

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

Samuel Avery Mccauley

AKA:

Race: WHITE Sex: M Age: 21

DOB: 03-23-1992 SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Homicide / Reckless Homicide, death results within 3 yrs, caused by injury from vehicle

in violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 3097

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

ATTEST:

Williams, Jennifer Kinzeler

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 10 years or under the Youthful Offender Act not to exceed years

and to pay a fine of \$ 5,000; provided that upon the service of 5 years and payment

of \$ 5,000; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 267 DAYS JAIL CREDIT AS OF 11/8/13.

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ paid to Public Defender Fund

Other:

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

Recipient:

*Fine:

\$ 5,000.00

\$ 5,000.00

§ 14-1-206 (Assessments 107.5%)

\$ 5,375.00

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$ 100.00

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$ 5.00

3% to County (if paid in installments)

\$ 318.00

TOTAL

\$ 10,923.00

Clerk of Court/ Deputy Clerk

Court Reporter: Mia Perron

SCCA/217 (03/2011)

Presiding Judge

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JULIE A. ARMSTRONG (SEAL)

CLERK, C.P., C.S. & F.C.

By: DEPUTY CLERK

Judge Code

Sentence Date:

2008

6/4/13

INDICTMENT/CASE#: 2011GS1007382

A/W#: M612732

Date of Offense: 7/24/2011

S.C. Code §: 56-05-2910

CDR Code #: 3097

AMENDED SENTENCE SHEET

EXHIBIT 4 11-6-13

STATE OF SOUTH CAROLINA) **FILED** IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
2013 JUL 17 PM 4:39

JULIE J. ARMSTRONG
CLERK OF COURT

BY MS

Indictments: 2011-GS-10-06799, 07382
Reckless Homicide and Felony DUI with Death

STATE OF SOUTH CAROLINA)

vs.)

SAMUEL A. MCCAULEY)

Defendant.)

**STATE'S MOTION TO REOPEN
DEFENDANT'S SENTENCING HEARING**

The State moves this Court to re-open the sentencing hearing of Defendant Samuel A. McCauley. After a guilty plea on May 14, 2012 and a sentencing hearing on January 18, 2013, this Court sentenced the Defendant to concurrent sentences of, *inter alia*, 15 years suspended to the service of 10 years in prison for Felony DUI with Death and 10 years in prison for Reckless Homicide. The Defendant filed a motion to reconsider these sentences on January 25, 2013. Attorneys for the Defendant and for the State filed memoranda addressing the reconsideration motion. Despite the caption of the Defendant's motion claiming a request for reconsideration, it was in substance and fact a motion to re-open the sentencing hearing. The Defendant's principle argument was not presented at his original sentencing hearing. Through his Memorandum in Support, the Defendant offered much new information.

On May 20, 2013 and June 4, 2013, this Court signed amended sentencing sheets reducing the Defendant's sentence to, *inter alia*, 15 years suspended to the service of 5 years in prison for Felony DUI with Death and 10 years suspended to 5 years in prison for Reckless Homicide. In all practical effect, the sentence was slashed in half. Neither the Defendant nor the

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State was notified of this Court's intentions to proceed without a hearing or even given notice of the reduced sentences.

The State recognizes language in Rule 29, SCRCrimP. which provides that a court may grant a post-trial motion without a hearing. The Rule(s), however, must be read in the broader context of the South Carolina Constitution and state statutes.

The South Carolina Supreme Court outlined the history of the Victims' Bill of Rights in *Ex Parte Horace Littlefield and Jimmy Jeter, In Re The State of South Carolina v. Jack Williams*, 343 S.C. 212, 540 S.E. 2d 81 (2000). The Court wrote:

In the early 1970s, a victims' rights movement emerged in this country. This movement focused on integrating the crime victims' concerns into the criminal justice process.^{FN2} In response to the victims' rights movement, most states enacted statutes that required prosecutors to inform crime victims of all criminal proceedings against their alleged perpetrator. Furthermore, these statutes gave the victim a voice at the critical stages of the criminal justice proceedings. *See Tobolowsky, supra*.

^{FN2}. See Peggy M. Tobolowsky, *Victim Participation in the Criminal Justice Process: Fifteen Years After the President's Task Force on Victims of Crime*, NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 21 (Winter 1999).

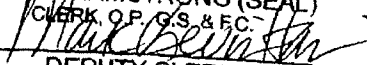
In response to the victims' rights movement, the South Carolina General Assembly enacted several laws to protect victims' rights, including S.C.Code Ann. § 16-3-1505 (Supp.1999) and S.C. Const. art. I, § 24(B) (Supp.1999). The General Assembly declared the intent behind section 16-3-1505 was to "ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity." On November 5, 1996, South Carolina citizens overwhelmingly ratified the Victims' Bill of Rights, which ensures victims are informed of their rights and any alternative means that might be available to them if the criminal prosecution is unable to meet their needs.¹

Under South Carolina law, prosecutors and judges have more duties toward victims than we once had. We both must respect the rights granted to the victims by the Victims' Bill of

¹ The Victims' Bill of Rights includes the following language:

(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute; [...](5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing[...]. S.C. Const. art. I, § 24(B) (Supp.1999)

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Rights, which includes the right to be informed of and attend any criminal proceeding which is dispositive of the charges where the defendant has the right to be present. *See Littlefield*, at 218.

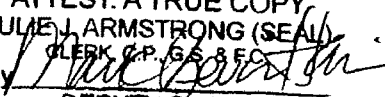
It undermines the good intentions of our legislature and citizenry to even imagine that the way to avoid the right of a victim's right to be "informed of and attend" and "heard" at a dispositive criminal proceeding when drastically changing its effect is simply to decline to hold a hearing at all. Understandably, if a post-trial motion is denied and the *status quo* preserved, a hearing with defendants and victims would not be necessary or required. If a Defendant's sentence were increased, a defendant certainly should have the right to be heard regarding the rationale for a considering new information and to be present at the pronouncement of the new and different adverse sentence.² Likewise, the victims should have a right to be present and to be heard at any re-sentencing when new information is considered and the Court is considering a sentence adverse to their requests and a departure from the previous sentence. This Court, in effect, re-opened a hearing, conducted a re-sentencing and slashed the defendant's sentence in half with no input from the victims. (The Solicitor represents the State of South Carolina, not a particular victim.) The Defendant originally was sentenced in open court and any changes to his sentence should have been delivered in open court.

CONCLUSION

The State respectfully moves this Court to re-open the sentencing of Samuel McCauley.

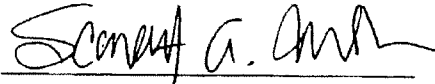
The Court's approach to resentencing the Defendant threatens the integrity of our criminal justice system. The Court did not preserve and protect the victims' rights to justice and due process and could not be considered as treating the victims with fairness, respect and dignity.

