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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from York County Court of General Sessions
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2023-001483

The State.....Respondent

v.

John Kenneth Totherow.....Appellant

RECORD ON APPEAL

WILLIAM G. YARBOROUGH, III
LAUREN C. HOBBS
WGY Law
308 West Stone Avenue
Greenville, South Carolina 29609
(864) 331-1612 | F: 864-271-0711

ATTORNEYS FOR APPELLANT

THE HONORABLE ALAN WILSON
JOSHUA A. EDWARDS, AAG
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 779-8477 | F: 803-253-6283

ATTORNEYS FOR RESPONDENT

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¹ Note that the Family Court Order and Waiver/Plea Agreement were also entered into the record at the plea and sentencing hearing in York County Court of General Sessions as Court Exhibits 1-2.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

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IN THE FAMILY COURT
SIXTEENTH JUDICIAL CIRCUIT
2023 SEP -7 PM 1:11

Whitney J. Payne, Petitioner
Erin Joyner, Petitioner

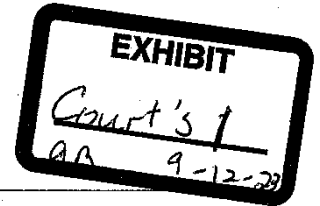
ANGIE M. BRYANT
FAMILY COURT
YORK COUNTY, SC

ORDER
22-JU-46-271
22-JU-46-272

IN THE INTEREST OF:

John Totherow

DOB: [REDACTED]-2007



Judge: Debra Matthews
Date: September 7, 2023
Attorney for Juvenile: Nathan Sheldon/Ali Franz
Senior Solicitor: Whitney Payne/Erin Joyner

This matter comes before the Family Court of the Sixteenth Judicial Circuit by way of consent to waive this case to General Sessions. This hearing was held in Chester County as Judge Matthews, the assigned judge in this matter, is holding court in Chester County this week. Both the Juvenile and the State waive any venue issues and consent for the hearing to take place in Chester County. In this matter, the State and the Defense submitted a consent order to the court which would waive this juvenile's case to General Sessions with a plea agreement in place for the final disposition of the case in General Sessions. This case was scheduled for a Waiver Hearing to be heard by the Honorable Debra Matthews on September 11 through 15, 2023. Prior to this hearing, the State and the defendant, through his lawyers, came to the aforementioned agreement for waiver in this matter. The Court has reviewed the consent waiver in this matter. During this hearing, the Court questioned the juvenile to determine if the juvenile's decision to agree to this waiver was made knowingly, voluntarily, and with the advice of competent counsel.

The Court finds that the agreement is appropriate and that the defendant's decision to consent to the waiver of his case to General Sessions under the plea agreement presented to the court was made knowingly, voluntarily, and with the advice of competent counsel. The Court further finds that this case shall be waived to General Sessions under the terms of the plea agreement presented to the court. The Court further finds that this defendant shall be treated as

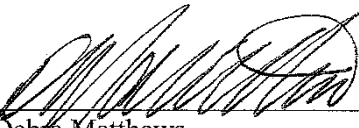
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an adult from this point forward. The Court finds that he should continue to be held at juvenile detention due to his age. He shall remain at the DJJ detention facility until such time as he brought before the Court of General Sessions for further disposition of this matter.

Based on the foregoing, IT IS HEREBY ORDERED:

1. That based on the finding that John Totherow's decision to agree to the waiver was made knowingly, voluntarily and knowingly, and with the advice of competent counsel, this juvenile case shall be transferred from the York County Family Court to the York County Court of General Sessions for further disposition under the terms of the plea agreement presented to this court.
2. That the defendant, John Totherow, shall continue to be housed at DJJ State Detention due to his age until further disposition of the case.
3. _____

AND IT IS SO ORDERED.


Debra Matthews
Family Court Judge
Sixteenth Judicial Circuit Family Court

CERTIFIED TRUE COPY
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ANGIE H. BRYANT
CLERK OF COURT
YORK COUNTY, SC

Chester, S.C.
September 7, 2023


OKM
2023

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE FAMILY COURT
SIXTEENTH JUDICIAL CIRCUIT

FILED - RECEIVED
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ANGIE M. BRYANT
FAMILY COURT
YORK COUNTY, SC

WAIVER AND PLEA AGREEMENT

IN THE INTEREST OF:

22-JU-46-271
22-JU-46-272

John Totherow
(DOB [REDACTED] 2007)

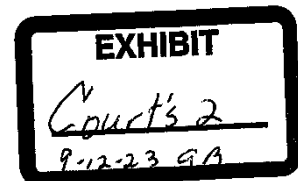
This matter comes before the Family Court by way of a Written Agreement between the State of South Carolina, represented by Deputy Solicitor John Anthony, Senior Solicitor Whitney Payne and Senior Solicitor Erin Joyner, and Juvenile John Totherow, represented by Nathan Sheldon.

The Juvenile, John Totherow, is currently charged in York County Family Court with the offenses of Murder (22-JU-46-271) and Possession of a Weapon During the Commission of a Violent Crime (22-JU-46-272). On May 20, 2022, the State filed a Motion for Waiver to General Sessions, pursuant to S.C. Code Ann. 63-19-1210 (6). This notice was served on the Juvenile's Attorney, the Juvenile, and his Father.


A Pre-Waiver Evaluation was ordered by the court on May 24, 2022. The waiver hearing has been scheduled for September 11 to September 15, 2023. The waiver hearing has been assigned to The Honorable Judge Debra A. Matthews. Prior to the commencement of the hearing on the State's Motion for Waiver to General Sessions, the State of South Carolina and the Juvenile have reached the following agreement:

- 1) The Juvenile agrees that the State of South Carolina would be able to present sufficient evidence of the applicable Kent¹ factors from which a Family Court Judge could find in favor of the waiver of this case to General Sessions;
- 2) The Juvenile agrees to waive the scheduled Waiver Hearing and consents to the waiver of his charges to General Sessions pursuant to the plea agreement outlined herein;
- 3) The State agrees to reduce the Murder charge to Voluntary Manslaughter, which the Juvenile understands is a Violent, Most Serious Offense, and is classified as a No-Parole Offense;
- 4) The Juvenile agrees to plead guilty to the reduced charge of Voluntary Manslaughter and to the Possession of a Weapon During the Commission of a Violent Crime charge;
- 5) The State and the Juvenile agree to a negotiated sentence of 339 months on the Voluntary Manslaughter and five years on the Possession of a Weapon During the Commission of a Violent Crime to run concurrently to the Voluntary Manslaughter;
- 6) The State agrees that the Juvenile is entitled to credit for the time served since May 4, 2022;
- 7) The Juvenile agrees that Section 16-25-90 is not applicable to this matter and he agrees not to seek to use this statute in the plea or for parole in the future;

¹ Kent v. United States, 383 US 541; 16 L.Ed.2d 84; 86 S.Ct. 1045 (1966)



IT IS HEREBY ORDERED

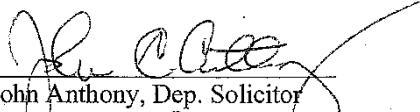

Presiding Judge, York County Family Court
Debora A. Matthews

Chester

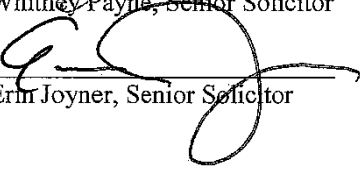
York, South Carolina


Date: *September 7, 2023*


I agree:


John Anthony, Dep. Solicitor


Whitney Payne, Senior Solicitor


Erin Joyner, Senior Solicitor


John Totherow, Juvenile


Nathan Sheldon, Attorney for Defendant

2023 SEP - 7 PM 1:13
YORK COUNTY
SOUTH CAROLINA

VERIFIED TRUE COPY

1 STATE OF SOUTH CAROLINA

2 -----x

3 State,

4 Plaintiff,

5 Case No.

6 -against- 2023-GS-46-05165

7 John Kenneth Totherow, 2023-GS-45-05165A

8
9 Defendant.

