



INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	3
STATE'S MOTION TO REOPEN DEFENDANT'S SENTENCING HEARING	
Remarks by Ms. Wilson	3
VICTIM'S FAMILY ADDRESS THE COURT	
Remarks by Ms. Savenkoff	13
Remarks by Ms. Buchardt	17
Remarks by Dr. Gray	18
DEFENDANT'S RESPONSE TO STATE'S MOTION	
Remarks by Mr. Barr	19
CERTIFICATE OF THE COURT REPORTER	30

INDEX TO EXHIBITS

		PAGE
<u>DEFENDANT</u>		
<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
1	Letter to Judge Hughston	20

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PROCEEDINGS

THE COURT: Thank you. Please be seated.

MS. WILSON: Thank you, Your Honor. This is State of South Carolina versus ---

THE COURT: --- let them get him out of the holding cell; just a minute.

[Whereupon, the defendant enters the courtroom]

MS. WILSON: This is State of South Carolina versus Samuel A. McCauley. It's Indictment numbers 2011-GS-10-07382, 2011-GS-10-06799. Those were Indictments for Felony Driving under the Influence Involving a Death and Reckless Homicide.

Your Honor, we are here today in a little bit of an unusual posture. Just for the record the defendant had pled guilty last year to these charges. Sentencing was deferred so that a presentence investigation could be conducted. That was done.

The parties briefed Your Honor before the sentencing which was held in January of this year. The defendant was sentenced. After that the defense filed a motion for reconsideration.

THE COURT: Timely filed it.

MS. WILSON: Timely filed a motion for reconsideration and Your Honor took that under advisement for some time and eventually in May of this year entered

1 a new sentence, which was a reduction of the prior  
2 sentence. Through I think just nothing intentional but  
3 through the movement of paperwork from your office to the  
4 Clerk's office to the parties involved ---

5 THE COURT: --- let me stop you to explain it to  
6 you what I just found out this morning about that.

7 MS. WILSON: Yes, sir.

8 THE COURT: Formerly whenever I filed an order in  
9 any case I made paper copies, certified paper copies of  
10 the order and I mailed it to the attorney for each side  
11 immediately; filed it with the Clerk, made copies, mailed  
12 a copy to the attorneys for each side.

13 When we -- I've been told -- I was told that I no  
14 longer needed to do that because everything is done -- is  
15 put on the computer on the Internet and that it is  
16 available to both sides through the Internet and so I  
17 don't need to have the County bear the expense of mailing  
18 all those orders that I do on the civil side.

19 I didn't realize -- nobody told me that the process  
20 wasn't the same -- was not the same on the criminal side.  
21 And so that's how ---

22 MS. WILSON: --- yes sir ---

23 THE COURT: --- the order didn't get to you. But  
24 it was on the Internet and you didn't -- whoever --  
25 anybody -- that's how that happened that both sides were

1 not notified of the order. And I don't know how you  
2 eventually found out that it was there, but that's what  
3 happened ---

4 MS. WILSON: --- yes, sir ---

5 THE COURT: --- in regard to that. In other words  
6 it was nobody's fault that I would say that it developed  
7 that way.

8 MS. WILSON: In any event once I was made aware of  
9 this we filed a motion in response to the court's order  
10 to reopen the sentencing. In the meantime the prosecutor  
11 handling this case, Ms. Jennifer Williams who handled it  
12 from its inception had left our office. She's here with  
13 me today.

14 Though she is in private practice she certainly has  
15 remained involved in this case and the things that have  
16 happened since. When we became aware -- I became aware  
17 of the court's order reducing the defendant's sentence I  
18 filed a motion to reopen.

19 I captioned it a motion to reopen mainly because I  
20 felt like the original motion to reconsider sentence  
21 filed by the defendant was actually a motion to reopen  
22 because it presented new and different things in addition  
23 to some of the same things that had been presented at  
24 sentencing. Upon my filing of the motion to reopen the  
25 defense has filed a motion to dismiss our motion. It's

1 my understanding based on correspondence from the court  
2 to both me and the defendant that you intend to reopen  
3 the sentencing and allow the victims to be heard on this,  
4 which was our goal to start with.