² In *State v. Bradley*, however, the South Carolina Court of Appeals held that a motion to reduce sentence was not a "critical stage" of criminal proceeding and, thus, defendant had no due process right to be present at hearing on such a motion. *Bradley*, 324 S.C. 387 (1996). Unlike the victims in this case who are not represented by an attorney, defendant Bradley was represented by an attorney who spoke on his behalf.

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In short, reducing the Defendant's sentence in this manner was in violation of the Victims' Bill of Rights and S.C. Code Ann. §16-3-1505.

Respectfully submitted,



Scarlett A. Wilson
Ninth Circuit Solicitor

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2013 JUL 17 PM 4:34
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By 
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KNR20110704950

DOCKET NO. 2011GS1007382

WITNESSES

LEIGH ANN MCGOWAN
Charleston City Police Department

The State of South Carolina
County of Charleston

AGENCY CASE NUMBER

1112011

COURT OF GENERAL SESSIONS

November Term 2011

ARREST WARRANT NUMBER

M612732

DATE OF ARREST

July 26, 2011

THE STATE

vs.

ACTION OF GRAND JURY

SAMUEL AVERY MCCAULEY
DOB: 1992-03-23
W/M

TRUE BILL

[Signature] NOV 14 2011
Foreperson of Grand Jury Date

Indictment for
Reckless Homicide

VERDICT

Foreperson of Petit Jury Date

INDICT.DOT

FILED

11/30/2011 4:46:38 PM
JULIE J. ARMSTRONG
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By *[Signature]*
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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

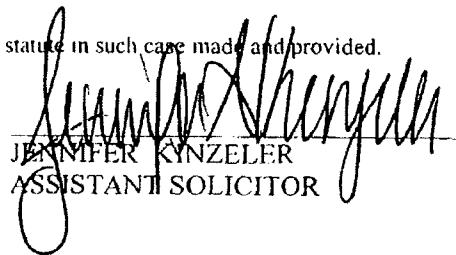
INDICTMENT

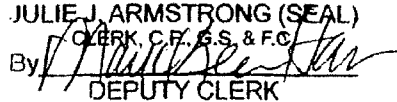
At a Court of General Sessions, convened on November 14, 2011 the Grand Jurors of Charleston County present upon their oath:

Reckless Homicide

That in Charleston County, on or about July 24, 2011, the Defendant, SAMUEL AVERY MCCAULEY did operate a motor vehicle in a reckless disregard for the safety of others and as a proximate result of which such vehicle was driven into and upon one Eleanor Caperton, causing mortal wounds of which Eleanor Caperton did die as a proximate result in Charleston County on or about July 24, 2011 This is in violation of Section 56-5-2910 of the South Carolina Code of Laws (1976) as amended

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


JENNIFER KYNZELER
ASSISTANT SOLICITOR

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT

) Case No. 2011-GS-10-07382

) Case No. 2011-GS-10-06799

STATE OF SOUTH CAROLINA,)

v.)


SAMUEL A. MCCAULEY,)
Defendant.)

) **MOTION FOR RECONSIDERATION AND**
) **MODIFICATION OF SENTENCE**

TO: HONORABLE THOMAS L. HUGHSTON, PRESIDING JUDGE and
JENNIFER KINZELER WILLIAMS, ASSISTANT SOLICITOR

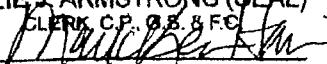
Defendant Samuel A. McCauley moves for a reconsideration and modification of
the sentences imposed herein on January 18, 2013, on the following grounds:

1. The Court should reconsider in light of sentences imposed in similar cases, in
the interests of avoiding a sentencing disparity;
2. The Court should reconsider because of the Defendant's age and lack of prior
record, as compared with sentences imposed on other offenders, in the interests of
avoiding a sentencing disparity;
3. The Court should reconsider because the sentences imposed in this case are
disproportionately higher than sentences imposed in other cases, and in similar
circumstances.
4. The Court should reconsider its denial of Defendant's request for credit for all
or a portion of his time spent on house arrest. It is in the Court's legal discretion to do so,
and the Court may have concluded that it was without authority to do so.

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By 
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This motion will be based upon such evidence, data and authorities as will be served and filed before hearing, and as will be presented at hearing.

Respectfully Submitted,

BARR, UNGER, MCINTOSH, LLC

Capers G. Barr, III

Capers G. Barr, III
11 Broad Street (29401)
P.O. Box 1037
Charleston, SC 29402
Telephone: 843-577-5083
Facsimile: 843-723-9039
cgb@barrungermcintosh.com
Attorney for Defendant

Charleston, South Carolina
January 25, 2013

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2013 JAN 25 AM 11:47
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JULIE J. ARMSTRONG (SEALY)
CLERK C.P., G.S. & F.C.
By *Mark Seinstadler*
DEPUTY CLERK

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT

) Case No. 2011-GS-10-07382
) Case No. 2011-GS-10-06799
)
) STATE OF SOUTH CAROLINA,)
))
) CERTIFICATE OF SERVICE
))
) v.)
))
) SAMUEL A. MCCAULEY,)
) Defendant.)
_____)

I hereby certify that I have served a copy of this Motion for Reconsideration and Modification of Sentence by placing a copy of same in the United States mail this 25th day of January, 2013 with sufficient postage attached thereto and addressed as follows:

Jennifer Kinzeler Williams
300-B California Avenue
Moncks Corner, South Carolina 29461

Meghan Gardner
Paralegal to Capers G. Barr, III

Charleston, South Carolina
January 25, 2013

FILED
2013 JAN 25 AM 11:47
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BY _____

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CLERK, C.P., D.S. & F.C.
BY *Julie J. Armstrong*
DEPUTY CLERK

BARR, UNGER AND McINTOSH, L.L.C.

ATTORNEYS AT LAW
11 BROAD STREET
P. O. BOX 1037
CHARLESTON, SOUTH CAROLINA 29402-1037

CAPERS G. BARR, III
H. WAYNE UNGER, JR.
WILLIAM S. BARR
H. THOMAS McINTOSH, JR.
ADAM E. BARR
CAPERS G. BARR, IV
W. SLAD BARR, JR.

TELEPHONE 843-577-5083
FAX 843-723-9039
www.barrungermcintosh.com

EDISTO ISLAND OFFICE
806 OYSTER PARK
EDISTO ISLAND, SC 29438
TELEPHONE 843-869-2369
FAX 843-869-0110

January 25, 2013

(By Hand Delivery)

Hon. Julie J. Armstrong,
Clerk of Court
100 Broad Street, Suite 106
Charleston, S.C. 29401

Re: State v. Samuel A. McCauley
Case Nos: 2011-GS-10-07382 and 2011-GS-10-06799
Our File No. 2011-1196

Dear Julie:

Enclosed for filing is the Defendant's Motion for Reconsideration and Modification of Sentence, together with Proof of Service upon Assistant Solicitor, Jennifer Kinzler Williams.

