that correct, Mr. McDevitt?

22 DEFENDANT MCDEVITT:

23 Yes sir.

24 THE COURT:

25 All right,

1 Mr. Monckton, have you had an opportunity to review all of  
2 these indictments that are before me with your client?

3 MR. MONCKTON:

4 I have, Your Honor.

5 THE COURT:

6 Does he understand the nature of  
7 each and every offense?

8 MR. MONCKTON:

9 He does, Your Honor.

10 THE COURT:

11 Does he understand the potential  
12 penalties that he was exposed to on each and every one of  
13 these defense -- uh -- indictments?

14 MR. MONCKTON:

15 He does, Your Honor.

16 THE COURT:

17 Have you had an opportunity to  
18 review the discovery materials in this case?

19 MR. MONCKTON:

20 Yes, sir, Your Honor.

21 THE COURT:

22 Based on your review of the  
23 discovery materials, do you have an opinion as to whether or  
24 not the State could prove each and every indictment -- uh --  
25 to a -- or convince a jury -- uh -- of his guilt on each and

1 every indictment beyond a reasonable doubt?

2 MR. MONCKTON:

3 They could, Your Honor.

4 THE COURT:

5 All right.

6 And Mr. -- uh -- Monckton, have you  
7 explained to him his constitutional rights as well as any  
8 possible defenses that might be available?

9 MR. MONCKTON:

10 I have, Your Honor.

11 THE COURT:

12 Do you concur with his decision to  
13 enter a plea of guilty to each of these indictments?

14 MR. MONCKTON:

15 I do, Your Honor.

16 THE COURT:

17 All right.

18 Mr. McDevitt, a see here that you  
19 are 23 years of age?

20 Are you 23 at this time?

21 DEFENDANT MCDEVITT:

22 Yes sir.

23 THE COURT:

24 All right.

25 And Mr. McDevitt, the sentencing

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1 sheet -- uh -- indicates that you are from Myrtle Beach?

2 Is that correct?

3 DEFENDANT MCDEVITT:

4 Yes sir.

5 THE COURT:

6 And Mr. McDevitt, how long have you  
7 lived here in Horry County?

8 DEFENDANT MCDEVITT:

9 For about 11 years.

10 THE COURT:

11 Where you from originally, Mr.

12 McDevitt?

13 DEFENDANT MCDEVITT:

14 Uh -- California.

15 THE COURT:

16 California?

17 And Mr. McDevitt, -- uh -- how far  
18 did you go in school?

19 DEFENDANT MCDEVITT:

20 11th grade.

21 THE COURT:

22 Have you been working?

23 DEFENDANT MCDEVITT:

24 Yes sir.

25 THE COURT:

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1 What sort of work do you do?

2 DEFENDANT MCDEVITT:

3 Landscaping.

4 THE COURT:

5 Mr. McDevitt, are you married?

6 DEFENDANT MCDEVITT:

7 No sir.

8 THE COURT:

9 Do you have any children of your  
10 own?

11 DEFENDANT MCDEVITT:

12 No sir.

13 THE COURT:

14 Have you ever been treated for any  
15 mental health issues, Mr. McDevitt?

16 DEFENDANT MCDEVITT:

17 No sir.

18 THE COURT:

19 Have you ever been treated for any  
20 addictions; alcohol, drugs, or anything like that?

21 DEFENDANT MCDEVITT:

22 No sir.

23 THE COURT:

24 Mr. McDevitt, have you had any  
25 drugs or alcohol in the last 24 hours?

1 DEFENDANT MCDEVITT:

2 No sir.

3 THE COURT:

4 Mr. McDevitt, is there anything  
5 going on in your life that would prevent you from  
6 understanding completely and fully what we are doing here  
7 today?

8 DEFENDANT MCDEVITT:

9 No sir.

10 THE COURT:

11 All right. Mr. -- uh -- Monckton,  
12 do you have any doubt as to your client's competency to  
13 enter this plea?

14 MR. MONCKTON:

15 No doubt whatsoever, Your Honor.

16 THE COURT:

17 All right.

18 Mr. McDevitt -- uh -- if you would  
19 -- uh -- I have before me several indictments.

20 I have an indictment that alleges  
21 that:

22 On August the 30th of 2008, that  
23 you did enter the dwelling of one Randal Baylock on Folly  
24 Road in Myrtle Beach without consent with the intent to  
25 commit a crime therein; and that -- uh -- while entering --

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1 uh -- the dwelling -- uh -- or the entering -- uh --  
2 occurred during the night time.

3 Uh -- Are you familiar with that  
4 event -- uh -- Mr. McDevitt?

5 DEFENDANT MCDEVITT:

6 Yes sir.

7 THE COURT:

8 Mr. McDevitt, I also have an  
9 indictment that alleges on that same day that you were  
10 operating a motor vehicle -- a motor -- excuse me -- a  
11 vessel -- that was involved in an accident resulting in  
12 death -- uh -- and that you did leave the scene of the  
13 accident without first rendering aid and/or giving the  
14 information required by the statute?

15 Are you familiar with that  
16 indictment?

17 DEFENDANT MCDEVITT:

18 Yes sir.

19 THE COURT:

20 And I have three other indictments  
21 which allege that on that same date you were operating a  
22 motor -- uh -- a -- a vessel that was involved in an  
23 accident -- uh -- resulting in great bodily injury and that  
24 you did leave the scene of the accident without first  
25 rendering aid or information as required by the statute.



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1 I want to make sure that you  
2 understand what indictments we're going forward on.

3 Are you clear on that, Mr.  
4 McDevitt?

5 DEFENDANT MCDEVITT:

6 Yes sir.

7 THE COURT:

8 All right.

9 Ms. -- uh -- Tilley, if you would  
10 -- uh -- give me the facts for this record.

11 MS. TILLEY:

12 During the nighttime hours of  
13 August the 30th of 2008, the defendant and codefendant,  
14 Nicholas Macklin, entered the residence of Road,  
15 here in Horry County.

16 They parked their boat at the dock  
17 of this residence, and then, entered the house by breaking a  
18 door.

19 Once inside, they removed a flat  
20 screen TV.

21 The young girl, who lived there  
22 with her parents, came home and saw these men running from  
23 the house and jumping into the docked boat.

24 A witness across the Waterway  
25 observed the break-in and called 911 and approximately 8

1 o'clock PM.

2 Both witnesses state that the  
3 defendant and codefendant took off at a high rate of speed  
4 with no lights.

5 When fleeing from the residence,  
6 there boat collided with another boat located at the 544  
7 swing bridge.

8 That boat hit and killed a 13-year-  
9 old boy.

10 The great-uncle, great aunt, and  
11 the grandmother of the child also received life-threatening  
12 injuries requiring them to be airlifted to MUSC, and still  
13 suffer from some of these injuries to this day.

14 THE COURT:

15 All right.

16 Mr. McDevitt, is that what  
17 occurred?

18 DEFENDANT MCDEVITT:

19 Yes sir.

20 THE COURT:

21 And is that why you are pleading  
22 guilty to the offense of burglary in the first degree,  
23 leaving the scene of an accident resulting in death, and  
24 three counts of leaving the scene of an accident with great  
25 bodily injury?

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1 Is that correct, sir?

2 DEFENDANT MCDEVITT:

3 Yes sir.

4 THE COURT:

5 Now Mr. McDevitt, I want you to  
6 understand that:

7 You do not have to plead guilty.  
8 You have an absolute right to a  
9 jury trial.

10 Has Mr. Monckton explained that to  
11 you?

12 DEFENDANT MCDEVITT:

13 Yes sir.

14 THE COURT:

15 Are you aware of the fact that:  
16 If you plead guilty, you waive, not  
17 only your general right to a jury trial, but you waive many,  
18 many, other rights that are associated with a jury trial.

19 There is -- These rights are so  
20 numerous that we could spend a month talking about them.

21 But some of those that, in my  
22 opinion, that are more important, and some of those that I  
23 think -- uh -- or I want to give you by way of illustration  
24 only, are:

25 Your right to remain silent during

1 a trial.

2 That is, you would not be compelled  
3 to testify if you were to opt for a jury trial.

4 If you chose to remain silent, I  
5 would tell the jury they could not use that against you.

6 You have the right, of course, to  
7 be represented by Mr. Monckton throughout the trial.

8 Mr. Monckton can challenge all the  
9 evidence that the State has against you, and can up evidence  
10 or testimony that might be helpful to you, regardless of  
11 whether you decided to testify yourself.

12 Do you understand that?

13 DEFENDANT MCDEVITT:

14 Yes sir.

15 THE COURT:

16 Do you also understand that:

17 In a jury trial, the State would be  
18 required to prove your guilt beyond a reasonable doubt to  
19 each and every one of the jurors?

20 Do you understand that?

21 DEFENDANT MCDEVITT:

22 Yes sir.

23 THE COURT:

24 Now, Mr. McDevitt, as I told you,  
25 these are just a few of the many rights that are associated

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1 with a jury trial.

2 But do you understand that:

3 If you waive your right to a jury  
4 trial, you're giving up these rights and many, many, others?

5 DEFENDANT MCDEVITT:

6 Yes sir.

7 THE COURT:

8 Knowing that, do you still wish to  
9 plead guilty to these charges?

10 DEFENDANT MCDEVITT:

11 Yes sir.

12 THE COURT:

13 Now, Mr. McDevitt, I am informed  
14 that this is a negotiated plea.

15 Uh -- In -- uh -- a negotiated plea  
16 situation, the trial judge has two options:

17 Either to refuse to accept the  
18 plea, that is reject the plea; or to

19 Accept the plea and impose the  
20 sentence negotiated.

21 Do you understand that?

22 DEFENDANT MCDEVITT:

23 Yes sir.

24 THE COURT:

25 Do you understand that:



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Has he done everything that you

would hope --

DEFENDANT MCDEVITT:

Yes sir.

THE COURT:

-- that he would do for you?

DEFENDANT MCDEVITT:

Yes sir.

THE COURT:

Uh -- I want to know if Mr.

Monckton has provided you with all the information that you

think you need to make an intelligent decision as to what

you should do with these charges?

DEFENDANT MCDEVITT:

Yes sir.

THE COURT:

Is there anything else you would

like to ask Mr. Monckton?

DEFENDANT MCDEVITT:

No sir.

THE COURT:

Is there anything you would like to

ask me?

I cannot give you legal advice.

But I can explain these proceedings and the procedure we're

1 following here.

2 Do you have any questions for me?

3 DEFENDANT MCDEVITT:

4 No sir.

5 THE COURT:

6 All right.

7 Mr. -- uh -- McDevitt, has anyone  
8 promised you anything in order to encourage you to plead  
9 guilty, other than what Ms. Tilley has told me?

