

ORIGINAL

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Roger M. Young, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BREON JACOBY MAYERS,

APPELLANT

APPELLATE CASE NO, 2012-213003

RECORD ON APPEAL

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1           Well, you know, sometimes, sometimes you put  
2 somebody up on the stand because you're tired of  
3 seeing, I'll use the Solicitor's words, murderers,  
4 thieves, so you put up this nice, old gentleman,  
5 Charles Benjamin, and you put him up and he says,  
6 yeah, you know, I came home that day. I dropped him  
7 off and I saw a car and I saw two or three guys  
8 there. Okay. Do you recognize him? Why didn't the  
9 Solicitor say, you recognize him? Was he one of the  
10 guys there that day?

11           Well, let's see, Investigator Joe Chappell  
12 essentially talked about the swabs, but remember  
13 that we talked about the Glock versus the Hi-Point.  
14 Now, there's a reason why we went -- why we went  
15 into there because, remember, some of the defendants  
16 for some reason seem to think that my client has a  
17 Glock. Well, this is not a Glock, wherever it's at,  
18 it's not a Glock. I promise you it's not a Glock.  
19 Everybody said it's not a Glock. If you hold it up,  
20 it says Hi-Point on it. It doesn't say Glock. The  
21 weapon that was used to shoot this gentleman was not  
22 a Glock.

23           Well, Davis {verbatim} Day called -- and  
24 everybody else essentially -- and I'm almost through  
25 believe it or not. You know, everybody's got an

1       " opinion of what I need to do when I try a case.  
2       Some of my friends they say, well, why didn't you  
3       tell the jury this, why didn't you tell them that,  
4       why didn't you hit this guy on this, why didn't you  
5       hit all these CSI people, now make sure the jury  
6       understands about these CSI people. Well, you're  
7       not stupid.

8               Every bit of evidence, fingerprints, DNA, every  
9       bit of evidence that you can look at, you know it's  
10      not lying to you, you can pick it up, Mr. DNA, are  
11      you lying to me today, no, I'm not, none of it  
12      points to my client. I still don't know what the  
13      sneakers are for. Remember the deal about the  
14      sneakers and how for some reason it was -- was that  
15      explained to you? None of it points to my client.

16             The best we can hope is that, and I hope,  
17      there's -- the math, did you realize, if you do the  
18      math, there's 800,000 people in South Carolina alone  
19      excluding Orientals who could potentially have been  
20      involved with the touching of that gun? That's the  
21      math. At least two of the 12 people assembled here  
22      could potentially fit within that group. That's  
23      what you're asked to decide the guilt or innocence  
24      of my client on. That's it. That's the only  
25      scientific evidence that does that.

1           Do you realize that the weapon which killed  
2 this gentleman, the best that can be said about that  
3 pistol ball, whatever you want to call it, that  
4 sounds old-fashioned, is that it was fired from a  
5 9mm Hi-Point? Can't even say it came from this gun.  
6 You can't say it came from this gun. It could come  
7 from any 9mm Hi-Point.

8           And, you know, nobody wanted you to know about  
9 that other stolen 9mm Hi-Point which was stolen  
10 right before this on the same street. Why not? Why  
11 didn't you want to know about that? Is it a  
12 coincidence? I don't know. But guess what, he said  
13 it could have been the weapon which shot the guy.

14          I am not going to annoy you with all the  
15 results because I think I've established that  
16 nothing points to him.

17          The pathologist, nice person, didn't have much  
18 to say. Ain't no question David Cannon got shot and  
19 died from a gunshot wound. The most interesting  
20 thing she said, though, was that the path of the  
21 bullet was left, then right and then down.

22          If you remember the schematics of the trailer,  
23 if you remember where the body was found, if you  
24 remember that the person who had to do the shooting  
25 had to be face-to-face with David Cannon,

1 face-to-face with David Cannon, I want me an expert  
2 from, I don't know, SLED to tell me why that doesn't  
3 indicate that the person who did it was left handed.

4 All right. We had the nice gentleman who drew  
5 the map. And I swear I'm just about through. We've  
6 got Derrenbacher who testified about the anonymous  
7 calls which left off Breon. We've got Suzette  
8 Meggett who didn't see Breon, doesn't recognize his  
9 number. We've got his girlfriend who said that it's  
10 -- that he's used the phone before with that number  
11 and it's his homeboy's, whoever homeboy is.

12 And then you've got the Verizon lady. And  
13 we've already talked about the Verizon lady. I'm  
14 not going to talk about the towers. I want to know  
15 about my Alltel bill and why my -- about why my  
16 phone doesn't work.

17 But the towers can sometimes be four, sometimes  
18 they switch, if you get too much on one tower, it  
19 moves to another. Who cares? Because this case is  
20 not about cell phones. We put the detective up  
21 there. It's about the list that we drew up. See,  
22 we write things in here and we tell you that that  
23 means something. Remember the investigator didn't  
24 know why we put voice mail. Why do you not put up  
25 the people to ask them if they talked to him, what

1 he said?

2 I am sorry if I've been long. I don't think I  
3 have. Your decision is so important. I don't get  
4 another chance. When you make your decision, just  
5 remember what you're deciding and remember who has  
6 the burden of proof. Don't convict him on a cell  
7 phone. You make the State prove its case. Thank  
8 you.

9 CHARGE OF THE COURT

10 **THE COURT:** All right. Folks, you've seen some  
11 good lawyering today, but the best lawyering you  
12 didn't get to see was the young lady there who  
13 earlier came into my office, those folks that are  
14 getting ready to leave out of there right now, they  
15 came in and they said, You know, Judge, we know you  
16 normally don't let anybody in or out of the  
17 courtroom during charges and arguments, stuff like  
18 that, but we would like to come in and watch the  
19 arguments, this group of lawyers, but we don't want  
20 to hear you do the charge. And if you could, just  
21 talk for a few seconds before you do your charge, we  
22 would like to leave.

23 And that's the best lawyering you've seen today  
24 and you didn't even see it. So I let them go on  
25 out. But, normally, we just keep everybody in here.

1           because right now we go into the final phase of the  
2           trial before you begin the deliberations and that's  
3           me charging you on the law.

4           Now, I told you at the beginning of the trial,  
5           you're judges just like I'm a judge. We just have  
6           different roles in this trial. You are the judges  
7           of the facts and you determine how much weight to  
8           give testimony of witnesses. And you judge the  
9           credibility of witnesses. You alone decide whether  
10          or not a witness has a bias, a prejudice or an  
11          interest in the outcome of the case. And you judge  
12          appearance and demeanor on the witness stand and  
13          reasonableness of a witness' statement.

14          I, on the other hand, have two roles. I told  
15          you one of mine was to be the trial judge, which was  
16          to preside over the trial, make sure that both  
17          trials -- or both sides get a fair trial. The other  
18          is the role that I now have and that is to instruct  
19          you on the law that applies to the charges in this  
20          case.

21          Now, if you have some idea of what you think  
22          the law is or what the law ought to be and it does  
23          not agree with what I now charge you that the law  
24          is, you're obligated under the oath that you took at  
25          the beginning of the trial to abandon this

1           preconception on your part and to apply and accept  
2           the law precisely as I now charge it to you.

3           I want to remind you that the fact that the  
4           defendant was arrested, charged and indicted in this  
5           case is not evidence in this case and cannot be  
6           considered by you as evidence of guilt in this case  
7           and nor does it create any presumption or inference  
8           of guilt on behalf of the defendant.

9           The indictments that I am going to go over with  
10          you in a few more minutes are simply the formal,  
11          written instruments which give this court  
12          jurisdiction over these charges. They contain the  
13          charges against the defendant and allow him to know  
14          what he is being charged with in this court. These  
15          are just formal documents that get this case to this  
16          court.

17          Now, I told you at the beginning of the trial,  
18          there are four indictments in this case. The first  
19          one is indictment 2012-GS-32-182 which charge the  
20          defendant with murder, indictment 2012-GS-32-184 is  
21          for armed robbery, and indictment 2012-GS-32-183 was  
22          for burglary in the first degree, and indictment  
23          2012-GS-32-187 was for possession of a weapon during  
24          a violent crime. I read those indictments to you at  
25          the beginning of the trial.

1           The indictment for murder I have amended to add  
2 a statement that in addition to U.S. currency being  
3 involved in the taking of goods, we also now have  
4 the indictment to read, And/or a .357 handgun and/or  
5 marijuana.

6           Now, again, I'm going to send these back with  
7 you when you begin your deliberations, but you are  
8 not to consider them as evidence. They are simply  
9 sent back to you for the purpose of the Foreman  
10 writing what the verdict is on the back of them, all  
11 right, but these themselves are not evidence.