Would you please file the within motion and provide the bearer with a clocked copy?

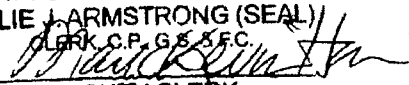
Sincerely,



Capers G. Barr, III

CGBIII/meg
Enclosure (as stated).

cc: Honorable Thomas L. Hughston, Jr. (w/enclosure)
Samuel A. McCauley (w/enclosure)
Denise McCauley (w/enclosure)
Jennifer Kinezler Williams (w/enclosure)

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT
Case No. 2011-GS-10-07382
Case No. 2011-GS-10-06799

JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA,)
BY _____)

v.)

SAMUEL A. McCauley,)
Defendant.)

**MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION AND
MODIFICATION OF SENTENCE**

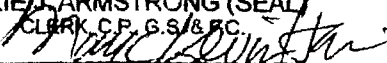
A. Introduction and Summary of Arguments.

It is a basic principle of justice and equity that all offenders should be treated equally by the criminal justice system. Punishment should be proportionate to the crime for which it is imposed, and directed to the particular circumstances of the crime and the specific character of the defendant. It should be guided by objective criteria, including the gravity of the offense and the harshness of the penalty, and sentences imposed on other offenders in the same jurisdiction. However, a sentence falling within the statutory range will not be disturbed on appeal, unless there is gross disproportionality. *24 CJS Criminal Law, Section 2001.*

It is particularly because the sentence imposed by the trial court is final and permanent, that requests for modification should be openly reconsidered.

The arguments to support a sentence reduction for Sam McCauley will be made in four sections, as follows:

1. Proportionality Analysis. Here, we show from hard data collected from the Clerk of Court's records that over the past 5 years, 19 felony DUI cases have been handled to disposition in the Charleston County Court of General Sessions, all by guilty plea. In the discussion section we will present arguments why Sam McCauley's sentence is disparate, and should be modified.

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Although Sam McCauley is the youngest of the 19 defendants, his total sentence imposed is the second most severe.

2. Rehabilitation and Negative Implications. In this section we argue that, to the extent that a purpose for sentencing is to rehabilitate the offender, the 10 year active prison sentence imposed upon Sam McCauley will likely impede his emotional and intellectual growth, so that the long term sentence could result in a “negative rehabilitation”; that is, it could result in changing a naturally kind and gentle person into a more hardened, distrustful person.

3. Deterrence. We will argue in this section that deterrence is a misunderstood and ineffective concept associated with sentencing, particularly when compared with the other purposes for punishment (incapacitation, rehabilitation and retribution).


4. Reconsideration of Credit for House Arrest. Mr. McCauley served house arrest for a period of 277 days. At initial sentencing, the Court denied his request for credit. In the event that the Court concluded that it was not authorized to extend credit, we argue why the Court holds the authority to do so.

B. Arguments.

1. Proportionality Analysis.

The records from the Charleston County Clerk of Court report 19 Felony DUI/Death cases that have been handled to final disposition in Charleston County Court of General Sessions since April 14, 2006. Attached are exhibits based upon the Clerk of Court’s data as follows:

a. **Exhibit “A”.** This is a spreadsheet provided by the Charleston County Clerk of Court of all Felony DUI cases disposed of in Charleston County for the past 5 years. From Exhibit “A” all Felony DUI cases involving death have been extracted, and form the basis for the exhibits that follow.

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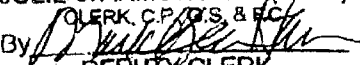
- b. **Exhibit "B"**. This is a spreadsheet of only the Felony DUI/Death cases, from 04/14/2006 to 1/18/2013, listed in the order of date of disposition, from most recent to most remote
- c. **Exhibit "C"**. This is a spreadsheet of the Felony DUI/Death cases, listed in the order of total sentence imposed, from the greater sentence to the lesser sentence.
- d. **Exhibit "D"**. This is a spreadsheet of the Felony DUI/Death cases listed by active sentence imposed, in order from greater to lesser. (By "active" sentence is meant that part of an imposed sentence that is not suspended).
- e. **Exhibit "E"**. This is a spreadsheet of the Felony DUI/Death cases listed by age of defendant, from youngest to oldest.
- f. **Exhibit "F"**. This is a spreadsheet of the Felony DUI/Death cases listed by sentencing judge, alphabetically.
- g. **Exhibit "G"**. Consists of the Sentencing Orders that were filed in each of the 19 Felony DUI/Death cases.¹

From a factual, proportionality analysis, the following conclusions may be drawn from the Clerk of Court's data:

1. Of the 19 Felony DUI/Death defendants in the report, Sam McCauley is the youngest defendant to have been sentenced in Charleston County for the past five years. (Ex. "E"). On the date of the offense, Sam was 19 years old and had graduated from High School only two months previously.

2. Of the 19 Felony DUI/Death defendants, the total sentence imposed on Sam McCauley is the second harshest. (Ex. "C").²

¹ Case No. 6 in the chronological listing [Exhibit "B"], Michael Lee Tupper, is included in this analysis. In fact, the defendant Tupper was permitted to plead to Reckless Homicide and Driving Under the Influence, which we suggest should be included in the within comparable analysis of Felony DUI/Death cases.

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3. Of the 19 Felony DUI/Death defendants, the total active sentence imposed upon Sam McCauley is the third harshest sentence (there are three other, 10 year active sentences, but without the suspended 5 years and 5 year probationary term imposed upon Sam.) (Ex. "D").

4. Not including Sam's sentence, the average sentence imposed was 7.8 years. Sam's 15 year imposed sentence is almost double the average;

5. Not including Sam's sentence, the average active sentence imposed was 5.81 years. Sam's 10 year active sentence is almost double the average.

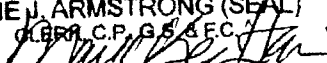
6. Not including Sam's case, only 2 of the 18 (11%) exceeded ten years.

Based upon the hard data from the Clerk of Court records, the total sentence imposed upon Sam McCauley is the second harshest imposed upon a Felony DUI/Death defendant in the past five years. If the Defendant Mallory Lee Ann Hood's sentence is reduced, Sam's will be the harshest. Among the questions thus presented by the within motion are whether it was the Court's intention to sentence Sam more harshly than other offenders, when compared with other Felony DUI/Death cases in the Charleston County Court of General Sessions; and whether that result should be reconsidered.

Against the backdrop of a proportionality analysis, sentencing in every case involves a balancing between aggravating and mitigating circumstances.

As for aggravating circumstances, it is self-evident that each of the reported cases contain basic facts in common: a tragic, violent death has occurred; typically an automobile has been smashed; a defendant was driving under the influence; and some other and independent infraction was committed that proximately caused death. Every one of the 19 cases in the proportionality analysis includes these same basic, aggravating circumstances.

