

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2011-GS-10-06799
) 2011-GS-10-07382

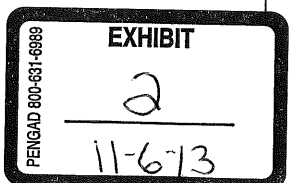
STATE OF SOUTH CAROLINA)
)
VS.)
)
SAMUEL A. MCCAULEY,)
)
DEFENDANT.)
_____)

PLEA

held before the Honorable Thomas L. Hughston
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Friday, January 18, 2013, Commencing at 10:16 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	4
CERTIFICATE OF COURT REPORTER	101

EXHIBITS

[None]

PROCEEDINGS

1
2 THE COURT: All right. I believe we are here in
3 connection with the case of the State against Samuel
4 Avery McCauley.

5 MR. BARR: While we are waiting, Your Honor, may
6 we approach?

7 THE COURT: Sure.

8 [Whereupon, a bench conference is held]

9 THE COURT: All right. Let me tell everybody
10 involved. I've asked the lawyers some questions.
11 We're talking about some legal points here, and I've
12 asked them a couple of questions that I'm unsure of
13 and -- about what the law is in regard to credits and
14 that sort of thing in terms of sentence -- whatever
15 sentence that I impose. And they're not certain, and
16 I'm not certain, and I'm going to take a little while
17 for them to have a chance to go to their computers and
18 see if they can answer those questions for me.

19 So we're going to stand in recess until y'all
20 have a chance to go and look and get me that
21 information, because it does play a role in
22 sentencing, as far as I'm concerned. I like to know
23 everything that I can about something before I decide
24 on the sentence. So it's going to take probably about
25 ten or fifteen minutes.

State v. Samuel McCauley
Plea
January 18, 2013

1 [Whereupon, an off-the-record bench conference
2 is held]

3 [Whereupon, counsel and probation confer]

4 THE COURT: I'll be back here in one of these
5 offices back here, and so let the clerk know.

6 [Whereupon, a recess is held from 10:10 a.m. to
7 10:50 p.m.]

8 THE COURT: All right. Why don't you -- why
9 don't we put it on the record -- if there's going to
10 be any question about what information I have and what
11 I'm acting on. What it was, I asked the lawyers to
12 give me some additional information. I had researched
13 it some myself, with the help of a clerk and all, but
14 I still had some questions about the mandatory
15 minimums and how much time you have to serve on
16 certain conditions and whether you're eligible for
17 parole or probation on certain conditions. The
18 legislature has changed the law in regard to a lot of
19 that in the last few years and I just wanted to be
20 clear on that before I did any sentencing today.

21 So we'll start with the State. What can you
22 tell me about that?

23 MS. WILLIAMS: Yes, Your Honor.

24 I have conferred with Mr. Barr about what I
25 found.

State v. Samuel McCauley
Plea
January 18, 2013

1 With respect to the felony DUI with death, that
2 is a no-parole offense which, by statute, means that
3 the defendant would serve eighty-five percent of the
4 active portion of any sentence the Court would render.
5 The statute --

6 THE COURT: All right. Let me make my notes
7 here.

8 [Whereupon, the Court reviews documents]

9 THE COURT: All right. Go ahead.

10 MS. WILLIAMS: As far as the minimum is
11 concerned, Your Honor, and what is suspendable and
12 what's not, 56-5-2945 provides that this case being a
13 one-year to twenty-five-year sentence, it says that a
14 part of the mandatory sentence -- the mandatory being
15 the one year in our case, that's required to be
16 imposed, must not be suspended, and probation must not
17 be granted for any portion.

18 THE COURT: All right.

19 MS. WILLIAMS: And we agree that the reading of
20 that means with respect to the mandatory minimum of
21 one year.

22 THE COURT: Right.

23 MS. WILLIAMS: Reckless homicide --

24 THE COURT: Hold on just a second. I'm making
25 my notes, still.

State v. Samuel McCauley
Plea
January 18, 2013

1 MS. WILLIAMS: I'm sorry, Your Honor.

2 THE COURT: That's all right.

3 [Whereupon, the Court reviews documents]

4 THE COURT: Okay. Go ahead.

5 MS. WILLIAMS: Reckless homicide is not a
6 violent crime by statute. It is not a no-parole
7 offense, as felony DUI is, and I have not found
8 anything in my research to indicate that there are
9 restrictions to the extent that there are on the
10 felony DUI with death, Your Honor.

11 THE COURT: All right.

12 MS. WILLIAMS: And that --

13 THE COURT: Do you agree with that, Mr. Barr?

14 MR. BARR: Yes, Your Honor.

15 THE COURT: All right.

16 MR. BARR: As an aside, I've concluded that this
17 is about as clear as the tax code.

18 But that's -- I think we're in agreement as to
19 at least those provisions.

20 THE COURT: All right. Thank you. Thank you
21 very much.

22 And I apologize for my voice, but I've had a
23 little bug for the last few days. It's better today
24 than it was yesterday, though.

25 All right. And so I'll be glad to hear from you

State v. Samuel McCauley
Plea
January 18, 2013

1 further in regard to anything you want to say prior to
2 sentencing. We'll start with the State.

3 And, of course, we are -- let me just say, as a
4 preference: we are here in regard to Samuel Avery
5 McCauley, who's here today. It's in connection with
6 his pleas of guilty that he entered before me back on
7 May 14 of 2012. At that time I accepted his pleas and
8 ordered a pre-sentence investigation, due to many
9 factors.

10 But I have received a pre-sentence report and
11 I've also received extensive sentencing memorandums
12 from both sides. And at the outset, I would say that
13 I'm very appreciative of everything that's been given
14 to me by everybody involved. I like to know as much
15 as I can about a case before I make a decision.

16 All right. Yes, ma'am?

17 MS. WILLIAMS: May it please the Court, Your
18 Honor. And if I may approach, I do have photos the
19 family provided me of the victim.

20 THE COURT: All right.

21 MS. WILLIAMS: Some are originals and some we
22 printed from our computer.

23 THE COURT: All right.

24 [Whereupon, Ms. Williams proffers documents to
25 the Court]

State v. Samuel McCauley
Plea
January 18, 2013

1 THE COURT: Just a minute. Let me look over
2 these and I'll give them back to you.

3 MS. WILLIAMS: Yes, sir.

4 [Whereupon, the Court reviews documents]

5 [Whereupon, the Court proffers documents to
6 Ms. Williams]

7 MS. WILLIAMS: Your Honor, may it please the
8 Court.

9 With respect to sentencing in this case the
10 Court is well-versed in the facts, at this point, I'm
11 sure. Both sides have submitted sentencing
12 memorandums covering the facts and our respective
13 positions about aggravation and mitigation, so I'm not
14 going to be too long with it, Your Honor.

15 And there are about five individuals who would
16 like to speak on behalf of Ms. Caperton. In addition,
17 Mothers Against Drunk Driving is here, and Officer
18 McGowan is also here, just for the Court's reference.

19 I do just want to hit a few highlights about
20 this case, Your Honor. Felony DUIs, whether they
21 cause death or great bodily injury, are often
22 considered accidents and tragic events. Which they
23 are, indeed. What is important to reiterate is that
24 while intent is not an element of felony DUI, there is
25 a lot of intent, particularly in our case, with

State v. Samuel McCauley
Plea
January 18, 2013

1 respect to what happened.

2 Everyone knows, including Mr. McCauley, that
3 there is a danger involved with drinking and driving.
4 That is why these kids chose while they were sober to
5 stay on that boat that night and not drive. They did
6 that and made those -- took those precautions because
7 they were aware, even at the age of nineteen, that
8 those risks are involved when they drink.

9 Everyone knows, including Mr. Cauley, that --
10 Mr. McCauley, that drinking impairs your judgment,
11 which is another reason why they made the precautions
12 that they did that they thought was good enough to
13 work to prevent what happened that night.

14 What's important about this case, Your Honor --
15 I'm not so good in front of a microphone. I
16 talk loud anyway.

17 THE COURT: That's all right. Go ahead. Go
18 ahead. Good. Me, either.

19 MS. WILLIAMS: What I think is important about
20 this case, for you to consider, that I can submit to
21 you on behalf of the State and Ms. Caperton: I have
22 handled over 400 DUIs, including felonies, in the past
23 two years alone, Your Honor, and what I see is
24 different about this case as opposed to many other
25 cases I've handled, this is not a case where someone

State v. Samuel McCauley
Plea
January 18, 2013

1 had too much to drink at dinner or while they were at
2 work at a bar. This is a case involving individuals
3 who chose, the whole point of that evening, to collect
4 and see each other before they left for school, maybe
5 one, but they intended on getting intoxicated. They
6 intended on staying on that boat because they knew
7 they intended on getting that impaired. And as people
8 who thought they were old enough to drink, even though
9 they were at least two years under the legal drinking
10 age in our state, they were adult enough to take on
11 that responsibility anyway and they were mature enough
12 to think ahead of time when they were sober that --
13 what the consequences could be.

14 The difference I see in this case, apart from
15 several others I've handled, is that these people
16 meant to get as intoxicated as they did. They knew
17 the risks that were involved, and they did it anyway.
18 And that, Your Honor, is where the recklessness comes
19 from. I haven't seen very many felony DUIs, in my
20 experience, that are often accompanied by a
21 substantially fact-intensive reckless homicide like
22 this case.

23 His blood alcohol content, as Your Honor knows,
24 was a .20. That's two and a half times the legal
25 limit for someone who is twenty-one or older.

State v. Samuel McCauley
Plea
January 18, 2013

1 THE COURT: I thought -- I had it here, a note
2 of .28.

3 MR. BARR: 208, I think it --

4 MS. WILLIAMS: It's 20, Your Honor.

5 THE COURT: Oh. 208?

6 MS. WILLIAMS: Yes, sir.

7 THE COURT: Okay.

8 MS. WILLIAMS: There is a reason why our
9 legislature created a statute prohibiting people under
10 twenty-one from drinking at all. It's not just the
11 attempts to purchase or the possession of it like in
12 other states. In our state, the legislature went
13 further and said that it's illegal for them to
14 consume. In some states you can in the house, in your
15 parent's house, but in our state you can't consume it
16 at all when you're under twenty-one. And these kids
17 did that anyway.

18 They engaged in the conduct that resulted in why
19 we are here today knowingly. And I think that is
20 something that I'm really asking the Court to
21 consider: that the consequences of why we are here
22 today were, in fact, foreseeable. Mr. McCauley wasn't
23 fourteen, he was nineteen, and by law he's actually an
24 adult, so I don't think he should be given too much
25 credit, for mitigation, for being young. I think

State v. Samuel McCauley
Plea
January 18, 2013

1 that's more aggravating than anything.

2 There are several people who would like to
3 speak, Your Honor, so I do just want to end with
4 everyone has to be held accountable for their actions,
5 Your Honor, and that includes nineteen-year-olds
6 without criminal histories.

7 And I realize that there are a lot of people
8 in this room that think that we are here today about
9 Mr. McCauley. And while that may be true to some
10 people, we are actually here because of Mr. McCauley.
11 And no one deserves to die the way Eleanor Caperton
12 did and the way too many other people do who never
13 dreamed they would put themselves in a scenario like
14 that that they found themselves in when they were
15 killed. She didn't just die, Your Honor. She was
16 killed.

17 And would -- is the Court inclined to hear from
18 them now?

19 THE COURT: Be glad to hear from anybody that
20 wants to say anything. Whoever wants to speak, you
21 can stand right there, or wherever you want to stand
22 back there. But just tell me your name, first of all,
23 and then speak loudly so that I can hear you and the
24 court reporter can hear you.

25 MS. SAVANCOff: My name is Phyllis Savancoff

State v. Samuel McCauley
Plea
January 18, 2013

1 [phonetic]. I'm the sister of Eleanor Caperton.

2 THE COURT: Go right ahead.

3 MS. SAVANCOFF: My sister, Eleanor Caperton,
4 lost her life to a drunken driver who was going the
5 wrong way on I-26 after midnight on July 24th, 2011.
6 She was driving home from her second job as a security
7 guard, which she worked on the weekend. She was also
8 a bank teller at First Citizens Bank and had been a
9 bank teller for over fifty years.

10 She was loved by everyone who knew her in the
11 Charleston community and was a great sister, mother,
12 grandmother, and aunt. She left behind two
13 grandchildren who miss her terribly. Her
14 grandchildren called her Baca [phonetic], which
15 appeared on her license plate.

16 In this accident, Samuel McCauley was traveling
17 at a high rate of speed and hit my sister's vehicle
18 head on. She died approximately fifteen minutes later
19 due to multiple body trauma. As a result of this
20 accident, my sister received the following injuries:
21 neck trauma with bleeding to the base of the brain,
22 fractures of the right first through twelve ribs,
23 fractures of the left first through seventh ribs,
24 laceration of the tissue surrounding the heart area,
25 multiple soft-tissue injuries, bleeding in both lungs,

State v. Samuel McCauley
Plea
January 18, 2013

1 a laceration to the bottom of the right lung,
2 lacerations of the liver, an open fracture of the
3 right arm, an open fracture of the right ankle, a
4 fractured femur of the right leg, fractures of the
5 right tibia and fibula or lower leg bones, fractures
6 of the right hand, multiple abrasions, contusions, and
7 lacerations to her body.

8 I can't even imagine the frightened pain she
9 must have suffered in those final moments, prior to
10 her death, from these severe injuries she sustained
11 from this horrific accident. Thoughts of this
12 accident and all of these horrific injuries haunt me
13 every day. The untimely death of my only sister has
14 affected me and my entire body greatly and remains
15 doing so. It remains very difficult for me to sleep,
16 eat, and accomplish the most simple tasks. Most
17 nights, I lie in bed without any sleep the entire
18 night. I have become exhausted in body and mind, with
19 no energy and much anger. I began having terrible
20 nightmares and experiencing body aches and pains due
21 to the stress and grief of losing my sister in this
22 manner. I have become deeply depressed and had to
23 seek the help of my doctor, who prescribed an
24 antidepressant for my growing anxiety and Ambien to
25 help me sleep. I remain today on both of these

State v. Samuel McCauley
Plea
January 18, 2013

1 prescriptions. I still lie in bed many nights and cry
2 thinking of the way in which my sister was killed and
3 what her last thoughts might have been as she saw this
4 vehicle speeding straight for her and realizing in her
5 last moments that she was going to die.