10 -----x

11 September 12, 2032

12 York, S.C.

13
14 B E F O R E:

15 HONORABLE EUGEN C. GRIFFIN

16
17 A P P E A R A N C E S:

18 ERIN JOYNER & WHITNEY PAYNE

19 Attorneys for the State

20
21 NATHAN SHELDON,

22 Attorney for the Defendant

23
24 Aileen Butler

25 Official Court Reporter

1 MS. JOYNER: We have before the Court in matter of
2 State of South Carolina versus John Totherow. Myself
3 and senior Solicitor Whitney Payne prosecuted this
4 case.

5 Mr. Totherow is before the Court with retained
6 counsel Nathan Sheldon. He has come before the Court
7 to plead guilty today, waive presentment and plead
8 guilty under Indictment 2023-GS-46-5165. Originally
9 charged with murder. Reduced to voluntary
10 manslaughter and as charged to 2023-GS-46-5165A,
11 possession of weapon during the commission of a
12 violent crime.

13 We have complied with the victim's rights act in
14 this case. The victim, Mr. Kenneth Totherow is
15 present in the courtroom and does wish to address the
16 Court at the appropriate time. Just to briefly lay
17 out the procedural history of this case, Your Honor.
18 John Totherow was originally charged as a juvenile for
19 the events of murder and possession of a weapon. He
20 was charged and detained on May 3rd of 2022. The
21 State filed a timely motion to waive this case to
22 general sessions. This waiver hearing was scheduled
23 to begin yesterday, Monday, September 11th before
24 Judge Debra Matthews. Last week the State and the
25 defense reached a plea agreement by which the

1 defendant would agree to have his case waived to
2 general sessions for a negotiated plea -- for a
3 negotiated plea agreement. On September 7th the State
4 and defense and Mr. Totherow went to Chester. We
5 appeared before Judge Matthews and Judge Matthews
6 questioned this juvenile, this defendant, on his
7 decision to agree to waive -- allow this case to be
8 waived to general sessions.

9 At the conclusion of that hearing she found he had
10 made a knowing and intelligent decision with the
11 advise of competent counsel and she signed an order
12 which waived this case to general sessions.

13 Your Honor, I have that marked as Court's exhibit
14 one which I will hand up. This is part of the general
15 sessions record, but we did want there to be a record
16 of what you are looking at Your Honor. We also have
17 Court's exhibit 2 which is the plea agreement that has
18 been entered in this case signed by the defendant, his
19 attorney and the State's attorney in this matter.
20 This is for a negotiated sentence of 339 months with
21 credit for 497 days that he has served in the
22 Department of Juvenile Justice.

23 Your Honor, Miss Whitney Payne will present the
24 facts of this case at the appropriate time and the
25 State does wish to address the negotiations at the

1 appropriate time.

2 THE COURT: Now, prior to coming on the bench I
3 discussed with the clerk of court the family court
4 file and the general sessions file and unless I hear
5 different, my intent would be to file what has been
6 handed to me making that a general sessions file and
7 the family court file which is here in the courthouse
8 near by it will be properly filed as referenced by
9 these Indictments through this order that tells where
10 the family court order is. The family court order
11 will stay in the the family court. The general
12 sessions order will stay in general sessions. One
13 references the other, so I think that is an
14 appropriate way to file.

15 MS. JOYNER: Those documents are already in the
16 file, Your Honor. We just marked those Court's
17 exhibits so there will be a record of what you were
18 looking at.

19 THE COURT: Right. These are in the family court
20 file. These are going to be in the general sessions
21 court file when there --

22 MS. JOYNER: It'll be transferred over, Your
23 Honor. So those documents are also in the general
24 sessions file.

25 THE COURT: What I'm saying is the clerk wants to

1 know where does she put that file. I think it stays
2 in the family court.

3 What I'm saying is there is a family court number
4 that references a general sessions number. The
5 general sessions number references the family court
6 number. There are two separate files but they
7 reference one another. So it's clear which one is
8 which. It's clear that it has been waived up.

9 MS. JOYNER: Yes, sir.

10 THE COURT: But the general sessions will be
11 limited to what has been waived up and not the
12 entirety of the family court file.

13 MS. JOYNER: Yes, sir. I would agree with that.
14 Only those documents that pertain to the waiver. I'm
15 sorry, I didn't understand your question.

16 THE COURT: That's just logistics for her benefit.
17 She asked me what do you do. That's what I find. If
18 that's not right we'll follow what's consistent with
19 the directive of court administration and the Clerk of
20 Court's manual. Thankfully we don't do a lot of these
21 to learn the specifics.

22 All right, Mr. Sheldon, are you ready?

23 MR. SHELDON: Yes, sir, Your Honor.

24 THE COURT: Mr. Totherow, good morning.

25 THE DEFENDANT: Good morning.

1 THE COURT: Your name is John Totherow?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I have an Indictment that has been
4 waived. Been prepared by the solicitor's office. It
5 was prepared to be presented to the Grand Jury next
6 week. It has not been presented yet so you need to
7 sign a waiver which your signature on the face of the
8 indictment which indicates you have just done that.
9 The Indictment alleges event occurred May 3rd of 2022
10 and that you did take the life of Lisa Puckett
11 Totherow and as an approximate result she passed.
12 This being in violation of 16-3 sub part 10 and also
13 on the same date you did possess a weapon in the
14 commission of that crime.

15 It's my understanding from the waiver on the front
16 to the Grand Jury you're waiving presentment to the
17 offense of voluntary manslaughter and possession of a
18 weapon in the commission of a violent crime. Is that
19 correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Sheldon, you represent Mr.
22 Totherow?

23 MR. SHELDON: Yes, Your Honor.

24 THE COURT: Along with Miss Franc?

25 MR. SHELDON: Yes.

1 THE COURT: And you've explained to him the
2 elements of voluntary manslaughter and possession of a
3 weapon and the potential punishment he faces?

4 MR. SHELDON: Yes, Your Honor.

5 THE COURT: Now, after examining the discovery
6 file provided by the State do you have a belief if you
7 were to proceed to trial there's a substantial
8 likelihood of his conviction?

9 MR. SHELDON: Yes, Your Honor.

10 THE COURT: And are you in agreement considering
11 the resolution negotiations and the end result --

12 MR. SHELDON: Yes, Your Honor.

13 THE COURT: -- and his decision to waive up and
14 plead guilty?

15 MR. SHELDON: Yes, sir, Your Honor.

16 THE COURT: All right, madam clerk, place Mr.
17 Totherow under oath please.

18 THE CLERK: Please raise your right hand. Do you
19 swear to the tell the truth, the whole truth and
20 nothing but the truth, so help you God?

