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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

JOHN WILLIAM KENNEDY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002019

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2016GS2303184
	)	2016GS2303185
State of South Carolina,	)	2016GS2303188
	)	2016GS2310062A
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
John William Kennedy,	)	
	)	
Defendant.	)	

November 9, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

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Attorney for the Plaintiff

CHRIS SCALZO, Esquire
Attorney for the Defendant

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Certified Court Reporter
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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(Proceedings begin on the 8th day of November,
2016 at approximately 1:22 p.m.)

THE CLERK: Your Honor, this is 2016-GS-23-
10062, John William Kennedy, indicted for Grand
Larceny, pleading to the same, and it is a
waiver. 2016-GS-23-3184, indicted for Reckless
Homicide, pleading to the same, and it is a
true bill. 2016-GS-23-3188, indicted for
Leaving the Scene of an Accident with Death,
pleading to the same, and it is a true bill.
2016-GS-23-3194, indicted for Attempted Murder,
pleading to the same, and it is a true bill.
2016-GS-23-3185, indicted for Failure to Stop
for a Blue Light resulting in Death, pleading
to the same, and it is a true bill.

Will you raise your right hand?

(The defendant is first duly sworn.)

THE COURT: Mr. Kennedy, you are here
today to plead to Attempted Murder. That
carries up to 30 years. That is a violent and
most serious offense. Hit and Run or Leaving
the Scene of an Accident resulting in Death.
That carries up to 25 years. That's classified
as a violent offense. Failure to Stop for a

1 Blue Light Resulting in Death is a violent
2 offense and carries up to 25 years. Reckless
3 Homicide carries up to 10 years and Grand
4 Larceny that carries up to 10. Is that your
5 understanding?

6 MR. KENNEDY: Yes, ma'am.

7 THE COURT: Have you discussed these
8 charges with your lawyer?

9 MR. KENNEDY: Yes, ma'am.

10 THE COURT: Are you happy with what your
11 lawyer's done for you?

12 MR. KENNEDY: Yes, ma'am.

13 THE COURT: Are you under the influence of
14 drugs or alcohol here today?

15 MR. KENNEDY: No, ma'am.

16 THE COURT: Has anyone forced you to plead
17 guilty?

18 MR. KENNEDY: No, ma'am.

19 THE COURT: Has anyone promised you
20 anything to get you to plead guilty?

21 MR. KENNEDY: No, ma'am.

22 THE COURT: When you plead guilty, you
23 give up certain constitutional rights. One is
24 your right to remain silent about these
25 charges. Do you know that?

1 **MR. KENNEDY:** Yes, ma'am.

2 **THE COURT:** You also give up your right to
3 a jury trial. At that trial, your attorney can
4 call witnesses for you, cross-examine witnesses
5 against you, and the State would have to prove
6 your guilt beyond a reasonable doubt. But when
7 you plead guilty, you give up your right to a
8 jury trial on these charges. Do you know that?

9 **MR. KENNEDY:** Yes, ma'am.

10 **THE COURT:** This sentencing sheet says
11 that you're 27. Is that right?

12 **MR. KENNEDY:** Yes, ma'am.

13 **THE COURT:** How far have you gone in
14 school?

15 **MR. KENNEDY:** I have a GED.

16 **THE COURT:** What kind of work have you
17 done?

18 **MR. KENNEDY:** I worked for my father in a
19 tobacco outlet. I managed a pizzeria, as well
20 as another pizzeria.

21 **THE COURT:** Tell me this. Have you ever
22 been treated for any sort of mental illness?

23 **MR. KENNEDY:** No, ma'am.

24 **THE COURT:** Have you ever been treated for
25 any substance abuse problem?

1 **MR. KENNEDY:** Yes, ma'am.

2 **THE COURT:** Tell me about that.

3 **MR. KENNEDY:** I been to the Phoenix
4 Center, Morris Village and Solutions Recovery
5 Center for Drug Addiction.

6 **THE COURT:** Okay. And -- but here today,
7 you're not under the influence of any drugs or
8 alcohol?

9 **MR. KENNEDY:** No, ma'am.

10 **THE COURT:** You feel like you understand
11 what you're doing?

12 **MR. KENNEDY:** Yes, ma'am.

13 **THE COURT:** All right. All right. These
14 charges have not -- well, excuse me. The grand
15 larceny has not been indicted by the grand
16 jury. You've got a right to have this charge
17 indicted by the grand jury. You want to give up
18 that right and plead guilty today anyway?

19 **MR. KENNEDY:** Yes, ma'am.

20 **THE COURT:** And how do you plead to these
21 charges, guilty or not guilty?

22 **MR. KENNEDY:** Guilty.

23 **THE COURT:** You've got 10 days from
24 today's date to appeal this plea, if you so
25 choose, but you must do so in writing with this

1 Court. I want you to listen to the facts as
2 related by the Solicitor. I'm going to have
3 some questions for you about that.

4 MR. CULBREATH: Your Honor?

5 THE COURT: Yes, sir.

6 MR. CULBREATH: Please the Court.

7 THE COURT: Yes, sir.

8 MR. CULBREATH: On September 17th of 2015,
9 at approximately one o'clock in the morning,
10 Defendant John Kennedy caught a ride from
11 someone over to the home of a Robert Dancy,
12 whose home is located in Greenville County.
13 This is the father of the defendant's former
14 girlfriend. Knowing where the victim hid an
15 extra set of keys to his 2015 GMC Sierra pickup
16 truck, the defendant gained access to the
17 vehicle, took the keys and stole the vehicle
18 and all of its contents.

19 Later that morning, he met up with co-
20 defendant, Ashley Moore, at about 6:45 in the
21 morning at TD's Express Mart on West Blue Ridge
22 Drive in Greenville County, in an effort to
23 sell the stolen truck and its contents to Mr.
24 Moore. They had a discussion there on scene
25 about the truck, whether or not he was going to

1 be able to pay for it. Ended up having a
2 discussion about the camper top that was on it.
3 They were in the process of transferring the
4 property from the stolen truck to Mr. Moore's
5 truck, which was parked end to end with his --
6 right next to the TD's Mart.

7 Now, the stolen truck was equipped with
8 OnStar. When the victim awoke and realized his
9 truck had been stolen, he contacted law
10 enforcement. They were able to locate the truck
11 via the OnStar signal. Deputies McQueen and
12 McGuire, who are here with us today, with the
13 Greenville County Sheriff's Office, responded
14 to the Express Mart and did observe the truck
15 matching the description of the stolen truck
16 parked beside the store and two men appearing
17 to transfer items from one truck to another.

18 As they pulled along side the store, the
19 defendant saw that the law enforcement had
20 arrived. Defendant John Kennedy jumped from the
21 bed of the stolen truck and hopped into the
22 driver's seat of Ashley Moore's truck, which
23 was pointed towards the exit, and began to try
24 to flee the scene.

25 Deputy McQueen had exited his vehicle and

1 tried to position himself in front of the truck
2 to prevent it from leaving. As he did move
3 over, he demanded that the defendant stop the
4 truck. The defendant, then, accelerated
5 directly towards the deputy. Deputy McQueen did
6 have to jump out of the way, but not before
7 being struck in the leg and injured by the
8 vehicle. Despite being struck, however, he was
9 able to fire at the oncoming truck and did
10 strike the defendant.

11 Deputy McQuire also attempted to stop the
12 vehicle, but the defendant was able to drive
13 out of the side area onto West Blue Ridge where
14 he led law enforcement on an extended vehicle
15 pursuit down Poinsett Highway through the
16 Cherrydale area and for several miles on
17 Highway 25 North towards Asheville.

18 Throughout the pursuit, the defendant was
19 traveling at a very high rate of speed, weaving
20 in and out of traffic and in a reckless, but
21 deliberate, manner. The vehicle clearly
22 indicates he's got full control of the vehicle
23 and is making deliberate movements around
24 traffic as he goes. This is all unfolding at
25 about 7:20 in the morning in the Cherrydale

1 area.

2 As he reached the intersection with 25 and
3 414, there were some vehicles stopped. At that
4 point, he decided to cross over into the
5 opposite lane of traffic and began driving the
6 truck at a high rate of speed down the opposite
7 lane in an effort to elude law enforcement.
8 There were four or five law enforcement
9 vehicles pursuing at this point with their
10 lights and sirens.

11 Once they saw this behavior by the
12 defendant -- he traveled for some distance on
13 the wrong side of the road -- but as the
14 deputies saw this, saw the danger he was
15 placing everybody in -- it was traffic coming
16 the other way -- they called off the chase,
17 turned off their lights, moved over to the
18 right and slowed down. The truck went on over
19 the hill and out of sight.

20 As they come around the corner and back
21 over the hill, they -- that's where they see
22 that there's been a collision. So, despite him
23 traveling down the highway at the wrong speed,
24 at the high rate of speed on the wrong side of
25 the road, he did hit Mr. Jordan Howard, Amber

1 Howard's husband. He was traveling on a
2 motorcycle. He was a fireman coming to work
3 that morning on his motorcycle headed to the
4 fire station.

5 After the crash, the defendant continued,
6 even though he had been in a crash and hit this
7 individual, continued to try to get out of the
8 truck, and flee the scene yet again. He did
9 this, however, in front of law enforcement. And
10 bystanders had observed the wreck. He ran into
11 a tree line. They were able to apprehend him,
12 shortly thereafter, and arrest him.

13 I've got some photographs, Your Honor, I
14 want to hand up -- these have already been seen
15 by defense counsel -- as well as -- there's a
16 couple of scene sketches in there, as well, and
17 the driving record of this defendant. It's
18 important to point out, as well, Your Honor,
19 that the investigation that followed this
20 particular incident, or these two incidents
21 really, revealed that the defendant had
22 multiple illegal and controlled substances in
23 his system at the time. He does have a relevant
24 prior criminal record and driving record that I
25 could elaborate on at an appropriate time, as

1 well as a toxicology screen, if needed by the
2 Court.

3 But the two -- two deputies, Your Honor,
4 that were involved, they are here, as is
5 Ms. Howard and a good number of her extended
6 family here supporting her. If the Court deems
7 it appropriate, at the appropriate time, she
8 may wish to address the Court.

9 **THE COURT:** Oh, certainly. Certainly.

10 Mr. Kennedy, you've heard the facts as
11 stated by the Solicitor. How do you plead to
12 each of these indictments, guilty or not
13 guilty?

14 **MR. KENNEDY:** Guilty.

15 **THE COURT:** I don't -- I don't know if I
16 asked you this. I wanted to be sure. Are you
17 happy with the services of your attorney?

18 **MR. KENNEDY:** Yes, ma'am.

19 **THE COURT:** Has he done everything you've
20 asked him to do?

21 **MR. KENNEDY:** Yes, ma'am.

22 **THE COURT:** And do you have any complaint
23 to make against law enforcement, the
24 Solicitor's office or your lawyer, as a result
25 of this plea whatsoever?

1 **MR. KENNEDY:** No, ma'am.

2 **THE COURT:** All right. I'll accept your
3 plea as being freely and voluntarily made with
4 the advice of extremely competent counsel with
5 whom the defendant says he's well satisfied.
6 The plea has a substantial factual basis.

7 The deputies who are here ---

8 **MR. CULBREATH:** McGuire and McQueen.

9 **THE COURT:** Would they like to speak? Yes.
10 Sir, would y'all like to say anything?

11 **DEPUTY MCQUEEN:** Just that, from our
12 perspective, or at least my perspective, that
13 day he was in control of the vehicle and took
14 -- took the action to strike me and further
15 confirmed his intent by keep going after we
16 attempted to stop him, he should be held
17 accountable for those actions.

18 **THE COURT:** Yes, sir. Thank you for being
19 here.

20 Anything else?

21 **MR. CULBREATH:** No.

22 **THE COURT:** All right. Yes, ma'am.

23 **VICTIM:** My name is Amy Howard. I am his
24 wife. The morning of this accident, never would
25 I have ever dreamed that the kiss he and I

1 shared would actually be a goodbye kiss. Jordan
2 was killed 15 minutes after leaving home, an
3 innocent man, on his way to work, on his way to
4 protect others. He was a hero in many people's
5 eyes, mine included.

6 Jordan was a very good man. He loved his
7 community. Jordan loved his wife, loved his
8 daughter, loved his family. Very family-
9 oriented. He was the love of my life.

10 He gave me a daughter who has to grow up
11 without her father. He has missed all of her
12 firsts, her first birthday, her first
13 Christmas, her first tooth. The very first time
14 she laughed was actually the day he died. She's
15 now saying, I love you. She says "daddy" all
16 the time. I like to believe that she sees him,
17 although she'll never remember him on her own.
18 I made it a point to always talk about him and
19 show pictures. He will always be remembered.
20 Always.

21 This has impacted us greatly. Not only has
22 Mr. Kennedy took away a husband and a son but,
23 most importantly, a father to a little girl who
24 does not deserve this. Your Honor, I beg to you
25 to make the best decision possible and give him

1 the maximum sentence allowed by law. I pray.