10 Ms. Tilley tells me that there is a  
11 murder indictment which is going to be dismissed; and that  
12 there is a conspiracy charge which is also being dismissed;  
13 and the State has entered into a negotiated sentence --  
14 cumulative negotiated sentence of 22 years.

15 Have you been promised anything  
16 other than that?

17 DEFENDANT MCDEVITT:

18 No sir.

19 THE COURT:

20 Is that correct, Mr. Monckton?

21 MR. MONCKTON:

22 That's correct, Your Honor.

23 THE COURT:

24 All right.

25 Mr. McDevitt, has anyone threatened

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1 you, intimidated you, tried to force you or coerce you into  
2 pleading guilty?

3 DEFENDANT MCDEVITT:

4 No sir.

5 THE COURT:

6 Are you pleading freely and  
7 voluntarily?

8 DEFENDANT MCDEVITT:

9 Yes sir.

10 THE COURT:

11 Do you understand the significance  
12 of that question that I've asked you?

13 Do you understand that I have to  
14 make a determination that you are pleading freely and  
15 voluntarily?

16 DEFENDANT MCDEVITT:

17 Yes sir.

18 THE COURT:

19 I ask you again:  
20 Are you pleading freely and  
21 voluntarily?

22 DEFENDANT MCDEVITT:

23 Yes sir.

24 THE COURT:

25 Do you believe that this is in your

1 best interest?

2 DEFENDANT MCDEVITT:

3 Yes sir.

4 THE COURT:

5 Have you had all the time you need  
6 to think about this plea?

7 DEFENDANT MCDEVITT:

8 Yes sir.

9 THE COURT:

10 Okay.

11 Do you need any more time with your  
12 attorney?

13 DEFENDANT MCDEVITT:

14 No sir.

15 THE COURT:

16 Okay.

17 Now, Mr. McDevitt, I want you to  
18 understand that:

19 Even though this is a guilty plea,  
20 you still have a right of appeal.

21 Uh -- However, you're right of app  
22 -- appeal is limited to any appeal that you would file in  
23 the next 10 days.

24 If you do not file an appeal within  
25 the next 10 days, you lose your right to appeal.

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1 The way you file your appeal is:  
2 You record what is called a Notice  
3 of Intent to Appeal.

4 I'm sure you don't know where or  
5 how to do that, but Let me tell you that Mr. Monckton would  
6 know where to do it and he would know how to do it.

7 Is that correct, Mr. Monckton?

8 MR. MONCKTON:

9 That's correct, Your Honor.

10 THE COURT:

11 Okay.

12 MR. MONCKTON:

13 And I'll explain that to him in  
14 detail after these proceedings.

15 THE COURT:

16 Very well. Okay.

17 I find that the -- uh -- uh -- plea  
18 is based on a substantial, factual -- uh -- basis, and that  
19 it was made freely, voluntarily, knowingly, and  
20 intelligently, after the advice of a very competent attorney  
21 with whom he says he is satisfied.

22 And I will accept the plea, and the  
23 negotiations.

24 Ms. Tilley, I'll hear from the  
25 State.

1 MS. TILLEY:

2 Yes, Your Honor.

3 In regards to his prior record:

4 In 2007, he has a burglary second.

5 Also in 2007, a grand larceny; and

6 his probation was revoked on 11/12 of 2008.

7 The victims are present in The

8 Courtroom and would like to address The Court.

9 THE COURT:

10 Very well. I'll hear from the

11 victims.

12 MS. MORRIS:

13 Hello, sir.

14 THE COURT:

15 Yes ma'am. I believe you are Ms.

16 Gordon. Is that correct?

17 MS. MORRIS:

18 Elizabeth Morris.

19 THE COURT:

20 Ms. Morris. I'm sorry.

21 MS. MORRIS:

22 I'm ~~with~~'s grandmother. I was a

23 victim.

24 Brandon, this is the first time

25 I've gotten to meet you.

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1 I know you know all we went  
2 through.

3 I'm sorry that your life has ended  
4 up this way.

5 But my grandson is gone.

6 And I would like you to look and  
7 take a picture of (CHILD)

8 This is what boy that you killed.

9 You don't want to look?

10 This is (CHILD)

11 This is my sister Roxie. Looks  
12 like half her face is gone.

13 There was a lot of damage done to  
14 all of us that day.

15 I'm sorry you have to do 20 years  
16 -- 22 years.

17 But, I mean, you ruined your own  
18 life.

19 You've caused a lot of damage and  
20 heartache to our lives.

21 My daughter has lost her son.

22 Her sons have lost their brothers  
23 -- their brother.

24 I hope you learned from this. And

25 I hope you turn to God and ask for repentance -- true

1 repentance for what you've done; not for your own self, but  
2 for the crime that you committed.

3                                 Otherwise, it's going to be  
4 useless.

5                                 And you should be sorry so -- for  
6 the pain and heartache that you've caused.

7                                 I hope the Holy Spirit and presence  
8 sit on you.

9                                 Thank you.

10 THE COURT:

11                                 Yes ma'am.

12 MS. TILLEY:

13                                 One moment, Your Honor.

14                                 Your Honor, I believe that's -- uh  
15 -- the preservation (sic) of the victim's statements.

16 THE COURT:

17                                 All right.

18                                 And I will consider the remarks  
19 made in the last -- uh -- the -- the plea of the  
20 codependent.

21                                 All right.

22                                 Mr. Monckton?

23 MR. MONCKTON:

24                                 Yes, sir, Your Honor.

25 THE COURT:

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Let me hear from you.

MR. MONCKTON:

May it please The Court?

I'd like to have his mama address

The Court first.

THE COURT:

Certainly.

Yes ma'am?

MS. ANDERSON:

Yes. My name Monet Anderson, and

I'm Brandon McDevitt's mother.

First of all, I want to start by

telling you I'm sorry for your loss. (Begins weeping too  
profusely to understand.)

COURT REPORTER:

I'm sorry, Your Honor, I can't pick

her up.

THE COURT:

I'm sorry, ma'am --

COURT REPORTER:

I'm sorry, ma'am. I can't pick you

up.

THE COURT:

-- we have to place the --

MS. ANDERSON:

1 I understand.

2 I'm just apologizing to the family  
3 and saying that we pray for them every day.

4 I just want you to know that my son  
5 is very remorseful for what has happened, and that he's not  
6 a bad person either.

7 I -- And I thank Your Honor for  
8 accepting the plea; and that I can assure you that he has  
9 already started to turn his life around.

10 Thank you.

11 THE COURT:

12 Thank you.

13 MR. MONCKTON:

14 Your Honor, may it please The  
15 Court?

16 I got involved in this case of  
17 April 2009 -- uh -- sometime after the event occurred in  
18 August of 2008.

19 Your Honor, at that time, my  
20 initial meeting with my client, he has been extremely  
21 remorseful.

22 Uh -- To give a little bit more  
23 background of what has occurred since my involvement -- uh  
24 -- he gave a complete statement to the Solicitor's Office --  
25 uh -- implicating himself and Mr. Macklin without any

1 benefit of a deal from the State.

2 Uh -- It was completely -- uh -- to  
3 get it all out.

4 He was actually -- Mr. Macklin was  
5 scheduled to go to trial this week. And Mr. McDevitt was  
6 scheduled to be a witness -- or a possible witness -- my  
7 understanding from the State. And he was willing to testify  
8 with regards to his statement.

9 I think that's why you see somewhat  
10 of a reduction here.

11 He has -- you know -- given the  
12 information with risk to himself.

13 Uh -- As Your Honor is aware,  
14 they've had to keep Mr. Macklin separated from Mr. McDevitt.

15 That's due to numerous threats he  
16 and his family have received -- uh -- based upon his  
17 willingness to cooperate, and actually cooperating with the  
18 State and implicating himself.

19 Uh -- His Statement, Your Honor, I  
20 was present when he gave it -- uh -- was not one you would  
21 normally see where a defendant is trying to pretend that he  
22 wasn't involved.

23 I mean, he completely implicated  
24 himself. Was completely truthful in his statement.

25 I know whatever I say on his behalf

1 in no way shape or form can bring back what y'all have gone  
2 through.

3 Uh -- But I know he has started  
4 making the steps to try to do right thing in this case.

5 Uh -- Shortly after my involvement,  
6 we started down that road, and it has completed today.

7 We know Your Honor has to sentence  
8 him, if you accept the negotiation of 22 years.

9 I would have sent you accept the  
10 negotiation.

11 This has been a traumatic event on  
12 everybody.

13 Brandon understands what his  
14 involvement was, and that he was wrong, and he has to be  
15 punished.

16 I've explained to him, along with  
17 his family, that -- you know -- it's up to him now to make  
18 the best of a horrible, horrible, tragic situation, and we  
19 hope that Brandon does what he needs to do to come back out  
20 a better human being, and not make the mistakes he's made in  
21 the past.

22 Your Honor, I know that he would  
23 like to address The Court.

24 In closing, I just ask that you  
25 accept the negotiation here today.

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1 THE COURT:

2 Very well.

3 Mr. McDevitt?

4 DEFENDANT MCDEVITT:

5 Uh -- Uh -- First off, I want to  
6 say that -- uh -- that I'm sorry.

7 Uh -- And I know there ain't  
8 nothing I can do right now at this point to bring Shane  
9 back.

10 But -- uh -- But I just want to say  
11 that I'm very sorry.

12 And I do pray for y'all every  
13 night.

14 And -- uh -- I'm very -- I'm just  
15 very sorry.

16 I mean, there's nothing that can --  
17 that I can say right now -- you know -- that -- that would  
18 bring him back.

19 I'm just very sorry.

20 And I -- I never meant for this  
21 type. I never would've meant for it to happened.

22 But I just want to thank The Court  
23 for everything -- you know.

24 Thank you.

25 THE COURT:

1 You're welcome.

2 MR. MONCKTON:

3 Thank Your Honor.

4 THE COURT:

5 Anything further from the State?

6 MS. TILLEY:

7 No, Your Honor.

8 THE COURT:

9 All right.

10 Mr. McDevitt, I had your

11 codefendant before me just -- uh -- a moment ago.

12 I am, and have been made, aware of  
13 your cooperation in this matter. And that is reflected in  
14 the negotiations -- uh -- between -- uh -- your attorney --  
15 uh -- and -- and the State.

16 That's the reason at the end of  
17 your plea, I have not only accepted your plea, but I agreed  
18 to follow the negotiations.

19 I was aware of your participation  
20 in this matter.

21 You're a young man.

22 Uh -- And you're looking at a very  
23 substantial -- uh -- prison sentence.

24 Let -- Let me say that:

25 I see -- uh -- young people who --

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1 uh -- are going to prison that come through this court on a  
2 regular basis.

3 I also practiced law for 32 years  
4 with your attorney Mr. -- Mr. Monckton and I -- uh -- not a  
5 partner but a colleague of his.