12           Each indictment is considered a separate and  
13 distinct offense. You must decide each indictment  
14 separately on the evidence and the law applicable to  
15 it which -- uninfluenced by your decision as to any  
16 other indictment. The defendant may be convicted or  
17 acquitted on any or all of the charges. You will be  
18 asked to write a separate verdict of guilty or not  
19 guilty for each indictment.

20           Now, the defendant pled not guilty to each of  
21 these indictments and that plea casts the burden on  
22 the State to prove the defendant guilty beyond a  
23 reasonable doubt. A person charged with committing  
24 an offense in South Carolina is never required to  
25 prove himself innocent. This is an important rule

1 of law in this country that a defendant is -- in a  
2 criminal trial, will always be presumed to be  
3 innocent of the crime for which he is indicted and  
4 unless and until his guilt has been proven by  
5 evidence satisfying you of that guilt beyond a  
6 reasonable doubt.

7 This presumption of evidence {verbatim} is not  
8 a mere legal theory. It's not a legal phrase. This  
9 is a substantial constitutional right to which every  
10 defendant is entitled. And this presumption of  
11 innocence accompanies the defendant from the time he  
12 is charged throughout the trial until you reach a  
13 guilty -- a verdict of guilt based upon evidence  
14 satisfying you of that guilt beyond a reasonable  
15 doubt.

16 Now, you've heard me say this phrase, Beyond a  
17 reasonable doubt, several times. The State has a  
18 burden of proving guilt beyond a reasonable doubt.  
19 We talked about at the beginning of the trial, some  
20 of you may have served as jurors in civil cases  
21 where you were told it's only necessary to prove  
22 that a fact is more likely true than not true, such  
23 as by a greater weight or a preponderance of the  
24 evidence. But as I explained to you, in criminal  
25 cases, the State's proof must be more powerful than

1 that. It is proof beyond a reasonable doubt.

2 Proof beyond a reasonable doubt is proof that  
3 leaves you firmly convinced of the defendant's  
4 guilt. There are very few things in this world that  
5 we know with absolute certainty and, in criminal  
6 cases, the law does not require proof that overcomes  
7 every possible doubt.

8 If, based on your consideration of the  
9 evidence, you are firmly convinced that the  
10 defendant is guilty of the crime charged, then you  
11 must find the defendant guilty. If, on the other  
12 hand, you think there is a real possibility that the  
13 defendant is not guilty, then you must give the  
14 defendant the benefit of the doubt and find him not  
15 guilty.

16 Now, in a trial such as this, there are two  
17 types of evidence, there's direct evidence and  
18 there's circumstantial evidence. Direct evidence is  
19 testimony of a person who claims to have actual  
20 knowledge of a fact, such as an eyewitness. This is  
21 evidence which immediately establishes the main fact  
22 to be proved.

23 The other type of evidence is called  
24 circumstantial evidence. And this is proof of a  
25 chain of facts and circumstances which indicate the

1 existence of a fact. It's evidence which  
2 immediately establishes collateral facts from which  
3 a main fact may be inferred. Circumstantial  
4 evidence is based on inference and is not based on  
5 personal knowledge or observation.

6 Now, the law makes absolutely no distinction  
7 between the weight or value to be given to either  
8 direct or circumstantial evidence, nor is a greater  
9 degree of certainty required of circumstantial  
10 evidence than of direct evidence. You should weigh  
11 all of the evidence in this case. And after  
12 weighing all of the evidence, if you're not  
13 convinced of the guilt of the defendant beyond a  
14 reasonable doubt, you must find the defendant not  
15 guilty.

16 As jurors, it is your job to determine  
17 credibility of witnesses. Credibility simply means  
18 believability. And it is your job as duty -- or  
19 your duty as jurors to analyze and evaluate the  
20 evidence and determine what evidence convinces you  
21 of its truth.

22 In determining the believability of witnesses  
23 who've testified in this case, you can believe one  
24 witness over several witnesses or several witnesses  
25 over one witness. You may believe part of the

1 testimony of a witness and reject the remaining part  
2 of the testimony of that same witness. You may  
3 believe the testimony of a witness in its entirety  
4 or you can reject the testimony of a witness in its  
5 entirety. You may consider whether any witness has  
6 exhibited to you any interest, bias, prejudice or  
7 other motive in this case. And you may also  
8 consider the appearance and manner of a witness  
9 while on the witness stand.

10 We also talked about expert witnesses and I  
11 explained that our rules of evidence don't  
12 ordinarily permit witnesses to talk about their  
13 opinions or their conclusions about evidence, but we  
14 make an exception for those folks that we call  
15 expert witnesses. And those are people who are  
16 witnesses because of education and experience and  
17 they have become an expert in some art, science and  
18 profession or a calling. And they're allowed to  
19 state an opinion as to relevant and material matter  
20 in which they claim to be an expert. And they can  
21 also give you their reasons for that opinion.

22 You should consider any expert opinion received  
23 as evidence in this case and treat it like any other  
24 evidence, give it the weight that you think it  
25 deserves. If you decide that the opinion of an

1 expert witness is not based upon sufficient  
2 education or experience or if you conclude that the  
3 reasons given in support of the opinion are not  
4 sound or that that opinion is outweighed by other  
5 evidence, you can disregard the opinion entirely.

6 An expert witness' testimony is not to be given  
7 any other -- or any greater weight than any other  
8 witness simply because the witness is an expert.  
9 And, furthermore, you're not required to accept an  
10 expert's opinion even if it is uncontradicted by  
11 other evidence.

12 Now, I've talked to you about this several  
13 times, but I'm going to emphasize to you now that  
14 the fact that the defendant did not testify is not a  
15 factor to be considered by you in any way during  
16 your deliberations and in your consideration on the  
17 question of whether he is guilty or innocent. You  
18 may not consider this in any manner whatsoever. A  
19 defendant has a constitutional right to remain  
20 silent and the assertion of this right must not be  
21 considered by you during your deliberations.

22 I repeat, under the oath that you took at the  
23 beginning of the trial, you are to draw no  
24 conclusion whatsoever from the fact that the  
25 defendant in this case did not testify. The fact

1 that this defendant did not testify should not even  
2 be discussed in the jury room.

3 The burden of proof, as I have stated it to  
4 you, remains on the State to prove guilt beyond a  
5 reasonable doubt. The defendant is not required to  
6 prove his innocence.

7 Now, there was a statement presented during the  
8 trial that was alleged to have been made by the  
9 defendant. While the Court decided that this  
10 statement was admissible, I instruct you that you  
11 must make the ultimate decision as to whether or not  
12 the defendant made that statement.

13 If the defendant did make the statement, you  
14 must determine whether or not the statement was made  
15 by the defendant voluntarily and of his own free  
16 will. This means that his statement was not caused  
17 by pressure, fear, force, threats, coercion or  
18 intimidation or by hope of promise or leniency or  
19 reward of any kind.

20 In determining whether or not the statement was  
21 voluntary, you should consider both the  
22 characteristics of the defendant and the details of  
23 the questioning. Some of the factors that you can  
24 consider are:

25 The age of defendant; the defendant's education

1 or lack of education; the defendant's mental ability  
2 or capacity; his IQ or intelligence; his background  
3 and environment; the place and length of the  
4 detention; the nature of the questioning; the advice  
5 or lack thereof to the defendant of his  
6 constitutional rights, including but not limited to,  
7 the right to remain silent, that any statement could  
8 be used against him in a court of law, the right to  
9 have a lawyer present and that if he couldn't afford  
10 a lawyer, a lawyer would be appointed to represent  
11 him without any cost, and that he could stop making  
12 a statement at any time.

13 You must carefully consider all of the  
14 surrounding circumstances before you give any weight  
15 to an alleged statement.

16 Again, the State has the burden of proving  
17 beyond a reasonable doubt that the alleged statement  
18 was voluntary. If you determine that it was, you  
19 may give the statement any further consideration  
20 that you deem proper. You must not -- you must  
21 decide what weight, if any, should be given to the  
22 alleged statement. And if you determine that the  
23 alleged statement was not the free and voluntary  
24 statement of the defendant, you should not consider  
25 the statement at all.

1           Now, we're going to get to the elements of each  
2 of the charges. We're going to go over the charge  
3 of murder first. And there's no significance to the  
4 fact that I'm going over this one first. You've  
5 just got to go through one of them at the time and  
6 this was the first one.

7           Now, the defendant's charged with murder. The  
8 State must prove beyond a reasonable doubt that the  
9 defendant killed another person with malice  
10 aforethought.

11           Malice is hatred, ill will or hostility towards  
12 another person. It's the intentional doing of a  
13 wrongful act without just cause or excuse and with  
14 an intent to inflict an injury or under  
15 circumstances that the law will infer an evil  
16 intent.