2 This man has proved that he can not be out
3 of jail. He's created a pattern. He's a
4 criminal. He's taken away a life too early,
5 way too soon. He's destroyed our family. He
6 needs to be behind bars. That's where he
7 belongs -- I would not wish my position on
8 anyone -- if it means saving another little
9 girl and keeping her daddy alive.

10 **THE COURT:** Thank you, ma'am. Let me begin
11 by saying I'm just so sorry for your loss. I
12 know nothing I could say that could possibly --
13 I don't know. If I could do anything to bring
14 you any comfort, I hope today being over and
15 behind you all, that will help you some small
16 way to get some -- get some small amount of
17 healing. I hope and I pray that for you. I pray
18 for you and your little girl and your entire
19 family. Thank you.

20 Anything else?

21 **MR. CULBREATH:** Your Honor, if we could
22 have a brief discussion about sentencing, the
23 State's got a position on sentencing. I know we
24 have talked at some length about a possible
25 negotiated plea, which this is not. But if the

1 Court wanted us to get into some of the
2 discussions, then we -- certainly, along with
3 the victim, the State just believes that the
4 reckless behavior that he demonstrated, not
5 only against the deputies or the citizens on
6 his way through Travelers Rest, but also to Mr.
7 Howard.

8 I know there's a range of 0 to 25 on these
9 charges, but the high end of that. We had
10 discussed a 20 with an additional 10 -- a
11 consecutive 10, because we really look at this
12 as two separate crimes, but allowing that 10 to
13 be suspended upon some probation. Because the
14 victim knowing, understanding that, at some
15 point, he will be released, wanted some
16 additional comfort in knowing he would be
17 supervised for a period of time.

18 **THE COURT:** How long has he spent in jail?

19 **MR. CULBREATH:** 419 days. We would ask the
20 Court consider sentencing the higher end of
21 that spectrum due to the uniqueness of this
22 case in the sense that it involves both an
23 assault on law enforcement, reckless behavior
24 through busy traffic on a weekday morning and
25 the death of Mr. Howard and the loss of her

1 husband.

2 **THE COURT:** I'm just writing down the
3 number of days he's been in jail so -- to make
4 sure I don't forget that.

5 **MR. CULBREATH:** There's a criminal record
6 as well, if you want to do that, at the
7 appropriate time.

8 **THE COURT:** Certainly.

9 **MR. CULBREATH:** You want to do that? Okay.
10 He's got -- Your Honor, most of it is driving
11 related. It's two DUS convictions in 2012; a
12 DUI conviction, Malicious Injury to Property
13 and a Failure to Stop in 2012; 2013, there's a
14 Grand Larceny, there's an Escape; there's also
15 a Failure to Stop second offense from Greer, I
16 believe, in 2014, that involved similar
17 conduct.

18 **THE COURT:** All right. All right. Thank
19 you.

20 Mr. Scalzo?

21 **MR. SCALZO:** May it please the Court, Your
22 Honor?

23 **THE COURT:** Yes.

24 **MR. SCALZO:** John is 27 year -- years old
25 now. He was 25 at the time that he did this. As

1 you heard, he spent 419 days. He was arrested
2 the day that this happened on the side of the
3 road.

4 I guess, let me say up front, there is
5 nothing that I intend to say or John intends to
6 say that takes away from his responsibility. I
7 met with John -- he was arrested September 17th
8 of 2015. I met with him on the 22nd of
9 September, so very fresh in terms of the time
10 frame. From the get-go, there was not a
11 discussion about, well, I could get away with
12 this, maybe I didn't do this. He was very clear
13 with me up front. These things take time, as
14 Your Honor knows, in terms of working
15 themselves out.

16 **THE COURT:** Sure.

17 **MR. SCALZO:** We -- as the Solicitor
18 mentioned, we negotiated -- you know, we
19 attempted to negotiate a resolution. But that
20 negotiation was more about trying to fashion
21 and find a way on the sentence as opposed to
22 the responsibility. I think that that's
23 important.

24 One thing, you can see his face when
25 Ms. Howard was speaking and his face now. He

1 gets what he did and he understands the
2 wrongness of his conduct. It doesn't take away
3 from what he's done and the harm that he's
4 caused. Obviously, it's relevant for Your Honor
5 in trying to figure out the appropriate
6 sentence how he understands his own conduct.

7 What you don't have is a person who is
8 standing before you just defiant and saying
9 forget everybody else, you know, I get to do
10 what I want to do. I just think that that is an
11 important aspect, only one aspect, but is an
12 important aspect to what's going on.

13 When John was 17, he had a severe accident.
14 He had prescription drugs because of pain. The
15 common thing. That prescription drug became an
16 addiction. Ran out of the prescription drug.
17 Led to more illicit drugs. That's not a
18 justification for the action, but to try to
19 understand where he was and what was going on,
20 I think that's important.

21 Another thing that's important is, as the
22 Solicitor described, it was a stolen vehicle
23 scenario where he was trying to sell the car.
24 He didn't have a weapon. He didn't have a gun.
25 He didn't have a knife. The vehicle was not

1 obtained in that way. We're not starting out
2 with, in essence, a plan, hey, I'm going to go
3 in and arm rob somebody or I'm going to go in
4 and use a weapon to take this thing. Certainly,
5 he began making wrong and reckless decisions
6 once it took place, but these are relevant and
7 important things for Your Honor in trying to
8 figure out an appropriate sentence.

9 As the Solicitor talked about, John was hit
10 in the head and was bleeding from it.
11 Obviously, he did not stop, take the time to
12 figure out what was going on, but that was all
13 wrapped up in the reckless behavior. If there's
14 a case that really defines reckless behavior,
15 then we have it. I think John and I talked
16 about that. I think he understands that.

17 What I'll say, Judge, is this, the habitual
18 traffic offender, the failure to stop, the
19 leaving the scene and the attempted murder are
20 all no parole offenses which means that
21 whatever sentence you give him, he will serve
22 85 percent of that sentence. He will be forced
23 to leave the Department of Corrections to be
24 monitored for two years with the balance of the
25 15 percent remaining, should he violate.

1 I don't believe there's any way, shape or
2 form that he's not, essentially, a 40-year-old
3 man when he's released from prison to be
4 supervised by the State for additional years to
5 ensure that he's in compliance. I think it is
6 relevant that he is a 25, 27-year-old man at
7 this stage and then will be a considerably
8 older person when he gets out.

9 What I'd ask Your Honor to consider doing
10 is a straight sentence. I think the no parole
11 sentence is essentially conceptually -- took
12 into consideration supervision once he is
13 released. I would ask you to consider a 15-year
14 sentence. You heard mention of the negotiation
15 from the State. But we're here, obviously,
16 presenting to you to find the right and just
17 kind of -- and best decision that you could
18 make. And we trust that you can do that. John
19 has been comfortable with that since we
20 discussed it.

21 Only other thing I would say, Judge, is you
22 can see several people, obviously, sitting
23 behind me. That is his family, his mother, his
24 sister and some other family members that are
25 there. I've met with them several times over

1 the course of this. They are embarrassed.. They
2 feel bad for the family. They've struggled with
3 what would they do in terms of feeling bad and
4 how they express what they have gone through --
5 what that family has gone through, not John's
6 family -- and struggled with how to convey
7 that.

8 I've talked to the deputy and tried to
9 discuss that to him prior to this plea. I think
10 you have a situation where he is fully
11 responsible, but understands that. I'd ask you
12 to consider those things. I believe John has a
13 very short thing that he wanted to say.

14 **THE COURT:** Yes, sir. Thank you.

15 **MR. SCALZO:** Thank you, Your Honor.

16 **MR. KENNEDY:** I just want to say how sorry
17 I am for everything that's happened, for all
18 the heartache and pain that I caused the Howard
19 family. I realize that had it not been for my
20 selfish and irresponsible actions that none of
21 us would be standing in this courtroom today. I
22 know there's no words that will ever make up
23 for what I've done. I truly am sorry. I never
24 had any intention upon hurting anyone. I'm here
25 today before you as a man to accept

1 responsibility for my actions.

2 THE COURT: Thank you.

3 MR. SCALZO: Judge, I told him to address
4 you so there would not be any concern about
5 making anybody awkward --

6 THE COURT: I'm glad.

7 MR. SCALZO: -- even though he desired to
8 express that to the victims in the case.

9 THE COURT: And I'll say -- and I'll say
10 to the family here today, I ask that defendants
11 address me so as to never make you feel
12 uncomfortable if you wonder why he spoke about
13 that with his back to you.

14 Well, Mr. Kennedy, I have to take into
15 account a number of things. I take into account
16 that you've taken responsibility here today.
17 I've taken into account -- I take into account
18 that you -- I don't think you set out that day
19 with the intention of hurting anyone. I think
20 you made a number of horrible decisions that
21 resulted in another consideration that I have
22 to make and that is the harm that you caused.
23 And that's immeasurable. I have to take into
24 account your prior record. Though it is not the
25 worse record that we've seen, this was a

1 pattern. I take into account that you're a
2 young man now and that I could, potentially,
3 fashion a sentence for you where you would
4 have, potentially, some life ahead of you to
5 make up for what you've done to try to live in
6 a very different way to make up for that. I
7 think your attorney spoke very eloquently on
8 your behalf here today and has done everything
9 he can possibly do for you.

10 The sentence of the Court on the Attempted
11 Murder is 20 years, credit for 419 days.
12 Consecutive to that is the Reckless Homicide --
13 excuse me. I apologize. I just done this and I
14 got them mixed up -- on the Grand Larceny --
15 excuse me -- consecutive to that is 10 years.
16 The balance is suspended with probation for
17 five. So you will have monitoring afterwards.
18 Again, credit for the 419 days. When you are
19 ultimately released on probation, substance
20 abuse counseling and random drug and alcohol
21 testing. Ten years on the Reckless Homicide.
22 Twenty years on the Failure to Stop. Twenty
23 years on the Hit and Run.

24 Ma'am, you and your family are in my
25 prayers. Thank you.

1 **MR. SCALZO:** Judge, as far as the
2 probation to follow the community supervision--

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

4 **MR. SCALZO:** -- I should have brought this
5 up earlier, I'm sorry. Depending on what your
6 intent is, if you intend for them to start at
7 the same time, I think you have to say it.
8 Otherwise, SCDC and probation are confused
9 about how to carry that out. That was what I
10 got from probation when I inquired.

11 **THE COURT:** Mr. Scalzo, I'll bring him
12 back in here if you want -- if you believe I
13 need to, but I'm going to have it begin after
14 community supervision. I'm just concerned. I
15 want him to be monitored for that period --
16 additional time.

17 **MR. SCALZO:** I'll tell him. I don't
18 that's --

19 **MR. CULBREATH:** Thank you for making the
20 time, Judge.

21 **THE COURT:** Thank you.

22
23 (Proceedings conclude at approximately
24 1:48 p.m.)
25

CERTIFICATE

27

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 25th day of January, 2018.

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

Teresa B. Johnson

Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)JOHN WILLIAM KENNEDY #310431)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2017-CP-23- 06954

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCORMICK CORRECTIONAL
2. Name and location of Court which imposed sentence GREENVILLE COUNTY
GENERAL SESSIONS COURT, GREENVILLE, SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) ATTEMPTED MURDER 16GS23001191
 - (b) RECKLESS HOMICIDE 16GS2303124

(c) HIT & RUN 1L6S2303188 (d) FAILURE TO STOP 1L6S2303188

5. The date upon which sentence was imposed and the terms of the sentence:

(a) NOVEMBER 9, 2016 30 YEARS

(b) " " " 10 YEARS

(c) " " " 30 YEARS (d) NOVEMBER 9, 2016 30 YEARS

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

8. If you answered "yes" to (7), 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. _____

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

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF PLEA COUNSEL
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE INCLUDED PAPERS
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- 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. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) SEE INCLUDED PAPERS
 (b) _____
 (c) _____

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

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

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

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

i. CHRISTOPHER SCALZO 305 E. NORTH ST.
GREENVILLE, SC 29601

ii. _____

 iii. _____

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

i. open plea hearing and sentencing

 ii. _____

 iii. _____

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

SEE INCLUDED DATER

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

No.

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, JOHN WILLIAM KENNEDY, 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.

John W. Kennedy

SWORN to and subscribed before me this 30
day of October, 2017.