6 I enjoyed practicing with him.

7 He's an excellent attorney.

8 He's done a good job for you.

9 One of the things that he will tell  
10 you, and that --- one of the things that I learned is that:

11 When you go to prison, there are  
12 pretty much two options available to you.

13 Uh -- You can take advantage of the  
14 programs and the opportunities that are made available to  
15 you while you are there. And you can come out a better  
16 person than when you went in.

17 Uh -- You can come out a youthful  
18 -- I mean, a useful -- and productive citizen.

19 On the other hand -- and many do  
20 this -- you can come out with all the tools you need to be a  
21 career criminal.

22 Uh -- And I hope that that will not  
23 be your case.

24 You tell me that you -- uh -- have  
25 begun to turn their life around -- I certainly hope so --

1 and that you will be a productive person when you are --are  
2 released.

3 The sentence of This Court:

4 As to the three charges of -- uh --  
5 leaving the scene of an accident involving a vessel -- uh --  
6 and great bodily injury is:

7 That you be confined to the State  
8 Department of Corrections for a period of 10 years on each  
9 of those sentences -- each of those charges.

10 As to the leaving the scene -- uh  
11 -- of an accident involving a -- a death -- uh -- while  
12 using a -- a vessel, -- uh -- the sentence of The Court is:

13 That you be confined to the State  
14 Department of Corrections for a period of 22 years.

15 As to burglary in the first degree,  
16 the sentence of The Court is:

17 That you be confined to the State  
18 Department of corrections for a period of 22 years.

19 Of course, you're given credit for  
20 the time you have served. And these sentences are  
21 concurrent.

22 Thank you sir.

23 MR. MONCKTON:

24 Thank Your Honor.

25 MS. TILLEY:

STATE v BRANDON MCDEVITT, GUILTY PLEA OF JUNE 9, 2010 37

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Thank you.

THE COURT:

All right.

Thank you, Ms. Tilley.

Thank you, Mr. Monckton.

WHEREUPON: There being nothing further regarding this Defendant, this proceeding ended at 3:31 PM, June 9th, 2010.

## CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR, Official Court Reporter at Large in and for The State of South Carolina, do hereby certify that the foregoing proceedings were taken on the 9th day of June, 2010.

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 5th day of April, 2011.

*H. Eugene Buckner*

---

H. EUGENE BUCKNER, CVR  
OFFICIAL COURT REPORTER AT LARGE  
15TH JUDICIAL DISTRICT  
STATE OF SOUTH CAROLINA

HORRY COUNTY

2011 FEB 15 PM 2:37

MELANIE HUGGINS-WARD  
CLERK OF COURT

STATE OF SOUTH CAROLINA

County of HORRY

BRANDON MCDEVITT 331683

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

vs.

STATE OF SOUTH CAROLINA

*Name of Respondent.*

In the Court of Common Pleas

2011-1434

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

1. Place of detention MCCORMICK CORRECTIONAL
2. Name and location of Court which imposed sentence 22 years no parole  
Horry County General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) Leaving scene of accident with death
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) August 31, 2008 22 years hit and run boat death. No parole
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

5. Check whether a finding of guilty was made

- (a) after a plea of guilty xxx
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

6. Did you appeal from the judgment of conviction or the imposition of sentence?

no

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) My Attorney did not tell me I could appeal
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective assistance of counsel
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? no
- (d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

\_\_\_\_\_

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

15. If any ground set forth in (9) 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) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Paul Taylor, William Monckton
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

Vacate sentence

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

no

2011-1434

STATE OF SOUTH CAROLINA

VERIFICATION

County of Harry

I, Brandon Mcdevitt

, 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.

X Brandon Mcdevitt

SWORN to and subscribed before me this 07 day of February, 2011

J C Franklin (L.S.)  
Notary Public

My Commission Expires: 12-16-2019

2011 FEB 15 PM 2:31  
MELANIE HUGGINS-WARD  
CLERK OF COURT  
HARRIS COUNTY

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

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

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

Brandon McDevitt  
Applicant

SWORN or affirmed to and subscribed before me this 07 day of February, 2011

J C Franklin  
Notary Public

My Commission Expires 12-16-2019

STATE OF SOUTH CAROLINA )  
 COUNTY OF HORRY )  
 )  
 Brandon McDevitt, # 331683, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT

2011-CP-26-1434

**RETURN**

Respondent, making its Return to the Application for post-conviction relief filed February 15, 2011, by Brandon McDevitt, would respectfully show this Court:

**I. – Procedural History**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Horry County. The Applicant was indicted in March 2009 for leaving the scene of a watercraft accident, death resulting (2009-GS-26-1274) and three counts of leaving the scene of a watercraft accident, great bodily injury resulting (2009-GS-26-1275; -1276; -1277). He was also indicted in March 2009 for burglary in the first degree (2009-GS-26-1247).<sup>1</sup> On June 9, 2010, the Applicant pled guilty before the Honorable Larry B. Hyman, Jr., pursuant to a negotiation with the State for a 22-year sentence. William H. Monckton, VI, Esquire, represented the Applicant at the plea. Judge Hyman accepted the negotiation and sentenced the Applicant to 22 years for leaving the scene of a watercraft accident, death resulting, 22 years for burglary in the first degree, and 10 years for each count of leaving the scene of a watercraft accident, great bodily injury resulting. The sentences were all to run concurrently. An indictment for murder (2009-GS-26-1246) was dismissed pursuant to the plea, along with a charge of criminal conspiracy (J-320948). No direct appeal was filed.

<sup>1</sup> The PCR Application lists only the convictions regarding the watercraft accident. (See PCR Application, page 1).

Incorporated herein by reference are the records of the Horry County Clerk of Court regarding the convictions and the Applicant's records from the Department of Corrections. The guilty plea transcript will be forwarded upon receipt from the court reporter. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II. – Allegations and Relief Sought

In his Application, Mr. McDevitt alleges that his custody is unlawful for the following reasons:

- (1) Ineffective assistance of counsel.

The Applicant states he is seeking to have his sentence vacated.

## III.

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where an application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). However, a guilty plea is a solemn, judicial admission of the truth of the charges against a defendant. Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, statements made during the plea will be considered conclusive unless the defendant presents persuasive reasons why he should be

allowed to depart from the truth of those statements. See Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record will fully support that the Applicant did not receive ineffective assistance of counsel, and that his guilty plea was freely and voluntarily given. However, because the allegation may raise questions of fact that the record does not conclusively refute, the Respondent requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation, claim, or statement contained within the Application not expressly admitted, qualified, or explained is DENIED.

V.

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

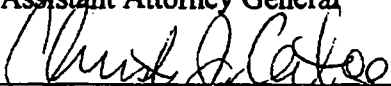
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

CHRISTINA J. CATOE  
Assistant Attorney General

  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

March 23, 2011

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Brandon McDevitt, # 331683,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

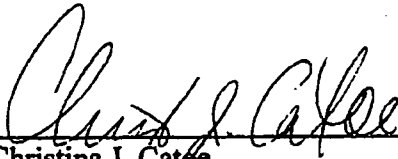
2011-CP-26-1434

**CERTIFICATE OF SERVICE BY MAIL**

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

**Paul Archer, Esquire  
233 Muirfield Drive  
Pawleys Island, SC 29585**

DATED this 23<sup>rd</sup> day of March, 2011.

  
 \_\_\_\_\_  
 Christina J. Catee  
 Office of the Attorney General  
 Post Office Box 11549  
 Columbia, South Carolina 29211  
 (803) 734-3737

STATE OF SOUTH CAROLINA )  
 COUNTY OF HORRY )

COURT OF COMMON PLEAS

BRANDON MCDEVITT )  
 331683 )  
 PETITIONER, )

v. )

TRANSCRIPT OF RECORD  
 11-CP-26-1434

STATE OF SOUTH CAROLINA, )  
RESPONDENT.)

August 28, 2013  
 Conway, South Carolina

**BEFORE :**

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

**APPEARANCES:**

L. MORGAN MARTIN, ESQ.  
 Attorney for the Petitioner

JOSH THOMAS, ESQ.  
 Attorney for Respondent

FRANCES BAKIS-RAY, RPR  
 Circuit Court Reporter

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(There were no exhibits submitted.)

1           MR. THOMAS: This is Brandon McDevitt  
2 versus the State of South Carolina, case number  
3 2011-CP-26-1434. Mr. McDevitt was indicted  
4 March 2009 for burglary first degree, three counts  
5 of operating a water craft and leaving the scene of  
6 an accident, great bodily injury resulting, and one  
7 count of leaving the scene of an accident with  
8 operating a motor craft leaving the scene of an  
9 accident, death resulting, and one count of murder.  
10 He pled on June 9th, 2010 to a negotiated sentence  
11 to burglary first, three counts of leaving the scene  
12 with great bodily injury and one count of leaving  
13 the scene with death. The Honorable Larry B. Hyman,  
14 Jr. sentenced him to 22 years for the burglary, 22  
15 years concurrent for the leaving the scene death  
16 resulting and ten years concurrent on each count of  
17 leaving the scene with great bodily injury  
18 resulting. He did not file an appeal from that  
19 sentence. He filed this PCR on February 15th, 2011,  
20 basically alleging ineffective assistance of  
21 counsel. He's represented by Morgan Martin, and  
22 he's present in court today and the State's ready to  
23 proceed.

24           THE COURT: Okay. Y'all ready?

25           MR. MARTIN: We're ready, Judge.

1 THE COURT: Okay. You can call your first  
2 witness.

3 MR. MARTIN: Mr. McDevitt, come around.

4 THE CLERK OF COURT: Place your left hand  
5 on the Bible and raise your right hand.

6 WHEREUPON,

7 **BRANDON MCDEVITT,**  
8 having been duly sworn by the Clerk of Court,  
9 testified as follows:

10 THE CLERK OF COURT: Have a seat. State  
11 your name for the Court.

12 THE WITNESS: Brandon McDevitt.

13 **DIRECT EXAMINATION**

14 BY MR. MARTIN:

15 Q Mr. McDevitt, do you remember pleading guilty in  
16 court?

17 A Yes, sir.

18 Q Do you remember what you pled guilty to?

19 A Yes, sir.

20 Q And who was your attorney?

21 A Billy Monckton.

22 Q And you pled guilty to burglary and three counts  
23 of leaving the scene of an accident involved with  
24 injury and one count of leaving the scene of an  
25 accident involving death of the operator of the

1 vehicle?

2 A Yes, sir.

3 Q Is that correct?

4 A Yes, sir.

5 Q Were you the operator of that vehicle?

6 A No, sir.

7 Q Had you told Mr. Monckton you were not the  
8 operator of the vehicle?

9 A Yes, sir.

10 Q Did you pass a polygraph that you were not the  
11 operator of the vehicle?

12 A Yes, sir.

13 Q All right. Do you understand that you were  
14 indicted as a principal operator of the vehicle,  
15 that being a boat, that caused the injuries and the  
16 death?