17           Malice aforethought does not require that  
18 malice exist for any particular time before the act  
19 is committed, but malice must exist in the mind of  
20 the defendant just before and at the time the act is  
21 committed. Therefore, there must be a combination  
22 of the previous evil intent and the act.

23           Malice aforethought may be expressed or  
24 inferred. These terms, expressed and inferred, do  
25 not mean different types of malice, but merely the

1 manner in which malice may be shown to exist, that  
2 is, either by direct evidence or by inference from  
3 the facts and circumstances which are proved.

4 Expressed malice is shown when a person speaks  
5 words which express hatred or ill will for another  
6 or when the person prepared beforehand to do the act  
7 which is later accomplished, for example, lying in  
8 wait for a person or other acts of preparation going  
9 to show that the deed was within the defendant's  
10 mind would be expressed malice.

11 Malice may be inferred from conduct showing a  
12 total disregard for human life. Malice may be  
13 inferred from conduct showing a total disregard for  
14 human life and may also arise when the deed is done  
15 with a deadly weapon.

16 A deadly weapon is any article, instrument or  
17 substance which is likely to cause great death or  
18 bodily harm. Whether an instrument has been used as  
19 a deadly weapon depends on the facts and  
20 circumstances of each case. And the following are  
21 examples of instruments which may be deadly weapons:  
22 A pistol; a shotgun; a rifle; a dirk; a dagger; a  
23 knife; a slingshot; metal knuckles; a razor;  
24 gasoline; firebomb or Molotov cocktail; lighter  
25 fluid. A gun may be a deadly weapon even if it is

1 not operating.

2 Now, the next indictment I'm going to go over  
3 with, an indicted offense, is armed robbery. This  
4 is in violation of South Carolina Code Section  
5 16-11-330. And in order to prove this offense, the  
6 State must first prove beyond a reasonable doubt  
7 that the defendant took personal property from the  
8 person or presence of another.

9 Property is in the presence of a person if it's  
10 within the person's reach, inspection, observation  
11 or control so that the person could, if not overcome  
12 with violence or prevented by fear, keep possession  
13 of the property.

14 The State must also prove beyond a reasonable  
15 doubt that the defendant carried the property away  
16 intending to permanently deprive the owner of the  
17 property and to keep the property for the  
18 defendant's own use. The slightest removal of the  
19 property or the complete possession of the property  
20 even for an instant by the defendant is sufficient  
21 to show a taking and carrying away of the property.  
22 The taking and carrying away of the property must  
23 have been done with violence or by putting the owner  
24 of the property in fear of violence.

25 Finally, the State must prove beyond a

1 reasonable doubt that the defendant was armed with a  
2 deadly weapon during the robbery. And, again, a  
3 deadly weapon is any article, instrument or  
4 substance which is likely to cause death or great  
5 bodily harm. Whether or not an instrument has been  
6 used as a deadly weapon, again, depends on the facts  
7 and circumstances of each case.

8 And, again, the same examples that I gave you a  
9 few minutes ago or a few seconds ago are examples of  
10 deadly weapons: A pistol; a shotgun; a dirk; a  
11 rifle; a dagger; a knife; a slingshot; metal  
12 knuckles; razor; gasoline; firebomb; Molotov  
13 cocktail; lighter fluid. And, again, a gun may be a  
14 deadly weapon even if it's not operating.

15 The third indicted offense is burglary in the  
16 first degree in violation of South Carolina Code  
17 Section 16-11-311. To prove burglary in the first  
18 degree, the State must first prove beyond a  
19 reasonable doubt that the defendant entered a  
20 dwelling without consent.

21 A dwelling is any building or a portion of a  
22 building in which a person ordinarily sleeps. A  
23 building constructed as a dwelling that has never  
24 been occupied cannot be considered a dwelling for  
25 purposes of burglary, but a building is a dwelling

1 even if the residents are temporarily absent from  
2 the building.

3 In order to prove the defendant entered the  
4 dwelling, the State does not have to show that the  
5 defendant's entire body entered the dwelling, the  
6 smallest entry is sufficient. It may be any part of  
7 the body, such as a hand or a foot, or even an  
8 instrument, such as a hook or other instrument.

9 In addition, the State does not have to prove  
10 that force was used to gain entry. If a person  
11 enters a building by using deception, artifice,  
12 trick or misrepresentation to get consent to enter,  
13 this is entry without consent.

14 Next the State must prove beyond a reasonable  
15 doubt that the defendant intended to commit a crime,  
16 either a felony or a misdemeanor, at the time of the  
17 entry. The mere entry into a dwelling without  
18 consent is not burglary. If the intent to commit a  
19 crime is formed after the entry, it's not a  
20 burglary.

21 On the other hand, if the defendant intended to  
22 commit a crime at the time of the entry, it is a  
23 burglary even if the intent was abandoned after the  
24 entry. It does not matter that the intended crime  
25 was not completed. Intent may be shown by acts and

1           conduct of the defendant and other circumstances  
2           from which you may naturally and reasonably infer  
3           intent.

4           And, finally, the State must prove beyond a  
5           reasonable doubt one of four things: First, when  
6           entering while in the dwelling or when fleeing, the  
7           defendant or an accomplice was armed with a deadly  
8           weapon or explosive.

9           And, again, a deadly weapon is an article,  
10          instrument or substance which is likely to cause  
11          death or great bodily injury. And whether or not an  
12          instrument has been used as a deadly weapon depends  
13          on the facts and circumstances of each case. And,  
14          again, examples are of a deadly weapon: A pistol;  
15          shotgun; rifle; dirk; dagger; knife; slingshot;  
16          metal knuckles; razor; gasoline; firebomb; Molotov  
17          cocktail; lighter fluid. And a gun may be a deadly  
18          weapon even if not operating.

19          Alternatively, the second thing the State must  
20          prove is that when entering the dwelling or when  
21          fleeing, the defendant or an accomplice caused  
22          physical injury to anyone not participating in the  
23          crime.

24          Or, alternatively, the third is that when  
25          entering while in the dwelling or when fleeing, the

1 defendant or an accomplice used or threatened to use  
2 a dangerous object.

3 Or, fourth, the final alternative is when  
4 entering while in the dwelling or when fleeing, the  
5 defendant or an accomplice displayed what was or  
6 appeared to be a knife, pistol, revolver, rifle,  
7 shotgun, machine gun or other firearm.

8 The fourth indictment is for possession of a  
9 weapon during the commission of or attempt to commit  
10 a violent crime in violation of South Carolina Code  
11 Section 16-23-490. To prove that charge, the State  
12 must prove beyond a reasonable doubt that the  
13 defendant was in possession of a firearm or visibly  
14 displayed what appeared to be a firearm during the  
15 commission of a violent crime. Firearm means any  
16 machine gun, automatic rifle, revolver, pistol or  
17 any weapon which will, is designed to or may readily  
18 be converted to expel a projectile.

19 In order to find the defendant guilty of  
20 possession of a weapon during the commission of a  
21 violent crime, you must first find the defendant  
22 guilty of either committing a violent crime or  
23 attempting to commit a violent crime. Murder,  
24 burglary in the first degree and armed robbery are  
25 considered violent crimes. The State must prove

1 beyond a reasonable doubt that the weapon further  
2 advanced or helped in the commission of the crime.

3 Now, I also charge you it's the law of South  
4 Carolina that if a crime is committed by two or more  
5 persons who are acting together and committing the  
6 crime, the act of one is the act of all.

7 A person who joins with another to commit an  
8 unlawful act is criminally responsible for  
9 everything done by the other person which happens as  
10 a probable or natural consequence of the acts done  
11 in carrying out the common plan or purpose. If two  
12 or more people are together, acting together,  
13 assisting each other in committing an offense, the  
14 act of one is the act of all or, it is sometimes  
15 said, the hand of one is the hand of all.

16 Prior knowledge that a crime is going to be  
17 committed without more is not sufficient to make a  
18 person guilty of that crime. Mere knowledge that  
19 another person is going to commit a crime, even if  
20 the defendant is present when the crime is  
21 committed, is not sufficient to convict the  
22 defendant as a principal.

23 Guilt as a principal is shown by actual or  
24 constructive presence at the scene as a result of  
25 prior arrangement; therefore, a finding of prior

1       arranged plan or common scheme is necessary for a  
2       finding of guilt as a principal.

3               The State must prove beyond a reasonable doubt  
4       by competent evidence the theory of the hand of one  
5       is the hand of all.

6               A principal is a crime -- a principal in a  
7       crime is one who either actually commits the crime  
8       or who is present aiding, abetting or assisting in  
9       committing the crime.

