The Supreme Court of South Carolina

The State, Respondent,

v.

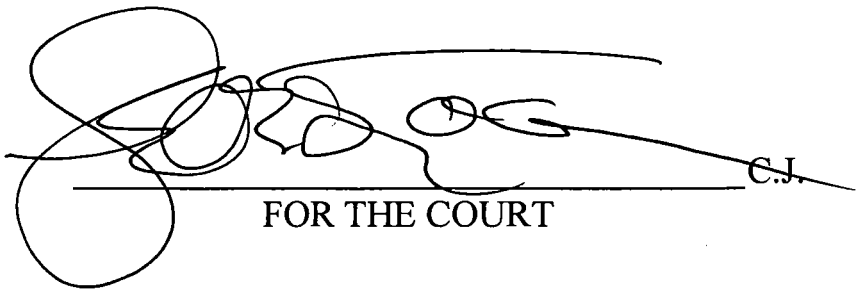
Freddie Edwards, Appellant.

Appellate Case No. 2011-195606

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court. Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.



C.J.

FOR THE COURT

Columbia, South Carolina

March 25, 2013

cc:
Andrew Michael Hodges, Esquire
Melody Jane Brown, Esquire
David Matthew Stumbo, Esquire
Thomas Michael Leddy, Esquire
Marta K. Kahn, Esquire
The Honorable Jenny Kitchings

The Supreme Court of South Carolina

The State, Respondent,

v.

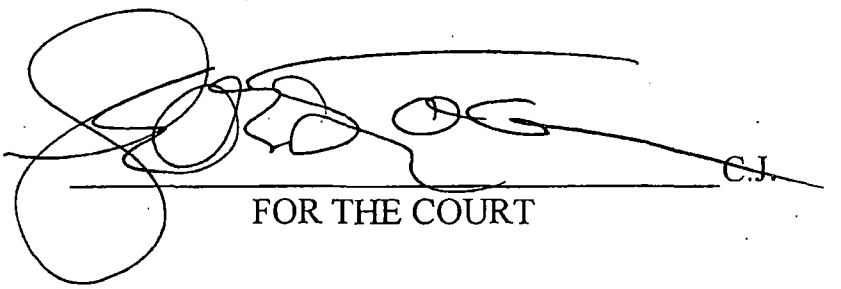
Freddie Edwards, Appellant.

Appellate Case No. 2011-195606

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court. Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.



C.J.

FOR THE COURT

Columbia, South Carolina

March 25, 2013

cc:
Andrew Michael Hodges, Esquire
Melody Jane Brown, Esquire
David Matthew Stumbo, Esquire
Thomas Michael Leddy, Esquire
Marta K. Kahn, Esquire
The Honorable Jenny Kitchings

The South Carolina Court of Appeals

The State, Respondent,

v.

Freddie Edwards, Appellant.

Appellate Case No. 2011-195606

ORDER

The motion to file the final reply brief out of time is granted. The final reply brief has been received and is accepted as filed.

FOR THE COURT

BY _____ CLERK

Columbia, South Carolina

cc:
Andrew Michael Hodges
Melody Jane Brown
David Matthew Stumbo
Thomas Micah Leddy

FILED
3/14/13

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

6759

Case Nos. 2005-GS-24-1003
2005-GS-24-1004

The State,.....Respondent,

vs.

Freddie Edwards,.....Appellant.

MOTION TO FILE OUT OF TIME

NOW COMES Appellant, Freddie Edwards, by and through undersigned counsel, and respectfully requests that this Court grant him permission to file his Final Reply Brief out of time.

1. At the time of filing of the Record on Appeal and the Final Opening Brief, Mr. Edwards inadvertently neglected to file a Final Reply Brief. The Final Reply Brief is identical to the Initial Reply Brief. There are no edits or cites to the Record on Appeal. Counsel has filed the proper number of copies of the Final Reply Brief along with this Motion. The Final Brief and Record on Appeal were filed on January 9, 2013.

2. Counsel for the Respondent has indicated the State does not object to this Motion.

WHEREFORE, Mr. Edwards respectfully requests that this Court grant his Motion to file his Final Reply Brief out of time.

March 12, 2013

T. Micah Leddy, Esq.
Leddy Law Firm, LLC
2008 Lincoln Street
Columbia, S.C. 29201
(803) 779-9966
ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003
2005-GS-24-1004

The State,.....Respondent,

vs.

Freddie Edwards,.....Appellant.

PROOF OF SERVICE

I, T. Micah Leddy, attorney for appellant, certify that I have served the final *Reply Brief* and *Motion to File Out of Time* on Respondent by depositing one copy of the same in the United States mail, postage prepaid, to the following address:

Melody J. Brown, Esq.
Senior Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

March 13, 2013

T. Micah Leddy, Esq.
Leddy Law Firm, LLC
2008 Lincoln Street
Columbia, S.C. 29201
(803) 779-9966
ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

v.

Freddie Edwards, Appellant.

Appellate Case No. 2011-195606

The Honorable Frank R. Addy, Jr.
Greenwood County
Trial Court Case No. 2005GS2401004, 2005GS2401003

ORDER

Pursuant to Rule 210(f) of the South Carolina Appellate Court Rules, it is ordered that the Clerk of Court for Greenwood County release:

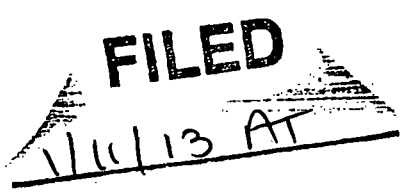
State's Exhibit 14 (CD recording of statement of Appellant)

State's Exhibit 41 (Photograph of victim's body)

to be transported to this Court by the South Carolina Attorney General's Office, for consideration in the above referenced matter.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK



Columbia, South Carolina

cc:
Thomas Micah Leddy
Melody Jane Brown
Marta K. Kahn

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ...Respondent,

v.

Freddie Edwards, ...Appellant

ORDER FOR TRANSPORTATION OF EXHIBITS

Upon motion of counsel for petitioner, the Court orders that the Attorney General or his designees transport the following exhibits from the Greenwood County Clerk of Court to the Clerk of this Court for consideration with the appellate brief:

State's Exhibit 14 (CD recording of statement of Appellant)

State's Exhibit 41 (Photograph of victim's body).

IT IS SO ORDERED _____

Date: _____

The Law Office of

Marta K. Kahn, LLC

8 East Mulberry Street
Baltimore, MD 21202

tel: 410-299-6966
fax: 443-927-7216
mkkahn@yahoo.com

January 7, 2013

The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: State v. Freddie Edwards

Dear Ms. Kitchings:

Enclosed please find a proposed order for the transportation of trial exhibits. These trial exhibits were made part of the record in Mr. Edwards' trial and thus should be brought to the Court for consideration in conjunction with his direct appeal

If you have any questions about this matter, please do not hesitate to contact me.

Yours sincerely,

Marta K. Kahn

Enclosure

cc: Melody Brown, Esq.
T. Micah Leddy, Esq.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003
2005-GS-24-1004

The State,.....Respondent,

vs.

Freddie Edwards,.....Appellant.

PROOF OF SERVICE

I, T. Micah Leddy, attorney for appellant, certify that I have served the *Record on Appeal* and the accompanying *Index* on Respondent by depositing one copy of the same in the United States mail, postage prepaid, to the following address:

Melody J. Brown, Esq.
Senior Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

December 21, 2012

T. Micah Leddy, Esq.
Leddy Law Firm, LLC
2008 Lincoln Street
Columbia, S.C. 29201
(803) 779-9966
ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003
2005-GS-24-1004

The State,.....Respondent,

vs.

Freddie Edwards,.....Appellant.

PROOF OF SERVICE

I, T. Micah Leddy, attorney for appellant, certify that I have served the *Reply Brief of Appellant* on Respondent by depositing one copy of the same in the United States mail, postage prepaid, to the following address:

Melody J. Brown, Esq.
Senior Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

November 26, 2012

T. Micah Leddy, Esq.
Leddy Law Firm, LLC
2008 Lincoln Street
Columbia, S.C. 29201
(803) 779-9966
ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2011-195606

The State,

Respondent,

vs.

Freddie Edwards,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by the Appellant, Respondent proposes the following to be included in the Record on Appeal:

(1) The following pages from the June 2011 Trial Transcript:

82-97;
116-127;
130-131;
134-135;
138-147;
151-152
161-164
166-167
169
188-190
206
210
225-233
250
256-260
271
283-285
291-293

299
303
313-314
319-320
331
341-355
376-377
388-390
395-413
444-446
454
458-459
465

(2) Indictments (2005-GS-24-1003 and 1004).

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

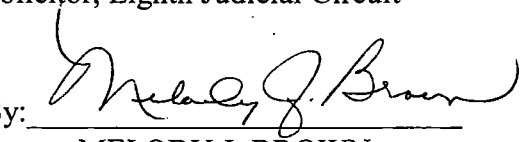
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

JERRY W. PEACE
Solicitor, Eighth Judicial Circuit

By: 
MELODY J. BROWN

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

November 13, 2012.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

The State, Respondent,

vs.

Freddie Edwards, Appellant.

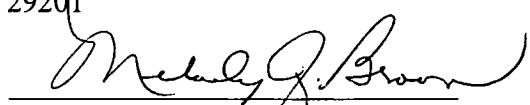
PROOF OF SERVICE

I, Melody J. Brown, Senior Assistant Attorney General, certify that I have served the *Initial Brief of Respondent* and *Designation of Matter* on Appellant by depositing one copy of same in the United States mail, postage prepaid, to each of his attorneys, at the following addresses:

Marta K. Kahn, Esq.
The Law Office of Marta K. Kahn, LLC
8 E. Mulberry St.
Baltimore, MD 21202

T. Micah Leddy, Esq.
Leddy Law Firm, LLC
2008 Lincoln Street
Columbia, SC 29201

This 13th day of November, 2012.



MELODY J. BROWN

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

The State, Respondent,

v.

Freddie Edwards, Appellant.

Appellate Case No. 2011-195606

The Honorable Frank R. Addy, Jr.
Greenwood County
Trial Court Case No. 2005GS2401004, 2005GS2401003

ORDER

For good cause shown, the request for an extension to serve and file the initial brief of respondent and designation of matter is granted and extended until November 12, 2012. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 (www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01), any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina
cc:
Thomas Micah Leddy
Melody Jane Brown

FILED
10/11/12 AT

RIB 2nd
10.10.12
11.12.12

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenwood County
Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2011-195606

The State of South Carolina, Respondent,

v.

Freddie Edwards, Appellant.

MOTION FOR SECOND EXTENSION OF TIME TO FILE INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER

Respondent, the State, moves this Court for an additional thirty (30) day extension of time in which to file the Initial Brief of Respondent and Designation of Matter. This is Respondent's second request for an extension of time in which to file the brief. In support of the request, undersigned counsel would respectfully show the Court:

1. Undersigned counsel for Respondent has been scheduled for a number of state and federal matters in the last thirty (30) days, that include, but are not limited to, the following: completed and filed a return and memorandum of law in support of motion for summary judgment in a federal habeas action (*Alton Brown*); completed and filed a return and memorandum of law in support of motion for summary judgment in another federal habeas action (*Ronald Jenkins*); completed and filed a post-hearing brief in a capital PCR action (*Kenneth Simmons*); prepared for and participated in a three (3) day evidentiary hearing in another capital PCR action in Sumter, South Carolina (*Stephen Corey Bryant*); and, prepared and filed a return to petition for rehearing in a non-capital murder direct appeal (*Derrick McDonald*). Counsel is also reviewing prior filings in possibility of reply in one of the previously listed capital PCR actions as any reply must be filed within the next two (2) days. (*Kenneth Simmons*). Additionally, undersigned counsel is currently

reviewing the reports and recommendations in three other federal habeas actions for possible objections which must be filed, if at all, within the next five (5) days. (*Vincent Boseman; Brett Catoe; Johnny Burnside*)

2. Due to her heavy case load, particularly the above listed capital cases, undersigned counsel for Respondent has not been able, in a timely fashion, to complete the initial brief in this appeal. However, counsel has completed review of the two (2) volume, four hundred and sixty-five (465) page transcript and other materials in preparation for the response. Further, counsel has completed a significant amount of the necessary legal research and has drafted a portion of the responsive argument. Respondent will continue to work diligently to complete the brief.

THEREFORE, undersigned counsel for Respondent respectfully requests an additional extension of thirty (30) days to complete the Initial Brief of Respondent and Designation of Matter.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

BY: _____
MELODY J. BROWN
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

October 10, 2012.
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenwood County
Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2011-195606

The State of South Carolina, Respondent,

v.

Freddie Edwards, Appellant.

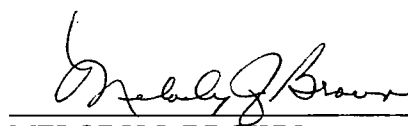
PROOF OF SERVICE

I, Melody J. Brown, certify that I have served Respondent's *Motion for Second Extension of Time to File Initial Brief of Respondent and Designation of Matter* on Appellant by depositing one copy of same in the United States mail, postage prepaid, to counsel of record, addressed as follows:

Marta K. Kahn, Esq.
The Law Office of Marta K. Kahn, LLC
8 E. Mulberry St.
Baltimore, MD 21202

T. Micah Leddy, Esq.
Leddy Law Firm, LLC
2008 Lincoln Street
Columbia, SC 29201

This 10th day of October, 2012.



MELODY J. BROWN

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

ALAN WILSON
ATTORNEY GENERAL

October 10, 2012

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: State v. Freddie Edwards
Appellate Case No. 2011-195606

Dear Ms. Kitchings:

Enclosed please find a **Motion for Second Extension of Time to File Initial Brief of Respondent and Designation of Matter** in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Thank you for your consideration.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Melody J. Brown
Senior Assistant Attorney General

/lbb
Enclosure

cc: Marta K. Kahn, Esquire
T. Micah Leddy, Esquire

The South Carolina Court of Appeals

The State, Respondent,
v.
Freddie Edwards, Appellant.

Appellate Case No. 2011-195606

The Honorable Frank R. Addy, Jr.
Greenwood County
Trial Court Case No. 2005GS2401004, 2005GS2401003

ORDER

The request for an extension to serve and file the initial brief of respondent and designation of matter is granted and extended until October 10, 2012. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 (www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01), any further extension request must be based on a showing of good cause.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina
cc:
Thomas Micah Leddy
Melody Jane Brown

FILED
9/11/12 AT

1st - RIB
9.10.12
10.10.12

ALAN WILSON
ATTORNEY GENERAL

September 10, 2012

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Freddie Edwards
Appeal from Greenwood County
Appellate Case No. 2011-195606

Dear Ms. Kitchings:

The Initial Brief of Respondent in the above-entitled action is due to be filed and served today, September 10, 2012. Due to my heavy caseload, I will not be able to complete the Initial Brief in a timely fashion. For this reason, I respectfully request an extension of thirty (30) days within which to file the Initial Brief.

I have spoken to opposing counsel, Marta K. Kahn, and she has consented to this extension request. Thank you for your consideration.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

MJB/lbb

cc: T. Micah Leddy, Esquire
Marta K. Kahn, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ...Respondent,

v.

Freddie Edwards, ...Appellant

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald Zelenka, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this ___ day of August 2012.

SUBSCRIBED AND SWORN TO before me
this 9th day of August 2012.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 7.20.18

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 12, 2012

Mr. Thomas Micah Leddy
2008 Lincoln St.
Columbia SC 29201

Re: The State v. Edwards, Freddie
Appellate Case No. 2011-195606

Dear Counsel:

The following order has been endorsed on your Unopposed Motion for Extension of Time in the above matter.

"Granted.

FOR THE COURT

By s/ Jenny A. Kitchings
CLERK

July 12, 2012."

Please be advised the Appellant's Initial Brief and Designation of Matter should be filed and served on or before August 13, 2012.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Salley W. Elliott
Andrew Michael Hodges
Marta K. Kahn

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ...Respondent,

v.

Freddie Edwards, ...Appellant

UNOPPOSED MOTION FOR EXTENSION OF TIME

Pursuant to Rule 240, SCACR, Appellant requests one additional thirty-day extension of the deadline for filing an serving his initial brief and designation of matter to be included in the record on appeal. The current deadline is July 11, 2012.

The briefing in the above-captioned matter is close to complete. Counsel requests an additional extension in order to ensure the opportunity for counsel to review and discuss the brief with Appellant before it is filed.

The undersigned was admitted to represent Appellant pro hac vice on May 11, 2012. This Court has granted the undersigned one previous extension of time. Counsel for the State has indicated that he does not object to this request.

Respectfully submitted,

T. Micah Leddy
Leddy Law Firm, LLC
2008 Lincoln Street
Columbia, SC 29201
(803) 779-9966
(803) 753-0837 (fax)
micah@leddylaw.com

Marta K. Kahn
The Law Office of Marta K. Kahn, LLC
8 E. Mulberry St.
Baltimore, MD 21202
(410) 299-6966
(443) 927-7216 (fax)
mkkahn@yahoo.com
Counsel for Appellant

Granted.
For the Court.
By Jenny A. Kitchings (UCA)
Clerk
7/12/12

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 11, 2012

Mr. Thomas Micah Leddy
2008 Lincoln St.
Columbia SC 29201

Re: The State v. Edwards, Freddie
Appellate Case No. 2011-195606

Dear Counsel:

The following order has been endorsed on your Motion for Extension in the above matter.