6 My family has never lost a close loved one to
7 this type of recklessness at the hands of another.
8 Losing a loved one to a felony DUI is simply
9 unbearable and only those who have gone through this
10 can really realize the impact this can have on the
11 bodies and minds of family members. But,
12 unfortunately, there have been far too many family
13 members statewide who have had to suffer the loss of a
14 loved one in this manner.

15 My sister was in good health and still working
16 two jobs at age seventy-two. She had no immediate
17 plans to retire. She loved life, her family, her
18 friends, and her animals. She was still a productive
19 member of society and was a very giving person who
20 would help anyone she could. She was a proud organ
21 donor but, unfortunately, due to this accident none of
22 her organs could be salvaged.

23 Let me ask you: how would you feel if this were
24 your sister, mother, grandmother, or aunt killed in
25 this way? Please put yourself in our place. No

State v. Samuel McCauley
Plea
January 18, 2013

1 family should have to go through this pain or go
2 through this.

3 Samuel McCauley was traveling on the wrong side
4 of the interstate at a high rate of speed with a blood
5 alcohol concentration of 0.208 when he hit and killed
6 my sister. That blood-alcohol concentration is over
7 twice the legal limit. Mr. McCauley chose to get into
8 his vehicle while highly intoxicated, turning the
9 vehicle into a destructible force that took my
10 sister's life. My sister had no time to react in any
11 way and was solely at the mercy of Mr. McCauley at the
12 time of this accident.

13 South Carolina is supposed to have a zero
14 tolerance law for underage drinkers; therefore, I
15 desire that Samuel McCauley be sentenced to a maximum
16 time for the taking of my sister's life. I believe
17 stricter laws and sentencing needs to be enforced for
18 these DUI offenders who take the lives of innocent
19 victims. Per the new media and Mothers Against Drunk
20 Driving, over 10,000 people were killed in the United
21 States last year due to drunk driving. The DUI
22 felonies in South Carolina for 2010 were 353 killed,
23 and, in 2011, 315 killed.

24 I'm also recommending that the conditions that I
25 set forth for Mr. McCauley in my pre-investigation

State v. Samuel McCauley
Plea
January 18, 2013

1 statement be adhered to by Mr. McCauley.

2 Mr. McCauley's mother --

3 THE COURT: I'm not sure I understood what you
4 meant by that.

5 MS. SAVANCOFF: Conditions of going to
6 counseling, and whatever else was in there.

7 THE COURT: Okay. All right.

8 MS. SAVANCOFF: Mr. McCauley's mother has been
9 able to visit and speak with her son, but my sister is
10 gone forever. I can't see her anymore, have the long
11 sister-to-sister talks we used to have on the
12 telephone, nor give her -- give her gifts or celebrate
13 her birthdays, holidays, or go on trips with her. I
14 only have a two-ounce container of her ashes to look
15 at and talk to.

16 Your Honor, please give Eleanor Caperton the
17 proper justice she deserves for her death at the hands
18 of Samuel McCauley.

19 THE COURT: All right. Thank you very much.

20 MS. FIRING: My name is Mary Firing [phonetic].
21 My name is Mary Firing.

22 Ella isn't just a loss to her family, but also
23 to her many friends. She lived life to the fullest.
24 She was my best friend and confident. We went on
25 cruises, to craft shows, out to eat, exchanged

State v. Samuel McCauley
Plea
January 18, 2013

1 birthday and Christmas gifts. I'm wearing stuff today
2 that she gave me. She would have -- she had ordered
3 our group tickets for the Charleston Christmas Show.

4 On long weekends she would get up early on
5 Sunday morning, after her security shift, and drive up
6 to Greenville to see her grandchildren, then drive
7 back home the next evening.

8 My husband helped her get her security job so
9 she could have the extra money she wanted. Some days
10 on her way to work she would pass my husband's
11 security post and stop and say hi. When he died in
12 April, she was there for me. Then I lost her three
13 and a half months later. She wasn't just a seventy-
14 two-year-old lady; she was my special friend.

15 MS. STOWE: My name is Susan Stowe [phonetic].

16 I spent a lot of time trying to figure out just
17 what it is I would say when this day came, and now I
18 find myself at a loss for words. I want to tell you
19 what it feels like to watch my mom deal with the loss
20 of the person who was supposed to help her deal with
21 the loss of my dad just three months earlier, or about
22 how I will miss going to the crafts fairs and the
23 Christmas shows with Miss Ellie and my mother, as we
24 have done for the past ten years. But I find myself
25 unable to express those feelings. Instead, all I can

State v. Samuel McCauley
Plea
January 18, 2013

1 think about is how Mr. McCauley chose to drink and
2 drive drunk, in spite of the fact that the group
3 agreed not to drive, Your Honor, and that his friends
4 tried to stop him but he ran off anyway. Now all that
5 is left is the grief and the knowledge that Miss
6 Ellie, or Baca, as she is known to her family, will
7 never be with us again.

8 MS. BUCHARDT: My name is Gena Buchardt.
9 B-U-C-H-A-R-D-T. I am niece to Ms. Ellie Caperton.

10 There are so many things that I could say and
11 feel about the untimely death of my only aunt, Ellie
12 Caperton, but I will start by saying that she was my
13 only aunt, a very important part of a small family.
14 And I lost more than an aunt that night that
15 Mr. McCauley killed her by a DUI. I lost a friend, a
16 travel companion, a babysitter, a pet sitter that I
17 trusted, and I lost a grandmother figure to my only
18 child.

19 I also lost a part of me that night, a part of
20 me that is now also lost to the rest of my family, and
21 that night has changed me forever. Since Ellie's
22 death, I have been very depressed and it has affected
23 every part of my life from my career to my home life.
24 I was no longer able to handle the duties of my job so
25 I -- that resulted in me having to give up my

State v. Samuel McCauley
Plea
January 18, 2013

1 position. I am not the mother, friend, nor wife that
2 I was before my aunt was killed.

3 Mr. McCauley made a premeditated decision to
4 drink under age. Mr. McCauley had discussions days
5 ahead of time about both the type of liquor and the
6 size bottle of alcohol that he wanted for the party
7 that night. He consumed a large amount of alcohol and
8 chose to drive. He was so determined to drive and get
9 behind the wheel of his car, after a few attempts to
10 stop him, that he went anyway. He drove the wrong way
11 up I-26 and the Crosstown doing more than twice the
12 legal speed limit. This young man drove his car at
13 this high rate of speed head-on into my aunt, who was
14 driving home at midnight after a long shift with her
15 second job. My aunt was doing the speed limit,
16 wearing her seatbelt, and listening to the radio, as
17 she had just left work five minutes prior and on her
18 way home.

19 In a way, you could say that her sacrifice that
20 she -- that she sacrificed at the hands of Mr.
21 McCauley also saved his life and possibly the life of
22 others. He may have drove off the Crosstown and
23 killed himself or hit another car and killed many
24 people in that car. So my aunt's sacrifice, in turn,
25 probably saved Samuel McCauley's life.

State v. Samuel McCauley
Plea
January 18, 2013

1 Mr. McCauley killed my aunt in the most horrific
2 way that I can imagine. This is more than a hiccup
3 in Mr. McCauley's life story. It doesn't matter what
4 Mr. McCauley's life was before that night, what
5 reputation or background. That did not stop him from
6 committing a felony DUI with death, and we feel that
7 Mr. McCauley should pay for this. -- pay for what he
8 has done.

9 House arrest and eight months in a local county
10 jail is just a drop in the bucket for the murder of my
11 aunt. I would like to see Mr. McCauley get penalized
12 to the fullest extent of the law. My aunt had many
13 years left in her life to live, and Mr. McCauley took
14 that away from her and me and the rest of our family.
15 Now it's Mr. McCauley's turn to have his freedom taken
16 away. My aunt was not given a choice, but Mr.
17 McCauley made the choice and now he has to pay the
18 price for that choice.

19 I refuse to let the system and society reduce my
20 aunt to a statistic, to another victim of DUI in
21 society, on South Carolina highways. Ellie deserves
22 better than that. She deserves justice for her death
23 at the hands of Samuel McCauley.

24 MR. GRAY: My name is Ronald Gray. I am Ellie's
25 son.

State v. Samuel McCauley
Plea
January 18, 2013

1 July 24th, 2011, is a day I'll never forget.
2 It's the day I found out my mother was killed by a
3 drunk driver. She was just driving home from work
4 when her life was cut short by a senseless but totally
5 preventable act. When I found out what happened, I
6 can't even begin to describe the flood of emotions
7 that I felt at that moment or in the weeks, months,
8 and now years that have gone by. It's a horrible,
9 devastating feeling nobody should have to go through.
10 And having to see and identify her body at the funeral
11 home was by far the hardest and most difficult
12 experience of my life. That is also something nobody
13 should ever have to experience.

14 She was a good woman, a great friend, a loving
15 sister, a caring aunt, a proud grandmother, and the
16 best mother a son could ever ask for. She always put
17 my brother and I first, and she sacrificed so much for
18 us. I was just getting to the point in my career and
19 in my life where I could start taking care of her,
20 giving back to her, and doing everything I could just
21 to show her how much I appreciated all that she did
22 for me. But I will never be given that opportunity.

23 She loved going on cruises. She loved her
24 family and friends. I have two children that she
25 adored and was so proud of. It breaks my heart that

State v. Samuel McCauley
Plea
January 18, 2013

1 they'll never get to spend anymore time with her and
2 that she will never get to see them grow up and
3 mature. And it breaks my heart knowing that her life
4 was cut short and that it was not time for her to go.

5 There are so many things she should have still
6 experienced, so much life still left to live, but all
7 that was denied to her on the night of July 24th. I
8 just feel so bad for her. She did not deserve this,
9 and I miss her terribly.

10 I think about her and this entire situation
11 every day, and I will continue to be haunted by it
12 every day for the rest of my life. To say it's
13 changed my life and the lives of all the people who
14 knew and loved her would be an understatement. We are
15 all devastated by what has happened to her. Time will
16 pass and we will deal with it the best that we can
17 but, unfortunately, for my mother, it will not. She
18 is gone, her life tragically ended too soon.

19 This horrible crime should not go unpunished.
20 Many people's lives, that of my mother, first and
21 foremost, were detrimentally affected. The defendant
22 should accept responsibility for this senseless,
23 selfish act and know and realize and bear the
24 consequences. I feel he should pay the fullest extent
25 of the law.

State v. Samuel McCauley
Plea
January 18, 2013

1 I see commercials on TV and I see billboards
2 along the highways that say that the state of South
3 Carolina is cracking down on DUI and getting tough on
4 DUI offenders. Well, today in this courtroom I would
5 like to see proof of that and I would like to see
6 justice served for my mother.

7 THE COURT: Thank you, everybody involved.

8 MS. WILLIAMS: Your Honor, that is all the State
9 has. Thank you.

10 THE COURT: All right. Thank you very much.
11 And I appreciate all of that.

12 All right. And I would say again that a lot of
13 that was covered in the materials that were presented
14 to me. But, nevertheless, I appreciate your being
15 here and bringing that to my attention today.

16 All right, Mr. Barr.

17 MR. BARR: May it please the Court.

18 Your Honor, would you prefer Sam to stay back
19 here or come forward --

20 THE COURT: Either way. Wherever you're most
21 comfortable.

22 MR. BARR: Your Honor, may it please the Court.

23 I have read where Ms. Caperton's sister felt
24 that our apologies are insincere, and all I can say is
25 that on behalf of Sam -- and he will certainly say

State v. Samuel McCauley
Plea
January 18, 2013

1 this later -- we do not intend to offend them by
2 continuing to apologize. But there is little more
3 that we can probably do.

4 If there are any -- if there's any such thing as
5 degrees of a tragedy, then this case presents a
6 tragedy of the highest magnitude, a tragedy in the
7 first degree, as it were. It involves the tragic
8 death of an innocent woman, much loved, Ellie
9 Caperton, who, to use Sam's own words from May, did
10 not deserve to die, much less in this manner.

11 But it also involves the fall from grace of
12 another innocent, much-loved Sam McCauley, a good
13 person in every way to whom a very bad thing has
14 happened, admittedly, admittedly, by his own decision.
15 The bad thing happened because Sam drank rum. He
16 drank so much rum that he lost -- he didn't lose
17 physical consciousness, but he went into blackout and
18 he lost control of his ability to make conscious
19 decisions.

20 Sentencing, I know, is difficult. I know it's a
21 difficult challenge for a lawyer representing a
22 defendant, difficult for a prosecutor. It's far more
23 difficult for Your Honor because Your Honor is called
24 upon to balance all of these things and, with the
25 proverbial wisdom of Solomon, arrive at a decision

State v. Samuel McCauley
Plea
January 18, 2013

1 that is just.

2 A number of people have come here today in
3 support of Sam. I wouldn't take the Court's time to
4 introduce them all, but there are a total of, at last
5 count, thirty-four folks out there, some of whom will
6 talk to the judge -- to the Court in a minute. And
7 they represent many components of Sam's extended
8 family and friends: his aunt and her sons from Iowa,
9 some of Sam's friends from here, some of friends --
10 Sam's friends from the Governor's School, and the
11 parents of those friends. And you will hear -- you
12 will hear from them momentarily.

13 I decided that perhaps the most coherent way to
14 present to Your Honor Sam's side of the story -- and
15 here I may tend to repeat what I've also written to
16 the Court. But I think, Your Honor, that it is also
17 important that these things be said at this formal
18 occasion of the defendant's elocution.

19 I will say, at least for the record, I have
20 filed with the court reporter a copy of my memorandum,
21 to the extent that I will be referring to it.