² Case #7 on Exhibit "B", Mallory Lee Ann Hood, was sentenced by Judge Jefferson on April 19, 2010 to 18 years. A Motion for Reconsideration has been filed in that case, but has not yet been decided.

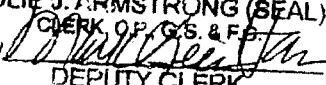
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Beyond the basics, it is true that Mr. McCauley's BAC was .208%. But in at least 6 of the other cases, the BAC exceeded .190. (Thompson, Wright, Reynolds, Hood, Cruz and McCormick). It is also true that Mr. McCauley was driving the wrong way on I-26; and, if it is deemed to be an aggravating circumstance, that the victim was a stranger.

However, it is the essence of the within motion that the circumstances of Sam McCauley's case cannot justify treating him so differently from the sentencing average. Respectfully, two other distinctive features stand out in the case of Sam McCauley. His case has invited special attention from the media; and the family of the victim have been insistent upon maximum retribution. However, these two factors should not skew a sentence away from the norm. The criminal justice system should protect all offenders against that form of caprice. If nothing else, the right to equal protection of the laws should protect Sam McCauley from the influence of such stressors.

Balanced against any aggravating circumstances in the case of Sam McCauley, and in consideration of the proportionality analysis, are strong and profound circumstances of mitigation and extenuation.

Age. Sam McCauley is the youngest defendant to be sentenced in the population of Felony DUI/Death offenders within the past five years. At the initial sentencing hearing, evidence was presented through the report of Dr. Thomas, and by Ms. Callahan, Sam's counselor, that at Sam's age the executive, decision-making reasoning functions of his brain have not fully matured to the same extent as a person over the age of 25. Instead, the executive reasoning function is dominated by the region of the brain that causes young people to act impulsively and foolishly to seek pleasure.

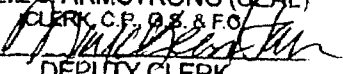
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In Sam McCauley's case he and his friends believed that they had cloaked themselves in a cocoon of protection on the night of the accident. He and they never foresaw that drinking to excess could cause Sam's unpredictable behavior: sprinting to his car and driving away clad in a bathing suit, no shirt and only one shoe. Indeed, it is difficult for even an adult to anticipate such an outcome, based upon an intent to drink alone.

Intent. Unlike most adult DUI cases, where the offender plans to drink and to travel from home to bar or from bar to party or from party back to home, by driving a vehicle, that is not what happened here. It is no defense that Sam did not plan to drive on the night of the accident, nor that he did not consciously intend to do so when he got into the car. But it is a factual difference that sets Sam McCauley's case apart from the other 18 offenders who have been sentenced for the same thing. It was the deliberate plan of Sam and his friends not to drive.

It is horrifying, although certainly on a scale less than the tragic death of Mrs. Caperton, that Sam McCauley's last conscious memory was of drinking and having a good time with his friends, and that his next conscious memory was of waking up in a hospital room and being told that he had killed Mrs. Caperton.

Remorse and Acceptance of Responsibility. It is a sound principle of sentencing in the criminal justice system that the acceptance of responsibility by an offender entitles him to credit on sentence, that is not available to an offender who does not accept responsibility. It is the reason why persons who plead guilty more often receive lesser sentences than those who are convicted at trial. Under the Federal Sentencing Guidelines, "acceptance of responsibility" is a formal factor that entitles an offender to credit on his sentencing "score".

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In this case, Sam McCauley's remorse and acceptance of responsibility are profound, extraordinary, and very likely surpass that of any other offender in the comparison group. Sam's counselors, his friends and his family consistently describe the genuine nature of his sorrow.

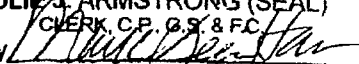
As proof of it, Sam openly told his story on two occasions to no fewer than 600 of his contemporaries, using his best efforts to make something right out of something that was so very wrong that he had done.

Sam's total sentence of 15 years, the second most severe in the population group, particularly compared with the group, its age and other circumstances, seems to give him no consideration for the deep and profound nature of his acceptance of responsibility and his remorse. Only a week before Sam was sentenced, Samuel Leroy Thompson, Jr. had denied responsibility to a charge of Felony DUI/Death, taking his case to a jury trial. Thompson pled guilty, mid-trial, and was sentenced to a total term of nine years. His BAC was .238. The Solicitor was quoted in the media as commenting that Thompson's guilt was "obvious".

2. Rehabilitation and Negative Implications.

As the Court concluded at sentencing, rehabilitation is one of the accepted goals or purposes of sentencing. As a sentencing goal, rehabilitation seeks to encourage an offender against, or to discourage an offender from, reoffending. In this case, the Court announced that rehabilitation goals, here, would lead to a conclusion against a long term of incarceration. We infer that the Court meant that Mr. McCauley does not require much for his rehabilitation; that, perhaps, he was rehabilitated by the facts and experience of this case.

But a counter point to the rehabilitative goal is this: to what extent might a lengthy sentence turn a rehabilitated person into an unrehabilitated one? Here, there is that risk.

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At the initial sentencing hearing on January 18, 2013, Sam's counselor Susie Callahan reported the following that had not been stated in her written report:

"It is my opinion, and the research bears this out, that a protracted sentence in a prison environment with adult criminals and the necessary skills he would need to cultivate, such as: not showing emotions, refraining from forming relationships, isolation, could have a negative impact on his emerging adult development and his ability to become a productive member of society.


In addition to this, the period of late adolescence or emerging adulthood, is a critical, formative period for the psychosocial development of the identity that they will carry into adulthood. They are in the process of finding out who they are. It's a difficult time even in the best of circumstances. But in a prison environment where the social norms are in direct conflict with the norms of normal adult development, it is extremely difficult.

Reference: The Impact of Incarceration on Young Offenders
Kristy N. Matsuda 227403
June 2009
Published by the US Dept of Justice

Furthermore, the research has shown that the younger the person is and the longer their stay in this environment, the more difficult it is for them to regain their trajectory to normal adult adjustment.

Other researchers have posited the possibility of a tipping point where the corrective effects of incarceration are replaced by distrust, suspicion, emotional over-control, and the projection of a tough persona, could ultimately in an extended stay in prison, permanently affect a person's ability to function appropriately in the world outside of prison.

In light of this, it is my opinion that Sam could use his demonstrated character traits of perseverance and resilience to complete an appropriate stay in prison and likely go on to positively impact other young adults of the consequences of underage drinking as he did by addressing the Governor's School. It is also my opinion that, at his young age, Sam lacks the ability to deal with the trauma of extended incarceration and could lead to a negative outcome for him and for society at large."