Jeff Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

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

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

John W. Kennedy
Applicant

SWORN or affirmed to and subscribed before me this

30 day of October, 2017

[Signature]
Notary Public

My Commission Expires: 12-16-2019

11. I was incarcerated in GREENVILLE COUNTY on SEPTEMBER 17, 2015. COURT APPOINTED ATTORNEY CHRISTOPHER SCALZO came for our initial visit promptly within the first 2 weeks. He informed me of the charges filed against me and the time they carried. He informed me also that a DISCOVERY would be available and would be sent to me within 30-90 DAYS. I believe this was around the first week of October if not earlier. After 90 DAYS had passed and I had still not received my DISCOVERY I sent CHRIS a request in the mail. I asked if he would come and visit me and if he had ~~received~~ received the DISCOVERY yet. ~~He~~ Except for a few quick visits prior to the letter I mailed to him in FEBRUARY I believe it was AUGUST 2016 before I saw CHRIS again. When he showed up he brought with him a PLEA OFFER of 30 YEARS. My first question to him was where is my ~~the~~ DISCOVERY? He didn't have it with him. I asked if he had received my letters. He pulled the letter which was months old out and said he had in fact received it and apologized for not sending the DISCOVERY but he did not understand why I would need it in such a "cut & dry" case. I then asked him when he received the DISCOVERY and how long he had withheld it from me. He received the first part I believe in OCTOBER of 2015 and the remaining documents in JANUARY or FEBRUARY of 2016. He then informed me that the PROSECUTOR was pushing to get me into court in the next 2-3 months. He said as soon as possible but by NOVEMBER. I told him, in response to that, I was definitely not ready to

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move forward at all. He asked what I thought I was to gain by having my DISCOVERY. ~~I~~ I couldn't believe that, from what my Mother had researched; such a well respected "DEPUTY" PUBLIC DEFENDER would ask that question. I responded with to see what evidence the STATE had against me and how we could move forward. He claimed the evidence was all pretty "damning" and he didn't see much benefit to "fighting" the STATE. I ~~asked~~ asked if he had received DASHCAM footage from TD's Gas station where everything started? He said there was none available that the PROSECUTOR said the DASH CAMS in both GESO vehicles were not functioning at the time. I asked how this could be possible? He said there were multiple DASH CAMS from the chase itself but none from TD's parking lot. Me being a long time customer of TD's I knew they had security cameras in their parking lot. He claimed only one was functioning at the time but all you could see was tail lights of the truck I was driving. OFFICER McCAUGEN, the OFFICER who fired his sidearm that morning claimed that I struck him with the vehicle I was driving ~~intentionally~~ and he fired on me because he feared for his life. When the DEPUTYS pulled into the parking lot they claim to have followed GPS signals from an ON-STAR computer in the 2012 GMC SIERRA that was reported stolen. I was not in possession of said vehicle. I was standing in the ^{opened} DOOR way of ASHLEY MOORE's 2007 FORD F-150. ASHLEY MOORE was standing in the bed of the 2012 GMC SIERRA, by law, giving him possession of the vehicle. The cameras at TD's would show I pulled into the parking

lot behind ASHLEY in the FORD F150. Ashley had given me permission, instructed me rather to follow him in his truck. His truck had proper registration, tags, and insurance. So when GCSO pulled into the parking lot the fact I was there proved nothing. I was just parked next to ASHLEY. How was I to know the truck was stolen? If the OFFICERS needed to bother anyone it was the man in clear possession of the stolen automobile. I immediately entered the drivers seat of the F150, the motor already running, placed it in DRIVE and proceeded to leave the parking lot. DEPUTY McQUEEN was standing I would approximate 25 feet away, 10 feet to the right passenger side of the vehicle I was driving. I proceeded forward turning my wheels to the left away from the OFFICER. He yelled for me to "stop" while pulling his firearm and immediately shooting 3 rounds through the front windshield. The first of which struck me above my right eye in my forehead. I then in the "fight or flight" mentality, fearing for my life because I felt he was trying to kill me increased speed and continued out of the parking lot onto 253 headed towards POINSETT HIGHWAY. I never struck the DEPUTY nor did I drive towards him like that was my intent. I kept asking CHIEF how they could charge me with ATTEMPTED MURDER in that scenario without providing evidence of where they claim I tried to run him over and in fact hit him. I was driving a 4 DOOR F150. A 1 and a half ton truck. If I in fact hit the OFFICER

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driving the way they claim I did, where is the injury report? Where are the hospital records? He could not provide me with answers to these questions. His answer for me was and I quote "You don't want to poke the bear." He advised me my case was HIGH PROFILE and POLITICAL given the fact a GREENVILLE COUNTY Decorated ~~WARRIOR~~ FIRE FIGHTER LIEUTENANT AND SERVICE VETERAN had been killed and I had 2 ATTEMPTED MURDER charges on GREENVILLE COUNTY SHERIFF'S DEPUTIES. I also informed him of a DETENTION OFFICER who had told me he went on a ride-along with a GCSO DEPUTY who asked him about his view on high-speed pursuits. The DO stated he was unsure and in return asked the DEPUTY for his view. The DEPUTY said they scared him and he hoped he never had to go on one again because he got into trouble for the way he handled the last one he went on ~~one~~ where the FIRE FIGHTER was killed. Apparently the SHERIFF'S OFFICE is not to pursue anyone at HIGH RATES OF SPEED unless they are a known VIOLENT offender or have been proven VIOLENT. In ofcourse was not and had not been VIOLENT. They also are supposed to call off any chase the moment it appears dangerous for the lives of those being pursued, the pursuer, or the community. Chris did not deny the validity of any of what I told him but he just continued to tell me "you don't want to poke the bear." He also said he would check into what I had told him about the DETENTION OFFICER and DEPUTY but when I asked about the outcome of that later he claimed he felt there was no reason for him to pursue it further. Also I had my family do research on the injury caused by the gun shot. I also read a

book during my incarceration called RETAINING THE BRAIN by DR. FRANK LAWLIS that talked about FRONTAL LOBE INJURIES. The location of my gunshot wound would result in a FRONTAL LOBE INJURY. It states in that book and various other places my family researched that when you have such injury it immediately could result in mind altering side affects. It is proven to have affected victims decision making skills and impulsive decision making abilities. I even brought the book with me whenever I consulted CHAS about this. He responded yet again with "You don't want to poke the bear." I inquired about whether we could have a DOCTOR as a part of our DEFENSE TEAM to possibly have a MEDICAL DEFENSE. Also as proved in the following cases: BRADY v. MARYLAND 373 U.S. 83 (1963)

KYLES v. WHITLEY 619 U.S. 419 (1995)

STICKLER v. GREENE 527 U.S. 263 (1999)

BRADY says that the prosecution must disclose any information or material that is:

- A. Material (and)
- B. Relevant to guilt or punishment (and)
- C. Favorable to the accused (and)
- D. Within the actual or constructive knowledge or possession of anyone acting on behalf of the state.

With all that stated above I feel as if a BRADY violation was committed by withholding the DASH CAM footage and the camera footage from TO's GPS station whether it just showed my tail lights or not. Because even if the prosecutor thinks that the BRADY material is unreliable or unbelievable, he or she must disclose it. It is for the defense counsel, not the prosecutor to decide whether the BRADY material is reliable enough to

to be used. For example the excuse that "the other guy who confessed was crazy and unbelievable" does not relieve the prosecution from the due process obligation to inform the defense about "the other guy and his confession." Also where were the hospital records for the DEPUTY who claimed to have been injured by the truck. Would he not have been required to see a DR.

To continue, I told CHRIS I would not accept the 30 YEAR offer and he asked what my counter offer would be I said I will plea guilty to RECKLESS HOMICIDE if they drop the rest of the charges and give me a 10 YEAR sentence. He laughed and said he wasn't even going to go back to the prosecutor with that, that if we weren't being serious he would just move forward to trial. I told him I was serious and ~~that~~ that maybe I would feel more comfortable with making an offer if I had reviewed my DISCOVERY. I finally received my DISCOVERY towards the end of SEPTEMBER. Within a few days of receiving it he was back with a second plea offer of 25 YEARS. I told him no and he asked what my counter offer was. He also said time was running out and they were pushing to have me in court on NOVEMBER 4th. And if I decided I wasn't going to take the plea we would have to get ready for trial. I told him I still wasn't ready to make an offer and he left. Within the first few weeks of OCTOBER he (CHRIS) came back and offered a 3rd plea of 20 YEARS with a consecutive 10 years suspended to 5 YEARS OF PROBATION. I told him no to that as well and that I would accept 15 YEARS straight sentence. He told me he didn't think that was possible but he would offer it. Within a few days he was back and said my offers were as follows: 20 YEARS w/ a consecutive 10 years suspended to 5 YEARS PROBATION, an open

PLEA 0-30, or take it to TRIAL. He informed me that my benefit
 in the open PLEA would be that the judge on the week of November
 9 would be Judge VERNON. He said she would be the best judge
 for me because she would not let the victims family influence her
 judgement. He also assured me I would get a straight sentence and
 no probation. He said with VERNON being the judge she would not
 give me a big number of years and probation. But if I did not
 go before her we would go to trial. I went before her on
 November 9 with a 0-30 open PLEA and received ~~the exact same~~
~~the exact same~~ the exact same PLEA offer I had turned down. 20
 YEARS with a consecutive 10 years suspended to 5 years probation.
 Keep in mind CLEIS told me I would not receive any probation
 if I went before Judge VERNON. I also felt as though he did not
 represent me to the best of his ability. He did not attack the fact
 that the Police did not provide any proof to their ATTEMPTED MURDER
 charges nor the fact there was a DEPUTY who stated he handled the
 chase incorrectly. He also told me the last time we spoke when I
 told him I still did not feel comfortable with any of the offers
 I was receiving ~~though~~ because I felt if I had my DISCOVERY
 on time I could have possibly had my family do some more investigating
 into other cases and sound COUNSEL LAW to see if I couldn't
 come up with a more stable defense. He said there was no amount
 of time required by law that the Prosecutor had to give me
 to review the DISCOVERY. That may be true but the fact he
 had pushed out in OCTOBER 2015 and the full report in
 FEBRUARY 2016 and I didn't receive it until 2 months before

I was railroaded into a PLEA deal or TRIAL in SEPTEMBER
I feel as though since he himself stated my case was
POLITICAL I felt as though he withheld that DISCOVERY
from me to deny me the ability to do my own research
and work to develop my own case.

16. I am not too familiar with LAWS and court proceedings. In GREENVILLE COUNTY DETENTION CENTER there is no access to a LAW LIBRARY nor anyone to associate and converse with about your case. But your court appointed attorney if you don't have the funds to hire a competent defense team. I wasn't given the access to a LAW LIBRARY until I got to PRISON and was told my only option for appeal was to file this document: POST-CONVICTION RELIEF application.

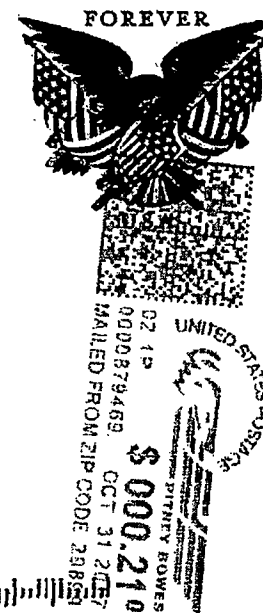
19 I am looking to receive a shorter sentence after the completion of my POST-CONVICTION REVIEW. I believe I was not adequately represented and therefore ~~the~~ since the evidence and facts in my favor were not correctly brought before the court I feel my sentencing was unfair. I truly believe had all the correct evidence been brought forth and my attorney done everything I asked him to do it would have been clear to the court that the sentencing is unjust.

JOHN KENNEDY #370431
McCl F2-236B
396 REDEMPTION WAY
McCOMICK, SC 29899

PAUL B. WICKENSIMER
GREENVILLE COUNTY CLERK OF COURT
305 EAST NORTH ST.
GREENVILLE, SC 29601

2017-CP-23- 06954

2960182190 C007



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

John William Kennedy, #370431,

Applicant,

Y.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-23-6954

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on November 3, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In April of 2015, the Greenville County Grand Jury indicted Applicant for reckless homicide (2016-GS-23-3184), failure to stop for a blue light resulting in death (2016-GS-23-3185), leaving the scene of an accident with death (2016-GS-23-3188) and attempted murder (2016-GS-23-3194). Applicant waived presentment to the grand jury on a charge of grand larceny (2016-GS-23-10062)(A). Christopher Scalzo, Esquire, represented Applicant and Andrew Culbreath, Esquire represented the State. On November 9, 2016, Applicant pled guilty before the Honorable Letitia H. Verdin. Judge Verdin sentenced Applicant to imprisonment for ten years for the reckless homicide, twenty years for failure to stop for a blue light resulting in death, twenty years for leaving the scene of an accident with death, twenty years for attempted murder and ten years for grand larceny suspended with probation for five years to be served consecutive to the other charges. Applicant did not appeal his sentences or convictions.

Attached to this Return are the records of the Greenville County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

On September 17, 2015, Applicant stole a pickup truck early that morning from the father of his ex-girlfriend. Later that morning, Applicant met up with his co-defendant at TD's Express Mart in Greenville County to attempt to sell the truck and its contents to his co-defendant. The truck was reported stolen and the police were alerted. When the police arrived they observed the truck matching the description of the reported stolen truck and saw Applicant and his co-defendant transferring items from the stolen truck to the co-defendant's truck. After seeing the police arrive, Applicant jumped into his co-defendant's truck and began to flee the scene. In the process he struck one police officer and a high speed chase started. Applicant proceeded to drive on the wrong side of the road and struck a victim who was riding his motorcycle to work. After hitting the victim, Applicant attempted to exit the truck and flee but was apprehended shortly thereafter. (GP tran. pg. 8-12)

III.