22 I wonder if I could have Your Honor's permission
23 to ask Sam's mother to stand with us? Denise?

24 And if you don't mind, I'll talk while she's
25 walking --

State v. Samuel McCauley
Plea
January 18, 2013

1 THE COURT: Go ahead.

2 MR. BARR: Because Sam's story really begins
3 with Denise, as we all -- our stories always begin
4 with our mothers. Denise is from Carlisle, Iowa. And
5 I've forgotten, I'm sure she told me how, but somehow
6 she found her way to Atlanta, Georgia. And she's a
7 court reporter, a good one, private court reporter,
8 just as our lady here next to the bench. And Denise
9 was living in Atlanta, Georgia, when Sam was born, and
10 she discovered Charleston, as many people do, and
11 admired its quality of life and thought that she would
12 like to live here.

13 And Sam was, at the time, four, six?

14 MOTHER: Ten when I moved here. Ten when --

15 MR. BARR: Ten. I'm sorry. Ten. Sam was ten
16 when they moved here.

17 And Denise is -- she is a -- she is a great mom,
18 a devoted mom, a loved mom. She's Sam's best friend,
19 and vice versa.

20 And so she chose the East Cooper area to live
21 because of the quality of its schools. And, more
22 specifically, found a place to rent on Sullivan's
23 Island where Sam attended probably one of the best
24 elementary schools in the county, Sullivan's Island.

25 And to further Sam's education, when Sam was in

State v. Samuel McCauley
Plea
January 18, 2013

1 the sixth grade Denise and Sam facilitated his
2 transfer to the Charleston County School of the Arts.
3 Now, I have more to say about that downstream. But
4 it's quite a school. It's sort of the cream of the
5 crop of those of artistic bent, but there is a general
6 curriculum, as well. And Sam attended the Charleston
7 County School of the Arts from the -- I think the
8 sixth grade until the tenth grade. And Denise
9 supported them with her earning -- from her earnings
10 as a court reporter.

11 And when Sam was in the tenth grade, he applied
12 to the Governor's School of the Arts in the
13 humanities, in Greenville, where I know Your Honor now
14 knows he was accepted.

15 One of his former teachers at the Charleston
16 County School of the Arts has written about that in
17 her statement. It's tab L of our exhibit, a Ms. Anne
18 Cimballa. And she writes about how she met Sam during
19 her first year. Sam was then a sophomore. And she
20 said being a new teacher, I carefully observed the
21 students. Sam stood out because he was silly, funny,
22 warm, sweet, and sensitive. He had been accepted to
23 the Governor's School, and another visual arts teacher
24 had somewhat frowned on that because they were losing
25 Sam's talent. And Sam was hurt by it, and she talked

State v. Samuel McCauley
Plea
January 18, 2013

1 to him about it. He was so upset that he cried.

2 He told Ms. Cimballa that leaving the School of
3 the Arts was the hardest decision he ever made, but he
4 told her -- and this is what I wanted to refer to --
5 he told me that he had to do what was best for him.
6 His mother, he explained, was a hardworking single mom
7 who didn't have a lot of money. While Sam grew up
8 with many privileged children his age, which is what
9 these schools of the arts introduced Sam to, a new
10 socioeconomic strata which opens so many doors for
11 him. So that while he grew up with them, his life was
12 different.

13 He knew that in order for him to be able to
14 afford to go to a good college, he would need
15 scholarships. He knew his art would get him
16 scholarships and he knew that the prestigious and
17 recognized Governor's School of the Arts would pave
18 the way for those scholarships. He understood that a
19 good college education would open doors for him, and
20 it would recognize all the sacrifices that Denise had
21 made for him. His goal was to work hard and to make
22 his mother proud. So Sam went on to the Governor's
23 School, and he graduated from there in May of 2011.

24 As I thought about that occasion, I tried to
25 remember my own graduation from high school. It was a

State v. Samuel McCauley
Plea
January 18, 2013

1 long, long time ago, but I do remember the sense of
2 freedom and invigoration that I felt. Through the
3 back door, I guess I confess my age. This would have
4 been in the summer of 1959. It was a great, great
5 time in my life and I thought that I was free as a
6 bird and knew a lot more than I realized -- I thought
7 I knew a lot more than I realized later that I did.

8 And so that's where Sam and his colleagues were
9 as they graduated from Governor's School. And he and
10 several other classmates stayed in touch over that
11 summer and decided that they would have a mini
12 reunion, as it were. So Sam and his very close
13 friend, Lucas Hadtstein --

14 And that's spelled, Madam Court Reporter, H-A-D-
15 T-S-T-E-I-N. Lucas Hadtstein. His statement is also
16 in our -- in our package.

17 He and Lucas lived here and they communicated
18 with three young ladies, Sarah, Susan, and Taylor
19 Jane, and they agreed that they would meet together on
20 Taylor Jane's mother's sailboat. Taylor Jane's
21 mother's sailboat was docked at the Dolphin Cove
22 Marina on the Ashley River. It's a remote marina up
23 in the industrial section. You have to wind around
24 small roads, almost can't find it, the Dolphin Cove
25 Marina.

State v. Samuel McCauley
Plea
January 18, 2013

1 But they decided that they would have a reunion
2 before all of them went off to where they were going
3 in the fall. Sam had been accepted to several
4 prestigious art schools and had received at least a
5 30,000-dollar scholarship to one of them.

6 Now, during the week before the rendezvous on
7 the sailboat -- the solicitor is entirely correct --
8 they communicated about what they would drink. Taylor
9 Jane asked Sam what he would like to drink and he
10 said, my mom -- she said, my mom will get it for us.
11 And Sam said, I would like some rum. Later on we
12 found out that he paid \$23.00 for it, so I'm
13 concluding it was probably a fifth rather than a
14 quart. I don't know how important that is. But
15 Taylor Jane's mom provided them with a bottle of rum
16 and a bottle of vodka and some beer.

17 And on the late evening or early evening of the
18 23rd, which was a Friday, they all met there on Taylor
19 Jane's sailboat. That was Sam, Lucas, Taylor Jane,
20 Susan and Sarah. Sam drove, to get there, his Nissan
21 that he -- his mom had gotten him. And he picked up
22 his friend Lucas, who lives on the Isle of Palms.
23 Sam, by that time, was living in Mount Pleasant. And
24 they had a sandwich with Denise, and she gave him some
25 Coca-Colas, and then Sam drove Lucas, passenger, over

State v. Samuel McCauley
Plea
January 18, 2013

1 to the Dolphin Cove Marina. They met the girls. They
2 all went over to Subway and several of them got
3 sandwiches but then went back to the boat.

4 And as the solicitor has alluded, they had an
5 agreement that night. The agreement was not that they
6 did not intend to drive; the agreement was that they
7 would not drive. They would not drive. They agreed,
8 we will not drive tonight.

9 They had an agreement that nobody is going to go
10 on deck on this sailboat alone, because we're drinking
11 and we don't want someone to fall in and drown.

12 Now, the solicitor would invite particular
13 attention to those circumstances, and perhaps
14 appropriately so. That is to say, that they intended
15 to drink. And I suppose you could argue that when
16 someone intends to drink, they intend to get drunk and
17 that that might be absolutely true. But they believed
18 -- in their way, they believed that they were wrapping
19 themselves in a -- in a cocoon of protection that not
20 only insulated them from harm -- and although no one
21 has said this to me but by inference, it would also
22 have insulated others from harm, as well.

23 The Dolphin Cove Marina is sort of a rundown
24 place and when this incident happened the clubhouse,
25 if you'll call it, building, which had a marina and a

State v. Samuel McCauley
Plea
January 18, 2013

1 lounge, had been closed down. It wasn't even
2 operational.

3 And so they got there about 7:30. They got
4 their sandwiches, came back, put their gear in the
5 sailboat, and then went to the deck of the clubhouse,
6 the lounge, and which overlooks the Ashley River,
7 watched the sunset, and they drank. And they probably
8 drank there until about 11:00. And Sam had probably
9 most of that bottle of rum. They listened to music,
10 they talked, they reminisced, they danced, they
11 laughed, they did things that young people do.

12 And then they left about, as I say, at it's been
13 estimated around 11:00, and went back to the boat.
14 Sam has told me these things. Lucas has told me these
15 things. At least one of the other -- maybe two of the
16 other girls have. But Sam's last conscious
17 recollection of that night, Your Honor, was leaving
18 the lounge and walking down the deck -- I'm sorry --
19 walking down the dock to return to the sailboat.
20 That's his last conscious memory. His next conscious
21 memory is of waking up in a hospital room and being
22 told by a woman police officer, probably Officer
23 McGowan, who's in the court today, that he had been in
24 an automobile accident and that Ms. Caperton had been
25 killed.

State v. Samuel McCauley
Plea
January 18, 2013

1 Now, the police report has some things to say
2 about that. The solicitor cited them in her
3 memorandum but at this stage of elocution, it's not
4 yet been stated. First, Sam, as observed in the
5 police report, was uttering nonsensical statements.
6 The officer even observed that they were -- I don't
7 remember how she characterized it -- they didn't make
8 sense. She asked him where he had been. He said
9 Dolphin Cove. She asked him where he was going. He
10 said Dolphin Cove. Sam has no memory of this, Your
11 Honor, of saying these words. But, nevertheless, this
12 is reported in the police report. He says, according
13 to the report, people who hurt people shouldn't live.
14 I have hatred for people -- I believe if I killed
15 someone, I should die. I killed someone. Does she
16 have children. Kill me, he replied. I'm nineteen. I
17 drank too much and I killed somebody.

18 Quote, Mr. McCauley repeatedly asked the
19 reporting officer and sought Sargent Hilderbiddle
20 [phonetic] to end his life. He stated, pop a couple
21 of caps. I need a ticket out of here. Is that a
22 lethal -- a nurse came -- is that a lethal injection.
23 Does South Carolina have the death penalty. Just kill
24 me now. I don't deserve to live. I killed someone.
25 Quote, Mr. McCauley took both of his hands and raised

State v. Samuel McCauley
Plea
January 18, 2013

1 them to his neck and began to squeeze the area around
2 the front of his throat. The reporting officer placed
3 Mr. McCauley's right and left hands in handcuffs and
4 attached them to the bed rails for his safety.

5 Sam suffered a fractured sternum and some
6 serious lacerations to his knee. He remained in the
7 MUSC hospital ward for a day or two and then was
8 released from there to the county jail. He was in
9 custody in the hospital room under the supervision of
10 a uniformed police officer.

11 And so that's how it happened. That's how the
12 event happened. It happened because Sam drank too
13 much. Frankly, I can't say whether or not Sam
14 intended to drive. Obviously he got into a car,
15 obviously he drove, and obviously he collided into
16 Ms. Caperton.

17 Lucas Hadtstein, in his report -- I mean, in his
18 statement, which is attached, described what happened
19 when they got back to the boat after Sam was in
20 blackout. And what Lucas says is they gathered in the
21 cabin of the boat and they played a game, a drinking
22 game, where they were flipping coins, or doing
23 something like that, and whoever lost would have to
24 take a drink. And suddenly Sam got up from the game,
25 left the cabin, into the cockpit, vaulted over, and

State v. Samuel McCauley
Plea
January 18, 2013

1 sprinted up the dock to the lounge. Sam has no memory
2 of this. Sprinted up the dock. Lucas followed him,
3 and he -- Sam was standing in the lounge area. And
4 Lucas said, Sam, I don't think this is a good idea.
5 And Lucas reports that Sam looked at him strangely and
6 then sprinted back to the boat.

7 Lucas walked back. And by the time Lucas got
8 back to the boat, the girls were putting Sam in the
9 bunk under the -- under the -- in the bow of the boat
10 in the forward cabin. So they put Sam in the bow and
11 the rest of them went on deck.

12 On the bow of the boat, it was an open hatch and
13 they could see Sam down below asleep. And they, the
14 others, talked on the deck of the bow of the boat for
15 maybe ten minutes, Lucas remembers, and suddenly they
16 heard a clamoring. And they looked up and Sam was,
17 again, in the cockpit of the boat. And once again he
18 vaulted over the rail and sprinted up the dock. Now,
19 notably, Your Honor, Lucas remembers that Sam was
20 wearing his bathing suit, no shirt, and one shoe.

21 Lucas went after him, just as he did before,
22 expecting to find him in the lounge area. But Sam was
23 nowhere to be found. Lucas then discovered that Sam's
24 car was gone. And we know what happened. This was a
25 few minutes before midnight. We know what happened

State v. Samuel McCauley
Plea
January 18, 2013

1 afterwards.

2 So with respect to the assertion that Sam
3 deliberately drank and that he deliberately drove,
4 those are the circumstances of how he, in a so-called
5 deliberate manner, drove. Sam will never remember for
6 the rest of his life, he will never know, he will
7 never be able to recall, why he got into the car that
8 night. But we know he was wearing a bathing suit, no
9 shirt, and one shoe. He was on a journey without a
10 destination, for all intents and purposes.

11 I speculate, Judge Hughston, that Sam somehow
12 found his way out of the marina area. And the nearest
13 feeder road there is King Street Extension, up north
14 of the Darlington apartments there, and that Sam went
15 up -- he came back south on King Street Extension and
16 he hit Romney Street, which goes under the I-26. And
17 there is a Romney Street exit where traffic is one-way
18 leaving the I coming onto Romney Street and he
19 probably went up that. Very sadly and tragically, he
20 went on up Romney Street exit the wrong way, went up
21 I-26, and there is where Ms. Caperton met her very,
22 very tragic unfortunate and unnecessary death.

23 Sam was in custody, Judge, from July 24th, his
24 arrest date in the hospital, until August the 10th, at
25 his preliminary hearing where his bond was reduced.

State v. Samuel McCauley
Plea
January 18, 2013

1 And the conditions imposed on his bond were that he be
2 placed on house arrest and that he undergo alcohol
3 evaluation. And he was released I think on that same
4 day. So he has seventeen days there in jail custody,
5 prior to today.

6 While Sam was on house arrest, he attended
7 Trident Tech. He got there by taking the bus, the
8 public bus. And he did well there. He made the deans
9 list at Trident Tech. Under Tab M of the exhibit is a
10 letter from Trident Tech notifying him of that.