"Granted.

By s/ V. Claire Allen, Deputy Clerk
For the Court

June 11, 2012."

Please be advised the Appellant's Initial Brief and Designation of Matter should be served and filed on or before July 11, 2012

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Salley W. Elliott
Marta Kahn

64457

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
~~(Clerk)~~ (Deputy Clerk)

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

July 11, 2012

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ...Respondent,

v.

FILED
6.11.12 DW

Freddie Edwards, ...Appellant

MOTION FOR EXTENSION

Pursuant to Rule 240, SCACR, Appellant requests a thirty-day extension of the deadline for filing and serving his initial brief and designation of matter to be included in the record on appeal. The current deadline is June 11, 2012. Undersigned attorney Kahn was admitted to represent Appellant pro hac vice on May 11, 2012. This the first extension requested by the undersigned.

Respectfully submitted,

T. Micah Leddy
Leddy Law Firm, LLC
2008 Lincoln Street
Columbia, SC 29201
(803) 779-9966
(803) 753-0837 (fax)
micah@leddylaw.com

Marta K. Kahn
The Law Office of Marta K. Kahn, LLC
8 E. Mulberry St.
Baltimore, MD 21202
(410) 299-6966
(443) 927-7216 (fax)
mkkahn@yahoo.com
Counsel for Appellant

The South Carolina Court of Appeals

Leddy Law Firm 06/05/2012

RECEIPT #64452

Case No:	2011-195606
Case Short Title:	The State v. Edwards, Freddie
Event:	
Fee Type:	Motion Fee
Amount:	$25.00
Payment Type:	Check
Reference No:	2048527499
Check/Money Order Date:	06/05/2012
Comments:	

The South Carolina Court of Appeals

JENNY ABBOTT
KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 11, 2012

T. Micah Leddy
The Leddy Law Firm, LLC.
2008 Lincoln Street
Columbia, SC 29201

Marta K. Kahn
The Law Office of Marta K. Kahn, LLC.
8 E. Mulberry Street
Baltimore, MD 29202

Re: The State v. Edwards, Freddie
Appellate Case No. 2011-195606

Dear Counsel:

The following order has been endorsed on your motion to admit counsel *pro hace vice* in the above matter.

"Granted.

By s/ Jenny A. Kitchings, Clerk
For the Court

May 11, 2012."

Please be advised the appellant's initial brief and designation of matter should be served and filed within thirty (30) days of the date of this order.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: C. Rauch Wise
Salley W. Elliott
Andrew Michael Hodges

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

May 2, 2012

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Sate v. Freddie Edwards
Case No. 201119506

Dear Clerk of Court:

I certify that the Office of Bar Admissions has received a verified application requesting Marta K. Kahn be admitted *pro hac vice* in the above matters. The $250 filing fee for the applicant has been paid.

Yours truly,

Deputy Clerk for Bar Admissions

GBW/st

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF GENERAL SESSIONS
GREENWOOD COUNTY

The Honorable Frank R. Addy, Circuit Court Judge

Docket No. 2005-GS-24-1003, 1004

Freddie Edwards, ... Appellant.

v.

State of South Carolina, ...Respondent,

MOTION TO ADMIT COUNSEL
PRO HAC VICE

Now Comes T. Micah Leddy, Esquire, local counsel for Appellant, Freddie Edwards, who moves that this Court enter an Order admitting Marta Kahn, Esquire as Counsel of Record *Pro Hac Vice* for Appellant. A Verified Application for Admission Pro Hac Vice is attached hereto.

April 11, 2012

T. Micah Leddy, Attorney for Appellant
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2008 Lincoln Street
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micah@leddylaw.com

Marta K. Kahn, Attorney for Appellant
The Law Office of Marta K. Kahn, LLC

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: Jenny A. Kitchings
(Clerk) ~~(Deputy Clerk)~~

8 E. Mulberry Street
Baltimore, MD 29202
(410) 299-6966
(443) 927-7216 (fax)

Other Counsel of Record:
Salley Elliott, Esquire
Deputy Attorney General
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF GENERAL SESSIONS
GREENWOOD COUNTY

The Honorable Frank R. Addy, Circuit Court Judge

Docket No. 2005-GS-24-1003, 1004

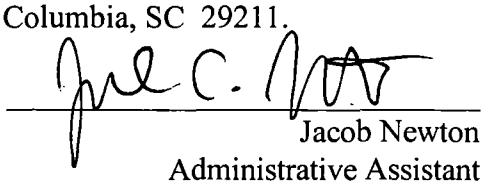
Freddie Edwards, ... Appellant.

v.

State of South Carolina, ...Respondent,

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Motion to Admit Counsel *Pro Hac Vice* in the above-referenced case has been served upon opposing counsel by mailing same this date to her office at the South Carolina Attorney General's Office, P.O. Box 11549, Columbia, SC 29211.



Jacob Newton
Administrative Assistant
Leddy Law Firm, LLC

Parties Served:
Salley Elliott, Esquire
Deputy Attorney General
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

VERIFIED APPLICATION FOR ADMISSION *PRO HAC VICE*
IN THE STATE OF SOUTH CARO A

State — Plaintiff
vs.
Freddie Edwards — Defendant

Case No.

SC Court of Appeals — Court

Mailing Address of Court: 1015 Sumter St. Columbia, SC 29201

Comes now Marta K Kahn, applicant herein, and respectfully represents the following:

1. Applicant resides at:
5718 Pimlico Rd. Apt. 1A
Street Address
Baltimore — City; (City) — County; MD — State; 21209 — Zip Code
410 367 3086
Telephone

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of) The Law Office of Marta K. Kahn, LLC, with offices at, at
8 E. Mulberry St.
Street Address
Baltimore — City; (City) — County; MD — State; 21202 — Zip Code
410 299 6966 — Telephone
443-927-7216 — Fax Number

3. Applicant has been retained personally or as a member of the above named law firm by Freddie Edwards to provide legal representation in connection with the above case now pending before the above named court of the State of South Carolina.

4. Since December of 1995, applicant has been, and presently is, a member in good standing of the bar of the highest court of the District of Columbia or the State of Maryland where applicant regularly practices law. Attached is a certificate of good standing.

5. Applicant has been admitted to practice before the following courts: (List all of the following courts applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.)

Court:	Date Admitted:
Virginia	1998
US Dist Ct - Maryland	1998
Fourth Circuit Court of Appeals	1998
☒ US Dist Ct - Eastern Dist Virginia	1998

Applicant is presently a member in good standing of the bars of those courts listed above, except as listed below: (List any court named in the preceding paragraph that applicant is no longer admitted to practice before.)

6. Applicant presently is not subject to any suspension or disbarment proceedings, and has not been formally notified of any complaints pending before a disciplinary agency, except as provided below (give particulars, e.g., jurisdiction, court, date):

7. Applicant never has had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked, except as provided below (give particulars, e.g., date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation):

8. Applicant never has had any certificate or privilege to appear and practice before any administrative body suspended or revoked, except as provided below (give particulars, e.g., date, administrative body, date of suspension and reinstatement):

9. Local counsel of record associated with applicant in this case is T Michael Leddy, of the Leddy law firm, which has offices at:

2008 Lincoln St.
Street Address

Columbia | | SC | 29201
City | County | State | Zip Code

803 779 9966
Telephone

If applicable list all other firms/attorneys you are associated with in this matter

10. Applicant has previously filed an application to appear *pro hac vice* in the following South Carolina cases (give case name and status of litigation, date of application, local counsel of record in each case, and state whether application is pending or was granted).

Elmore v. Ozmint, case closed, 12/8/05, Diana Holt, granted US Dist Ct for South Carolina

11. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize him/herself with and comply with the South Carolina Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

12. Applicant respectfully requests to be admitted to practice in the above named court for this case only.

DATED this 3rd day of April, 2012.

APPLICANT

VERIFICATION

STATE OF MARYLAND)

~~COUNTY~~ CITY OF BALTIMORE)

I, MARTA K KAHN, do hereby swear or affirm under penalty of perjury that I am the applicant in the above styled matter; that I have read the foregoing application and know the contents thereof; and that the contents are true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true.

APPLICANT/AFFIANT

Subscribed and sworn to before me this 3rd day of April, 2012.

Christine Frate CFrate

CHRISTINE M. FRATE
Notary Public
State of Maryland
Baltimore County

Notary Public for the State of Maryland

My Commission Expires: 8/25/2015

LOCAL COUNSEL CONSENT

I hereby consent, as local counsel of record, to the association of applicant in this cause pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar.

DATED this 11th day of April, 2012.

J. Michael Ledbetter #75213

LOCAL COUNSEL OF RECORD

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this application upon the South Carolina Supreme Court by ~~mail~~ hand delivery addressed to: South Carolina Supreme Court Office of Bar Admissions, PO Box 11330, Columbia, SC 29211, accompanied by payment of the $250 filing fee payable to the South Carolina Supreme Court on this 11th day of April, 2012.

~~APPLICANT/AFFIANT~~

JAKE NEWTON

RECEIVED
APR 11 2012
S.C. SUPREME COURT

Court of Appeals of Maryland

Annapolis, MD

CERTIFICATE OF GOOD STANDING

STATE OF MARYLAND, ss:

I, Bessie M. Decker, Clerk of the Court of Appeals of Maryland, do hereby certify that on the thirteenth day of December, 1995,

Marta Karin Kahn

having first taken and subscribed the oath prescribed by the Constitution and Laws of this State, was admitted as an attorney of said Court, is now in good standing, and as such is entitled to practice law in any of the Courts of said State, subject to the Rules of Court.

In Testimony Whereof, *I have hereunto set my hand as Clerk, and affixed the Seal of the Court of Appeals of Maryland, this twenty-third day of March, 2012.*

Bessie M. Decker

Clerk of the Court of Appeals of Maryland

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF GENERAL SESSIONS
GREENWOOD COUNTY

The Honorable Frank R. Addy, Circuit Court Judge

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Freddie Edwards, ... Appellant.

v.

State of South Carolina, ...Respondent,

NOTICE OF APPEARANCE

Now Comes T. Micah Leddy, Esquire who appears as local counsel for Appellant, Freddie Edwards.

April 11, 2012

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Notice of Appearance in the above-referenced case has been served upon opposing counsel by mailing same this date to her office at the South Carolina Attorney General's Office, P.O. Box 11549, Columbia, SC 29211.

Jacob Newton
Administrative Assistant
Leddy Law Firm, LLC

Parties Served:
Salley Elliott, Esquire
Deputy Attorney General
S.C. Attorney General's Office
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Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
AUG 0 9 2012
SC Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ...Respondent,

v.

Freddie Edwards, ...Appellant

INITIAL BRIEF OF APPELLANT

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Counsel for Appellant

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STATEMENT OF ISSUES ON APPEAL

Did the lower court err in failing to grant a directed verdict where the State's case against Mr. Edwards was entirely circumstantial and the State failed to present substantial evidence of guilt?

Did the lower court err when it allowed the State to "open on the law" during closing argument thereby denying the defense any opportunity to respond to the State's closing argument on the facts?

STATEMENT OF THE CASE

At the August 2005 term, the Greenwood County Grand Jury indicted Appellant Freddie Edwards for murder and possession of a firearm during a violent crime, indictment numbers 2005-GS-24-1003, 1004. On August 28, 2005, Mr. Edwards proceeded to a jury trial before the Honorable J. Cordell Maddox. The jury returned a verdict of guilty on both counts. On August 31, 2005, pursuant to S.C. Code §17-25-45, Mr. Edwards was sentenced to thirty years' incarceration. Mr. Edwards did not appeal his conviction. Upon post-conviction review, the South Carolina Supreme Court granted Mr. Edwards the right to file a belated appeal, on which the Court reversed Mr. Edwards' conviction and remanded for a new trial. Mr. Edwards was tried for the second time before the Honorable Frank Addy, Jr., beginning on June 20, 2011. The jury returned a verdict of guilty on both counts. Judge Addy again sentenced Mr. Edwards to thirty years' incarceration. A timely notice of intent to appeal was filed on July 1, 2011. This appeal follows.

ARGUMENT

I. The Lower Court Erred When It Refused to Grant a Direct Verdict for Mr. Edwards

A. Relevant Facts

On July 16, 2005, Freddie Edwards invited some friends to play poker in a small outbuilding behind his house. Tr. 7, Lines 16-19. The friends included Clyde Marshall, Derek Saxon, and Ben Smith. These men had been playing poker regularly for many years. Tr. 71, Lines 16-19; Tr. 116, Lines 2-7; Tr. 122, Lines 13-14. Also present that night, and the last to arrive, were Gregory Harrison and his brother, George Freeman. Tr. 81, Lines 19-22; Tr. 138, Lines 15-20. These two brothers had only played with the group on a few occasions, and were considerably younger than the other men. Tr. 121, Lines 15-18. Harrison was dropped off by a friend, Tr. 75, Lines 21-23, and Freeman arrived later in his van. Tr. 86, Lines 20-23.

Prior the start of that night's game, Mr. Edwards had announced a new rule whereby a person who folded out of turn had to put two dollars into the pot. Tr. 77, Line 23-25; Tr. Line 117, Lines 4-12. When he asked that Mr. Freeman abide by this new rule, Freeman, who had been drinking prior to arriving at Mr. Edwards' home, refused.[1] Tr. 124, Lines 3-4; Tr. 134, Lines 6-11, Tr. 139, Lines 4-10. A verbal altercation ensued between the two men, at which point, Mr. Edwards ordered everyone to leave. Tr. 82, Line 16 - Tr. 85, Line 14; Tr. 124 Line 7 - Tr. 125, Line 8. Mr. Smith tried to leave, but his car was blocked in by Freeman's van. Tr. 119 Line 3-7; Tr. 141, Lines 20-25. Freeman and Harrison did not leave, although they had ambled over to Freeman's van. Tr. 88, Line 16 - Tr. 89, Line 11. Mr. Freeman was counting his money,

[1]Mr. Freeman's blood alcohol content at the time of autopsy was .186, almost two and one half times the legal limit. Tr. 303 Lines 12-17.

apparently in no particular hurry to depart. Tr. 88, Line 16 - T. 89, Line 4; Tr. 130, Line 24 - Tr. 131, Line 1.

Meanwhile, Mr. Edwards went into his house, where it later appeared he had hurriedly pulled clothes out of his dresser drawers. Tr. 206, Lines 21-24. He reemerged from his house with a gun. Tr. 90, Lines 4-9. Witness accounts of the amounts of time that elapsed between Edwards' entry into his home and his eventual return with the gun varied between five minutes, Tr. 125, Line 25, to "about a minute." Tr. 151, Lines 21-22. However long it was, Ben Smith testified it would have been plenty of time for Harrison and Freeman - whose van was *not* blocked in - to leave Edward's property. Tr. 154, Lines 4-20. When Mr. Edwards reemerged from his house, he proceeded to the end of his driveway, following Harrison and Freeman. Tr. 93, Lines 5-6. Harrison turned left into Cokesbury Road, away from Mr. Edwards' house, and Freeman crossed in front of Mr. Edwards' house into the side yard. Tr. 90, Lines 4-9; Tr. 127, Line 9; Tr. 132, Lines 1-6.

As evidence of what occurred next, in the side yard, the State offered the tearful recorded statement of Mr. Edwards and the testimony of Gregory Harrison. Prior to giving his statement, a highly distraught Mr. Edwards, had instructed his stepson to call 911 just after the shooting, then waited for police to arrive. He waived his constitutional rights to remain silent and to counsel and gave police a full statement regarding what happened. State's Ex. 14. Mr. Edwards described the conflict over the poker game. Edwards said Harrison "asked me what I want to do and I told him, 'I don't want to do nothing... just get out and go." "And he kept bouncing around. 'Course I should have hit him but I couldn't 'cause his brother was there." "So I went in the house to scare him." Edwards went into the house and got his gun. When he

came back out of the house, Harrison was trying to get Freeman to leave, but Freeman ran around into Edwards' side yard where the gate was locked. "He couldn't go over the fence so he came back my way and I put my arm out and I clotheslined him and he fell down. But I had my gun – he pulled the gun and said, "don't shoot me." And the gun went off when he pulled it. I wasn't gonna shoot him. The gun went off. He pulled the gun down." "It happened so fast. He grabbed the gun and it went off. I ain't shot nobody 'bout no poker game."

Q. Okay. About how long after you clotheslined him until the gun – the gun went off? Do you know?

A. I clotheslined him – it happened so fast. He pulled the gun down on him – pulled me and the gun down.

Q. Was he already laying on the ground when he grabbed it?

A. Soon as I clotheslined him.

Q. Um Hum.

A. Next thing I know he pulled the gun and me.

Q. As he was falling?

A. I don't know, it happened so fast.

Q. Okay.

A. But, as he was falling - it had to be as he was falling 'cause it happened too fast.

Mr. Edwards gave substantially similar testimony in his own defense. He gave slightly more detail and said that after he clotheslined Freeman, Freeman had fallen to his buttocks. Mr. Edwards had started to get up from one knee, and Harrison reached for the gun with both hands. Tr. 353, Lines 18-24. Edwards pulled back and the gun went off. Tr. 354, Line 19 - Tr. 355, Lines 5. Edwards reiterated that everything happened very fast, that he did not remember putting

his finger on the trigger but concluded he must have because it went off. Tr. 355 Lines 2-24.