21 THE DEFENDANT: Yes, ma'am.

22 THE CLERK: Thank you.

23 THE COURT: All right, sir, in the last 24 hours
24 have you taken any alcohol, drugs or any type of
25 medications?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you clear headed?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you suffer from any disability
5 whatsoever?

6 THE DEFENDANT: No, sir.

7 THE COURT: You have a constitutional right here
8 in the court of general sessions to ask for a jury
9 trial. During a jury trial the State has the
10 responsibility or duty to try to prove your guilt
11 before the jury. Because of that responsibility they
12 go first. They call witnesses to testify. They
13 present evidence for the jury's consideration. You
14 don't have to prove anything at trial. You have an
15 absolute right to remain silent. Your silence can not
16 be used against you in any way whatsoever. You don't
17 have to prove your innocence or even disprove your
18 guilt.

19 Have you been over your rights to trial with your
20 lawyer, Mr. Sheldon?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you understood those
23 conversations?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, you're a young man. You just

1 turned 16 last week I see. Do you feel comfortable
2 with the advice regarding your rights to defend
3 yourself at trial that Mr. Sheldon and co-counsel has
4 given to you?

5 THE DEFENDANT: Yes.

6 THE COURT: Are you waiving your rights to have a
7 trial here today on these charges? Are you waiving
8 those rights freely and voluntarily?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And likewise, did you also sign the
11 face of the Indictment waiving presentment to the York
12 County Grand Jury on the offense of voluntary
13 manslaughter and possession of weapon in commission of
14 a violent crime.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, in school, what grade would you
17 be in?

18 THE DEFENDANT: Tenth.

19 THE COURT: Were you doing well in school before
20 these events occurred?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. So you have a little bit of
23 understanding the procedures and explanation Mr.
24 Sheldon gave you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. You feel comfortable with your
2 decision?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Now normally, this is when
5 we get the facts. Is everybody comfortable in the
6 courtroom with the facts?

7 MS. JOYNER: Mr. Kenny Totherow will remain in the
8 courtroom, Your Honor.

9 THE COURT: Very good. Present me the facts to
10 support the plea.

11 MS. PAYNE: Thank you, Your Honor. The victim in
12 this case is Althea Lisa Totherow. The victim was
13 married to Kenneth Totherow. He's known as Kenny as
14 well. Together they had a son, John. He is the
15 defendant in this case.

16 At the time of her death they lived at 825 Sutton
17 Springs Road which is within the County of York in
18 South Carolina. On Tuesday, May 3, 2022, as per the
19 normal routine, this defendant stayed home alone while
20 Miss Totherow went to work at the York Church of God.
21 She worked from nine to one. Miss Totherow returned
22 home a little after two. She was seen entering the
23 home alone by a flagman who was working on the roadway
24 directly in front of the Totherow home. Several
25 minutes later the flagman heard several loud pops

1 which he believed to be fireworks. He then observed
2 the defendant exit the home through the front door and
3 walk a cross the street to a neighbor's house. At
4 that time he saw the defendant waive back at the
5 flagman as he crossed street. He did not see anyone
6 else either enter or exit the residence.

7 The defendant went to the neighbors home and used
8 the neighbors phone to call his father who was at work
9 in Charlotte. The neighbor then called 911 at 2:29
10 p.m. to report that the defendant had said that an
11 unknown intruder had shot his mother. The 911
12 operator spoke directly to the defendant who stated
13 that an intruder came into the home. He fled the
14 residence at his mother's instruction and that he
15 heard a gunshot as he fled. He would provide this
16 version of events with some variation and in more
17 detail repeatedly to the detectives on scene.

18 There was a swift and large law enforcement
19 response to the scene. When the first officers
20 arrived at the scene at 2:40 it was not known whether
21 the defendant was alive and injured or dead inside the
22 home and it was not known whether there was a armed
23 intruder inside the home. The first team forcibly
24 entered the Totherow home through a side door at 2:49
25 p.m.. They observed several spent shell casings on

1 the kitchen floor and they observed the victim lying
2 motionless on the laundry room floor. They called to
3 the victim repeatedly and looked for signs of life.
4 They received no response and did not see any signs of
5 life. At that point they were unable to move further
6 in the home because there was still a concern that
7 there was an armed intruder inside the home.

8 SWAT was ultimately called out and after some
9 delay they were able to clear the home that evening
10 locating no one else inside the residence except the
11 deceased victim.

12 It is important for the Court to know that John
13 remained on scene for over 2 hours aware of the large
14 law enforcement present. He continued to maintain
15 that the version of events conveyed to the neighbor
16 and to the 911 operator that an unknown person entered
17 the home. His mother told him to run. That he ran
18 out the back door believing his mother was behind him
19 and that door closed behind him and he heard the dead
20 bolt lock and then he heard shots and a scream.

21 During the search of the home once SWAT cleared the
22 residence, law enforcement discovered that the back
23 door through which the defendant claimed to have
24 exited was dead bolted and blocked from the inside by
25 a box. When speaking to Kenny Totherow he advised

1 that there had not been a box there when he left for
2 work that morning. The side door was also dead
3 bolted. The front door was locked. This means that
4 the defendant locked his mother inside and locked law
5 enforcement out of the residence.

6 Law enforcement recovered 12 spent casings. Five
7 spent projectile beginning near the master bedroom and
8 in and around the kitchen and laundry room area.
9 Officers located a black Ruger LCP 380 in the
10 nightstand inside the master bedroom. A box of 380
11 full metal jacket cartridges in the draw of the
12 dresser, gloves, an earmuff type ear protection on the
13 bed in the master bedroom. The gloves and ear
14 protection were not normally located on the bed. But
15 the gun and ammunition were in locations that they
16 normally would have been in with the exception that
17 the Ruger should have been inside its holster but was
18 instead laying on top of holster inside the draw. The
19 gun and ammunition appeared to be consistent with the
20 projectile and the shell casings that law enforcement
21 saw throughout the scene. Mr. Totherow also advised
22 that he stored his firearms unloaded as well.

23 An autopsy of the victim, Miss Totherow
24 determined that the cause of death was multiple gun
25 shot wounds, with the manner of death being homicide

1 the autopsy report documented 11 gunshot wounds to
2 Miss Totherow. Six projectiles were recovered from
3 her body during the autopsy. These six projectiles
4 were sent to SLED along with the spent projectiles and
5 spent casings from the scene. They were compared to
6 the Ruger 380 that was recovered from the master
7 bedroom. All spent shell casings recovered on the
8 scene were determined to have been fired by the Ruger
9 and all spent projectiles recovered through the
10 autopsy and on scene with the exception of one which
11 was inconclusive due to the amount of damage to that
12 one, were determined to have been fired by the Ruger
13 380. The Ruger 380 had a capacity of six in the
14 magazine and could accommodate one in the chamber as
15 well. From the crime scene and law enforcement
16 investigation it appears that Miss Totherow came home
17 through the front door. She placed her purse and bags
18 from Walmart down on a love seat as was her normal
19 practice. She made her way toward the back of the
20 house. In doing so she passed through the living room
21 and into a hallway. If she went left into hallway she
22 would go toward the bedroom and also toward the room
23 the defendant did his school work in. To the right
24 was the kitchen, the side door and laundry room. It
25 appears that the defendant stood close to master

1 bedroom and the school room and began firing on Miss
2 Totherow as she stood in the hallway or in the
3 kitchen. There's no indication that she had any prior
4 warning that this was about to happen. The defendant
5 shot the victim until he emptied the gun. He then
6 went back to the master bedroom and reloaded the
7 magazine and returned back and continued to shoot the
8 victim.