17 A Yes, sir.

18 Q Did you ever have any conversation with  
19 Mr. Monckton about the different elements of proof  
20 it would take to convict you as being accomplice as  
21 opposed to the operator of the boat?

22 A As far as the indictment it said?

23 Q Yes.

24 A No, sir.

25 Q Did you have any conversation or did you receive

1 any information from Mr. Monckton about the elements  
2 of proof the State would have to meet —

3 A No, sir.

4 Q Let me finish the question.

5 A Yes, sir.

6 Q The State would have to prove to convict you  
7 under accomplice liability or being present aiding,  
8 abetting in the driving of that boat?

9 A No, sir.

10 Q If you had understood that there were possible  
11 defenses to the charge of operating the boat,  
12 leaving the scene with death or injury, would you  
13 have pled guilty?

14 A No, sir.

15 Q Now you pled guilty to burglary and these other  
16 offenses with a negotiated deal, and why did you  
17 enter that plea then, Mr. McDevitt?

18 A As far as my understanding on the indictment that  
19 I had talked with Mr. Monckton, I didn't know the  
20 grounds of fighting the indictment for actually  
21 driving the boat. I thought it was for just leaving  
22 the scene of accident. I didn't know that the  
23 grounds for the actual plea as far as driving the  
24 boat.

25 Q You — had it not been explained to you that they

1 would have to establish that you were the operator  
2 and/or present and abetting the operator of that  
3 offense?

4 A No, sir.

5 Q Did he inform you that your mere presence in the  
6 boat was not sufficient to convict you of the crime  
7 and was a possible defense?

8 A No, sir.

9 Q Had you known that that was the case would you  
10 have pled guilty to this offense as you did?

11 A No, sir.

12 Q Did you understand at the time you entered your  
13 plea exactly what you were charged with and the  
14 proof that it would take to convict you of that?

15 A No, sir.

16 Q When you pled guilty before Judge Hyman did you  
17 admit to him at that time that you were the operator  
18 of the boat?

19 A No, sir.

20 Q Did you admit to him in that plea colloquy at  
21 that time or that exchange between you and him that  
22 you were present aiding and abetting the driver of  
23 the boat?

24 A No, sir.

25 MR. MARTIN: That's all the questions I

1 have of Mr. McDevitt.

2 THE COURT: All right.

3 Yes, sir, anything?

4 MR. THOMAS: Beg the Court's indulgence  
5 one second.

6 THE COURT: Sure.

7 **CROSS-EXAMINATION**

8 BY MR. THOMAS:

9 Q Good morning, Mr. McDevitt.

10 A Good morning.

11 Q Just a couple of background questions. How many  
12 times did you meet with Mr. Monckton before your  
13 plea?

14 A Two times.

15 Q And did he go over with you at that time the  
16 State's discovery and evidence they had against you?

17 A Yes, sir.

18 Q And did you — do you recall discussing with him  
19 any type of — what defenses did you discuss that  
20 you would have to your charges?

21 A Basically that I was told that I didn't have a  
22 chance in trial first of all. And then second of  
23 all that, that he had tried to say that they had  
24 enough evidence against me to convict me at trial  
25 and the best thing I could do was to plead. But

1 when I pleaded I was supposed to plead to the  
2 burglary first and leaving the scene of accident,  
3 not as the driver of the boat.

4 Q The State also indicted you for murder; didn't  
5 they?

6 A Yes, sir.

7 Q Did you discuss the murder indictment with your,  
8 with Mr. Monckton?

9 A As far as my understanding I didn't even  
10 understand why they indicted me on murder in the  
11 first degree.

12 Q So he didn't explain to you that the murder  
13 indictment — he didn't explain the murder  
14 indictment to you?

15 A No, sir, I didn't even understand why I got  
16 indicted on first degree murder anyways.

17 Q Ultimately when you decided to plead guilty was  
18 that your decision, or was that Mr. Monckton's?

19 A Well, we discussed it. I mean, but I did it  
20 because he also had told me I had no chance in  
21 trial, and if I did go to trial that I could have  
22 sustained a life sentence.

23 Q But it was your decision to plead guilty; wasn't  
24 it?

25 A I mean, I signed the paper.

1 Q Do you remember when the judge — do you remember  
2 when the Solicitor read the facts to you at the  
3 plea?

4 A In the beginning?

5 Q Yes.

6 A Yeah.

7 Q Do you remember agreeing with the judge that  
8 those were the facts of your case?

9 A I never said that I was driving the boat, no,  
10 sir.

11 Q But you remember agreeing with the judge that you  
12 and the co-defendant broke into that home; don't  
13 you?

14 A Yeah.

15 Q And then you and the co-defendant got in a boat  
16 and sped away; isn't that correct?

17 A No, I didn't tell the judge that.

18 Q And then as the boat was driving away it hit  
19 another boat; isn't that correct?

20 A That wasn't discussed in the -- for me to tell  
21 the judge. I didn't say that to the judge at all.

22 Q But the solicitor said that; didn't he?

23 A I can't recall that.

24 Q Okay. Beg the Court's indulgence one second. Do  
25 you remember the Solicitor saying that both

1 witnesses stated you and your co-defendant took off  
2 in the boat at a high rate of speed with no lights?

3 A Yes, sir.

4 Q Do you remember him saying that while fleeing  
5 from that residence the boat collided with another  
6 boat?

7 A As far as the solicitor tells me is what the  
8 Solicitor said, okay.

9 Q Do you remember that?

10 A Yes, sir.

11 Q Okay. And then do you remember the judge asking  
12 you, Mr. McDevitt, is that what occurred?

13 A Yes, sir.

14 Q And do you remember saying yes, sir to the judge?

15 A Yes, sir.

16 Q Are then you also pled guilty to burglary first,  
17 correct?

18 A Uh-huh.

19 Q Mr. McDevitt [sic] informed you that that charge  
20 carried 15 years to life in prison, right?

21 A You mean Mr. Monckton?

22 Q Mr. Munckton, I'm sorry, you're Mr. McDevitt, I  
23 apologize.

24 A Uh-huh.

25 Q So Mr. Monckton told you that?

1 A That it applied to what sir, 25 to life?

2 Q Fifteen to life?

3 A Yes, sir, he did.

4 Q Okay. And you realize that -- at this point you,  
5 you're saying that you didn't understand that you  
6 were indicted, but you weren't the driver of the  
7 boat; is that correct?

8 A Yes, sir.

9 Q You realize that at this point if your PCR is  
10 granted you have to go back and stand for those  
11 burglary charges?

12 THE COURT: Hold on. Ma'am, I'm sure that  
13 somehow you're related to him. I let it go as long  
14 as I could go. Please don't make anymore signals to  
15 him, motions, hand signals, head signals, anything  
16 else, okay?

17 MS. ANDERSON: Yes, sir.

18 THE COURT: If not, if I see it again I'll  
19 have to remove you, okay?

20 MS. ANDERSON: I understand.

21 THE COURT: All right. Go ahead.

22 MR. THOMAS: Thank you, Your Honor.

23 BY MR. THOMAS:

24 Q Do you remember at your plea hearing, do you  
25 remember telling the judge that you wanted to waive

1 your right to a jury trial?

2 A Yes, sir.

3 Q And that you wanted to waive your right to  
4 challenge the State's evidence against you?

5 A Yes, sir.

6 Q And you wanted to waive your right to confront  
7 the witnesses who testified they saw you and the  
8 co-defendant speeding off in the boat?

9 A Yes, sir.

10 Q Do you recall telling the trial judge that you  
11 were satisfied with your attorney's representation?

12 A Uh-huh, yes, sir.

13 MR. THOMAS: Beg the Court's indulgence.

14 THE COURT: Sure.

15 BY MR. THOMAS:

16 Q Just a few more questions, Mr. McDevitt. You  
17 understand that the murder charge you were indicted  
18 for carries up to a life sentence, correct?

19 A Yes, sir.

20 Q You understand that there's mandatory minimum of  
21 30 years on that?

22 A Yes, sir.

23 Q You understand that the burglary charge is a  
24 mandatory minimum of 15 years?

25 A Yes, sir.

1 Q I think that's all the questions I have. Thank  
2 you.

3 THE COURT: Okay. Anything else?

4 MR. MARTIN: Just briefly in reply.

5 THE COURT: Sure.

6 **REDIRECT EXAMINATION**

7 BY MR. MARTIN:

8 Q The Attorney General asked you about the, what  
9 the solicitor read into the record and what the  
10 judge asked you and what you answered; and that was  
11 Mr. McDevitt, is that what occurred. Did you tell  
12 the judge at that time that you were guilty of  
13 operating the boat or being present aiding and  
14 abetting in the operating of the boat?

15 A No, sir, I did not.

16 Q All right. Would you have waived your right to a  
17 jury trial if you had understood that in order to  
18 convict you of being present aiding and abetting in  
19 the driving of the boat that there were elements in  
20 addition to just being an operator that the State  
21 would have to prove in order to convict you, would  
22 you have waived your right to a trial if  
23 Mr. Monckton had explained that to you?

24 A As far as go to trial?

25 Q Yes.

1 A Yes, sir, I would have.

2 Q You would have gone to trial and you wouldn't  
3 have waived your right to a trial?

4 A Yes, sir, I would have went to trial.

5 Q Were there ever any discussions between you and  
6 your lawyer at any point in time that if you were  
7 not the operator of boat the only way they could  
8 convict you of that crime would be as an accomplice  
9 present aiding and abetting and that mere presence  
10 wasn't sufficient to do that?

11 A No, sir.

12 Q Ever any discussions about that?

13 A No, sir.

14 Q Had you had those discussions and you knew what  
15 you know now would you have entered the guilty plea  
16 that you have?

17 A No, sir.

18 Q Did you fully, voluntarily, and intelligently  
19 know what you were doing when you entered that  
20 guilty plea?

21 A No, sir.

22 MR. MARTIN: That's all I have.

23 THE COURT: Okay. Thank you, sir. You  
24 can step down.

25 MR. THOMAS: May I briefly?

1 THE COURT: Yeah, briefly. Hold on a  
2 second.

3 **RE CROSS - EXAMINATION**

4 BY MR. THOMAS:

5 Q And you understand that if your PCR is granted  
6 and you go back and get another trial you're facing  
7 up to life in prison?