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

- I. Ineffective Assistance of Plea Counsel
 - a. Attached pages 8-17

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the

record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

VI.

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

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and ineffective assistance of appellate counsel.

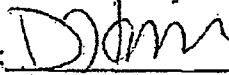
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 9, 2018

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JOHN W. KENNEDY, #370431,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

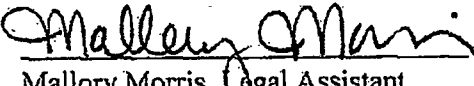
2017-CP-23-6954

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

R. Mills Ariail, Jr., Esquire
 11 North Irvine Street, Ste. 11
 Greenville, SC 29601

DATED this 9th day of March, 2018.


 Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2017-CP-23-06954

JOHN WILLIAM KENNEDY,
APPLICANT,)

VS.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.)

ORIGINAL

October 22, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE.

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

R. MILLS ARIAIL, JR., ESQ.
Attorney for the Applicant

DESHAWN H. MITCHELL, ESQ.
Assistant Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) JOHN WILLIAM KENNEDY:

Direct Examination by Mr. Ariail.....5
Cross-Examination by Mr. Mitchell.....16

(RW) CHRISTOPHER SCALZO:

Direct Examination by Mr. Mitchell.....20
Cross-Examination by Mr. Ariail.....33

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: Counsel, are you ready to proceed on the next one?

MR. ARIAIL: Yes, Your Honor.

THE COURT: All right. Yes, sir.

MR. MITCHELL: This is 2017-CP-23-6954, John Kennedy v. the State of South Carolina. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court.

In April of 2015, the Greenville County Grand Jury indicted Applicant for reckless homicide, failure to stop for a blue light resulting in death, leaving the scene of an accident with death, and attempted murder. The Applicant waived presentment to the Grand Jury and was charged with grand larceny.

Mr. Christopher Scalzo represented the Applicant. And Deputy Solicitor Andrew Culbreath represented the State.

On November 9th, 2016, the Applicant pled guilty before the Honorable Judge Verdin. Judge Verdin sentenced the Applicant to imprisonment for 10 years for reckless homicide, 20 years for failure to stop for a blue light resulting in death, 20 years for leaving the scene of an accident with death, 20 years for attempted murder, and 10

1 years for grand larceny, suspended with probation for
2 five years to be served consecutive to the other
3 charges.

4 The Applicant did not appeal his sentence or
5 conviction. He's present in the courtroom today and
6 represented by Mr. Ariail.

7 THE COURT: All right. Mr. Ariail.

8 MR. ARIAIL: Thank you, Your Honor.

9 May it please the Court.

10 I call Mr. Kennedy to the stand as our first witness.

11 THE COURT: All right. Mr. Kennedy, come forward,
12 sir. Come forward where the Bible is and Madam Clerk is
13 going to swear you in.

14 THE CLERK: Mr. Kennedy, please place your left hand
15 on the Bible and raise your right hand.

16 WHEREUPON,

17 JOHN WILLIAM KENNEDY,
18 after first having been duly sworn, testified as follows:

19 THE CLERK: Thank you.

20 You may be seated.

21 Please state your full name for the record.

22 THE WITNESS: John William Kennedy.

23 MR. ARIAIL: Okay. Can you hear him pretty good over
24 there?

25 THE COURT REPORTER: Yes, sir.

DIRECT EXAMINATION

BY MR. ARIAIL:

Q John, if you can -- get as close to that as you can.

A John William Kennedy.

Q That's perfect. You're a good distance right there.

How are you doing this morning?

A It's another day in paradise.

Q All right. Now, we're here today on your PCR. And I want to go through a little bit of the background in regards to -- you've heard the charges that you pled guilty to. Did Mr. Scalzo represent you on all those charges?

A Yes, sir.

Q Okay. Now, as part of those charges, I guess when you got them -- you didn't ever post bond on this, did you?

A No, sir.

Q Okay. When was the first time you met with Mr. Scalzo in regards to these charges?

A I believe it was the first week I was arrested. That would have been September -- the last week of September, 2015.

Q 2015?

A Yes, sir.

Q So you met with him then, had a discussion about your

1 case; is that correct?

2 A Yes, sir.

3 Q Did y'all talk about all the charges that you had
4 against you?

5 A Yes, sir.

6 Q Did you talk about the evidence that he had at that
7 time?

8 A No, no real discussion on the evidence.

9 Q What did y'all talk about during that conversation?

10 A Just the -- I guess sentencing guidelines on the
11 charges, what I was looking at moving forward.

12 Q Okay.

13 A And I had asked him about my discovery, when I would
14 get the evidence, and all that. He said I would receive
15 it within 30 to 90 days, I believe.

16 Q Okay.

17 A Which I -- I didn't get it for a long time, but.

18 Q Okay.

19 A That was our first discussion.

20 Q All right. And how many -- over the -- I guess the
21 term of your case before you pled guilty, how many
22 discussions did you have with Mr. Scalzo?

23 A I believe it was about -- I think he came to see me
24 between four and five times.

25 Q Okay. Now, during those conversations, did y'all,

1 eventually, start discussing the discovery that was in the
2 case?

3 A Not too much. I mean, most -- like, I guess it was
4 around January of 2016, I realized, you know, I had still
5 not gotten my discovery. So I had wrote a letter and
6 asked him to send it to me. I still hadn't received it
7 the next time I -- I saw him, which was probably -- I want
8 to say October or September of 2016, whenever he came and
9 offered me my first plea. And I still hadn't received my
10 discovery yet.

11 I asked him then about, you know, where -- he said --
12 he showed me the letters that I wrote asking for it. But
13 he asked me what I intended to do with my discovery.

14 Q Okay.

15 A I said, you know, see what the State's evidence was
16 against me. He said it was pretty much a cut and dry
17 case. He didn't know what I had to gain by looking at my
18 discovery. But I still -- I mean, that's my right, I -- I
19 believe.

20 Q Did you get your discovery to be able to look at it?

21 A Yeah. I was able to get it then --

22 Q Okay.

23 A -- about a month before I went before Ms. -- Ms. Verdin.

24 Q Before you went before Judge Verdin to plead?

25 A Yes.

1 Q Okay. Now, did you have enough time to be able to
2 review that, and take a look at it, and discuss it with
3 him?

4 A I mean, in my opinion, I didn't have enough time to
5 do anything with it. But it was -- I felt like I was sort
6 of railroaded. Because they said it was either -- he said
7 you either go to trial or you go zero to 30 before
8 Ms. Verdin. And I had only had the evidence for a month.

9 Now, he said it was cut and dry. There was nothing I
10 would be able to gain from it. But since I've been at --
11 in SCDC and able to go to the law library, I've gained a
12 lot of information of that discovery, found parts where
13 it's lacking, things -- evidence is missing.

14 Q Okay.

15 A And if I would have had it from the beginning, you
16 know, who knows what I could have gained from it.

17 Q And let me go back maybe. During your discussions
18 with Mr. Scalzo, did y'all discuss the evidence they had
19 and how it would -- I guess could be used to convict you
20 of each of the charges?

21 A Yes.

22 Q Okay. So I understand you say there's stuff missing
23 and lacking. Did y'all -- did you discuss that with him
24 to say, well, hold on a second. They're not -- I don't
25 see any video here. I don't see any medical records. I

1 don't see anything that -- did y'all discuss that?

2 A Yeah. I -- I had mentioned that to him before. And
3 the response I believe was -- I'll quote, he said, do
4 not -- we might not want to poke the bear, I believe were
5 his exact words. Because I was talking about how, you
6 know, in my discovery, the part that I had seen, there was
7 only one real statement from an officer where they had
8 said that I had been shot.

9 And behind that, there was no medical records of --
10 didn't -- the other officer who they claim I ran him over,
11 they showed no medical records to back any of that up.

12 Q I mean, did you discuss with him during this period
13 of time -- I know there are no medical records about the
14 officer seeking treatment. Did you discuss anything
15 about, well, even if there aren't medical records that say
16 that, his testimony alone can be used to get an attempted
17 murder charge against you?

18 A That's -- that's when he was like, you know, you
19 don't want to poke the bear, like, because they can pretty
20 much -- based on his statement alone convict you of it.

21 Q I mean, so you did talk to him about the statement of
22 the officer being used to convict you for attempted
23 murder?

24 A Yes, sir.

25 Q And what was your response to that?

1 A I -- I mean, I asked -- I understood that. But at
2 the same time, I felt like there should have been the dash
3 cam footage and all that, the footage from whatever gas
4 station cameras they had. And I asked him if he would try
5 to find that. And he said at one point that there was
6 a -- camera footage from TD's gas station, but it only
7 showed the taillights of the truck as I pulled out. And I
8 said, well, I'd still like to see that. But it never -- I
9 never saw any of the video evidence.

10 Q Okay. And as part of this, you went through -- I
11 think there were several -- there were plea negotiations
12 in this case; correct? Do you remember it started off at,
13 like, 30 years?

14 A It started off at 30, and then 25.

15 Q I mean, you put -- you had a couple of -- I mean,
16 you, actually, asked him, here's what I'm willing to do to
17 be able to plead guilty; is that correct?

18 A Yeah.

19 Q What were you willing to pled to to get this done?

20 A We had two different options. At one point, it
21 was -- I said I would do 10 years -- three consecutive
22 charges for 10 years, one for the reckless homicide, one
23 for the attempted murder, and then one for the grand
24 larceny, suspended to five years of probation. So,
25 basically, it would have been 30 years just the way it

1 would have -- the sentencing guidelines behind it, that
2 would have been a shorter sentence than --

3 Q Okay.

4 A -- the 20 that they gave me.

5 Q And, actually, their plea offers went from 30 to 25
6 to 20 with a consecutive 10 years suspended to five years
7 of probation; is that correct?

8 A Yes, sir.

9 Q So they got to the 20. You wanted 15 years straight
10 was your last offer; is that correct?

11 A Yeah. That was the last one, the 15.

12 Q Okay. So at some point in time, you decided to go
13 plead; is that correct?

14 A Yeah. That's when he had informed me that if I
15 didn't that my options were either accept the 20 years
16 with the suspended 10, 10 suspended to five years of
17 probation, go to trial, or I could go before Judge Verdin
18 zero to 30 on an open plea.

19 And his -- what you -- the deciding factor on that,
20 you know, he said if you go before Verdin, you know,
21 she'll sentence you straight 20 years. She's not going to
22 give you no -- no probation. It'll be a straight
23 sentence, which at the time, you know, that was the best
24 offer I had seen, but not really an offer, but the best --
25 the best out -- you know, the best sentencing they had

1 offered.

2 Q The 20?

3 A 20, just straight.

4 Q Okay. And I guess you went and -- understood this is
5 what they're going to recommend, where they were looking.
6 I mean, I guess this is what their last offer was; is that
7 correct?

8 A Yeah. Their last offer was the 20 suspended to -- 20
9 with consecutive 10, suspended to five years of probation.

10 Q And you decided to plead based upon all the
11 information you had; correct?

12 A Yeah.

13 Q Did you ever raise, I guess, at the plea -- and I've
14 looked through the plea transcript. I'm just trying to
15 remember if you talked to Mr. Scalzo about it, well, I
16 don't have this. I don't have the medical records of the
17 officers -- or the officer. I don't have the camera. I
18 don't have things I need, so I'm not ready to plead
19 guilty.

20 A I -- I never said that exactly. Because every time
21 that I -- I would bring up, like, I -- there was a
22 potential -- an officer I had asked him to get in contact
23 with from the county jail --

24 Q Right.

25 A -- who had spoken with me about a conversation they

1 had had with one of the deputies involved in the chase, I
2 asked him to follow-up on that. And nothing ever came
3 from it.

4 And so by the time -- whenever he -- you know,
5 it's -- here it is October, they're talking about court on
6 November 9th. I mean, what do you do? I mean, this --
7 everything I've been asking him for I haven't been getting
8 much assistance from.

9 Q Okay. So you had asked him to do -- I mean, there
10 was a witness you said that was going to testify or
11 provide information about what?