5 And I just wanted to make sure we were all on the  
6 same page as to where we believe we are moving forward  
7 with the rest of this hearing.

8 [Whereupon, Mr. Barr confers with his client]

9 MR. BARR: Your Honor, may I ask that Mr. McCauley  
10 be unshackled? I don't think that that is ---

11 THE COURT: --- certainly.

12 MR. BARR: I apologize, Your Honor, for...

13 THE COURT: I didn't realize that he was or I would  
14 have ordered it immediately.

15 MR. BARR: I didn't want to interrupt the Solicitor  
16 in the middle of her...

17 [Whereupon, shackles are removed from the defendant]

18 MR. BARR: Thank you very much. I might add while  
19 I'm standing up -- this question about the filing of the  
20 order without notice. I might say I talked to the Clerk  
21 of Court about this and she advises me that the computer  
22 system in the Civil Court in the Common Pleas is set up  
23 so that the computer automatically kicks out a  
24 computerized notice to the lawyers in the case. But  
25 that's not the same in General Sessions. Perhaps ---

1 THE COURT: --- and I didn't realize it wasn't ---

2 MR. BARR: --- we can go to the source, which I  
3 think is the Court Administration's computer system ---

4 MS. WILSON: --- right. I think we need to make  
5 that very clear that that is not our local Clerk's issue.  
6 That is a statewide system ---

7 THE COURT: --- oh, I agree ---

8 MS. WILSON: --- that is enforced ---

9 THE COURT: --- and I just finished talking to her  
10 chief deputy computer person about that and he's going to  
11 be working on how to handle that and make sure it doesn't  
12 happen in the future.

13 MS. WILSON: Yes, sir. So in any event moving  
14 forward with this hearing it's my understanding that the  
15 court is going to grant our motion to reopen or  
16 reconsider, however you would like to style it, and we  
17 can move forward in the sentencing aspect of this case.

18 THE COURT: I think you correctly stated everything  
19 that brings us to this point. And I've read everything  
20 that you and Mr. Barr have submitted in connection with  
21 that. And I'll be glad to hear from you Mr. Barr if you  
22 want to say anything else. But as I said I have read and  
23 considered everything that has been presented.

24 MR. BARR: Well, Your Honor, all I would say I  
25 understand that -- based on the court's communications

State v Samuel A. McCauley  
(2011-GS-10-6799, 7382)  
August 1, 2013

1 with the Solicitor and with me that the court is going to  
2 hear both from the Solicitor and from the victims. But I  
3 think it's improper to characterize this as a reopening  
4 of the sentencing proceeding.

5 Unlike the rules in Common Pleas which hold motions  
6 for reconsideration to matters overlooked by the trial  
7 court, the rule of law in General Sessions is not the  
8 same. So as I stated in my memorandum code section 17-  
9 25-326 permits a broader scope of review than in the  
10 Civil Court; a broader scope of review at this stage in a  
11 criminal matter.

12 So the defendant's motion for reconsideration was  
13 not an improper reopening of the sentencing proceeding.  
14 It was consistent with the Code section and with the  
15 general law, which says that a court can revisit its  
16 decision in a criminal case leading up to my point.

17 So I think the nature of this hearing is not a  
18 reopening of the sentencing hearing. But it is a motion  
19 to alter, modify, or rescind the court's final amended  
20 sentencing orders and which places the burden on the  
21 State to show good and sufficient cause by a  
22 preponderance of the evidence that that should be. And  
23 so I ---

24 THE COURT: --- all right, let me state my  
25 position. What I'm going to do today is I'm reopening or



1 ever how you want to phrase it -- the purpose of this  
2 hearing is to fully comply with the Victim's Bill of  
3 Rights under the Constitution and Statutes of this State.

4 I did not -- when this came into the process as far  
5 as you filing a motion and the State responding and my  
6 corresponding back and forth and moving it along and all  
7 there was in the concluding paragraph of the State's  
8 response there was something like this, if -- and I'm  
9 paraphrasing as best I can remember it -- if you want to  
10 have a hearing on this we'll be glad to have a hearing on  
11 this.