8 A Yes, I do.

9 THE COURT: Okay, anything else?

10 MR. THOMAS: That's all.

11 THE COURT: You can step down.

12 MR. MARTIN: Ms. Anderson.

13 THE CLERK OF COURT: Place your left hand  
14 on the Bible, raise your right hand.

15 WHEREUPON,

16 **ANNETTE ANDERSON,**

17 having been duly sworn by the Clerk of Court,  
18 testified as follows:

19 THE CLERK OF COURT: Have a seat. State  
20 your name for the Court.

21 THE WITNESS: Annette Anderson.

22 **DIRECT EXAMINATION**

23 BY MR. MARTIN:

24 Q Ms. Anderson, you're Brandon's mother?

25 A Yes.

1 Q And did you retain Mr. Monckton to represent him

2 —

3 A Yes, sir.

4 Q —at the time he was charged?

5 A Yes, sir.

6 Q And during that representation did you have an  
7 occasion to talk with Mr. Monckton about your son's  
8 case?

9 A Yes, sir.

10 Q All right. Did Mr. Monckton at any time explain  
11 to you the difference between being the operator of  
12 the boat and a liability as an accomplice to the  
13 offense?

14 A Absolutely not.

15 Q Was there ever any discussion about the fact that  
16 if he wasn't driving the boat that the State would  
17 have to prove that he was present aiding and  
18 abetting and in a meaningful manner and not merely  
19 present?

20 A Never.

21 Q All right. Do you understand that if your son is  
22 granted a PCR that he is looking at the possibility  
23 of a much greater sentence than what he currently  
24 has?

25 A Yes, sir.

1 MR. MARTIN: That's all the questions I  
2 have.

3 THE COURT: All right, yes, sir.

4 MR. THOMAS: I have no questions.

5 THE COURT: You can step down. And I know  
6 you — I don't mean to embarrass you. I know that  
7 —

8 MS. ANDERSON: I know, I apologize, Your  
9 Honor.

10 THE COURT: That's okay.

11 MR. MARTIN: That would be our witnesses,  
12 Your Honor. I think just to be sure I'm clear, that  
13 the transcript, the indictments, and all are part of  
14 the record. If they aren't I'd like to move to  
15 enter them.

16 THE COURT: They're — I've got them. In  
17 fact, I read the transcript.

18 MR. MARTIN: All right. That would be our  
19 showing, Your Honor.

20 THE COURT: Okay. Thank you.

21 MR. THOMAS: Your Honor, the State would  
22 call Mr. William Monckton.

23 THE CLERK OF COURT: Place your left hand  
24 on the Bible, raise your right hand.

25 WHEREUPON,

1                                   **WILLIAM H. MONCKTON, VI,**  
2   having been duly sworn by the Clerk of Court,  
3   testified as follows:

4                   THE CLERK OF COURT: Have a seat. State  
5   your name for the Court.

6                   THE WITNESS: William Henry Monckton, VI.

7                                   **DIRECT EXAMINATION**

8   BY MR. THOMAS:

9   Q Good morning, Mr. Monckton.

10   A Good morning.

11   Q Just a little background information, how long  
12   have you been practicing law?

13   A Since 1992.

14   Q And you were retained in this case?

15   A I was, but I was not the first lawyer on the  
16   case.

17   Q Okay. So did you file the Rule 5 Brady motion or  
18   did the prior attorney?

19   A The prior attorney, and I may have supplemented.  
20   I can't remember.

21   Q And from your review of that discovery material  
22   what was the State's evidence against Mr. McDevitt?

23   A Basically what the case was, was he and a  
24   co-defendant by the name of Brandon McLin had pulled  
25   up on the water way in a speed boat, ski boat, went

1 into a house, broke into the house. They were seen  
2 by a daughter of someone at the home, startled them,  
3 they left. They took a TV, put it in the ski boat.  
4 As they were trying to leave in the ski boat  
5 somebody on the river saw them from across, jumped  
6 in their boat, started chasing them down the river.  
7 Right at the Socastee swing bridge, which is a idle  
8 only zone, they came through there right at dusk  
9 from what I understand wide open and hit a family in  
10 a boat that were loading it on a trailer, killed one  
11 person and severely injured three others.

12 Q And did you discuss the State's version of events  
13 with Mr. McDevitt?

14 A Yes. When I first met Brandon I got involved  
15 after a plea offer. A plea offer had been made to  
16 Brandon through his prior attorney for 20 years.  
17 Brandon declined the plea offer through his prior  
18 attorney. I got involved in the case. At that  
19 time, I think Brandon at that time was serving -- he  
20 was on YOA parole when this occurred. He was being  
21 housed in the Department of Corrections, and I met  
22 for Brandon -- with Brandon the first time at the  
23 Department of Corrections. After meeting with him  
24 he basically had explained to me that his  
25 involvement in the case. He, however, had explained

1 that he was not the driver of the boat at that time.  
2 I had communicated that we would need to take a  
3 polygraph with regards to that account. I went back  
4 out there, had a polygrapher out of Florence with  
5 the Florence County Sheriff's Office. Brandon did  
6 pass the polygraph that he was not the actual driver  
7 of the vehicle, of the boat. I discussed that in  
8 detail with not only Brandon but with his mother.

9           The problem we had with that is after the  
10 boating accident Brandon and Mr. McLin fled the  
11 scene. They were seen coming out of the river at  
12 somebody's house and Brandon had made the statement  
13 at the scene that, you know, they thought they hit a  
14 stump. Some hours later Brandon calls 9-1-1,  
15 reports that he was the driver of the boat that was  
16 involved at the accident at the swing bridge. That  
17 had been our problem all along in the case. If we  
18 had gone to trial we were gonna be confronted with  
19 Brandon's statement that he admitted to driving the  
20 boat on 9-1-1. I discussed that in detail with  
21 Brandon. We met numerous times. I discussed that  
22 with his mother. We even went so far as to set up a  
23 proffer with the investigators with Horry County and  
24 the Solicitor's office 'cause my -- after Brandon  
25 had been offered the 20 years and declined it, he

1 was told he would be indicted for murder by the  
2 solicitor which was Miss Tilly, Mr. Hembree. They  
3 did indict him for murder under a felony murder  
4 rule, and so we are confronted with basically 30 to  
5 life and how to confront that.

6 I realized that I had to make Brandon  
7 somewhat of an asset to the solicitor's office at  
8 that time because the facts were just so horrendous.  
9 I discussed that with him. We entered into a  
10 proffer agreement with the Solicitor's Office, met  
11 at the Georgetown County Sheriff's Office, and  
12 Brandon gave a full account of what had occurred  
13 that day all day long. And after he gave that  
14 account that information was transmitted to the  
15 codefendant's attorney who was going to trial, and  
16 Brandon was going to be made a witness. That  
17 co-defendant ended up pleading guilty and received a  
18 sentence, I think it's 28 years. The solicitor who  
19 had made a commitment to the family in the case,  
20 that he would not go below the 20 year offer,  
21 communicated to us that he'd be willing to enter  
22 into a negotiated plea of 22 years. That would have  
23 Brandon pleading on burglary first. That would have  
24 Brandon pleading on the being the operator of the  
25 vessel. We discussed at length about the operating

1 the vessel. In the event he went to trial he'd be  
2 facing the murder charge and that they had enough  
3 evidence based upon his 9-1-1 call to convict him.  
4 I also — he had served on his YOA parole 674, 675  
5 days which the State did not have to give him credit  
6 for on the new charge. Part of the negotiation was  
7 to, if we pled to the time and Brandon pled to being  
8 the operator of the vessel, then he would receive  
9 the credit from his YOA parole which was 670 days  
10 and that is made on his sentencing sheet.

11 We discussed at length and I discussed it  
12 with his mother. The 9-1-1 call, he made a  
13 statement to another witness who was being  
14 represented by Russell Long that he was the operator  
15 of the boat. I know he passed the polygraph and we  
16 discussed that, but I explained to him a polygraph  
17 would not be admissible in court. And the  
18 Solicitor's Office was bound and determined if he  
19 did not plead they were going to try him on the  
20 murder case which put him at 30 to life, which I  
21 felt like they'd be able to prove based upon the  
22 facts and circumstances in this case.

23 Q You said that indictment was for felony murder.  
24 Can you just briefly sort of describe the State's  
25 theory on felony murder charge?

1 A We discussed it. They told me what they were  
2 going to do.

3 Q And what was their theory?

4 A Their theory would be fleeing the scene of the  
5 burglary and in fleeing the scene they killed  
6 somebody.

7 Q Ultimately, when you communicated, you did  
8 communicate the 22 year offer to him obviously,  
9 correct?

10 A Yes.

11 Q Did you also discuss with him sort of the  
12 benefits and costs of taking a plea versus going to  
13 trial?

14 A I discussed that with him, and I discussed that  
15 with his mother.

16 Q And did you discuss his sort of constitutional  
17 rights he was going to waive when he pled guilty?

18 A Yes.

19 Q And did you ever at any point think he didn't  
20 understand that he was pleading to being the  
21 operator of the boat?

22 A He understood.

23 Q Ultimately whose decision was it to plead guilty?

24 A It was Brandon with consulting with his mother.

25 Q Did he ever give you any indication that he

1 wanted to go to trial instead of pleading guilty?

2 A No.

3 Q Beg the Court's indulgence one second.

4 THE COURT: Okay.

5 MR. THOMAS: Thank you, Mr. Monckton.

6 I'll let you answer any questions.

7 THE WITNESS: Thank you.

8 **CROSS-EXAMINATION**

9 BY MR. MARTIN:

10 Q Mr. Monckton, it's been a long time since I  
11 called you Mr. Monckton. You would agree with me  
12 that a 22 year sentence is a long prison sentence?

13 A Without a doubt.

14 Q And that this was a difficult case in all facets?

15 A It was.

16 Q At the same time there was a issue that was  
17 brought up and dealt with in more than one way  
18 whether or not he was the operator of the boat?

19 A That's right. I even — I submitted the  
20 polygraph results to the Solicitor's Office, and he  
21 confirmed the polygraph results in his statement  
22 that he made to the Solicitor's Office.

23 Q And all that was done because it was felt at  
24 least at the time that it was significant as to what  
25 the outcome of this case should be?

1 A Without a doubt.

2 Q All right. And it is true that, as I know the  
3 State will argue, that there can be accomplice  
4 liability even if one is not offensible that there  
5 are different elements that the State must establish  
6 dependent upon whether a person is actually an  
7 operator or a principal, I'll say, and whether or  
8 not they are an accomplice and liable therefore?

9 A They're — the State was adamant. Either he was  
10 gonna plead to driving the boat or there was no  
11 deal.

12 Q No deal?

13 A No deal.

14 Q And as a matter of fact, — well, let me do this.  
15 Is it true that you and Mr. McDevitt never had any  
16 conversation about the elements of proving his guilt  
17 of driving the boat by being present aiding and  
18 abetting?

19 A I explained to Brandon that based upon his 9-1-1  
20 call and his statement to another individual that he  
21 was driving the vessel was all the evidence the  
22 State would need to convict him of actually driving  
23 the vessel.

24 Q All right. And I agree with you there; but my  
25 point is, and I gather I can assume from that that

1 that's as far as the conversation went about their  
2 ability to hold you accountable for driving the  
3 boat?