10              When a person does an act in the presence of  
11       and with the assistance of another, the act is done  
12       by both. Where two or more acting with a common  
13       plan or an intent are present at the commission of a  
14       crime, it does not matter who actually commit the  
15       crime, all are guilty, the hand of one is the hand  
16       of all.

17              Present at the commission of the crime means to  
18       be sufficiently near to aid and abet and assist in  
19       the commission of the crime; however, mere presence  
20       at the scene of a crime is not sufficient to convict  
21       one as a principal on the theory of aiding and  
22       abetting. Intent is also a necessary element, for  
23       there must have been a common design or intent to  
24       commit the crime and the crime must have been  
25       committed pursuant thereto with the person aiding

1 and abetting by some overt act.

2 Intent means intending the result which  
3 actually occurs not accidentally or involuntarily.  
4 Intent may be shown by acts and conduct of the  
5 defendant and other circumstances from which you may  
6 naturally and reasonably infer intent. The State  
7 must prove these elements beyond a reasonable doubt.

8 Finally, folks, in determining the guilt or  
9 innocence of the defendant, you cannot consider any  
10 possible penalty for any particular crime.

11 Punishment for a crime is a matter for me to  
12 determine and should never be considered by you in  
13 any way whatsoever in arriving at a fair and  
14 impartial verdict as to the guilt or innocence of  
15 the defendant.

16 Now, as to each charge, it must be a unanimous  
17 verdict. In other words, all 12 of you must agree  
18 on any particular indictment to convict the  
19 defendant of that indictment. So I'm going to send  
20 these indictments back. As I said, these are not  
21 evidence, but they're sent back for the sole purpose  
22 of writing the verdict down.

23 So, Mr. Foreman, this is where you step in.  
24 And you'll see on the back of these down on this  
25 left-hand side, there's a little place that says

1 verdict, all right. There are two possible verdicts  
2 on each charge, guilty or not guilty.

3 You go through each of the charges. And if the  
4 jury says -- unanimously agrees on a guilty verdict,  
5 you write not guilty {verbatim}. If the jury  
6 unanimously agrees not guilty, you write not guilty.  
7 You sign it and date it. Go through the same thing  
8 on each of the charges. You must unanimously agree  
9 on a verdict of either guilty or not guilty. And  
10 when you have finished on each of the charges, then  
11 I want you to let the bailiffs know you have reached  
12 a verdict.

13 Now, I'm going to send you back to the jury  
14 room. Don't begin deliberations for just a couple  
15 more minutes. I have to do -- I have to give the  
16 lawyers first an opportunity to say, Judge, you  
17 know, you misspoke. I know you intended to say  
18 something, but it came out wrong. Just a formality  
19 we go through. We also have to make sure we have  
20 all the evidence together.

21 And so, in a couple of minutes, these are just  
22 formalities, it shouldn't take more than five  
23 minutes hopefully, I'll send the evidence and the  
24 indictments back with the bailiff and they'll tell  
25 you that you can begin deliberations. So right now

1 just all of you go back to the jury room, but don't  
2 begin deliberations until I send word back, all  
3 right. See you in a few minutes.

4 (The jury retires to the jury room.)

5 **THE COURT:** Okay. Anything from the State?

6 **MR. GRAHAM:** Judge, I hate to do this, but I  
7 think you misspoke.

8 **THE COURT:** What was that? It's not the first  
9 time.

10 **MR. GRAHAM:** At the very end when you were  
11 telling about the form of the verdict, you said, If  
12 you reach a guilty verdict, to write not guilty on  
13 the form. And then you said --

14 **THE COURT:** I said it backwards?

15 **MR. GRAHAM:** You said, If you reach a guilty  
16 verdict, write not guilty. And then you said, If  
17 you reach a not guilty verdict, to write not guilty.  
18 I would assume they're smart enough to figure it  
19 out --

20 **THE COURT:** Well, I don't mind bringing them  
21 back in here just to clear that up. Is that the  
22 only mistake?

23 **MR. GRAHAM:** That's all, Your Honor. Thank  
24 you.

25 **THE COURT:** Well, I'm having a better day than

1 I thought I was. How about you, Mr. Williams,  
2 anything?

3 **MR. WILLIAMS:** Judge, I like the way you gave  
4 the speech.

5 **THE COURT:** Well, it both sounds like I said I  
6 might have misspoke. So go ahead and bring them  
7 back in real quick.

8 **THE CLERK:** Your Honor...

9 (Whereupon, a brief conversation was held  
10 off the record.)

11 **THE COURT:** I'll explain to them about the gun,  
12 that it won't go back unless they ask for it.

13 How about the jury charge? Has anybody got a  
14 problem with those going back?

15 **MR. GRAHAM:** No, Your Honor.

16 **MR. WILLIAMS:** No, Your Honor.

17 **MR. GRAHAM:** I didn't understand what the clerk  
18 said. The gun goes back, but the gun and ammo don't  
19 go back together; isn't that correct?

20 **THE COURT:** Well, what I tell them is I won't  
21 send the gun back right away, but if they want it,  
22 to just ask for it and then if they want --

23 **MR. GRAHAM:** So the ammo --

24 **THE COURT:** -- but we don't get -- if they want  
25 it, we'll send it in. And then they send it back if

1           they want the ammo, it'll go in separately and go  
2           back. But I just don't send it right back unless  
3           they -- I like to just keep it separate.

4           **MR. GRAHAM:** Is the ammo going to go in  
5           straight away and then we'll switch --

6           **THE COURT:** If they want the ammo or the gun,  
7           they just ask for it.

8           (The jury returns to the courtroom.)

9           **THE COURT:** All right. Folks, as difficult as  
10          it is for me to admit error on my part, apparently,  
11          I said that if y'all reach a verdict of guilty, I  
12          said write down not guilty. Well, that, of course,  
13          would be wrong and would terribly confuse this case.  
14          So, to clarify, if you unanimously agree the verdict  
15          is guilty, write down guilty. If you unanimously  
16          agree the verdict is not guilty, write down not  
17          guilty, okay.

18          Now, one last thing I did not cover, but the  
19          firearm and the ammunition, if you want to see them,  
20          you're welcome to see them. I don't normally allow  
21          the gun and the bullets back at the same time and I  
22          won't send them back unless you want to see them.

23          But if you want to see either or both, all you  
24          have to do is let the bailiff know and we'll take --  
25          bring you in the gun first, you can examine it if



1           **THE COURT:** All right. I'm going to discharge  
2 the alternate, so anybody have any problem with  
3 that?

4           **MR. GRAHAM:** No, sir.

5           **MR. WILLIAMS:** No, Your Honor.

6           **THE COURT:** Okay. I want to thank y'all first  
7 before you do this. Y'all have both done a  
8 tremendous job. It makes my job a lot easier when  
9 people operate on a high level and very  
10 professional. Whatever the outcome, thank you.  
11 You've done a tremendous job.

12           So let's go ahead and get this to the jury and  
13 then we can let them start deliberating. We'll give  
14 them a few more minutes and we'll decide if they --  
15 ask them if they want to have lunch ordered in.

16           (The alternate enters the courtroom.)

17           **THE COURT:** Yes, sir. You are finished for the  
18 week. Thank you for your service. Once you -- once  
19 we turn it over to them, then you're done. So you  
20 can go on home. They'll send you a big 'ol fat  
21 paycheck, don't spend it all in one place. You  
22 probably won't have a choice but to spend it in one  
23 place. But thank you for your service.

24           (The alternate was excused.)

25           (The jury commenced its deliberations at

1 11:40 a.m.)

2 (A recess transpired.)

3 (The following proceedings occurred during  
4 jury deliberations at 11:53 a.m.)

5 (Court's Exhibit Number 1, jury note, marked  
6 for identification purposes.)

7 **THE COURT:** Got three questions. The first  
8 question, Are all three co-defendants awaiting trial  
9 or did they plead guilty and are awaiting sentence?

10 The second question, If they plead guilty on  
11 all counts and are awaiting sentence and pleading  
12 guilty would place them all in prison for life, what  
13 leniency could be expected?

14 And the third one, With the hand of one is the  
15 hand of all rule, if I feel Breon was present, would  
16 that make him guilty on all charges?

17 **MR. WILLIAMS:** Well, the last question is no.

18 **MR. GRAHAM:** The last question is yes.

19 **MR. WILLIAMS:** Is no. No, it's not. If I were  
20 present --

21 **MR. GRAHAM:** They just had he was part of a  
22 plan. You have to have a plan --

23 **MR. WILLIAMS:** You have to add intent and all  
24 kind of stuff.

25 **MR. GRAHAM:** I mean, it says that in the hand

1 of one, hand of all charge. It's in there. It's  
2 got the mere presence in there I believe.