12 A It was about the officer who was involved in the
13 chase --

14 MR. MITCHELL: Your Honor, I'm going to object to
15 potential hearsay.

16 THE COURT: All right. I'm going to sustain the
17 objection.

18 MR. ARIAIL: Okay.

19 BY MR. ARIAIL:

20 Q There was a witness that you wanted him to interview;
21 is that correct?

22 A Yeah.

23 Q And he was at the -- was he a correctional officer
24 at --

25 A At Greenville County.

1 Q Greenville County?

2 A Yeah.

3 Q Did he go talk to him?

4 A No.

5 Q Okay. There's, also, a 911 tape that you wanted him
6 to look into; is that correct?

7 A Yes, sir.

8 Q And do you remember getting anything about that?

9 A I never heard anything -- I didn't find out about it
10 until this year.

11 Q And what -- what do you think that 911 tape could
12 have done to help you out, or how it would have affected
13 your --

14 A Well, I mean, I'm no lawyer. But based on the
15 research I've done in South Carolina, in order to chase
16 after somebody, they have to have been proven violent or
17 have a violent record, violent tendencies in order to
18 proceed with a high speed chase.

19 Well, the 911 call apparently -- I haven't heard it
20 myself. But a civil rights attorney or whatever, they --
21 they have provided it on YouTube where my mom heard it.
22 And it says that -- the way it's described is it describes
23 me as two black males that have -- that have fired shots
24 at the police and the police officer is on the ground,
25 he's hurt. And they are afraid if the ambulance doesn't

1 get there soon, the police officer is going to die.

2 Well, I never shot anybody. I had no gun. I -- they
3 did no GSR test on me. They -- nothing to try to prove
4 that I was in a shootout with this officer. Yet, I can --
5 there's parts where -- in the officer's statements in my
6 discovery where it says that they were -- the chase was
7 cleared based on the fact that they assumed I had fired
8 shots at the officer.

9 Q Okay. So you're saying the 911 tape was inconsistent
10 with what happened, so the chase should have never
11 started?

12 A They're -- I'm -- I mean, I agree with that. But
13 that it should have never continued because they were
14 basing it on the fact that I -- they thought I shot at the
15 officer. And the officer never had no reason to say that.
16 I never fired a weapon at him. They never found a gun.

17 Q Okay. So there were just some things that you had
18 thought he should have done that weren't done; is that
19 correct?

20 A Exactly.

21 Q Okay. Are there other things that you want to raise
22 to Judge Kinlaw that you want to put in as a part of this
23 record before we're finished?

24 A I think that's -- I mean, that's really about the
25 gist of it.

1 MR. ARIAIL: Okay. I've got no further questions,
2 Your Honor.

3 THE COURT: All right. Counsel.

4 MR. MITCHELL: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MITCHELL:

7 Q Good morning, Mr. Kennedy.

8 How are you?

9 A I'm great.

10 How about you?

11 Q I'm doing well.

12 So just to follow-up on that last -- have you ever
13 heard the 911 tape yourself?

14 A No.

15 Q Okay. So let me ask you, how many times did you meet
16 with Mr. Scalzo, again, prior to pleading guilty?

17 A I believe it was about four or five times.

18 Q Okay. And so I think the complaint is that you
19 didn't receive your discovery timely. Prior to you
20 pleading guilty, you had a copy of your discovery; right?

21 A Yes, prior to that. I got it right before. I was
22 given the option of going to trial or pleading guilty.

23 Q So did Mr. Scalzo make you plead guilty?

24 A No.

25 Q Okay. So you chose to plead guilty yourself?

1 A Yeah.

2 Q Okay. And so --

3 THE COURT: Make sure you speak up.

4 THE WITNESS: Oh, yes, sir.

5 BY MR. MITCHELL:

6 Q So -- and I just want to make sure I'm clear, because
7 this is your day in court. Your complaint is that you
8 didn't get the discovery timely; right?

9 A Yes, sir.

10 Q Okay. So what other information, if you got it
11 timely, would have -- would have been proven? Would you
12 have went to trial? I guess that's the question I'm
13 trying to get to.

14 A At this point, yes. Now that I've -- I've had the
15 time to look over it and see, you know, there's a lot of
16 stuff -- like I say, the -- the statement that -- if you
17 were to read the statements of some of the officers in
18 there, you know, they -- they say -- they back up a lot of
19 the stuff I've been saying, like, the chase was called
20 based on the fact that they thought I had shot at the
21 officers, but I never had.

22 Then, you know, had he gotten in contact with the
23 officer from the detention center, I believe there could
24 have been more facts shared by the deputy that spoke with
25 that particular officer that was involved in the chase.

1 Q Are any of those people here today to testify?

2 A No.

3 Q Okay. So is it -- it sounds like speculation to me.

4 A I mean, how am I supposed to call? I'm supposed to
5 call them? That's why I asked my attorney to do it.

6 Q Okay.

7 A He just refused to do it.

8 Q So let me ask you about the officers testimony about
9 the -- the incident at the store. You said you and
10 Mr. Scalzo talked about that the officers could testify at
11 trial, if you went to trial --

12 A Uh-huh.

13 Q -- about them fearing for their life; right?

14 A Right.

15 Q Okay. And all the previous -- or any of the plea
16 officers -- plea offers that were extended to you, you
17 denied those; is that right? You rejected them?

18 A (Witness nodded.)

19 Q Okay. But you said -- I think you said that you were
20 willing to do a certain number of years; right?

21 A Yes, sir.

22 Q Okay. Was that ever -- was that ever extended to
23 you, or was that just your request?

24 A No. It was never extended to me.

25 Q So that was your request that you wanted the State to

1 offer you?

2 A Yeah. They -- they offered me. And I sent back a
3 counter offer.

4 Q Okay. And what was the response to that?

5 A What was their response?

6 Q Yeah.

7 A No.

8 Q Okay. And I just want to make sure that we have a
9 good understanding of the facts. There was an attempted
10 murder charge against the police; correct?

11 A Right.

12 Q And then a firefighter who was hit by you died;
13 right?

14 A Yes, sir.

15 MR. MITCHELL: Judge, that's all the questions I
16 have.

17 THE COURT: All right. Anything else?

18 MR. ARIAIL: No further questions, Your Honor.

19 THE COURT: And I have no questions.

20 You can step down.

21 MR. ARIAIL: That is our case, Your Honor.

22 THE COURT: All right. Mr. Mitchell, are you ready
23 to call your witnesses?

24 MR. MITCHELL: I am, Your Honor.

25 The State would call Mr. Christopher Scalzo.

1 THE CLERK: Mr. Scalzo, please place your left hand
2 on the Bible and raise your right hand.

3 WHEREUPON,

4 CHRISTOPHER SCALZO,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you.

7 You may be seated.

8 And please state your full name for the record.

9 THE WITNESS: It's Christopher Scalzo.

10 DIRECT EXAMINATION

11 BY MR. MITCHELL:

12 Q Good morning, Mr. Scalzo.

13 How are you?

14 A Good morning.

15 Q What's your current position?

16 A I am the circuit public defender in the Thirteenth
17 Circuit.

18 Q And how long have you practiced law here in South
19 Carolina?

20 A 16 years.

21 Q Okay. And how much of that time has been devoted to
22 criminal law?

23 A All of it.

24 Q Okay. And if you could -- well, you're a public
25 defender. So does that suffice it to say that this was an

1 appointed case?

2 A Yes.

3 Q All right. And I know I asked Mr. Kennedy about the
4 facts. If you could give me a truncated version of the
5 facts in this particular case.

6 A Okay. The incident started at a gas station in
7 Greenville. At least, one officer, although I believe
8 there were two officers on the scene approached -- their
9 testimony would have been, I'll say it that way,
10 approached a car that they thought was stolen. That at
11 some point Mr. Kennedy got in the car and attempted to
12 flee.

13 One of the -- the two officers, my understanding,
14 would have said that he drove at them. That one of the
15 officers got pinned up against -- I forget the thing that
16 he got pinned up against. That officer discharged his
17 weapon. It went through the windshield, I believe, and
18 struck Mr. Kennedy or grazed his head.

19 And then Mr. Kennedy left the scene at that point, or
20 left the gas station. Clearly, the officers would have
21 called in the incident. And you had officers around,
22 essentially, Greenville County coming to get him.

23 The -- Mr. Kennedy traveled -- I don't know how many
24 miles. But he traveled fairly far away from the gas
25 station with several police cars in tow. There is dash

1 cam video that, essentially, they're on the highway.

2 And at some point, you can see that Mr. Kennedy was
3 in a small pickup truck and went from the right side of
4 the traffic across and into the other lane and almost
5 immediately at that point, there's a collision. There was
6 a gentleman on a motorcycle not related to the case. He
7 was killed on the scene. And Mr. Kennedy was apprehended
8 on the scene as well. And that's where you have the death
9 charges -- or the death-related charges that come out of
10 the plea.

11 Q Okay. And so let me ask you this. I know I heard
12 Mr. Kennedy say that he -- you met with him several times.
13 Could you recall how many times that would be?

14 A I don't recall off the top of my head. I -- my notes
15 would have -- he sounded -- when he said four or five,
16 that sounded correct. If you want, I can go through the
17 notes, if you want me to.

18 Q Well, just based on your memory, what he said is
19 accurate? Does it sound about accurate?

20 A Yeah. There may have been one or two more times.
21 But, essentially, it was accurate, yeah.

22 I've got -- generally, how I do it is I'll write it
23 on the inside of my cover in terms of when I went to see a
24 person or something happened in the case. And most of the
25 time, I'll write handwritten notes with the date on it.

1 And it'll -- it'll cover what I discussed with the person.
2 And I have those here as well.

3 Q Okay. So let's talk about those meetings. During
4 those meetings, did you -- did you all go over or discuss
5 the case?

6 A Yeah. Initially, I probably would not have discussed
7 the case with him. My initial meeting with him would have
8 just been general, you're in jail, here's what to expect.
9 Here's sort of a rough timeline of what to expect.

10 I might have talked about some relevant details,
11 probably more medical, really, given he had been injured.
12 But I don't generally get into the details of the case on
13 the first meeting when I don't have any information. But
14 as we would have progressed and I've gotten more
15 information, then we would have started to discuss
16 relevant details of the case.

17 Q Okay. And so during those meetings, is it safe to
18 say you guys would have discussed the charges that he was
19 facing and the potential punishment that he would be
20 facing?

21 A Certainly, yeah. We would -- I think he is right
22 that he asked me initially what -- you know, what would he
23 be facing. What were the -- what was sort of the worst
24 thing that could happen. But as we progressed in our
25 conversations, we would have continued to talk about

1 everything, the issues, how much you're looking at,
2 whatever plea offers, things like that.

3 Q Okay. And so let's take a look at this first issue
4 in terms of a dash cam -- or an issue about a video from
5 the store where the incident took place.

6 A Okay.

7 Q Did you have discussions with him about that?

8 A Sure. I mean, that was -- that was a legitimate
9 issue in -- in the case. If -- you had two versions of
10 what supposedly happened. You have the police officers
11 claim about what happened. And you had -- or I had John's
12 claim about what happened.

13 Clearly, a video would have -- could have been a
14 deciding factor in terms of what was the most accurate
15 description. So we knew that going in for a while.

16 Ultimately, when I got the discovery, I don't recall
17 ever finding the video, getting it from the law
18 enforcement's investigation. I don't ever have a video
19 from -- I think it's TD Express or whatever, the gas
20 station showing the incident take place. We didn't have
21 that from the State.

22 So I engaged a private investigator to go out, find
23 out does a video exist. And if there was a video, get a
24 copy of the video. But, ultimately, that didn't pan out.
25 The investigator went out there. But there was no video

1 able to be returned through that investigation.

2 Q Okay. So the State didn't turn over one. You took
3 it upon yourself to see if you could get one. There was
4 no video?

5 A Right. And, to my knowledge, the State did not turn
6 it over. It just didn't -- they didn't have it.

7 Q Fair enough.

8 A At least, that's what's I understood from the
9 Prosecution.

10 Q Okay. And you filed your traditional Brady request;
11 correct?

12 A Yes, sir.

13 Q Okay. And so you got the discovery from the State.
14 Once you got the discovery, did you discuss it with the
15 Applicant at that point, or talk about it with him?

16 A No. He's correct. I mean, we didn't immediately
17 discuss it, you know, the second I got it. I can tell
18 you --

19 Q Sure.

20 A We were discussing it probably over time. There is a
21 specific time when I wrote -- I know I have a note in here
22 that I met with him. And he -- and I have a note, get him
23 discovery, which is a normal thing when a client asks me
24 for discovery -- or a copy.

25 And then I've got another note that -- I don't know

1 how many weeks later, or whatever. But I can look through
2 to give you the dates where I went back and I said -- one
3 of the things I wrote down was, gave him discovery. And I
4 think he's right, it's somewhere, I think maybe, in
5 September of 2016. And then his plea is in November.

6 So giving him a literal copy of the discovery is two
7 months or so prior to the plea. A discussion of what
8 evidence they had and what we were dealing with would have
9 taken place over the course of other months leading up to
10 that.

11 Q So -- so that was ongoing?

12 A Yes.

13 Q Okay. And let me ask you about in terms of medical
14 records from a police officer in this particular case. Is
15 that something that he inquired of you?

16 A I don't, specifically, remember that request. But I
17 wouldn't have been -- I mean, I would have expected
18 medical records. I mean, it's not that that wasn't a
19 potential issue, or an illegitimate request, or
20 consideration on his part.