12 And then I said I've got the matter under  
13 advisement, give me everything you want me to consider.  
14 I'll read it, study it, think about it and if I feel a  
15 need for a hearing I'll let you know; not thinking about  
16 the fact that the Victim's Bill of Rights and the  
17 statutory provisions relative to hearing from victims  
18 need to be fully complied with.

19 I think that I was within the law by not having a  
20 hearing but I don't there to be any question about my  
21 denying anyone the opportunity to be heard under the  
22 existing Constitution and laws of this State.

23 So that's the purpose of us being here today is to  
24 hear from anyone who wants to speak in regards to this  
25 matter at this juncture.

State v Samuel A. McCauley  
(2011-GS-10-6799, 7382)  
August 1, 2013

1 MR. BARR: Yes, sir.

2 THE COURT: So that's the way we're proceeding.

3 MS. WILSON: Thank you, Your Honor. And ---

4 MR. BARR: --- and I think it's a matter of --  
5 perhaps it's a matter of semantics ---

6 THE COURT: --- I agree ---

7 MR. BARR: --- Your Honor that ---

8 THE COURT: --- I agree.

9 MS. WILSON: It is a matter of semantics because  
10 this is an unusual situation and we appreciate the court  
11 allowing us to ---

12 THE COURT: --- I can only think of about three  
13 that I've ever had -- there are only three times that  
14 I've had a resentencing that I know of in 28 years. So  
15 these are very, very rare occurrences and very, very rare  
16 events and that's why I...

17 MS. WILSON: --- well, there is very little case  
18 law on it and again we appreciate your being here because  
19 it is important that victims are not left as ---

20 THE COURT: --- I agree ---

21 MS. WILSON: --- as bystanders. And you know we  
22 certainly recognize as the prosecutors the difficulty  
23 that court's face in sentencing. It is the most  
24 difficult thing that Your Honor and your fellow members  
25 of the bench do. I think I have, and Mr. Barr has had as

State v Samuel A. McCauley  
(2011-GS-10-6799, 7382)  
August 1, 2013

1 his time as Solicitor, some insight into that because we  
2 make many decisions that directly impact defendants and  
3 what happens with their lives; especially with the death  
4 penalty. But I know how seriously the court takes this  
5 and I don't intend to criticize the court. I'm here to  
6 protect the process and ---

7 THE COURT: --- thank you very much. I appreciate  
8 that. You may proceed.

9 MS. WILSON: Your Honor, as I stated earlier our  
10 position as we have set forth in many hours with Ms.  
11 Williams as the prosecutor through I believe it was a ten  
12 page or so presentence memorandum which the court  
13 considered, hours of argument and persuasion with the  
14 court at the guilty plea hearing.

15 Then a nineteen page response to the motion to  
16 reconsider I think the court is very clear on the State's  
17 position that we believe your original sentence was  
18 appropriate. It was fair, it was reasoned. The court  
19 has made mention of his reliance or consideration of the  
20 Federal sentencing guidelines.

21 I agree with the court that some guidelines would be  
22 helpful if we had them in the State of South Carolina. I  
23 do believe that comparing this case to a Federal  
24 involuntary manslaughter case is not an analogous  
25 situation. But I think if we're going to go down the

1 pathway of using Federal guidelines, we use them in drug  
2 and gun cases as well; and that does not seem to be what  
3 happens here at least in Charleston and Berkeley  
4 Counties. In any event ---

5 THE COURT: --- I would recommend we do that.

6 MS. WILSON: In any event we believe the ten year  
7 sentence was very thoughtful. We know that you took our  
8 arguments to heart, that you took the defendant's side to  
9 heart and came up with a sentence that was fair that  
10 addressed some of the goals of sentencing such as  
11 incapacitation, deterrence, retribution, rehabilitation,  
12 and restoration.

13 All of those things are important to this court.  
14 You've made that clear many times over the years and we  
15 think that a ten year sentence did that. We also think  
16 that the ten year sentence is not beyond the pale of  
17 other sentences in similar situations. And again, that  
18 has been outlined in nineteen pages of memorandum for the  
19 court which I know you've considered.

20 The victims are here and present and would like to  
21 address you. And they too are grateful that you are  
22 allowing them this opportunity because I've explained to  
23 them as well that it is grey as to whether or not you  
24 even have to do this. So the fact that you are doing it  
25 is most appreciated by us and them. And with that we

1 would ask whoever would like to go first if you would  
2 step forward.