9 Doctor Leber who was conducting the autopsy would
10 have testified that the victim --

11 THE COURT: You stated 11 shots. I think I've got
12 sufficient facts.

13 MS. PAYNE: Thank you, Your Honor.

14 THE COURT: You've been very thorough.

15 MS. PAYNE: Thank you, Your Honor.

16 THE COURT: All right. The facts that have been
17 outlined by the State, are those facts accurate?
18 We're not pleading under Alford? This is a straight
19 plea?

20 MR. SHELDON: Yes, sir.

21 THE COURT: Are those facts accurate as to what
22 your behavior was on May 3, 2022?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, as I understand the agreement
25 reached recently, voluntarily waive up from family

1 court. Come to court of general sessions. Plead to
2 the lesser offense of voluntary manslaughter as
3 opposed to murder. Given credit for all the days you
4 have served thus far and negotiated 60 month sentence
5 on the weapon and 339 months on the voluntary
6 manslaughter.

7 Is that what you're expecting to receive and have
8 is agreed to?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you served pretrial detention some
11 497 days. Is that an accurate count?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, you understand if I accept this
14 plea that the conviction of voluntary manslaughter
15 constitutes a violent offense, meaning you'll be
16 classified in the Department of Corrections as a
17 violent offender. Do you understand as a violent
18 offender you're not entitled to the same programs as
19 nonviolent offenders. Are you aware of that?

20 THE DEFENANT: Yes, sir.

21 THE COURT: Are you also aware that you will have
22 to serve 85% of the sentence imposed before you are
23 eligible for a community supervision type of release.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you also aware that this is a most

1 serious conviction to a crime which is classified most
2 serious, which counts as two strikes basically on a
3 three strike your out count. So if you are ever
4 accused of any type of crime, whether it be serious or
5 most serious in the future the State could seek a life
6 without parole sentence because of this two strikes
7 being on your record?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Have you had sufficient
10 time to discuss this plea that you are entering here
11 today with your lawyer?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have they answered all your questions?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you understood all your
16 conversations with them.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, as I understand it -- never been
19 a person entering a plea but I've been a practicing
20 lawyer for a long time and I've been presiding judge
21 for almost equivalent amount of time of me practicing
22 -- advice and counsel of lawyers is precious commodity
23 but lawyers have to give you candid advice,
24 well-thought advice based upon their experience and
25 their understanding of the facts, circumstances, your

1 age, autopsy. All the parameters of evidence that
2 come into the file. Many times their advice and
3 counsel is difficult to give because the facts are
4 bad. Understanding from your perspective that advice
5 might be difficult to receive. You're in trouble.
6 These facts are bad.

7 Are you satisfied albeit difficult advice and
8 counsel that you received, are you satisfied with the
9 advise and counsel of which have been conveyed to you
10 by your two attorneys?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: As a result of their advice and
13 counsel have you had ample time to think through you
14 entering this plea of guilty here today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: As a result of your deliberations and
17 decision making are you now entering this plea here
18 today freely and voluntarily.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you pleading guilty because you
21 are in fact guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Regarding Indictment 23-GS-46-5165 and
24 count two, 5165 on the sentencing sheet as Count A,
25 which is the weapons charge.

1 To the offense of voluntary manslaughter and
2 possession of a weapon during the commission of a
3 violent crime, the Court finds that John Totherow has
4 made a free, knowing, intelligent waiver of
5 presentment to the York County Grand Jury on the
6 offense of voluntary manslaughter and possession of a
7 weapon during the commission of a violent crime. He's
8 also made a free, knowing and intelligent plea of
9 guilty to both of those offenses. He's entered both
10 waivers and both pleas while he testified under oath
11 he is satisfied and understood the counsel he received
12 from his attorneys.

13 The State has provided more than ample facts upon
14 which this Court can base these two pleas. All right.
15 Mr. Sheldon, do you want me to hear from the State
16 first?

17 MR. SHELDON: Whatever the Court's preference.

18 THE COURT: All right, ma'am, let me hear from
19 you any mitigating facts from your investigation and
20 your involvement handling this case.

21 MS. PAYNE: Your Honor, I would just say this has
22 been a very difficult case. This defendant was 14 at
23 the time this occurred. The victim is his mother.
24 His father is understandably in a position that none
25 of us would ever want to be in. And Your Honor, we

1 had to balance in this case the interest of protecting
2 the public and the interest of justice with the fact
3 that we were looking at a 14-year-old. The juvenile
4 system we did not feel was adequate in this matter to
5 take care of this situation.

6 Your Honor, as a juvenile if he had been
7 adjudicated of the murder and the weapons charge he
8 would be looking at 36 to 54 months at the Department
9 of Juvenile Justice. That's three to five years.
10 They do not have any jurisdiction past his 22nd
11 birthday and once he was through with the Department
12 of Juvenile Justice and had been released from parole
13 or had turned 22 -- which ever came first -- he would
14 be eligible once he turned 18 to purchase a gun
15 legally. We felt that was something that was
16 unacceptable to the State at this point.

17 This was a very serious crime as Your Honor just
18 heard from the facts it is more than normal type of
19 killings that we see. We felt at that point, Your
20 Honor, this had to come to general sessions. However,
21 Your Honor we did take into account the fact that he
22 was a first time offender. We did take into account
23 the facts that his father does not want to see his son
24 in jail for the rest of his life and, Your Honor, we
25 did make the agreement with his defense counsel to

1 reduce the charge and to bring it to general sessions
2 with this agreed upon sentence. This will allow him
3 to serve a little less time than we think he would
4 have served on the murder, however, Your Honor, we do
5 believe this is adequate time and that this will
6 protect the public.

7 THE COURT: And ma'am, as I understand it for the
8 record, that the evaluation the family court must go
9 through is based upon the case happened down by the
10 Supreme Court of the United States, Kent versus United
11 States and it gives the balancing between the nature
12 of the juvenile, lack of material and all those
13 factors, any prior history, but it also balances the
14 with the factor that you just said regarding the
15 seriousness of crime, the manner in which it was
16 committed and the interest the State has to protect
17 the public, and it appears from my brief review of
18 Judge Mathews's order that she did all that and took
19 those factors into account, in addition to his
20 agreeing to waive up to the court of general sessions.
21 He did so with advice of counsel and his attorney.
22 All right, and since it is negotiated I don't need to
23 hear anything further from you.

24 Mr. Sheldon.

25 MR. SHELDON: Thank you, Your Honor. May it

1 please the Court. Just to give the Court a little
2 background as to what we've done in this case. Judge,
3 there's been probably four lawyers that have worked
4 with Mr. Totherow. Both Miss Franc and myself who's
5 seated behind me. In addition Hannah Freedmen with
6 Justice 360 prior to leaving. She just left within
7 the last couple of months was a part of this team as
8 well as another who left earlier. In addition to that
9 we had a law student that has gone to see John every
10 week. Not giving any legal advice, just simply
11 because I think part of 14-year-old being incarcerated
12 they need somebody to talk to. So we provided that
13 weekly, for the last 17 months. Mitigation specialist
14 that was hired. We've reviewed every record we have.
15 We've interviewed everybody and anybody we could and
16 of course hired a forensic psychologist.