4 A That's right 'cause the State had made the offer  
5 that they were not interested in anything other than  
6 Brandon driving the vessel.

7 Q Okay, I understand that. But again, that means  
8 then that if you have a trial and Brandon takes the  
9 position that he took and passed the polygraph that  
10 he wasn't driving the boat, then the State would  
11 have to not prove necessarily that he was driving  
12 the boat, but they would have to prove either he was  
13 driving the boat or that he was more than merely  
14 present at the time it occurred?

15 A The concern we had there is you don't get to just  
16 pick that little piece out. If we go to trial we're  
17 facing the murder charge, the burglary charge. And  
18 once you get the — if he's gonna have to take the  
19 stand to say he's not driving in my opinion at that  
20 point in time —

21 Q I follow you, I follow you. And I follow that  
22 it's a difficult case. But in order for him to  
23 determine whether or not to accept the plea that was  
24 offered which was a plea of significant time,  
25 wouldn't you agree with me that he had a right to

1 understand what the State would have to prove in  
2 order to establish the, in order to convict him of  
3 driving the boat and that if he could establish that  
4 he wasn't driving the boat 'cause that would be his  
5 testimony?

6 A Uh-huh.

7 Q They would have to prove different elements in  
8 order to convict him of that or a jury may determine  
9 he was not guilty of driving the boat or leaving the  
10 scene?

11 A I discussed with him that the driving of the boat  
12 in this case based upon the other facts honestly  
13 didn't matter, okay. His statement that he was  
14 driving the boat, 9-1-1, implicated him there. I  
15 explained to him if we go to trial on that one issue  
16 we may win, but you're still facing the murder and  
17 the burglary first charge. I said this is one of  
18 those, and we dealt with them before where it's just  
19 bad, bad facts.

20 Q And how did you explain to him that you may win  
21 if you went to trial on that?

22 A On the —

23 Q On the leaving the scene of accident —

24 A He had to take the stand and the jury would have  
25 to believe him that he wasn't driving the boat.

1 Q But you didn't have any discussions with him  
2 about the elements of present aiding and betting and  
3 how that would play into whether he was driving the  
4 boat or not, did you?

5 A Honestly, I can probably say I didn't go that  
6 far.

7 MR. MARTIN: That's all the questions I  
8 have for him, Your Honor.

9 THE COURT: Anything else?

10 MR. THOMAS: Just a couple of short  
11 questions in redirect, Your Honor.

12 **REDIRECT EXAMINATION**

13 BY MR. THOMAS:

14 Q Counsel asked you if you agree that 22 years was  
15 a long sentence. Was he facing a longer sentence if  
16 he had gone to trial and lost?

17 A His co-defendant was sentenced to 28 years for  
18 the same conduct. You know, if he goes to trial on  
19 the murder charge it's 30. I felt like with the  
20 State's evidence and the conduct in the case that  
21 they had a good chance of winning.

22 Q And so it would have been advantageous to have  
23 the murder charge dropped in exchange for a plea  
24 that he entered?

25 A Without a doubt.

1 Q And just briefly, based on your understanding of  
2 the indictment on the operating a motor vehicle --  
3 or operating a water craft, did they charge him as  
4 principal or was it sufficient to charge him as an  
5 accessory as well?

6 A I believe it was sufficient for both but, you  
7 know, I'm not looking at it right now.

8 Q That's all the questions I have. Thank you.

9 THE COURT: Okay. Anything else?

10 MR. MARTIN: No, sir.

11 THE COURT: Thank you, sir. You can step  
12 down.

13 THE WITNESS: Thank you.

14 MR. THOMAS: That's the State's only  
15 witness, Your Honor. I do have one case that I  
16 would like to discuss but I can do that briefly or  
17 pass it up.

18 THE COURT: Yeah, go ahead.

19 MR. THOMAS: I'll pass up a copy for  
20 yourself. May I approach.

21 THE COURT: Yeah, sure.

22 MR. THOMAS: I've already provided counsel  
23 with that. This is the case of State versus  
24 Batchelor. It's B-A-T-C-H-E-L-O-R. It's 377 South  
25 Carolina 341, 661 Southeastern Second 58. Basically

1 this case is a — it's a felony DUI case. The  
2 individual was charged as a principal, was indicted  
3 as a principal in a felony DUI. It is undisputed  
4 that he was not driving at the time of the wreck.  
5 In this case the Supreme Court said that it's well  
6 settled that indictment charging the defendant as a  
7 principal will support conviction based on  
8 accomplice liability and that the State may present  
9 an indictment charging a defendant as a principal  
10 based on information of aiding and abetting. And it  
11 says felony DUI is subject to accomplice liability.

12 And our, the State's position is that  
13 defense counsel made a strategic decision. He  
14 informed the applicant of the risk and benefits of  
15 pleading to the charge; and based on the case law  
16 and his review of the facts, we think he rendered  
17 effective assistance.

18 THE COURT: Okay.

19 Yes, sir.

20 MR. MARTIN: If it please the Court, let  
21 me hand up for you one case and I'm sure that you  
22 and the attorney general are very familiar with  
23 relating to the voluntariness and intelligence of  
24 wanting to plead, and say that our position for  
25 Brandon doesn't have anything to do with whether or

1 not he would have been convicted at trial. It  
2 doesn't have anything to do with whether or not he  
3 could have got more time, and it doesn't have  
4 anything to do with the strategic decisions of the  
5 attorney. The issue is that whether or not a  
6 defendant pleads guilty or goes to trial in spite of  
7 the evidence against him or the likelihood of  
8 conviction he is guaranteed a constitutional right  
9 to trial.

10 In that, in order to enter a plea that is  
11 a valid plea it has to be intelligently made and  
12 only if it's intelligently made can it be  
13 voluntarily made. And in this particular instance  
14 there was a significant issue in the factual  
15 situation involved concerning whether or not this  
16 young man was actually driving the boat. And  
17 Mr. Monckton agrees that that was a significant  
18 issue so much so that they took him and polygraphed  
19 him and sent it to the solicitor and dealt with it  
20 in that fashion. That means then it was important  
21 to this young man and important to his attorney.

22 Now the plea that was made was to the  
23 indictments that had him indicted as a principal.  
24 It does not include accomplice liability, but I  
25 agree with the attorney general that the Batchelor

1 case he handed up to you stands for the proposition  
2 it did not have to. But what it does mean is that  
3 in and of itself doesn't impact our position here  
4 today because whether one can be convicted of that  
5 offense as a principal or as an accomplice are two  
6 different matters. They require two different  
7 bodies of proof. In this case this young man was  
8 adamant that he was not the driver of the boat; that  
9 was important to him. And he was told he had no  
10 defense to that; he needed to plead guilty. It was  
11 never explained to him that if you're not the driver  
12 of the boat, then the State has to use witnesses to  
13 establish that you were not just present in the boat  
14 when the leaving occurred but that you were a  
15 participant in that act; that is, the offense of  
16 operating a boat and leaving the scene of an  
17 accident with injury and that you participated,  
18 encouraged, aided that act. And that is a different  
19 set of facts that the State would have to establish  
20 in order to convict him. And he has testified  
21 before the Court today that had that been explained  
22 to him he would not have entered the plea that he  
23 entered to that or the burglary, that it was a  
24 package deal. But he entered that plea because  
25 nobody explained to him that Mr. Monckton admits

1 that he did not explain that to him and that he did  
2 not understand the possible defenses he had to the  
3 offense of the four indictments of leaving the scene  
4 of an accident with death, one, and creating injury.

5           So we believe that being the case, that  
6 under the law enunciated in Holden versus South  
7 Carolina that a defendant knowing and voluntary  
8 waiver of his constitutional rights which accompany  
9 a guilty plea must be of an intelligent character by  
10 showing that the court -- well, it said, let me  
11 start that over. A defendant who enters a plea on  
12 the advice of counsel may attack the voluntarily  
13 intelligent character of that plea by showing that  
14 counsel's representation fell below a standard of  
15 reasonables and that there is a reasonable  
16 probability that but for counsel's errors he would  
17 not have pled guilty but have insisted on going to  
18 trial. Much of their defense is when a lawyer did  
19 him a favor because he might have got more time if  
20 he had gone to trial but that's really not relevant.  
21 What's relevant is that he understood what his  
22 options were, and he can only understand what his  
23 options were if he understood what his defenses  
24 were. Whether or not his attorney thought those  
25 were good defenses or whether or not they thought

1 the State could prove the case under the elements of  
2 present aiding and abetting or accomplice liability,  
3 he never talked to those about his client. If he  
4 didn't talk with his client about it how can his  
5 client make an intelligent decision as to whether or  
6 not he thought they were valid and as to whether or  
7 not he wanted a trial or plea and that's the basis  
8 of our argument before the Court.

9 THE COURT: Okay. All right, thank you.  
10 Well, as usual, I mean, I'll be happy to hear from  
11 you but I understand the issues. Let me — I'll let  
12 y'all know something the next day or two. I'll take  
13 it under advisement.

14  
15 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*  
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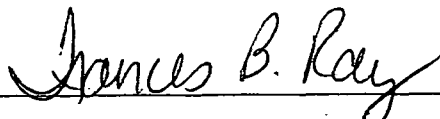
**C E R T I F I C A T E   O F   R E P O R T E R**

STATE OF SOUTH CAROLINA)  
COUNTY OF FLORENCE        )

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 12th day of February, 2014.



FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA )  
 COUNTY OF HORRY )  
 Brandon S. McDevitt, # 331683, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2011-CP-26-1434

**ORDER OF DISMISSAL**

HORRY COUNTY  
 13 OCT - 1 PM 1:48  
 MELANIE HUGHES-WARD  
 CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 15, 2011. Respondent made its Return on March 24, 2011. The Court convened an evidentiary hearing into the matter on August 28, 2013, at the Horry County Courthouse. Applicant was present at the hearing and represented by L. Morgan Martin, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's mother also testified on his behalf. Applicant's plea counsel, William H. Monckton, VI, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. In March 2009, the Horry County Grand Jury indicted Applicant for leaving the scene of a watercraft accident, death

resulting (2009-GS-26-1274), three counts of leaving the scene of a watercraft accident, great bodily injury resulting (2009-GS-26-1275; -1276; -1277), murder (2009-GS-26-1246), and burglary in the first degree (2009-GS-26-1247). William H. Monckton, VI, Esquire, ("plea counsel") represented Applicant. On June 9, 2010, Applicant entered a negotiated plea to leaving the scene of a watercraft accident, death resulting, three counts of leaving the scene of a watercraft accident, great bodily injury resulting, and burglary in the first degree. The Honorable Larry B. Hyman, Jr. accepted the negotiation and sentenced Applicant to twenty-two (22) years for leaving the scene of a watercraft accident, death resulting, twenty-two (22) years for burglary in the first degree, and ten (10) years for each count of leaving the scene of a watercraft accident, great bodily injury resulting.<sup>1</sup> The sentences were all to run concurrently. The murder indictment was *nolle prossed* pursuant to the plea, and a warrant for criminal conspiracy (J-320948) was dismissed. Applicant did not appeal his plea or sentence.