Mr. Harrison told a very different story. He testified that after the men left the poker house, Edwards and Freeman ran across the front of the house, and Harrison lost sight of them briefly as he ran after them. Tr. 92, Lines 16-19; Tr. 93, Lines 1014. When he arrived in the side yard, he heard Edwards threatening to kill Freeman. Tr. 93, Lines 17-20. Edwards was "straddled" on top of Freeman, who was on the ground on his back.[2] Tr. 94, Lines 13-14. By "straddling," Harrison meant "on top of him with his knees on him." Tr. 96 Lines 1-3. "Knees was on his arms and chest and stuff like that." Tr. 109, Lines 17-19. According to Harrison, Freeman was waving his left hand, which was grasping a wad of bills. Tr. 96, Lines 10-11; Tr. 111, Lines 22-25. Freeman's free right arm remained outstretched. Tr. 110, Lines 4-8; Tr 111 Lines, 16-18. Harrison claimed Edwards had the gun in Freeman's mouth and pulled the trigger. Tr. 96, Lines 7-15.

The State also offered two expert witnesses[3] in an attempt to prove beyond a reasonable doubt that the shooting took place as Harrison had described and not as Edwards had said (although Edwards had repeatedly stated that the incident happened so fast he could not be entirely sure exactly at what point the shot went off.) State's Ex. 14.

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[2]The State's other witnesses testified that Harrison was in Cokesbury Road, on the other side of Edwards' house at the time of the shooting. Tr. 132, Line 22 - Tr. 134, Line 1; Tr. 150, Line 24 - Tr. 151, Line 4.

[3]In addition to a gunshot residue expert and a pathologist, the State offered an expert who opined on the amount of force required to pull a trigger on the gun in the case and an expert who evaluated DNA evidence which demonstrated that there was a tiny piece of the victim's tissue on the gun and that a spot of the Freeman's blood was on Edwards' shirt. These facts prove only that Edwards shot Freeman, which is not disputed.

The State offered Joseph Powell as an expert in the analysis of gunshot residue. Mr. Powell began by explaining that there are varying degrees of conclusions he was able to make based on the quantities of gunshot residue found on swabs taken from a person's skin.

> Q. So when you are analyzing a sample what will you be able to tell from a sample?
>
> A. Sometimes a little, sometimes a lot. If I am looking at a sample, the swabs, and the levels on the swabs are not, vary outside the norm there is very little I can tell from that. It just says that they have been in the presence of gunshot residue.

Tr. 221, Lines 19-15. Powell went on to explain that he could tell if a subject was standing in front of a weapon because the levels are "10, 15, 20 times higher than you can ever get just from firing a weapon." He went on to say that only if levels are "excessively high" can any conclusion be drawn regarding where a person or object was in relation to the gun when it was fired. "If they are not, we can't make any conclusion about it." Tr. 222, Lines 19-23. Mr. Powell then explained that samples are done on the front and back of a subjects hand because "we can use the materials to give us some indication of where or what someone is doing with their hands as far as a weapon is concerned." But, he admitted,

> *It is not an exact science* because unfortunately we are dealing with a process where after you fire a weapon you can lose this material because you can wash your hands or you can wipe your hand on your clothing and of course that can remove a lot of materials. So we can actually have an area that will come up negative that had residue on them to begin with but because of something that someone did it removed the materials.

Tr. 225, Lines 5-15.

Mr. Powell testified that Mr. Edwards had one particle of gunshot residue on his right palm and one particle on the back of his right hand. He said that Mr. Edwards had "many particles" on the palm and back of his left hand." Tr. 225 Lines 19-24. Based on this

distribution of particles, Mr. Powell told the jury that this distribution indicated that "the left hand had received more exposure to the cloud coming out of the weapon on [sic] the right hand." Tr. 226, Lines 3-7. He then told the jury that either Mr. Edwards' left hand was "closer" to the gun at the time it was fired, or that the right hand was holding the gun, and was completely covered by the left hand at the time it was fired. Tr. 226, Lines 8-19. He similarly concluded that Mr. Edwards could not have held the gun with his right hand and kept his left arm at his side. Tr. 227, Line 23 - Tr. 228, Line 18.

Powell conceded that gunshot residue is like "flour" and easily rubs off as well as transfers from one surface to another. Tr. 233, Line 23 - Tr. 234, Line11. When confronted with the fact that Mr. Edwards had been handcuffed behind his back while riding in the police car following the shooting, he admitted the gunshot residue readings could have been "distorted." Tr. 234, Lines 12-17.

Mr. Powell also made conclusions about the gunshot residue on Mr. Freeman's hands. He testified that Mr. Freeman's hands had no gunshot residue on either palm. On the back of his left hand - which was holding a wad of money - there was a "moderate" amount of gunshot residue. On the back of the right hand, there was a "very, very high level of residue." Tr. 229, Lines 15-19. Based on this information, Mr. Powell told the jury that Freeman's right hand was "very close" to the gun when it was fired, and the left hand was "someone [sic] in the neighborhood." Tr. 240, Lines 8-11. He added that at the time the gun went off, both of Mr. Freeman's palms would have had to be closed into fists, or closed around objects, Tr. 240, Line 7-12. Mr. Powell said based on this residue distribution, Freeman's hand was not on Edwards'

wrist at the time he was shot. Tr. 230, Lines 19 - Tr. 231, Line 5.[4] He also told the jury that Mr. Freeman's hands were not actually on the gun at moment it was fired, because his hand would have been burned. Tr. 231, Lines 6 - Tr. 232 Line 12.

Mr. Powell also told the jury that if the gun was in Mr. Freeman's mouth when it was fired, the "very very high" levels of residue on the back of Freeman's right hand "could" have come from the "cylinder gab [sic]" of the gun, as the majority of the residue from the muzzle would have entered Mr. Freeman's mouth. Tr. 232, Lines 16-24.

Finally, Mr. Powell conceded that the residue distribution pattern on Freeman's hands was consistent with Mr. Edwards' explanation that Freeman's hand pulled on the gun and his fist closed just prior to actual shot. Tr. Line 238, Line 17 - Tr. 239, Line 9.

Q. If a person had a hold of the barrel and pulled on it they would normally, when they pull on it keep their hand closed, correct?

A. Right.

Q. And as soon as it cleared the barrel, if it went off, then you would get a high reading on the back of the hand?

A. Yes, sir.

Q. But none on the palms?

A. If the hands, once it came off it has to be closed and it has to be nothing on the weapon. That is correct.

Id.

The State also offered Dr. Joel Sexton, who was qualified as an expert in forensic

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[4]The probity of this question is unclear. Mr. Edwards stated repeatedly that Mr. Freeman "pulled the gun," not his arm.

pathology. Tr. 280, Line 25 - Tr. 281 Line 3.[5] Dr. Sexton concluded that in order to create the wounds he observed on Freeman's body, the gun would have to have been fired while just against or inside of Freeman's mouth, or from a minimum of eighteen inches away. Tr. 291, Lines 2-7; Tr. 305, Lines 10-14. Dr. Sexton also testified that the bullet entered the lower left side of Freeman's mouth and exited just above and behind his right ear. Tr. 293, Lines 6-24. He then opined on three hypothetical scenarios as demonstrated by members of the prosecution team. First, Dr. Sexton concluded that it would be "nearly impossible" for Freeman to have reached for the gun with his right hand *as* he was falling from being clotheslined by Mr. Edwards. Tr. 297, Lines 6-8. Second, Dr. Sexton, in his capacity as a pathologist, testified that Mr. Freeman would not have grabbed the gun and pulled it toward him after he fell, in an attempt to wrest the gun away from Edwards, because that is contrary to "human nature."[6] Tr. 297, Line 24 - Tr. 298 Line 14. Dr. Sexton then said that Mr. Edwards' being on top of the victim with both hands on the gun and the gun in the victim's mouth would be consistent with the bullet

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[5]Dr. Sexton also testified that he has an "interest" in firearms and engages in recreational shooting. He also took a course in 1969 in wound ballistics as part of his residency. Tr. 282, Line 3-5. Although he was not qualified as an expert in ballistics or gunshot residue analysis, he did offer several opinions on these topics. For example:

> Q. And the fact that the shooter has both hands on the firearm is that consistent with the gunshot residue as it is placed on Mr. Edwards' hands?
>
> A. It would be consistent with getting it on both hand because it is coming out the front of the gun, it is coming out of the cylinder and it is making a cloud and that cloud with a Magnum like that could be a couple of feet in diameter. And so it certainly could get on the shooter's hands.

Tr. 300, Lines 11-19.

[6]Dr. Sexton also testified that Mr. Freeman's high blood alcohol content would impair his ability to defend himself, because he "may not recognize something as dangerous as quickly," Tr. 313 Lines 22-24, but he did not say how it would impede his ability to act in accordance with his expert understanding of human nature. Dr. Sexton also failed to opine on whether batting at a gun with two balled-up fists comported with "human nature."

trajectory. Tr. 298, Line 24 - Tr. 299, Line 11. Ultimately, however, Dr. Sexton admitted that he could not say "beyond a reasonable doubt" where Freeman and Edwards were when the shot was fired. "There are multiple positions they could be in." Tr. 313, Lines 3 -6.

At the close of the State's case, the defense moved for a directed verdict on the grounds that the State had not provided sufficient evidence of malice to send the murder charge to the jury. The defense noted in particular Mr. Edwards' distraught demeanor during his statement to police following the shooting. Tr. 319, Lines 5-12. The State argued that they had presented evidence of malice in the form of Edwards' "going and getting a firearm, chasing this man down, clotheslining him, you take the testimony of the pathologist there are scenarios where this is an intentional act." *Id.*, Lines 15-24. The lower court denied the motion. Tr. 319 Line 25 - Tr. 320, Line 4. The defense renewed its motion for a directed verdict, and asserted that the State had failed to present substantial evidence of guilt as required by the Fourteenth Amendment and *Jackson v. Virginia*, 433 U.S. 307 (1979). Tr. 387, Line 25 - Tr. 388 Line 8. The lower court again denied the motion. *Id.* at Line 9. The jury returned a verdict finding Mr. Edwards guilty of murder.[7]

---

[7]The record suggests the possibility of some irregularity in the manner in which the jury reached this conclusion. During deliberations, the jury requested to be reinstructed on involuntary manslaughter. Tr. 448, Line 18 - Tr. 449, Line 7. The jury had, however, been instructed that "*if* you find that the State has failed to meet is burden of proving the defendant guilty of murder... *then* you would have the option of considering the third possible scenario and that is the charge of involuntary manslaughter. Tr. 439, Lines 18-25 (emphasis added). The jury was reinstructed to this effect when they returned with their question. Tr. 449, Line 21 - Tr. 450 Line 1. Therefore, if the jury had been following instructions, as they are presumed to do, *State v. Ard*, 332 S.C. 370, 505 S.E.2d 328 (1995), they must have already found that the State failed in its burden to prove malice in order to be considering involuntary manslaughter at all.

B. Relevant Legal Principles and Argument

The lower court erred in denying Mr. Edwards' motion for a direct verdict, and as a result he was convicted based on insufficient evidence in violation of due process of law. *Jackson*, 433 U.S. 307. When the State's case is circumstantial, a charge must be submitted to the jury only "if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). The charge may not be submitted to the jury if the evidence gives rise only to a suspicion of the defendant's guilt. *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011). "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475 (2004).

In a case in which a person's intent is the only issue before the jury, the evidence is almost by definition circumstantial. As the South Carolina Supreme Court has indicated, "intent is seldom susceptible to proof by direct evidence and must ordinarily be proved by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred. *State v. Tuckness*, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971); *see also,* 29A Am.Jur.2d Evidence § 1469 at 849-50 (1994) ("Circumstantial evidence alone is often sufficient to show criminal intent because the element of intent, being a state of mind or mental purpose, is usually incapable of direct proof."). In this case, even taking the evidence in the light most favorable to the State, there is simply no substantial evidence from which malice can be proved. *See State v. McHoney*, 344 S.C. 85, 544 S.E.2d 30 (2001) (when reviewing the denial of a directed verdict, the court must consider the facts in the light most favorable to the State).

The only question in this case was Mr. Edwards' state of mind at the moment that Mr.

Freeman was shot. The State contended he acted with malice. Mr. Edwards said the shot was an accident. The State argued that the following factors were evidence of malice:

that Mr. Edwards was angry as a result of the dispute with Mr. Freeman;

that he hurriedly pulled clothes from his drawers while looking for the gun;

that he armed himself;

that he chased Mr. Freeman; and

that the circumstances of the shot (as described by Mr. Harrison) indicated malice.

With regard to all of these factors except for the last, Mr. Edwards was acting with legal intent. Once Freeman failed to leave Edwards' property despite being asked to do so, and having had the opportunity to do so, Edwards was entitled to use reasonable means to eject him. *See State v. Bradley*, 126 S.C. at 533, 120 S.E. at 242 ("for the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances.").[8] Thus, the State's sole remaining evidence of malice was the testimony of Harrison. Harrison's testimony, however, is entirely contradicted by the State's documentary and scientific evidence. What is left is little more than a smoke screen of suspicion – far removed from substantial evidence that Mr. Edwards acted with malice.

The State's theory was that Mr. Edwards kneeled on top of Mr. Freeman, put the gun in

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[8]The jury was instructed, "[a]n invitee cannot be lawfully ejected by the use of violence until the occupant has requested that he leave. Once the invitee refuses the occupant must use only such force as necessary to accomplish the ejectment. No one has the right to kill an invitee guest without any notice to leave. If a trespass has occurred the property owners chosen means of ejectment must be reasonable under the circumstances. Tr. 437, Line 24 - Tr. 438 Line 7. The jury was not expressly instructed that if they found that Mr. Edwards had used reasonable force to eject Mr. Freeman, that they could not find him guilty of any crime, or that they could not consider any reasonable and therefore lawful actions as evidence of malice.

his mouth and shot him, as described by Mr. Harrison, but according to their own evidence, taken in its most favorable light, this theory cannot be true.

First, Harrison said that Edwards was on top of Freeman with his knees on Freeman's "arms and chest and stuff like that." Tr. 109, Lines 17-19, and that Freeman was waving his left arm at Mr. Edwards' gun. Tr. 96, Lines 10-11; Tr. 111, Lines 22-25. Photos taken at the crime scene, however, depict Mr. Freeman's left arm lying across his left hip. Exhibit 41. Had Edwards been on top of the victim at the time he was shot, Freeman's arm could not possibly have gotten into that position. There was no testimony that Freeman's body was moved by anyone after he was shot. Moreover, if Freeman's arm had been in that position at the time he was shot, and Edwards was indeed on top of him, Freeman's hand would not have had gunshot residue on it, because it would have been covered by Edwards' body.

Second, the gunshot residue expert and the forensic pathologist testified that there was a "very, very large amount of gunshot residue on the back of Freeman's right hand, and that therefore this hand must have been in front of the gun or near the cylinder gap at the time the gun was shot. This is simply not what Harrison described. He said Freeman's right hand was "off to the side." In addition, the experts testified that Freeman's right had would have been in a fist or closed around an object at the time he was shot, because there was no gunshot residue on the palm of his hand. Harrison did not mention any object in Harrison's right hand,[9] nor did he mention that Freeman was trying to fend off the gun with a closed fist.

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[9]The State attempted to raise the suspicion that the water bottle on the ground near Mr. Harrison's body may have been in his hand. Tr. 230, Lines 9-14. Not only is the position of the bottle inconsistent with such a scenario, there was no evidence of gunshot residue on the bottle presented, and Harrison did not mention that Freeman was holding a water bottle.

Third, Harrison said that Freeman was pinned to the ground with the gun in his mouth when he was shot. There was, however, no imprint in the ground of a bullet hole or any bullet found. Tr. 213, Line 20- Tr. 214, Line 16. The State's expert witness theorized that bullet must have ricocheted off a rock, Tr. 307, Lines 10-18, but there was no evidence presented that there was a rock underneath or anywhere near Freeman's head.

Fourth, although Harrison claimed the gun was in Freeman's mouth at the time that it was fired, the State's expert on DNA evidence found that a swab of the muzzle of the gun did not have any blood on it. Tr. 271, Lines 11-13.

Fifth, Mr. Powell expressly testified that unless the volumes of gunshot residue were "very, very high," he could not make conclusions about where exactly a person's hands were in relation to a gun, yet he went on to make precisely those sort of conclusions about where Mr. Edwards' hands must have been as he was firing.

The State contended that Mr. Edwards "lost his cool, he went charging into his house, got his revolver and with a reckless disregard and hostility in his heart he ran George Freeman down, he clotheslined him, got down on top of him and stuck that .44 Magnum in his mouth and pulled the trigger." Tr. 423, Lines 19-23. The State's own evidence, however, fails to prove its own theory – Harrison's utterly contradictory testimony does not constitute substantial evidence that Mr. Edwards acted with malice. See *State v James*, 362 S.C. 557, 608 S.E.2d 455 (Ct. App. 2004).