11 And under Tab D is a statement from Scott
12 Wallace, the professor of visual arts there, who,
13 although he only taught Sam for a semester, was quite
14 impressed that Sam excelled and consistently achieved
15 all the goals required of him, displaying maturity and
16 character, showed real promise as an artist or
17 designer, the kind of student every teacher wants to
18 have. He was well-prepared, an active participant.
19 His work was reliably well thought out and engaging,
20 has a very strong work ethic. Served him well in our
21 intense deadline-driven curriculum. He has all the
22 traits a professor admires in a good student: time
23 management, outgoing positive demeanor, ability to
24 meet deadlines, persistently an asset, engages with
25 his fellow students. He acknowledges this case. I

State v. Samuel McCauley
Plea
January 18, 2013

1 realize that Sam is involved in a tragic -- a
2 situation where it's tragic that a woman lost her
3 life. It would be even more tragic to effectively
4 lose another by taking Sam out of school and
5 incarcerating him for a long period of time, in my
6 humble opinion. He has expressed extreme remorse.
7 He's interested in making better decisions. With so
8 much promise and potential, it is my hope that the
9 Court will be lenient and see that Sam is capable of
10 making positive contributions to his community.
11 Students of Sam's caliber are rare. At the same time,
12 Sam worked as a busboy at the High Thyme restaurant on
13 Sullivan's Island.

14 Now, pursuant to the conditions of bond, I
15 referred Sam to Randy Waid, who is a -- that's spelled
16 W-A-I-D -- who is a clinical psychologist. His
17 report, his full report, is attached to Tab E to the
18 defendant's memorandum. And Dr. Waid consulted with
19 Sam from -- I didn't write this in my notes, so let me
20 refer to it. He consulted with Sam from September of
21 2011 until May of 2012 on eight different sessions
22 where he conducted both interviews and a battery of
23 psychological testing. And to summarize what Randy
24 Waid or Dr. Waid reports to the Court, he opines that
25 Sam relates to others in a straightforward manner.

State v. Samuel McCauley
Plea
January 18, 2013

1 He's modest, unpretentious, self-effacing. Sam
2 believes in the essential goodness of people. He has
3 introvert tendencies. He's somewhat emotionally
4 distant. He's somewhat passive as an individual. His
5 personality and character are adventurous, risk-
6 taking, and impulsive. And I'll get to that impulsive
7 part in a minute when I talk about the next report.
8 And his conclusion is that there is a low probability,
9 in Sam's case, of any substance dependence disorder.
10 In other words, that this was a binge occurrence, as
11 the -- as the word goes.

12 Dr. Waid also says -- addresses something that
13 we saw in the teacher's statement about Sam's sense of
14 remorse. And I'll quote Dr. Waid exactly: as a
15 psychologist, I have been extremely impressed with the
16 genuine remorsefulness that Samuel McCauley has
17 experienced due to his behaviors that resulted in the
18 traumatic death of Ms. Eleanor Caperton.

19 And I think a refrain that Your Honor will hear,
20 as we continue, is exactly that, that Sam's sense of
21 remorse is not a contrived one -- Sam doesn't -- Sam's
22 not feeling sorry for himself -- it is very genuine,
23 that he has caused the death of another human being.

24 Your Honor, for about -- I lost count of the
25 years, but close to thirty, at least twenty-five

State v. Samuel McCauley
Plea
January 18, 2013

1 years, I have been involved in an annual seminar
2 that -- for judges and lawyers that deals with the
3 area of alcohol dependence, drug abuse and other
4 related psychiatric matters, that's presented to
5 lawyers by -- mostly by clinicians and doctors. This
6 seminar began at Fenwick Hall hospital out on John's
7 Island and after it closed, it moved over to the
8 Medical University Center for Drug and Alcohol
9 Programs. We do it in December of every year. Did
10 the last one just a little more than a month ago.
11 And I became -- I was introduced, in that process, to
12 Dr. Suzanne Thomas, who has been one of the lecturers
13 at the lawyers' seminar for at least the past three or
14 four years. Dr. Thomas is a clinical psychologist and
15 her lectures relate to things of the brain, relate
16 to matters of the brain. Dr. Thomas -- her CV is at
17 Tab G.

18 Dr. Suzanne Thomas is a -- has a Ph.D. in
19 clinical psychology from the Medical University of
20 South Carolina, I believe, and she received her -- I
21 take that back. She got a Ph.D. from the University
22 of South Carolina, a B.A. at Auburn, an M.A. at the
23 University of South Carolina.

24 And I called her up to ask her if she could
25 shed any light as to what's going on here in a young

State v. Samuel McCauley
Plea
January 18, 2013

1 person of Sam's chronological age. That is to say,
2 he's at -- he's at age nineteen. And the studies that
3 Dr. Thomas has sent to me characterize -- some of them
4 characterize adolescents as sixteen to twenty and then
5 others refer to a period even beyond twenty that they
6 refer to as early adulthood. But the chronological
7 age is relevant only with respect to what Dr. Thomas
8 has reported to the Court at -- I guess her full
9 report would be at Tabs H and I. She's written a
10 paper for the Court, two papers for the Court, the
11 first relating to the blackout phenomena, and the
12 second one is entitled Adolescent Brain Development,
13 Decision Making, and Differential Effects of Alcohol
14 in Adolescents as Potential Extenuating and Mitigating
15 Factors for Sentence. It's quite an academic paper.
16 And you'll see at the end of it Dr. Thomas is citing
17 all of her research references that lead to the
18 conclusions that she expressed.

19 So permit me, if you will, Your Honor, to simply
20 summarize them at this point in time. First of all,
21 with respect to blackouts, Dr. Thomas observes that
22 they're typical at blood alcohol readings of .20 and
23 above, which is consistent with what we find here.
24 They're typical with inexperienced drinkers. Also
25 typical of what we find here.

State v. Samuel McCauley
Plea
January 18, 2013

1 I think all of the evidence demonstrates that of
2 his peers, Sam was one of the later ones to start
3 drinking alcohol. Now, we're not representing that
4 this is the first time he had ever had anything to
5 drink. Sam had been drinking since his sophomore --
6 probably had started drinking since about his
7 sophomore year in high school, nothing that would meet
8 the effects of what we're faced here. But this is --
9 he was not a first-time drinker, but he is certainly
10 an inexperienced drinker in terms of its duration.

11 Back to the blackout. Interestingly, Dr. Thomas
12 reports that of a poll taken of adolescents in 2002,
13 slightly more than half of them have reported blackout
14 experiences. And of those who reported blackouts,
15 they learned that in that state they later -- it was
16 reported to them, because the blackout blocks out your
17 memory -- it was reported to them that they engaged in
18 physical acts, such as driving, that were not later
19 recalled. So that's the substance of what Dr. Thomas
20 would say about blackouts.

21 Now, in terms of brain development, I think what
22 she reports is quite probative to what Your Honor is
23 called upon to evaluate. And at the end, there's a
24 so-what question so let me answer the so-what question
25 to begin with. The so-what question -- and that is to

State v. Samuel McCauley
Plea
January 18, 2013

1 say, what difference does this brain development stuff
2 make. It makes a difference because Sam is legally an
3 adult. He became an adult, as we know, when he turned
4 age seventeen and therefore subject to prosecution in
5 the adult courts. But in terms of this brain
6 development, I respectfully suggest that what Your
7 Honor is about to hear is relevant to his culpability,
8 his culpability with respect to other offenders who
9 have stood at this place with these charges but who
10 might be of a chronologically older age and with a
11 brain development that's at a different stage.

12 And so here's what Dr. Thomas reports: that
13 studies have shown that the brain's decision-making
14 process is primarily influenced by two regions of the
15 brain. One is called the ventral striata, the other
16 called the prefrontal cortex. The ventral striata is
17 the area of the brain that motives an individual to
18 seek rewards and pleasure. And so that would include
19 alcohol, excitement and risk-taking. The prefrontal
20 cortex, on the other hand, provides the executive
21 functioning of the brain. And that is to say it
22 underlies the ability -- that is, the prefrontal
23 cortex underlies the ability to control impulses and
24 so that when the prefrontal cortex is chronologically
25 mature, that reasoning, that executive function, is

State v. Samuel McCauley
Plea
January 18, 2013

1 better able to override the impulsive pleasure-seeking
2 behavior that's stimulated by the ventral striata.

3 So here's what the problem is with adolescent
4 and early adulthood. Those regions of the brain
5 mature at different rates. The ventral striata is --
6 as Dr. Thomas reports, it's a primitive part of the
7 brain, which is to say was probably present in early
8 man before the more reasoning part. It's ancient.
9 And it's more mature at birth and it is mature by
10 early adolescence. By early adolescent, that
11 pleasure-seeking part of the brain has matured.

12 On the other hand, the prefrontal cortex is
13 relatively undeveloped at birth -- it develops slowly
14 -- and there is not full connectivity until the mid
15 twenties, until age twenty-five. So the result is
16 that until that prefrontal cortex has matured, it's
17 being overridden by the risk-taking, pleasure-seeking
18 region of the brain, the ventral striata. There's a
19 diagram in Dr. Thomas's report that graphically just
20 gives you a picture of what that -- what that process
21 looks like.

22 So what does that really mean, then, in terms of
23 this case. Well, alcohol particularly affects the
24 prefrontal cortex, that executive-reasoning part of
25 the brain, more so than it does the ventral striata,

State v. Samuel McCauley
Plea
January 18, 2013

1 the pleasure-seeking part. So alcohol dampens or
2 dulls that executive function, which is already
3 immature in the -- in the case of a person of Sam's
4 age, under twenty-one.

5 Additionally, the differential effects of
6 alcohol on an adolescent are important. An adolescent
7 -- let me say it a different way. Whereas an adult
8 who drinks will receive clues that they're drinking
9 and they ought to slow it down, such as impaired
10 speech and impaired balance and even loss of
11 consciousness, passing out, that does not happen in
12 the case of an adolescent, early adult. It's what
13 Dr. Thomas reports to us. Additionally, those
14 adolescents who don't receive the same -- the same
15 clues, so -- which is what I just said.

16 So here's the picture with relate -- as it
17 relates to what Dr. Thomas has to say to us. At Sam's
18 age, although everybody has great things to say about
19 him -- and which are true. And he's very intelligent
20 and he's very mature -- his brain isn't any different
21 from any other nineteen-year-old. And that is to say
22 that executive function is just as slowly developed as
23 they all are and it's being overridden by the ventral
24 striata, the pleasure-seeking part.

25 I've heard a phrase, and I've probably used it

State v. Samuel McCauley
Plea
January 18, 2013

1 myself: when we see young people do foolish, stupid
2 things, they haven't got a clue. Well, that's the
3 reason they haven't got a clue. The reason they
4 haven't got a clue is because that reasoning portion
5 of the brain has not yet reached full maturity. The
6 solicitor is entirely correct. That's probably why --
7 well, I'll go on and say it. That's probably why the
8 General Assembly decided to say you can't drink until
9 you reach a certain age. Now, the reason I hesitated
10 is I'm not so sure that the General Assembly makes
11 decisions in such a reasoned way, but it's certainly
12 the justification for it, Judge, as to why -- why you
13 say to a young man who says, why can't I drink when I
14 can go fight in Iraq, and the answer is exactly that.
15 It may not be a satisfactory one to him.

16 And so these are not excuses for Sam's behavior.
17 These are certainly not offenses to the criminal
18 charges. But these are classically mitigating
19 circumstances that we invite to Your Honor's attention
20 that say, well, how should we treat this young man in
21 the spectrum of factors that apply in sentencing
22 someone standing before the bar, not the least of
23 which is treating everyone equally and fairly.

24 Now, while Sam was out on bond -- and although
25 he was seeing Randy Waid on a regular basis, or at

State v. Samuel McCauley
Plea
January 18, 2013

1 least on -- for those eight occasions, he was having
2 some -- he was having difficulties just dealing with
3 this, the fact that he -- what he had done and he
4 killed somebody.

5 And whereas I had referred Sam to Randy Waid
6 because the magistrate said get Sam to an evaluator,
7 Denise became concerned that Sam was worried, distant,
8 and so Denise engaged the services of Suzie Callahan.
9 Suzie is a licensed professional counselor. And I'll
10 get to it in a minute. But her report is at Tab F,
11 Foxtrot, in the memorandum. And so Sam -- at the same
12 time that Sam was going to Randy Waid, he was also
13 seeing Suzie Callahan. And we know, I've already told
14 you, he was going to tech and at the same time he was
15 working at a restaurant called High Thyme, on
16 Sullivan's Island, bussing tables.

17 Sam pled guilty, as Your Honor has already
18 noted, on May the 14th of 2012. It was a significant
19 day in his life. I vividly remember him turning -- he
20 turned his back to Your Honor. I'm sure Your Honor
21 didn't take that as an affront, because he was facing
22 the Caperton family and he expressed an apology to
23 them in the most sincerest form.

24 And Your Honor may remember this. Although Your
25 Honor was inclined to continue him on bond, Sam asked

State v. Samuel McCauley
Plea
January 18, 2013

1 you to take him into custody. And so he's been in
2 jail at the county detention center since May the 14th
3 of 2012. Now, on that occasion, Judge, his plea, his
4 family had likewise come from Iowa.

5 And if I'm going on too long and we need to take
6 a break, Your Honor, just let me know, because I know
7 you've got a cold.

8 THE COURT: No. Go on.

9 MR. BARR: And Sam's parents -- Sam's
10 grandparents, who are Larry and Shirley McCauley,
11 Denise's parents, don't fly and so Denise flew out
12 there and drove them back from Iowa for the plea. And
13 then after the plea, Sam was taken into custody and
14 Denise drove them back.

15 I remember the day of the plea. After Sam was
16 taken into the back, I walked out of the courtroom and
17 down the corridor behind us, and down the carpeted
18 hall, and I was walking right next to Shirley
19 McCauley, Sam's grandmother, and she was embracing
20 Denise or Denise's sister, I don't remember which.
21 But what I remember is that she was sobbing. I just
22 remember so vividly Shirley saw me. And I remember
23 how much she thanked me for what I was doing for Sam,
24 which is always an intimidating statement from a
25 family member to any lawyer. But it touched me.

State v. Samuel McCauley
Plea
January 18, 2013

1 A week later, a week after the plea, I got a
2 call from Denise to say that two days after they got
3 back to Iowa, Shirley died of a sudden heart attack,
4 which was sudden and unexpected. She was seventy-
5 seven years old. And the first thought that struck me
6 was, oh, my gosh, how is this going to hit Sam --

7 THE COURT: Just hold on. Hold on a second and
8 everything.

9 Please be sure to turn off any cell phones,
10 noise-making devices. That's all right. We'll let
11 that one go and all. But please take your time now.
12 If you have one, make sure it's not where we can hear
13 it or anything. Okay? Thank you.