3 **THE COURT:** Yeah, it's more than a mere  
4 presence.

5 **MR. WILLIAMS:** Can you answer that question? I  
6 mean, the first two, you can't even answer at all.

7 **THE COURT:** Yeah. But I think the third one I  
8 will say, Go back and look at the charge on hand of  
9 one, the hand of all.

10 **MR. WILLIAMS:** Do they reference that in the  
11 question?

12 **THE COURT:** It just says -- they asked, If I  
13 feel Breon was present, would that make him guilty  
14 on all charges?

15 **MR. WILLIAMS:** Well, they didn't ask about the  
16 hand of one is the hand of all, so I would object to  
17 that.

18 **THE COURT:** They do. They say, With the hand  
19 of one, hand of all rule, if I feel Breon was  
20 present, would that make him guilty on all charges?

21 **MR. WILLIAMS:** Well, we can't answer that  
22 question.

23 **MR. GRAHAM:** Just refer them back to the  
24 charge.

25 **MR. WILLIAMS:** They just have to read the

1 charges.

2 THE COURT: Well, that's what I'm going to say  
3 is go back and reread the charge on that.

4 MR. WILLIAMS: And the other charges.

5 THE COURT: And the other charges.

6 MR. GRAHAM: Just reread the jury charge,  
7 that --

8 MR. WILLIAMS: Just reread the jury charges.

9 MR. GRAHAM: -- covers both -- either or both.

10 MR. WILLIAMS: Okay. I'm good with that.

11 THE COURT: And the first two, I guess, I will  
12 say, they should not -- well, are all three awaiting  
13 trial or did they --

14 MR. WILLIAMS: There's no testimony.

15 MR. GRAHAM: They have not --

16 MR. WILLIAMS: There is no testimony as to  
17 either one.

18 MR. GRAHAM: I mean, I asked them if they were  
19 guilty, but -- they were hoping for leniency by  
20 question -- nobody promised them anything, but there  
21 was no testimony of whether they had pled or not  
22 pled.

23 MR. WILLIAMS: I actually checked to see if  
24 they had pled before --

25 MR. GRAHAM: Well, I would have told you that.

1           **MR. WILLIAMS:** Well, I mean, you know, I just  
2 thought I'd check anyway.

3           **THE COURT:** So are we all agreeing that I  
4 should just tell them we can't answer question one  
5 and question two?

6           **MR. WILLIAMS:** Yes, sir. We agree -- I agree  
7 with that.

8           **MR. GRAHAM:** It has to -- yeah, but -- I'm  
9 trying to think how to word it right. You can only  
10 consider the evidence that was before you at trial.  
11 There was no testimony on this matter, something  
12 like that.

13           **MR. WILLIAMS:** You can't comment on that  
14 basically or we can't comment on anything. You have  
15 to make the decision.

16           **THE COURT:** Well, what would be wrong with  
17 saying, are all three -- all three co-defendants are  
18 awaiting trial?

19           **MR. WILLIAMS:** Because you don't -- there's no  
20 testimony that that's what they're doing. They may  
21 have entered their plea already. There's no  
22 testimony whether they have or haven't. They may be  
23 awaiting sentencing.

24           **MR. GRAHAM:** Or they may be hoping that their  
25 charges are going to be dismissed.

1           **MR. WILLIAMS:** Yes. . And they would never have  
2 to enter a plea --

3           **MR. GRAHAM:** Correct, which is --

4           **MR. WILLIAMS:** -- as Cedric has done.

5           **MR. GRAHAM:** Cedric was never charged.

6           **MR. WILLIAMS:** Oh, as -- I've got some more  
7 names. I've got some more names.

8           **MR. GRAHAM:** I can sit down legal wise and tell  
9 you why.

10          **THE COURT:** As to questions one and two,  
11 there's no evidence in the record --

12          **MR. WILLIAMS:** To respond to that.

13          **THE COURT:** -- to respond to your questions.

14          **MR. GRAHAM:** Or just say, you must only -- what  
15 if we just respond and say, you must only consider  
16 the evidence that you heard from the witness stand?

17          **MR. WILLIAMS:** Well, that's not really true.  
18 They can consider evidence that's --

19          **MR. GRAHAM:** Well, regarding that.

20          **MR. WILLIAMS:** Well, I don't know, maybe  
21 something was introduced.

22          **MR. GRAHAM:** You can only consider testimony --

23          **MR. WILLIAMS:** You can only consider evidence  
24 which has been presented.

25          **MR. GRAHAM:** Okay. Works for me.

1 (Pause.)

2 (Court's Exhibit Number 2, jury note, marked  
3 for identification purposes.)

4 **THE COURT:** There's no evidence presented which  
5 states whether the co-defendants have entered pleas  
6 or are awaiting trial. So I cannot answer question  
7 one for the same reason I cannot answer question  
8 two.

9 As to question three, I refer you back to the  
10 jury instructions, which you have. After you have  
11 read any portions you deem applicable, please take a  
12 look at all the remaining portions to make sure the  
13 portions you have read are taken in proper context.  
14 After you have done this, you should evaluate the  
15 evidence as a whole in order to reach a verdict. I  
16 cannot comment any further on what is the ultimate  
17 question for you, the jury, to decide.

18 **MR. WILLIAMS:** I am 100 percent behind that  
19 instruction. That's good. I like that.

20 **THE COURT:** Are y'all all right with me just  
21 sending this back?

22 **MR. WILLIAMS:** Yes, sir. That's wonderful.  
23 That's wonderful.

24 (Court's Exhibit Number 3, jury note, marked  
25 for identification purposes.)

1 (A recess transpired at 12:18 p.m.)

2 **THE COURT:** All right. I understand we have a  
3 verdict. Let the record reflect the defendant's in  
4 the courtroom.

5 Bring the jury in.

6 Folks, let me tell you when we get this verdict  
7 in, I don't want anybody to have any outbursts or  
8 any sort of comments or commotions. If you do, we  
9 will have you escorted immediately from the  
10 courtroom.

11 (The jury returns to open court to report  
12 its verdict at 2:08 p.m.)

13 **THE COURT:** All right. Mr. Foreman, I  
14 understand the jury has reached a verdict; is that  
15 correct?

16 **FOREMAN:** Yes, Your Honor.

17 **THE COURT:** Have you reached a verdict on each  
18 of the indictments?

19 **FOREMAN:** Yes, sir.

20 **THE COURT:** And is it unanimous as to each  
21 indictment?

22 **FOREMAN:** Yes, Your Honor.

23 **THE COURT:** All right. Would you hand that to  
24 the clerk, please?

25 (The clerk hands the verdicts to the Judge.)

1           **THE COURT:** The clerk will publish. The  
2 defendant will rise.

3                               VERDICT OF THE JURY

4           **THE CLERK:** Indictment 2012-GS-32-00182, the  
5 State versus Breon Jacoby Mayers. As to the charge  
6 of murder, we, the jury, find the defendant guilty.

7           Indictment 2012-GS-32-00184, the State versus  
8 Breon Jacoby Mayers, indicted for armed robbery.

9 We, the jury, find the defendant guilty.

10           Indictment 2012-GS-32-00183, the State versus  
11 Breon Jacoby Mayers, indicted for burglary in the  
12 first degree. We, the jury, find the defendant  
13 guilty.

14           Indictment 2012-GS-32-00187, the State versus  
15 Breon Jacoby Mayers, indicted weapons -- possession  
16 of weapon during a violent crime. We, the jury,  
17 find the defendant guilty.

18           They're all so signed and dated August 10th,  
19 2012.

20           Mr. Foreman, ladies and gentlemen, if this is  
21 your verdict, please indicate each of you by raising  
22 your right hand.

23           **THE COURT:** Let the record reflect each juror  
24 has raised their right hand.

25           Would the defense like to have the jury polled?

1           **MR. WILLIAMS:** I would, Your Honor.

2           **THE COURT:** All right. Madame Clerk, poll the  
3 jury by juror identification number, please.

4           **THE CLERK:** Yes, sir.

5           As I call your number, if you will hold your  
6 hand where I can recognize you. I will ask you a  
7 two-prong question, please wait till the end of it.  
8 I'll ask you, As to the verdicts, were these your  
9 verdicts and are they still your verdicts? At that  
10 time, please respond.

11           Juror number 39, as to the verdicts, were these  
12 your verdicts and are they still your verdicts?

13           **JUROR:** Yes.

14           **THE CLERK:** 29, as to the verdicts, were these  
15 your verdicts and are they still your verdicts?

16           **JUROR:** Yes.

17           **THE CLERK:** 130, as to the verdicts, were these  
18 your verdicts and are they still your verdicts?

19           **JUROR:** Yes.