## **II. ALLEGATIONS**

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

### **1. "Ineffective assistance of counsel"**

At the PCR hearing, the Applicant proceeded on the allegation of ineffective assistance of plea counsel for failure to advise Applicant that he had a potential defense to the watercraft charges because Applicant was not the operator of the watercraft.

---

<sup>1</sup> Collectively, the charge of leaving the scene of a watercraft accident, death resulting, and the three charges of leaving the scene of a watercraft accident, great bodily injury resulting will be referred to as "the watercraft charges."

### III. SUMMARY OF TESTIMONY

Applicant testified he was not operating the watercraft when it struck another boat and injured four people, one fatally. Applicant told plea counsel he was not driving the boat that caused the accident. However, Applicant was under the impression he was charged as a principal in the indictment. He testified he did not discuss with plea counsel the difference between accomplice liability and liability as a principal. Applicant testified he would not have pled guilty had he known that operating the watercraft was an element of the crimes to which he pled. However, he entered the plea because he understood there was significant evidence against him. Applicant testified plea counsel never informed him that mere presence was enough to indict him as a principal. Applicant maintained he did not admit to being the driver of the boat.

On cross examination, Applicant testified he met with plea counsel twice and reviewed discovery and the State's evidence against him. He testified plea counsel never discussed defenses with him because the State had enough evidence to get a conviction. He further testified plea counsel did not explain the murder indictment. Applicant admitted it was his decision to plead guilty because plea counsel advised him there was little chance of success at trial. Applicant recalled the plea colloquy and agreeing with the facts presented by the State. He recalls accepting responsibility for the burglary charge and does not presently challenge his plea to that crime.

Applicant's mother, Ms. Anderson, also testified. She stated she retained plea counsel and had discussions with him about the case. She testified plea counsel never explained to her the difference between accomplice liability and liability as a principal.

Plea counsel testified he was the second attorney to represent Applicant on these charges. He did not file the initial Rule 5/Brady motions, but he did receive copies of all the State's discovery. Plea counsel testified the State's theory of the crimes was that Applicant and a co-defendant arrived at a riverfront house via boat and parked at the house's boat slip. Applicant and the co-defendant then broke into the house and removed several items. During the burglary, the homeowner's daughter saw Applicant and the co-defendant and chased them away. Applicant and the co-defendant returned to their boat and sped off, striking another boat on the river. Applicant and the co-defendant fled the scene of the boat accident and docked their watercraft nearby. When disembarking the watercraft, Applicant told a witness that he was driving the boat. Applicant also called 911 and reported that he was driving the boat.

Plea counsel testified he discussed discovery and the State's evidence with Applicant. During these discussions, Applicant admitted to his involvement in the burglary but denied he was driving the boat. Plea counsel had Applicant submit to a polygraph test, which indicated Applicant was truthful about not being the driver of the boat. Plea counsel discussed with Applicant and his mother the fact that Applicant was not the operator of the watercraft. He further testified that he arranged for Applicant to meet with the police to give a full confession in exchange for the dismissal of the murder charge.

Plea counsel testified Applicant's prior attorney received a twenty (20) year plea offer from the State, but Applicant declined that offer. Plea counsel received a twenty two (22) year plea offer, which included credit for time Applicant served on a Youthful Offender Act parole revocation. Plea counsel further testified he discussed with Applicant and his mother the fact that the State's theory at trial would be that Applicant was the operator of the watercraft. Plea

counsel discussed with Applicant the fact that he stated to a witness and the 911 operator that he was the driver of the boat. Plea counsel also told Applicant the polygraph results were inadmissible. Therefore, the only way to refute the allegation Applicant was driving the boat would have been for Applicant to testify at trial. Also, plea counsel testified the State had indicated it would go forward with the murder charge at trial. Plea counsel testified he discussed the benefits of the plea versus the risks of trial. Plea counsel testified Applicant always indicated he wanted to plea instead of go to trial, and that the ultimate decision to accept the plea offer was Applicant's.

On cross examination, plea counsel testified the State was not interested in any theory of the case other than the theory that Applicant was driving the boat. He believed the State may have gotten a conviction on the watercraft charges based on the statements to 911 and the witness. However, he testified he believed it was more likely those charges would get judicially dismissed. Plea counsel testified he explained to Applicant that success on the watercraft charges did not eliminate the possibility of being convicted under the murder indictment. Plea counsel admitted he did not explain aiding and abetting as a theory of accomplice liability, but that he believed the murder indictment was sufficient to support a murder conviction under several theories of liability. Ultimately, plea counsel explained to Applicant he may win the battle in regards to the issue of operating the watercraft, but lose the war in regards to the murder conviction.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe

each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003):

**A. Ineffective Assistance of Plea Counsel**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at

688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Below are the Court's findings in regards to each of Applicant's allegations of ineffective assistance of plea counsel.

The Court finds Applicant's allegation plea counsel was ineffective for failing to advise Applicant that he had a potential defense to the watercraft charges because Applicant was not the operator of the watercraft to be without merit. Plea counsel testified he discussed the issue of who was driving the boat with Applicant at length. He also testified he explained to Applicant the fact that Applicant was not the operator was likely not dispositive in the case. On this point, the Court finds plea counsel's testimony to be credible and Applicant's testimony to be not credible. Furthermore, the State possessed evidence that Applicant was the driver of the boat. Plea counsel explained the possible trial strategies to counter this evidence. Therefore, the Court finds that plea counsel fully advised Applicant of the nature of the charges against him and of any possible defenses to those charges.

Likewise, plea counsel has articulated a valid reason for advising Applicant to plead guilty to the watercraft charges. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Here, the State was prepared to go to trial on a murder

charge. The Court agrees with plea counsel that the State would have more than likely been successful in obtaining a murder conviction based on the facts of the case. The plea to the watercraft charges eliminated Applicant's exposure on the murder charge. Thus, plea counsel's advice was reasonable under the circumstances. Therefore, Applicant has failed to meet his burden to prove plea counsel was deficient.

Furthermore, Applicant has not shown the indictment was deficient to support a conviction for the watercraft charges. The indictment purports to charge Applicant as the operator of the watercraft. This indictment is sufficient to support a conviction as a principal or as an accomplice regardless of whether Applicant was operating the watercraft. See State v. Bachelor, 377 S.C. 341, 661 S.E.2d 58 (2008) (indictment as principal for felony DUI sufficient to support theory of accomplice liability where defendant was not driving the vehicle at the time of the wreck). Thus, Applicant cannot show he was prejudiced by plea counsel's advice regarding the requirement that he be operating the watercraft. See Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense).

Furthermore, plea counsel provided competent representation in light of the overwhelming evidence against Applicant. The burglary victim's daughter identified Applicant and co-defendant as the individual speeding off in the boat. Another witness overheard Applicant admit to being in the boat when the accident happened. Applicant also admitted to his involvement in the accident in the 911 call and a subsequent interview with police. Thus, plea counsel was correct in his advice that accepting the plea offer avoided the risk of trial. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that

would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it"). Therefore, plea counsel was not ineffective.

**B. All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

**V. CONCLUSION**

Based on the foregoing, the 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.

The Court notes that 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 23 day of September, 2013.



THE HONORABLE J. CORDELL MADDOX, JR.  
Presiding Judge  
Fifteenth Judicial Circuit

Anderson, South Carolina

WITNESSES

Robin Carlin S C Department Of Natural Resources

DOCKET NO. 2009-GS-26-01242

The State of South Carolina

County of Horry

Elizabeth V. Tilley

08H03804

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

ARREST WARRANT NUMBER

2009GSS2601246  
CDR: 0116 16-03-0010, 0020  
DOA: 9/1/2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury  
Date: MAR 9 6 2009

VERDICT

Foreperson of Petit Jury  
Date:

THE STATE

VS.

Brandon Scott Mcdevitt  
W/M

Myrtle Beach, SC 29588-8403

DOB:  
SSN:

ATTORNEY: Taylor, R. Paul

Indictment for

MURDER

J. Gregory Hembree, Solicitor

ORIGINAL

MP  
06/10/2010  
11:48am

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )


## INDICTMENT

At a Court of General Sessions, convened on MARCH 26, 2009, the Grand Jurors of Horry County present upon their oath:

**MURDER****CDR: 0116 16-03-0010,0020**

That **Brandon Scott Mcdevitt** did in Horry County, on or about August 30, 2008, willfully, feloniously, and intentionally kill the victim, ~~Eric~~ Odermatt, with malice aforethought, either express or implied, by means of colliding with the victim's boat, and the victim did die as a proximate result thereof on or about August 30, 2008 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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

  
J. GREGORY PEMBREE  
FIFTEENTH CIRCUIT SOLICITOR

State of South Carolina  
Office of the Solicitor  
Fifteenth Judicial Circuit



Francis A. Humphries, Jr.  
Deputy Solicitor

REPLY TO

P.O. BOX 1276  
CONWAY, SC 29328  
843-915-5460  
FAX: 843-915-6461

Scott R. Hixson  
Deputy Solicitor

REPLY TO

P.O. BOX 1688  
GEORGETOWN, SC 29442  
843-545-3169  
FAX: 843-545-3268

J. GREGORY HEMBREE  
Solicitor

DISMISSAL/NOLLE PROSSE FORM

TO: Horry County Clerk of Court  
FROM: ELIZABETH V. TILLEY, ASSISTANT SOLICITOR  
DATE: JUNE 9, 2010  
RE: STATE OF SC VS. BRANDON SCOTT MCDEVITT  
CASE NO: 08H03804

FILED  
HORRY COUNTY  
2010 JUN 10 AM 11:48  
MELANIE HUGGINS-WARD  
CLERK OF COURT

PLEASE BE ADVISED THAT THE CHARGE(S) LISTED BELOW HAVE BEEN DISMISSED/NOLLE PROSSED OR RESTORED (PLEASE PLACE X IN APPROPRIATE COLUMN).

Warrant #	Charge	Indict #	Dismissed	N/Prossed	Restored
J320948	Criminal Conspiracy		x		
2009GS2601246	Murder	2009GS2601246		x	

*E. V. Tilley /wm*  
Assistant Solicitor

WITNESSES

Robin Camlin S C Department Of Natural Resources

DOCKET NO. 2009-GS-26-01277

X

The State of South Carolina

County of Horry

Elizabeth V. Tilley 08H103804

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

ARREST WARRANT NUMBER

2009GS2601277

CDR: 2699 50-21-0130(A)(2)  
DOA: 9/1/2008

THE STATE

VS.