3 [Whereupon, an individual moves forward]

4 THE COURT: Yes, ma'am? Tell me your name please  
5 ma'am?

6 MS. SAVENKOFF: Phyllis Savenkoff.

7 THE COURT: All right. Would you spell that for  
8 the court reporter?

9 MS. SAVENKOFF: P-H-Y-L-L-I-S S-A-V-E-N-K-O-F-F.

10 THE COURT: All right. Thank you very much. Go  
11 right ahead.

12 MS. SAVENKOFF: I have stated at past hearings that  
13 my sister Eleanor Caperton was a friend to everyone. She  
14 was hardworking, loving, and certainly did not deserve to  
15 die the horrific death at the hands of Samuel.

16 McCauley's original sentence of fifteen years must  
17 be served by McCauley given the fact that this case is  
18 not your typical D-U-I felony with death case. This  
19 wasn't an instance of someone having too many drinks at a  
20 bar and then crossing over a center line on a two-way  
21 street killing someone.

22 This well-planned party on a boat at the marina on  
23 the day of July 23, 2011 was a deliberate attempt to  
24 party and get drunk. Each attendee at the party was  
25 furnished alcohol that they wanted. Car keys were not

1 taken away by any adults. Samuel arrived at the boat  
2 around 4 o'clock p.m. on July 23rd where he drank and  
3 partied until almost 12 o'clock midnight.

4 Approximately 11:30 p.m. Samuel tried to leave the  
5 boat. And after several attempts to restrain him on the  
6 boat he grabbed his car keys, climbed off the boat and  
7 ran away. He got into his car and drove off.

8 A friend from the party, Branch Moore [ph] had  
9 McCauley on the phone just prior to the accident telling  
10 him to pull over on the road, but Samuel did not listen.  
11 Branch told another party attendee that Sam was not  
12 making sense.

13 Samuel McCauley then drove up the Romney Street exit  
14 of Interstate 26, which put him on the wrong side of the  
15 Interstate highway. He was driving approximately 60  
16 miles per hour when he rounded a curve and struck my  
17 sister head-on killing her.

18 What makes this D-U-I Felony with Death case even  
19 worse and why all car keys should have been taken from  
20 the attendees is that just one month prior to this  
21 accident Samuel had a similar incident where he had been  
22 drinking too much and basically did the same thing as he  
23 did on the night of July 23rd on the boat; he just took  
24 off running away and ended up in the basement of a  
25 friend's house not knowing where he was or how he got

New Info  
in the court room

New Info  
in the court room

1 there. This kind of irrational behavior is not one of a  
2 responsible teen who should have been drinking alcohol  
3 and car keys not taken. This previous incident was a  
4 warning that neither Samuel nor his friends heeded which  
5 resulted in the second incident which took the life of my  
6 sister.

7 Samuel's evidence and history of alcohol abuse was  
8 indicated in the eight month presentencing investigation.  
9 This accident was not your typical D-U-I felony but much  
10 worse due to the fact that the attendees planned to get  
11 drunk, no car keys were taken, and there was a previous  
12 incident of Samuel's unpredictable behavior.

13 As McCauley could have been sentenced up to 35 years  
14 for the two charges of Felony D-U-I with Death and  
15 Reckless Homicide the sentencing of fifteen years by  
16 Judge Hughston in January is not out of line with the  
17 other D-U-I cases in this area.

18 He killed my sister while grossly intoxicated not  
19 knowing where he was or what he had done. He was told to  
20 pull over on the road, but didn't listen. Per the police  
21 report of the arresting officer McGowan [ph] Samuel was  
22 uncooperative at the hospital after the accident and was  
23 unable to answer any questions. He was foaming at the  
24 mouth and making sentences that were not making sense.  
25 To quote several: Bob Marley is coming to visit me. I

203 In to  
In the Court room

Exhibit E

3  
H  
3  
2  
in Court

3  
H  
3  
2  
in Court

① want to go to Colorado and live dangerously. I want a  
② thrill out of life. You investigate the murders of gang  
③ members. Would it be bad if someone killed an MS-13  
④ member? If I get a tattoo in jail will you fill it with  
⑤ blood?