14 Go ahead.

15 MR. BARR: And I immediately worried about Sam,
16 who was locked up at the detention center. And I knew
17 how close he was to Shirley and I thought that this
18 tragedy couldn't have taken a more ominous turn than
19 it did. So I met with -- I went up to the jail to
20 meet with Sam and it was then that I first met Suzie
21 Callahan, at the jail. And she and I met with him
22 together and then Suzie met with him because she had
23 been counseling with him for several months.

24 She had not been forensically engaged, Judge.
25 That is to say, she was just engaged by Denise and Sam

State v. Samuel McCauley
Plea
January 18, 2013

1 to try to help Sam to work through where he was in
2 life. But I was -- I was so impressed with her and
3 what she had to say, that I asked if she would write
4 a report, which she did. And it's in the package at
5 Tab F. But I've also asked her to come here today and
6 to express her thoughts to Your Honor about her
7 opinions, and particularly as they relate to
8 counseling.

9 Suzie, Your Honor, graduated from the College of
10 Charleston with a B.S. in political science in -- or
11 an M.A. I guess in political science in 1985 and then
12 graduated from the Citadel with a Masters of Arts in
13 psychology in '01, and she's been a licensed
14 professional counselor since 2006. Presently, she's
15 in private practice as a medical -- a mental health
16 counselor in Mount Pleasant, prior to which she had
17 worked as a mental health counselor at the Center for
18 Women of Charleston.

19 So with Your Honor's permission, may I ask
20 Ms. Callahan to come on up here so that we can better
21 present it?

22 THE COURT: Sure. Go right ahead.

23 MS. CALLAHAN: Thank you, Your Honor.

24 Sam came to see me for counseling on February
25 21st, 2012. And as Mr. Barr has just said, his mom

State v. Samuel McCauley
Plea
January 18, 2013

1 was noticing that he was feeling -- that he had
2 related to her that he was feeling a lot of feelings
3 of sadness and anxiety, as well as guilt and so his
4 mother, Denise, set up the initial appointment.

5 I saw Sam for thirteen sessions. He showed up
6 for ever appointment on time, never rescheduled,
7 usually arriving by riding his bike or the bus or
8 walking. And he always completed any therapeutic
9 homework I gave him. He read books I referred to him.
10 We've discussed those books. And he generally took
11 this opportunity to take an honest look at the life --
12 at the course of life that he had taken.

13 To me, Sam seemed to be willing to accept the
14 consequences of this tragic event and his willingness
15 to be punished for his actions without complaint. He
16 never once tried to justify his actions or make
17 excuses for his behavior. In fact, he said to me at
18 one point, and I quote, I wish that it had been me who
19 lost my life instead of Eleanor Caperton.

20 He related to me the story of what had happened
21 that night, as best he could, given the blackout state
22 that he was in when the accident happened. He seemed
23 confused about how to integrate and capture the events
24 of the accident and how it fit with who he thought he
25 was. He had always seen himself as just a regular

State v. Samuel McCauley
Plea
January 18, 2013

1 kid, a bit shy, a good student who liked to draw, the
2 son of a single parent. He had a difficult time
3 reconciling this with the faceless killer that the
4 media and others were accusing him of. We spent
5 several sessions on that.

6 In our sessions together, Sam was always
7 respectful, sincere, courteous, and engaged in the
8 sessions. I observed him to be honest, insightful,
9 thoughtful, contemplative, and sad. His judgment
10 appeared to me to be typical teenage judgment, which
11 I'll say more about this later.

12 And let me just say, Your Honor, that I have
13 been asked to speak on behalf of a client before but
14 have never chosen to do so. I chose to do so in this
15 situation because, number one, my concern for future
16 victims, as well as concern for the outcomes of other
17 young adults in a similar situation; and, number two,
18 I was struck by Sam's sincerity.

19 Now, having given you the impressions of Sam, I
20 would like to now speak to you about a little bit -- a
21 little bit about the judgment of an adolescent. And
22 this is going to be just a really brief review of what
23 Mr. Barr has already said, but it -- I think it bears
24 repeating in the way that it fits in with my opinions
25 in my report here.

State v. Samuel McCauley
Plea
January 18, 2013

1 So as Dr. Suzanne Thomas reports, the prefrontal
2 lobe is not fully developed at age nineteen but rather
3 continues to develop well into our twenties. This is
4 the part of the brain that affects our judgment and
5 reason. At the same time, another part of the brain,
6 the ventral striata, controls the part of our brain
7 that influences reward and excitement. Because the
8 prefrontal cortex, as Mr. Barr has said, is not fully
9 developed, and the ventral striata is, the desire for
10 a reward and excitement usually wins out over good
11 judgment and reason. And this, Your Honor, helps to
12 explain why teenagers often make poor decisions such
13 as drinking to excess. And I say this not to justify
14 Sam's getting in a car and driving. He doesn't even
15 have any recollection of this. I say this as an
16 example of how he and his friends made the decision to
17 drink to excess that night on a dock surrounded by
18 water. In their inexperienced and undeveloped brains,
19 this made sense. Though they were -- they thought
20 they were taking precautions, the reward of blowing
21 off steam by drinking took precedence over logic, good
22 judgment, and reason.

23 In addition to this, adolescence have a higher
24 tolerance to the sedating effects of alcohol. What
25 this means is that they don't receive, as Mr. Barr

1 said, the same clues as adults do, such as an
2 awareness that they're starting to slur their words
3 and that they're starting to lose their balance.

4 Furthermore, adolescents are capable of being
5 more vulnerable when they're intoxicated, whereas an
6 adult which is passed out, an adult -- an adolescent
7 would have the ability to engage in motor activities
8 such as driving a car, even though cognitively, they
9 are completely incapacitated.

10 Given this science, it makes sense to me that
11 Sam did not set out to harm anyone. He used poor,
12 albeit typical, judgment for a teen when he made the
13 decision to drink to excess and that decision had
14 very, very tragic consequences.

15 During the course of our discussions, Sam
16 wondered if prison would make him into a hardened
17 person. He said he had caught on quickly during his
18 seventeen-day stay in jail immediately after his
19 arrest and how he needed to keep his emotions to
20 himself, not make eye contact, and not show weakness
21 in the jail environment, in an effort to protect
22 himself. And, again, he wondered what the impact this
23 would have on him as a developing adult.

24 So I researched these questions on his behalf,
25 but also for my own. How would a protracted sentence

State v. Samuel McCauley
Plea
January 18, 2013

1 in an adult prison impact Sam's emerging adult
2 development? Would it affect his ability to be a
3 well-adjusted, compassionate person and affect his
4 current desire to dedicate his life to being an
5 example of deterrence to his peers about the tragic
6 outcome of drinking and driving? Ultimately, as we
7 have heard, Sam decided to begin serving his sentence
8 after entering his guilty plea in May, so I never had
9 the opportunity to share my opinions with him. But
10 I'll share them with you now.

11 It is my opinion, and the research bears this
12 out, Your Honor, that a protracted sentence in a
13 prison environment with adult criminals and the
14 necessary skills that one would need to cultivate,
15 such as not showing emotions, refraining from forming
16 relationships, and isolation, could possibly have a
17 negative impact on his emerging adult development and
18 his ability to become a productive member of society.
19 In addition to this, the period of late adolescence or
20 emerging adulthood is a critical, formative period for
21 the psycho-social development of the identity that
22 they will carry into adulthood. They are in the
23 process of finding out who they are. This is a
24 difficult time, even in the best of circumstances.
25 But in a prison environment, where the social norms

1 are in direct conflict with the norms of normal adult
2 development, it is extremely difficult. Furthermore,
3 the research has shown that the younger a person is
4 and the longer their stay in this environment, the
5 more difficult it is for them to regain their
6 trajectory to normal adult adjustment.

7 Other researches have positive -- the
8 possibility of a tipping point, where the corrective
9 effects of incarceration are replaced by distrust,
10 suspicion, emotional over-control, and a projection of
11 a tough persona and how these could ultimately, in an
12 extended stay in prison, permanently affect a person's
13 ability to function appropriately in the world outside
14 of prison.

15 Now, I'm quite aware that the victim's family
16 may not care much about these things. What's
17 important to them is who they lost, and seeing justice
18 being done. I understand that, and I have much
19 compassion for them and what they are going through,
20 as well as the McCauleys.

21 But as a therapist, I do care about these
22 things. I care that a protracted stay in an adult
23 prison could turn a gentle kid, who made a tragic
24 choice, into a hardened person due to the need to
25 protect himself in a prison culture. And it is my

State v. Samuel McCauley
Plea
January 18, 2013

1 opinion that at his young age, Sam lacks the ability
2 to deal with the trauma of an extended incarceration
3 and this could lead to a negative outcome for him and
4 for society at large. In light of this, it is my
5 opinion that Sam could use his demonstrated character
6 traits to positively impact other young adults of
7 consequences of underage drinking, as he did by
8 addressing the Governor's School.

9 Although Sam's choices led to a criminal act,
10 Your Honor, I have a hard time seeing Sam as a
11 criminal. My fear is that a long sentence could turn
12 him into one. Rather, he could be an instrument for
13 increased awareness of the dangers of underage
14 drinking.

15 As we all know, this tragedy cannot be undone.
16 Sam is accepting of the consequences of his actions
17 which led to this tragedy and will live with the guilt
18 of that for the rest of his life. It seems to me that
19 the highest good that can be served, given this, is if
20 Sam's telling of his story can prevent a similar
21 tragedy.

22 MR. BARR: Thank you, Suzie. Thank you very
23 much, Ms. Callahan.

24 Your Honor, as Ms. Callahan alluded, Sam felt,
25 among other things, a sense of disempowerment, an

State v. Samuel McCauley
Plea
January 18, 2013

1 inability to do something good about what he had just
2 done or what he had done bad that caused Ms.
3 Caperton's death. And last spring he called the
4 Governor's School in Greenville and offered to go
5 speak to them, go speak to the students, to tell them
6 his story. And I think on May the 2nd of last year,
7 Sam went up to Greenville and he made a presentation
8 to the student body -- I think it was the full student
9 body, but we'll find that out in a minute -- of the
10 Governor's School. That's May the 2nd. That was only
11 twelve days before his plea. It had been set up for
12 some time ahead of that. In a minute I'm going to
13 invite Joe Thompson, who has driven here from
14 Greenville today, who is the chair of the visual arts
15 department, to say a few words. But it sent a --

16 I guess the advantage of having a court reporter
17 for a mother is that -- or maybe a disadvantage -- is
18 that she can note precisely what it is you're saying.
19 Denise attended, and she recorded it and she's
20 transcribed it. And so Sam's presentation there is
21 under Tab J.

22 And some of the things that he told them, these
23 students, are as follows: twenty-something days from
24 now, you all will be graduating, some of you will be
25 graduating, and twelve days from now I'll be in jail.

State v. Samuel McCauley
Plea
January 18, 2013

1 Not even a full year -- that is to say, after his
2 graduation -- it's on page 2, page 2 -- and I'm going
3 to be in the custody of the State. So let me start
4 the story from graduation. It was liberating --

5 On the bottom of page 2. I'm somewhat skipping
6 it over.

7 -- it seemed like a new part of my life had just
8 began -- begun, but I didn't really know which
9 direction I wanted to go in yet.

10 And that's what made me digress back to my 1959
11 year, is when I read that.

12 I was accepted into all the schools I applied
13 to. I've got three jobs. I was a valet, I delivered
14 transcripts to law offices, I printed tee-shirts. And
15 then to line 12 on page 3, he says: in late July,
16 some friends from Governor's School came down and we
17 were going to stay on an individual's boat. The plan
18 was to stay there, sleep, and then drink. And so we
19 did drink. We were at a picnic table, a picnic table
20 on land, and the last thing I remember is walking on a
21 dock toward the sailboat. And the next thing I
22 remember was waking up in a hospital room with a woman
23 officer at the foot of my bed telling me I had killed
24 someone. And I later learned that it was a woman
25 named Eleanor Caperton, and she was a mother. She had

1 two jobs. She was coming home from work.

2 And then he reports about how he was charged and
3 spent seventeen days in jail and released and that
4 he's been on house arrest ever since. And he tells
5 them, on page 5, that the max he could get is thirty-
6 five years. And then Mr. Thompson engages in some
7 dialog.

8 And Sam says, on page 5, to the students: you
9 all definitely have potential, because you're here,
10 but all of the work that you've done or are continuing
11 to do to be here and to go where you would like to go,
12 it can all be wiped away if you're not conscious of
13 what you're doing and aware of your decisions. And I
14 wish that I had known what was too much to drink. Or
15 just not to drink, I guess.

16 I had shared with Sam what Dr. Thomas had
17 reported about brain development. And on page 6, this
18 is what he tells these kids: we're specifically at
19 risk at our age because of how we develop as an
20 adolescent. Our reasoning isn't the same when we come
21 in contact with alcohol. And that's not -- that's not
22 from lack of moral or legal standpoint, that's
23 scientific. It's how the brain structure works.
24 We're more likely to take risks. And when alcohol is
25 introduced into that chemistry, you don't know what's

State v. Samuel McCauley
Plea
January 18, 2013

1 going to happen. Or I didn't.

2 A parent asked him: tell us what precautions
3 you guys thought you had taken. On page 7. And Sam
4 said, well, we were going to stay on the boat and then
5 when we were on the boat we were in pairs or whatever,
6 to make sure no one got injured or fell off the boat.
7 But it really doesn't matter. If you black out, I
8 mean, if you don't know what is too much, then it's
9 all a risk, is what he said.

10 And then on page 8 he tells these students: I
11 have to live with the idea that I killed an innocent
12 person and that she doesn't get to live the rest of
13 her life. And I don't know. It's not good for
14 anyone.