20           **THE CLERK:** Number 61 -- excuse me, she was the  
21 one that was released -- 131, as to the verdicts,  
22 were these your verdicts? Are they still your  
23 verdicts?

24           **JUROR:** Yes.

25           **THE CLERK:** Number 65, as to the verdicts, were

1 these your verdicts? Are they still your verdicts?

2 JUROR: Yes, ma'am.

3 THE CLERK: 203, as to the verdicts, were these  
4 your verdicts? Are they still your verdicts?

5 JUROR: Yes.

6 THE CLERK: 117, as to the verdicts, were these  
7 your verdicts? Are they still your verdicts?

8 JUROR: Yes, ma'am.

9 THE CLERK: 164, as to the verdicts, were these  
10 your verdicts? Are they still your verdicts?

11 JUROR: Yes, ma'am.

12 THE CLERK: 213, as to the verdicts, were these  
13 your verdicts? Are they still your verdicts?

14 JUROR: Yes.

15 THE CLERK: 180, as to the verdicts, were these  
16 your verdicts? Are they still your verdicts?

17 JUROR: Yes.

18 THE CLERK: Number 115, as to the verdicts,  
19 were these your verdicts? Are they still your  
20 verdicts?

21 JUROR: Yes.

22 THE CLERK: Number 145, as to the verdicts,  
23 were these your verdicts and are they still your  
24 verdicts?

25 JUROR: Yes.

1           **THE CLERK:** All jurors polled, Your Honor.

2           **THE COURT:** All right. The verdicts will  
3 stand.

4           You may be seated. Thank you.

5           Ladies and gentlemen, I want to thank you for  
6 your service this week. This has been a long week  
7 and an interesting trial. I know it has been a  
8 difficult case for y'all to probably hear. It  
9 sounds like you, though, took your job very, very  
10 seriously.

11           I know throughout the trial, part of my job is  
12 to not only conduct it, but just kind of, you know,  
13 visually glance around the room a good bit and make  
14 sure everybody's paying attention. And I don't  
15 think at once I ever saw anybody doing anything  
16 other than riveted on whatever the testimony was.  
17 It is clear that you folks took your job and your  
18 oath very, very seriously and we thank you for that.

19           I told you on Monday the system works because  
20 you folks show up. And, you know, it's a very  
21 diverse group of folks that are sitting in there.  
22 And you listened to the evidence, you listened to  
23 what I told you the law was and then you went back  
24 and discussed it for pretty close to three hours and  
25 that shows me that you did your job and that's all

1 that we can ask you to do is to participate in the  
2 system, take it seriously and then we live with what  
3 the verdict is.

4 And so we're at that point where we're finished  
5 now for this week for your jury service. As you  
6 remember on Monday when I qualified you, you are now  
7 disqualified as a juror for the rest of the year if  
8 you happen to get called again, but you also then  
9 have three years worth of exemptions.

10 Now, as I also told you on Monday, you don't  
11 have to exercise the exemptions. And it's my hope  
12 -- my own personal hope is that you enjoyed this  
13 experience enough that you'll want to do it again  
14 one day and that if you got called, you would say,  
15 you know what, I enjoyed that, it was a good  
16 experience. I learned a lot. And on the whole, it  
17 was a positive experience.

18 Because, one, we want you to -- we don't want  
19 to inconvenience you anymore than we did and you  
20 guys spent a full solid week here, but we also count  
21 on you enjoying the experience so that you go back  
22 and tell other people and say, you know what, I  
23 spent a whole week there, it was a difficult case,  
24 but I learned something about my government, about  
25 the way things work, about how trials are conducted.

1 And, on the whole, it was a positive experience. So  
2 that other people will want to do it because it  
3 doesn't do any of us any good that if people don't  
4 enjoy the experience and go back and complain about  
5 it.

6 Our clerks around here run a tremendous  
7 courtroom. The bailiffs and the clerks that were  
8 working in here, everybody works behind the scenes  
9 to make things go very smoothly. And I know, it's  
10 been my experience, that when sometimes people  
11 follow up with jurors and ask them what they enjoyed  
12 about the experience, what they found most positive,  
13 you know, nine times out of ten they say, well, we  
14 think the bailiffs did a really good job.

15 And, you know, that's the folks that you work  
16 with on a hands-on basis. And I know these fellows  
17 have been working really hard behind the scenes to  
18 make sure everything just is really, really smooth.  
19 I showed up here on Monday and I hadn't held court  
20 in Lexington in several years, but they treated me  
21 well. And so -- and it does look like you folks got  
22 taken care of as well.

23 So, having said that, you are now free for the  
24 week. We will have you escorted down. And you  
25 don't have to come back, you don't have to call the

1 telephone number or anything like that. But on  
2 behalf of the citizens of the State of South  
3 Carolina and Lexington County, I do want to thank  
4 you for your jury service. And you are now free to  
5 go.

6 (The jury was excused.)

7 **THE COURT:** All right. Is there anything that  
8 the State would like to bring to my attention before  
9 I impose sentence? And then I'll hear from the  
10 defense.

11 **MR. GRAHAM:** Yes, Your Honor. I know that  
12 there -- I will speak first and I know there are  
13 several members of the family that would like to  
14 speak as well.

15 Mr. Mayers does not have any criminal  
16 convictions, Your Honor. He was arrested in 2008  
17 for a drive-by shooting. He was arrested for  
18 assault with intent to kill and discharging a  
19 firearm into a dwelling. He made bond. And this  
20 crime and these convictions that resulted from that  
21 crime occurred while he was out on bond showing his  
22 disregard for the law.

23 There are some photographs of tattoos that he  
24 wears that I believe that are relevant. If I can  
25 approach, Your Honor.

1           **THE COURT:** You may.

2           **MR. GRAHAM:** There are two, Your Honor, on his  
3 left forearm. He has a 74 underneath, which is a  
4 man in a ski mask and underneath is the word  
5 Gangsta. 74 is the symbol, one of the symbols for  
6 the Gangster Disciples. It's the seventh letter of  
7 the alphabet and the fourth letter of the alphabet.  
8 And it was founded in 1974.

9           On his other forearm, Your Honor, you can see  
10 that he has the word G Status, Gangster Status, with  
11 the money sign on it.

12           We were passed a letter during the preparation  
13 of this trial from Jasmine Bowers that's entitled,  
14 Take it to the grave. It's previously been provided  
15 to Mr. Williams in discovery. She's identified it  
16 as coming from Mr. Mayers. She did not recognize  
17 the handwriting. Mr. Caughman said that it did look  
18 like Mr. Mayers' handwriting. It was sent to SLED.  
19 The SLED result was inconclusive on that or we would  
20 have introduced it into evidence.

21           But what it reads, Your Honor, in part is this,  
22 it says: Take it to the grave. It says, Send your  
23 letter back. What's good? How have you been? Just  
24 want to let you know it ain't me who's screaming  
25 shit. I'm keeping it thug and stick to my word as a

1 man and as a G.

2 But anyone I'm checking -- but anywho, I'm  
3 checking on you. And did you go to court? If you  
4 did, just maintain and do what we know best, thug it  
5 out and we're gonna out of here by a month or two  
6 scotch free {verbatim}. Don't get flaw on me now.  
7 Keep it gangsta with your boy. And I'm here to tell  
8 you you're almost home if you stuck to your word  
9 well as I. And you can write me back if you like.  
10 I hope you do. Let me know what happens when you  
11 went to court and I'll let you know what we have to  
12 do from this point on.

13 My lawyer knows for a fact that this is  
14 bullshit and they have to let us go. Do you have a  
15 paid lawyer? Don't panic. This is what folks go  
16 through. Stick to your G code and your status goes  
17 sky high. I look out for you no matter what. Feel  
18 me? No flex.

19 Let me know what's good, though. We can beat  
20 this. I know it, I'm not a rookie. I want to get  
21 back to the streets as well as you, that's only if  
22 you didn't snitch, which I seriously think you  
23 didn't. Let me know everything you know and what  
24 your lawyer telling you and we can get it moving  
25 from there. I got connections all through this

1 bitch, so get at ya boy, please.

2 **THE COURT:** Tell me what this 74 thing means  
3 again.

4 **MR. GRAHAM:** It's a symbol for Gangster  
5 Disciples. It's part of the Folk Nation gang. If  
6 you'll remember Mr. Brennan that testified, I think  
7 it was Mr. Brennan testified, that Mr. Mayers was  
8 wearing a pair of Vans flagging Folk, meaning that  
9 the shoes that he was wearing were Van shoes, but  
10 they were flagging the Folk Nation. And the  
11 Gangster Disciples and the Folk Nation are  
12 affiliated, Your Honor.