⑥ Mr. McCauley also quoted that his Mother had a  
⑦ bastard child. By Mr. McCauley's own words and action he  
8 is not the genuine upstanding person that Capers Barr  
9 makes him out to be. Therefore, Mr. McCauley is not  
10 worthy of having both his charges cut in half by you.

11 In two newspaper articles McCauley was quoted as  
12 saying I wish I could have died instead of her. How is  
13 someone who is willing to die for his victim not willing  
14 to serve his time for the taking of a life?

15 This two year process for justice has put tremendous  
16 stress on my family as well as individual relationships  
17 within the family. No victim should have to go through  
18 this unreasonable process for justice for their loved  
19 one. I am praying that justice will be served in this  
20 case.

21 THE COURT: All right. Ms. Wilson, anything else?

22 MS. WILSON: Yes sir, Your Honor.

23 THE COURT: Beg your pardon?

24 MS. WILSON: Yes sir, there are.

25 [Whereupon, another individual comes forward]



1 THE COURT: All right. Tell me who you are.

2 MS. BUCHARDT: My name is Gina Buchardt. G-I-N-A  
3 B-U-C-H-A-R-D-T. I am Eleanor Caperton's niece. As far  
4 as what I would like to say today I don't have anything  
5 written down. Everything is coming from my heart; it  
6 may not come out as smoothly as I would like.

7 But what I would like to say is that it is really  
8 hard for me to believe that you know even though the law  
9 states it is allowed that a motion to reconsider was  
10 allowed to begin with considering the Judge's original  
11 sentence, considering that there was an eight month long  
12 presentencing investigation that investigated everything  
13 surrounding this.

14 All of that taken into consideration an original  
15 hearing that was more like a trial with witnesses than  
16 just a sentencing hearing. Even you yourself at the end  
17 of that sentencing hearing, Judge Hughston, stated that  
18 if Samuel McCauley's sentence was too light that it may  
19 not prove effective for deterrent of other teens not to  
20 drink and drive as well.

21 With this said having to deal with this again it's  
22 just stretching out our trauma. It doesn't let us heal.  
23 It doesn't give us a chance to move on. The two year  
24 anniversary of my aunt's death was just last week. Right  
25 before she died she had planned a cruise on her favorite

State v Samuel A. McCauley  
(2011-GS-10-6799, 7382)  
August 1, 2013

1 cruise ship, the Dream, with her best friends. We are  
2 leaving Saturday to go on that cruise and sprinkle her  
3 ashes. And with all of that said and with this coming up  
4 right now is the most inappropriate thing that I've ever  
5 had to deal with.

6 And I just needed to say that I don't think it's  
7 fair even though it's the law. And I don't think its  
8 right.

9 THE COURT: Thank you.

10 [Whereupon, another individual comes forward]

11 THE COURT: All right. Yes sir, tell me your name  
12 please sir?

13 MR. GRAY: Ronald Gray.

14 THE COURT: All right. Are you her son?

15 MR. GRAY: Yes, sir.

16 THE COURT: All right. I believe it's Doctor  
17 Gray?

18 MR. GRAY: Correct.

19 THE COURT: All right. I'll be glad to hear from  
20 you, Doctor Gray.

21 MR. GRAY: I agree with everything that my aunt and  
22 my cousin said. I don't have a lot to say; it's going to  
23 be very brief. Us being here today is the very reason  
24 why D-U-I is such a problem in this State. The people  
25 that commit this kind of crime get off way too lightly

1 and there are no consequences to their actions. And you  
2 yourself said at the last hearing that a sentence is not  
3 just about punishment; it is to be a deterrent for  
4 others. And I really think you need to stand behind  
5 those words. Thank you.

6 THE COURT: All right. Anything else from the  
7 State?

8 MS. WILSON: No sir, Your Honor.

9 THE COURT: All right. I might just say at that  
10 juncture, of course, as the Solicitor has mentioned I  
11 have been an advocate of sentencing guidelines for many  
12 years. The only guideline that the legislature has given  
13 us in regard to this situation is a minimum of one year,  
14 a maximum of 35 years.