15 Now, a cynical view of all of this, Your Honor,
16 I suppose would be that all of this was orchestrated
17 by a clever lawyer. And I wish I could only take the
18 credit for that. But this was spontaneous. This was
19 Sam. This was Sam's reaching out to say, what can I
20 do; I can't bring Ms. Caperton back; what can I do.

21 May I invite Mr. Thompson up here, Your Honor?

22 THE COURT: We're going to -- excuse me. We'll
23 take a short break at this time --

24 MR. BARR: All right.

25 THE COURT: -- and then we'll go ahead.

State v. Samuel McCauley
Plea
January 18, 2013

1 MR. BARR: And about how long?

2 THE COURT: Five minutes.

3 MR. BARR: All right, sir.

4 [Whereupon, a recess is taken from 12:22 p.m. to
5 12:34 p.m.]

6 MR. BARR: I think I'm -- may I proceed, Your
7 Honor?

8 THE COURT: Go right ahead.

9 MR. BARR: I think I was inviting, if Your Honor
10 will permit it, to come forward, Mr. Thompson.

11 THE COURT: Come on up.

12 MR. BARR: And I think I have it correct that
13 Mr. Thompson is the chair of graphics arts.

14 MR. THOMPSON: I'm the chair of the visual arts
15 department --

16 MR. BARR: Visual arts.

17 MR. THOMPSON: -- at the South Carolina Governor
18 School for the Arts.

19 THE COURT: Go right ahead.

20 MR. THOMPSON: Thank you, Your Honor.

21 I am grateful for the opportunity to speak to
22 this Court on behalf of Samuel McCauley, but humbled
23 by the tragic circumstances that led to this hearing.
24 I know that the human suffering caused by Sam's
25 actions is beyond measure. And for the family of

State v. Samuel McCauley
Plea
January 18, 2013

1 Eleanor Caperton, the comments I have in support of
2 Mr. McCauley will be difficult so I will make my
3 comments as brief as possible.

4 During Mr. McCauley's time at the Governor's
5 School, I was aware of the fact that his father is
6 absent in his life. And I reached out to him to the
7 extent that I could, which was a considerable amount,
8 within the context of the Governor's School as a
9 residential art student. He made progress at our
10 school, but I admit that there were moments of
11 frustration for me with Sam as I tried to focus him on
12 the need to commit fully to almost any course of
13 action. I was extremely proud of him when he
14 graduated, but also somewhat disappointed that he did
15 not seem to have a better plan for the immediate
16 future. And over the course of the summer, as
17 naturally happens, he drifted away.

18 After the accident that killed Ms. Caperton, and
19 knowing that Sam would be struggling, I contacted him
20 in September and visited him under house arrest. It
21 seemed to me that he was in shock and still grappling
22 emotionally with his role in this terrible event. I
23 tried to focus my efforts in speaking with Sam on his
24 understanding and responsibility in these
25 circumstances and gradually I saw the numbness wear

State v. Samuel McCauley
Plea
January 18, 2013

1 off and a profound sense of remorse developed.

2 In the spring of 2012, as has already been
3 noted, Sam asked if he could speak to the student body
4 at the Governor's School about his experience and he
5 was allowed to do that. This was eleven days before
6 he was back in incarceration at the detention center.
7 And at that moment, based on his presentation to his
8 fellow students, who knew him as a student at our
9 school, I saw him as a young man who clearly
10 understood the suffering he had caused and was filled
11 with remorse and his own struggle with sorrow. He
12 made a tremendous effort that day to affect the lives
13 of others, and he shook the auditorium to their core.
14 There was not a single student who was not focused on
15 the task at hand.

16 Sam was then incarcerated and while he was
17 incarcerated at the detention center, I have visited
18 him twice. And I have eleven letters written back and
19 forth. Sam wrote me eleven letters. In each letter,
20 we share our thoughts about life, about spirituality,
21 and about the future. Also, in every letter is an
22 overarching sense of remorse, and, lately, an
23 articulation of a desire to contribute something
24 positive to society.

25 Sam wants to do something positive in his life.

State v. Samuel McCauley
Plea
January 18, 2013

1 And, sadly, through these incredibly tragic events, he
2 is incredibly well-positioned to change the lives of
3 others right now through speaking to young people who
4 are faced with the culture of binge drinking and with
5 dangerous social behavior.

6 My hope for Sam McCauley and the family of
7 Ms. Cooperton -- Caperton, pardon me -- is that we
8 will all, as a community, search and reach deeply in
9 our hearts for forgiveness, even though forgiveness
10 does not make anything right, and that we give this
11 young man an opportunity to develop in his life.

12 Thank you, sir.

13 THE COURT: Thank you.

14 [Whereupon, Mr. Barr and Mr. Thompson confer]

15 MR. BARR: Thank you very much, Mr. Thompson.

16 And it's somewhat dovetailing on what we just
17 heard from Mr. Thompson, Judge. In October, I
18 received a call from Ann Cimballa. And I quoted her a
19 minute ago. Ann Cimballa was Sam's -- one of Sam's
20 former teachers at the Charleston County School of the
21 Arts. And Ms. Cimballa made an interesting request.
22 And this just emerged from her mind. Well, I say
23 emerged. She had been to see Sam. And she said, is
24 there any way that Sam could talk to the student body
25 at the School of the Arts. And I said, well,

State v. Samuel McCauley
Plea
January 18, 2013

1 Ms. Cimballa, I'm not sure but I'll see if it can't be
2 arranged. To make a long story short, and with the
3 consent of the Solicitor and the consent of Sheriff
4 Cannon, I presented Your Honor -- I think you -- you
5 were taking pleas or something that day. I don't know
6 if you remember it, but Your Honor signed an order.

7 And Sam was transported from the Charleston
8 County Detention Center over to the Charleston County
9 School of the Arts in North Charleston -- as an aside,
10 what an impressive facility -- and where he made his
11 presentation. The sheriff's office used the
12 opportunity to do some of its own community school
13 outreach. This was an assembly of over 400 students
14 and I think 60 faculty. I was invited to attend,
15 which I did. And, initially, the sheriff-office
16 officers made their presentation, as they probably do
17 from school to school. And then Ms. Cimballa
18 introduced Sam. And Sam walked onto the stage dressed
19 in probably the same suit. These are probably not the
20 same chains, but he was wearing chains. And he stood
21 there and addressed 400 students and 60 teachers. And
22 I would like to recite some of the things that he told
23 them.

24 Sam -- interestingly, Sam said, well, you know,
25 I was particularly happy to be asked to do it because

State v. Samuel McCauley
Plea
January 18, 2013

1 it was a do-over. He said, I really thought that I
2 could have said things more meaningfully than I did at
3 the Governor's School. So this was Sam's opportunity,
4 having thought about what he said to the Governor's
5 School, to refine it to these students.

6 And he explained -- he explained that he came
7 here in the sixth grade and was -- I'm going to
8 paraphrase for a minute. This is Tab K of the
9 exhibit, Your Honor: I came here from the sixth grade
10 until sophomore year, so I was where you are not long
11 ago. I had 30,000-dollar scholarships to two of the
12 best art schools in the country, along with
13 acceptances to two in-state schools. Graduation
14 passed. Summer began. I couldn't make it to all the
15 parties my friends were having and telling me about,
16 but I made it to some. He's talking to students here.
17 The thing with young people and drinking is that
18 they're more likely to take risks due to their brain's
19 age of development. The human brain reaches full
20 maturity at age twenty-five. This means that if some
21 of you were to experiment with alcohol, you would not
22 receive the same warning signs as an older
23 counterpart. It means it's easier to become drunk.
24 So, physically, you can't handle it. And it's
25 illegal. You could be the smartest person in the room

State v. Samuel McCauley
Plea
January 18, 2013

1 but once intoxicated, your ability to reason is
2 broken. None of what I've just said was in my
3 thoughts the night of July 23rd, 2011. That night, it
4 was my intention to drink with some classmates on a
5 boat which we -- which we would stay the night. I
6 remember walking down the dock toward the boat, then I
7 blacked out.

8 The next memory I have is of a woman officer at
9 the foot of my bed, in a dark hospital room, telling
10 me I had killed a woman. Overcome with shock, that
11 was the worst moment of my life. I knew I had hurt
12 everyone that had ever cared for my victim, Eleanor
13 Caperton. She was an innocent person driving home
14 from work one night. From that hospital room, I was
15 charged. I also saw the pain of Eleanor's family for
16 the first time.

17 And what that means is that -- because I
18 attended this. By this time I had been called. And
19 so Sam's initial bond hearing was in his hospital
20 room, Your Honor. And so he was in a bed, was all
21 bandaged up, and the family was there. He saw it
22 face-on, and this just hours after the incident had
23 occurred.

24 And then skipping on: after my bond was paid I
25 got to go home, which was really emotional because I

State v. Samuel McCauley
Plea
January 18, 2013

1 got to see the world that I thought was gone. Nothing
2 was or ever will be the same after that night I killed
3 her. This past May, I pled guilty to both of my
4 charges and chose to come back to jail to await my
5 sentence, which would be one to thirty-five years in
6 prison. Just recently I was offered a substance abuse
7 program, which I'm in.

8 I haven't seen my loved ones face-to-face since
9 May. Eleanor won't get to see her family again, ever,
10 because of me. After I serve the sentence I'm giving
11 -- given, there will be five years where I can't have
12 a license. This will affect where I live and my job.
13 I also won't be able to vote. This would have been my
14 first election. More importantly than either of those
15 ideas is the feeling of guilt I will always have
16 knowing I killed an innocent person.

17 I'm telling you this because I hope it can help
18 one of you. I don't know why I got in the car that
19 night. When I'm sober, I make good choices. This is
20 a dangerous world and to lose control is to put
21 everything you love at risk, including your life. So
22 when confronted with any substance, don't think of me,
23 think of what you love and the value of anyone's life
24 and whether that is worth overstepping a boundary.

25 My name is Sam McCauley. I used to be in visual

State v. Samuel McCauley
Plea
January 18, 2013

1 arts here and now, although I never wanted to be, I'm
2 a killer. But I'm still part of the community,
3 whether I like it or not. And I make a difference.
4 That difference is up to me.

5 You could have heard a pin drop in the audience.
6 And a teacher later told me that he had never seen a
7 student body more attentive at any presentation.

8 And Ms. Cimballa's statement at Tab L also talks
9 about that, Judge. I already recited some of the
10 stuff from her. But she, in her report, talks -- she
11 talks about what Sam told the students. And then she
12 says: when Sam closed his speech -- and she
13 apologizes, by the way, for not being here. She had
14 some excessive leaves because of illness and felt she
15 couldn't leave the school today -- when Sam closed his
16 speech and exited the stage, I thanked him for coming
17 and for having shared with us this wrought and very
18 personal story. Sam turned to me and said: Ms.
19 Cimballa, thank you. Thank you for letting me do
20 this.

21 And then she says: the rest of our school day
22 saw classrooms in deep discussion about what we had
23 just heard. For days after, students came up to me,
24 as well as other teachers, with questions and to talk
25 about drinking and driving.

State v. Samuel McCauley
Plea
January 18, 2013

1 And she talks about how schools will often take
2 a wrecked car as an example of what could happen to
3 you driving drunk. But she said nothing could ever
4 have been more dramatic and profound than Sam's
5 presentation. The morning after Sam's speech, a
6 teacher pulled me into his office. He told me he was
7 so affected by Sam's words, that he wanted to leave
8 but he couldn't, because he had also been in a serious
9 accident in which someone had been killed, not
10 involving alcohol, but in which there was some remorse
11 involved. My experience with Sam and Sam's speech, as
12 we now refer to it, has shown me what a difference one
13 person can make in the lives of many. I can promise
14 that the students who were present, and the adults,
15 heard what Sam had to say. The image of Sam walking
16 out onto that stage has been burned into their
17 memories. I can guarantee that at least one life will
18 have been saved as a result of what Sam did.

19 Now, Your Honor, I earlier alluded to the fact
20 that we have a number of people in the audience and a
21 lot of them want to say some things. And I know we've
22 been at it a long time and so I would like to just
23 represent to the Court that I -- a consistent refrain
24 that you would hear from them is you will accept this
25 as a representation.

1 THE COURT: And I might say that a great deal
2 of what you have said, and others, of course, I've
3 been -- I've already read --

4 MR. BARR: Correct.

5 THE COURT: -- in the book, from the sentencing
6 memorandum, that you gave to me. But I think it's
7 important that it be said in public, also.

8 MR. BARR: Yes, sir.

9 THE COURT: I have no hesitation, I have no
10 desire, to cut you off and let you --

11 MR. BARR: I know that.

12 THE COURT: -- the same thing for the State, for
13 that matter.

14 MR. BARR: I thank you.

15 THE COURT: But anything that you want to
16 present, I'll be glad to consider.

17 MR. BARR: Thank you.

18 So let me just invite a couple and then I'm
19 going to get a show of hands on me, too.

20 Sam's aunt is Debra Peterson, who drove here
21 from Iowa.

22 And you can speak from right there. Yeah. But
23 I think we can probably hear you.

24 MS. PETERSON: Yeah, I think you can hear me.
25 I'm a high-school teacher.

State v. Samuel McCauley
Plea
January 18, 2013

1 THE COURT: You've got a good teacher's voice.

2 MS. PETERSON: Oh, yeah, a teacher's voice.

3 My name is Debra McCauley Peterson. Debra, like
4 in the Bible.

5 Obviously, I've known Sam his entire life. I
6 think it's important that you know that I teach at a
7 high school of 2400 kids in an intercity school. And
8 he's had an impact there. He's been very close to my
9 students. And I did read his speech. Some of them
10 cried. Many of them came to me later and talked to
11 me. And when they knew I was flying down today, they
12 sent their prayers. They don't even know you. And
13 they were impressed by what he had to say.

14 And it's a tragic, tragic loss. We were
15 shocked. We're sorry to the family. My mom is
16 heartbroken. She felt really bad. When she read the
17 story she said, that could have been me, that's me.
18 And this is our baby. He's the youngest of seven. My
19 four children, nephews, he's like their little
20 brother. We're very close. He's been a joy for us.
21 We're very proud of him. He's a very -- excuse me.
22 I'm sorry. He's a very loving, caring person. This
23 is really hard to fathom that this is even happening.
24 And we hope that -- I want to kind of hope -- I want
25 to read this last part. It's shaken our entire family

State v. Samuel McCauley
Plea
January 18, 2013

1 to the core. It's shaken his friends, his family
2 here. Even though they are not blood, they are
3 family. Many weren't here today. They wanted to be
4 here and say something.