21 I don't have them. I looked through the discovery
22 even today. I don't recall having them or ever seeing
23 them. I mean, that -- with regard to that, that's kind of
24 where that is.

25 Q Did you guys have a conversation about whether the

1 officers -- if this case went to trial whether their
2 testimony would have been sufficient to establish the
3 charge?

4 A Well, we definitely had that discussion. That
5 discussion would have been just like I said with the
6 video, they're going to testify to this, you might testify
7 to that. We don't currently have the video. And the jury
8 is going to have to figure out what they believe.

9 Most of our discussions would have been centering
10 around the plea offer that the State, at least, initially,
11 started with and us figuring out does he want the plea
12 offer, or does he not want a plea offer. And we're trying
13 to figure out -- or I'm trying to figure out whether the
14 client -- whether they want a plea offer or a trial, then
15 we're going to start talking about what we think is going
16 to happen at a trial.

17 And, certainly, in this case, like most cases, the
18 credibility of the police officers and what they have to
19 testify to has to be taken into consideration by the
20 Defendant, and whether or not they're going to take a
21 certain degree of risk in going to trial.

22 And I can tell you I've been doing it the same way
23 for, at least, 13, 14 years. It took a couple of years to
24 get settled on. But, to me, I'm advising my client and
25 it's about the weight of what risk you're willing to take.

1 Do you want a trial? There's a risk involved in a trial.
2 Do you want a plea? There's a risk involved in wanting a
3 plea. And there -- I'm trying to help them sort out which
4 risk they're willing to -- to, eventually, take. And I
5 would have done the same thing and did the same thing in
6 this case.

7 Q And during the course of that conversation, what was
8 the response from the Applicant in terms of whether he
9 wanted to plead guilty or go to trial?

10 A Well, he -- he was never -- I mean, the certainty --
11 it wasn't like he was certain about one thing over another
12 over the entire time. He -- you know, he dealt with it.
13 It was a difficult decision. It was very hard.

14 I mean, so I don't -- he never had a definitive, no,
15 never trial or, oh, guilty plea. It went -- there was an
16 evolution in it. We were getting plea offers from the
17 State. So that sometimes had a change. He bounced back
18 and forth, you know.

19 So there were points where he leaned towards going to
20 trial. And there were points where he wanted to strike a
21 deal. Nothing unusual on that. But that's kind of where
22 we were.

23 Q So, ultimately, you guys got a plea offer from the
24 State that the Applicant decided that he wanted to accept?

25 A Ultimately, we did, yeah.

1 Q Okay. Was there a determining factor in that for
2 him?

3 A I don't remember a specific -- I mean, some of it
4 took place in his head. I mean, we had gone, as was
5 testified, from -- I don't know that it was 30. I
6 remember 25. But, essentially, starting out with 30 or 25
7 from the State. We started pretty strong negotiations
8 over a period of time.

9 Ultimately, we got to a place where what the
10 Prosecutor wanted was a negotiated 20. And then they did
11 want to tack on this 10-year suspended consecutive. And
12 they wanted sort of probation at the back end. And we
13 had -- the Prosecutor wanted -- negotiated that --
14 wouldn't back off of that for a while.

15 Then eventually -- and John is correct, there was
16 some point where he wanted me to go for -- what I wrote
17 down was a 10, 10, 10 counter offer, which we tried -- I
18 tried to get from the Prosecution. And where we ended up
19 was they wouldn't go to the 10, 10, 10. But they backed
20 off of the negotiation and, basically, agreed we can do it
21 straight up.

22 And so that as we were moving towards November -- and
23 I can look through here to find out the dates where that
24 changed. As we were getting to the November plea day,
25 what we were really discussing was now that it was

1 straight up, where would we end up? You know, what was my
2 prediction about where we might end up as far as with the
3 Judge and what might happen.

4 But we didn't have a -- we didn't have a deal on the
5 amount of time. We had a deal on what he was going to
6 plead guilty to, what they were going to get rid of. And
7 that's -- I think that's all, essentially, in terms of
8 what we had as a deal.

9 Q Okay.

10 A We didn't have a number as a deal. We -- I knew they
11 would make a recommendation. And I knew that we would go
12 up and talk to the Judge about kind of how we got to where
13 we were prior to, actually, doing the plea. So that the
14 Judge would understand the dispute was between what we
15 wanted, and what they wanted, and we were very close, but
16 we just hadn't agreed on a number.

17 Q Okay. Did you ever promise Mr. Kennedy a certain
18 number that he would receive if he pled guilty?

19 A No.

20 Q Okay.

21 A I wouldn't even promise that if that was recommended.
22 If it was negotiated, then I could promise it, if the
23 Judge took it. But I couldn't promise it if it was
24 recommended.

25 Q Okay. And in terms of an investigation about a 911

1 tape, did you guys ever have a conversation about that?

2 A I don't recall that. I think there is a 911
3 recording in the CDs or DVDs. I mean, it may or may not
4 exist. And it -- and it -- or it may not -- I'll say it
5 this way. It may be consistent with what he's hearing. I
6 don't recall it. But that's an after the fact piece of
7 evidence. In other words, I think there was confusion
8 amongst law enforcement when it was reported out.

9 So in other words, you know, they use codes. So when
10 the officer was down and he discharged his weapon, I think
11 the way the codes went out, it confused law enforcement
12 into thinking that he was shot when what he was really
13 saying was he was struck and shot.

14 And in the quickness of everything that was going on,
15 I think they did sort of report out the wrong codes. And
16 there were several officers who were thinking something
17 different in terms of what happened.

18 But other than, essentially, chasing him, they don't
19 have any contact with him until after the accident. And
20 so it may or may not have been an accurate statement that
21 the chasing officers had. But it wasn't really relevant
22 in terms of an initial defense to either if he struck the
23 officer or even leaving the scene of the initial attempt
24 to arrest him, so.

25 Q Okay. And then other -- I know you discussed it.

1 Other than the potential video that would have shown the
2 incident starting at the store, were there other -- any
3 defenses, possible defenses that you considered using
4 or...

5 A Well, we, certainly, did discuss -- I think the
6 main -- the main potential defense we discussed was the
7 fact that because the bullet had struck him in the head
8 and -- to some degree. It didn't go into his skull. But
9 it -- it hit him and, obviously, had an effect on him. We
10 tried to evaluate where that might have led as far as a
11 defense.

12 Because he wouldn't have had sort of a technical, you
13 know, insanity defense or something along those lines.
14 The question really would have been more factual and
15 whether or not -- you know, what would a jury do with the
16 facts. And the major thing he would have been running up
17 against in terms of what would a jury be willing to accept
18 was having to deal with what the officers testified to.
19 Because they weren't going to agree with him.

20 And then, ultimately, the video on the accident
21 itself, you know, was pretty strong and compelling. So we
22 would have been fighting against that. I don't know that
23 there's a specific sort of legal defense that we really
24 would have discussed. It would have been more of a
25 factual defense in terms of him presenting a different

1 factual scenario than the State would have presented. So
2 we would have had to weigh those two scenarios.

3 MR. MITCHELL: Thank you, Mr. Scalzo.

4 Please answer any questions Mr. Ariail may have for
5 you.

6 THE WITNESS: Sure.

7 THE COURT: All right. Mr. Ariail.

8 MR. ARIAIL: Thank you, Your Honor.

9 May it please the Court.

10 CROSS-EXAMINATION

11 BY MR. ARIAIL:

12 Q Mr. Scalzo, how are you doing today?

13 A All right. Thanks.

14 Q Good.

15 Let me start off and go back. You said you met with
16 him three or four times during the -- I guess the term of
17 the case; is that correct?

18 A Well --

19 Q Around about?

20 A I can go through it. I met with -- I've got a jail
21 visit on October 8th, 2015.

22 Q Okay.

23 A My notes indicate he was arrested on the 17th of
24 September, 2015, and that we got it September 21st, 2015.
25 I, initially, sent one of my investigators down to see him

1 on September 22nd. And that would have just been -- I
2 don't remember why. Apparently, there must have been a
3 reason why I couldn't get down there. But I sent him
4 down. He talked to the client. Make sure he doesn't talk
5 to anybody. Make sure he knows kind of what to expect and
6 that we would end up getting with him.

7 I met with his sister the day before I went down to
8 the jail. So I met with his sister on October 7th, 2015.
9 I went to see him on October 8th, 2015.

10 There was a civil suit going on with regard to the
11 death case. And the insurance company for both sides, the
12 same insurance company, had hired a lawyer, Alex Timmons,
13 to represent John, essentially, in the case. So in
14 February of 2016, I believe the three of us, also, met at
15 the jail to discuss the civil case, which was, obviously,
16 pretty involved in the criminal case.

17 And then I met with him -- it looks like
18 September 30th, 2016. And then that's my notes in here.
19 I'd have to go through these handwritten notes -- excuse
20 me -- to get some of the other dates.

21 August 19th, 2016, there was a meeting, which I have
22 a note, bring discovery to Defendant. So then on
23 September 1st, 2016, I met with the Defendant and gave him
24 a copy of the discovery. And I wrote, plea after. So
25 that means I must have advised him of the plea offer, as

1 well as giving him the discovery.

2 Then I've got 10/10/2016, it looks like my notes
3 where I would have been going over the various scenarios,
4 hey, if you plead guilty or take the offer, here's what it
5 would look like, things like that.

6 Q Right.

7 A 10/12, another discussion it looks like about the
8 numbers, essentially, what it means if he, essentially,
9 took the deal, or tried to get to a number that he wanted.
10 10/18, again, still talking about negotiations.

11 10/26 was a continuing process. And this time, he
12 wanted to be able to speak with his sister about what was
13 going on. Let's see. A 9/30 meeting; a 10/31 meeting; an
14 11/3 meeting; 11/7 meeting. And an 11/8 meeting, which I
15 believe is the day before the plea. And then, obviously,
16 we would have sat and talked on the 9th before we went up
17 in front of a Judge.

18 Q Okay. Now, during -- I mean, there's numerous
19 meetings here. At some point -- let me ask it this way.
20 Was there any time during any of these meetings that you
21 felt he didn't understand what was going on?

22 A No. I believe he understood what was going on.

23 Q Okay. And it looks like y'all -- from my
24 understanding of the negotiations, it looks like at some
25 point in time, this transferred from understanding what

1 the case is about to trying to work out a plea deal.

2 Would you say that, based upon your looking at your notes?

3 A We were always very -- we were almost on a line.

4 There were times when it could have easily gone one way or
5 the other.

6 Q Okay.

7 A And it stayed that way for a pretty long time. It
8 may have, actually, even stayed that way right -- leading
9 up to the plea.

10 Q Okay.

11 A Ultimately, yes, he did decide I'll take the plea.
12 But it -- like I said, I don't want to mischaracterize.
13 He -- it wasn't as if he was certain he wanted a trial
14 from the beginning, or certain that he wanted to plead.

15 Q Right.

16 A It was a very difficult weighing of what his options
17 were the entire time.

18 Q So he's weighing his options. If I go to trial, I've
19 got this. Potentially, if I plead, I can get this. And
20 y'all are trying to do both at the same time?

21 A Yes.

22 Q Okay. I know he's brought up certain issues and
23 you've tried to address them a little bit.

24 A Sure.

25 Q You said you went -- I guess, first of all, one key

1 thing he was looking at was -- from your understanding,
2 there was no in-car camera video from the officers at TD
3 Express; is that correct?

4 A I think there's an in-car video. But I think it's
5 from the officers car, which is not facing the scene.

6 Q Okay.

7 A And I don't think -- I think -- that's why I think
8 there's a second officer on the scene. And I think his
9 video or audio really only captures away from where the
10 officer would have claimed he struck him with the car. So
11 it didn't, actually, show it. So I can't say there wasn't
12 a video.

13 Q Got it.

14 A But there wasn't a video that showed what we really
15 wanted to know, which was sort of an objective view of
16 what happened.

17 Q Right. And I guess maybe I should have asked it this
18 way. There's no video that captures what happened at the
19 TD Express parking lot?

20 A Correct.

21 Q Okay. And that was from the in-car cameras and,
22 also, TD Express didn't have them?

23 A That's right.

24 Q Okay. So there's nothing that y'all could have
25 argued or put up at trial that would have, I guess,

1 supported his view of kind of what happened during this
2 incident?

3 A Well, there wasn't additional evidence. Obviously,
4 he -- it would have -- it would have boiled down to he
5 would have had to testify what happened, and the officer
6 would have had to testify to what happened. And then we
7 didn't have sort of a third piece of evidence to help push
8 it one way or the other.

9 Q Right. As part -- and we know there's an attempted
10 murder charge in regards to, at least, one of the
11 officers. The medical records, did you discuss with
12 him -- you know, I guess he said don't poke the bear at
13 some point in time. I don't know if, you know --

14 A I don't recall that. That's not really a term I
15 would have used. But if he walked away thinking don't
16 poke the bear, then it probably came from the fact that
17 the focus of the case was less the officer and more the
18 uninvolved victim. I mean, what drove the case was the
19 firefighter and the tragedy of his death.