Mr. Edwards' conviction violates the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution and should be reversed.

II. The Lower Court Erred When it Deprived Mr. Edwards of Any Opportunity to Rebut the State's Closing Argument on the Facts

A. Introduction and Relevant Facts

Prior to the delivery of closing arguments, the defense moved that the State be required to open fully on the facts and the law. The defense argued that to do otherwise violated the Due Process Clause of the Fourteenth Amendment, because

> the State will hear my entire theory of the case before they ever have to utter the first word about their theory of the case. They will have ample opportunity to refute any theory I put out there. I will never have an opportunity to refute their theory. If they are to require to open fully on the law and the facts then I can refute their theory and then they come in and refute my theory and I think it is a much fairer process for the jury to hear arguing in that order.

Tr. 389, Lines 7-15. The State countered simply that it was "appropriate" for the state to open on the law, because Mr. Edwards had presented evidence in his defense. *Id.* at Line 25. The lower court denied the defense motion, holding that it was bound by "tradition" and "the rules" as he understood them to be. Tr. 390, Lines 3-11; Tr. 446, Lines 16-24. Depriving Mr. Edwards of any opportunity to respond to the State's arguments deprived him of the effective assistance of counsel and due process of law. U.S. Const. amends VI, XIV; S.C. Const. art. I, §§ 3,14.

B. Background of the Rule Depriving Certain Defendants of the Right to Rebut the State's Closing Argument on the Facts

South Carolina's rules governing whether the party with the first and last closing argument must open on the law and the facts have a dynamic history. In *Atterberry v. State*, 129 S.C. 464, 124 S.E. 648 (1924), the defendant in a criminal case moved to have the prosecuting attorney make his closing argument first. The trial court denied the motion. The South Carolina Supreme Court held that the issue was clearly resolved in defendant's favor by reference to Rule 59 of the then extant Code of Civil Procedure. *Id.* at ___, 651. That rule stated that "the party

having the opening argument shall disclose his entire case and on his closing shall be confined strictly to a reply to the points made, and authorities cited by the opposite party." *Id.* Based on the lower court's clear violation of the rule, the South Carolina Supreme court reversed. In addition to reiterating the rule, however, the court also opined on its wisdom:

> The wisdom of this rule is seen most clearly in a case in which the state relies upon circumstantial evidence. It may be that the circumstances are to all appearances disconnected and yet an able prosecuting attorney, but for this rule, would be able to present a connection, little suspected by the defendant or his counsel. If the prosecuting attorney is allowed to reserve his argument for the closing speech, the defendant will not be allowed to show any defect in the chain of evidence.

Id.

It is not clear why the straightforward logic of *Atterbury* and the old Rule 59 was abandoned, but it appears it may have occurred as a result of the Supreme Court's interpretation of a new Rule 58 of the Circuit Court in *State v. Lee*, 255 S.C.309, 178 S.E.2d 652 (1971). In *Lee*, the defendant again moved that the prosecution be required to open both on the law on the facts. The court cited the new rule, which stated, "the party having the opening in an argument shall disclose fully the law upon which he relies if demanded by the opposing party." *Id.* at 317, 656. The court then concluded, without explanation, that because the rule stated that the opening party was *required* to open on the law upon the defendant's request, that he was *not* required to open on the facts under any circumstances. *Id.* The court did not explain why it was so suddenly retracting the criminal defendant's critical ability to respond to the prosecution's case - a right that had been so logically supported by the *Atterbury* court. The South Carolina Supreme Court reiterated its interpretation of Rule 58 in *State v. Rogers*, 269 S.C. 22, 235 S.E.2d 808 (1977)(per curiam). In *Rogers*, the defendant requested (for some reason) that the Solicitor

not be permitted to open on the facts. The court then concluded, interestingly, that "there is nothing in the Circuit Court Rule 58 which *limits* the initial closing argument to the law of the case, it simply requires a discussion of the law to be included in that argument if demanded by the defendant." *Id.* at 24, 809 (emphasis added). But in the next breath, the court said, "[t]he solicitor is not required to make an opening argument to the jury on issues of fact, but may do so in his discretion." *Id.* at 25, 809. Therefore, after *Rogers*, the State was not required to open on the law, unless the defendant so requested, and was not required to open on the facts at all.[10] Perhaps the most compelling language in *Rogers*, however, is this: "The right to open and close the argument to the jury is a substantial right, the denial of which is reversible error." *Id.* at 24, 809.

Despite the eventual repeal of the Rule on which *Lee* and *Rogers* were based, the practice of giving the opening party the advantage of an unrebuttable argument remains, although only in criminal cases. The civil rule states, "The party having the right to open shall be required to open in full, and in reply may not introduce any new matter." S.C. Rule. Civ. Pro. 43(j). It is not clear why, unlike in *Atterbury* and *Lee*, the rule is not extended to criminal cases.

C. Relevant Legal Principles and Argument

The lower court's adherence to an unexplained interpretation of a rule that no longer exists conflicts with constitutional requirements that must attend a criminal trial. The United States Supreme Court has held that closing argument is a critical aspect of the Sixth Amendment right to counsel. *Herring v. New York*, 422 U.S. 853, 858 (1975). The Court stated, "[t]here can

[10]It is not clear from this interpretation what the State would be left to argue should the defendant not make any requests.

be no doubt that closing argument for the defense is a basic element of the adversary factfinding process in a criminal trial."

> It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for parties are in a position to present their retrospective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and *point out the weaknesses of their adversaries' positions*. And for the defense, closing argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt.

Id. at 863 (emphasis added).

1. Requiring a criminal defendant to choose between fundamental rights is constitutionally intolerable

The only way in which a criminal defendant in South Carolina can obtain the right to point out the weakness of his adversary's position, however, is to waive his right to present a defense, including his right to testify. *See, e.g., State v. Crowe*, 258 S.C. 258, 188 S.E.2d 379 (1972) ("In a criminal prosecution, where a defendant is separately tried and introduces no testimony, he is entitled to the closing argument to the jury."). The United States Supreme Court has held this kind of Hobson's Choice to be constitutionally "intolerable." *Simmons v. United States*, 390 U.S. 377 (1968). *Simmons* addressed a situation in which a defendant needed admit his possession of incriminating evidence (and therefore guilt) in order to demonstrate standing to challenge the evidence under the Fourth Amendment. Simmons argued that this requirement amounted to compelled incriminating testimony in violation of the Fifth Amendment. The lower court had held that the Fifth Amendment was not implicated, because the defendant could simply "choose" not to offer the testimony that conferred standing. The Court found, however,

> the assumption which underlies this reasoning is that the defendant has a choice: he may refuse to testify and give up the benefit. When this assumption is applied to a situation in which the 'benefit' to be gained is that afforded by another provision of the Bill of Rights, an undeniable tension is created. Thus, in this case Garrett was obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, to waive his Fifth Amendment privilege against self-incrimination. In these circumstances, we find it intolerable that one constitutional right should have to be surrendered in order to assert another.

Id.[11]

2. The right to rebut the State's argument is a fundamental right

The South Carolina Supreme Court has acknowledged that the improper denial of a defendant's right to rebut the state's argument can constitute reversible error. Thus, the Court has implicitly acknowledged that closing argument is the type of right that should not be the subject of a *Simmons* dilemma. In *State v. Mouzon*, 326 S.C. 199, 485 S.E.2d 918 (1997), the defendant was denied the right to present the last argument, despite the fact he had presented no evidence. The court found the harm lay in defendant's inability to respond to the State's argument.[12]

> Mouzon focused on the murder charge and was acquitted for murder; he did not focus on the conspiracy charge and was convicted. In its closing argument, the State devoted a significant amount of attention to the issues of drug dealing and conspiracy. If Mouzon had been allowed to argue last, then he could have more adequately addressed the issue of conspiracy to distribute crack cocaine.

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[11]In fact, only South Carolina and North Carolina obligate criminal defendants to make this choice. See N.C. Gen. Prac. R. 10.

[12]The fact that the ability to respond to the State's argument is a critical aspect of presenting a defense is implicitly acknowledged by the existence of S.C. Code Ann 16-3-28 (1995 & Supp. 2001) which expressly affords the right to defendants in capital sentencing proceedings. Notably, a federal court has also found the right to rebut the State's argument is so critical that forgoing the presentation of evidence in order to achieve the right is an acceptable trial strategy. *Whelchel v. Battle*, 489 F.Supp.2d 523, 533 (D.S.C. 2000).

Id. at 205, 923. Certainly, however, the damage done by the defendant's inability to respond to the State's argument is the same, regardless of whether the defendant presented evidence. The prejudice should not be ignored simply because the defendant exercised one of his other constitutional rights. Mr. Edwards was prejudiced in the same way as Mr. Mouzon was – by his counsel's inability to respond to the State's argument. Denying the defendant the right to respond or forcing him to abandon other constitutional rights in order the assert the right is fundamentally unfair, and a deprivation of due process and the right to counsel.

In Mr. Edward's trial, the State gave a three-page opening on the law during which it explained to the jury that the State would need to prove malice in order for them to find Mr. Edwards guilty of murder. It then noted that the following facts were "the sorts of things" that tended to prove malice: that Mr. Edwards was angry; that he hurriedly pulled clothes from his drawers while looking for a gun; that he armed himself; that he chased Mr. Freeman; that he "clotheslined" Mr. Freeman; and that he shot Mr. Freeman in the mouth. Tr. 394, Line 14 - Tr. 395, Line 3. The State also told the jury that the defendant "was engaged in a violent felony" of "pointing or presenting a firearm" when he shot Mr. Freeman, which "cuts against manslaughter." Tr. 393, Lines 9-13.

The defense then argued that the crime was not murder. A dispute arose between Mr. Edwards and Mr. Freeman as a result of which Edwards ordered Freeman to leave his property. Edwards ran inside of his house, during which time Freeman had ample time to leave the premesis, but he did not. Edwards encountered Freeman attempting to climb over the fence in his side yard. Edwards did not shoot Freeman at that point. Instead, Freeman charged at Edwards and said, "don't shoot me." He grabbed the gun, the two went down, and the gun went

off. The defense noted that the expert witnesses could not say with any certainty whether the shot was at close range or from a distance. The defense also pointed out there was no bullet found in the ground beneath Freeman's head, calling into question the story of the State's main witness who had said Edwards was kneeling on top of the victim when he shot, and the defense questioned Freeman's ability to see what he said he saw. The defense argued that the facts did not support a finding of voluntary manslaughter, because Edwards never pointed the firearm at Freeman, and therefore his possession of his own firearm in his own home was not unlawful. Tr. 395 Line 15 - Tr. 413, Line 11 .

The State then presented its argument on the facts. It contended that after the verbal dispute, Edwards was angry and hostile when he went to get the gun, which he later said there had been no need to do. When he came back out with the gun, sixty seconds later, Mr. Freeman was "clear down" by his van, "getting ready to leave." The Solicitor stated that Edwards' tearful admission was not, in fact, remorseful. He also told the jury that clotheslining the victim while he had a gun in the other hand is "reckless disregard." The State pointed out several instances in which it believed Mr. Edwards' version of the events to be inconsistent with the forensic evidence, and argued that it was not a natural defensive reaction to pull a gun toward onesself, but also argued – seemingly to the contrary – that Freeman's natural instincts were impaired by alcohol. Tr. 413, Line 13 - Tr. 423, Line 25.

Defense counsel then put on the record the arguments he would have made in a responsive argument, had he been provided one:

> When Mr. Hodges argued that he was mad when he stood up and called him Freddie. I would argue that was a concern by Mr. Edwards because he normallly didn't call him Freddie and that showed he was acting unnormally [sic]. When Mr. Hodges argued no reason to go get a gun I would have argued going to get a

gun was not illegal. When he said that Freddie being mad when he left the house I would have pointed that Mr. Edwards never said anything as he came out of the house with the gun. Never made any threats against Mr. Freeman and never pointed the firearm at Mr. Freeman. When he said the carrying of the pistol is reckless disregard I would have pointed out that that would mean that anyone who walked upon their premises with a firearm could be guilty of murder for they would be in reckless disregard. When he was talking about, thinking about I am going to tell the police I would have argued that due to the emotion on the tape that wasn't true and if someone is so coldhearted as be able to murder somebody and then sit down and act like he did then they probably are really coldhearted. The defendant said a couple of different versions, I would have pointed out that in the statement he gave the police that night the really only version he gave them was the Mr. Freeman was on the ground first before the gun was grabbed. When he argued about the angle of the bullet I would have pointed out that if the head was tilted back a little bit the bullet would have been at the same angle as shown on the diagram and was testified to by Dr. Sexton. I would have argued that when the gun, when he pointed out that the gun was pulled away from Mr. Freeman I would have argued that when the gun was pulled back that a reflex action easily could have pointed the gun directly at Mr. Freeman. He said grabbing the hand with money was not possible. I would have pointed out that we demonstrated through Mr. Edwards grabbing the paper that it was possible to grab the gun with the money in your hand. And when he argued that GSR was inconsistent with grabbing we would argue that GSR was consistent with the gun being fired immediately upon Mr. Freeman's hand slipping off of it. And when he says, talking about the blood on the t-shirt, I would have pointed out that Dr. Sexton testified the blood on the t-shirt could have been splattered on him and that had the gun occurred at contact range there should have been more blood on the t-shirt. And when he said the different versions of the defendant are not consistent with the forensic evidence. I would have testified that Dr. Sexton clearly said that there were a myriad of versions that could have created the same bullet path and everything.

Tr. 444, Line 15 - Tr. 446 Line 15. Each of these arguments rebuts a critical part of the State's closing. For example, the State said that Edwards' anger at Mr. Freeman was clear evidence of malice. The defense was precluded from responding that perhaps Mr. Edwards was not so angry as the State says - he did not threaten Freeman or point the gun at him as he was attempting to get Freeman to leave the property. The State argued that Edwards was acting in reckless disregard for the safety of others simply by getting the gun, but the defense was precluded from responding

that he was legally entitled to do so. The defense was also precluded from responding to the very specific conclusions drawn by the State on the basis of its forensic evidence, where the testimony was actually quite broad and allowed for a number of scenarios, and occasionally actually contradicted the State's theory.

The State offered a highly circumstantial case in support of its quest to turn a tragic accident into a malice murder. The State's only eyewitness to the shooting told a story that was contradicted in numerous respects by the State's other lay witnesses and its forensic evidence. Therefore, it was critical that the State be able to cobble together an argument that could effectively distract the jury from the profound weaknesses in its case and enable the jury to convict Mr. Edwards beyond a reasonable doubt. The defense's ability to parry the State's thrust in this case through a rebuttal argument was critical. Depriving Mr. Edwards of this right violated his rights to the effective assistance of counsel and due process of law under the Sixth and Fourteenth Amendments to the Untied States Constitution and Articles 1, Sections 3 and 14 of the South Carolina Constitution.

CONCLUSION

For the foregoing reasons, Mr. Edwards' convictions should be reversed.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ...Respondent,

v.

Freddie Edwards, ...Appellant

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1) True Bill Indictment and Sentencing Sheet;

2) Transcript pages
71, Lines 13-19
73, Lines 16-17
75, Lines 21-23
77, Lines 23-25
81, Lines 19-22
82 Line 16 - 85 Line 14
86, Lines 20-23
88 Lines 16 - 89 Line 11
90 Lines 4-9
92 Lines 16-19
93 Lines 5-6
94 Lines 13-14
96 Lines 1-3, 7-15
109 Lines 10-11, 17-19

110 Lines 4-8
111 Lines 16-18, 22 - 25
116, Lines 207
117 Lines 4-12
119 Lines 3-7
121, Lines 15-18
122 Lines 13-14
124 Lines 3-125 Line 8
125 Line 25
127 Line 9
130 Line 24 - 131 Line 1
132 Lines 1-6, Line 22 - 134 Line 1
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298 Lines 8-11, 24 - 299 Line 11
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319 Lines 5-12, 25- 320 Line 4
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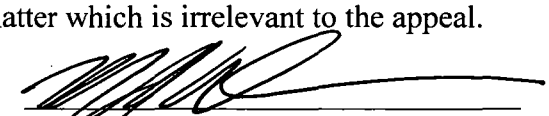
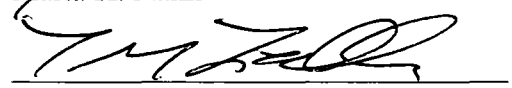
437 Line 24 - 438 Line 7
439 Lines 18-25
444 Line 15 - 446 Line 24
448 Line 18 - 449 Line 7
449 Line 21 - 450 Line 1

3) State's Exhibits 14, 41.

I certify that this designation includes no matter which is irrelevant to the appeal.



Marta K. Kahn



T. Micah Leddy

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2011-195606

The State,

Respondent,

vs.

Freddie Edwards,

Appellant.

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Federal Cases:

State Cases:

***State Statutes*:**

State Rules:

Other Authorities:

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

Did the lower court err in failing to grant a directed verdict where the State's case against Mr. Edwards was entirely circumstantial and the State failed to present substantial evidence of guilt?

II.