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When weighed against the proportionality analysis discussed above, the negative implications of a 10 year active sentence on Sam McCauley should be reconsidered. The sentence should be reduced.

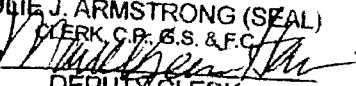
3. **Deterrence.**

The Court made the specific finding at sentencing that general deterrence in Sam McCauley's case far outweighs the other considerations of incapacitation, rehabilitation and retribution.

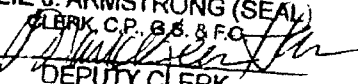
Respectfully, much has been studied and written about the severity of punishment as a deterrent to the commission of crime. The overwhelming conclusion is that the certainty of punishment carries a far greater deterrent impact than the severity of the punishment. See Exhibit H, attached: "*Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment*". Valerie Wright, PhD, The Sentencing Project, November 2010.

Among the report's conclusions:

1. "Research to date generally indicates that increases in the *certainty* of punishment, as opposed to the *severity* of punishment, are more likely to produce deterrent benefits."
(p.1).
2. "...the severity of punishment may influence behavior if potential offenders weigh the consequences of their action and conclude that the risks of punishment are too severe." (p. 2).
3. "One problem with deterrence theory is that it assumes human beings are rational actors who consider the consequences of their behavior before deciding to commit a crime; however, this is often not the case."(p. 2).

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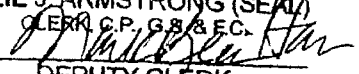
4. "Another means of understanding why deterrence is more limited than often assumed can be seen by considering the dynamics of the criminal justice system. If there was 100% certainty of being apprehended for committing a crime, few people would do so. But since most crimes, including serious ones, do not result in an arrest and conviction, the overall deterrent effect of the certainty of punishment is substantially reduced. Clearly, enhancing the severity of punishment will have little impact on people who do not believe they will be apprehended for their actions."(p. 2).
5. "In a 2001 study published in the journal Criminology, researchers utilized a sample of college students to assess the likelihood of drinking and driving. The authors found that the certainty of punishment was a more robust predictor of deterrence than severity. Increasing the probability of apprehension by 10% was predicted to reduce the likelihood of drunk driving by 3.5%, while the effect of severity eroded when the effects of certainty and severity were combined. In another study, researchers compared crime and punishment trends in the U.S., England, and Sweden, and failed to find an effect for severity." (p. 5).
6. "The logic behind supporting harsher sentences is simple: locking up people for longer periods of time should enhance public safety. However, contrary to deterrence ideology and "get tough" rhetoric, the bulk of research on the deterrent effects of harsher sentences fails to support these assertions." (p. 6).
7. "Ideally, from a deterrence perspective, the more severe the imposed sentence, the less likely offenders should be to re-offend." (p. 6)
8. "...the authors assessed the relationship between length of time in prison and recidivism, and found that longer prison sentences were associated with a three

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percent increase in recidivism. Offenders who spent an average of 30 months in prison had a recidivism rate of 29%, compared to a 26% rate among prisoners serving an average sentence of 12.9 months.” (p. 6).

9. “Researchers also find an increased likelihood that lower-risk offenders will be more negatively affected by incarceration. Among low-risk offenders, those who spent less time in prison were 4% less likely to recidivate than low-risk offenders who served longer sentences. Thus, when prison sentences are relatively short, offenders are more likely to maintain their ties to family, employers, and their community, all of which promote successful reentry into society. Conversely, when prisoners serve longer sentences they are more likely to become institutionalized, lose pro-social contacts in the community, and become removed from legitimate opportunities, all of which promote recidivism.” (p. 7).
10. “Existing evidence does not support any significant public safety benefit of the practice of increasing the severity of sentences by imposing longer prison terms. In fact, research findings imply that increasingly lengthy prison terms are counterproductive.” (p. 9).

It is noteworthy that Dr. Wright’s report discusses on page 5 a study of college students, drinking, and driving. She observes that the uncertainty of being caught was a far greater deterrent than the severity of punishment. Along the same lines, on page 2 of her report she notes that “severity of punishment may influence behavior if potential offenders weigh the consequences of their actions and conclude that the risks of punishment are too severe” but she further notes, “One problem with deterrence theory is that it assumes that human beings are rational actors who consider the consequences of their behavior before deciding to commit a

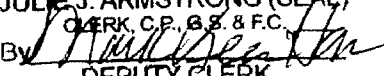
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crime; however, this is often not the case.” For example, half of all state prisoners were under the influence of drugs or alcohol at the time of their arrest. Therefore, it is unlikely that such persons are deterred by either the certainty or severity of punishment because of their temporary impaired capacity to consider the pros and cons of their actions.”

Which brings to mind another proposition unique to driving under the influence cases. Driving under the influence is an offense against the criminal laws, different from any other in a singular respect. Whereas, an actor will formulate a plan or intention to break into a house and to steal; or to commit armed robberies; or to engage in a fight that results in an assault charge or a homicide; or to sell or to use drugs, DUI cases are different. No offender consciously formulates a scheme prior to the act by deciding, “I am going out tonight to drive under the influence.” Instead, DUI offenses occur simply when the offender has had too much to drink, lacks the insight to evaluate his own circumstances, and drives a car. More often than not, the offender had planned to drink and he had planned to drive before the act; however, he did not plan to “drive under the influence.” In those circumstances, the actor is certainly not in a position to evaluate the consequences of his behavior before deciding to drive a car for the very reasons reported by Dr. Wright.

Very respectfully, and in the final analysis we suggest that the Court placed too great an emphasis on the severity of sentence as a community deterrent, when the science reports that severity makes little difference; and without giving adequate or due consideration and weight to Sam McCauley’s particularized circumstances.

From a general deterrence standpoint, a sentence requiring Sam McCauley to tell his story to high school students will have a far greater deterrent effect on those students than will

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the imposition of a 15 year sentence that was never known to them in the first place and, even if it was known, is so remote and unconnected with them as to be totally irrelevant.

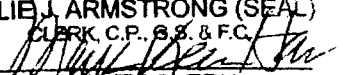
Because the length of sentence is of questionable deterrent effect, we seek a reduction of both the total imposed sentence, and the total active sentence.

4. **Reconsideration of Credit for House Arrest.**

At the initial sentencing hearing, the State cited Code Section 24-13-40 and the case of *State vs. Higgins*, 357 S.C. 382, 593 S.E.2nd 180 (Ct.App. 2004), for the proposition that Sam McCauley is not entitled to any credit for time spent on house arrest. At hearing the Court agreed with the Solicitor.