20 Q Okay.

21 A So however that case was going to be resolved, from
22 the beginning, I made it clear that was being resolved
23 based on how the Prosecution was going to handle that.

24 Q Right.

25 A That's why he ended -- I think he had two attempted

1 murders, but he only had one, ultimately, in the plea.
2 Because the attempted murder as serious as it was really
3 took a backseat to the lead charge, which was all the
4 death-related charges.

5 Q And I know I've spoken with him about this before.
6 And I don't know if he put it as part of his testimony.
7 But did you see any way, I guess, to provide a defense to
8 the death of the firefighter, based upon what happened in
9 the parking lot or coming out of the TD Express? Was
10 there any way that to -- I guess articulate a defense that
11 might have --

12 A We discussed what I -- like I described before, what
13 would have been a factual defense potential. We didn't,
14 ultimately, obviously, go forward with it. But the
15 potential factual defense would have been they shot me
16 unnecessarily. I'm fleeing because they're, basically,
17 trying to kill me. And that my fleeing of them -- of the
18 police at the gas station as well as the police that were
19 chasing me, it was all because I think they're trying to
20 kill me for no justified reasons.

21 You know, that was -- that's a factual defense. But
22 one of the things you had to weigh was what, ultimately,
23 would have been -- if you present that to the jury and the
24 jury convicts you, then now we're in, you know, charges
25 that carry 25-year maximums. There are multiple charges.

1 Are we dealing with greater than the 20 years that we,
2 ultimately -- range we were in? And that's kind of where
3 the discussion always centered on.

4 Q Right. And part of that was he had been shot in the
5 head. One thing I think I need to discuss with you or him
6 was, did you at any time look at trying to hire an expert
7 or get somebody to say that his head injury could have
8 distorted the way he was thinking and affected his
9 behavior when he was fleeing from the cops? Did you ever
10 think about that?

11 A I didn't.

12 Q Okay.

13 A I know that we talked about -- you know, when he
14 described the injury, I talked to him about, you know,
15 what was going on, you know. I was trying to make,
16 essentially, the assessment that -- that you're asking. I
17 don't recall thinking or seeing a basis that would have
18 described, like I said, a legal insanity --

19 Q Right.

20 A -- or a legal defense that would have involved not
21 being aware of what was going on.

22 Q Okay. At the time of his plea, do you believe that
23 he understood and knew what he was potentially doing, and,
24 I guess, the range of the sentence that could happen at
25 that time?

1 A Yeah, I do.

2 MR. ARIAIL: Okay. I have no further questions, Your
3 Honor.

4 THE COURT: All right. And I have no questions.
5 Anything else?

6 MR. MITCHELL: Nothing additional, Your Honor.

7 THE COURT: Mr. Scalzo, you can step down.

8 THE WITNESS: Thank you, sir.

9 THE COURT: All right. Any other witnesses from the
10 State?

11 MR. MITCHELL: No, Your Honor.

12 THE COURT: All right. Short argument from both
13 sides.

14 MR. ARIAIL: Your Honor, in regards to this case --
15 and I think you've heard, you know, my client simply has
16 said there's some things that he didn't have, which would
17 have aided him in his review of this case. I know he's
18 pled guilty to it. It was somewhere in the range of what
19 he was looking at.

20 But due to him not having some of the items and not
21 being aware of some of those, I think that affected his
22 ability to enter into that plea and do it freely and
23 voluntarily. That would be our argument, Your Honor.

24 THE COURT: All right. Mr. Mitchell.

25 MR. MITCHELL: Briefly, Your Honor. I think you've

1 heard testimony from trial counsel that he reviewed
2 discovery with the Applicant. Whether it was a couple of
3 months before his plea offer, he had it well in advance of
4 his actual pleading guilty. And he made his decision
5 based on the information he had at the time.

6 In terms of medical records, medical information,
7 hiring an expert to -- to see if there was some type of
8 defense to put forward, none of that's been produced here
9 today. So I don't think you can -- he can establish
10 sufficient prejudice to meet the -- the burden of
11 Strickland.

12 So with that, Your Honor, I think that the Applicant
13 has failed to establish an ineffective assistance claim --
14 ineffective assistance of counsel claim. And I think his
15 application should be denied for those reasons.

16 THE COURT: All right. Counsel, I'm looking at the
17 transcript on Page 5. And I think when the Court made
18 inquiry of Mr. Kennedy and the Court asked him, Are you
19 happy with what your lawyer has done for you?

20 And his response was, Yes, ma'am.

21 And the Court, also, made inquiry, well, has anybody
22 forced him to plead guilty?

23 And he said, No, ma'am.

24 The Court says, and as Counsel well knows, in the
25 Strickland case, the Court has to look at a two-prong

1 argument. And in that case, the first thing the Court has
2 to look at is the -- is the attorney's performance by a
3 reasonable-- is it reasonable under the prevailing
4 professional norms. And that's the first prong of
5 Strickland.

6 The second one is Counsel's alleged deficient
7 performance must have prejudiced the Applicant such that
8 there's a reasonable probability, therefore, the -- but
9 for Counsel's unprofessional errors the result of the
10 proceeding would have been different.

11 And that's the two-pronged test that's set forth in
12 Strickland. And that's always been the standard.

13 Based upon my examination of the record and, also,
14 based upon my examination of the testimony from the
15 Applicant, as well as Counsel for the Applicant at the
16 time, I would respectfully deny the Applicant's
17 application for post-conviction relief.

18 And I would instruct you, Mr. Mitchell, to prepare
19 the appropriate order.

20 MR. MITCHELL: Absolutely, Your Honor.

21 THE COURT: All right.

22 MR. ARIAIL: Thank you, Your Honor.

23 THE COURT: All right.

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

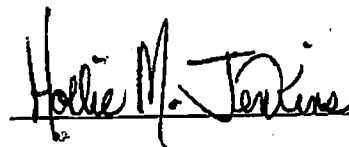
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 22nd day of October, 2018.

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

January 30, 2019



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

John William Kennedy, #370431
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-6954

ORDER OF DISMISSAL

13 NOV 7 4:53:22
CLERK OF COURT
JUDICIAL CIRCUIT 13

This matter comes before the Court by way of an application for post-conviction relief filed on November 3, 2017 by John William Kennedy (Applicant). Respondent made its Return on March 9, 2018. An evidentiary hearing into the matter was convened on October 22, 2018, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Plea Counsel Christopher J. Scalzo, Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return and Applicant's records from the Department of Corrections. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.


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PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In April of 2015, the Greenville County Grand Jury indicted Applicant for reckless homicide (2016-GS-23-3184), failure to stop for a blue light resulting in death (2016-GS-23-3185), leaving the scene of an accident with death (2016-GS-23-3188) and attempted murder (2016-GS-23-3194). Applicant waived presentment to the grand jury on a charge of grand larceny (2016-GS-23-10062)(A). Christopher Scalzo, Esquire, represented Applicant and Andrew Culbreath, Esquire represented the State. On November 9, 2016, Applicant pled guilty before the Honorable Letitia H. Verdin. Judge Verdin sentenced Applicant to imprisonment for ten years for the reckless homicide, twenty years for failure to stop for a blue light resulting in death, twenty years for leaving the scene of an accident with death, twenty years for attempted murder and ten years for grand larceny suspended with probation for five years to be served consecutive to the other charges. Applicant did not appeal his sentences or convictions.

FACTUAL HISTORY

On September 17, 2015, Applicant stole a pickup truck early that morning from the father of his ex-girlfriend. Later that morning, Applicant met up with his co-defendant at TD's Express Mart in Greenville County to attempt to sell the truck and its contents to his co-defendant. The truck was reported stolen and the police were alerted. When the police arrived they observed the truck matching the description of the reported stolen truck and saw Applicant and his co-defendant transferring items from the stolen truck to the co-defendant's truck. After seeing the police arrive, Applicant jumped into his co-defendant's truck and began to flee the scene. In the process he struck one police officer and a high speed chase started. Applicant proceeded to drive

on the wrong side of the road and struck a victim who was riding his motorcycle to work. After hitting the victim, Applicant attempted to exit the truck and flee but was apprehended shortly thereafter. (GP tran. pg. 8-12)

ALLEGATIONS

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

1. Ineffective Assistance of Plea Counsel
 - a. Attached pages 8-17

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified Plea Counsel represented him on his charges. He testified once he was arrested he never posted bond and was incarcerated the entire time his charges were pending. Applicant testified he first met with Plea Counsel in September of 2015 and discussed his case. He testified during their conversation, they discussed his charges but not the evidence the State had against him. Applicant testified he asked Plea Counsel for a copy of his discovery but that he did not receive it until right before he pled guilty. He testified during the course of Plea Counsel's representation he met with Plea Counsel four or five times but that they never discussed his discovery. Applicant testified Plea Counsel told him his case was cut and dry and he should probably plead guilty. He testified he eventually received his discovery but felt as though he did not have enough time to review it prior to pleading guilty. Applicant testified included in his discovery was one statement from an officer who was on the scene that was the victim of the attempted murder charge. He testified there were no medical records for the officer included in his discovery. Applicant testified he discussed the officer's statement with Plea

Counsel and how it could be used at a possibly trial. He testified he asked Plea Counsel about seeing videos from the incident but that Plea Counsel never showed them to him. Applicant testified there were plea negotiations that started out at a plea for thirty years. He testified Plea Counsel told him if he wanted to plead he should do so in front of Judge Verdin and he would get a straight sentence of potentially twenty years. Applicant testified Plea Counsel never talked to anybody at the jail who could have helped with his case. He testified there was also a 911 tape he wanted Plea Counsel to investigate.

On cross-examination, Applicant testified he never heard the 911 tape he wanted Plea Counsel to investigate. He testified Plea Counsel did not provide him his discovery when he requested it but that he had an opportunity to review it prior to pleading guilty. He testified none of the officers he wanted Plea Counsel to talk to about his case were present to testify at his PCR hearing.

Plea Counsel's Testimony

Plea Counsel testified he had practiced law for sixteen years and that he was appointed to represent Applicant on his charges. He testified that Applicant had been charged with attempted murder with a truck after an incident at a gas station with a police officer. Plea Counsel testified after Applicant left the gas station a chase ensued with police where Applicant ultimately struck and killed a firefighter. He testified during the course of his representation he met with Applicant about four or five times. Plea Counsel testified during those meetings he discussed the indictments and the possible punishments Applicant was facing. He testified he discussed Applicant's constitutional rights with him and also the State's burden of proof. Plea Counsel testified he never got a video in discovery from the gas station where the incident took place. He testified he talked to Applicant about a possible video and then had a private investigator go to

the gas station to see if there was a video. Plea Counsel testified his private investigator informed him the gas station did not have a video of the incident. He testified he did not recall Applicant requesting him to get medical records concerning the officer who Applicant was charged with attempted murder for. Plea Counsel testified he told Applicant that the officer could testify to the events that happened at the gas station which would have been sufficient facts to establish attempted murder. He testified he entered into plea negotiations with the State on behalf of Applicant. Plea Counsel testified the State wanted a negotiated sentence but agreed to let Applicant pled straight up. He testified he never promised Applicant a certain sentence. Plea Counsel testified he considered the attempted murder charge as a secondary charge as the charges related to the death of the firefighter was what drove Applicant's case. Plea Counsel testified he tried to evaluate a defense for Applicant based on Applicant being struck by a bullet prior to starting the high speed chase had the case gone to trial.