5 Nobody could feel more sad or more guilt-ridden,
6 nobody could feel more lost, than Sam does. This is
7 something he's going to live with his entire life.
8 We're concerned for him. We know that life will never
9 be the same, but we hope and pray that his life will
10 not be destroyed. We hope that he will have an
11 opportunity to learn from his mistakes and to give
12 back to the world. We cannot believe that locking him
13 away will serve any meaningful purpose. It would only
14 compound the tragedy which cannot be undone.

15 MR. BARR: Thank you, Debra.

16 Let me say that, Your Honor, Sam's grandfather,
17 Larry, Shirley's husband, came with them for these
18 proceedings but the family has convinced Larry, who
19 has heart issues, and with my strong concurrence, that
20 he probably shouldn't sit in here today. And so he's
21 waiting in Denise's apartment to hear about this. But
22 I wanted Your Honor to know that he's present.

23 Another representative the State and I think
24 could be invited is Beth Moore. Beth, are you there?

25 [Off the record momentarily]

State v. Samuel McCauley
Plea
January 18, 2013

1 MS. BETH MOORE: My name is Beth Moore.

2 MR. BARR: You'll have to project, Beth, unless
3 you think you can't and then -- .

4 MS. BETH MOORE: I think I can.

5 MR. BARR: Okay.

6 MS. BETH MOORE: I'm going to try.

7 My husband and I knew Sam a very long time. He
8 and my son became close friends in the fourth grade
9 and he spent a lot of time at our house during the
10 years. We all feel like he's a part of our family.
11 And we love him. He and my daughter attended the
12 School of Arts together and Sam went on to the
13 Governor's School of Arts, in Greenville, afterwards.

14 Having raised three teenagers and chaperoning
15 many parties and field trips, we have seen plenty of
16 kids get into trouble from poor choices they've made.
17 But Sam stayed away from all of that. He wasn't one
18 of those. And we were always so happy our son was
19 good friends with him. I've always seen Sam as
20 someone who is deeply devoted to his family. He has
21 been a great friend to my son, to my family, and a
22 very kind and respectful person. He was always such a
23 good kid with so much potential, and he still is.

24 MR. BARR: Thank you very much.

25 And there's a representative, a young person,

State v. Samuel McCauley
Plea
January 18, 2013

1 Audrey Moore, if she's up to it.

2 MS. AUDREY MOORE: Hello. My name is Audrey
3 Moore. I've known Sam since I was eleven years old.

4 I struggled a lot with what I wanted to say
5 today, I suppose because I find it strange to be
6 defending the character of one of the kindest people
7 I've ever known. I grew up knowing Sam to be an
8 intelligent, loyal, and gentle person, and I know him
9 still to be nothing less than ultimately a good man.

10 Since July of 2011, Sam and I have talked often
11 about the differences between regret and remorse and
12 the line between reform and punishment, around which
13 he has attempted to define for me a kind of pain I
14 hope I never really understand.

15 Recently, I read an article in the paper that
16 called Sam's remorse a show of theatrics. I mention
17 this not knowing whether to beg Ms. Caperton's family
18 to believe the absolute sincerity that I have valued
19 in Sam since our childhood or whether just to say that
20 the death of Eleanor Caperton was a tragedy that has
21 devastated the lives of everyone in this room.

22 The remorse that I know Sam feels is genuine.
23 And as far as the things he has done since the
24 accident, whether it be giving a speech at our high
25 school or asking an officer in the hospital to kill

State v. Samuel McCauley
Plea
January 18, 2013

1 him, too, none of these things were done to gain
2 public favor.

3 The mistake that Sam made at nineteen will
4 impact the rest of his life, regardless of the
5 sentence he is given today. I am here today to show
6 support for my friend. I am here to ask that the
7 works of Samuel McCauley's life be recognized. Sam
8 has been -- Sam has had potential as an artist, as a
9 speaker, and has potential as a speaker and a teacher
10 and a member of this community. Sam McCauley has
11 potential as a man. And those of us here who love him
12 ask that he be given a chance to become the person he
13 was meant to be, and a show of mercy will allow him to
14 become that person.

15 MR. BARR: Thank you very much.

16 And may I invite by a show of hands everybody
17 who agrees with what was just heard? Everybody.
18 Thank you.

19 And I apologize to those of you who have
20 prepared statements, but I -- but I do believe that
21 we've -- hopefully, we've addressed the point with the
22 Court.

23 One other -- I would like to recite: present
24 among -- I told you there were five from the School of
25 the Arts, is Sarah Stokes, who was one of the girls on

1 the boat that night. And she sent me -- she's here,
2 but she sent me an e-mail that she would prefer not to
3 try to present it herself. And she says many of the
4 same things that we just heard from Aubrey in terms of
5 the importance of Sam in her life and its impact.

6 But what she says about this incident is -- I
7 think might bear knowing to the Court: this event
8 goes beyond the lives of the two families involved.
9 It has created a ripple effect that I believe is being
10 used to create a better world. Sarah is a freshman at
11 Wentworth. This was a traumatic event for everyone
12 involved. It changed my life forever, so it's hard
13 for me to begin to imagine how massive an impact this
14 had on those who are deeply involved. I've learned
15 far more than I thought I would have. For many of us,
16 it was a reality check and a harsh welcome into the
17 adult world. Since the accident I've gone out of my
18 way to do everything to keep accidents like this from
19 happening, from volunteering to be the designated
20 driver, to taking away their keys.

21 Sam's story is powerful and I've found a large
22 majority of people that I talk to just don't begin to
23 understand the consequences of their actions and the
24 impact it can have. It's not something that anyone
25 ever thinks can happen to themselves or their friends,

State v. Samuel McCauley
Plea
January 18, 2013

1 but it's so much closer now than one would ever
2 imagine. I hope that they tell it to people they know
3 and it spreads ripple by ripple.

4 We know, Your Honor, working in this courthouse,
5 tragically, tragically, this -- we now know this
6 desire for reward and satisfaction -- we've learned
7 what part of the brain it's controlled by, but we see
8 so many cases in here that are controlled by exactly
9 that.

10 I would like now to ask --

11 Are you ready?

12 I would like to ask Denise to say some words,
13 and then I would like to ask Sam to say some words,
14 Your Honor, and then I would like to summarize and
15 close.

16 THE COURT: Go right ahead.

17 MS. MCCAULEY: I had written good morning, Your
18 Honor, but good afternoon. I'm Denise McCauley, Sam's
19 mother. While a court reporter is usually comfortable
20 in the courtroom setting, I've always been a
21 professional listener and not a professional speaker
22 so please excuse me if my voice fails me.

23 THE COURT: I'll start by saying in the
24 courtroom, I think my listening skills are the best.
25 And so while I may be doing something here, I'm

1 listening to everything that's being said.

2 MS. MCCAULEY: Okay. I'm here today to stand
3 beside Sam and tell the Court that this is a good
4 person here next to me. Sam's family and friends
5 sitting behind us would tell you the same if given the
6 chance. In fact, many of them offered to say or write
7 something for the Court on his behalf, but we would be
8 here until next week if we let them all speak.

9 I will tell you that all of these people here
10 supporting Sam have one thing in common: they know
11 Sam. They have lived with him, gone to school with
12 him, worked with him, grown up with him, counseled
13 him, and taught him. They know him well. And if
14 asked, they would all say the same thing: Sam is a
15 good person.

16 The people here today who would tell you that
17 Sam is a bad person or insinuate that somehow all of
18 us who love Sam are wrong about the good person we
19 know him to be also have one thing in common. None of
20 them have ever met Sam, sat down and talked to him
21 face-to-face, or with any of us. Some of them are in
22 a lot of pain over the loss of their loved one and
23 it's easy to understand why they would try to comfort
24 their grief by making Sam out to be some kind of
25 monster. But he is not. One bad choice resulting in

1 one tragic accident does not make him so. Sam is not
2 perfect. And I think we can all agree that neither
3 are any of us. The one thing we all have in common
4 here today is we're all suffering over the loss of
5 Eleanor Caperton. The one thing we may disagree on is
6 how to deal with that grief.

7 Sam's entire life I have gotten comments about
8 what a nice kid Sam is from folks who didn't
9 necessarily know me well or at all. They would tell
10 me how much they enjoyed having him at their house or
11 in their classroom and being around him. As he grew,
12 I continued to get comments of what a good person and
13 hard worker he is, both at school and on the job.

14 The day after this accident, when I tried to
15 find Sam -- because contrary to what everyone is led
16 to believe, you really don't get that phone call.
17 Through many obstacles, I found my way to Sam's
18 hospital room because I needed to know he was okay.
19 As I opened the door and stood at the threshold, I saw
20 Sam lying in his hospital bed with a neck brace on and
21 his hands handcuffed to the rails. I remained in the
22 doorway at a distance from his bed and I asked him was
23 he okay, while two guards, surprised that I was there,
24 looked on.

25 Sam could have whined about his painful cracked

State v. Samuel McCauley
Plea
January 18, 2013

1 sternum, his concussion, his knee that they had
2 performed a procedure on, but he didn't. His first
3 thought was only to reassure me that he was okay, even
4 though he really didn't look okay.

5 After that exchange, one guard said I would have
6 to leave, and followed me out, closing the door behind
7 us. I asked him was Sam really okay and what
8 procedures had they done or what they do to him
9 [phonetic]. He answers -- he answered the questions
10 that he could and added this: that is a good boy in
11 there, and mistakes happen. After only a few hours of
12 spending time with Sam, even the officer came to the
13 conclusion that Sam was a good young man.

14 I don't think you can have a conversation with
15 Sam and not come to the conclusion that this is a
16 genuinely good, kind person that loves his family,
17 friends, and community and is so very sorry for the
18 grief he has brought to all three.

19 I am standing here today next to Sam because I
20 would never hesitate to stand next to him. I love him
21 because he is my son, but I cherish him because he has
22 always been a very good person in so many ways and I
23 will always be proud to call him my son.

24 On his behalf, I would ask that this Court show
25 Sam leniency here today. We will not be safer, nor

1 will the world be a better place, putting Sam McCauley
2 away for many years. Abraham Lincoln once said, I
3 have always found that mercy bears richer fruits than
4 strict justice. Sam cannot bring Ms. Caperton back
5 but if you grant him mercy, I know that he is the kind
6 of person that will go into this community and spend
7 the rest of his days trying to atone for this one
8 tragic mistake. Please let him do that. Thank you,
9 Your Honor.

10 MR. BARR: Thank you, Denise.

11 Sam?

12 MR. MCINTYRE: Over the past eight months, I've
13 been thinking about what I would say today and it's
14 very similar to what I said at the plea. No one
15 deserves what I did to Eleanor Caperton, her family,
16 or this community. I wish that I could have died
17 instead of her. And the fact that she did die is
18 something I'll have to live with forever, and I'll be
19 sorry forever.

20 MR. BARR: Thank you, Sam.

21 Your Honor, the statutory complex is felony DUI
22 and reckless, and we've somewhat analyzed that prior
23 to the call of the case and getting straight issues
24 like how to classify parole and that manner of thing.

25 Let me do say this. Your Honor observed at the

1 plea that -- for a simple plea on both felony DUI and
2 reckless, it's not -- I'm sure it's not unheard of,
3 but it's not the normal kind of plea. And there is a
4 -- there is a case that does say that there's an
5 articularable difference between felony DUI and
6 reckless homicide because felony DUI doesn't require
7 evidence of recklessness. But it's important to
8 observe that that very case -- in that very case, the
9 sentences that were imposed were concurrent. And so I
10 think that the case clearly calls for concurrency.

11 The pre-sentence investigation report recommends
12 to the Court a split sentence, as Your Honor and I
13 know. But to just say it for the record and those
14 assembled, meaning a sentence that consists of time
15 and probation. And we --

16 THE COURT: Suspended on time and probation.

17 MR. BARR: Suspended on time and probation.
18 Suspended on time and probation. And we certainly
19 would seek that, as well, as the way to fashion
20 justice in this case.

21 In my memorandum I discuss credit for time
22 served. Let me get the easy part away first. It's
23 clear that Sam was in jail for seventeen days before
24 he was let out to bond and it's clear that he's been
25 in jail 250 days since -- as of today. Since May the

State v. Samuel McCauley
Plea
January 18, 2013

1 14th. So that's 267 days. And in my memorandum I
2 argued that Your Honor should give him credit for his
3 house arrest for 277 days, in response to which the
4 Court has -- I mean, I'm sorry -- the solicitor has
5 filed a memorandum arguing that that's not correct.

6 Well, let me -- let's observe some things about
7 that case and that decision and the statute. In the
8 case cited by the State, I think it was State v.
9 Higgins, the defendant had been sentenced to house
10 arrest and he filed an appeal on the basis that he
11 should have been automatically credited, under the
12 statute he should have been automatically credited,
13 for time served. And what the Court held was that
14 time served means time served and therefore he's not
15 entitled to automatic credit under the statute. But
16 the case does not say that a circuit judge cannot, in
17 its discretion, give credit for house arrest. Whether
18 that be full credit, half credit, a quarter credit,
19 ten-percent credit, the case does not say that the
20 Court cannot give credit for time served.

21 And, in fact, interestingly, in the statute --
22 and in the State's memorandum that's under Tab A. But
23 the section is 24-13-40, computation of time. It
24 talks about when the computation is -- will commence.
25 It says: the computation of time served by prisoners

State v. Samuel McCauley
Plea
January 18, 2013

1 under sentence imposed by the courts of this state
2 must be calculated from the date of the imposition of
3 the sentence; however, when -- and then Subparagraph C
4 says: when the court shall have designated a specific
5 time for the commencement of the service of the
6 sentence, the computation of the time served must be
7 calculated from the date of commencement of the
8 service of the sentence.

9 So I think this -- the statute gives Your Honor
10 that authority. The case says you can't. And you may
11 not want to give him full credit, but I think you have
12 the discretion if you don't want to give him full to
13 give him part credit. And that's what I have to say
14 about credit for time served. Sam -- Sam's liberty
15 was restricted for 277 days and I think in fairness
16 and in equity, he should be given some credit for
17 that.