17 Judge Matthews who heard the waiver last week and
18 was scheduled to be our waiver trial judge this week
19 had the benefit of both the report from the Department
20 of Juvenile Justice which was prepared by Doctor
21 Atkinson as well as the report prepared by our expert
22 Doctor Knight. So to the extent that she review the
23 Kent factors I do believe that because she knew that
24 the trial was coming. She knew that the trial was
25 eminent. She knew it was set before her and had the

1 advantage several weeks prior of having those reports
2 just so she wasn't blindsided with it.

3 THE COURT: Did I read that she had it scheduled
4 for this week and it was scheduled for several days?

5 MR. SHELDON: This week for five days. It would
6 have started yesterday and it would have gone all the
7 way through Friday and so we were able to resolve this
8 I believe last Thursday when that portion of the trial
9 took place.

10 Judge, the reports, they're both very similar.
11 They both find low risk to the community and he has
12 really essentially no disciplinary history prior to
13 entering DJJ. But I think more significantly if you
14 were to talk to the forensic psychologist which we did
15 obviously talk to both them after preparing the
16 reports, there was no significant history while at
17 DJJ. He was there a long time and it's very difficult
18 for youths to stay out of trouble once they get in to
19 the juvenile detention center just because that just
20 the nature of where they are. There's a lot of
21 trouble there. So his ability to stay out of that
22 trouble I think speak volumes as to sort of where he
23 is today and what he's been able to accomplish.

24 This was an extremely egregious case as the State
25 said. It's a sad case. We've had numerous interviews

1 from Mr. Totherow which I'm sure the Court is going to
2 hear from last. Its just -- unfortunately in weighing
3 all this, it's murder. That's what it is. So the
4 benefit of being able to plead to manslaughter is a
5 benefit that we're saving hopefully years of this
6 young man's life.

7 We appreciate certainly the State for reducing
8 that charge. We'd be trying this waiver if that
9 wasn't part of the negotiation. That was clear that
10 they were going to have to come off the murder which
11 they agreed to do and gave us something to seriously
12 talk about and I think that's ultimately how we got to
13 where we are today. But with all that said we'd ask
14 -- and just just for the record, some of the other
15 things that we have done that I want to put on the
16 record. Both the State and myself have talked to
17 Christina Bigelow who is general counsel at South
18 Carolina Department of Corrections. The way it was
19 structured and the way that we have explained to Mr.
20 John Totherow since the beginning is essentially this
21 is a 24 year sentence. So he gets 339 months. Two
22 charges running concurrent with each other at 85% of
23 that is exactly 25 years and that's exactly what
24 S.C.D.C. confirmed. It's how they will compute it.
25 He doesn't expect to do any more than that but doesn't

1 expect to do any less of that. He understands this is
2 an 85% offense. It's not a day-for-day offense. That
3 the gun charge will run concurrent and be done before
4 the exhaustion of the 339 months. He understands he's
5 getting credit. We've explained we have had thorough
6 conversations with the Department of Juvenile Justice
7 where he is going to go be housed. It's my
8 understanding at essentially the Broad River facility
9 until such time that he turns 17-years-old. At that
10 time he will go to a different unit which is pursuant
11 to Federal Law. There's a statute that says
12 17-year-olds can not be housed with 18 and above. So
13 from 17 to 18 he will be in separate part essentially.
14 Detention center separates, segregated from both of
15 the juveniles and the adults and then at 18 will go to
16 SCDC and serve the remainder of his sentence. So he
17 understands how that's going to work.

18 We passed up an order. I don't know if the Court
19 has the authority to do this or not, but based on his
20 lack of disciplinary history, sort of his behavior
21 while there, they do have a unit at the Broad River
22 Juvenile Facility that is sort of an honor's dorm.
23 And we're asking the Court to sign that order that
24 allows him to go to honor's dorm. It's not clear
25 whether DJJ or ACDC will honor that order. We'd just

1 ask just like the Court orders addiction treatment
2 unit, orders shock incarceration or anything else,
3 that the Court order that today and if they honor it
4 they do and if they don't, they don't. And I'm
5 certain that their internal policies and their statute
6 control take stuff, but we've prepared that order and
7 pass it up. The solicitors office, I don't think they
8 have any objection to that.

9 MS. PAYNE: Your Honor, I do have some information
10 on that. A representative from the Department of
11 Juvenile Justice is present in the courtroom, Miss
12 Anna Melvin. She did check with her folks in
13 Columbia. The honor's dorm is a privilege that you
14 have to earn while you are at the Department of
15 Juvenile Justice. Since he will be housed there he's
16 eligible to earn that but he would not be eligible to
17 go into it to begin with.

18 THE COURT: But he's there now?

19 MS. PAYNE: Correct.

20 THE COURT: Okay, so he's already gotten himself
21 in the door.

22 MS. PAYNE: He is at the detention center. He
23 will be at Broad River and that is where the honor's
24 dorm is located.

25 THE COURT: Okay. The order says he currently

1 meets criteria. So, it will be up to him. Fair
2 enough. All right.

3 Now, the capability -- opportunity to him to met
4 the honor's dorm requirements, that wasn't a factor
5 for which he decided to enter this plea or not.

6 MR. SHELDON: No, sir.

7 THE COURT: So that is not a consideration?
8 That's a hope.

9 MR. SHELDON: Yes, sir.

10 THE COURT: Now, anything else from you all?

11 MR. SHELDON: No, sir.

12 THE COURT: All right.

13 MR. SHELDON: Judge, I would point out one other
14 thing. Miss Joyner indicated that I was retained on
15 this case. Mr. Totherow approached me to take this
16 case, Mr. Kenny Totherow, and it has been an extensive
17 amount of money that was going to be needed to
18 litigate this pursuant to Atkin v Byers and everything
19 else that we're dealing with. In exchange for
20 indigent defense they agreed to give me the funding
21 for that. I did take the case pro bono. So while I
22 wasn't appointed necessarily I don't think retained is
23 a fair word either.

24 THE COURT: You're kind of a hybrid.

25 MS. JOYNER: Are you ready to hear from the

1 victim?

2 THE COURT: Yes.

3 MR. TOTTEROW: Good morning Your Honor.

4 THE COURT: Good morning. Tell me your name.

5 MR. TOTTEROW: My name is Kenny Totherow. I'm
6 John's father.

7 On May 3rd when I woke up that morning just like
8 every other morning. I went in. Kissed John on the
9 forehead before I left to go to work like I do every
10 morning. Kissed his momma before I walked out the
11 door. I talked to her some time around lunch. I
12 guess the last words I told her I love you. I'll see
13 you in a little while. Little did I know that all
14 hell would break loose in my home that day. I know
15 everybody in this courtroom probably looks at John as
16 a mean, horrible monster, and I'm sure everybody in
17 this room looks at me and says, how could you still
18 love your son. Very simple. My son was a gift from
19 God above.

20 His mother was never suppose to have children, but
21 you know what doctors tell you is impossible, doctors
22 don't know everything. What's impossible with men,
23 nothing is impossible with God. I came in today with
24 a heavy heart. Still got a heavy heart because my son
25 that I love dearly I'm probably not going to ever see

1 him on the outside again. I'll never be able to go to
2 a ball game with grandkids. Never going to be able to
3 hold a grand baby. All because of one poor choice and
4 that choice did not come from John. I'll tell you
5 what I believed happened on that day.