On cross-examination, Plea Counsel testified Applicant was arrested in September of 2015 and that on September 22, 2015, he sent his private investigator to go see Applicant. He testified during his representation he went to go see Applicant several times. Plea Counsel testified he believed Applicant comprehended what was going on and knew what he was doing. He testified during the course of his representation there were times where Applicant's case could have been a plea or gone to trial. Plea Counsel testified there was no video available from the TD's gas station where the incident started. He testified what drove Applicant's case and its disposition was the death of the firefighter. Plea Counsel testified he never thought about hiring an expert to access Applicant's head injury as he did not see a valid basis to establish a defense after evaluating Applicant's case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

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). 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." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial 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, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the

applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty

plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

Ineffective Assistance of Counsel

Failure to Investigate

Applicant alleges Plea Counsel was ineffective in failing to investigate facts and adequately prepare. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have

requested counsel pursue had counsel more fully prepared for the trial.”). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Here, Applicant testified included in his discovery was one statement from an officer who was on the scene that was the victim of the attempted murder charge. He testified however, there were no medical records for the officer included in his discovery. Applicant testified he discussed the officer’s statement with Plea Counsel and how it could be used at a possibly trial. He testified he asked Plea Counsel about seeing videos from the incident but that Plea Counsel never showed them to him. Plea Counsel testified he never got a video in discovery from the gas station where the incident took place. He testified he talked to Applicant about a possible video and then had a private investigator go to the gas station to see if there was a video. Plea Counsel testified his private investigator informed him the gas station did not have a video of the incident. He testified he did not recall Applicant requesting him to get medical records concerning the officer who Applicant was charged with attempted murder for. Plea Counsel testified he told Applicant that the officer could testify to the events that happened at the gas station which would have been sufficient facts to establish attempted murder. Based on this testimony this Court finds Plea Counsel did investigate the issues Applicant wanted him to. Additionally, this court would note Applicant presented no medical records, 911 tapes, or testimony from other witnesses he alleged he wanted Plea Counsel to talk to for him thus failing to demonstrate sufficient prejudice on Plea Counsel’s behalf. This Court finds Counsel’s investigation was beyond reasonable. Therefore, Applicant has failed to meet his burden to prove Plea Counsel was ineffective. This allegation is denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant also contends his guilty plea was induced by ineffective assistance of counsel because Plea Counsel failed to provide him with discovery in a timely fashion which did not allow him sufficient time to make a decision regarding a trial or guilty plea. This Court finds Applicant has failed to meet his burden of proof. This Court finds Plea Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Further this Court finds Applicant's testimony not credible regarding this allegation. This Court would note Applicant testified Plea Counsel did not provide him his discovery when he requested it but that he had an opportunity to review it prior to pleading guilty. Additionally, this Court finds Plea Counsel's testimony credible he met with Applicant on a sufficient number of occasions prior to pleading guilty.

This Court further finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses told the plea judge that he was satisfied with his attorney. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant told the plea judge he did not have any physical or mental issues which would prevent him from understanding the proceeding, and Applicant indicated he understood all of the plea judge's questions and had answered them honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements."). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

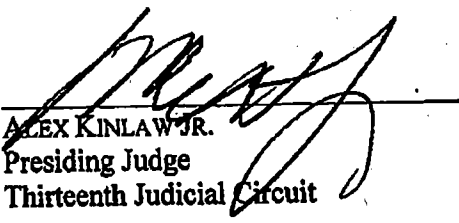
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of November, 2018.


 ALEX KINLAW JR.
 Presiding Judge
 Thirteenth Judicial Circuit

, South Carolina

Copy mailed to
Attorney <u>Amal</u> and <u>A.G.</u>
on <u>11</u> / <u>7</u> / <u>2018</u>

003184

WITNESSES

J C Morton

JMB

S. C. Highway Patrol

9/18/2015

ARREST WARRANT NUMBER
2015A2310100315

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Price

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

**DOCKET NO. 2016-GS-23-
ASC**

The State of South Carolina

Decl
County of Greenville.

COURT OF GENERAL SESSIONS

April

TERM 2016

THE STATE

vs.

JOHN WILLIAM KENNEDY

✓
Indictment for

3097

RECKLESS HOMICIDE

VIOLATION § 56-5-2910

ENTERED

ACCT.

fac

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR
RECKLESS HOMICIDE

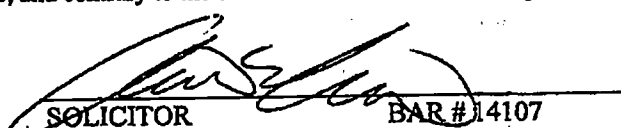
At a Court of General Sessions, convened on
County present upon their oath:

APR 19 2016

the Grand Jurors of Greenville

That JOHN WILLIAM KENNEDY did in Greenville, on or about the 17th day of September, 2015, drive a vehicle in a reckless disregard for the safety of others and as a proximate result thereof did cause injury resulting in the death of JORDAN HOWARD on September 17, 2015. This is in violation of §56-5-2910 of the South Carolina 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.


SOLICITOR

BAR # 14107

WITNESSES

J C Morton

gmb

S. C. Highway Patrol

9/18/2015

ARREST WARRANT NUMBER
2015A2310100316

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Padgett
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

**DOCKET NO. 2016-GS-23-
ASC**

003185

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2016

THE STATE

vs.

JOHN WILLIAM KENNEDY

Indictment for

2398

**FAILURE TO STOP FOR A BLUE LIGHT
RESULTING IN DEATH**

VIOLATION § 56-05-0750

**ENTERED
ACCT.**

Red

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

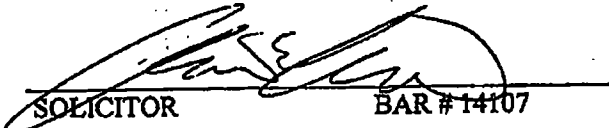
INDICTMENT FOR
 FAILURE TO STOP FOR A BLUE LIGHT RESULTING IN DEATH

At a Court of General Sessions, convened on
 County present upon their oath:

APR 19 2016 the Grand Jurors of Greenville

That JOHN WILLIAM KENNEDY did in Greenville County, on or about the 17th day of September 2015, willfully, knowingly, and unlawfully commit the offense of failure to stop for a law enforcement vehicle in that the said defendant, while driving on a road, street or highway of the State did fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light, and did perform an act forbidden by law or did neglect a duty imposed by law in the driving of the vehicle, which resulted in the death of JORDAN HOWARD, to wit: the defendant failed to exercise due care, and/or drove with reckless disregard for the safety of others, and/or drove too fast for conditions, and/or failed to yield right of way and crossed the center line traveling into oncoming traffic striking the victim's motorcycle. This is in violation of §56-05-0750 of the South Carolina 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.


 SOLICITOR

BAR # 14107

WITNESSES

J C Morton

gmb

S. C. Highway Patrol

9/18/2015

ARREST WARRANT NUMBER
2015A2310100317

ACTION OF GRAND JURY
TRUE BILL

Thomas J. Padgett
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

**DOCKET NO. 2016-GS-23-
ASC**

003188

The State of South Carolina

Jed
County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2016

THE STATE

vs.

JOHN WILLIAM KENNEDY

✓
Indictment for

2463

**LEAVING THE SCENE OF AN ACCIDENT WITH
DEATH**

VIOLATION § 56-05-1210

**ENTERED
ACCT.** *Jed*

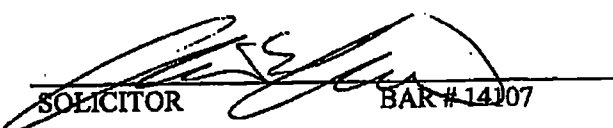
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEAVING THE SCENE OF AN ACCIDENT WITH DEATH

At a Court of General Sessions, convened on **APR 19 2016** the Grand Jurors of Greenville
County present upon their oath:

That JOHN WILLIAM KENNEDY did in Greenville County, on or about the 17th day of September, 2015, while operating a motor vehicle on Highway US 25 and North Old Buncombe Rd, in Travelers Rest, South Carolina, strike another vehicle belonging to JORDAN HOWARD, inflicting bodily injury, and ultimately death, and then fleeing the scene of the accident without either properly identifying himself or providing any assistance to the victim(s). This is in violation of §56-05-1210 of the South Carolina 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.


SOLICITOR

BAR #14107

FA

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

9/18/2015

ARREST WARRANT NUMBER
2015A2330208257

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Price

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-23-
ASC

003194

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2016

THE STATE

vs.

JOHN WILLIAM KENNEDY

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

ENTERED
ACCT *fcf*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

APR 19 2016

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That JOHN WILLIAM KENNEDY did in Greenville County, on or about the 17th day of September 2015, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Deputy Brandt McQueen with the Greenville County Sheriff's Office. This is in violation of § 16-03-0029 of the South Carolina 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.


SOLICITOR

BAR #14107

WITNESSES

C Maltby

Greenville County Sheriffs Office

DOA: 9/19/2015 WM DOB: [REDACTED]/1989

SSN: [REDACTED]

**ARREST WARRANT NUMBER
DIRECT PRESENTMENT**

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-23-^{ASC} 10,062 A

The State of South Carolina

Jul County of Greenville

COURT OF GENERAL SESSIONS

TERM 2016

THE STATE

vs.

JOHN WILLIAM KENNEDY

✓ Indictment for

3421

GRAND LARCENY

VIOLATION § 16-13-0030

ENTERED
ACCT. *for*

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
GRAND LARCENY

At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

That JOHN WILLIAM KENNEDY did in Greenville County, between September 16, 2016 and September 17, 2016, feloniously take and carry away the personal property of ROBERT DANCY to wit: a 2012 GMC Sierra pickup truck, with a total value of more than Ten Thousand Dollars with the intent to deprive the owner permanently of such property. This is in violation of §16-13-0030 of the South Carolina 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.


SOLICITOR

BAR # 14107

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
John William Kennedy
 AKA:
 Race: WHITE Sex: M Age: 27
 DOB: 02-1989 SS#: 011-10-011
 Address: [REDACTED]
 City, State, Zip: Greer, SC 29650-2617
 DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Homicide, Reckless Homicide

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2303184
 A/W#: 2015A2310100315
 Date of Offense: 9/17/2015
 S.C. Code § : 56-5-2910
 CDR Code #: 3097

SENTENCE SHEET

0-10 yrs

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-5-2910 of the S.C. Code of Laws, bearing CDR Code # 3097
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: [Signature] 14107 [Signature] [Signature] 70522
Culbreath, Andrew SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 49 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 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

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

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

§ 56-5-2995 (DUI Assessment) 12 \$

§ 56-1-286 (DUI Breath Test) 25 \$

Proviso 61.6 (Public Def/Probation) 500 \$

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

§ 14-1-213 (Drug Court Surcharge) 150 \$

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

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

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

TOTAL

Paul B. W. 103.00

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (07/2016)

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]

Judge Code: 2162

Sentence Date: 11/9/16

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

John William Kennedy

AKA:

Race: WHITE Sex: M Age: 27

DOB: 1989 SS#: 1989

Address:

City, State, Zip: Greer, SC 29650-2617

DL#: SID#:

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

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

TO: Traffic / Failure To Stop For A Blue Light Resulting in Death

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2303185

A/W#: 2015A2310100316

Date of Offense: 9/17/2015

S.C. Code § : 56-05-0750

CDR Code #: 2398

SENTENCE SHEET

0-25 yrs

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-0750 of the S.C. Code of Laws, bearing CDR Code # 2398

☐ 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:

Culbreath, Andrew

14107
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 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years

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

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

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 90 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 3

TOTAL

\$ 103

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
John William Kennedy

AKA:

Race: WHITE Sex: M Age: 27DOB: 1989 SS#: Address: City, State, Zip: Greer, SC 29650-2617DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Hit and Run/ Leaving the scene with death

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2303188A/W#: 2015A2310100317Date of Offense: 9/17/2015S.C. Code §: 56-05-1210(A)(3)CDR Code #: 2463

SENTENCE SHEET

0-25 yrs☐ CONVICTED OF or ☒ PLEADSin violation of § 56-05-1210(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2463☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §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: Culbreath, Andrew 14107 John Kennedy CSCG 70522
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 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 49 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3</u>

TOTAL

Paul B. Winters 102.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge Judge Code: 2162Sentence Date: 11/9/16

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
John William Kennedy
 AKA: _____
 Race: WHITE Sex: M Age: 27
 DOB: 1988-1989 SS#: ██████████
 Address: ██████████
 City, State, Zip: Greer, SC 29650-2617
 DL#: ██████████ SID#: ██████████

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder/Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS-23-003194
 A/W#: 2015A23302082507 ASE
 Date of Offense: 9/17/2015
 S.C. Code §: 16-03-0029
 CDR Code #: 3410

SENTENCE SHEET

0-30 yrs

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ 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: Culbreath, Andrew 14107 SC Bar# x John Kennedy Defendant C. Stew Attorney for Defendant 70520 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 49 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 (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
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 61.6 (Public Def/Probation) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114 (DUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk Paul B. Winkelman
 Court Reporter: T. Geller
 SCCA/217 (07/2016)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge _____

Judge Code: 216

Sentence Date: 11/9/16

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.John William Kennedy

AKA:

Race: WHITE Sex: M Age: 27DOB: 1989 SS#: [REDACTED]

Address:

City, State, Zip: Greer, SC 29650-2617DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Larceny/Grand Larceny

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2310062AA/W#: DIRECT PRESENTMENTDate of Offense: 9/16/2015 - 9/17/2015S.C. Code §: 16-13-0030(B)CDR Code #: 3421

SENTENCE SHEET

0-10 yrs☐ CONVICTED OF or ☐ PLEADSin violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 3421☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

w/minor 1st or 2nd 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:

Andrew Culbreath14107
SC Bar#John Kennedy
DefendantC. St. J.
Attorney for Defendant71522
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/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: 2016-GS-23-3194
§ 24-13-40 to be calculated and appliedby the State Department of Corrections. 419 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Paul B. WickensCourt Reporter:

SCCA/217 (07/2016)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: Begin after Comm.
Sup.☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge Judge Code: Sentence Date: 11/11/16Probation upon rel. from 20 year sent rec this date to include