McCauley does not argue that he is entitled to credit for time served on house arrest, as did the Defendant in *State vs. Higgins*. Rather, we argue that the Court has the discretion to give him credit for house arrest. This can be accomplished in at least one of two ways. The Court may reduce the active sentence imposed by 277 days (McCauley was on house arrest from August 10, 2011 to the date of his plea on May 14, 2012) (Although, we are seeking in this overall motion a greater reduction than 277 days, for the reasons previously argued). Or, the Court may order that McCauley's active sentence shall be deemed to have commenced effective August 10, 2011, which was the day he was released on bond and placed on house arrest. Or, the Court may decide to grant less than full, day-for-day, credit for a portion of the 277 days he was on house arrest.

Code Section 24-13-40(c) gives the Court the authority to declare the commencement date of the active sentence: "However, when...(c) the Court shall have designated a specific time for the commencement of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence."

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By any definition, house arrest is a restraint against liberty that is different only in degree from incarceration in jail. It is imposed as a consequence of the offence charged. There should be no reason in equity why all or at least a fractional portion of the 277 days served on house arrest should not be applied to reduce the active sentence imposed. Although it is not claimed as a right, it is a sought in the interests of fairness and justice.

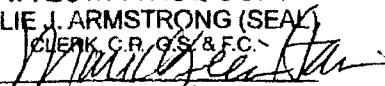
C. Conclusions

In the final analysis, retribution is the clearest purpose for sentencing. It is sentencing's clearest goal because its function is simply to punish the offender, in proportion to the act committed and in consideration of his circumstances. Retribution extracts from the offender, by the forfeiture of his liberty, "compensation" for the wrong he has done. Of all the purposes for sentencing, retribution must be fairly, equally and proportionately imposed.

Not including the sentence imposed upon Sam McCauley, the average Felony DUI/Death sentence imposed in Charleston County over a 5 year period is 7.8 years. The average active imposed in 5.81 years.

There is no reason why Sam McCauley, the youngest offender in the class, should be sentenced any differently than the average offender who is sentenced for Felony DUI/Death. Indeed, there are strong arguments that he should be sentenced to less. A proportionate, fair and equal sentence, that will not become counterproductive, is the relief sought on reconsideration; together with credit for an additional 277 days because of time served on house arrest.

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Respectfully Submitted,

BARR, UNGER, MCINTOSH, LLC

Capers G. Barr, III

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Attorney for Defendant

Charleston, South Carolina
February 22, 2013


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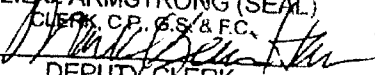
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EXHIBIT LIST

1. **Exhibit "A"**. Spreadsheet of all disposed of Felony DUI/Death cases in Charleston County for the past 5 years.
2. **Exhibit "B"**. Spreadsheet of all disposed of Felony DUI/Death cases listed in the order of date of disposition.
3. **Exhibit "C"**. Spreadsheet of all disposed of Felony DUI/Death cases listed in the order of total sentence imposed.
4. **Exhibit "D"**. Spreadsheet of all disposed of Felony DUI/Death cases listed by active sentence imposed.
5. **Exhibit "E"**. Spreadsheet of the Felony DUI/Death cases listed by age of defendant.
6. **Exhibit "F"**. Spreadsheet of the Felony DUI/Death cases listed by sentencing judge.
7. **Exhibit "G"**. Sentencing Orders that were filed in each of the 19 Felony DUI/Death cases.
8. **Exhibit "H"**. "*Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment*". Valerie Wright, PhD, The Sentencing Project, November 2010.

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT

) Case No. 2011-GS-10-07382

) Case No. 2011-GS-10-06799

) STATE OF SOUTH CAROLINA,)
))
))

v.)
))

SAMUEL A. MCCAULEY,)
Defendant.)
_____)

CERTIFICATE OF SERVICE

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CLERK OF COURT

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I hereby certify that I have served a copy of this Memorandum in Support of Motion for Reconsideration and Modification of Sentence by placing a copy of same in the United States mail this 22nd day of February, 2013 with sufficient postage attached thereto and addressed as follows:

Jennifer Kinzeler Williams
300-B California Avenue
Moncks Corner, South Carolina 29461

Megan Gardner
Paralegal to Capers G. Barr, III

Charleston, South Carolina
February 22, 2013

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By *Mallory Stewart*
DEPUTY CLERK

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
2011 DEC 22) PM 2: 28)
Case No. 2011-GS-10-07382
Case No. 2011-GS-10-06799

JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA,
Plaintiff, BY _____)

CONSENT ORDER

v.)
SAMUEL A. MCCAULEY,)
Defendant.)
_____)

The Defendant is charged with Felony DUI and Reckless Homicide in this Court, and has posted a \$50,000 bond, by depositing 10% thereof with the Clerk of Court in cash. The Defendant seeks to travel to the home of his grandparents for the Christmas holidays accompanied by his mother. A copy of the Defendant's travel itinerary is attached as Exhibit "A" to this order.

By applying for this order, the Defendant understands and acknowledges that he must comply with the same conditions of his bond while out of state, to wit, 24 hour house arrest, provided that said arrest during the period of the Defendants absence from the state shall be served at the home of his grandparents, which is detailed below.

Now, therefore, on motion of Capers G. Barr, III, attorney for Defendant and with the consent of Jennifer Kinzeler, Assistant Solicitor, it is


ORDERED that the Defendant, Samuel Avery McCauley may depart the state of South Carolina on Sunday, December 25, 2011, to return to the state of South Carolina on Sunday, January 1, 2012 in accordance with the travel itinerary attached to this order. And it is further represented to the Court that the Defendant will be driving from Charleston to connect to his air flight in Charlotte and that he shall return to Charleston upon completion of his flight in like manner; and it is further,

ORDERED that during the period of the Defendant's departure from the state, he shall reside in the home of his grandparents, Larry and Shirley McCauley at 5541 S. E. Maple Drive, Carlisle, Iowa 50047, telephone 515-989-3880; and it is further,

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By _____
DEPUTY CLERK

ORDERED that during the period of the Defendant's absence from the state of South Carolina he shall be and remain under 24 hour house arrest at the home of his grandparents as detailed above on the same terms and conditions on his order for bond; and

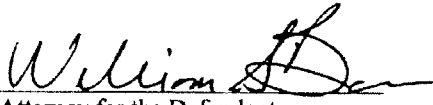
IT IS SO ORDERED


Presiding Judge

Chas, SC
Dec. 22, 2011 *WJ*

WE MOVE FOR THE WITHIN ORDER

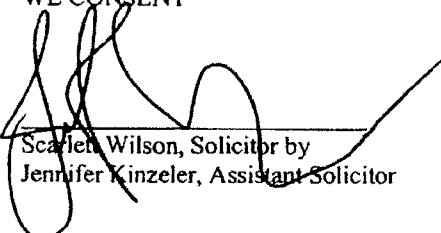
Barr, Unger & McIntosh

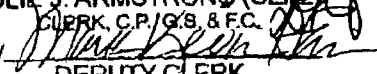

Attorney for the Defendant

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BY _____

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WE CONSENT


Scarlett Wilson, Solicitor by
Jennifer Kinzeler, Assistant Solicitor

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JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., O.S., & F.C. *WJ*
By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS. Samuel Avery Mccauley
AKA:
Race: Sex: M Age: 20
DOB: 03-23-1992 SS#:
Address:
City, State, Zip:
DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1007382
A/W#: M612732
Date of Offense: 7/24/2011
S.C. Code § : 56-05-2910
CDR Code #: 3097
DEFERRED