13 In addition, Your Honor, Christopher Benjamin,  
14 that's the young man who stated that he had  
15 recovered the handgun from Mr. Mayers, and you'll  
16 remember that he was talking how Mr. Mayers was  
17 bragging about getting his first body. During the  
18 course of their day together, Mr. Mayers became  
19 aware of another unfortunate event that stemmed from  
20 his actions.

21 Mr. Cannon's mother, when she heard of her son  
22 being shot, was driving over to see him and to go to  
23 the house. She ended up suffering a stroke and a  
24 heart attack and dying on her way to go see her son.  
25 And Mr. Benjamin, and I believe Mr. Brennan as well,

1 state that Mr. Mayers was bragging about getting two  
2 bodies for the price of one.

3 Finally, Your Honor, I'd like to point out that  
4 Mr. Brennan reported to his lawyer who reported to  
5 me that earlier this week, I believe on Monday  
6 morning, that he was -- received a threat from  
7 Mr. Mayers.

8 His attorney notified me. We went and  
9 interviewed the person who he stated communicated  
10 the threat to him and that person was interviewed  
11 and confirmed the fact that Breon Mayers was  
12 bragging about that he did commit a murder, again  
13 stating that he got a body. And he told that person  
14 to tell Tyrone Brennan and his co-defendants that  
15 there are no keep aways on the yard at SCDC.

16 I know, Your Honor, at this time, that there  
17 are several members of the victim's family would  
18 like to address, Your Honor.

19 **THE COURT:** All right. Who would that be?

20 **MR. CANNON:** Good afternoon, Your Honor. My  
21 name is Christopher David Cannon. David Cannon was  
22 my father and his mother was my grandmother, my  
23 adoptive mother who raised me.

24 The loss of that day is impossible to put into  
25 words. I had been estranged from my father for

1 quite a while and just in the past couple of years,  
2 when I learned he was sick, the family had started  
3 to come back together. And to have that taken away  
4 after really not having a full family and then  
5 experiencing what it was like to have a family --  
6 have a Christmas together and now having that taken  
7 away, I can't put that into words how much that  
8 hurts and how much that will affect me for the rest  
9 of my life.

10 **THE COURT:** Thank you, sir.

11 **MS. CANNON:** My name is Jennifer Cannon. I'm  
12 David Cannon's daughter. Just like my brother said,  
13 we'd been estranged from our father. Maggy was my  
14 grandmother as well.

15 That day we lost so much. I have a little girl  
16 who's seven and she had just, you know, been around  
17 her granddaddy and she doesn't understand why he's  
18 not there, you know, why Grandma Maggy's not around  
19 anymore. And I have to explain to her that one day  
20 and just -- and that's all.

21 **THE COURT:** Thank you.

22 Was there anyone else from the State?

23 (Pause.)

24 **THE COURT:** Anything further from the State?

25 **MR. GRAHAM:** No, Your Honor. The only thing

1 that I would add at this point is that on behalf of  
2 the family of David Cannon and the citizens of  
3 Lexington County, based on the evil and horrendous  
4 crime that Mr. Mayers committed, that you impose the  
5 maximum sentence.

6 **THE COURT:** All right. Is there anything from  
7 the defense?

8 **MR. WILLIAMS:** Yes, Your Honor. First, we  
9 would ask that the Court grant the defendant an  
10 arrest of judgment and grant him a new trial. We  
11 moved into the sentencing procedure. I'd ask the  
12 record to note that I did move for a new trial at  
13 the conclusion of the return of the jury's verdict,  
14 that the evidence taken as a whole was insufficient  
15 as a matter of law for the jury to return a verdict  
16 of guilty.

17 **THE COURT:** Your motion is denied.

18 **MR. WILLIAMS:** Thank you, Your Honor. Your  
19 Honor, if I can have my client stand with me up  
20 here.

21 **THE COURT:** All right.

22 **MR. WILLIAMS:** I'd like to remark, I guess, on  
23 a couple of things that were brought up first and  
24 that is these tattoos which Breon has on his arms,  
25 he was 15 years of age when the tattoos were placed

1 on his arms. He is now 21 years of age.

2 On the message, Take it to the grave, we  
3 learned of this in the trial of the case. My client  
4 volunteered to have a handwriting sample done. And  
5 he had a handwriting sample done which came back --  
6 indicated that he was not, or they could not say,  
7 that he was the one who actually wrote this letter.  
8 So I realize they're saying that he wrote it, but at  
9 least the handwriting expert said that he didn't  
10 write it.

11 He is 21 years of age. He is -- obviously, he  
12 comes from a very good family. He's got a child  
13 that was born while he has been in jail who will be  
14 two months old tomorrow.

15 Your Honor, I'll see if I can mark out some --  
16 if I could ask his family, Your Honor, to kind of  
17 just stand up. His father, Your Honor, is the  
18 gentleman with the glasses with the long hair. He's  
19 retired Army. The young lady next to him is his  
20 grandmother.

21 Father and grandmother have been in constant  
22 talk or conversation with me everyday since I began  
23 representing him, have always been concerned with  
24 Breon. So he comes from a good family. Grandmama  
25 has met with me every morning before eight o'clock

1 to bring his clothes. I know you've noticed that  
2 he's dressed well.

3 His sister is to the right of him, I believe  
4 that's his sister. His uncle -- Tandy {verbatim},  
5 if you'll stand up -- he's a very -- he's a strong  
6 citizen. His grandfather's with the yellow shirt.  
7 See if I can remember everybody. And then the rest,  
8 I guess, of the people behind him are friends, are  
9 relatives. The courtroom's kind of been filled with  
10 them everyday.

11 I don't think these guys are gang members. If  
12 they are, they're awful old to be gang members. I  
13 think these are concerned family that care about  
14 him.

15 We can't quibble with the verdict because we  
16 don't do that as lawyers. Obviously, the jury  
17 thought about it for three hours and they made their  
18 call.

19 I don't know who's guilty and who's not guilty,  
20 that takes jurors and it takes God to know the  
21 answer to that question. The only thing I hope is  
22 that if indeed, if he is guilty, I hope every one of  
23 the co-defendants receive the same sentence. I  
24 don't know if I should say that or not, but I did  
25 because I don't know who was involved in doing what.

1 I mean, you never know because you've got different  
2 people saying different things.

3 But I'm sure that if he -- if he had to change  
4 his life all over again, he would not be associated  
5 with the people he's been associated with. And you  
6 can tell he obviously has remorse because he's  
7 standing up here and he's emotionally upset.

8 I guess the best I can hope, Your Honor, is  
9 that you run it concurrent and give him a chance to  
10 have some kind of life after many years. Young  
11 people eventually grow out of whatever stupid stuff  
12 they do. I know I have and I think he will. That's  
13 all I know to say, Judge.

14 **THE COURT:** Mr. Mayers, would you like to say  
15 anything?

16 **DEFENDANT:** I ain't kill nobody. I ain't got  
17 nothing to say. I ain't killed that man. I'd never  
18 do that. I been in this community for over ten  
19 years. I never killed that man. For what? I'm not  
20 racist. Weed. I don't need no money. My grandma  
21 can support me. I get jobs.

22 I'm not a bad person, Your Honor. I don't care  
23 what nobody can tell you sitting up there on the  
24 stand and tell you. I'm not a bad person, Your  
25 Honor, and that's for real. I don't deserve this,

1 that's why I took it to trial. I do not deserve  
2 this.

3 If you see -- I -- these tattoos right here  
4 came when I was 15 years old, that's when I ain't  
5 know no better. I seen something that I wanted, so  
6 I got down with it. That's what every little  
7 teenager want to do. They see something they want,  
8 they're going to go for it. But my grandmama made  
9 me see otherwise. My daddy made me see otherwise.  
10 My family made me see otherwise. My family had  
11 changed me. I came from a Christian family.

12 I'm not a killer. I'm not a robber. I don't  
13 even get -- I barely got a driver's ticket. I  
14 barely got that. The reason that I got the other  
15 charges is because of the same situation I'm in now,  
16 someone saying that I did something that was totally  
17 irrelevant.

18 Something happened today I can't change it.  
19 It's nothing I can do. It's nothing I can do. It's  
20 nothing I can do. I said my peace. I mean, it  
21 still won't change the verdict.

22 I'm sorry to your family. I'm sorry for your  
23 loss, but you know I wouldn't do nothing like that,  
24 Sharon. The whole time I've been in that community,  
25 you know I wouldn't do nothing like that. I never

1 had no type of beef with Dave never, ever, and you  
2 know that. You never heard anything about that.  
3 You never heard me robbing anyone. You never seen  
4 me doing crazy and thuggish things.