15 So, someone has made, supposedly the legislature has  
16 made a supposedly reasoned judgment to allow one year as  
17 the general deterrent in a case like this. I don't think  
18 that's a good -- I don't think that's a good guideline.

19 So in response as I said the only reason in my  
20 opinion to send Mr. McCauley to the penitentiary is to be  
21 a general deterrent. And the law says one year can be a  
22 general deterrent. Mr. Barr, I'll be glad to hear from  
23 you if there is anything you want to say.

24 MR. BARR: Your Honor, thank you. May it please  
25 the court? For the record I would like to restate our

1 legal position, which is we still contend that the court  
2 made no error in the manner in which the court ruled.  
3 And I would also like to say and I informed Solicitor  
4 Wilson about this the other day that we also believe that  
5 the State's motion was untimely. If I may hand up to the  
6 court and to the reporter a letter I can explain a little  
7 more why.

8 [Whereupon, defendant's exhibit number 1 is marked  
9 by the court reporter]

10 [Whereupon, Mr. Barr proffers documents to the  
11 court]

12 MR. BARR: Your Honor, we marked as the defense  
13 exhibit number 1 a letter that I wrote to the court on  
14 May 30th, 2013 but let me address that in just a minute  
15 because it's part of a chronology here.

16 During the interval where we explained to the court  
17 our discovery that the General Sessions and Common Pleas  
18 computer systems don't operate quite the same we  
19 discussed how this was discovered.

20 My paralegal happened to be checking the website  
21 after the motion for reconsideration was filed and that's  
22 how we learned that the order had been filed. And as  
23 Your Honor may recall the initial amended sentencing  
24 order only modified the felony D-U-I Indictment; and I'm  
25 sure at that time the court had simply overlooked the

State v Samuel A. McCauley  
(2011-GS-10-6799, 7382)  
August 1, 2013

1 Reckless Homicide Indictment. So exhibit 1 is my letter  
2 to the court in which I informed Your Honor that I  
3 discovered the filing of the order and asked whether it  
4 was your intention to also modify the Reckless Homicide  
5 order.

6 But the point of bringing this up is that I sent a  
7 copy of it to Solicitor Wilson. So on May 30th of 2013  
8 her office was aware that the sentence had been modified.  
9 Now Your Honor, I recognize that Ms. Williams had been  
10 the Assistant Solicitor. Had Ms. Williams still been  
11 with the Solicitor's Office I would have sent it to her  
12 but by that time she had left.

13 I sent it to Solicitor Wilson. I don't contend that  
14 Solicitor Wilson saw it and ignored it. My guess is it  
15 was put in a file somewhere. But I am compelled to make  
16 the argument that to the extent that post-trial motions  
17 must be filed in ten days the Solicitor was put on notice  
18 on May 30th that the sentences had been amended.

19 MS. WILSON: Judge, I need to -- if we're making  
20 the record straight I need to interject here.

21 MR. BARR: Sure.

22 MS. WILSON: My office received this letter; I did  
23 not, on June the 4th. That was for the first sentencing  
24 sheet. We never received a second sentencing sheet. So  
25 if we're talking about notice and timely filing things we

1 never received notice of the second amended sentencing  
2 sheet.

3 THE COURT: Well, it was done the same way the  
4 first one was done.

5 MS. WILSON: Right, I understand ---

6 THE COURT: --- unfortunately because I didn't  
7 understand. We still didn't realize at that point -- I  
8 didn't realize at that point what had happened.

9 MR. BARR: I'm not contending otherwise, Your  
10 Honor.

11 THE COURT: Okay. I understand ---

12 MR. BARR: --- and I just ---

13 THE COURT: --- and I appreciate your position.

14 MR. BARR: Making that point clear ---

15 THE COURT: --- I don't agree with you but I  
16 appreciate your position.

17 MR. BARR: Now, if I may -- if I dive more into our  
18 reason for being here we've talked around this but I  
19 would like to state fully and clearly that the way that  
20 Your Honor handled this motion for reconsideration and  
21 the filing of the orders was proper under every  
22 consideration of law and practice.