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Homicide / Reckless Homicide, death results within 3 yrs, caused by injury from vehicle

in violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 3097
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kinzeler, Jennifer SC Bar#
Defendant: Sean Mccauley
Attorney for Defendant: SC Bar#

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

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:
Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
By: DEPUTY CLERK

Presiding Judge: T.L. Hyatt
Judge Code: 2008
Sentence Date:
PLEA ACCEPTED - P.S.I. 5/14/12

ARREST WARRANT

M-612732

STATE OF SOUTH CAROLINA
 County/ Municipality of
 Charleston

THE STATE 11-12011
 against
Samuel Avery Mccauley

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]
 Sex: M Race: [REDACTED] Height: 6 Weight: 140
 DL State: SC DL #: [REDACTED]
 DOB: 3/23/1992 Agency ORI #: [REDACTED]

Prosecuting Agency: Charleston City Police Department
 Prosecuting Officer: Kevin McGowan - 0298

Offense: Homicide / Reckless Homicide, death results within 3 yrs, caused by injury from vehicle

Offense Code: 3097
 Code/Ordinance Sec: 56-05-2910

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

 Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant _____ on _____

 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
 General Sessions
 Charleston County Judicial Center
 100 Broad Street, Suite 106
 Charleston, SC 29401

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
 Charleston)

AFFIDAVIT

Personally appeared before me the affiant Kevin McGowan *LOWEN* who being duly sworn deposes and says that defendant Samuel Avery Mccauley did within this county and state on or about 7/24/2011 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Charleston) in the following particulars:

DESCRIPTION OF OFFENSE: Homicide / Reckless Homicide, death results within 3 yrs, caused by injury from vehicle

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

SEE ATTACHED AFFIDAVIT

Signature of Affiant *SAT*

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
 Charleston)

Affiant's Address [REDACTED]
 Affiant's Telephone [REDACTED]

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
 It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/24/2011 defendant Samuel Avery Mccauley did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Homicide / Reckless Homicide, death results within 3 yrs, caused by injury from vehicle

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

Sworn to and subscribed before me on 7/25/2011

Sheryl M. Perry (L.S.)
 Signature of Issuing Judge
 Sheryl M. Perry
 Judge Code: 7161

Judge's Address [REDACTED]
 Judge's Telephone [REDACTED]

Issuing Court: Magistrate Municipal Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
 Clerk, C.P., S.B. & F.C.
 By *[Signature]*
DEPUTY CLERK

BAIL set by

Judge

on

Type and Amount:

Name of Surety:

Paul
July 25, 2011
55,000

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS



BY

JULIE J. ARMSTRONG
CLERK OF COURT

2011 JUL 27 PM 3:53

FILED

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURT
BY *[Signature]*
DEPUTY CLERK

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one *Sgt. R. A. Owen*

who first being duly sworn deposed and says that Samuel Avery McCauley

Did with in this county and state on the 24 July 2011 violate the criminal laws of the State of South Carolina in the following particular:

DESCRIPTION OF OFFENSE

Reckless Homicide
56-5-2910

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

In that on July 24, 2011 at approximately 0001 Hrs., while located at Interstate 26 and Highway US-17, which is within the lawful jurisdiction of the City of Charleston, SC, the defendant Samuel Avery McCauley did willingly, knowingly, and unlawfully commit the act of Reckless Homicide, 56-5-2910, in the following particulars:

That Charleston Police Department Officer McGowan and the Fatal Accident Collision Team from the Traffic Division were investigating a two-vehicle collision with injuries on Interstate 26 and Highway US-17, Charleston, SC.

That Interstate 26, in the area of Highway US-17, is a divided highway with four lanes of westbound traffic, in which the fatal collision occurred.

That the defendant was traveling eastbound in the westbound lanes of traffic when the defendant's vehicle collided head-on with a Honda Civic driven by Eleanor Caperton. As a result of the collision, Eleanor Caperton sustained multiple blunt force injuries to her entire body, which lead to her demise. That the defendant stated in the presence of Officer McGowan and Sgt. Hildebidle, "I'm nineteen. I drank too much, and I killed somebody."

That the defendant was driving a vehicle in the opposite direction of traffic on a divided highway, at a high rate of speed, while under the influence of alcohol and/or drugs, in such a manner as to indicate a wilful and wanton disregard for the safety of persons traveling on that highway, which caused the loss of life of Eleanor Caperton.

That the above is true and believable based on both the investigation of Charleston Police Department Officer McGowan, Sgt. Hildebidle and the statements made by the defendant.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 25 DAY OF July, 2011

Sheph M. Perry
SIGNATURE OF JUDGE (L.S.)

Sfa
AFFIANT

Charleston Police Department
180 Lockwood Blvd
Charleston, SC 29403
(843) 577-7434

COMPLAINT #: 11-12011

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By *Julie J. Armstrong*
DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

Samuel Avery Mccauley

AKA:

Race: WHITE Sex: M Age: 21

DOB: 03-23-1992 SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: DUI / Felony driving under the influence, death results (.10 law)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1006799

A/W#: 32767FU

Date of Offense: 7/24/2011

S.C. Code § : 56-05-2945(A)(2)

CDR Code #: 0395

SENTENCE SHEET AMENDED

CONVICTED OF or PLEADS

in violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

ATTEST:

Williams, Jennifer Kinzeler SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 years or under the Youthful Offender Act not to exceed years and to pay a fine of \$ 15,000; provided that upon the service of 5 years and payment of \$ 10,100; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 267 days jail credit as of 1/18/13.

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like *Fine: 10,100, § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$ 635.63, TOTAL \$ 21,823.43

PTUP days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ paid to Public Defender Fund

Other: Public Service Regarding these offenses to appropriate groups.

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

Clerk of Court/ Deputy Clerk

Court Reporter: Mic Perron

SCCA/217 (03/2011)

J. Bostrom

ATTEST: A TRUE COPY JULIE J. ARMSTRONG (SEALED) CLERK, C.P., O.S. & F.C. By: [Signature] DEPUTY CLERK

Presiding Judge

Judge Code: 2008

Signature Date: 5/20/13.