Did the lower court err when it allowed the State to "open on the law" during closing argument thereby denying the defense any opportunity to respond to the State's closing argument on the facts?

(FBOA, p. 1).

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge erred in denying Appellant's motion for directed verdict of acquittal for lack of evidence of malice aforethought where there was eye witness testimony of Appellant's expressed threat to kill victim immediately before Appellant pinned victim to the ground and shot him in the mouth.

II.

Whether the trial judge erred in not requiring the prosecution to present full argument prior to Appellant's argument when Appellant lost his right to last closing argument by presenting witnesses and introducing evidence.

RESPONDENT'S STATEMENT OF THE CASE

The instant appeal arises from a re-trial subsequent to Appellant's grant of post-conviction relief. The charges were originally brought in August of 2005.

A Greenwood County Grand Jury indicted Appellant, Freddie Edwards, in August 2005 for the murder of George Freeman, (2005-GS-24-1003), and possession of a firearm or knife during the commission of a violent crime, (2005-GS-24-1004). (R. pp. *). Appellant's first trial was held August 28-31, 2006, before the Honorable Cordell M. Maddox. E.P. Godfrey, Jr., represented Appellant at that trial. The jury convicted Appellant as charged and the trial judge sentenced Appellant to thirty (30) years imprisonment for murder and two (2) years, concurrent, for the weapon charge. Appellant did not appeal. Appellant subsequently filed an application for post-conviction relief complaining, in part, that he was denied the right to direct appeal. On January 4, 2008, the Honorable William P. Keesley granted a belated appeal, and denied and dismissed the remainder of the application.[1] Appellant appealed to obtain the belated review. On March 1, 2010, the South Carolina Court of Appeals granted certiorari to review the direct appeal issue, and, upon review of the issue, reversed the convictions and remanded for a new trial.[2] *Edwards v. State*, Unpublished Op. No. 2010-UP-173 (S.C.Ct.App. filed March 1, 2010).[3] The State sought rehearing which

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[1] Judge Keesley accepted Appellant's request to withdraw the remaining grounds, finding his request was voluntary and made with the assistance of counsel.

[2] Appellant argued that the trial judge erred in denying his request to charge involuntary manslaughter.

[3] Though this jurisdiction does not generally allow citation to South Carolina unpublished opinions, an unpublished South Carolina appellate court opinion may be cited

the Court denied on April 22, 2010. The State subsequently petitioned the Supreme Court of South Carolina for review. The Supreme Court of South Carolina denied the State's petition on March 2, 2011, and issued the remittitur on March 29, 2011.

On June 20, 2011, the State called the charges for a second time. A jury trial was held June 20-23, 2011, before the Honorable Frank R. Addy. Rauch Wise, Esq., represented Appellant at this second trial. The jury convicted Appellant of murder and the possession of a weapon charge. (Tr. p. 454, lines 1-6). The judge sentenced Appellant to thirty (30) years imprisonment for murder, and five (5) years, concurrent, on the weapon charge. (R. p. 465, lines 3-8). This appeal follows.

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in a case where the opinion is directly involved. See Rule 268, SCACR (d) (2).

RESPONDENT'S STATEMENT OF FACTS

On July 16, 2005, a group of men gathered to play poker in Appellant's detached building next to his home. The group of men included, in addition to Appellant, victim's brother Gregory Harrison, Clyde Marshall, Derek Saxon, and Ben Smith. Victim, George "Meat" Freeman, arrived after the game began. Appellant instituted a new rule for the game – that if one folds out of turn, the offender must pay a two dollar fine. This rule became a point of contention between Appellant and victim.

Gregory Harrison testified that no one told victim about the new rule until approximately thirty (30) minutes after victim arrived. (Tr. p. 82, lines 11-20). He testified victim only became aware of the rule when "one of the guys folded out of turn and he seen what Fred was telling the other guy to pay the two dollars...." (Tr. p. 82, lines 20-22). According to Harrison, victim stated if "he folds out of turn he ain't going to pay the two dollars." (Tr. p. 82, lines 22-23). Harrison testified that Appellant "got real angry" and the two "had words" but did not hit each other. Things settled after this initial confrontation between Appellant and victim, and the group resumed play. Approximately ten (10) minutes later, "they had words again." (Tr. p. 83, lines 1-5; p. 84, lines 8-12). Victim again indicated he would not pay the two dollar fine if he folded out of turn. (Tr. p. 83, lines 8-15). Both victim and Appellant were "on their feet" and shouting at each other after victim's second statement, but, again, did not exchange blows. (Tr. p. 83, line 17 - p. 84, line 7; p. 84, lines 20-24). Harrison testified that after the second exchange, Appellant "hit the table ... and said everybody get out of my house." (Tr. p. 85, lines 3-4; p. 85, lines 12-14). Appellant then

immediately "ran out of the door" of the "entertainment house" and went into his residence. (Tr. p. 85, lines 4-5; p. 85, lines 15-20; p. 86, lines 11-17). Harrison testified he told victim, his brother, that Harrison thought Appellant was "going to get a gun." Harrison and victim thereafter exited the building to go to victim's van to leave together as Harrison did not have a car at the house. (Tr. p. 85, lines 6-8; p. 86, lines 18-23; p. 88, lines 12-15). Victim was walking toward the van counting his money. (Tr. p. 88, lines 18-24). Harrison testified he was "trying to get out of there quick because [he] kn[e]w he was going to get a gun." (Tr. p. 89, lines 14-15). As the two were leaving, Harrison testified he saw Appellant "running down the steps" from the home "with a gun." (Tr. p. 90, lines 4-15). Harrison testified that victim tried to "get away from him and ... ran around the corner" of Appellant's home. (Tr. p. 90, lines 16-17). Appellant ran after victim with Appellant's gun visible, "down by his side." (Tr. p. 93, lines 1-6). Though Harrison initially ran another way from victim, he "went back around the house to make sure he was okay...." (Tr. p. 91, line 11-92, line 21; p. 93, lines 7-15). Harrison testified when he went around the house, he saw Appellant on top of victim. (Tr. p. 92, lines 23-25; p. 94, lines 13-14). Harrison testified that victim was on the ground, money still in one hand. (Tr. p. 95, lines 19-20). Harrison testified:

> ... Fred was telling him stuff like, I am going to kill you and all of that stuff like that. So I went around to try to stop him and I told Fred, I said, just leave him alone, you know. And my brother told him, please don't kill me, like that. And the next thing I know, boom.

(Tr. p. 93, lines 17-22). (See also Tr. p. 95, lines 19-23; p. 96, lines 12-15).

Harrison described how Appellant had his knees on victim as victim was on the ground and how Appellant was "shoving the gun down in" victim's mouth, attempting "to

shoot him in the mouth." (Tr. p. 96, lines 1-8). Harrison also described Appellant's reaction immediately after Appellant shot victim:

> He got up and put his head down like this and was shaking his head like this right here saying he messed his life up. And I told him, I said, I don't know if I can say the words I said or what. I said motherf****r, you killed my brother. And thn he pointed at me like this and then he put it back down and he kept on going around the house with his head down.

(Tr. p. 97, lines 2-8).

Harrison testified his brother was "still breathing" when he reached him, but that "[t]he side of his head [was] blowed off." Harrison called 911. (Tr. p. 97, lines 17-23).

Clyde Marshall testified similarly as to the arguments preceding the shooting. Marshall testified victim arrived after the new rule was instituted, and after one of the players, "Sax," had already paid the two dollar fine. (Tr. p. 116, lines 14-24). He recalled Appellant later told victim about the rule and victim stated he would not comply. Words were then exchanged, but no blows were exchanged. Marshall testified that he offered to pay the fine if victim folded early "to keep peace." (Tr. p. 117, lines 8-21). Shortly after, the two stood again and starting arguing again. (Tr. p. 118, lines 6-13). Appellant left. Marshall testified he heard Harrison tell victim, "let's go because Fred gone to get a gun," and saw them both leave. (Tr. p. 118, lines 16-18). Marshall later heard shots, but did not see the shooting. (Tr. p. 118, lines 19-20). After the shots were fired, Harrison came back to Marshall and stated, "Fred done killed my brother." (Tr. p. 118, lines 20-22). Marshall testified he told Harrison, "Fred ain't killed your brother, Fred might have shot him in the leg. And so that is the way it was. I never did go out there." (Tr. p. 118, lines 22-24).

Marshall testified that he also saw Appellant after the shooting. Appellant was "at the doorway to go back up the steps on the patio," and "said, I done messed up my life." (Tr. p. 120, lines 3-9). Marshall testified that victim had been drinking that night. (Tr. p. 121, lines 4-10).

Derek "Sax" Saxon also testified about the new rule at the card game and the resulting argument. Saxon testified that he was the one who reminded Appellant to tell victim about the new rule. (Tr. p. 123, line 13 - p. 124, line 2). Saxon testified that after Appellant told victim about the new rule, victim "said he ain't going to pay no two dollars," victim "jumped up" as did Appellant, and a verbal argument ensued. (Tr. p. 124, lines 5-24). Saxon recalled Appellant told everyone to leave and people started to leave. (Tr. p. 125, lines 7-11). Saxon testified that Harrison "said, let's go Meat, I believe he is going to get his gun. And Meat said, well, I will get my gun," but Appellant had already left and could not have heard Appellant's comment. Moreover, Saxon testified that he never saw victim with a gun. (Tr. p. 125, lines 11-22). Saxon testified that, approximately five minutes after Appellant left, he saw Appellant "come out with a gun on the side." Harrison and victim also saw him approach and "started running." Appellant "started jogging right behind them." (Tr. p. 126, lines 1-3; p. 130, line 12- p. 131, line 18). He saw the brothers split in different directions. (Tr. p. 126, lines 5-6). He later heard a gunshot, but could not see the shooting. (Tr. p. 127, lines 10-13). After the gunshot, he saw Appellant "came back around the house with the gun on his side and said, the gun, the damn gun went off and it f****d my life up," or "I f****d my life up." (Tr. p. 127, lines 21-23; p. 135, lines 8-9). Saxon testified that

Appellant was very upset. (Tr. p. 135, lines 20-25). Saxon testified that victim was intoxicated that night. (Tr. p. 134, lines 6-11).

Ben Smith testified that victim had been playing cards with the group for a while before Appellant explained the new rule. (Tr. p. 138, lines 20-24). Smith testified that victim did not agree with the rule, stated he would not abide by the rule, and a verbal argument with Appellant followed. (Tr. p. 139, line 8-12; p. 140, lines 7-19). The game broke up shortly thereafter with Appellant stating "the game was over with." (Tr. p. 141, lines 2-11). He saw Appellant go into the house. (Tr. p. 142, lines 5-6). Maybe "a minute or so" later, Smith saw Appellant come back out of the house with "something in his hand...." (Tr. p. 143, lines 1-5; p. 151, lines 10-22). Smith testified that victim and Harrison were already in the process of leaving. (Tr. p. 143, lines 13-25). He, too, heard the shot but did not see the shooting. (Tr. p. 144, lines 1-4). Smith testified he saw Appellant after the shooting, and heard him "say, the SOB have done F'd my life up." (Tr. p. 144, lines 9-15). He appeared upset. (Tr. p. 144, lines 17-24). Smith recalled that his impression was that victim had been drinking and was "pretty high when he come in I think." (Tr. p. 145, lines 8-9). Smith testified that he never saw victim with a weapon. (Tr. p. 152, line 6-7). Smith also recalled that Harrison stated right before the shooting, "If you kill my brother" or "shoot my brother I am going to shoot you, one or the other." (Tr. p. 147, lines 9-19).

Mike Martin, formerly a captain with the Greenwood City Police Department, testified that when he arrived on the scene, he saw the victim's body in the side yard, and saw Appellant seated inside the home. (Tr. p. 161, lines 3-5; p. 164, lines 18-21). Martin

testified that Appellant was "visibly upset," and was crying, but told the officer, "he had an argument, Meat grabbed the gun and it went off." (Tr. p. 166, line 4- p. 167, line 10; p. 169, lines 4-18). A second officer, Mike Murdock, similarly testified that while taking Appellant's statement at City Hall, Appellant "broke down, he was crying uncontrollably." (Tr. p. 188, lines 10-19). Murdock testified that Appellant eventually gave a statement and related he followed victim into the side yard where victim was trapped by a locked fence. Victim attempt to run back past Appellant, but Appellant "clotheslined" him. Appellant then stated victim "grabbed the gun or at the gun and the gun discharged." (Tr. p. 189, line 16-p. 190, line 1). Another officer, Travis Clark, testified that Appellant's house was neat with the exception of one area in the bedroom: "one single dresser where the items were seemed to be hastily pulled out and thrown to the floor." (Tr. p. 206, lines 20-24). A box of ammunition was also found in that same room. (Tr. p. 206, lines 13-18). A shoulder holster was found by the back door. (Tr. p. 206, lines 1-3). Clark also testified that victim's body was in the side yard, his money still clutched in his left hand. (Tr. p. 210, lines 8-17).

Gunshot residue ("GSR") testing was performed for both Appellant and victim. Agent Joseph Powell, formerly of SLED, testified that Appellant had a concentration of residue on the left hand with fewer particles found on the back of the right hand. (Tr. p. 225, line 19 - p. 226, line 7). The agent testified that this was consistent with both hands being near or on the gun as it fired. (Tr. p. 226, lines 10-19). It is not, however, consistent with the gun being held in one hand to one side. (Tr. p. 227, line 23 - p. 228, line 8). He further testified that there was no residue on victim's palms, but a high concentration on the back of the right hand, and a lesser amount on the back of the left hand. (Tr. p. 229, lines 11-19).

Agent Powell testified that this was consistent with the left hand being closed. (Tr. p. 230, lines 1-8). Further, it is inconsistent with one hand grabbing a wrist, or grabbing the cylinder or barrel of the gun. (Tr. p. 230, line 19 - p. 233, line 12).

Tracey Thrower, a firearms expert from SLED, testified that he examined Appellant's weapon. He first noticed what appeared to be"skin type material" present on the "right side of the barrel near the muzzle area...." (Tr. p. 250, lines 13-17). Another SLED division confirmed, after DNA testing, that the skin matched to victim. (Tr. p. 271, line 1-8). Agent Thrower testified that he examined the gun to determine whether it was properly functioning. He found the gun "has two internal automatic safeties, " which were properly functioning. (Tr. p. 256, line 19 - p. 258, line 3). He testified that "unless this trigger is held to the rear at the time of firing this gun cannot fire." (Tr. p. 258, lines 5-6). The agent attempted to make the gun fire accidentally but to no avail:

> ... during my testing I want to see if there is any way I can make these fire unintentionally without pulling the trigger. Something else that I will do is with the hammer cocked to the rear I will tap the trigger and that is how I test these two safeties to see if this spring, the springs that operate these two systems are strong enough and fast enough to be quicker than the fall of the hammer. So I will cock it and I will tap the trigger causing it to release without any pressure on the trigger. They worked.

(Tr. p. 258, lines 6-15).

Further, Agent Thrower testified he even attempted to accidentally discharge the weapon by hitting the gun in various places, again to no avail:

> ... I will cock the hammer to the rear and I will take a non-marring, typically a rubber mallet and I will start tapping the gun in various places to see if I can jar it lose. And on this gun I was able to do so. Okay. By tapping on the rear

> of this back strap or on the rear of this hammer I was able to cause this hammer to fall. Okay. However, these two internal safeties that I have been talking about were fast enough that every time I did it they prevented this gun from firing....

(Tr. p. 258, lines 16-25).

Further, the gun has a "long heavy trigger pull," requiring "around twelve and a half pounds" to pull the trigger. (Tr. p. 260, lines 17-22).

Dr. Joel Sexton, a forensic pathologist, testified that his autopsy review of the victim revealed:

> ... a gunshot wound of the left side of the face that entered, well there was injury at the corner of the mouth on the left side which consist of tearing of the flesh at that location. There were also some tears on the inside of the, not the eye itself but the tissue around the eye between the eye and the nose. And there was a devastating fracture of the upper jaw which we refer to as the maxilla. And a gunshot wound that passed through his brain and out the back of his head on the right side above and slightly behind the ear.

(Tr. p. 283, line 23 - p. 284, line 7).

Dr. Sexton found no injuries at all to the hands. (Tr. p. 284, line 25 - p. 285, line 6). Dr. Sexton opined, due to lack of tattooing or stippling, "the gun was either right against the skin or as I mentioned earlier since it was the corner of the mouth, just inside of the mouth or at a distance far enough away that the powder could not reach the skin. An in this particular gun's case it could be a foot and half, it cold be two and a half feet." (Tr. p. 291, lines 2-7). (See also Tr. p. 291, lines 8-20). The mouth also exhibited torn or split skin which was indicative of the muzzle being close to or inside the mouth. (Tr. p. 292, lines 11-21). He also opined, "[t]he path of the bullet is from the corner of the mouth on the left side up

to the right and to the rear coming out above and behind the right ear where I am pointing at this location. So it is going upward to the rear and to the right." (Tr. p. 292, line 24- p. 293, line 3). Dr. Sexton also opined that the injury is consistent with victim on the ground, and the gun being shoved into his mouth before firing. (Tr. p. 299, lines 1-24). Further, Dr. Sexton not only confirmed that victim had a .186 blood alcohol level, but also that such a level could "reduce his ability to defend himself" as "they may not react as quickly or perhaps not even with much strength," depending on their level of tolerance. (Tr. p. 303, lines 12-13; p. 313, line 19-p. 314, line 3).