6 Three weeks prior to all hell breaking loose in
7 our home John went to a youth conference in Tennessee.
8 John came home a different kid. A kid that had an
9 experience with the lord. His mother had took him to
10 the guitar practice. They had returned. He's sitting
11 on the coffee table playing the guitar. Jumps up.
12 Runs to his room. Mom, I'll be back. Runs to his
13 room and writes a song. John was the kid that would
14 run all the hot water so I went in the bath before he
15 did. Well, me and his momma every Monday night we
16 would sit and watch Sunday service and we're sitting
17 there that Monday night watching it and I get up go to
18 the kitchen. So I go to his room and I see John
19 sitting at his desk. Hair still dripping wet. Dried
20 off enough to put his boxer shorts on. And I said,
21 son, what are you doing? He said here, Daddy. Handed
22 a song that he had wrote.

23 I know what happened that day. Satan said I'm
24 going to destroy this child. He may have gotten his
25 momma but what he didn't bank on was his daddy. I

1 will not give up on him. Everybody else in this room
2 may give up on him with the exception of the few
3 people who are sitting here with me today, but I won't
4 give up on him. I will not allow anyone to destroy my
5 son like he thought he had.

6 I know it's probably not what you expected to hear
7 from today, but that's my son. I love him. And I'm
8 sure of everybody in this room probably wondering how
9 can you still love him. Because if it wasn't for God
10 above loving me when I was unlovable, you know, that's
11 why I love him.

12 THE COURT: Mr. Totherow, my minister, my pastor,
13 my church every single Sunday finishes with God loves
14 you and so do I. That's what he preaches.

15 MR. TOTHEROW: Yes, sir.

16 THE COURT: And I admire your courage and your
17 faith.

18 THE DEFENDANT: That's what gotten me through. If
19 I didn't have faith and courage -- well, I don't about
20 the courage part, but the folks like Richard Harris,
21 pastor Jason, Max and I just met chaplain and I talk
22 to chaplain yesterday. I said I don't understand why
23 I'm walking this road, but what I do understand is
24 there is a lot of folks that I hadn't met that I would
25 not have met any other way. We don't understand what

1 God's plan is. I don't. I try to find the beauty in
2 it. Right now I don't see any beauty. There is old
3 saying beauty to ashes or ashes -- I can't remember
4 the exact words right now. But one day -- and I tell
5 John, son, make sure you keep your heart right because
6 time is running short. Time is running short for each
7 and everyone of us. We never know what we're going to
8 face when we walk out this door every day. None of us
9 are guaranteed to get back home. God can look the you
10 and call your number at any time and I promise you
11 that's one appointment you will keep. We can break
12 all appointments, but our appointed time to die we'll
13 not break that appointment.

14 The only thing I will ask you, Your Honor, is if
15 you will allow me to give my son a hug because it's
16 probably the last time I will see him on the outside
17 of this room.

18 THE COURT: My policy is this, if security detail
19 is okay with it. I don't want to tell them how to do
20 their job keeping security in the courtroom. If
21 they're okay with it I will not object to it. Sounds
22 look a reasonable request to me.

23 THE COURT: Anybody else Miss Joyner?

24 MS. JOYNER: No, sir, Your Honor.

25 THE COURT: All right, we'll finish this and if

1 that's something we can do we'll certainly accommodate
2 that. Anything else from anybody?

3 MR. SHELDON: No, sir Your Honor.

4 THE COURT: I accept the plea regarding Indictment
5 23-GS-46-5155 and 5155A, the sentence of the Court on
6 the voluntary manslaughter consistent with the
7 negotiation is 339 months. He gets credit for 497
8 days he done to date and that runs concurrent with the
9 60 month sentence. Also credit for 497 days on that
10 sentence as well.

11 Mr. Totherow, I advise you, you have a limited
12 number of days during which time you can file a notice
13 of intent to appeal if you believe some procedures
14 have been improperly followed. All right.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I hope this brings closure
17 to everyone. All right. That concludes the hearing.

18 END OF TRANSCRIPT
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C E R T I F I C A T E

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I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 12th day of September, 2023.

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

October 19, 2023

Aileen Butler

STATE OF SOUTH CAROLINA) IN THE FAMILY COURT
COUNTY OF CHESTER) 22-JU-46-271,272

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
 -VS-) TRANSCRIPT OF RECORD
)
)
 JOHN K. TOTTEROW)
)
 Defendant.)

September 7, 2023
Chester, South Carolina

B E F O R E:

THE HONORABLE DEBRA A. MATTHEWS, Presiding Judge

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

WHITNEY PAYNE, ESQ.,
ASSISTANT SOLICITOR

NATHAN SHELDON, ESQ.,
ALLISON FRANZ, ESQ.,
ATTORNEYS FOR THE DEFENDANT

LaToya Camack Perry
Official Court Reporter
Post Office Box 991
Winnsboro, SC 29180

I N D E X:

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1 THE COURT: Yes, ma'am.

2 SOLICITOR PAYNE: May it please the court? Present
3 before you, we have John Totherow. He is here today with
4 is attorney Mr. Sheldon and also his other attorney Ms.
5 Franz. Your Honor, we are here. We were scheduled to
6 have a waiver hearing in York County next week. That was
7 scheduled for the full week. However, Your Honor, we
8 have presented you with a plea agreement. It has been
9 signed today, Your Honor. And we presented that to you
10 where the juvenile will be agreeing to be waived up to
11 general sessions under the conditions of that plea
12 agreement which would require him to admit to a charge in
13 general sessions of voluntary manslaughter and to the
14 possession of a pistol during the commission of a violent
15 crime. The charges will run concurrently. And he will
16 receive a sentence of 339 months. And Your Honor, he
17 would get credit for time served for all the time that he
18 has spent in pretrial confinement since May of 2021. Of
19 '22, sorry, Your Honor.

20 THE COURT: May of '22?

21 SOLICITOR PAYENT: Yes. And Your Honor, we did
22 calculate that. It does come out to be approximately 24
23 years that he would serve. And that will be as an adult
24 on the plea agreement.

25 Your Honor, we are here today and we did ask that we

1 have a special term of court here in Chester County and
2 we do consent for the venue to have been changed here and
3 I believe that the defense does as well. And Your Honor,
4 we are here simply to make certain that this decision by
5 John is a free and voluntary decision and he's made it
6 with competent counsel that's given him the advice and
7 that he understands what's going on today. And so we are
8 asking Your Honor to please ask any questions that you
9 feel are appropriate to qualify this.

10 And then Your Honor, we will be returning him today
11 to the Department of Juvenile Justice. Because of his
12 age, even though, if Your Honor does approve this today,
13 he will be considered an adult, he will have to remain
14 with the Department of Juvenile Justice. I did speak
15 with Elizabeth Hill, the attorney with the Department of
16 Juvenile Justice. She said he would go back to state
17 detention and then once there is as a plea in general
18 sessions, Ms. Melvin with the department, who is present
19 in the courtroom, will let us know. She's checking on
20 that right now. She has that answer. When the plea
21 actually takes place, she will let us know what facility
22 of DJJ he will go back to. But he will remain with DJJ.

23 The victim in this case is this juvenile's mother.
24 The father is present in the courtroom. So he is both
25 father to this juvenile and the husband to the victim.

1 And Your Honor, I know that he is in a really difficult
2 position and he has brought with him some support. I
3 believe he has his minister with him and I believe
4 another gentleman as well. And so we do have them in the
5 courtroom as well. Thank you.

6 THE COURT: Thank you. Let me just say this. We
7 requested permission from South Carolina Court
8 Administration. They issued an order granting me the
9 jurisdiction to hear this case in Chester today.
10 Attorney Sheldon.