[Signature]

KNR20110704950

WITNESSES

Kevin McGowan
Charleston City Police Department

AGENCY CASE NUMBER

1112011

ARREST WARRANT NUMBER

32767FU

DATE OF ARREST

July 25, 2011

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: NOV 14 2011

VERDICT

Foreperson of Petit Jury Date

INDICT.DOT

DOCKET NO. 2011GS1006799

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

vs.

SAMUEL AVERY MCCAULEY
DOB: 1992-03-23
W/M

Indictment for

Felony Driving Under The Influence With
Death

FILED

11/30/2011 4:46:38 PM
JULIE J. ARMSTRONG
CLERK OF COURT

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

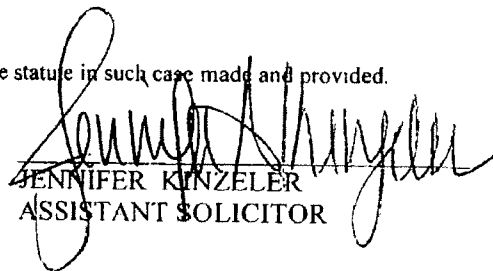
INDICTMENT

At a Court of General Sessions, convened on November 14, 2011 the Grand Jurors of Charleston County present upon their oath:

Felony Driving Under The Influence With Death

That in Charleston County, South Carolina, on or about July 24, 2011, while driving a vehicle under the influence of alcohol, drugs or both alcohol and drugs, the Defendant, SAMUEL AVERY MCCAULEY did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle, and such act proximately caused death to Eleanor Caperton; all in violation of Section 56-5-2945, Code of Laws of South Carolina, (1976, as amended).

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


JENNIFER KINZELER
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.G.

By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.

INDICTMENT/CASE#: 2011GS1006799

AKA: Samuel Avery Mccauley

A/W#: 32767FU

Race: Sex: M Age: 20

Date of Offense: 7/24/2011

DOB: 03-23-1992 SS#

S.C. Code §: 56-05-2945(A)(2)

Address:

CDR Code #: 0395

City, State, Zip: DL#: SID#

DEFERRED.

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: DUI / Felony driving under the influence, death results (.10 law) 1-25 (28 B.A.) CONVICTED OF or PLEADS

in violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTES: Kitzeler, Jennifer SC Bar# 3378 x Samuel Mccauley Defendant Attorney for Defendant SC Bar#

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

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

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

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

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

ATTEST: A TRUE COPY
Residing Judge
JULIE L ARMSTRONG (SEAL) Judge Code:
CLERK, C.P., G.S., & F. Sentence Date:
DEPUTY CLERK

T.L. Hyatt

Accepted - P.S.I. 5/14/12

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

AJT
1301

CITY OR COUNTY OF Chas VERSUS

FIRST NAME Samuel MIDDLE NAME Avery LAST NAME McCauley

STATE LICENSED <u>SC</u>	DRIVER'S LICENSE NO. [REDACTED]	CDL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DRI. LIC. CLASS <u>D</u>
VEH. LIC. NO. <u>DYJ988</u>	STATE <u>SC</u>	MAKE OF VEH <u>NISS</u>	YEAR <u>98</u>
COMM. VEH. <input checked="" type="checkbox"/> AUTO	16 PSGR. VEH. <input type="checkbox"/>	HAZ. MT. <input type="checkbox"/>	MOPED <input type="checkbox"/>
MTRCYCL. <input type="checkbox"/> OTHER <input type="checkbox"/>			

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT <u>TBA</u>		STREET AND NO. <u>G/S TO</u>	
DATE <u>7/20</u>	OF TRIAL	TIME OF TRIAL <u>BE SET</u>	CITY <u>BE SET</u>
STATE <u>SC</u>		ZIP CODE	

VIOLATION - COURT APPEARANCE REQUIRED (YES) NO <u>Felony DWI</u>	VIOLATION SECTION NO. <u>56-5-2945</u>
OWNER OF VEHICLE <u>Dennis McCauley</u>	DATE OF ARREST <u>7/24/2011</u>

DATE OF VIOLATION <u>7/24/2011</u>

BAIL DEPOSITED <u>Jail</u>	NAME OF ARRESTING OFFICER <u>L. McGowan</u>	RANK <u>PO</u>
-------------------------------	--	-------------------

RACE <u>W</u>	SEX <u>M</u>	BIRTH DATE <u>3/23/1976</u>	HT. <u>5'10"</u>	HAIR <u>BRN</u>	WT. <u>140</u>	EYES <u>BLU</u>	COUNTY <u>Chas</u>	NUMBER <u>10</u>
DATE BAIL REC'D. <u>7/20</u>	BY	BADGE <u>1597</u>	TROOP <u>6</u>	DOCKET NO.				

CASE BEFORE	MAGISTRATE <input type="checkbox"/>	MUN. COURT <input type="checkbox"/>	CIRCUIT COURT <input type="checkbox"/>	FAMILY COURT <input type="checkbox"/>	FEDERAL COURT <input type="checkbox"/>
NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE.	TIME OF VIOLATION <u>0055</u> A.M. - 1 P.M. - 2				
DEFENDANT: DID NOT APPEAR <input type="checkbox"/>	APPEARED <input type="checkbox"/>				

DISPOSITION	NOLLE PROSSED <input type="checkbox"/>	GUILTY <input type="checkbox"/>	FORFEITED BOND <input type="checkbox"/>	PLED: NOLO CONTENDERE <input type="checkbox"/>
TRIAL BY:	TRIAL JUDGE <input type="checkbox"/>	JURY <input type="checkbox"/>	DISTANCE IN FEET FROM INTERSECTION OF <u>I-26</u> AND <u>Coming St</u>	

MILES	N. 1	E. 2	S. 3	W. 4
TRIAL BY:	TRIAL JUDGE <input type="checkbox"/>	JURY <input type="checkbox"/>	HWY. NO.	CITY <u>Chas</u>
VERDICT OF TRIAL IF ANY	GUILTY <input checked="" type="checkbox"/>	NOT GUILTY <input type="checkbox"/>	DATE OF TRIAL IF ANY <u>7/20</u>	Lat

JAIL	SUSPEND	FINE	AMT. COLLECTED	AMT. SUSPENDED
COMMITTED TO:		Vehicle Searched <u>N</u>	Arrest as Result of Collision <u>Y</u>	OFFENSE CODE <u>99</u>
CERTIFIED CORRECT		DATE <u>7/20</u>	B.A. LEVEL <u>3ED BLOOD</u>	

32767 FU

TRIAL COURT COPY

11-12011

ATTEST: A TRUE COPY
JULIE JARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By [Signature]
DEPUTY CLERK

ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF C.S. & A.
BY *[Signature]*
DEPUTY CLERK

BOND HEARING

DATE July 25, 2011

JUDGE Perry

AMOUNT \$ 52,324.50

P. R.

SURETY

JURISDICTION Central Hearing Court

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2011 JUL 27 PM 3:54

FILED