The defense presented Appellant's stepson Jovan Dawson who testified that after the shooting Appellant "was in a state of shock," and told Dawson to call 911 because "someone had accidentally been shot." (Tr. p. 331, lines 1 - 24). Appellant also took the stand. Appellant testified similarly about the new rule and victim's resistance to the rule. Appellant testified that victim stood up to argue, balled up his fists, but did not hit him. In fact, Appellant testified he did not do anything at that point because he wanted to continue the card game. (Tr. p. 341, line 1 - p. 342, line 7). Appellant testified that victim was not acting his normal, fun self that night. Appellant testified that during the exchange, victim called him "Freddie" when "he normally called [the elder man] Mr. Edwards." (Tr. p. 342, line 15 - p. 343, line 4). Appellant testified that "scared" him and prompted him to tell victim to leave. According to Appellant, victim replied he would not leave. Appellant testified that Harrison, trying to calm Appellant down, approached Appellant from behind and Appellant felt "jammed in." (Tr. p. 343, line 8 - p. 344, line 22). Appellant testified he went into his house and "started throwing clothes out of the drawer looking for my gun." (Tr. p. 346, line

18 - p. 347, line 6). He retrieved the gun, found victim and Harrison standing by their van in the process of leaving. Victim ran, and Appellant chased victim. Victim was trapped in the yard by virtue of a locked gate. Victim was attempting to climb over the fence, but could not. Victim turned and attempted to run toward Appellant. Appellant testified he concerned victim might take the gun from him. Appellant testified he clotheslined victim, dropping to one knee as he hit victim. He recalled victim said, "Freddie, don't shoot me," but also "went for the gun," reaching for it with both hands. (Tr. p. 347, line 23-p. 353, line 24). Appellant pulled back and the gun fired. (Tr. p. 354, line 18 - p. 355, line 5). He did not recall either pulling the trigger intentionally or even having his finger on the trigger. (Tr. p. 355, lines 11-23). Lastly, in his defense, Appellant presented two witness who testified to general good character.

As noted above, the jury found Appellant guilty of murder.

ARGUMENT

I.

The trial judge properly denied Appellant's motion for directed verdict where there was direct evidence in the form of eye witness testimony that Appellant chased the victim, threatened to kill the victim, pinned the victim on the ground, put a .44 pistol in victim's mouth, and fired causing victim's death.

Relevant Facts:

At trial, defense counsel argued that the State failed to present any evidence supporting malice aforethought:

> ... taking the evidence from the light most favorable to the State there is no showing of malice aforethought in this case to justify a murder conviction. I think when you listen to the audio tape it is quite obvious that there was anything but malice aforethought in this case. And without having that, of course, the State has not met its burden of proof.

(Tr. p. 319, lines 5-12).

The State responded:

> ... in the light most favorable to the State there is evidence of malice. I know there is not any, no longer a jury instruction in regard to arming yourself with a firearm. I think the State will argue going and getting a firearm, chasing this man down, clotheslining him, you take the testimony of the pathologist there are scenarios where this was an intentional act. I believe in the light most favorable to the State there is evidence of malice.

(Tr. p. 319, lines 15-24).

The trial judge denied the motion, noting there was "evidence from which a reasonable finder of fact may conclude that malice was present thereby justifying a conviction on the indicted charge." (Tr. p. 320, lines 1-4).

Appellant renewed his motion at the close the case. (Tr. p. 387, line 25 - p. 388, line 8). The trial judge again denied Appellant's motion, without response from the State, noting, "I ... find that there is substantial evidence from which a jury could find that the defendant is in fact guilty of murder in this case." (Tr. p. 388, lines 9-12).

On appeal, Appellant submits that "there is simply no substantial evidence from which malice can be proved." (FBOA, p. 12).

Discussion:

A defendant is only entitled to a directed verdict of acquittal if the State fails to offer proof of the offense charged, or its proof merely raises a suspicion of guilt. *State v. Buckmon*, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001). Here, there is direct, eye witness testimony on not only the shooting, but Appellant's expression of his malice immediately prior to the shooting – specifically, Appellant's statement to victim that Appellant intended to kill the victim moments before putting a gun in victim's mouth and pulling the trigger. The trial judge properly denied the defense motion, and his ruling should be affirmed.

When reviewing the trial judge's denial of a motion for a directed verdict, the appellate court will view the evidence in the light most favorable to the State. *Id. See also State v. Frazier*, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010). "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the

accused, the Court must find the case was properly submitted to the jury." *State v. Freiburger*, 366 S.C. 125, 136, 620 S.E.2d 737, 743 (2005). *See also State v. Weston,* 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); *State v. Zeigler*, 364 S.C. 94, 102, 610 S.E.2d 859, 863 (Ct. App. 2005), *cert. denied* (Jan. 31, 2007). Conversely, "[t]he trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty." *Frazier*, 386 S.C. at 531, 689 S.E.2d at 613. "The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling." *State v. Stanley*, 365 S.C. 24, 42, 615 S.E.2d 455, 464 (Ct. App. 2005). There is no absence of evidence here. In fact, Appellant's argument on appeal does not rest on the lack of evidence, but an asserted lack of credible evidence of malice aforethought. Appellant is mistaken in law and fact.

Appellant concedes many of the facts of record – the game, the disagreement, Appellant's leaving the entertain shed to enter the house and retrieve a gun, Appellant chasing the victim and eventually shooting the victim. In Appellant's view, "[t]he only question in this case was Mr. Edwards' state of mind at the moment that Mr. Freeman was shot." (FBOA, pp. 12-13). The state of mind in question would be the necessary criminal intent to support murder, *i.e.*, the intent to deliberately act with malice aforethought. S.C. Code §16-3-10 ("'Murder' is the killing of any person with malice aforethought, either express or implied.").

"'Malice' is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong." *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998),

citing State v. Johnson, 291 S.C. 127, 352 S.E.2d 480 (1987). It has also been"defined as a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it." *State v. Wilds*, 355 S.C. 269, 276, 584 S.E.2d 138, 142 (Ct. App. 2003). "Malice may be either express or implied." *Id.* The difference is a matter of proof, not designations of differing concepts of malice. *Id, citing State v. Milam*, 70 S.E. 447, 449 (1911) ("merely the manner in which the only kind known to the law may be shown to exists- that is, either by positive evidence or by inference"). Appellant concedes that the testimony from Gregory Harrison of the "circumstances of the shot" would "indicate malice." (FBOA, p. 13). Appellant then attempts, however, to dismiss the evidence by engaging in weighing the testimony, opining that the testimony "is entirely contradicted by the State's documentary and scientific evidence." Id. Respondent submits there are three preliminary flaws with Appellant's argument.

As a first matter, Appellant did not argue that the witness' testimony should be discounted based on a contradiction with other evidence of record. Therefore, the argument is not preserved for review. *State v. Curtis*, 356 S.C. 622, 634, 591 S.E.2d 600, 606 (2004), *citing State v. Byram*, 326 S.C. 107, 485 S.E.2d 360 (1997) (argument on appeal was not preserved for review where Appellant argued a different argument in support of the motion for direct verdict to the trial judge). As a second matter, the trial judge is prohibited from weighing the evidence when considering the motion. *Weston*, 367 S.C. at 292, 625 S.E.2d at 648 ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."). The argument, even if preserved, would lack merit. As a third matter, the testimony must be taken in the light most favorable

to the State. *Id.* Appellant erroneous suggests that the evidence be evaluated in the light most favorable to the defendant – an incorrect statement of law. At any rate, the record well supports there was ample evidence of malice aforethought.

First, as conceded by Appellant, is Gregory Harrison's testimony. Mr. Harrison testified not only that Appellant chased the victim, restrained him and shot him in the mouth, (see Tr. p. 93, line 7 - p. 96, line 25), he also testified that Appellant stated to the victim, "I am going to kill you," immediately before chasing him down and shooting him in the face, (Tr. p. 93, lines 17-22). Clear statements of intent by the defendant will support a finding malice aforethought. For example, in *State v. Fields*, 264 S.C. 260, 267-268, 214 S.E.2d 320, 322 (1975), the state supreme court reviewed whether there was evidence of malice in the record to support the conviction and summarily found evidence of malice in the Appellant's statement to "the deceased, 'I'm going to kill you, god damn it.'" *Id. See also* 40 C.J.S. *Homicide* § 45 (2012 Update) ("Malice is express when admitted or asserted, or shown by positive and direct evidence"). Here, like *Fields*, there was direct evidence of Appellant's malice aforethought. Harrison testified:

> ... Fred was telling him stuff like, I am going to kill you and all of that stuff like that. So I went around to try to stop him and I told Fred, I said, just leave him alone, you know. And my brother told him, please don't kill me, like that. And the next thing I know, boom.

(Tr. p. 93, lines 17-22). (See also Tr. p. 95, lines 19-23; p. 96, lines 12-15).

Consequently, Appellant's attempt to couch the evidence as solely circumstantial, (see

FBOA, p. 12), is not supported by the record.[4] *See State v. Meggett*, 398 S.C. 516, 527, 728 S.E.2d 492, 498 (Ct.App. 2012) ("whether a defendant possessed the requisite intent at the time the crime was committed is typically a question for jury determination because, *without a statement of intent by the defendant, proof of intent must be determined by inferences from conduct.*") (emphasis added); *State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 867 (Ct.App. 2001) ("Nesbitt's statement referring to the perpetrators' agreement to 'do the store' constitutes direct evidence that the specific intent to rob the store existed"); *State v. Johnson*, 65 S.E. 1023, 1024 (1909) ("The intent with which an act is done denotes a state of the mind, and it can be proved only from expressions, or conduct, or both, considered in the light of the given circumstances."). Additionally, it was uncontested that Appellant went to his home, brought out a loaded .44 revolver, then went in search of victim. In fact, Appellant admitted as much in his voluntary statement. (See Tr. p. 189, line 3 - p. 190, line 1). Moreover, he specifically admitted victim was trapped by the locked fence, and, as victim attempted to run back toward the front of the house, Appellant clotheslined victim, bringing him down to the ground. (Tr. p. 189, lines 15-23). Such acts, Respondent submits, are surely circumstantial evidence of acting with malice aforethought. Moreover, the physical properties of the particular gun used would support that the trigger was pulled intentionally – most

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[4] Appellant's argument that there was no direct evidence of malice was not raised below, either, and should be considered procedurally barred. *Curtis, supra*. To the extent the argument at trial may be construed as including a lack of direct or circumstantial evidence, Respondent has addressed the issue on the merits.

specifically, that it is highly unlikely that the gun could accidentally fire. (See Tr. p. 256, line 19 - p. 258, line 3; p. 258, lines 6-15; p. 258, lines 16-25). Agent Thrower testified the gun has a "long heavy trigger pull," requiring "around twelve and a half pounds" to pull the trigger. (Tr. p. 260, lines 17-22).

This Court has recently visited a similar issue, finding:

> ...applying the any evidence standard and viewing the evidence in the light most favorable to the State, we find sufficient evidence supports the family court's denial of Appellant's motion for a directed verdict. Evidence in the record demonstrates Appellant retrieved a deadly weapon from his brother's closet, walked to another room, opened a window, and pointed the gun. Moreover, the record indicates it required six pounds of pressure to fire the gun and the recoil on the specific firearm in question was "negligible," inferring accidental discharge of the second shot was unlikely. Because the family court could infer malice from a defendant's use of a deadly weapon or from the evidence that the discharge of the weapon was likely not accidental, this evidence was sufficient to overcome Appellant's motion for a directed verdict

In re Walter M., 386 S.C. 387, 391-392, 688 S.E.2d 133, 135 (Ct.App. 2009), *cert. denied* (2011).

The logic in *In re Walter M* is applicable here. Further still, the forensic pathologist, Dr. Sexton, confirmed that the characteristics of the wound would support Harrison's testimony of the event. (Tr. p. 299, lines 1-24). Likewise, the GSR expert also testified the GSR testing results were consistent with the witness' testimony, particularly with victim's left hand being closed and were inconsistent with victim's hand grabbing Appellant's wrist, or the barrel or cylinder of the gun. (Tr. p. 230, line 1 - p. 233, line 12). To the extent inconsistencies between Harrison's testimony and the experts' testimony could be considered

in a motion for direct verdict, there are none.[5] However, Respondent maintains that Harrison's testimony of the express intent to kill, and his account of the shooting is sufficient to overcome a directed verdict motion, particular the precise motion here where counsel vaguely argued simply a lack of malice aforethought. (Tr. p. 319, lines 5-12). This Court has previously articulated:

> "Malice aforethought" is defined as "the requisite mental state for common-law murder" and it utilizes four possible mental states to encompass both specific and general intent to commit the crime. *Black's Law Dictionary* 969 (7th ed.1999). These four possibilities are *intent to kill*, intent to inflict grievous bodily harm, extremely reckless indifference to the value of human life (abandoned and malignant heart), and intent to commit a felony (felony murder rule).

State v. Kinard, 373 S.C. 500, 503-504, 646 S.E.2d 168, 169 (Ct.App. 2007) (emphasis added).

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[5] Appellant's arguments by footnote on the credibility of the witness testimony are simply not applicable either. In Note 2, (FBOA, p. 6), Appellant argues witnesses indicated that Harrison was not where he could have seen the shooting; however, the testimony at trial established that the two brothers initially took separate paths when attempting to escape, but that Harrison then returned to aid his brother. (See Tr. p. 91, line 21 - p. 92, line 23). This is jury argument, which, actually, was presented as jury argument. (See Tr. p. 409, lines 1-13). Further, in Note 3, Appellant attempts to diminish the importance of the expert testimony, concluding "[t]hese facts prove only that Edwards shot Freeman, which is not disputed." (FBOA, p. 6). However, the circumstances of the crime, along with the expressed intent to kill, also support a finding of malice aforethought. Finally, in Note 4, Appellant contest the "probity" of the question regarding the GSR evidence and possibility of victim grabbing Appellant's wrist. (FBOA, p. 9). Appellant had previously testified in his prior trial that victim grabbed his wrist. He eventually admitted same in this trial when faced on cross-examination with his prior testimony. (Tr. p. 376, line 18 - p. 377, line 18). The State merely reviewed all known possible scenarios when the GSR expert testified. At bottom, Appellant's notes do not affect the evidence or the analysis here.

As demonstrated, an "intent to kill" was expressly stated by Appellant immediately before the shooting. An expressed intent to kill would appear to be direct evidence sufficient to defeat a motion for directed verdict. *Id. See also Fields, supra.* And, that was merely one portion of the evidence in the State's case – evidence that consistently pointed to Appellant's guilt. Again, there was more than ample evidence to submit the case to the jury. The trial judge did not err in denying Appellant's motion for directed verdict.

Appellant's argument to the contrary should be rejected.

II.

The trial judge did not err in denying the defense request to compel the state to open on the law and the facts in order to allow the defendant to respond to the state's argument on the facts. Precedent clearly dictates that when a defendant offers evidence, he loses the right to make the final closing argument.

Relevant Facts:

At the close of evidence, defense counsel "move[d] to require the State to open fully on the law and the facts in this case." (Tr. p. 388, lines 13-15). Counsel argued that the procedure was not followed for many years in the civil context, but is currently followed in civil cases, and procedure should be changed so that same format is followed in criminal cases. (Tr. p. 388, line 15-p. 389, line 3). Counsel argued:

> ... it is a denial of due process to not allow the, not require the State to open fully. It is a violation of the Fourteenth Amendment of the U.S. Constitution and due process clause of the State Constitution. And the reason for it being under the procedure that we are getting ready to undergo the State will hear my entire theory of the case before they ever have to utter the first word about their theory of the case. The will have ample opportunity to refute any theory that I put out there. I will never have an opportunity to refute their theory. If they are to require to open fully on the law and the facts then I can refute their theory and then they come in and refute my theory and I think it is a much fairer process for the jury to hear arguing in that order.

(Tr. p. 389, lines 2-15).