18 Judge, I tried to figure out an analogy, that
19 would apply to Sam's case, to things that might be
20 more easily recognizable than five young people on a
21 boat who decide they're not going to go on deck alone
22 and not to drive. And maybe this isn't the greatest
23 one, but it strikes me that if I were invited to a
24 friend's house on the Isle of Palms, and to -- to
25 watch the Super Bowl -- that's an appropriate time, we

State v. Samuel McCauley
Plea
January 18, 2013

1 all agree, to celebrate. If I were invited to that
2 friend's house and there are a couple of other buddies
3 there and I brought along a fifth of Jack -- Captain
4 Morgan rum and I decided I was going to drink a lot --
5 now, I don't drink a lot. I will admit in my younger
6 days I had enough. I had a lot to drink. But I don't
7 drink a lot. But if I decided that, certainly nothing
8 wrong with that. I have that right. But it would
9 never occur to me in a thousand years -- even though
10 I've been working with this Fenwick Hall seminar for
11 thirty years, it would never occur to me in a thousand
12 years that if I drank enough Captain Morgan, watching
13 the Super Bowl -- that I blacked out and that I could
14 have found myself waking up at Medical University
15 hearing that I had gone the wrong way on the Ravenel
16 Bridge and killed somebody, it never would occur to me
17 in those thousand years that I could have done
18 something like that in a state that is so bizarre, so
19 unpredicted, so unplanned. And that's exactly what
20 happened here.

21 Sam's crime, Sam's crime, was that he drank
22 almost a fifth of Captain Morgan's rum and he blacked
23 out. And his crime was that in that blackout state,
24 wearing a bathing suit, no shirt, and one shoe, that
25 he went the wrong way up the Romney Street exit and,

State v. Samuel McCauley
Plea
January 18, 2013

1 rest her soul, we're so sorry, Ms. Caperton was
2 killed. The evidence shows that Sam was virtually out
3 of his mind when the police got there, talking about
4 these nonsensical things. It never would have
5 occurred to me in a thousand years. I don't know how
6 we can argue that it should have occurred to Sam.

7 After the plea, Judge, in May, I had a really
8 interesting experience in that I received feedback
9 from the community. I got calls from people who
10 expressed their sympathy for Sam McCauley, people that
11 didn't know Sam McCauley. And I sent one -- there's
12 a -- there's an e-mail under Tab M from a fellow named
13 Ed Pendarvis, who was one of them. I just happened to
14 throw that in.

15 But one of those calls, Judge, was -- that I
16 received was from a man named Legrand Guerry. It's
17 G-U-E-R-R-Y. Now, Legrand is eighty-two years old and
18 he is a retired municipal judge from the town of Mount
19 Pleasant. I haven't seen Legrand in twenty years.
20 And I think he was probably a municipal judge.
21 There's nothing in your package relating to him. I
22 haven't seen him. And I think he probably sat on the
23 bench over there in the '70s, maybe the '80s. But
24 here was the message. He said that he read today's
25 article and would trade places with Sam and serve his

State v. Samuel McCauley
Plea
January 18, 2013

1 time for Sam if he could. He said to please let him
2 know if there's anything that he can do. And then he
3 said this. He said that he lost his son to a DUI four
4 years ago. But he said, tell Sam I wish I could serve
5 his time for him, he would not wish Sam to go through
6 anything like this at his young age.

7 So I called Judge Guerry and I asked him -- and
8 he apologized. He said, you know, Capers, if we had
9 talked earlier, I might could have made arrangements
10 to be here. But I said, I understand. I said, well,
11 do you mind my telling Judge Hughston what you told
12 me, what you said to me in May, what you -- and what
13 we're saying now. He said, not at all. He said, you
14 can tell Judge Hughston that on my behalf and on
15 behalf of my wife, Cookie.

16 And Legrand said this. He appeared at the plea
17 in the case involving his son who was killed. And he
18 said, the only way we got peace was to give it up; we
19 found relief by giving up on that hate and forgiving
20 her. The other driver in that case was a woman. And
21 this young man can help with other young people. He
22 didn't know about these presentations that had already
23 occurred at the schools.

24 This case, of course, is filed as the case of
25 The State of South Carolina v. Sam McCauley. It's

State v. Samuel McCauley
Plea
January 18, 2013

1 brought in the name of the State. And in the interest
2 of every value that's protected by our state and
3 federal constitutions, not the least of which is a
4 defendant's right to be treated fairly and equally.

5 And we also know, Your Honor, that the purpose
6 of punishment in the system is to serve the broader
7 societal goals of retribution, deterrence and
8 rehabilitation. It's not intended to vindicate the
9 individual injury of an individual victim, although
10 that is certainly a factor to consider.

11 The Supreme Court of the United States has said
12 that the criminal justice system exists not only for
13 the benefit of victims but for the benefit of society
14 as a whole. Justice is seldom perfect, but I believe
15 a maximum of sentencing law to be of particular
16 relevance here is that a particular sentence should be
17 the minimum necessary to further the goals of
18 retribution, deterrence and rehabilitation.

19 In this equation, Judge, we've seen -- you and I
20 and the lawyers in this court, and other lawyers and
21 other judges, see so many cases and we see cases in
22 which the victims are, as we heard from Ms. Caperton's
23 family by their own words, angry. And we see cases
24 such as Judge Guerry's where the victims are forgiven.

25 And I don't say this at all in criticism of the

1 Caperton family. I don't -- I'm not criticizing their
2 emotions. They're entitled to those emotions. But in
3 a societal sense, considering the fact that we sit
4 here, we're present here, in the interest of the State
5 the pivotal point -- that is to say the great balance
6 between these conflicting dynamics of one case where
7 the victim is compassionate and forgiving and the
8 other where the victims want the max, it's the Court's
9 function, as you well know, to balance that and to
10 consider that there are broader societal interests.

11 And I might say, apropos, another observation,
12 apropos, the feelings of the Caperton family: I met
13 with Sam last night and I reviewed with him a news
14 article that was yesterday where I think Ms.
15 Caperton's sister said she thought Sam ought to get
16 fifteen years. And she said some other things, that
17 Sam was -- had been acting, and things like that, when
18 he attempted suicide. I wanted him to know it, and I
19 also wanted to know it in case he should hear it here
20 today. And I said, Sam, how do you feel about that.
21 And you know what he said to me? He said, they're in
22 pain. And I thought to myself, wow, at my age if I
23 were going to court tomorrow facing thirty-five years
24 and I were told something like that, would I have the
25 grace to make that as an observation? It's another

State v. Samuel McCauley
Plea
January 18, 2013

1 example of Sam's genuine remorse.

2 At his age, Your Honor, and his relative
3 immaturity, what we've heard about the brain, the
4 bizarre manner that this thing happened, and the
5 potential for prison to negate rehabilitation, the
6 probation officer's PSI recommendation, all of these
7 factors support the imposition of a minimum active
8 sentence.

9 The General Assembly in defining the crime of
10 felony DUI, which is the more serious of the two, set
11 a minimum mandatory sentence of one year, which is a
12 mandatory sentence. But, Your Honor, it's also
13 another expression of the General Assembly's intent,
14 and that expression is this. There are cases of
15 felony DUI involving death in which one year is an
16 adequate, fair and just sentence. And we respectfully
17 suggest that this is one of those cases.

18 I can't thank Your Honor enough for your
19 patience. But I know you recognize that this is a
20 major day for Sam, so we leave it in your hands. And
21 thank you very much.

22 THE COURT: All right. Of course, Mr. McCauley,
23 you have the opportunity now to say anything that you
24 want to say to me or anyone else. You already spoke
25 at your plea but, again, I give you the opportunity to

State v. Samuel McCauley
Plea
January 18, 2013

1 say anything that you would like to say.

2 MR. MCCAULEY: I'm just very sorry for what I've
3 done.

4 THE COURT: All right. Thank you.

5 I'm very appreciative of the presentations that
6 have been presented today, and I have previously -- a
7 lot of it covered ground that were --

8 Oh. Excuse me. I do want to ask -- y'all can
9 have a seat back over there.

10 Anything, briefly, in response from the State?
11 I say it's response. Anything -- not just cover what
12 you covered initially. But if there's anything you
13 want to say in response to what's been presented, you
14 have that opportunity.

15 MS. WILLIAMS: Your Honor, if I may address the
16 Court very briefly.

17 THE COURT: All right. Go right ahead.

18 MS. WILLIAMS: Very briefly.

19 THE COURT: Go right ahead.

20 MS. WILLIAMS: I, as the Court is aware, have
21 already I think thoroughly responded to most of
22 Mr. Barr's presentation in my memorandum, which I know
23 that the Court has read, as well as the legal
24 authorities I gave the Court already regarding time
25 served on house arrest.

1 THE COURT: And I conclude that you're correct
2 on that.

3 MS. WILLIAMS: Thank you, Your Honor. I'm not
4 right very often.

5 What I do just want to add, Your Honor, to bring
6 a little bit of reality back to the facts of this case
7 and impaired driving. And what I just must reiterate
8 to this Court is all of the things we've talked about
9 in these memorandums, all of the cases that Your Honor
10 I'm sure has heard, these -- let me find some
11 effective wording here -- these cases aren't about,
12 Your Honor -- unfortunately, these felony DUIs with
13 death and reckless homicides, they are not, as I'm
14 sure as Your Honor is aware, like a lot of crimes that
15 we work with and preside over. They just aren't. So
16 I would like to say on behalf of the State, the
17 solicitor's office, and the Caperton family, that we
18 do recognize the position that the Court finds itself
19 in with the difficulty in making decisions in cases
20 like this.

21 That being said, I do just want to reiterate
22 that this case is distinguishably different from other
23 cases -- I have handled over 400 of them -- as far as
24 the facts and egregiousness of them involved. But
25 what I would like to end with, Your Honor, is, as I'm

1 sure you're aware, these kinds of cases are not about
2 smart people or less intelligent people. They aren't
3 about who can fill the courtroom with the most people
4 or the most letters. These cases are not about where
5 people went to school and these cases, most of the
6 time, are not about criminal history. These cases are
7 not about good people and bad people. And I know that
8 the Court is aware of that, but I just needed to
9 reiterate that these cases, in particular, are about
10 choices and consequences. And I would submit to the
11 Court, Your Honor, that beyond just remorse and guilt
12 and license privileges, that Mr. McCauley still has
13 more consequences to deal with regarding sentencing in
14 our case, Your Honor. Thank you.

15 THE COURT: Again, thank you for the
16 presentations.

17 I've thought about this case a great deal and in
18 situations like this, words are truly not adequate to
19 express our thoughts, our feelings, at such moments.
20 However, I have -- I have written a statement, prior
21 to coming in here today, that I will try to read. And
22 I will make the statement available through the clerk
23 -- you can be seated -- through the clerk, if anybody
24 is interested. And, of course, there is a transcript.

25 This is an extraordinarily tragic case for

1 everyone involved. I could recite -- I could recite
2 the facts that lead me to this conclusion, but we've
3 really already heard those tragic facts today already.
4 I have considered everything that has been made known
5 to me by the prosecution, the defense, and the pre-
6 sentence investigation, and I'm very grateful to all
7 those involved for what you have done to present me
8 with a thorough development of the facts.

9 Sentencing -- excuse me. Sentencing is almost
10 universally acknowledged as the most serious, the
11 hardest, thing that a judge has to do. There are so
12 many things that go into sentencing. We study about
13 theories behind sentencing in law school and deal with
14 these, thereafter, as lawyers and as judges.
15 Occasionally, it is helpful to examine these as they
16 relate to a specific case.

17 My four basic theories or justifications for
18 sentencing are incapacitation, rehabilitation,
19 retribution and deterrence. Some subdivide one or
20 more of these. Each of these has some application in
21 this case. My analysis and application of
22 incapacitation, rehabilitation and retribution would
23 lead me to conclude against a long incarceration.
24 However, deterrence -- and here I speak of a general
25 deterrence -- in the community, in my opinion, far

State v. Samuel McCauley
Plea
January 18, 2013

1 outweighs all other considerations.

2 Hopefully, Mr. McCauley, your loss of liberty
3 will serve as a stop sign for others. As I said at
4 the beginning, this extraordinarily tragic -- this is
5 an extraordinarily tragic case for everyone directly
6 involved and for our society at large. My sympathy
7 goes to everyone. I'm always guided in my decisions
8 by those ancient words: to do justice and to love
9 mercy.

10 The operative sentence will be the -- I am going
11 to impose what I -- what we refer to as a split
12 sentence on the felony DUI. And one of the terms of
13 that probation will be -- I'm not going to specify
14 exactly, I'm not going to go into detail. I'm going
15 to leave that up to the good judgment of the probation
16 officers that will be in charge of supervising your
17 probation. But I have written as one of the terms of
18 your probation following the service of the initial
19 sentence will be public service regarding these
20 offenses that you've been convicted of, presented to
21 appropriate groups. So I leave the exact -- how that
22 will be exactly carried out up to the good officers of
23 the probation department.

24 But the sentence on the felony DUI, which I said
25 is really going to be the operative sentence, is that

1 you be confined to the South Carolina Department of
2 Corrections for a period of fifteen years and pay a
3 fine of \$15,000 provided upon the service of ten years
4 and the payment of a 10,100-dollar fine. The balance
5 will be suspended and you'll be placed on probation.
6 As I said, I agree that 267 days is the appropriate
7 jail credit. Sentence on the other one is a
8 concurrent ten years and a payment of a 5,000-dollar
9 fine. You get credit for your jail time toward that.

10 Good luck to you.

11 PROBATION: Your Honor, the probation to follow
12 was how long?

13 THE COURT: Five.

14 PROBATION: Thank you, Your Honor.

15 [SENTENCING CONCLUDES AT 1:41 P.M.]

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State v. Samuel McCauley
Plea
January 18, 2013

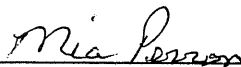
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the sentencing held before the Honorable Thomas L. Hughston, on Friday, January 18, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 2nd day of November, 2013.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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