23 We filed a motion to reduce the sentencing and -- in  
24 January and on February the 4th of this year Your Honor  
25 wrote Ms. Williams and me -- it's a short letter so I'll

1 read the whole thing. It says, [Reading] I received Mr.  
2 Barr's motion for reconsideration slash modification of  
3 sentence. I suggest Mr. Barr send me anything in writing  
4 regarding this by February 15, 2013 and Ms. William may  
5 respond in writing by February 25th, 2013 and I will then  
6 do an order or may ask for a hearing.

7 So the contention that nobody knew, if there is such  
8 a contention, that nobody knew that Your Honor might rule  
9 on the briefs is simply not correct because Your Honor  
10 told us that at the very outset. Rule 29 of the South  
11 Carolina Rules of Criminal Procedure specifically  
12 provides as to post trial motions that the motion may, in  
13 the discretion of the court, be determined on briefs  
14 filed by the parties without oral argument.

15 And I think this harkens back to the day, Your  
16 Honor, when circuit judges were rotating more frequently  
17 than they do today. Your Honor might have a term of  
18 court here in Charleston and you may be in Anderson next  
19 week.

20 So my guess is that's why that rule exists so that  
21 Your Honor doesn't have to travel back here to actually  
22 hold a hearing or you don't have to require the  
23 Solicitor, defense lawyer, and defendant to go to  
24 Anderson to hear a Charleston motion. So there is a  
25 sound public policy reason for that rule. So that --

1 Your Honor has told us you may rule on the briefs without  
2 a hearing. The rule says that you may do it that way.  
3 So what does the Victim's Bill of Rights say? The  
4 Victim's Bill of Rights says in Constitution Article 1  
5 section 24 subparagraph A (3) to preserve and protect  
6 victim's rights to justice and due process and -- victims  
7 of a crime have the right to be informed of and present  
8 at any criminal proceedings which are dispositive of the  
9 charges where the defendant has the right to be present.

10 And I cited in the return to the State's motion the  
11 case of the State v Bradley in which the Court of Appeals  
12 specifically held in a case where defendant's post trial  
13 motion was denied, ruled against him, and he argued that  
14 his due process was violated. The Court of Appeals said  
15 he didn't have a right to be there.

16 So, I know the Solicitor is not beating this drum,  
17 Your Honor. But to the extent that that is part of why  
18 we are here I wanted to clear the air to assert the  
19 position that there was absolutely nothing improper under  
20 the law, practice, rules, or the Victim's Bill of Rights  
21 by the court ruling on briefs.

22 I understand that when Your Honor was informed of  
23 the objection of the victim's and the position of the  
24 State that you agreed to open this up and that's probably  
25 within your discretion. But as a matter of law it is



1 incorrect that there was any violation of law or  
2 practice. At least that is our position.

3       So as I said at the outset Judge Hughston, I think  
4 that we are bound here by the provisions of the Code  
5 section 17-25-326 in the criminal procedure chapter or  
6 title of the South Carolina Code of Laws which says that  
7 any court order issued pursuant to the provision of this  
8 article may be altered, modified, or rescinded upon the  
9 filing of a petition -- in this case by the Solicitor --  
10 for good and sufficient cause shown by a preponderance of  
11 the evidence.

12       So Your Honor issued, properly issued final orders  
13 in May and June of this year amending the sentence that  
14 it had originally imposed. And therefore the State's  
15 motion here is -- has to be under 17-25-326 because there  
16 is no other authority for it.

17       And therefore the question before Your Honor is has  
18 there been a showing of good and sufficient cause by a  
19 preponderance of the evidence to now alter your amended  
20 sentencing orders. And I suggest there has not been.

21       The State's ground was in the written motion was  
22 purely based on the assertion that Your Honor's procedure  
23 violated the Victim's Bill of Rights. And again with --  
24 and I know that I try to understand how the Caperton  
25 family feels; I couldn't begin to understand how they

1 feel. I absolutely couldn't. I'm close to Ms. -- the  
2 lady, Ellie Caperton's age, which means that my wife is  
3 as well. And I think -- I don't know that I could live  
4 if something like this had happened to my wife. So I  
5 understand the pain that they feel.

6 But with all due respect they have not presented  
7 anything new to the court today. Everything that we've  
8 heard today was heard in the prior hearings and in the  
9 prior briefings. I rough counted the briefing pages that  
10 Your Honor has received in this case. It was about 175  
11 pages of materials; over an inch thick, that Your Honor  
12 has received. And I know you've read it.