5 Your Honor, I spoke my peace and it's nothing I  
6 can do, that's why I took it to trial. It's nothing  
7 else I can do. I -- without consisting, without  
8 thinking about it twice, I did my DNA analysis, I  
9 did the handwriting. Anything they wanted, I gave  
10 it to them, but it's -- the reason I didn't write a  
11 statement, I didn't want to put nobody under the bus  
12 because I didn't think nobody would put me under the  
13 bus. Why would I put somebody under the bus if I  
14 don't know nothing about it?

15 If I killed the man, I would tell you. I will  
16 honestly tell you, but I did not kill this man.  
17 That's just word to God. God know the truth. God  
18 knows the truth. That's all I have to say.

19 **THE COURT:** All right.

20 (Pause.)

21 **THE COURT:** All right. Well, without a doubt,  
22 the worst part about this job is sentencing people  
23 to prison, young people especially. You know, if  
24 they make terrible, stupid, horrendous choices when  
25 they're young, and some people grow old and still

1 make bad, terrible, stupid decisions, but we live  
2 with them. And I've got to live with what you've  
3 got to live with and that is the jury has convicted  
4 you of all of these charges.

5 And it is clear that they believed what I think  
6 was an overwhelming case with compelling evidence  
7 that you did kill this man and that you did rob him  
8 and that you did burglarize his house and that you  
9 did it in one of the coldest acts of just pure  
10 senseless violence that I think I've heard in my  
11 close to ten years of being on the circuit court.  
12 The only cases that I think I've heard that are  
13 worse, the State's asked for a death penalty. They  
14 didn't ask for it in this case.

15 But the fact of the matter is is that your  
16 actions, despite the fact that they were taken when  
17 you were young, cause you to face the maximum  
18 sentence. And I say that with no joy in my heart  
19 whatsoever, but these -- this was a senseless act.  
20 It was taken without any sort of remorse either  
21 post-trial, post-arrest, post-act along the way  
22 until today and you still maintain you didn't do it.

23 But according to the testimony that I heard,  
24 you did do it and you bragged about it and did it  
25 for a very little reason other than you wanted a

1 little marijuana, a little bit of cash and you  
2 wanted to get your first body.

3 SENTENCE OF THE COURT

4 THE COURT: The sentence of the Court on the  
5 murder charge and on the burglary charge is life  
6 without parole. On the armed robbery charge is 30  
7 years and on the weapons charge, five. Good luck to  
8 you.

9 MR. WILLIAMS: Thank you, Your Honor.

10 THE COURT: All right. Court is adjourned.

11

12

END OF PROCEEDINGS

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## C E R T I F I C A T E

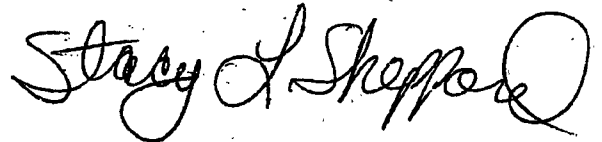
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 6th - 10th of August, 2012.

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

January 28, 2013



Stacy L. Sheppard, RPR  
Circuit Court Reporter



1061

WITNESSES

Lexington County Sheriffs Department

William E. Derrenbacher

Law Enforcement Case #: 11031995

DSG

ARREST WARRANT NUMBER

M303444

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 2/6/2012

VERDICT

Guilty

Foreperson of Petit Jury

Date: 6/10/12

DOCKET NO. 2012GS3200182

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

THE STATE

vs.

Breon Jacoby Mayers

CDR #: 0116

Indictment for

Murder

§ 16-03-0010

DONALD V. MYERS, SOLICITOR

TRUE COPY

CLERK OF COURT, S.C. JUD.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
Murder  
§ 16-03-0010

At a Court of General Sessions, convened on February 2012, the Grand Jurors of Lexington County present upon their oath:

That Breon Mayers along with Jermaine Caughman and/or Tyrome Brennan and/or Jasmine Bowers did in Lexington County, South Carolina on or about October 21, 2011, willfully, feloniously and with malice aforethought, kill one David Cannon by shooting the victim twice in the chest and the victim died as a result thereof, in violation of §16-3-10, 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.

  
DEPUTY SOLICITOR

WITNESSES

Lexington County Sheriffs Department

William E. Derrenbacher

Law Enforcement Case #: 11031995

DSG

ARREST WARRANT NUMBER

M303445

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 2/6/2017

VERDICT

Guilty

Foreperson of Petit Jury

Date: 8/10/12

DOCKET NO. 2012GS3200183

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

THE STATE

vs.

Breon Jacoby Mayers

CDR #: 0079

Indictment for

Burglary 1st degree

§ 16-11-0311

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.P., G.S. & F.G.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
Burglary 1st degree.

§ 16-11-0311

At a Court of General Sessions, convened on February 2012, the Grand Jurors of Lexington County present upon their oath:

That **Breon Jacoby Mayers along with Jermaine Caughman and/or Tyrone Brennan and/or Jasmine Bowers** did in Lexington County, South Carolina on or about October 21, 2011 did knowingly and willfully enter a dwelling, to wit:

I being the dwelling of David Cannon and/or Sharon Bowers, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, he/she or another participant in the crime, was armed with a deadly weapon or explosive, and/or caused physical injury to a person who is not a participant in the crime, and/or used or threatened the use of a dangerous instrument, in violation of § 16-11-311 of the 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.

  
DEPUTY SOLICITOR

WITNESSES

Lexington County Sheriffs Department

William E. Derrenbacher

Law Enforcement Case #: 11031995

DSG

ARREST WARRANT NUMBER

M303446

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 2/6/2012

VERDICT

Guilty

Foreperson of Petit Jury

Date: 8/10/12

DOCKET NO. 2012GS3200184

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

THE STATE

vs.

Breon Jacoby Mayers

CDR #: 0139

Indictment for

Robbery / Armed Robbery

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

ATRUE COPY

Lex. Co. C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )

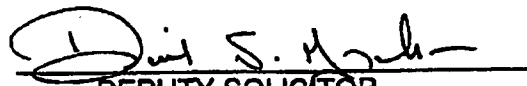
INDICTMENT FOR  
Robbery / Armed Robbery  
§ 16-11-0330(A)

At a Court of General Sessions, convened on February 2012, the Grand Jurors of Lexington County present upon their oath:

That Breon Jacoby Mayers along with Jermaine Caughman and/or Tyrome Brennan and/or Jasmine Bowers did in Lexington County, South Carolina on or about October 21, 2011 knowingly and willfully while armed with a deadly weapon, to wit: a 9mm Handgun did feloniously take from the person or presence of David Cannon, by means of force, threats or intimidation goods or monies being described as follows: US Currency with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

# AND/OR A .357 HANOGUN AND/OR MARIJUANA. PJ

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

  
DEPUTY SOLICITOR

WITNESSES

Lexington County Sheriffs Department

William E. Derrenbacher

Law Enforcement Case #: 11031995

DSG

ARREST WARRANT NUMBER

M303447

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 2/6/2012

VERDICT

Guilty

Foreperson of Petit Jury

Date: 8/10/12

DOCKET NO. 2012GS3200187

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

THE STATE

vs.

Breon Jacoby Mayers

CDR #: 0549

Indictment for

Weapons / Possession Weapon during a  
Violent Crime

§ 16-23-0490

DONALD V. MYERS, SOLICITOR

A TRUE COPY

*[Handwritten Signature]*

Lex. Co. C.C.P., G.S. & E.C.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )


INDICTMENT FOR  
Weapons / Possession Weapon during a Violent  
Crime

§ 16-23-0490

At a Court of General Sessions, convened on February 2012, the Grand Jurors of Lexington County present upon their oath:

That **Breon Jacoby Mayers along with Jermaine Caughman and/or Tyrome Brennan and/or Jasmine Bowers** did in Lexington County, South Carolina on or about October 21, 2011 knowingly and willfully, possess a firearm, during the commission of a violent crime or attempt to commit a violent crime, to wit: Murder and/or Burglary 1<sup>st</sup>, and/or Armed Robbery such weapon described as a a 9mm handgun in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

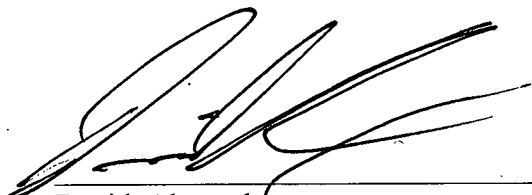
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
DEPUTY SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 30th, 2013

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Lexington County

Roger M. Young, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

OCT 30 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BREON JACOBY MAYERS,

APPELLANT

APPELLATE CASE NO, 2012-213003  
\_\_\_\_\_

CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 30th day of October, 2013.

*Brandon Hall*

\_\_\_\_\_  
Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 30th day of October, 2013.

*[Signature]*  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.