Brandon Scott Mcdevitt  
W/ M

Myrtle Beach, SC 29588-8403  
DOB:  
SSN:

ATTORNEY: Taylor, R. Paul

~~ACTION OF GRAND JURY~~

TRUE BILL

Foreperson of Grand Jury  
Date: March 2 2009

VERDICT

Indictment for

LEAVING SCENE OF ACCIDENT

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury  
Date:

ORIGINAL

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF HORRY          )


## INDICTMENT

At a Court of General Sessions, convened on MARCH 26, 2009, the Grand Jurors of Horry County present upon their oath:

**LEAVING SCENE OF ACCIDENT****CDR: 2669 50-21-0130(A)(2)**

That **Brandon Scott McDevitt** did in Horry County on or about August 30, 2008, while operating a vessel become involved in an accident which resulted in great bodily injury to Elizabeth Morris, and did leave the scene of the accident without first rendering aid and/or information, in violation of Section 50-21-0130(A)(2), S. C. Code of Laws, 1976, as amended.

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

  
\_\_\_\_\_  
J. GREGORY PEMBREE  
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry  
STATE VS.

INDICTMENT/CASE#: 2009GS2601277

Brandon Scott Mcdevitt

A/W#: 2009GS2601277

AKA: \_\_\_\_\_

Date of Offense: 8/30/2008

Race: W Sex: M Age: 23

S.C. Code § : 50-21-0130(A)(2)

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

CDR Code #: 2699

Address: \_\_\_\_\_

City, State, Zip: Mvrtle Beach, SC 29588-8403

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Watercraft / Operator fails to render assistance - with great bodily injury

in violation of § 50-21-0130(A)(2) of the S.C. Code of Laws, bearing CDR Code # 2699

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: Elizabeth Tilley 71146 Brandon Mcdevitt W.A. Marchant 65167  
Tilley, Elizabeth 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 probation for \_\_\_\_\_

with \_\_\_\_\_ 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: 6/9/10

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. 647 days

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 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

§ 47.12 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk Melanie Higgins-Hard

Court Reporter Gene Buckner

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

mnts. of \$ 25.00 beginning 07/09/2009

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

Appointed PD or appointed other counsel.

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]  
Judge Code: 2152  
6/9/10

WITNESSES

Robin Camlin S C Department Of Natural Resources

DOCKET NO. 2009-GS-26-01274

The State of South Carolina

County of Horry

Elizabeth V. Tilley 08H03804

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

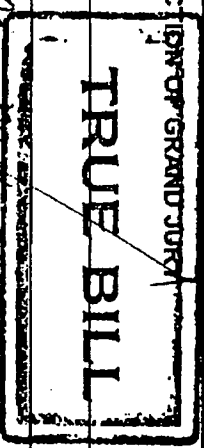
ARREST WARRANT NUMBER

2009GS2601274  
CDR: 2701 50-21-0130(A)(3)  
DOA: 9/1/2008

THE STATE

VS.

ACTING CLERK OF GRAND JURY



Foreperson of Grand Jury  
Date: March 9, 2009

VERDICT

Brandon Scott Mcdevitt  
W/M

Myrtle Beach, SC 29588-8403

DOB:  
SSN:

ATTORNEY: Taylor, R. Paul

Indictment for

LEAVING SCENE OF ACCIDENT

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury  
Date:

ORIGINAL



102

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry VS. Brandon Scott Modevitt

INDICTMENT/CASE#: 2009GS2601274

AKA: \_\_\_\_\_

A/W#: 2009GS2601274

Race: W Sex: M Age: 23

Date of Offense: 8/30/2008

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

S.C. Code §: 50-21-0130(A)(3)

CDR Code #: 2701

Address: \_\_\_\_\_

City, State, Zip: Myrtle Beach, SC 29588-8403

SENTENCE SHEET

DL#: 0 ID#: \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Watercraft / Operator fails to render assistance - death results

CONVICTED OF or  PLEADS

in violation of § 50-21-0130(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2701

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

ATTEST: E.V. Tilley 711462 Barb White W.H. Buckner II 65167  
Tilley, Elizabeth V 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 22 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 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: 6/9/10  
 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. 647 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED   
 Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: _____	
*Fine: _____	\$ _____
§ 14-1-206 (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 56-1-286 (DUI Breath Test)	\$25 \$ _____
§ 47.12 (Public Def/Prob)	\$500 \$ _____
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ _____
§ 14-1-213 (Drug Court Surcharge)	\$100 \$ <u>25.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
§ 90.7 (SCCJA Surcharge)	\$5 \$ <u>5.00</u>
3% to County (if paid in installments)	\$ <u>3.90</u>
TOTAL	\$ <u>133.90</u>

May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ 25.00 beginning 07/09/2009  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk Melanie Higgins  
Court Reporter Gene Buckner

Presiding Judge Jan B/K  
Judge Code: 2152  
6/9/10

WITNESSES

-Alan Jones Horry County Police Department

*[Handwritten mark]*

The State of South Carolina

County of Horry

Elizabeth V. Tilley 08H103803

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

ARREST WARRANT NUMBER

J320945

CDR: 0079 16-11-0311

DOA: 9/2/2008

THE STATE

VS.

Brandon Scott Mcdevitt  
W/ M

Myrtle Beach SC 29588-8403

DOB: .....  
SSN

ATTORNEY: Wilson, Kia T.

Indictment for

BURGLARY, 1ST DEGREE

J. Gregory Hembree, Solicitor

ACTION OF GRAND JURY

TRUE BILL

*[Signature]*

Foreperson of Grand Jury

Date: MAR 26 2009

VERDICT

Foreperson of Petit Jury  
Date:

ORIGINAL



COUNTY OF Horry  
STATE VS.

INDICTMENT/CASE#: 2009GS2601247

Brandon Scott Mcdevitt

A/W#: J320945

AKA: \_\_\_\_\_

Date of Offense: 8/30/2008

Race: W Sex: M Age: 23

S.C. Code § : 16-11-0311

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

CDR Code #: 0079

Address: \_\_\_\_\_

SENTENCE SHEET

City, State, Zip: Myrtle Beach, SC 29588-8403

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

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

ATTEST: E.V. Tilley 71146 Paul McIndoo V.H. Marshall 65167  
Tilley, Elizabeth V. 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 22 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: 6/9/10

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. 647 days

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

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

PTUP \_\_\_\_\_

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

\_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

Obtain GED

Set by SCDPPPS \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_

Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_

Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

pmts. of \$ 25.00 beginning 07/09/2009

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Other: \_\_\_\_\_

§ 47.12 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

§ 50-21-114(BU) Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

§ 90.7 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Presiding Judge Laub

Clerk of Court/ Deputy Clerk Melanie Higgins Hard

Judge Code: 2152

Court Reporter: Dore Buckner

Sentence Date: 6/9/10

WITNESSES

Robin Camlin S C Department Of Natural Resources

DOCKET NO. 2009-GS-26-

01275

The State of South Carolina

County of Horry

Elizabeth V. Tilley

08H03804

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

ARREST WARRANT NUMBER

2009GS2601275

CDR: 2699 50-21-0130(A)(2)

DOA: 9/1/2008

THE STATE

VS.

ACTION OF GRAND JURY

Brandon Scott Mcdevitt  
W/ M

TRUE BILL

Myrtle Beach, SC: 79588-8403

DOB:

SSN:

ATTORNEY: Taylor, R. Paul

Foreperson of Grand Jury

Date: MAR 2 2009

VERDICT

Indictment for

LEAVING SCENE OF ACCIDENT

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL



STATE OF SOUTH CAROLINA

COUNTY OF Horry VS. STATE

Brandon Scott Mcdevitt

AKA: \_\_\_\_\_

Race: W Sex: M Age: 23

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: Mvrtle Beach, SC 29588-8403

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

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

TO: Watercraft / Operator fails to render assistance - with great bodily injury

in violation of § 50-21-0130(A)(2) of the S.C. Code of Laws, bearing CDR Code # 2699

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

ATTEST: E. Willey 71146 B. McDevitt W.H. Mancini 65167  
Tilley, Elizabeth V 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 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: 6/9/10  
 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. 647 days  
 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 \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 07/09/2032  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

Recipient: _____	
*Fine:	\$ _____
§ 14-1-206 (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 56-1-286 (DUI Breath Test)	\$25 \$ _____
§ 47.12 (Public Def/Prob)	\$500 \$ _____
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$100 \$ _____
§ 50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
§ 90.7 (SCCJA Surcharge)	\$5 \$ <u>5.00</u>
3% to County (if paid in installments)	\$ <u>3.90</u>
TOTAL	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk Melania Huggins - Mad  
Gene Buckner

Presiding Judge [Signature]  
Judge Code: 2192  
6/9/10

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2601275  
A/W#: 2009GS2601275  
Date of Offense: 8/30/2008  
S.C. Code § : 50-21-0130(A)(2)  
CDR Code #: 2699

SENTENCE SHEET

CONVICTED OF or  PLEADS

WITNESSES

Robin Camlin S C Department Of Natural Resources

DOCKET NO. 2009-GS-26-01275

The State of South Carolina

County of Horry

Elizabeth V. Tilley

08H-03804

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

ARREST WARRANT NUMBER

2009GS2801275

CDR: 2699 50-21-0130(A)(2)

DOA: 9/1/2008

ACTION OF GRAND JURY

TRUE BILL

Date: *March 11, 2009*

MA 7 n 0 2009

VERDICT

Foreperson of Petit Jury

Date:

VS.

THE STATE

Brandon Scott Mcdevitt  
W/ M

Myrtle Beach, SC 29588-8403

DOB: 1

SSN:

ATTORNEY: Taylor, R. Paul

Indictment for

LEAVING SCENE OF ACCIDENT

J. Gregory Hembree, Solicitor

ORIGINAL



WITNESSES

Robin Carnlin S C Department Of Natural Resources

DOCKET NO. 2009-GS-26-01277

The State of South Carolina

County of Horry

Elizabeth V. Tilley 08H103804

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

ARREST WARRANT NUMBER

2009GS2601277

CDR: 2699 50-21-0130(A)(2)

DOA: 9/1/2008

THE STATE

VS.

ACTION OF GRAND JURY

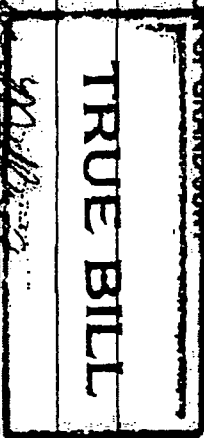
Brandon Scott Mcdevitt  
W/M

Myrtle Beach, SC 29588-8403

DOB:

SSN: :

ATTORNEY: Taylor, R. Paul



Foreperson of Grand Jury  
Date: March 2, 2009

VERDICT

Indictment for

LEAVING SCENE OF ACCIDENT

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