11 MR. SHELDON: Thank you, Your Honor. May it please
12 the court? We would echo sort of the sentiments of the
13 State. We do agree to change venue specifically because
14 you are the assigned trial judge for next week. In
15 addition to that, I mean, you are the assigned trial
16 judge because the judges in York County are conflicted
17 out. Judge Khoury is there this week. She has signed a
18 lot of orders in this case, but since you were the trial
19 judge, we thought this would be the most appropriate way
20 to handle this and are most familiar with the reports
21 since the court has had this for some time now. Judge,
22 so I agree with everything that the State said.

23 Present with me is my co-counsel in this case
24 Allison Franz. I also have my mitigation specialist
25 Pamela Leonard here. Somebody's that's worked very

1 closely with John, a second year law student now,
2 Rebecca Toole's in the back and she's been helpful in
3 this case as well visiting the juvenile quite frequently
4 down there in Columbia. So Judge, we're happy to get
5 started.

6 Just a couple of things that I would like to say
7 beforehand in regards to sentencing, we agree to 339
8 months. When I've been speaking with the juvenile and
9 with really, frankly, the solicitor's office, we've been
10 speaking about actual time that he would serve as opposed
11 to the months that he's been sentenced to, largely in
12 part because what he's charged with is a day-for-day
13 crime. There is also a day-for-day crime in the weapons
14 charge that's sort of been negotiated throughout this.
15 And because of that, both the solicitor and myself, have
16 communicated with SCDC and their general counsel in terms
17 of sentence computation and I do agree that the way that
18 this plea is structured and the 339 months, it will
19 result in him spending approximately 24 years; it's like
20 24.01. So I'm willing to say it's exactly 24 years for
21 the purposes of SCDS computation with a credit for
22 approximately a year and four months. And so that's --
23 When I'm asking him questions about his understanding of
24 the plea, he does fundamentally understand the 339
25 months, but the 24 years is what he's really

1 understanding. And that is not a number that's made
2 up. That is the number that is coming from SCDC; just so
3 the court knows. With all that said, we're happy to
4 proceed when the court is ready.

5 THE COURT: Okay. Would you like to question your
6 client on the stand?

7 MR. SHELDON: Yes, Your Honor. We would call John
8 Totherow.

9 THE COURT: Mr. Totherow, if you would please come
10 to the witness stand, sir.

11 JOHN TOTHEROW; after first being duly sworn,
12 testified as follows:

13 THE COURT: Please state your name for the record.

14 MR. TOTHEROW: John Totherow.

15 THE COURT: Thank you. Please answer your
16 attorney's questions and any questions Attorney Payne may
17 have of you or DJJ.

18 MR. SHELDON: Thank you, Judge.

19 DIRECT EXAMINATION

20 BY MR. SHELDON:

21 Q Mr. Totherow, please just say your name for the
22 record.

23 A John Totherow.

24 Q And we're going to need you to speak up, okay. This
25 lady, LaToya Perry, sitting next to you is recording

1 everything you say. And so she needs to be able to hear
2 you so that the transcript can be created if it's needed
3 later. Okay. Got that?

4 A Yes, sir.

5 Q She also cannot record uh-huh or huh-uh or head
6 nods. So make sure to go ahead and answer the questions.
7 All right?

8 A Yes, sir.

9 Q Mr. Totherow, you've heard everything that both
10 myself and Ms. Payne and the judge have said this
11 morning. Do you have an understanding of why we're here
12 this morning?

13 A Yes, sir.

14 Q And would you please mind telling me and the judge
15 what your understanding of what we're doing today is?

16 A I will be accepting 24 years.

17 Q But more importantly, do you understand that this
18 case was set for a trial next week?

19 A Yes, sir.

20 Q And what is your understanding of what that trial
21 was supposed to be?

22 A To determine if I will go to general sessions or
23 remain in family court.

24 Q Okay. And you understanding that by accepting the
25 plea that the state has offered, that you are also

1 agreeing to give up your right to have the trial next
2 week to determine whether or not you stay in family court
3 or be waived up to general sessions?

4 A Yes, sir.

5 Q Do you have any further questions for me about that,
6 for Ally, for Ms. Leonard, Becca or anybody else?

7 A No, sir.

8 Q Do you believe that we've sufficiently given you the
9 understanding of what's going on so that you can
10 voluntarily enter into what you're doing today?

11 A Yes, sir.

12 Q You think that you can -- Did, at any point in time
13 myself, Ms. Franz or anyone else that you've met with,
14 whether it's Dr. Knight, Dr. Atkinson, anybody at DJJ or
15 anyone else threatened you or force or make you do this?

16 A No, sir?

17 Q Are you entering into this agreement to have this
18 charge moved to general sessions because you believe it's
19 in your best interest?

20 A Yes, sir.

21 Q At any point in time, anyone other than myself or
22 Ms. Franz or someone directly associated with us at our
23 direction given you any sort of advice, legal advice or
24 anything else?

25 A (No response.)

1 Q Has anybody come to DJJ and tried to tell you what
2 the law is other than Ally or myself?

3 A No, sir.

4 Q And you understand that if that had happened, that
5 you would let us know that, right?

6 A Yes, sir.

7 Q You suffer from any medical conditions or anything?
8 Are you under the influence of anything today that would
9 impact your ability to understand waiving your right to
10 trial and moving this to general sessions for ultimate
11 resolution?

12 A No, sir.

13 Q You doing this, again, because you believe you're
14 getting the benefit of a deal and you want the court to
15 go ahead and accept this so that we can move this to
16 general sessions and finalize that deal?

17 A Yes, sir.

18 Q And nobody promised you anything other than what's
19 contain that document that you signed this morning; is
20 that right?

21 A Yes, sir.

22 Q Specifically, as it pertains to the agreement that
23 you entered into, you understand that when we went over
24 it this morning, there's a specific provision in there
25 that talks about section 16-25-90; is that right?

1 A Yes, sir.

2 Q And you understand that, even though that's in this
3 plea agreement, that your case would not be applicable to
4 that statute anyways?

5 A Yes, sir.

6 Q And that it's my understanding, Ms. Franz's
7 understanding and everybody else that has advised you
8 that that statute applies specifically to victims of
9 domestic violence cases and that parents and child, as a
10 matter of law, cannot be a victim of domestic violence
11 from a parent. You understand that?

12 A Yes, sir.

13 Q Okay. On the last page, you'll see that it's been
14 signed by all the prosecutors and by Judge Matthews. Is
15 that your signature there?

16 A Yes, sir.

17 Q Did you sign that this morning?

18 A Yes, sir.

19 Q Did you have an opportunity to go over every single
20 provision of that agreement?

21 A Yes, sir.

22 Q So after all of these questions, again, I'm going to
23 ask you one more time, is this what you believe to be in
24 your best interest and you want the court to accept this
25 agreement today and you're giving up your right to a

1 trial in juvenile court?