The State maintained that state practice dictates that if the defendant offers any evidence, the full prosecution argues follows the defense argument. (Tr. p. 389, lines 18-23). The trial judge agreed, and denied the defense request. (Tr. p. 390, lines 3-11). At

the conclusion of both arguments, the defense proffered its "rebuttal" to the state's argument to preserve his argument for prejudice for review on appeal:

> When Mr. Hodges argued that he was mad when he stood up and called him Freddie, I would argue that that was a concern by Mr. Edwards because he normally didn't call him Freddie and that showed he was, that Mr. Freeman was acting unnormally. When Mr. Hodges argued no reason to go get a gun I would have argued going to get a gun was not illegal. When he said that Freddie being mad when he left the house I would have pointed that Mr. Edwards never said anything as he came out of the house with the gun. Never made any threats against Mr. Freeman and never pointed the firearm at Mr. Freeman. When he said the carrying of the pistol is reckless disregard I would have pointed out that that would mean that anyone who walked upon their premises with a firearm could be guilty of murder for they would be in reckless disregard. When he was talking about, thinking about I am going to tell the police I would have argued that due to the emotion on the tape that wasn't true and if someone is so coldhearted as be able to murder somebody and then sit down and act like he did then they probably are really coldhearted. The defendant said a couple of different versions, I would have pointed out that in the statement he gave the police that night the really only version he gave them was that Mr. Freeman was on the ground first before the gun was grabbed. When he argued about the angle of the bullet I would have pointed out that if the head was titled back a little bit the bullet would have been at the same angle as shown on he diagram and was testified to by Dr. Sexton. I would have argued that when the gun, when he pointed out that the gun was pulled away from Mr. Freeman I would have argued that when the gun was pulled back that a reflex action easily could have pointed the gun directly at Mr. Freeman. He said grabbing the hand with money was not possible. I would have pointed out that we demonstrated through Mr. Edwards grabbing the paper that it was possible to grab the gun with the money in your hand. And when he argued that GSR was inconsistent with grabbing we would argue that the GSR was consistent with the gun being fired immediately upon Mr. Freeman's hand slipping off of it. And when he says talking about the blood on the t-shirt, I would have pointed out that Dr. Sexton testified the blood on the t-shirt could have been splattered on him and that had the gun occurred at contact range there should have been more blood on the t-shirt. And when he said the different versions of the defendant are not consistent with the forensic evidence. I would have testified that Dr. Sexton clearly said there were a myriad of versions that could have created the same bullet path and everything. And those are the things that I would have argued had he been required to open fully on the facts of the case.

(Tr. 444, line 15-p. 446, line 15).

Appellant also moved for a new trial based, in part, on the order of argument. (Tr. p. 458, line 20 - p. 459, line 11).

In the appeal, Appellant complains the trial judge's ruling "depriv[ed him] of any opportunity to respond to the State's arguments" and "deprived him of the effective assistance of counsel and due process of law." (FBOA, p. 16).

Discussion:

In South Carolina, our courts have held that "[t]he right to open and close the argument to the jury is a substantial right, the denial of which is reversible error." *State v. Pinkard*, 365 S.C. 541, 543-544, 617 S.E.2d 397, 398 (Ct. App. 2005), *quoting State v. Rodgers,* 269 S.C. 22, 24-25, 235 S.E.2d 808, 809 (1977). Under state practice, "it is well established that where the defendant calls no witnesses and offers no evidence in his behalf, his counsel is entitled to have the concluding argument to the jury." *State v. Mouzon*, 321 S.C. 27, 31, 467 S.E.2d 122, 125 (Ct. App. 1995). Under this practice, the defendant never loses the right to argument. Rather, he merely loses the right to present his argument last. *See State v. Gellis*, 155 S.E. 849, 855 (1930) ("It is evident from the more recent decisions of this court that the rule is that if a defendant offers any evidence on trial of the case, the state is not deprived of its general right to the opening and concluding arguments."). Historically, the right to closing argument follows the party with the burden of proof. Stein Closing Arguments § 1:6: *Right to open and close; order of argument* (2011-2012 ed.)

("Generally, the right to make opening and closing follows the person having the burden of proof"). Some jurisdictions also follow rules for rebuttal and for limitation on scope of argument. Id. However, there is no right to a certain order of argument or certain scope of argument. Appellant's claim of a violation of due process is not support in law or fact. Further, his claim of deprivation of "effective assistance" is not preserved for appeal as it was not raised below. *See, e.g., State v. Freiburger,* 366 S.C. at 134, 620 S.E.2d at 741 (issue not preserved for appeal where one ground is raised below and another raised on appeal). At any rate, Appellant can show no error in the application of state practice.

As noted, the order of closing in criminal cases is determined by the testimony received at trial: "In a criminal prosecution, where a defendant is separately tried and introduces no testimony, he is entitled to the closing argument to the jury." *State v. Crowe*, 258 S.C. 258, 268, 188 S.E.2d 379, 384 (1972). In fact, where any co-defendant offers evidence in a joint trial, the structure of hearing the closing arguments changes and the state is allowed final closing. *See State v. Smith*, 387 S.C. 619, 625, 693 S.E.2d 415, 418 (Ct.App. 2010), *citing State v. Crowe*, 258 S.C. at 268, 188 S.E.2d at 384 ("When defendants are jointly indicted and any one of them introduces evidence, the State is entitled to the closing argument."). The only difference is in capital cases where, by the statute, the defense has the final closing. See S.C. Code § 16-3-28 ("Notwithstanding any other provision of law, in any criminal trial where the maximum penalty is death or in a separate sentencing proceeding following such trial, the defendant and his counsel shall have the right to make the last argument."). Even the joined non-capital counts do not affect this exception. *Cooper v.*

Moore, 351 S.C. 207, 218, 569 S.E.2d 330, 335 - 336 (2002) ("We find § 16-3-28 applies to non-capital charges when a defendant is on trial for a capital charge and that respondent was prejudiced by his attorneys' failure to inform him of his statutory right to make a guilt phase closing statement to the jury."). Given this is not a capital case, that statute, of course, does not apply. Consequently, the non-capital practice in South Carolina applies. This order was followed by the trial judge and there is no error in the application of common practice. Further, there is no constitutional error in the practice itself. Neither is the practice out of line with the practice in other jurisdiction.

Indeed, the South Carolina practice in non-capital cases conforms with practice in other jurisdictions that demonstrates flexibility in the order of argument. *See, for example, State v. Martinez*, 651 A.2d 1189, 1195 (R.I. 1994) ("agree[ing] with the states that have held that the order of argument lies within the sound discretion of the trial justice" and collecting cases). See also 75A Am.Jur. 2d Trial § 449 (Updated November 2012) ("A defendant loses the right to open and conclude closing argument when the defendant introduces evidence other than his or her own testimony."); Stein Closing Arguments § 1:6, *Right to open and close; order of argument* (2011-2012 ed.) (noting "variations" in practice, including allowing "a criminal defendant who introduces no evidence ... to open and close the final arguments, or at least to argue after the state."). If any "trend" may be detected, it is that the prosecution is always allowed the final argument.

For example, in Georgia, a pre-2005 statute provided "[i]f the defendant introduces no evidence, his counsel shall open and conclude the argument to the jury." By 2005

amendment, a Georgia state statute now provides the prosecution has last closing in all criminal cases. *McKenzie v. State*, 667 S.E.2d 43, 48 (Ga. 2008). See also Ga. Code § 17-8-71 (2005) ("After the evidence is closed on both sides, the prosecuting attorney shall open and conclude the argument to the jury. The defendant shall be entitled to make a closing argument prior to the concluding argument of the prosecuting attorney."). In Nevada, even in death penalty cases, the prosecution has the right to open and close argument. *Williams v. State*, 945 P.2d 438 (1997), *receded from on other grounds Byford v. State*, 994 P.2d 700 (2000) ("NRS 175.141 mandates that the State open and close the argument. The district court is bound by statute and does not have the authority to allow Williams to argue last."). Even so, in North Carolina, the criminal rules provide, much like South Carolina, that the criminal defendant may open and close if the defendant does not offer evidence. *See State v. Matthews*, 720 S.E.2d 829 (N.C.Ct.App. 2012). It is clearly a matter of state procedural preference which neither offends due process or any other constitutional right. *See Hale v. United States*, 410 F.2d 147, 152 (5th Cir.), *cert. denied*, 396 U.S. 902 (1969) ("The order and extent of the argument is entirely within the discretion of the trial court.").

Appellant argues, however, that the practice in this State offends notions of fairness and due process because there is no basis for the practice (the prior rule having been repealed); and current civil rules require a different order. (FBOA, p. 18). Appellant has failed to show support for his contention there is any due process violation.

As noted, the order of closing is a matter of state procedural rule. The United States Supreme Court has consistently held that the States are free to shape their own rules of

procedure. *See, e.g., United States v. Scheffer*, 523 U.S. 303, 316 (1998), *quoting Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) ("we thus stressed that the ruling did not 'signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures.'"). The right to argument is even further removed from the right to present evidence, or rebut evidence, as argument is not evidence. *See, e.g., Sosebee v. Leeke*, 293 S.C. 531, 535, 362 S.E.2d 22, 24 (1987) ("the solicitor's closing argument is not evidence"); *Ex parte Morris*, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006), *quoting S.C. Dept. of Transp. v. Thompson,* 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct.App.2003) ("'[a]rguments made by counsel are not evidence'"). However, the Supreme Court has recognized the right to a closing argument is an important right securing "a basic element of the adversary factfinding process in a criminal trial." *Herring v. New York*, 422 U.S. 853, 858 (1975). "[A] total denial of the opportunity for final argument in a nonjury criminal trial is a denial of the basic right of the accused to make his defense." *Id* at 859. There is no such denial here. Defense counsel for Appellant presented a lengthy closing argument. (See Tr. pp. 395-413). Again, Appellant has failed to show support for his position.

Further, the prior state court rule relied upon in *Atterberry v. State*, 129 S.C. 464, 124 S.E.648 (1924), and referenced by appellant, (See FBOA, pp. 16-17), while no longer in existence, did not even specifically address the order of argument – merely that "[t]he party having the opening in argument shall disclose his entire case and on his closing shall be confined strictly to a reply to the points made, and authorities cited by the opposite party." 129 S.C. at __, 124 S.E. at 651. Further, the Rule was subsequently changed to reflect: "The

party having the opening in an argument shall disclose fully the law upon which he relies if demanded by the opposite party." *State v. Lee*, 255 S.C. 309, 318, 178 S.E.2d 652, 656 (1971), *overruled on other grounds State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). Later case law clarified that the prosecution could choose whether to argue law or facts. *State v. Rodgers*, 269 S.C. at 25, 235 S.E.2d at 809 ("There is nothing in Circuit Court Rule 58 which limits the initial closing argument to the law of the case, it simply requires a discussion of the law to be included in that argument if demanded by the defendant. The solicitor is not required to make an opening argument to the jury on issues of fact....").[6] But that does not address the specific argument at issue here. Appellant's argument here suggests that the order and scope of closing argument be radically altered from well established common practice, which would also have the concomitant effect of eliminating the opportunity for a defendant to avail himself of the "privilege of concluding" argument. *See generally State v. Gellis*, 158 S.C. 471, ___, 155 S.E. 849, 855 (1930) (reference precedent from 1802 allowing "'in all cases where a defendant called no witnesses, he should have the privilege of concluding to the jury.'"). He offers no specific constitutional cause or basis for such a radical change, and none is readily apparent. The court and the parties below had the right to rely on well established precedent and long standing practice – a practice that never deprives any defendant of the opportunity to present a closing argument. That practice was

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[6] *Rogers* underscores that contest may be made to the order and scope of closing either way. In *Rogers*, the defendant contested the prosecutions right to open on law and facts, essentially, one assumes, being allowed two opportunities to present its case to the jury as compared to the defense's single opportunity. Appellant's suggestion of "unrebuttable argument," (FBOA, p. 18), will always be available where the State argues last.

adhered to in the instant case and there is no error. Even so, if the order of argument in the instant case is somehow deemed error, the error could only be harmless for several different reasons.

The Supreme Court of South Carolina has concluded that denial of the right to last argument "is not the kind of error that would affect the entire conduct of the trial from beginning to end," and is "subject [to a] harmless error analysis." *State v. Mouzon*, 326 S.C. 199, 485 S.E.2d 918 (1997). In *Mouzon*, the state supreme court concluded that, pursuant to state procedure, the defendant was entitled to the right to last closing because he actually did not present evidence. Further, the court concluded the error was not harmless as counsel concentrated "on the murder charge and was acquitted of murder; he did not focus on the conspiracy charge and was convicted." 326 S.C. at 205, 485 S.E.2d at 922. The court noted that the prosecution "devoted a significant amount of attention to the issues of drug dealing and conspiracy. If Mouzon had been allowed to argue last, then he could have more adequately addressed the issue of conspiracy to distribute crack cocaine." *Id.* There is no like situation here. First, according to well settled state procedure, Appellant lost the right to last argument as he introduced evidence. Second, the focus here remained on one event - the murder. Third, a comparison of the points defense counsel proffered as points he would have made if he was granted the right to last argument closely mirror the points previously made in his own argument. For instance, as to the suggested rebuttal argument that it not illegal to have gun on one's own property, counsel argued the same basic point in his closing, (Tr. p.406, line 22 - p. 407, line 22); as to lack of threats, that is not supported by the record, yet, the defense did argue that Appellant did not point the gun at victim during the chase, (Tr.

p. 399, lines 17-21); as to emotion in the statements to police, the defense also argued that as well, (Tr. p. 397, line 16 - p. 398, line 5; p. 410, line 24 - p. 411, line 11); the defense also presented argument as to the angle of bullet, forensics, and GSR (Tr. p. 401, line 10 - p. 404, line 22). The record supports a fair opportunity to address each and every fact relied upon by the State as demonstrated by the evidence. There was nothing of substance left unaddressed. Again, error, if any, could only be harmless on this record.

However, Respondent submits there is no error. Appellant's argument to the contrary should be rejected.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the lower court should be affirmed.

Respectfully submitted,

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Chief Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

November 13, 2012.
Columbia, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ...Respondent,

v.

Freddie Edwards, ...Appellant

REPLY BRIEF OF APPELLANT

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ARGUMENT

I. Mr. Edwards Rights to Due Process and Effective Assistance of Counsel Were Violated Not Simply because He Was Not Permitted to Argue First and Last but because He Was Deprived of the Opportunity to Respond to the State's Argument at All

Mr. Edwards contends that the lower court erred by depriving him of the right to respond to the State's closing argument because Mr. Edwards exercised his constitutional right to present a defense. The State attempts to sidestep the claim by mischaracterizing it as involving only the order of arguments and not their substance.

As Mr. Edwards indicated in his opening brief, the vast majority of jurisdictions follow a procedure whereby the prosecution "opens the argument. The defense then follows with a reply, and the prosecution responds with a rebuttal." Stein Closing Arguments 2d 1:6 (2011-2012 ed.) This structure creates a general framework not just for the order of the arguments but for the content, such that each party gets one opportunity to state its case and one opportunity to respond to the opposition's argument. The party with the burden gets the strategic benefit of primacy and recency, by arguing first and last, but does not retain an exclusive opportunity to respond to his adversary.

It bears noting that when the Federal system adopted the framework for argument set forth above in Federal Rule of Criminal Procedure 29.1, the Rules Committee stressed that the argument-response-rebuttal framework was the only fair one and that allowing the burden-holder to proceed first should not be interpreted as a license for prosecutorial sandbagging:

> The rule is drafted in the view that fair and effective administration of justice is best served if the defendant knows the arguments actually made by the prosecution in behalf of conviction before the defendant is faced with the decision whether to reply and what to reply.

> [T]he Committee is of the view that the prosecutor, when he waives his initial closing argument, also waives his rebuttal.

Fed. R. Crim Pro. 29.1 advisory committee notes.

The propriety of structuring arguments in this way recognizes the important principles at stake:

> Closing argument is the last word of the government counsel to the jury, and in our adversary system, it is usually the time when the prosecution delivers its most telling blows against the hapless defendant. This advantage already possessed by the government should not be magnified by changing the usual order of argument..[.]

United States v. Yaughn, 493 F.2d 441, 447 n.6 (5th Cir. 1974) (Rives, J., dissenting).

While the State goes to great pains to note that there are a handful of other jurisdictions that reward the defendant with the benefit of arguing first and last if he agrees not to present a defense, it cites none that allow the State to take advantage of the order of argument by transforming what should be its rebuttal argument into the main event. *See Bailey v. State*, 440 A.2d 997 (Del. 1982) (reversing conviction where prosecution "sandbagged" defense by withholding bulk of argument for rebuttal).

The State further claims that Mr. Edwards has failed to demonstrate prejudice arising from his inability to respond to the State's closing argument. Mr. Edwards highlighted those arguments to which he was unable to respond in his Opening Brief and will not repeat them here. He will instead note that in addition to the specific arguments that he was precluded from rebutting, there is another, more intangible layer of prejudice arising from the manner in which closing arguments were conducted in his case. As Judge Rives of the Fifth Circuit put it,

> If the government is allowed to waive its opening argument, and to reserve an opportunity to make a full closing argument, the defendant is forced to argue his nonculpability before the government has fully revealed its theory of the case.

> This puts the burden of going forward upon the defendant at a critical state in the trial, and may understandably lead to confusion among the jurors as to who has the burden of proof.

Yaughn, 493 F.2d at 446 (Rives, J., dissenting).

The lower court erred by allowing the state to "open on the law" and reserve the majority of its argument until the defendant exercised his sole opportunity for argument. The procedure violated Mr. Edwards rights to a fair trial, due process and the effective assistance of counsel in violation of the Sixth and Fourteenth Amendments of the United States Constitution and Article I, sections 3 and 4 of the South Carolina Constitution. Reversal is required.

CONCLUSION

For the foregoing reasons, and the reasons contained in his initial brief, Mr. Edwards' conviction should be reversed.

Respectfully submitted,

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The South Carolina Court of Appeals

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March 21, 2012

Blake Hewitt, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
1614 Taylor St.
Columbia, SC 29202

Re: The State v. Edwards, Freddie
2011195606

Dear Mr. Hewitt:

Enclosed is a copy of an Order of the Court for the above case.