13 And with respect to the Solicitor's allusion to the  
14 Federal sentencing guidelines that, of course, wasn't the  
15 basis for my motion. We researched the Clerk of Court's  
16 records. And as we pointed out to Your Honor in our  
17 brief for reconsideration of 19 felony D-U-I death cases  
18 handled in Charleston County in the previous five years  
19 Sam McCauley is the youngest offender.

20 Of those 19 cases Sam McCauley's active sentence was  
21 the third highest. His total sentence was the second  
22 highest. We invited Your Honor to take a look at that,  
23 take a reconsideration of that which I am comfortable the  
24 general law permits. It's not a reopening of the  
25 sentencing hearing. It's consistent with what 17-25-326

1 provides. And I know Your Honor made a reference to the  
2 Federal sentencing guidelines but I know Your Honor also  
3 read that sentencing data. It doesn't lie. And the  
4 average sentence was something like 5.8 -- active  
5 sentence was 5.8 years. So Your Honor's reduction to  
6 five is totally consistent with the sentencing history in  
7 this County of felony D-U-I death cases; again, with  
8 respect to the family.

9 This ultimately -- ultimately a felony D-U-I death  
10 case always involves someone who has tragically been  
11 killed by a driver who is driving under the influence and  
12 usually involving a smashed car and where the driver did  
13 something else to violate the law as the statute requires  
14 so that the sentencing in these cases necessarily must  
15 focus on the circumstances of the defendant and the  
16 circumstances of the offense.

17 And it is correct that Sam McCauley in the emergency  
18 room made the statements that Ms. Caperton's sister said  
19 that he made as reported by the police. But as Your  
20 Honor might recall he was in a state of alcoholic  
21 blackout. He didn't remember anything from when he last  
22 was walking back to the boat at the marina where he and  
23 his friends were until he woke up in the emergency room  
24 and he was told by a police officer that he killed  
25 somebody. Second only to the tragic death of Ms.

State v Samuel A. McCauley  
(2011-GS-10-6799, 7382)  
August 1, 2013

1 Caperton I can't think of anything more horrible than to  
2 experience something like that by this young man who  
3 never even had a traffic ticket in his life. <sup>Previous</sup> incident / Alcoholic

4 So I don't acknowledge, Your Honor, as I've said  
5 that this is a reopening of the sentencing hearing. But  
6 it sort of invites the query how much time is enough.  
7 Your Honor has already observed that as a statement of  
8 public policy the General Assembly has expressed the  
9 intent that in some cases a felony D-U-I involving death  
10 one year is enough.

11 So certainly five times that for the youngest  
12 offender in the population group that we studied with no  
13 record at all and the circumstances that put him there,  
14 is certainly enough. It's also in the range of the  
15 average sentences imposed.

16 We've heard nothing today that is <sup>Not so</sup> new. There has  
17 been no showing of good and sufficient cause to modify  
18 the court's final amended sentencing orders. And thank  
19 you very much for your attention.

20 THE COURT: All right. Brief response; anything  
21 you want to ---

22 MS. WILSON: --- no sir, Your Honor.

23 THE COURT: All right. Thank you very much. All  
24 right I will take the matter under advisement and I will  
25 do a written order. I anticipate getting that done this

1 morning today before I finish work. And we'll make sure  
2 that it is properly published.

3       And I do want to say to all in attendance that I am  
4 always mindful of my duty to do justice, to love and be  
5 merciful, and to be humble and to treat everyone with  
6 dignity, respect, and to be fair. That is to be equal in  
7 my treatment to all who come before me. Again, this is a  
8 most tragic case and my heartfelt sympathy goes to  
9 everyone. Thank you and court is adjourned.

10               \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

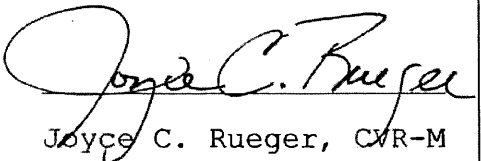
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina on the 1st day of August, 2013.

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

September 6, 2013

  
Joyce C. Rueger, CVR-M  
Court Reporter

 **COPY**