2 A Yes, sir.

3 Q A waiver hearing, I'm sorry, in juvenile court.

4 A Yes, sir.

5 MR. SHELDON: Thank you, Judge, I don't think I have
6 any more questions.

7 THE COURT: Attorney Payne.

8 SOLICITOR PAYNE: Your Honor, just one questions.

9 CROSS-EXAMINATION

10 BY SOLICITOR PAYNE:

11 Q Are you satisfied with the services that both of
12 your attorneys have given you in this matter?

13 A Yes, ma'am.

14 SOLICITOR PAYNE: Thank you.

15 THE COURT: Sir, have your attorneys done everything
16 that you've asked them to do?

17 MR. TOTTEROW: Yes, ma'am.

18 THE COURT: Do you have any other questions for
19 them?

20 MR. TOTTEROW: No, ma'am.

21 THE COURT: Do you have any complaints?

22 MR. TOTTEROW: No, ma'am.

23 THE COURT: All right. Have you been attending
24 school?

25 MR. TOTTEROW: Yes, ma'am.

1 THE COURT: Okay. And it is your intention to
2 finish; is that correct?

3 MR. TOTHEROW: Yes, ma'am

4 THE COURT: Did DJJ have any questions?

5 MS. MELVIN: No, Your Honor.

6 THE COURT: Thank you. You may step down.

7 MR. SHELDON: Nothing further from us, Judge.

8 SOLICITOR PAYNE: Nothing further from the State,
9 Your Honor.

10 THE COURT: Thank you. The court accepts the waiver
11 and the plea agreement executed by Mr. Totherow, his
12 attorneys and the State. I find that the agreement is
13 appropriate and the juvenile's decision to consent to the
14 waiver of his case to general sessions has been done so
15 voluntarily with the advice of competent counsel. You've
16 had two attorneys, young man. I find that your case
17 shall be waived to general sessions. You will be granted
18 credit for your time served. And I have signed your
19 order. You will be housed at DJJ until the appropriate
20 time. Best to you, sir. Good luck to you, young man.

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END OF TRANSCRIPT

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FAIFIELD)

I, LaToya C. Perry, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Family Court of Chester County, South Carolina, on the 7th day of September, 2023.

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

November 10, 2023

LaToya C. Perry

LaToya C. Perry, Court Reporter

My Commission Expires: 06-29-2027

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Direct Indictments
DOCKET NO. 2023-GS-46-05165
2023-GS-46-05165a

WITNESSES

The State of South Carolina
County of York

YCSO

Witnessing Officer: WONG

ARREST WARRANT NUMBER

COUNT ONE: Direct Indictment
COUNT TWO: Direct Indictment

ACTION OF GRAND JURY

THE STATE
VS.

JOHN KENNETH TOTHEROW

Foreperson of Grand Jury
Date:

VERDICT

INDICTMENT FOR
COUNT ONE: MURDER

SC Code: § 16-03-0050
CDR Code: 0116

Foreperson of Petit Jury
Date:

COUNT TWO: POSSESSION OF A
WEAPON DURING THE COMMISSION OF
A VIOLENT CRIME

SC Code: § 16-23-0490
CDR Code: 0549

Defendant

I John Totherow
hereby appear in my own proper
person and plead guilty to the within
indictment or to
Voluntary Manslaughter
& PWD/CVC

John Totherow
Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on September 21, 2023, the Grand Jurors of York County present upon their oath:

COUNT ONE: MURDER

John Kenneth Totherow did, in York County, South Carolina, on or about May 3, 2022, unlawfully and with malice aforethought, either express or implied, kill Alethea "Lisa" Puckett Totherow by means of shooting her, and the victim died as a proximate result thereof, all in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended.

COUNT TWO: POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

John Kenneth Totherow did, on or about May 3, 2022, in York County, South Carolina, while committing the violent crime of Murder, possess a Firearm, all in violation of 16-23-0490, *Code of Laws of South Carolina* (1976), as amended.

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


JOHN C. ANTHONY
DEPUTY SOLICITOR

MAC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

STATE

VS.

INDICTMENT/CASE#: 2023-GS-46-05165

JOHN TOTHEROW

AKA:

Race: W Sex: M Age: 16

DOB: SS#

Address:

City, State, Zip: York, SC 29745

DL#* SID#

A/W#:

Date of Offense: 09/07/2023

S.C. Code §: 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

CONVICTED OF or PLEADS

TO: Voluntary Manslaughter (2-30 years)

In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

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

ATTEST: 33 months

/s John C. Anthony
Solicitor

7116
SC Bar #

/s John Totherow
Defendant

/s [Signature]
Attorney for Defense

74943
SC Bar #

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

for a determinate term of 339 days/months/years/Time Served, Youthful Offender Act not to exceed ___ years

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

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

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

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: 2023 GS 46-5165A

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

497 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

JCA

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Attend Voc. Rehab. Or Job Corp
- Mental Health Counseling
- Sex Offender Registry pursuant to S.C. Code § 23-3-430
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____
- Completion of GED
- No Contact with Victim
- May serve W/E beginning: _____
- Public Service Employment _____ days/hours
- Random Drug/Alcohol Testing
- Domestic Violence Intervention Program

RESTITUTION Deferred Def. Waives Hearing Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:		\$ _____
Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ _____
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
	TOTAL	\$ 125.00

Clerk of Court/Deputy Clerk: Angie Bryant
Court Reporter: A. Butler

Presiding Judge: _____
Judge Code: Griffith 2154
Sentence Date: September 12, 2023

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STATE

VS.

JOHN TOTTEROW

AKA:

Race: W Sex: M Age: 16

DOB: SS#

Address: [REDACTED]

City, State, Zip: York, SC 29745

DL#* SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2023-GS-46-05165A

A/W#:

Date of Offense: 09/07/2023

S.C. Code §: 16-23-0490

CDR Code #: 0549

RECEIVED

Sep 19 2023

SC Court of Appeals

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

CONVICTED OF or PLEADS

TO: Possession of a Weapon During the Commission of a Violent Crime (5 years)

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is:

as

As indicted,

Lesser Included Offense,

J.T.

Defendant Waives Presentment to Grand Jury.

(def.'s initials)

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

ATTEST:

5 years concurrent

/s John C. Anthony
Solicitor

7116
SC Bar #

/s John Tothorow
Defendant

/s *[Signature]*
Attorney for Defense

74943
SC Bar #

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

for a determinate term of 60 days/months/years/Time Served,

Youthful Offender Act not to exceed ___ years

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

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

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

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on:

2023 GS 46-5165

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

497 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

JCA

SPECIAL CONDITIONS:

PTUP after _____ months/years

And Other Terms Listed Below:

- Substance Abuse Counseling
- Completion of GED
- Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp
- No Contact with Victim
- Domestic Violence Intervention Program
- Mental Health Counseling
- May serve W/E beginning: _____
- Sex Offender Registry pursuant to S.C. Code § 23-3-430
- Public Service Employment _____ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: _____

RESTITUTION Deferred Def. Waives Hearing Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:	\$	Beginning	\$
Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	_____	_____
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ 100
§14-1-211 (A)(2)(DUI Surcharge)		\$100	\$
§56-5-2995 (DUI Assessment)		\$12	\$
§56-1-286 (DUI Breath Test)		\$25	\$
§14-1-212 (Law Enforce. Funding)		\$25	\$ 25
§14-1-213 (Drug Court Surcharge)		\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41	\$
§50-21-114 (BUI Breath Test Fee)		\$50	\$
§56-5-2942(J) (Vehicle Assessment)		\$40/ea	\$
3% to County (if paid in installments)		TBD	\$
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$
TOTAL			\$ 125.00

Clerk of Court/Deputy Clerk: Angie Bryant
Court Reporter: A. Butler

Presiding Judge: _____
Judge Code: Griffith 2154
Sentence Date: September 12, 2023