Very truly yours,

V. Claire Allen, Deputy
CLERK

JAK/dw

cc: C. Rauch Wise, Esquire
Andrew Michael Hodges, Esquire
Senior Assistant Deputy Attorney General Salley W. Elliott

The South Carolina Court of Appeals

The State, Respondent,

v.

Freddie Edwards, Appellant.

The Honorable Frank R. Addy, Jr.
Greenwood County
Trial Court Case No. 2005-GS-24-01003
2005-GS-24-01004

ORDER

Blake Hewitt, John Nichols, and Frank Eppes, attorneys for Appellant, filed a motion to be relieved as counsel on the ground that Appellant has elected to terminate his relationship with the attorneys. Appellant consented to the motion.

After careful consideration, the motion to be relieved is granted. Appellant's attorney C. Rauch Wise shall remain Appellant's counsel of record. See Rule 264(a), SCACR ("The attorneys . . . of the respective parties in the court below shall be deemed the attorneys . . . of the same parties in the appellate court until withdrawal is approved and notice is given . . . .").

IT IS SO ORDERED.

Columbia, South Carolina

cc: C. Rauch Wise, Esquire
John S. Nichols, Esquire
Andrew Michael Hodges, Esquire
Assistant Deputy Attorney General Salley W. Elliott
Freddie Edwards

FILED
3.21.12 DW

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ... Respondent,

v.

Freddie Edwards, ... Appellant.

PETITION TO WITHDRAW AS COUNSEL

This petition to withdraw is filed pursuant to Rule 264 of the South Carolina Appellate Court Rules. Rule 264(b) instructs that an attorney may not withdraw from a matter pending in the appellate court without justifiable cause or the consent of his client. The rule also provides that the withdrawing attorney must give written notice to the client and the adverse party, and must also receive an order from the appellate court.

The client has elected to terminate his relationship with attorneys Blake Hewitt, John Nichols, and Frank Eppes. The client therefore consents to this petition for withdrawal, and that consent is indicated by his signature below.

Freddie Edwards March 8, 2012
Freddie Edwards

The attached proof of service indicates that this petition has been served on the client and the adverse party.

Attorneys Hewitt, Nichols, and Eppes therefore request an order from this court granting this petition and noting their withdrawal from this matter.

Respectfully submitted,

March 8, 2012

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Attorneys for Appellant

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: _____
(Clerk) (Deputy Clerk)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ... Respondent,

v.

Freddie Edwards, ... Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served the client, Mr. Edwards, and counsel for the Respondent with the *Petition to Withdraw as Counsel* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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Columbia, South Carolina 29210

Salley W. Elliott, Esquire
Assistant Deputy Attorney General
S.C. Attorney General's Office
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March 8, 2012

Ashleigh W. Hair
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BNTD
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John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL
O. Eugene Powell, Jr.
Rebecca Cagle Patrick

March 8, 2012

VIA HAND DELIVERY
The Honorable Tanya Gee
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Freddie Edwards
Case Tracking No. 2011195606

Dear Ms. Gee:

Please find enclosed for filing the original and seven (7) copies of a *Petition to Withdraw as Counsel* in regards to this case. I have also enclosed a proof of service of this document on Mr. Edwards and counsel for the Respondent. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Ashleigh W. Hair
Paralegal to Blake Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/awh
Enclosures
cc: Frank L. Eppes, Esquire
Sally W. Elliott, Esquire
Freddie Edwards
Armanti Edwards (via e-mail)

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 5, 2012

The Honorable Tanya Gee
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: The State v. Edwards, Freddie, 2005-GS-24-01003 and -01004 (Case Tracking No. 2011-195606)

Dear Ms. Gee:

The appeal in the above matter is currently pending before the South Carolina Court of Appeals. Enclosed is correspondence which Mr. Edwards sent to Chief Justice Toal. Since, among other things, he seeks to have Mr. Nichols and Mr. Hewitt relieved as his counsel in this matter, I am forwarding this correspondence to your office.

Very truly yours,

CLERK

Enclosure

cc: C. Rauch Wise, Esquire
John S. Nichols, Esquire
Assistant Deputy Attorney General Salley W. Elliott
Mr. Freddie Edwards, #317346

RECEIVED
3/1/12
MAR 05 2012
S.C. SUPREME COURT

S.C. Supreme Court
C. Judge Jean Toal
C/o S.C. BAR
P.O. Box 11330 · Columbia, SC 29211

Re. Counsels Refusal To Return Unearned Fees/Honor Termination in Contract...

Dear Chief Justice Ms. Toal:

I and my Family seriously am in need of your Assistance. Attoneys BLAKE ~~Hewitt Nichols~~, et al and/ Law Firm of:

* Bluestein · Nichols
Thompson & Delgado
of 1614 Taylor Street, Columbia, S.C.
Tel. ____
have failed to return the $30,000 (Thirty Thousand Dollars) or any and "[All]" unearned Portion thereof upon my repeated requests and that of my Family.

Counsels had me blindly Agree to a Fee Agreement under the False pretense or Deception It involved payment for my Appeal and other legal matters

~~II~~ of ~~II~~

the alleged contracted upon closer examination simply did not state. I've written counsel(s) explaining I wish to Terminate their Services since Counsel has only done some possible 10% of work on my case if that.

I and my family cannot Afford to pay 30k for an Appeal counsel have not Briefed and sent me a copy thereof. Counsels were retained some 2-3 months. The Written Contract Clearly stated I have the Right to Terminate Counsels Services at any time and they are To Return Unearned portion of my money. Counsels have not written me regarding my request they respectfully withdraw from my case since the amount of money unearned the Law entitles be Returned. My Daughter, JANICE GARRISON I've given Power of Attorney. I wish to obtain New Counsel even if Pro Bono or at greatly Reduced Fees. Counsel has not really done any work on my case. My daughter can be reached at 864-299-0307. your disposition A.S.A.P. Thank You.

Freddie Edwards-F.E.
#317346 KCI
4344 Broad River Rd, Cola, SC 29210

cc. S.C. BAR
Resolution of Fee Dispute Board

Mr. Freddie Edward
317346-F3-B-23
Kirkland C.I.
1344 Broad River Rd.
Columbia, SC 29210

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL™

7006 2760 0003 8472 3771

To. S.C. Supreme Court
Judge Jean Toal
P.O. Box 11330
Columbia, SC 29211

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RECEIVED
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ... Respondent,

v.

Freddie Edwards, ... Appellant.

(SECOND) MOTION FOR EXTENSION

Pursuant to Rule 240, SCACR, Appellant requests a thirty-day extension of the deadline for filing and serving his initial brief and designation of matter to be included in the record on appeal. The current deadline is March 5, 2012. This is Appellant's second request for an extension of the briefing deadline.

As required by the Supreme Court's order concerning extensions in criminal direct appeals,[1] the following facts are offered as good cause for the extension:

(1) Appellant's counsel received the trial transcript on January 3, 2012.

(2) Because of briefing obligations in other cases, Appellant's counsel has not yet had the opportunity to review the transcript.

(3) Appellant's counsel was scheduled to begin work on the case this week, but the client recently (last week) requested that counsel cease all work on his case.

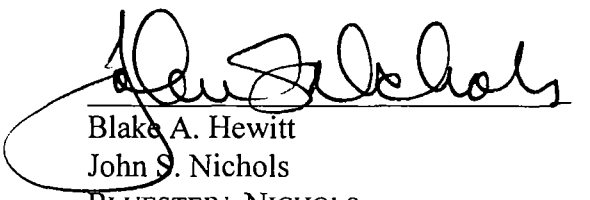
---

[1]See *Re: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings*, S.C. Sup. Ct. Order dated March 18, 2009.

Counsel is seeking a meeting with the client to occur during the week of March 5th through the 9th to ascertain, among other things, whether the client will be seeking new counsel and how the client plans to handle his appeal.

By his signature below, counsel for the Appellant certifies that he believes the extension is warranted.

Respectfully submitted,



February 29, 2012

Blake A. Hewitt
John S. Nichols
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
(803) 779-8995 (facsimile)
bhewitt@bntdlaw.com
jsnichols@bntdlaw.com

Frank L. Eppes
EPPES & PLUMBLEE
P.O. Box 10066
Greenville, SC 29603
(864) 235-2600
(864) 235-4600 (facsimile)
feppes@eppesandplumblee.com

Attorneys for Appellant

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: _____
(Clerk) (Deputy Clerk)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ... Respondent,

v.

Freddie Edwards, ... Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with the *Motion for Extension* by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

Salley W. Elliott, Esquire
Assistant Deputy Attorney General
S.C. Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

February 29, 2012

Ashleigh W. Hair
Paralegal
BLUESTEIN, NICHOLS, THOMPSON & DELGADO, LLC

BNTD
BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL
O. Eugene Powell, Jr.

February 29, 2012

VIA HAND DELIVERY
The Honorable Tanya Gee
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Freddie Edwards
Case Tracking No. 2011195606

Dear Ms. Gee:

Please find enclosed for filing the original and seven (7) copies of a *Motion for Extension* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Respondent. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Ashleigh W. Hair
Paralegal to Blake Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/awh
Enclosures
cc: Frank L. Eppes, Esquire
Sally W. Elliott, Esquire
Freddie Edwards
Armanti Edwards (via e-mail)

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 21, 2012

John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
1614 Taylor St.
Columbia, SC 29202

Re: The State v. Edwards, Freddie
2011195606

Dear Mr. Nichols:

The following Order has been endorsed on your Motion for Extension in the above entitled case on appeal.

"Granted.

John Cannon Few, C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

February 21, 2012."

Please be advised the Appellant's Initial Brief and Designation of Matter should be served and filed on or before March 5, 2012.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/dw

cc: C. Rauch Wise, Esquire
Andrew Michael Hodges, Esquire
Senior Assistant Deputy Attorney General Salley W. Elliott

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ... Respondent,

v.

Freddie Edwards, ... Appellant.

MOTION FOR EXTENSION

Pursuant to Rule 240, SCACR, Appellant requests a thirty-day extension of the deadline for filing and serving his initial brief and designation of matter to be included in the record on appeal. The current deadline is February 2, 2012. This is Appellant's first request for an extension of the briefing deadline.

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
~~Clerk~~ (Deputy Clerk)

January 31, 2012

Respectfully submitted,

Blake A. Hewitt
John S. Nichols
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
(803) 779-8995 (facsimile)
bhewitt@bntdlaw.com
jsnichols@bntdlaw.com

Frank L. Eppes, Esquire
Eppes & Plumblee, P.A.
P.O. Box 10066
Greenville, SC 29603
(864) 235-2600
(864) 235-4600 (facsimile)
feppes@eppesandplumblee.com

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case Nos. 2005-GS-24-1003, & -1004

State of South Carolina, ... Respondent,

v.

Freddie Edwards, ... Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with the *Motion for Extension* by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

Salley W. Elliott, Esquire
Assistant Deputy Attorney General
S.C. Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

January 31, 2012

Ashleigh W. Hair
Paralegal
BLUESTEIN, NICHOLS, THOMPSON & DELGADO, LLC

BNTD
BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL
O. Eugene Powell, Jr.
Rebecca Cagle Patrick

January 31, 2012

VIA HAND DELIVERY
The Honorable Tanya Gee
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Freddie Edwards
Case Tracking No. 2011195606

Dear Ms. Gee:

Please find enclosed for filing the original and seven (7) copies of a *Motion for Extension* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Respondent. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Ashleigh W. Hair
Paralegal to Blake Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/awh
Enclosures
cc: Frank L. Eppes, Esquire
Rauch Wise, Esquire
Sally W. Elliott, Esquire

BNTD
BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL
O. Eugene Powell, Jr.
Rebecca Cagle Patrick

January 18, 2012

The Honorable Tanya Gee
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Freddie Edwards
Case Tracking No. 2011195606

Dear Ms. Gee:

John Nichols and I have been retained to represent Freddie Edwards, who is the Appellant in this appeal. Attorney Frank L. Eppes, of Eppes & Plumblee, will also be representing Mr. Edwards. Please note our appearances for the Court's records.

I learned this past Friday that Attorney Rauch Wise, who represented Mr. Edwards at trial, has received the trial transcript in this case. The court reporter mailed the transcript to Attorney Wise on December 29th, 2011, and I believe he received the transcript January 3, 2012. I expect the Court will set a deadline of 30 days from January 3rd for filing Mr. Edwards's initial brief.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Blake A. Hewitt (by Auth w/ permission)

Blake Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

BAH/awh
cc: S.C. Court Administration
Frank L. Eppes, Esquire
Rauch Wise, Esquire
Andrew M. Hodges, Esquire
Sally W. Elliott, Esquire

The Supreme Court of South Carolina

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Notice

Upon request and for good cause shown, Joy Holston, Court Reporter, is hereby granted an extension up to and including December 15, 2011 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
11/14/2011

cc: Rauch Wise, Esq.
Joy Holston

The Supreme Court of South Carolina

	(State of South Carolina	
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TITLE OF	(V.	2005GS2401003
CASE	(	
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Notice

Upon request and for good cause shown, Joy Holston, Court Reporter, is hereby granted an extension up to and including November 15, 2011 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
10/14/2011

cc: Rauch Wise, Esq.
Joy Holston

The Supreme Court of South Carolina

TITLE OF CASE

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RECEIVED
SEP 16 2011
SC Court of Appeals

Notice

Upon request and for good cause shown, Joy Holston, Court Reporter, is hereby granted an extension up to and including October 15, 2011 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
09/14/2011

cc: Rauch Wise, Esq.
Joy Holston

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 22, 2011

C. Rauch Wise, Esquire
305 Main St.
Greenwood, SC 29646

Re: The State v. Edwards, Freddie
2011195606

Dear Mr. Wise:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Please be advised that pursuant to Rule 602, SCACR and the order of the Chief Justice dated December 12, 1997, if you expect the Office of Indigent Defense to pursue this appeal, you must provide that office with all information required to proceed with this appeal, failing which, this office will consider you counsel of record.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within thirty (30) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

1) any final judgment from the circuit court which includes a sentence of death;

2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;

3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;

4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;

5) any final judgment from the circuit court pertaining to elections and election procedure;

6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;

7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,

V. Claire Allen

V. Claire Allen
DEPUTY CLERK

VCA/dw

cc: Chief Appellant Defender Robert M. Dudek
Andrew Michael Hodges, Esquire
Assistant Deputy Attorney General Salley W. Elliott

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 22, 2011

C. Rauch Wise, Esquire
305 Main St.
Greenwood, SC 29646

Re: The State v. Edwards, Freddie
2011195606

Dear Mr. Wise:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen
DEPUTY CLERK

VCA/dw

cc: Chief Appellant Defender Robert M. Dudek
Andrew Michael Hodges, Esquire
Assistant Deputy Attorney General Salley W. Elliott

20111192606

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Honorable Frank R. Addy, Jr, Circuit Court Judge

Case No. 2005-GS-24-1003
Case No. 2005-GS-24-1004

7.1.11
7.10.11

State of South Carolina ..... Respondent,

vs.

Freddie Edwards ..... Appellant.

JB

NOTICE OF INTENT TO APPEAL

Freddie Edwards hereby appeals the Ruling of the Honorable Frank R. Addy, Jr. dated June 23, 2011. The Ruling was entered into the record on June 23, 2011.

July 1st, 2011

C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Appellant

Other Counsel of Record:

Andrew M. Hodges, Deputy Solicitor
Eighth Circuit Solicitor Office
P.O. Box 516
Greenwood, SC 29648

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Honorable Frank R. Addy, Jr, Circuit Court Judge

Case No. 2005-GS-24-1003
Case No. 2005-GS-24-1004

State of South Carolina ..... Respondent,

vs.

Freddie Edwards ..... Appellant.

AFFIDAVIT OF SERVICE

Personally appeared before me, Sandy Traynham, who, after being duly sworn, deposes and says that she is the Receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That, on July 1, 2011, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Notice of Appeal in the above case addressed to Andrew M. Hodges, Deputy Solicitor, P.O. Box 516, Greenwood, SC 29648, and Honorable Frank R. Addy, Jr., 528 Monument St., Ste. 210, Greenwood, SC 29646.

Sandy Traynham

Sworn to and Subscribed
before me this 1st day
of July 2011.

Notary Public for South Carolina
My Commission Expires: 12/7/2017

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauch@simplepc.net

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

July 1, 2011

Jeanette Barber, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State vs. Freddie Edwards

Dear Ms. Barber:

I am enclosing herewith for filing the original Notice of Appeal together with the Affidavit of Service regarding the above matter. Your help is greatly appreciated.

With kindest regards, I am

Very truly yours,

C. Rauch Wise

CRW/slt
Enclosure

cc Andrew Hodges, Deputy Solicitor
Hon. Frank R. Addy, Jr.
Court Administration

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646

GREENVILLE SC 296
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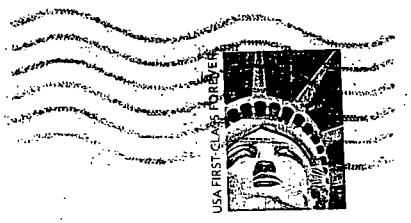

Jeanette Barber, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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